

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/STOP PRESS: DRIVING INSTRUCTION (SUSPENSION AND EXEMPTION POWERS) ACT 2009

## **ROAD TRAFFIC (**

### **STOP PRESS:**

**The Driving Instruction (Suspension and Exemption Powers) Act 2009 provides for the suspension in certain circumstances of registration and licences relating to the provision of driving instruction, and makes provision about exemptions from prohibitions concerning registration (including provision about suspension) and about compensation in connection with suspension. The Act received royal assent on 12 November 2009 and ss 5 and 6 came into force on that day. The remaining provisions come into force on a day or days to be appointed. For details of commencement, see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.**

**Sections 1-3 amend the Road Traffic Act 1998. Provision is made by the 2009 Act s 1 for the suspension of a person's registration to give driving instruction, where the registrar is considering either terminating the person's registration, or where the registrar has already so decided, and he believes such person presents a significant threat to the safety of members of the public. By virtue of s 2, the Secretary of State must make a scheme for the making of compensation payments in respect of suspension. Provision is made by s 3 for exemptions from prohibitions concerning registration. Section 4, Sch 1 make transitory amendments to the existing registration regime. Consequential provision is made by s 5 and transitional, transitory and saving provisions are made by s 6. Section 7 deals with short title, commencement and extent.**

### ***Amendments, repeals and revocations***

Subscribers should note that the list below mentions repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet. Please also note that the list is not exhaustive.

Specific provisions of a number of Acts are added, amended or repealed. These include: Road Traffic Act 1998 ss 128(7A)-(7G), 128ZA, 128ZB, 129(9), 130(7)-(13), 131A; Road Traffic Offenders Act 1998 s 18(1).

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## **1. LEGISLATION AND ADMINISTRATION**

## **(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION**

### **(i) Introduction**

#### **201. Road traffic.**

At common law a person's right to use the highway was regulated mainly by the duty of care owed to other users of the highway<sup>1</sup>, by the law of nuisance<sup>2</sup>, and by limitation of that right to the purposes of legitimate travel<sup>3</sup> and to the class of traffic for which the highway had been dedicated<sup>4</sup>. The detailed regulation of all forms of traffic by road which is the subject matter of this title is entirely statutory<sup>5</sup>. Certain definitions are common throughout the road traffic legislation<sup>6</sup>.

1 See NEGLIGENCE vol 78 (2010) PARAS 51-61. For the meaning of 'highway' see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 1 et seq. As to the rule of the road (ie keeping to the left) see NEGLIGENCE vol 78 (2010) PARA 55; and *Bolton v Everett* (1911) 75 JP 534, DC.

2 See HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 322-339; and PARA 227 post. For a statutory saving for the law of nuisance see the Road Traffic (Consequential Provisions) Act 1988 s 7; and PARA 202 post.

3 See HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 1, 197 et seq.

4 See HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 108 et seq.

5 As to the legislation relating to road traffic see PARA 202 post.

6 See PARAS 206-220 post.

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#### **202. The legislation.**

The principal enactments relating to road traffic are the Road Traffic Act 1988, the Road Traffic Offenders Act 1988 and the Road Traffic (Consequential Provisions) Act 1988 ('the Road Traffic Acts')<sup>1</sup>, which came into force on 15 May 1989<sup>2</sup> and which consolidated earlier legislation<sup>3</sup>. These Acts have been amended and extended by the Road Traffic Act 1991 and the Road Safety Act 2006. Many detailed provisions are contained in subordinate legislation<sup>4</sup>. Nothing in these Acts authorises a person to use on a road<sup>5</sup> a vehicle so constructed or used as to cause a public or private nuisance, or affects the liability, whether under statute or common law<sup>6</sup>, of the driver<sup>7</sup> or owner<sup>8</sup> so using such a vehicle<sup>9</sup>.

Separate enactments govern the taxation, licensing and registration of all road vehicles<sup>10</sup> and the operation and special licensing of goods vehicles<sup>11</sup> and passenger vehicles<sup>12</sup>. There is also legislation containing powers for controlling traffic, parking, speed limits and other matters<sup>13</sup>.

Some statutes remain in force which were enacted when road traffic was principally horse drawn. The older statutes include the provisions of the Town Police Clauses Act 1847 relating to hackney carriages<sup>14</sup>, a number of provisions applying in London, principally those relating to hackney carriages or cabs<sup>15</sup>, and some minor provisions relating to stage carriages<sup>16</sup>.

1 'The Road Traffic Acts' means the Road Traffic Act 1988, the Road Traffic Offenders Act 1988 and the Road Traffic (Consequential Provisions) Act 1988 so far as it reproduces the effect of the repealed earlier legislation: Road Traffic Act 1988 s 192(1); Road Traffic Offenders Act 1988 s 98(1); Road Traffic (Consequential Provisions) Act 1988 s 1(1).

2 Road Traffic Act 1988 s 197(2); Road Traffic Offenders Act 1988 s 99(2); Road Traffic (Consequential Provisions) Act 1988 s 8(2).

3 For the repealed enactments see the Road Traffic (Consequential Provisions) Act 1988 s 3(1), Sch 1 Pt I; for consequential amendments see s 4, Schs 2, 3; and for transitional provisions, including savings for things done or begun under repealed enactments and the construction of references, see ss 2, 5, Sch 4. Certain enactments remain in part unrepealed: see eg the Road Traffic Act 1930 Pt V (ss 101-109) (as amended) (see PARA 1260 post), which deals with the powers of local authorities to operate public service vehicles.

4 As to the exercise of powers to make regulations see PARA 243 post.

5 For the meaning of 'road' see PARA 206 post.

6 As to public and private nuisance and liability for it see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 322-339; and as to the distinction between public and private nuisance see NUISANCE vol 78 (2010) PARAS 105, 107.

7 For the meaning of 'driver' see PARA 207 post.

8 For the meaning of 'owner' see PARA 207 post.

9 Road Traffic (Consequential Provisions) Act 1988 s 7. Similar provision has been made in respect of the Public Passenger Vehicles Act 1981 (see s 85 (applied to the Transport Act 1985 Pts I, II (ss 1-46) (as amended) by s 128)); the Road Traffic Regulation Act 1984 (see s 143); and the Goods Vehicles (Licensing of Operators) Act 1995 (see s 54).

10 See the Vehicle Excise and Registration Act 1994; and PARA 518 et seq post.

11 See the Goods Vehicles (Licensing of Operators) Act 1995; and PARA 1319 et seq post. The Road Traffic Act 1988 also includes provisions as to the parking of heavy commercial vehicles (see ss 19, 20; and PARAS 220, 997 post), the testing, plating and type approval of goods vehicles (see ss 49-65A (as amended); and PARA 657 et seq post) and the licensing of drivers of large goods vehicles (see Pt IV (ss 110-122) (as amended); and PARA 487 et seq post). The Road Traffic Regulation Act 1984 contains provisions restricting the use on roads of heavy commercial vehicles (see PARAS 209, 220 post): see s 122(2)(b); and PARA 734 post. It also contains the reserve powers of the Secretary of State: see s 124(1), Sch 9 Pt I para 5 (as amended); and PARA 736 post. Further legislation is contained in the International Road Haulage Permits Act 1975 (see PARA 1334 post), and certain provisions of the Transport Act 1968: see further PARA 1380 et seq post. As to stamp duty under the Transport Act 1968 see s 160 (amended by the Finance Act 1973 s 59(7), Sch 22 Pt V; the Transport Act 1985 s 57(6), Sch 3 para 20; the Finance Act 1988 s 148, Sch 14 Pt XI; and the Railways Act 1993 s 152(3), Sch 14). As to expenses paid out of moneys provided by Parliament under the Transport Act 1968 see s 163.

12 See the Public Passenger Vehicles Act 1981 and the Transport Act 1985, which continue the system of licensing under the traffic commissioners which was originally enacted under the Road Traffic Act 1930: see PARA 1141 et seq post. The Road Traffic Regulation Act 1984 provides for the regulation of the use of highways by public service vehicles: see s 19 (as amended); and PARA 767 post.

13 See the Road Traffic Regulation Act 1984; the Road Traffic Act 1991; and PARA 718 et seq post. The operation of tramcars is, in general, controlled by the Tramways Act 1870: see PARAS 1555-1561 post.

14 See the Town Police Clauses Act 1847 ss 37-66, 68 (all as amended): see PARA 1435 et seq post.

15 See the London Hackney Carriage Act 1831, the London Hackney Carriages Act 1843, the London Hackney Carriages Act 1850, the London Hackney Carriage Act 1853, the Metropolitan Public Carriage Act 1869, the London Cab Act 1896, and the London Cab and Stage Carriage Act 1907. As to the law relating to hackney carriages see PARA 1434 et seq post.

16 See eg the Stage Carriages Act 1832, which is repealed except as it applies to the Blackpool tramway system. Provision limited to animal drawn vehicles is found in the Highways Act 1959 s 309, Sch 22; continued in effect by the Highways Act 1980 s 340(1).

## UPDATE

## **202-203 The legislation, Regulation of vehicles and drivers**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **202 The legislation**

NOTE 11--Transport Act 1968 s 160 further amended: Local Transport Act 2008 Sch 4 para 16.

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### **203. Regulation of vehicles and drivers.**

The Road Traffic Acts<sup>1</sup> regulate the use of vehicles and the conduct of drivers on roads<sup>2</sup> or, in certain cases, in other public places<sup>3</sup>. They lay down provisions as to: (1) road safety<sup>4</sup>; (2) the construction and use of vehicles and equipment<sup>5</sup>; (3) the licensing of drivers of vehicles<sup>6</sup>; (4) driving instruction<sup>7</sup>; (5) third party liabilities<sup>8</sup>; and (6) enforcement powers<sup>9</sup>.

1 For the meaning of 'the Road Traffic Acts' see PARA 202 text and note 1 ante.

2 For the meaning of 'road' see PARA 206 post; and for the meaning of 'driver' see PARA 207 post.

3 See the Road Traffic Act 1988 ss 1-10 (as amended); and PARA 963 et seq post. As to the meaning of 'public place' see PARA 206 note 2 post.

4 See ibid Pt I (ss 1-40) (as amended); and PARA 963 et seq post.

5 See ibid Pt II (ss 40A-86) (as amended); and PARAS 260-266, 376, 625, 657 et seq post.

6 See ibid Pt III (ss 87-109) (as amended), Pt IV (ss 110-122) (as amended); and PARAS 442-502 post.

7 See ibid Pt V (ss 123-142) (as amended); and PARA 412 et seq post.

8 See ibid Pt VI (ss 143-162) (as amended); and PARA 937 et seq post.

9 See ibid Pt VII (ss 163-197) (as amended). See also the Road Traffic Offenders Act 1988; and PARA 1023 et seq post.

### **UPDATE**

## **202-203 The legislation, Regulation of vehicles and drivers**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.



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## **204. Regulation of road traffic.**

Local authorities have statutory powers to make orders regulating the use of roads and car parks within their areas<sup>1</sup>. The Secretary of State<sup>2</sup> has certain reserve powers enabling him to secure the compliance of local authorities with their general duty<sup>3</sup> with respect to road traffic<sup>4</sup>. He may direct an authority to make an order or may prohibit it from doing so, or may make one himself on its failure to comply; and, in certain cases, he may vary or revoke an order made by a local authority<sup>5</sup>. The consent of the Secretary of State is required before certain orders are made<sup>6</sup>. Provision is made as to notification of proposals for orders and consents<sup>7</sup>, the variation and revocation of orders<sup>8</sup>, public inquiries as to traffic orders<sup>9</sup>, the procedure for the making of orders<sup>10</sup> and for the right to challenge orders<sup>11</sup>.

1 See the Road Traffic Regulation Act 1984; and PARA 718 et seq post.

2 As to the Secretary of State see PARA 236 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 post.

3 See the Road Traffic Regulation Act 1984 s 122 (as amended); and PARA 236 post.

4 See ibid s 124, Sch 9 Pt I (as amended); and PARA 736 post.

5 See PARA 736 et seq post.

6 See the Road Traffic Regulation Act 1984 Sch 9 Pt II (as amended); and PARA 737 post.

7 See ibid Sch 9 Pt III (as amended); and PARA 738 post.

8 See ibid Sch 9 Pt IV (as amended); and PARA 739 post.

9 See the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996, SI 1996/2489 (as amended).

10 See the Road Traffic Regulation Act 1984 Sch 9 Pt III (as amended); and PARA 738 post.

11 See ibid Sch 9 Pt VI (as amended); and PARA 741 post.

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## **205. Application to the Crown.**

Certain provisions of the Road Traffic Acts<sup>1</sup> apply to vehicles and persons in the public service of the Crown<sup>2</sup>.

The following provisions of the Road Traffic Act 1988 apply to the Crown with certain exceptions: (1) the principal road safety provisions<sup>3</sup>; (2) the provisions as to the construction and use of vehicles and equipment<sup>4</sup>; (3) the provisions as to the licensing of drivers of vehicles<sup>5</sup>; (4) the provisions as to the licensing of drivers of large goods vehicles and passenger-carrying

vehicles<sup>6</sup>; and (5) certain provisions as to the production of documents and the giving of information and other general provisions<sup>7</sup>.

The following provisions of the Road Traffic Offenders Act 1988 apply to the Crown: (a) provisions concerning prosecutions and proceedings for certain offences<sup>8</sup>; (b) provisions concerning the giving of specimens in relation to certain offences<sup>9</sup>; (c) the provision relating to the admissibility of certain evidence of speeding offences<sup>10</sup>; (d) the provision relating to offenders escaping the consequences of an endorsable offence by deception<sup>11</sup>; and (e) provisions connected with the licensing of drivers<sup>12</sup>.

The provisions of the Road Traffic Regulation Act 1984 relating to traffic regulation orders<sup>13</sup>, experimental traffic schemes<sup>14</sup>, temporary suspensions, prohibitions or restrictions of traffic<sup>15</sup>, excess weights on roads or bridges<sup>16</sup>, traffic regulation for special areas of the countryside<sup>17</sup>, pedestrian and school crossings<sup>18</sup>, bus and coach stations<sup>19</sup>, parking places<sup>20</sup>, parking in the royal parks<sup>21</sup>, stands and racks for bicycles<sup>22</sup>, parking attendants<sup>23</sup>, traffic signs<sup>24</sup>, speed limits<sup>25</sup>, removal of illegally, obstructively or dangerously parked, abandoned or broken down vehicles<sup>26</sup>, immobilisation of vehicles illegally parked<sup>27</sup>, and boundary roads and parts of roads<sup>28</sup> apply to vehicles and persons in the public service of the Crown<sup>29</sup>.

The provisions of the Transport Act 1968 relating to drivers' hours<sup>30</sup> also apply to the Crown<sup>31</sup>.

Nothing in the provisions of the Road Traffic Act 1991 concerning traffic in London<sup>32</sup> apply to any vehicle which at the relevant time is used or appropriated for use for naval, military or air force purposes<sup>33</sup>. However, the provisions of that Act concerning parking penalties in London<sup>34</sup>, and the immobilisation of vehicles in parking places in London<sup>35</sup>, apply to vehicles in the public service of the Crown which are required to be registered under the Vehicle Excise and Registration Act 1994<sup>36</sup> (other than those exempt above) and to persons in the public service of the Crown<sup>37</sup>.

Except as stated above, the Transport Act 1968, the Road Traffic Regulation Act 1984 and the Road Traffic Acts do not bind the Crown<sup>38</sup>.

1 For the meaning of 'the Road Traffic Acts' see PARA 202 text and note 1 ante.

2 See the Road Traffic Act 1988 s 183(1) (as amended); and the Road Traffic Offenders Act 1988 s 92 (see PARA 1023 post). As to the meaning of 'the public service of the Crown' see *Nottingham No 1 Area Hospital Management Committee v Owen* [1958] 1 QB 50, [1957] 3 All ER 358, DC. See also *Salt v MacKnight* 1947 SC (J) 99, 1947 SLT 327 (Crown vehicle used for purposes other than Crown business).

3 Road Traffic Act 1988 s 183(1)(a). The principal road safety provisions are contained in Pt I (ss 1-40) (as amended): see PARA 963 et seq post. Where an offence under the Road Traffic Acts or the Road Traffic Regulation Act 1984 is alleged to have been committed in connection with a vehicle in the public service of the Crown, proceedings may be brought in respect of the offence against a person nominated for the purpose on behalf of the Crown, and he is guilty of the offence as well as any person actually responsible for it, but without prejudice to proceedings against any person so responsible: see the Road Traffic Offenders Act 1988 s 94(1), (2); and PARA 1023 post. However, where a person is convicted of an offence by virtue of this provision, no order may be made save an order imposing a fine; payment of the fine may not be enforced against him; and, apart from the imposition of any fine, the conviction is to be disregarded for all purposes other than any appeal, whether by way of case stated or otherwise: see s 94(3); and PARA 1023 post. This avoids the difficulties over endorsement etc discussed in *Barnett v French* [1981] 1 WLR 848, [1981] RTR 173, DC.

In their application to persons subject to service discipline, the Road Traffic Act 1988 ss 5-10 (as amended) apply outside as well as within Great Britain and have effect as modified by s 184(1) (amended by the Railways and Transport Safety Act 2003 s 107, Sch 7 para 6), and a member of the provost staff may arrest a person for the time being subject to service discipline without warrant, outside as well as within Great Britain, if he has reasonable cause to suspect that that person is or has been committing an offence under the Road Traffic Act 1988 s 4 (as amended) (see PARA 975 post): s 184(2), (2A) (s 184(2) substituted, and s 184(2A) added, by the Serious Organised Crime and Police Act 2005 s 111, Sch 7 para 59). As to persons subject to service discipline and as to provost staff see ARMED FORCES. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a).

4 Road Traffic Act 1988 s 183(1)(b). The provisions as to the construction and use of vehicles and equipment which apply to the Crown are contained in Pt II (ss 40A-86) (as amended) (see PARAS 260-266, 376, 625, 657 et

seq post), with the exception of ss 68-74 (as amended), s 77 (relating to the inspection of public passenger vehicles and goods vehicles, prohibition of unfit vehicles and the operator's duty to inspect, and keep records of, goods vehicles) (see PARA 686 et seq post). The provisions of ss 49-63 (as amended) (see PARA 679 et seq post), s 64A (as added and amended) (see PARA 708 post), s 65 (as amended) (see PARA 701 post) and s 65A (as added and amended) (see PARA 709 post) apply: (1) to vehicles in the public service of the Crown only if they are registered or liable to be registered under the Vehicle Excise and Registration Act 1994 (see PARA 518 et seq post); and (2) to trailers in the public service of the Crown only while drawn by vehicles, whether or not in the public service of the Crown, which are required to be so registered: Road Traffic Act 1988 s 183(2) (amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 24(1); and the Motor Vehicles (EC Type Approval) Regulations 1992, SI 1992/3107, regs 1(2), 16, Sch 2 para 6). As from a day to be appointed, the Road Traffic Act 1988 s 183(2) (as amended) is further amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 para 18 so as also to apply the Road Traffic Act 1988 s 63A (as added) (see PARA 716 post) to the Crown. At the date at which this volume states the law no such day had been appointed.

Where those provisions apply they do so subject to the following modifications: examinations of such vehicles in pursuance of regulations under s 49 (as amended) (see PARA 676 post) or s 61(2)(a) (as amended) (see PARA 711 post) may be made by or under the directions of examiners authorised by the Secretary of State for the purpose instead of by or under the directions of examiners appointed under s 66A (as added and amended) (see PARA 698 post): s 183(3) (amended by the Road Traffic Act 1991 ss 48, 83, Sch 4 para 77, Sch 8). As from a day to be appointed, the Road Traffic Act 1988 s 183(3) (as amended) is further amended by the Road Traffic (Consequential Provisions) Act 1988 Sch 2 para 18 to include the directions of authorised inspectors under the Transport Act 1982 s 8 (as amended) (see PARA 699 post). At the date at which this volume states the law no such day had been appointed.

Military vehicles are exempted from certain of the requirements as to the lighting of vehicles: see the Road Vehicles Lighting Regulations 1989, SI 1989/1996, reg 7; and PARA 401 post.

5 Road Traffic Act 1988 s 183(1)(c) (amended by the Police Reform Act 2002 ss 107, 108(10)(b), Sch 7 para 12, Sch 8). The provisions as to licensing of drivers which apply to the Crown are contained in the Road Traffic Act 1988 Pt III (ss 87-109) (as amended) (see PARA 442 et seq post). Neither s 97(3) (as amended) (see PARA 464 post) nor s 98(3) (as amended) (see PARA 466 post), in so far as they prevent such a licence as is there mentioned from authorising a person to drive certain motor bicycles and mopeds, applies: (1) in the case of motor bicycles and mopeds owned by the Secretary of State for Defence and used for naval, military or air force purposes; or (2) in the case of motor bicycles and mopeds so used while being ridden by persons for the time being subject to the orders of a member of the armed forces of the Crown: s 183(4) (amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 34; and the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 15). As to the Secretary of State for Defence see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 438-447.

Subject to regulations made under the Road Traffic Act 1988 s 101(2) (see PARA 479 post), s 101 (as amended) (in so far as it prohibits persons under 21 from holding or obtaining a licence to drive motor vehicles or persons under 18 from holding or obtaining a licence to drive medium-sized goods vehicles) does not apply: (a) in the case of motor vehicles owned by the Secretary of State for Defence and used for naval, military or air force purposes; or (b) in the case of vehicles so used while being driven by persons for the time being subject to the orders of a member of the armed forces of the Crown: s 183(5).

6 Ibid s 183(1)(d). The provisions as to licensing of drivers which apply to the Crown are contained in Pt IV (ss 110-122) (as amended): see PARA 489 et seq post. The functions under Pt IV (as amended) of the traffic commissioners in relation to licences issued to persons subject to the Naval Discipline Act 1957 or to military or air force law to drive large goods vehicles or passenger-carrying vehicles in the public service of the Crown must be exercised by the prescribed authority: Road Traffic Act 1988 s 183(6) (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 23). 'Prescribed' means prescribed by regulations made by the Secretary of State: Road Traffic Act 1988 s 192(1). The authority prescribed is the traffic commissioner for the South Eastern and Metropolitan Traffic Areas: see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 81. As from a day to be appointed, the Secretary of State may by regulations provide that the Road Traffic Act 1988 Pt V (ss 123-142) (as amended) (driving instruction: see PARA 411 et seq post) is to apply in relation to persons in the public service of the Crown but subject to any prescribed omissions, additions or other modifications: s 183(6A) (prospectively added by the Road Safety Act 2006 s 42, Sch 6 paras 1, 29). At the date at which this volume states the law no such day had been appointed.

7 Road Traffic Act 1988 s 183(1)(e). The provisions mentioned in the text are s 163 (as amended) (see PARA 646 post), s 164 (as amended) (see PARA 647 post), s 168 (as amended) (see PARA 968 post), s 169 (see PARA 644 post), s 170(1)-(4) (as amended) (see PARA 645 post), s 177 (as amended) (see PARA 311 post), s 181 (as amended) (see PARA 244 post), s 182 (see PARA 244 post). Section 165 (as amended) (see PARA 648 post), in so far as it provides for the production of test certificates and the giving of names and addresses, applies to a person in connection with a vehicle to which s 47 (as amended) (see PARA 657 post) applies notwithstanding that he or the driver is or was at any material time in the public service of the Crown: s 183(7). Section 165(1) (as amended) (see PARA 648 post), in so far as it provides for the production of any certificate mentioned in s

165(2)(c) (see PARA 648 post), applies to a person in connection with a goods vehicle so mentioned notwithstanding that he or the driver is or was at any material time in the public service of the Crown: s 183(8).

8 le the Road Traffic Offenders Act 1988 ss 1-3 (as amended): see PARAS 1028-1029 post.

9 le ibid ss 15, 16 (both as amended): see PARA 991 post. In their application to persons subject to service discipline, ss 15, 16 (as amended) apply outside as well as within Great Britain and have effect with modifications: see s 93(1); and PARA 991 post.

10 le ibid s 20 (as substituted and amended): see PARA 1042 post.

11 le ibid s 49: see PARA 1088 post.

12 Ibid s 92 (amended by the Road Traffic Act 1991 s 48, Sch 4 para 109).

13 le the Road Traffic Regulation Act 1984 ss 1-5 (as amended): see PARAS 742-746 post. The provisions of ss 6-8 (as amended) (orders similar to traffic regulations orders in Greater London) (see PARAS 747, 749-750 post) apply except in relation to vehicles and persons in the armed forces of the Crown when on duty: s 130(2)(b).

14 le ibid ss 9-13A (as amended): see PARAS 751-754 post.

15 le ibid ss 14-16C (as amended): see PARAS 755-762 post.

16 le ibid s 21 (as amended): see PARA 769 post.

17 le ibid s 22 (as amended): see PARA 770 post.

18 le ibid ss 23-26 (as amended): see PARAS 776-780 post.

19 le ibid s 38 (as amended): see PARA 770 post.

20 le ibid ss 45-51 (as amended), s 52(2), (3) (s 52(2) as amended), ss 58-60 (as amended): see PARA 808 et seq post.

21 le ibid s 62: see PARA 828 post.

22 le ibid s 63: see PARA 829 post.

23 le ibid s 63A (as added and amended): see PARA 869 post.

24 le ibid ss 64-67 (as amended), ss 69-71 (as amended), ss 76-80 (as amended): see PARA 830 et seq post.

25 le ibid ss 81-89 (as amended): see PARAS 847-856 post. In relation to vehicles used for naval, military or air force purposes, while being driven by persons for the time being subject to the orders of a member of the armed forces of the Crown, the Secretary of State may by regulations vary the provisions of any statutory provision imposing a speed limit on motor vehicles, subject to such conditions as may be specified in the regulations: s 130(3). At the date at which this volume states the law no regulations had been made under this provision but, by virtue of the Interpretation Act 1978 s 17(2)(b), the Motor Vehicles (Variation of Speed Limit) Regulations 1947, SR & O 1947/2192 (amended by SI 1954/943; SI 1964/489) have effect as if so made.

26 le the Road Traffic Regulation Act 1984 ss 99, 100 (both as amended): see PARA 870 post.

27 le ibid ss 104, 105 (both as amended): see PARAS 876-877 post.

28 le ibid s 125 (as amended), s 126: see PARAS 730, 751, 855 post.

29 Ibid s 130(1), (2) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 3(1), Sch 1 Pt I; the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 74; the Road Traffic Regulation (Special Events) Act 1994 s 3(1), Schedule para 3; and the Deregulation (Parking Equipment) Order 1996, SI 1996/1553, art 2(1), Schedule). The application of the specified provisions of the Road Traffic Regulation Act 1984 to the Crown is subject to the special provisions as to certain Crown roads in s 132 (as amended): see PARA 770 post.

30 le the Transport Act 1968 Pt VI (ss 95-103) (as amended): see PARA 1380 et seq post.

31 Ibid s 102(1). However, Pt VI (as amended) does not apply in the case of motor vehicles owned by the Secretary of State for Defence and used for naval, military or air force purposes or in the case of vehicles so used while being driven by persons subject to the orders of a member of the armed forces: s 102(2). Where an offence under Pt VI (as amended) is alleged to have been committed in connection with a vehicle in the public

service of the Crown, proceedings may be brought in respect of the offence against a person nominated for the purpose on behalf of the Crown, and he is guilty of the offence as well as the person actually responsible for it, but without prejudice to proceedings against any person so responsible: s 102(3) (substituted by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 6(6)). However, where a person is convicted of an offence by virtue of the Transport Act 1968 s 102(3) (as substituted): (1) no order may be made on his conviction save an order imposing a fine; (2) payment of the fine may not be enforced against him; and (3) apart from the imposition of any fine, the conviction is to be disregarded for all purposes other than any appeal, whether by way of case stated or otherwise: s 102(3A) (added by the Road Traffic (Consequential Provisions) Act 1988 Sch 3 para 6(6)).

32    Ie the Road Traffic Act 1991 Pt II (ss 64-82) (as amended).

33    Ibid s 79(1)(a). The provisions of Pt II (as amended) also do not apply to any vehicle which belongs to any visiting forces (within the meaning of the Visiting Forces Act 1952 (see PARA 1641 note 1 post) (Road Traffic Act 1991 s 79(1)(b)); or to any vehicle which at the relevant time is used or appropriated for use by any such force (s 79(1)(c)). As from a day to be appointed, s 79 (as amended) is repealed by the Traffic Management Act 2004 s 98, Sch 12 Pt 1. In relation to England, the appointed day is 31 March 2008: see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053, arts 1, 3.

34    Ie the Road Traffic Act 1991 s 66 (as amended): see PARA 889 post.

35    Ie ibid ss 69-71: see PARAS 892-893 post.

36    As to vehicle registration see PARA 519 et seq post.

37    Road Traffic Act 1991 s 79(2) (amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 29). The Road Traffic Act 1991 s 79(2) is modified in relation to a vehicle found in a special parking area: Road Traffic (Special Parking Area) (GLA Roads and GLA Side Roads) Order 2004, SI 2004/2684; and see PARA 889 post. As to the prospective repeal of the Road Traffic Act 1991 s 79 (as amended) see note 33 supra.

38    For the general rule that the Crown is not bound by a statute unless expressly or by necessary implication named in it see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 384.

## **UPDATE**

### **205-223 Application to the Crown ... Road safety grants**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **205 Application to the Crown**

NOTE 3--Road Traffic Act 1988 s 184(1) further amended, s 184(2) amended: Armed Forces Act 2006 Sch 16 para 117.

NOTE 6--Road Traffic Act 1988 s 183(6) amended: Armed Forces Act 2006 Sch 16 para 116.

NOTE 33--Day appointed in relation to Wales is 31 March 2008: SI 2007/3174.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(ii) General Definitions/206. Meanings of 'road', 'bridleway' and 'footpath'.

## **(ii) General Definitions**

## 206. Meanings of 'road', 'bridleway' and 'footpath'.

The terms 'traffic' and 'road traffic' are not defined in the road traffic statutes generally<sup>1</sup>.

'Road' means any length of highway or of any other road to which the public has access, and includes bridges over which a road passes<sup>2</sup>. In this context, 'the public' means the general public and not members of a limited class<sup>3</sup> and the access must be lawful access<sup>4</sup>. A road includes the footway as well as the carriageway<sup>5</sup>, and may include a private road<sup>6</sup>. Whether any place is a road is a matter of fact in each case<sup>7</sup>.

'Bridleway' means a way over which the public has the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the way<sup>8</sup>.

'Footpath' means a way over which the public has a right of way on foot only<sup>9</sup>.

<sup>1</sup> However, for the purposes of the Road Traffic Regulation Act 1984 (see PARA 718 et seq post), 'traffic' is declared to include pedestrians: see s 127(1)(b); and PARA 742 note 4 post. In the Highways Act 1980, 'traffic' includes pedestrians and animals: see s 329(1); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 240.

<sup>2</sup> See the Road Traffic Act 1930 s 121(1); the Road Traffic Act 1960 s 257(1); the Transport Act 1968 s 103(1); the Road Traffic (Foreign Vehicles) Act 1972 s 7(1); the Public Passenger Vehicles Act 1981 s 82(1); the Transport Act 1982 s 75; the Road Traffic Regulation Act 1984 s 142(1) (definition substituted by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 78); the Transport Act 1985 s 137(1), (2); the Road Traffic Act 1988 s 192(1) (definition amended by the New Roads and Street Works Act 1991 Sch 8 para 78); the Road Traffic Offenders Act 1988 s 98(1); the Road Traffic Act 1991 s 82(1); the Road Traffic (New Drivers) Act 1995 s 9(1), (2); the Goods Vehicles (Licensing of Operators) Act 1995 s 58(1); and the Private Hire Vehicles (London) Act 1998 s 36.

In *Oxford v Austin* [1981] RTR 416, DC, it was held that the proper approach to this provision was to determine first whether there was a road in that there was a definable way between two points over which vehicles could pass, and then to determine whether the public, or a section of the public, had access to the road. See also the cases cited in notes 3-4 infra.

In certain statutory provisions, there are references to 'a road or other public place': see eg the Road Traffic Act 1988 s 1 (as substituted) (see PARA 963 post). Where admission to a particular place is subject to conditions, the question to ask is whether the screening process operates or endows those passing through with some special characteristic whereby their identity changes from being members of the general public to members of a special class: *DPP v Vivier* [1991] 4 All ER 18, [1991] RTR 205, DC. See also *R v DPP, ex p Taussik* (7 June 2000) Lexis, DC.

<sup>3</sup> *Harrison v Hill* 1932 SC (J) 13; *Buchanan v Motor Insurers' Bureau* [1955] 1 All ER 607, [1955] 1 WLR 488; *O'Brien v Trafalgar Insurance Co* (1945) 61 TLR 225, CA. A road used only for access to a group of houses may not be a road for these purposes: see *Knaggs v Elson* (1965) 109 Sol Jo 596, DC. An access to a farm and caravan site may not be a road although heavily used: *R v Beaumont* [1964] Crim LR 665, CCA. Roads on a housing estate may not be open to the general public and therefore not amount to roads under the legislation: *Deacon v A T (a minor)* [1976] RTR 244, DC. Some roads with limited access are, however, declared by statute to be roads for certain purposes of the road traffic legislation: see eg the Port of London Act 1968 s 199 (as substituted and amended). A Crown road (defined as a road other than a highway, to which the public has access by permission granted by the appropriate Crown authority) is normally a road for the purposes of the road traffic legislation: *Kellett v Daisy* [1977] RTR 396, DC.

Consideration of access by the public only arises if the place is a road; whether a particular area is a road is eventually a matter of fact, but in the ordinary use of language a car park did not so qualify: *Cutter v Eagle Star Insurance Co, Clarke v Kato* [1998] 4 All ER 417, [1998] 1 WLR 1647, sub nom *Clarke v General Accident Fire and Life Assurance Corp'n plc, Cutter v Eagle Star Insurance Co Ltd* [1999] RTR 153, HL. See also *DPP v Vivier* [1991] 4 All ER 18, [1991] RTR 205, DC.

The width of the road is a matter of fact: *A-G and Croydon RDC v Moorsom-Roberts* (1908) 72 JP 123; *A-G v Beynon* [1970] Ch 1, [1969] 2 All ER 263. The position of the frontages of buildings or other obvious features such as railings and walls as affording evidence of the boundary is a rebuttable presumption: see *Harvey v Truro RDC* [1903] 2 Ch 638; *Fisher v Winch* [1939] 1 KB 666, [1939] 2 All ER 144, CA; *Davey v Harrow Corp'n* [1958] 1 QB 60, [1957] 2 All ER 305, CA.

- 4 *Harrison v Hill* 1932 SC (J) 13; *Jones v Bates* [1938] 2 All ER 237, CA; *Cox v White* [1976] RTR 248, DC; *Robinson v Adair* (1995) Times, 2 March.
- 5 *Bryant v Marx* (1932) 48 TLR 624, DC; *Lang v Hindhaugh* [1986] RTR 271, DC.
- 6 *Harrison v Hill* 1932 SC (J) 13; *R v Shaw* [1974] RTR 225, CA; *Adams v Metropolitan Police Comr* [1980] RTR 289, DC.
- 7 *Bugge v Taylor* [1941] 1 KB 198, DC (unlighted car on hotel forecourt habitually used by public on foot; magistrates entitled to find forecourt a road); *Thomas v Dando* [1951] 2 KB 620, [1951] 1 All ER 1010, DC (unlighted car on unpaved forecourt between shop and pavement; magistrates entitled to find not a road); *Griffin v Squires* [1958] 3 All ER 468, [1958] 1 WLR 1106, DC (unlicensed driver in car park to which general public had access, adjacent to but separate from highway; magistrates entitled to find not a road); *A-G v Beynon* [1970] Ch 1, [1969] 2 All ER 263 (wide road verge declared to be part of the highway). A cul-de-sac can be a road: *Bass v Boynton* (1960) 124 JP Jo 357, DC; cf *Knaggs v Elson* (1965) 109 Sol Jo 596, DC. See also *Heath v Pearson* [1957] Crim LR 195, DC (paved yard by beerhouse not a road); *Lock v Leatherdale* [1979] RTR 201, DC (unadopted road with no kerb or footpath; no evidence of use by general public; held not a road); *Cutter v Eagle Star Insurance Co*, *Clarke v Kato* [1998] 4 All ER 417, [1998] 1 WLR 1647, sub nom *Clarke v General Accident Fire and Life Assurance Corp plc*, *Cutter v Eagle Star Insurance Co Ltd* [1999] RTR 153, HL (a car park is not a road); *Inman v Kenny* [2001] EWCA Civ 35, [2001] PIQR P256 (grassy path not a road); *Planton v DPP* [2001] EWHC 450 (Admin), [2002] RTR 107, DC (causeway leading to island not a road); *Brewer v DPP* [2004] EWHC 355 (Admin), [2005] RTR 66, DC (railway station car park not a road).
- 8 See the Road Traffic Regulation Act 1984 s 142(1); and the Road Traffic Act 1988 s 192(1).
- 9 See the Road Traffic Regulation Act 1984 s 142(1) (which applies except in relation to s 71(2) (see PARA 837 post)); and the Road Traffic Act 1988 s 192(1).

## UPDATE

### 205-223 Application to the Crown ... Road safety grants

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 206 Meanings of 'road', 'bridleway' and 'footpath'

NOTE 6--See also *Barrett v DPP* [2009] EWHC 423 (Admin), [2010] RTR 8, [2009] All ER (D) 123 (Aug), DC.

NOTE 7--See also *Griffiths (Contractors) Ltd v Driver and Vehicle Licensing Agency* [2009] EWHC 3132 (Admin), [2010] RTR 83, [2009] All ER (D) 218 (Oct), DC (grass verge maintained by highways authority deemed part of public road).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(ii) General Definitions/207. Meanings of 'driver' and 'owner'.

### 207. Meanings of 'driver' and 'owner'.

'Driver', where a separate person acts as a steersman of a motor vehicle, includes that person as well as any other person engaged in the driving of the vehicle, and 'drive' and 'driving' are to be interpreted accordingly<sup>1</sup>. This definition does not apply in relation to driving offences<sup>2</sup>.

'Owner', in relation to a vehicle which is the subject of a hiring agreement or hire-purchase agreement, means the person in possession of the vehicle under that agreement<sup>3</sup>.

1 See the Road Traffic Act 1960 s 257(1); the Road Traffic (Foreign Vehicles) Act 1972 s 7(1); the Public Passenger Vehicles Act 1981 s 82(1); the Road Traffic Regulation Act 1984 s 142(1); the Road Traffic Act 1988 s 192(1); the Road Traffic Offenders Act 1988 s 98(1); the Road Traffic (New Drivers) Act 1995 s 9(1), (2); and the Goods Vehicles (Licensing of Operators) Act 1995 s 58(1). Cf the Transport Act 1968 ss 95(3), 103(1) (see PARA 1380 post).

The Road Traffic (Foreign Vehicles) Act 1972 s 7(1) and the Goods Vehicles (Licensing of Operators) Act 1995 s 58(1) further specify that, in relation to a trailer, 'driver' means any person who is the driver of the motor vehicle by which the trailer is drawn: see the Road Traffic (Foreign Vehicles) Act 1972 s 7(1); and the Goods Vehicles (Licensing of Operators) Act 1995 s 58(1). The definition of driver contemplates two persons being in charge of the same vehicle, and accordingly a person steering a broken-down vehicle that is being towed is not a 'driver': *Wallace v Major* [1946] KB 473, [1946] 2 All ER 87, DC. However, a person who steers a vehicle down a hill under the force of gravity is its driver: *Saycell v Bool* [1948] 2 All ER 83, 112 JP 341, DC. As to whether one or other or both of two persons are driving in particular circumstances see also *Marsh v Moores* [1949] 2 KB 208, [1949] 2 All ER 27, DC; *Langman v Valentine* [1952] 2 All ER 803, 116 JP 576, DC; *Evans v Walkden* [1956] 3 All ER 64, [1956] 1 WLR 1019, DC. The motion of a vehicle is not the only consideration when establishing whether a person is driving it: *Planton v DPP* [2001] EWHC 450 (Admin), [2002] RTR 107, DC.

2 See the Road Traffic Act 1988 s 192(1), which makes an exception in relation to s 1 (as substituted) (see PARA 963 post); and the Road Traffic Offenders Act 1988 s 89(1).

3 See the Public Passenger Vehicles Act 1981 s 82(1); the Road Traffic Regulation Act 1984 s 142(1), which is expressed to be subject to s 111(3), (4) (see PARA 881 post); and the Road Traffic Act 1988 s 192(1). Cf the Road Traffic Act 1991 s 82(2), (3): see PARA 889 post. For the entitlement of a person to use a vehicle subject to hire purchase with the consent of the hirer but not of the finance company see *R v Tolhurst*, *R v Woodhead* (1961) 106 Sol Jo 16, CA.

## UPDATE

### 205-223 Application to the Crown ... Road safety grants

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(ii) General Definitions/208. Classes of vehicles and traffic.

### 208. Classes of vehicles and traffic.

References to a class of vehicles or traffic<sup>1</sup> are to be construed as references to a class defined or described by reference to any characteristics of the vehicles or traffic or to any other circumstances whatsoever<sup>2</sup>.

1 As to the classification of vehicles see PARAS 210-220 post.

2 See the Road Traffic Regulation Act 1984 s 142(3) (which applies other than to the references in s 17 (as amended) (see PARA 764 post)); and the Road Traffic Act 1988 s 192(3) (which further authorises the use of 'category' to indicate a class of vehicles, however defined or described).

## UPDATE



## 205-223 Application to the Crown ... Road safety grants

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(ii) General Definitions/209. Method of calculating weight of motor vehicles.

### 209. Method of calculating weight of motor vehicles.

For the purposes of the Road Traffic Act 1960, Part VI of the Transport Act 1968<sup>1</sup>, the Road Traffic Regulation Act 1984, the Road Traffic Act 1988, the Road Traffic Offenders Act 1988, the Goods Vehicles (Licensing of Operators) Act 1995 and any other enactments relating to the use of motor vehicles or trailers<sup>2</sup> on roads<sup>3</sup>, the weight unladen of a vehicle or trailer is taken to be the weight of the vehicle or trailer:

- 1 (1) inclusive of the body and all parts (the heavier being taken where alternative bodies<sup>4</sup> or parts are used) which are necessary to or ordinarily used with the vehicle or trailer when working on a road; but
- 2 (2) exclusive of the weight of water, fuel or accumulators used for the purpose of the supply of power for the propulsion of the vehicle or, as the case may be, of any vehicle by which the trailer is drawn, and of loose tools and loose equipment<sup>5</sup>.

1 Ie the Transport Act 1968 Pt VI (ss 95-103) (as amended): see PARA 1380 post.

2 For the meanings of 'motor vehicle' and 'trailer' see PARA 210 post.

3 For the meaning of 'road' see PARA 206 ante.

4 Something merely added to the body of a vehicle is not an alternative body: *M'Cowan v Stewart* 1936 SC (J) 36; *Mackie v Waugh* 1940 SC (J) 49; *Cording v Halse* [1955] 1 QB 63, [1954] 3 All ER 287, DC.

5 See the Road Traffic Act 1960 s 255 (amended by the Road Traffic Regulation Act 1967 s 109, Sch 6; and the Road Traffic Act 1972 s 205(1), Sch 9 Pt I); the Transport Act 1968 s 103(8), Sch 11; the Road Traffic Act 1988 s 190; and the Goods Vehicles (Licensing of Operators) Act 1995 s 53. The Road Traffic Act 1988 s 190 does not apply to tramcars or trolley vehicles: Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 7. For the meanings of 'tramcar' and 'trolley vehicle' see PARA 219 post. As to tramcars and trolley vehicles see PARA 1532 et seq post.

A highway authority may: (1) provide, erect, maintain and operate, or join with another highway authority in providing, erecting, maintaining and operating, weighbridges or other machines for weighing vehicles; or (2) contribute towards the cost of the provision, erection, maintenance and operation of any such weighbridge or other machine by any other authority or person: Road Traffic Act 1988 s 196(1). The Secretary of State may exercise the powers so conferred whether or not in his capacity as highway authority, but may provide, erect, maintain and operate any such machine on a road for which he is not the highway authority only with the consent of the highway authority: s 196(2). Accordingly, the presence of any such machine on a road in consequence of the exercise of those powers by virtue of s 196(2), as in any other case, is not to be taken to be an obstruction of the road: s 196(3). The provision or erection, or the making of a contribution towards the provision or erection, of any such weighbridge or other machine is a purpose for which the highway authority may borrow: s 196(4). As to the Secretary of State see PARA 236 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 post. As to highway authorities see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq.

Moveable shelving, fitted to slide on brackets in a van and used to facilitate the delivery of goods to customers, has been held to be loose equipment: *Darling v Burton* 1928 SC (J) 11. However, boards fitted to the side of a motor vehicle by means of slots to enable it to carry coal slack without scattering it, as a result of which the vehicle was capable of carrying a much larger load, have been held not to be loose equipment: *Lowe v Stone* [1948] 2 All ER 1076, 113 JP 59, DC. The same applies to a cast iron block some 5 cwt in weight, held in position by single irons and used as ballast: *London County Council v Hays Wharf Cartage Co Ltd* [1953] 2 All ER 34, [1953] 1 WLR 677.

## UPDATE

### 205-223 Application to the Crown ... Road safety grants

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(ii) General Definitions/210. Meanings of 'motor vehicle' and 'trailer'.

### 210. Meanings of 'motor vehicle' and 'trailer'.

'Motor vehicle' means a mechanically propelled vehicle<sup>1</sup> intended or adapted for use on roads<sup>2</sup>. 'Trailer' means a vehicle drawn by a motor vehicle<sup>3</sup>.

A sidecar attached to a motor vehicle is, if it complies with such conditions as may be specified in regulations made by the Secretary of State<sup>4</sup>, to be regarded as forming part of the vehicle to which it is attached and not as being a trailer<sup>5</sup>.

In a case where a motor vehicle is so constructed that a trailer may by partial superimposition be attached to the vehicle in such a manner as to cause a substantial part of the weight of the trailer to be borne by the vehicle, that vehicle is deemed to be a vehicle itself constructed to carry a load<sup>6</sup>. In the case of a motor vehicle fitted with a crane, dynamo, welding plant or other special appliance or apparatus which is a permanent or essentially permanent fixture, the appliance or apparatus is not deemed to constitute a load or goods or burden of any description, but is deemed to form part of the vehicle<sup>7</sup>.

For the purposes of the Road Traffic Regulation Act 1984, the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988, the following are to be treated as not being a motor vehicle:

- 3 (1) a mechanically propelled vehicle which is an implement for cutting grass, is controlled by a pedestrian<sup>8</sup> and is not capable of being used or adapted for any other purpose<sup>9</sup>;
- 4 (2) any other mechanically propelled vehicle controlled by a pedestrian which may be specified by regulations made by the Secretary of State<sup>10</sup>; and
- 5 (3) an electrically assisted pedal cycle of such class as may be prescribed by regulations so made<sup>11</sup>.

1 As to the meaning of 'mechanically propelled vehicle' see PARA 211 post.

2 See the Road Traffic Act 1960 s 253(1); the Transport Act 1968 s 103(1); the Public Passenger Vehicles Act 1981 s 82(1); the Road Traffic Regulation Act 1984 s 136(1); the Road Traffic Act 1988 s 185(1); the Road Traffic Offenders Act 1988 s 98(2) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 111(2)); the Goods

Vehicles (Licensing of Operators) Act 1995 s 58(1); and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table. In relation to the Road Traffic Regulation Act 1984, the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988, this definition is expressed to be subject to the Chronically Sick and Disabled Persons Act 1970 s 20 (as amended) (which makes special provision with respect to invalid carriages): see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1023 et seq. For the meaning of 'road' see PARA 206 ante. For the meaning of 'invalid carriage' see PARA 215 post.

A motorised scooter known as a 'Go-ped' is a motor vehicle for the purposes of the Road Traffic Act 1988 s 185(1), in relation to which a driving licence and insurance are required to drive it: *DPP v Saddington* [2001] RTR 227, DC.

3 See the Road Traffic Act 1960 s 253(1); the Transport Act 1968 s 103(1); the Road Traffic Regulation Act 1984 s 136(1); the Road Traffic Act 1988 s 185(1); the Road Traffic Offenders Act 1988 s 98(2) (as amended: see note 2 supra); the Goods Vehicles (Licensing of Operators) Act 1995 s 58(1); and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

The Road Traffic (Foreign Vehicles) Act 1972 specifies that any reference to a motor vehicle drawing a trailer, or to a motor vehicle by which a trailer is drawn, is to be construed as a reference to a motor vehicle to which a trailer is attached for the purpose of being drawn by it; and where, for the purpose of being drawn by a motor vehicle, two or more trailers (one of which is attached to the motor vehicle) are attached to each other, the motor vehicle is, for the purposes of that Act, to be treated as drawing each of those trailers: s 7(3).

The provisions of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078 (as amended) relating to trailers do not apply to any part of an articulated bus: reg 3(9). As to articulated buses see PARA 271 note 6 post.

4 As to the Secretary of State see PARA 236 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 post.

5 See the Road Traffic Act 1960 s 253(1); the Transport Act 1968 s 103(1); the Road Traffic Regulation Act 1984 s 137(1); the Road Traffic Act 1988 s 186(1); and the Road Traffic Offenders Act 1988 s 98(2) (as amended: see note 2 supra).

6 See the Road Traffic Act 1960 s 253(9); the Transport Act 1968 s 103(1); the Road Traffic Regulation Act 1984 s 137(2); the Road Traffic Act 1988 s 186(2); and the Road Traffic Offenders Act 1988 s 98(2) (as amended: see note 2 supra).

7 See the Road Traffic Act 1960 s 253(10); the Transport Act 1968 s 103(1); the Road Traffic Regulation Act 1984 s 137(3); the Road Traffic Act 1988 s 186(3); and the Road Traffic Offenders Act 1988 s 98(2) (as amended: see note 2 supra).

8 For these purposes, 'controlled by a pedestrian' means that the vehicle either: (1) is constructed or adapted for use only under such control; or (2) is constructed or adapted for use either under such control or under the control of a person carried on it, but is not for the time being in use under, or proceeding under, the control of a person carried on it: Road Traffic Regulation Act 1984 s 140(2); Road Traffic Act 1988 s 189(2).

9 Road Traffic Regulation Act 1984 s 140(1)(a); Road Traffic Act 1988 s 189(1)(a).

10 Road Traffic Regulation Act 1984 s 140(1)(b) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 25(9)); Road Traffic Act 1988 s 189(1)(b). At the date at which this volume states the law no such regulations had been made.

11 Road Traffic Regulation Act 1984 s 140(1)(c); Road Traffic Act 1988 s 189(1)(c). The Electrically Assisted Pedal Cycles Regulations 1983, SI 1983/1168, have effect as if made under these provisions.

The class of electrically assisted pedal cycles prescribed for these purposes consists of bicycles or tricycles which:

- 1 (1) have a kerbside weight not exceeding: (a) in the case of a bicycle, other than a tandem bicycle, 40 kg; and (b) in the case of a tandem bicycle and a tricycle, 60 kg (reg 4(a));
- 2 (2) are fitted with pedals by means of which they are capable of being propelled (reg 4(b)); and
- 3 (3) are fitted with no motor other than an electric motor which: (a) has a continuous rated output which, when installed in the vehicle with the nominal voltage supplied, does not exceed, in the case of a bicycle other than a tandem bicycle, 0.2 kilowatts, and in the case of a tandem bicycle and a tricycle, 0.25 kilowatts; and (b) cannot propel the vehicle when it is travelling at more than 15 mph (reg 4(c)).

## UPDATE

### 205-223 Application to the Crown ... Road safety grants

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(ii) General Definitions/211. Meaning of 'mechanically propelled vehicle'.

### 211. Meaning of 'mechanically propelled vehicle'.

The term 'mechanically propelled vehicle' is not defined in the road traffic legislation<sup>1</sup>, although for some purposes it is defined exclusively<sup>2</sup>. Following amendments made by the Road Traffic Act 1991, it is the term used in a number of provisions relating to offences of dangerous driving<sup>3</sup>, careless or inconsiderate driving<sup>4</sup>, and driving when under the influence of drink or drugs<sup>5</sup>. The term is also used in relation to the prohibition of driving mechanically propelled vehicles elsewhere than on roads<sup>6</sup>, in relation to the power of police to stop vehicles<sup>7</sup>, the duty of a driver to stop, report an accident etc<sup>8</sup>, and in relation to the power to hold accident inquiries<sup>9</sup>. It is used, too, in the definition of 'trolley vehicle'<sup>10</sup>.

1 The words are words of classification, not of definition: *Lawrence v Howlett* [1952] 2 All ER 74, DC. Where a vehicle (eg a motor car) is so designed that it has only mechanical means of propulsion, it is a mechanically propelled vehicle whether or not the engine is being used or is capable of being used (*Lawrence v Howlett* supra; *Nichol v Leach* [1972] RTR 476, DC (towed vehicle)) or being made usable (*Newberry v Simmonds* [1961] 2 QB 345, [1961] 2 All ER 318, DC; *Law v Thomas* (1964) 62 LGR 195, 108 Sol Jo 158, DC), unless there is no reasonable prospect of the engine ever being put into working order again (*Smart v Allan* [1963] 1 QB 291, [1962] 3 All ER 893, DC). However, where a vehicle (eg a pedal cycle fitted with an engine) is designed to have a non-mechanical as well as mechanical means of propulsion, the engine is not in working order and the non-mechanical means of propulsion are being used, it is not a mechanically propelled vehicle (*Lawrence v Howlett* supra); but if the engine is in working order although it is not being used, the vehicle is a mechanically propelled vehicle (*Floyd v Bush* [1953] 1 All ER 265, [1953] 1 WLR 242, DC).

2 See eg the Road Traffic Act 1988 s 21(3)(aa) (as added) (see PARA 998 note 2 post); and s 34(7) (as substituted) (see PARA 1007 note 2 post).

3 See *ibid* ss 1, 2, 3 (as substituted); and PARAS 963-964 post.

4 See *ibid* s 2B (prospectively added), s 3 (as substituted); and PARAS 970-971 post.

5 See *ibid* s 3A (as added), s 4 (as amended); and PARAS 974-975 post.

6 See *ibid* s 34 (as substituted and amended); and PARA 1007 post.

7 See *ibid* s 163 (as amended); and PARA 646 post.

8 See *ibid* s 170 (as amended); and PARA 645 post.

9 See *ibid* s 181 (as amended); and PARA 244 post.

10 See the Road Traffic Regulation Act 1984 s 141A(4) (as added); and PARA 1629 note 2 post.

## UPDATE

### 205-223 Application to the Crown ... Road safety grants

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(ii) General Definitions/212. Meaning of 'motor car'.

### 212. Meaning of 'motor car'.

'Motor car' means a mechanically propelled vehicle, not being a motor cycle<sup>1</sup> or an invalid carriage<sup>2</sup>, which is constructed itself to carry a load or passengers and of which the weight unladen<sup>3</sup>:

- 6 (1) if it is constructed solely for the carriage of passengers and their effects, is adapted to carry not more than seven passengers exclusive of the driver<sup>4</sup>, and is fitted with tyres of such type as may be specified in regulations made by the Secretary of State<sup>5</sup>, does not exceed 3,050 kilograms<sup>6</sup>;
- 7 (2) if it is constructed or adapted for use for the conveyance of goods or burden of any description, does not exceed 3,050 kilograms, or 3,500 kilograms if the vehicle carries a container or containers for holding, for the purpose of its propulsion, any fuel which is wholly gaseous at 17.5° Celsius under a pressure of 1.013 bar or plant and materials for producing such fuel<sup>7</sup>; or
- 8 (3) in a case falling within neither head (1) nor head (2) above, does not exceed 2,540 kilograms<sup>8</sup>.

1 For the meaning of 'motor cycle' see PARA 214 post.

2 For the meaning of 'invalid carriage' see PARA 215 post.

3 As to the method of calculating the weight of motor vehicles see PARA 209 ante.

4 For the meaning of 'driver' see PARA 207 ante.

5 As to the Secretary of State see PARA 236 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 post. As to regulations made in relation to tyres see PARA 292 et seq post.

6 See the Road Traffic Act 1960 s 253(2)(a) (amended by the Road Traffic Acts 1960 and 1972, Road Traffic Regulation Act 1967, and Transport Act 1968 (Metrication) Regulations 1981, SI 1981/1373, reg 2, Schedule Pt I); the Road Traffic Regulation Act 1984 s 136(2)(a); the Road Traffic Act 1988 s 185(1); and the Road Traffic Offenders Act 1988 s 98(2) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 111(2)). See also the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table, which contains a similar provision, with the exception of the requirement as to tyres.

The Secretary of State may by regulations vary any of the maximum or minimum weights specified in the expressions relating to vehicles; and such regulations may have effect: (1) either generally or in the case of vehicles of any class specified in the regulations; and (2) either for the purposes of the provisions of the Road Traffic Regulation Act 1984, the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988 and of all regulations made under those provisions or for such of those purposes as may be so specified: see the Road

Traffic Act 1960 s 253(11) (amended by the Road Traffic Regulation Act 1984 s 146, Sch 13 para 1); the Road Traffic Regulation Act 1984 s 137(4); the Road Traffic Act 1988 s 186(4), (5); and the Road Traffic Offenders Act 1988 s 98(2) (as so amended). At the date at which this volume states the law no such regulations had been made. Nothing in the Road Traffic Regulation Act 1984 s 86 (as amended) (see PARA 850 post) is to be construed as limiting the power to make such regulations: see the Road Traffic Act 1960 s 253(11) (as so amended); the Road Traffic Regulation Act 1984 s 137(5); the Road Traffic Act 1988 s 186(6); and the Road Traffic Offenders Act 1988 s 98(2) (as so amended). As to classes of vehicles see PARA 208 ante.

7 See the Road Traffic Act 1960 s 253(2)(b) (amended by the Road Traffic Acts 1960 and 1972, Road Traffic Regulation Act 1967, and Transport Act 1968 (Metrication) Regulations 1981, SI 1981/1373, reg 2, Schedule Pt I; and the Road Traffic Acts 1960 and 1972, and Road Traffic Regulation Act 1967 (Metrication) (No 2) Regulations 1981, SI 1981/1374); the Road Traffic Regulation Act 1984 s 136(2)(b); the Road Traffic Act 1988 s 185(1); and the Road Traffic Offenders Act 1988 s 98(2) (as amended: see note 6 supra). See also the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table, which contains a similar provision, but does not include a higher weight limit for the carriage of fuel.

8 See the Road Traffic Act 1960 s 253(2)(c) (amended by the Road Traffic Acts 1960 and 1972, Road Traffic Regulation Act 1967, and Transport Act 1968 (Metrication) Regulations 1981, SI 1981/1373, reg 2, Schedule Pt I); the Road Traffic Regulation Act 1984 s 136(2)(c); the Road Traffic Act 1988 s 185(1); the Road Traffic Offenders Act 1988 s 98(2) (as amended: see note 6 supra); and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

## **UPDATE**

### **205-223 Application to the Crown ... Road safety grants**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(ii) General Definitions/213. Meaning of 'heavy motor car'.

### **213. Meaning of 'heavy motor car'.**

'Heavy motor car' means a mechanically propelled vehicle, not being a motor car<sup>1</sup>, which is constructed itself to carry a load or passengers and the weight of which unladen<sup>2</sup> exceeds 2,540 kilograms<sup>3</sup>.

1 For the meaning of 'motor car' see PARA 212 ante.

2 As to the method of calculating the weight of motor vehicles see PARA 209 ante.

3 See the Road Traffic Act 1960 s 253(3) (amended by the Road Traffic Acts 1960 and 1972, Road Traffic Regulation Act 1967, and Transport Act 1968 (Metrication) Regulations 1981, SI 1981/1373, reg 2, Schedule Pt I); the Road Traffic Regulation Act 1984 s 136(3); the Road Traffic Act 1988 s 185(1); and the Road Traffic Offenders Act 1988 s 98(2) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 111(2)). See also the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table, which contains a similar definition, but further specifies that the mechanically propelled vehicle may not be a locomotive, a motor tractor or a motor car. As to the Secretary of State's power by regulations to vary the specified weight see PARA 212 note 6 ante. For the meaning of 'locomotive' see PARA 217 post; and for the meaning of 'motor tractor' see PARA 216 post.

## **UPDATE**

## **205-223 Application to the Crown ... Road safety grants**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(ii) General Definitions/214. Meaning of 'motor cycle'.

### **214. Meaning of 'motor cycle'.**

'Motor cycle' means a mechanically propelled vehicle, not being an invalid carriage<sup>1</sup>, with less than four wheels, the weight of which unladen<sup>2</sup> does not exceed 410 kilograms<sup>3</sup>.

1 For the meaning of 'invalid carriage' see PARA 215 post.

2 As to the method of calculating the weight of motor vehicles see PARA 209 ante.

3 See the Road Traffic Act 1960 s 253(4) (amended by the Road Traffic Acts 1960 and 1972, Road Traffic Regulation Act 1967, and Transport Act 1968 (Metrication) Regulations 1981, SI 1981/1373, reg 2, Schedule Pt I); the Road Traffic Regulation Act 1984 s 136(4); the Road Traffic Act 1988 s 185(1); the Road Traffic Offenders Act 1988 s 98(2) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 111(2)); and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table. As to the Secretary of State's power by regulations to vary the specified weight see PARA 212 note 6 ante.

The definition does not apply in relation to the provision of parking places by parish or community councils (see PARAS 823-825 post) or the provision of stands and racks for bicycles or motor cycles (see PARA 829 post): see the Road Traffic Act 1960 s 253(4) (as so amended); and the Road Traffic Regulation Act 1984 s 136(4) (amended by the Transport Act 2000 s 271(3)).

## **UPDATE**

## **205-223 Application to the Crown ... Road safety grants**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **215. Meaning of 'invalid carriage'.**

'Invalid carriage' means a mechanically propelled vehicle the weight of which unladen<sup>1</sup> does not exceed 254 kilograms and which is specially designed and constructed, and not merely

adapted, for the use of a person suffering from some physical defect or disability and is used solely by such a person<sup>2</sup>.

1 As to the method of calculating the weight of motor vehicles see PARA 209 ante.

2 See the Road Traffic Act 1960 s 253(5) (amended by the Road Traffic Acts 1960 and 1972, Road Traffic Regulation Act 1967, and Transport Act 1968 (Metrication) Regulations 1981, SI 1981/1373, reg 2, Schedule Pt I); the Road Traffic Regulation Act 1984 s 136(5); the Road Traffic Act 1988 s 185(1); the Road Traffic Offenders Act 1988 s 98(2) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 111(2)); and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table. As to the Secretary of State's power by regulations to vary the specified weight see PARA 212 note 6 ante.

## **UPDATE**

### **205-223 Application to the Crown ... Road safety grants**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **216. Meaning of 'motor tractor'.**

'Motor tractor' means a mechanically propelled vehicle which is not constructed itself to carry a load, other than excepted articles<sup>1</sup>, and the weight of which unladen<sup>2</sup> does not exceed 7,370 kilograms<sup>3</sup>.

1 For these purposes, 'excepted articles' means any of the following, ie water, fuel, accumulators and other equipment used for the purpose of propulsion, loose tools and loose equipment: see the Road Traffic Act 1960 s 253(6) (amended by the Road Traffic Acts 1960 and 1972, Road Traffic Regulation Act 1967, and Transport Act 1968 (Metrication) Regulations 1981, SI 1981/1373, reg 2, Schedule Pt I); the Transport Act 1968 s 103(1); the Road Traffic Regulation Act 1984 s 136(8); and the Road Traffic Act 1988 s 185(2).

2 As to the method of calculating the weight of motor vehicles see PARA 209 ante.

3 See the Road Traffic Act 1960 s 253(6) (as amended: see note 1 supra); the Transport Act 1968 s 103(1); the Road Traffic Regulation Act 1984 s 136(6); the Road Traffic Act 1988 s 185(1); and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table. As to the Secretary of State's power by regulations to vary the specified weight see PARA 212 note 6 ante.

## **UPDATE**

### **205-223 Application to the Crown ... Road safety grants**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.



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## **217. Meanings of 'light locomotive' and 'heavy locomotive'.**

'Light locomotive' and 'heavy locomotive' mean a mechanically propelled vehicle which is not constructed itself to carry a load, other than excepted articles<sup>1</sup>, and the weight of which unladen<sup>2</sup>: (1) in the case of a light locomotive, exceeds 7,370 but does not exceed 11,690 kilograms; and (2) in the case of a heavy locomotive, exceeds 11,690 kilograms<sup>3</sup>.

1 For the meaning of 'excepted articles' see PARA 216 note 1 ante.

2 As to the method of calculating the weight of motor vehicles see PARA 209 ante.

3 See the Road Traffic Act 1960 s 253(7), (8) (amended by the Road Traffic Acts 1960 and 1972, Road Traffic Regulation Act 1967, and Transport Act 1968 (Metrication) Regulations 1981, SI 1981/1373, reg 2, Schedule Pt I); the Transport Act 1968 s 103(1); the Road Traffic Regulation Act 1984 s 136(7); and the Road Traffic Act 1988 s 185(1). As to the Secretary of State's power by regulations to vary the specified weight see PARA 212 note 6 ante.

For the purposes of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078 (as amended), 'locomotive' means a mechanically propelled vehicle which is not constructed itself to carry a load, other than excepted articles, and the weight of which unladen exceeds 7,370 kg: reg 3(2), Table.

## **UPDATE**

### **205-223 Application to the Crown ... Road safety grants**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(ii) General Definitions/218. Meanings of 'hovercraft' and 'hover vehicles'.

## **218. Meanings of 'hovercraft' and 'hover vehicles'.**

A hovercraft<sup>1</sup> or hover vehicle: (1) is a motor vehicle<sup>2</sup>, whether or not it is intended or adapted for use on roads<sup>3</sup>; but (2) is to be treated as not being a vehicle of any of the defined classes<sup>4</sup>.

The Secretary of State<sup>5</sup> may by regulations provide: (a) that any provision of the Road Traffic Regulation Act 1984 or the Road Traffic Act 1988, which would otherwise apply to hovercraft or hover vehicles, is not to apply to them or is to apply to them subject to such modifications as may be specified in the regulations; or (b) that any such provision, which would not otherwise apply to hovercraft or hover vehicles, is to apply to them subject to such modifications, if any, as may be so specified<sup>6</sup>.

1 For these purposes, 'hovercraft' has the same meaning as in the Hovercraft Act 1968 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 381): see the Transport Act 1968 s 159(1); the Road Traffic Regulation Act 1984 s 139(3); and the Road Traffic Act 1988 s 188(1).

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 See the Road Traffic Regulation Act 1984 s 139(1); and the Road Traffic Act 1988 s 188(1). As to the defined classes of vehicles see PARAS 210-217 ante.

5 As to the Secretary of State see PARA 236 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 post.

6 See the Road Traffic Regulation Act 1984 s 139(2); and the Road Traffic Act 1988 s 188(2). At the date at which this volume states the law no such regulations had been made.

## UPDATE

### 205-223 Application to the Crown ... Road safety grants

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### 219. Meanings of 'tramcar', 'trolley vehicle' and 'trolley bus'.

'Tramcar' includes any carriage used on any road<sup>1</sup> by virtue of an order under the Light Railways Act 1896<sup>2</sup>. 'Trolley vehicle' means a mechanically propelled vehicle adapted for use on roads without rails under power transmitted to it from some external source, whether or not there is in addition a source of power on board the vehicle<sup>3</sup>.

The Secretary of State<sup>4</sup> may by regulations provide that certain provisions<sup>5</sup> specified in the regulations are not to apply, or are to apply with modifications: (1) to all tramcars or to tramcars of any specified class; or (2) to all trolley vehicles or to trolley vehicles of any specified class<sup>6</sup>. Such regulations:

- 9 (a) may make different provision for different cases<sup>7</sup>;
- 10 (b) may include such transitional provisions as appear to the Secretary of State to be necessary or expedient<sup>8</sup>; and
- 11 (c) may make such amendments to any special Act<sup>9</sup> as appear to the Secretary of State to be necessary or expedient in consequence of the regulations or in consequence of the application to any tramcars or trolley vehicles of any of the applicable statutory provisions<sup>10</sup>.

'Trolley bus' means a bus adapted for use on roads without rails under power transmitted to it from some external source<sup>11</sup>.

1 For the meaning of 'road' see PARA 206 ante.

2 See the Public Passenger Vehicles Act 1981 s 82(1); the Road Traffic Regulation Act 1984 s 141A(4) (s 141A added by the Road Traffic Act 1991 s 46(1)); and the Road Traffic Act 1988 s 192(1). As to the Light Railways Act 1896 see PARA 1534 post.

3 See the Road Traffic Act 1930 s 121(1); the Road Traffic Regulation Act 1984 s 141A(4) (as added: see note 2 supra); and the Road Traffic Act 1988 s 192(1) (definition amended by the Road Traffic Act 1991 s 48, Sch 4 para 78).

4 As to the Secretary of State see PARA 236 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 post.

5 See the Road Traffic Regulation Act 1984 ss 1-14 (as amended) (see PARAS 742-755 post), ss 16A-16C (as added) (see PARAS 759-762 post), s 18 (as amended) (see PARA 766 post) and ss 81-89 (as amended) (see PARAS 847-856 post); the Road Traffic Act 1988 s 12 (as amended) (see PARA 992 post), ss 40A-42 (as amended) (see PARAS 260-265, 625 post), s 47 (as amended) (see PARA 657 post), s 48 (as amended) (see PARAS 657-658 post), s 66 (as amended) (see PARA 675 post), ss 68-73 (as amended) (see PARA 686 et seq post), ss 75-79 (as amended) (see PARA 694 et seq post), s 83 (see PARA 408 post), ss 87-109 (as amended) (see PARA 443 et seq post), ss 143-165 (as amended) (see PARA 937 et seq post), s 168 (as amended) (see PARA 968 post), s 170 (as amended) (see PARA 645 post), s 171 (see PARAS 645, 648 post), s 190 (see PARA 209 ante) and s 191 (see PARA 977 post); and the Road Traffic Offenders Act 1988 s 1 (as amended) (see PARA 1028 post), s 2 (as amended) (see PARA 1028 post), s 7 (as amended) (see PARA 1032 post), s 8 (as amended) (see PARA 1033 post), s 22 (see PARA 1043 post), s 25-29 (as amended) (see PARA 1045 et seq post), s 31 (as amended) (see PARA 1054 post), ss 34-48 (as amended) (see PARA 1058 et seq post), s 91A (as added) (see PARA 1024 post), s 91B (as added) (see PARA 1084 post), s 96 (see PARA 1080 post) and s 97 (see PARA 1058 post): see the Road Traffic Regulation (Special Events) Act 1994 s 3(1), Schedule para 4; and the Road Traffic Act 1988 s 193A(2) (s 193A added by the Road Traffic Act 1991 s 46(2)).

6 Road Traffic Regulation Act 1984 s 141A(1) (as added: see note 2 supra); Road Traffic Act 1988 s 193A(1) (as added: see note 5 supra). In exercise of this power the Secretary of State has made the Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217.

7 Road Traffic Regulation Act 1984 s 141A(3)(a) (as added: see note 2 supra); Road Traffic Act 1988 s 193A(3)(a) (as added: see note 5 supra).

8 Road Traffic Regulation Act 1984 s 141A(3)(b) (as added: see note 2 supra); Road Traffic Act 1988 s 193A(3)(b) (as added: see note 5 supra).

9 For these purposes, 'special Act' means a local Act of Parliament passed before 1 July 1992 which authorises or regulates the use of tramcars or trolley vehicles: see the Road Traffic Regulation Act 1984 s 141A(4) (as added: see note 2 supra); and the Road Traffic Act 1988 s 193A(4) (as added: see note 5 supra).

10 Road Traffic Regulation Act 1984 s 141A(3)(c) (as added: see note 2 supra); Road Traffic Act 1988 s 193A(3)(c) (as added: see note 5 supra). For the applicable statutory provisions see note 5 supra.

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

## UPDATE

### 205-223 Application to the Crown ... Road safety grants

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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## **220. Meanings of 'heavy commercial vehicle' and 'goods vehicle'.**

'Heavy commercial vehicle' means any goods vehicle which has an operating weight exceeding 7.5 tonnes<sup>1</sup>. 'Goods vehicle' means a motor vehicle<sup>2</sup> constructed or adapted for use for the carriage of goods or burden of any description, or a trailer<sup>3</sup> so constructed or adapted<sup>4</sup>.

The operating weight of a goods vehicle for these purposes is:

- 12 (1) in the case of a motor vehicle not drawing a trailer or in the case of a trailer, its maximum laden weight<sup>5</sup>;
- 13 (2) in the case of an articulated vehicle<sup>6</sup>, its maximum laden weight (if it has one) and otherwise the aggregate maximum laden weight of all the individual vehicles forming part of that articulated vehicle<sup>7</sup>; and
- 14 (3) in the case of a motor vehicle (other than an articulated vehicle) drawing one or more trailers, the aggregate maximum laden weight of the motor vehicle and the trailer or trailers attached to it<sup>8</sup>.

The Secretary of State<sup>9</sup> may by regulations amend the above provisions (whether as originally enacted or as previously amended) by substituting weights of a different description for any of the weights there mentioned, or in the case of operating weights<sup>10</sup>, by substituting a weight of a different description or amount, or a weight different both in description and amount<sup>11</sup>. Different regulations may be made for the purposes of different provisions of the Road Traffic Regulation Act 1984 and as respects different classes of vehicles<sup>12</sup> or as respects the same class of vehicles in different circumstances and as respects different times of the day or night and as respects different localities and roads<sup>13</sup> in different localities<sup>14</sup>.

1 Road Traffic Regulation Act 1984 s 138(1); Road Traffic Act 1988 s 20(1).

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For these purposes, 'trailer' means any vehicle other than a motor vehicle: see the Road Traffic Regulation Act 1984 s 138(3); and the Road Traffic Act 1988 s 20(4). For the meaning of 'trailer' generally see PARA 210 ante.

4 Road Traffic Regulation Act 1984 s 138(3); Road Traffic Act 1988 s 192(1). For the purposes of the Road Traffic Act 1988, 'goods' includes goods or burden of any description: s 192(1).

5 Road Traffic Regulation Act 1984 s 138(2)(a); Road Traffic Act 1988 s 20(2)(a). References to the maximum laden weight of a vehicle are references to the total laden weight which must not be exceeded in the case of that vehicle if it is to be used in Great Britain without contravening any regulations for the time being in force under s 41 (as amended) (see PARA 260 post): see the Road Traffic Regulation Act 1984 s 138(3); and the Road Traffic Act 1988 s 20(3). As to the laden weight of vehicles see PARA 584 seq post. For the meaning of 'Great Britain' see PARA 205 note 3 ante.

6 For these purposes, 'articulated vehicle' means a motor vehicle with a trailer so attached to it as to be partially superimposed upon it: see the Road Traffic Regulation Act 1984 s 138(3); and the Road Traffic Act 1988 s 20(3).

7 Road Traffic Regulation Act 1984 s 138(2)(b); Road Traffic Act 1988 s 20(2)(b).

8 Road Traffic Regulation Act 1984 s 138(2)(c); Road Traffic Act 1988 s 20(2)(c).

9 As to the Secretary of State see PARA 236 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 post.

10 In the case of the Road Traffic Regulation Act 1984 s 138(1) or the Road Traffic Act 1988 s 20(1): see the text to note 1 supra.

11 Road Traffic Regulation Act 1984 s 138(4); Road Traffic Act 1988 s 20(5). Such regulations may not amend the Road Traffic Regulation Act 1984 s 138(1), or the Road Traffic Act 1988 s 20(1) so that there is any case in which a goods vehicle whose operating weight (see the text and notes 5-8 supra) does not exceed 7.5 tonnes is a heavy commercial vehicle for any of the purposes of the Road Traffic Regulation Act 1984 or the Road Traffic Act 1988 s 19 (see PARA 997 post): Road Traffic Regulation Act 1984 s 138(6); Road Traffic Act 1988 s 20(7). At the date at which this volume states the law no regulations had been made under the Road Traffic Regulation Act 1984 s 138(4) or the Road Traffic Act 1988 s 20(5).

12 As to classes of vehicles see PARA 208 ante.

13 For the meaning of 'road' see PARA 206 ante.

14 See the Road Traffic Regulation Act 1984 s 138(5); and the Road Traffic Act 1988 s 20(6).

## UPDATE

### 205-223 Application to the Crown ... Road safety grants

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(iii) Road Safety/221. The Highway Code.

## (iii) Road Safety

### 221. The Highway Code.

The Highway Code<sup>1</sup> is a code of directions for the guidance of persons using roads<sup>2</sup>, and was originally issued under the Road Traffic Act 1930<sup>3</sup>. The Highway Code continues to have effect, subject to revision in accordance with the following provisions<sup>4</sup>.

The Secretary of State<sup>5</sup> may from time to time revise the Highway Code by revoking, varying, amending or adding to its provisions in such manner as he thinks fit<sup>6</sup>.

Where the Secretary of State proposes to revise the Highway Code by making any alterations in its provisions, other than alterations merely consequential on the passing, amendment or repeal of any statutory provision<sup>7</sup>, he must lay the proposed alterations before both Houses of Parliament and must not make the proposed revision until after the end of a period of 40 days<sup>8</sup> beginning with the day on which the alterations were so laid<sup>9</sup>. If within that period either House resolves that the proposed alterations be not made, the Secretary of State must not make the proposed revision, but without prejudice to the laying before Parliament of further proposals<sup>10</sup> for alteration<sup>11</sup>.

Before revising the Highway Code by making any alterations in its provisions which are so required to be laid before Parliament, the Secretary of State must consult with such representative organisations as he thinks fit<sup>12</sup>.

The Secretary of State must cause the Highway Code to be printed and may cause copies of it to be sold to the public at such price as he may determine<sup>13</sup>.

A failure on the part of a person to observe a provision of the Highway Code does not of itself render that person liable to criminal proceedings of any kind<sup>14</sup>; nor does it necessarily establish negligence<sup>15</sup>. Any such failure may, however, in any proceedings, whether civil or criminal, and including proceedings for certain statutory offences<sup>16</sup>, be relied on by any party to the proceedings as tending to establish or negative any liability which is in question in those proceedings<sup>17</sup>.

1 For these purposes, 'the Highway Code' means the code comprising directions for the guidance of persons using roads issued under the Road Traffic Act 1930 s 45 (repealed), as from time to time revised under the Road Traffic Act 1988 s 38 or under any previous enactment: s 38(8).

2 The Highway Code includes guidance for pedestrians, pedal cyclists, motor cyclists, drivers of all types of motor vehicles and those using the roads who are in charge of animals.

3 See the Road Traffic Act 1930 s 45 (repealed).

4 Road Traffic Act 1988 s 38(1).

5 As to the Secretary of State see PARA 236 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 post.

6 Road Traffic Act 1988 s 38(2).

7 For these purposes, 'statutory provision' means a provision contained in an Act or in subordinate legislation within the meaning of the Interpretation Act 1978 (see STATUTES vol 44(1) (Reissue) PARA 1381); and the reference to the passing or repeal of any such provision accordingly includes the making or revocation of any such provision: Road Traffic Act 1988 s 38(9)(a).

8 In reckoning any period of 40 days, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days: *ibid* s 38(9)(c).

9 *Ibid* s 38(3). For these purposes, where the proposed alterations are laid before each House of Parliament on different days, the later day is to be taken to be the day on which they were laid before both Houses: s 38(9)(b).

10 *Ie* in accordance with *ibid* s 38(3): see the text and note 9 *supra*.

11 *Ibid* s 38(4).

12 *Ibid* s 38(5).

13 *Ibid* s 38(6). The Highway Code is published by The Stationery Office. The Council of Europe published at Strasbourg in 1979 a guide as to future legislation on road traffic offences entitled 'Guidelines concerning offences to be included in a European Highway Code'.

14 Road Traffic Act 1988 s 38(7). Such a breach may as a matter of fact amount to strong evidence of lack of proper driving: *Trentham v Rowlands* [1974] RTR 164, [1974] Crim LR 118, DC. See also note 13 *infra*.

15 *Croston v Vaughan* [1938] 1 KB 540 at 552, [1937] 4 All ER 249 at 252, CA, per Greer LJ; *Joseph Eva Ltd v Reeves* [1938] 2 KB 393, [1938] 2 All ER 115, CA. The observance of the Highway Code is not of itself an answer, necessarily, to an allegation of negligence: *Goke v Willett* [1973] RTR 422, CA. See also NEGLIGENCE vol 78 (2010) PARA 54.

16 *Ie* an offence under the Road Traffic Regulation Act 1984, the Road Traffic Act 1988, the Road Traffic Offenders Act 1988, the Road Traffic (Consequential Provisions) Act 1988, the Public Passenger Vehicles Act 1981 or the Transport Act 1985 ss 18-23 (as amended).

17 Road Traffic Act 1988 s 38(7). To rely on the provisions of s 38(7) it is not necessary to prove that the other party to the proceedings had available to him a copy of the Highway Code or had actually read it: see *O'Connell v Jackson* [1972] 1 QB 270, [1971] 3 All ER 129, CA. The mere breach of the Highway Code does not amount to *prima facie* carelessness; the question is whether the accused has in fact exercised his duty of care: *Scott v Warren* [1974] RTR 104, [1974] Crim LR 117, DC.

**UPDATE****205-223 Application to the Crown ... Road safety grants**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(iii) Road Safety/222. Road safety information and training.

**222. Road safety information and training.**

The Secretary of State<sup>1</sup> may, with the approval of the Treasury<sup>2</sup>, provide for promoting road safety by disseminating information or advice relating to the use of roads<sup>3</sup>.

Each relevant authority<sup>4</sup>: (1) if it is a local authority, must prepare and carry out a programme of measures designed to promote road safety<sup>5</sup>; or (2) if it is Transport for London, may prepare and carry out such a programme<sup>6</sup>, and a relevant authority may contribute towards the cost of measures for promoting road safety taken by other authorities or bodies<sup>7</sup>.

Without prejudice to the generality of heads (1) and (2) above<sup>8</sup>, each relevant authority must:

- 15 (a) carry out studies into accidents arising out of the use of vehicles on roads<sup>9</sup>;
- 16 (b) in the light of those studies, take such measures as appear to the authority to be appropriate to prevent such accidents, including the dissemination of information and advice relating to the use of roads, the giving of practical training to road users or any class or description of road users, the construction, improvement, maintenance or repair of roads for the maintenance of which it is responsible and other measures taken in the exercise of its powers for controlling, protecting or assisting the movement of traffic on roads<sup>10</sup>; and
- 17 (c) in constructing new roads, take such measures as appear to the authority to be appropriate to reduce the possibilities of such accidents when the roads come into use<sup>11</sup>.

1 As to the Secretary of State see PARA 236 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 post.

2 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

3 Road Traffic Act 1988 s 39(1). For the meaning of 'road' see PARA 206 ante.

4 For these purposes, 'relevant authority' means a local authority or Transport for London: *ibid* s 39(4) (definition added by the Greater London Authority Act 1999 s 279(1), (6)). 'Local authority' means, in relation to England and Wales, the council of a county, metropolitan district or London borough or the Common Council of the City of London: Road Traffic Act 1988 s 39(4). As to Transport for London see PARA 246 post; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

5 *Ibid* s 39(2)(a) (s 39(2) substituted by the Greater London Authority Act 1999 s 279(1), (2)).

6 Road Traffic Act 1988 s 39(2)(b) (as substituted: see note 5 *supra*).

7 Ibid s 39(2) (as substituted: see note 5 supra).

8 The duties imposed by ibid s 39(3) (as amended) are without prejudice to the generality of s 39(2) (as substituted) and: (1) in the case of a local authority, are to be discharged in pursuance of its duty under s 39(2) (a) (as substituted) (see head (1) in the text); and (2) in the case of Transport for London, are to be discharged by exercising its powers under s 39(2)(b) (as substituted) (see head (2) in the text): s 39(3A) (added by the Greater London Authority Act 1999 s 279(1), (5)).

9 Road Traffic Act 1988 s 39(3)(a) (amended by the Greater London Authority Act 1999 s 279(1), (3)). If the relevant authority is a local authority, such studies must be carried out in relation to roads or parts of roads, other than GLA roads or roads for which the Secretary of State is the highway authority, within its area: Road Traffic Act 1988 s 39(3)(a)(i) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 121(3); and the Greater London Authority Act 1999 s 279(1), (4)). If the relevant authority is Transport for London, such studies must be carried out in relation to GLA roads or parts of GLA roads: Road Traffic Act 1988 s 39(3)(a)(ii) (added by the Greater London Authority Act 1999 s 279(1), (4)). For these purposes, 'GLA road' has the same meaning as in the Highways Act 1980 (see s 14D (as added), s 329(1) (as amended)); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 822: Road Traffic Act 1988 s 39(4) (definition added by the Greater London Authority Act 1999 s 279(1), (6)).

10 Road Traffic Act 1988 s 39(3)(b) (amended by the New Roads and Street Works Act 1991 Sch 8 para 121(3)).

11 Road Traffic Act 1988 s 39(3)(c).

## UPDATE

### 205-223 Application to the Crown ... Road safety grants

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(iii) Road Safety/223. Road safety grants.

### 223. Road safety grants.

A national transport authority<sup>1</sup> may make payments to any local authority<sup>2</sup> or any other authority or body for meeting the whole or part of the capital or running costs of any measures for promoting road safety<sup>3</sup>.

1 A 'national transport authority' means, in relation to England, the Secretary of State acting with the approval of the Treasury: Road Traffic Act 1988 s 40(2) (s 40 substituted by the Road Safety Act 2006 s 1). As to the Secretary of State see PARA 236 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 post. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 For the meaning of 'local authority' see PARA 413 note 18 post; definition applied by the Road Traffic Act 1988 s 40 (as substituted: see note 1 supra).

3 Ibid s 40(1) (as substituted: see note 1 supra).

## UPDATE



## **205-223 Application to the Crown ... Road safety grants**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(iv) Cognate Law/224. Excise duty.

### **(iv) Cognate Law**

#### **224. Excise duty.**

Subject to certain exemptions<sup>1</sup>, excise duties<sup>2</sup> are charged in respect of mechanically propelled vehicles<sup>3</sup> used or kept on public roads<sup>4</sup> in the United Kingdom<sup>5</sup>, and must be paid periodically upon a licence taken out by the person keeping the vehicle<sup>6</sup>.

1 For descriptions of exempted vehicles see the Vehicle Excise and Registration Act 1994 s 5, Sch 2 (as amended); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 741 et seq.

2 The duties payable under ibid s 1(1): see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 718 et seq.

3 As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.

4 For the meaning of 'public road' see PARA 519 note 5 post. For the meaning of 'keeps a vehicle on a public road' see PARA 519 note 5 post.

5 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. Neither the Channel Islands nor the Isle of Man are within the United Kingdom. For the meaning of 'Great Britain' see PARA 205 note 3 ante. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3.

6 See the Vehicle Excise and Registration Act 1994 s 1; and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 718.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(iv) Cognate Law/225. Tolls.

#### **225. Tolls.**

Tolls may be payable under a grant from the Crown or under statute<sup>1</sup>. There no longer exist any statutory turnpike tolls<sup>2</sup>, but tolls are payable in respect of some bridges, ferries and tunnels<sup>3</sup>. The New Roads and Street Works Act 1991<sup>4</sup> makes provision for new roads in England and Wales, particularly by way of an agreement with a private sector concessionaire who will design, build, finance and operate the roads in return for the right to collect tolls<sup>5</sup>.

1 See HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 210-211.

2 See HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 23.

3 See HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 211-215. For an example of a statutory bridge toll see the Severn Bridge Tolls Act 1965.

4 See the New Roads and Street Works Act 1991 Pt I (ss 1-26) (as amended): see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 215, 752 et seq.

5 See HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 752.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(iv) Cognate Law/226. Negligence and breach of statutory duty.

## **226. Negligence and breach of statutory duty.**

A road user owes to other users a duty to exercise due care<sup>1</sup>. Driving with defective apparatus, if the defect might reasonably have been discovered, or leaving a motor car unattended so that it runs down a slope by itself or so that a mischievous stranger could start it, or failure to remove an obstruction as soon as possible or to guard it so as to reduce the risk to other highway users so far as possible are examples of acts of negligence which may give rise to civil liability<sup>2</sup>. Special care must be taken at cross roads, level crossings, on motorways and by a user who has notice of special circumstances which enhance the danger to other users<sup>3</sup>.

A driver may be negligent even though he complies with the relevant statutory requirements<sup>4</sup>. Conversely, the commission of a traffic offence is not always an actionable wrong, although it may be *prima facie* evidence of negligence<sup>5</sup>. However, to permit a motor vehicle to be used by an uninsured person<sup>6</sup>, or to fail to stop at a pedestrian crossing when required<sup>7</sup>, are actionable breaches of statutory duty<sup>8</sup>. Failure to observe a provision of the Highway Code may be relied upon as tending to establish or negative liability<sup>9</sup>.

A person having control over a vehicle owes a duty of care, in most cases, to any passengers whom he carries to exercise reasonable skill in his driving of the vehicle<sup>10</sup>.

The manufacturer and seller, hirer or repairer of a vehicle or a part of a vehicle owes a duty of care towards persons using the vehicle or other road users in its vicinity<sup>11</sup>.

1 See a duty to exercise the care which could reasonably be expected from a skilful driver, including driving at a proper speed for the prevailing conditions, keeping a proper look-out and observing traffic signals and rules: *Hay or Bourhill v Young* [1943] AC 92 at 104, [1942] 2 All ER 396 at 403, HL, per Lord MacMillan. See also NEGLIGENCE vol 78 (2010) PARA 53.

2 See NEGLIGENCE vol 78 (2010) PARAS 51-60. The user of a vehicle must be insured in respect of any such liability for death or bodily injury to, or damage to the property of, third parties: see the Road Traffic Act 1988 ss 143, 145 (both as amended); and PARA 937 et seq post. See also INSURANCE vol 25 (2003 Reissue) PARA 706 et seq.

3 See NEGLIGENCE vol 78 (2010) PARAS 54-57. As regards the obligations of railway operators see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 363-366. See also *Carryfast Ltd v Hack* [1981] RTR 464 (motorist overtaking nervous horse).

4 Eg by driving within the legal speed limits but too fast for prevailing road conditions: see NEGLIGENCE vol 78 (2010) PARA 56.

5 As to the admissibility of previous convictions in evidence in civil proceedings see CIVIL PROCEDURE vol 12 (2009) PARA 1208 et seq.

6 See PARA 937 post.

7 See PARA 776 et seq post.

8 As to actions for breach of statutory duty generally see TORT vol 45(2) (Reissue) PARA 395 et seq.

9 See PARA 221 ante.

10 Passengers in a vehicle must be insured against death or bodily injury or damage to their property (except property in the passengers' custody or under their control): see the Road Traffic Act 1988 s 145(3), (4) (e) (s 145(3) as amended); and PARA 945 post. See also INSURANCE vol 25 (2003 Reissue) PARA 706 et seq. An antecedent agreement or understanding is of no effect in so far as it purports to, or might be held to, negative or restrict the driver's liability to his passengers: see s 149(1), (2); and PARA 949 post. See also INSURANCE vol 25 (2003 Reissue) PARA 737. The defendant may still claim the defence of contributory negligence, but not *volenti non fit injuria*: see s 149(3); and PARA 949 post. See also *Gregory v Kelly* [1978] RTR 426.

11 See NEGLIGENCE vol 78 (2010) PARAS 47-50.

## UPDATE

### 226 Negligence and breach of statutory duty

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(iv) Cognate Law/227. Nuisances and obstructions.

### 227. Nuisances and obstructions.

An abuse or misuse of a highway will often be a common law nuisance, for example where an unreasonable obstruction is caused, or where a vehicle of unreasonable size or character is used which causes injury, danger or substantial obstruction<sup>1</sup>. Moreover, many acts of misuse or abuse are summary offences<sup>2</sup>; for example wilfully damaging a highway or various appurtenances of a highway or depositing anything whatsoever on a highway which damages it, or interrupts any user or causes a user to be injured or endangered<sup>3</sup>, and wilfully obstructing the free passage along a highway<sup>4</sup>. Byelaws may be made for the prevention or suppression of nuisances on the highway<sup>5</sup>. Byelaws may also regulate queues for public vehicles<sup>6</sup>.

A person, merely as a user of the highway, has no right to remove an object which is a nuisance unless it does him special injury or unless it is impossible otherwise to pass<sup>7</sup>. However, highway authorities and local authorities have numerous powers to remove obstructions and deal with obstructions and nuisances to highways<sup>8</sup>.

1 See HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 322; NUISANCE vol 78 (2010) PARA 141. As to statutory savings for the law of nuisance see PARA 202 text and note 9 ante.

2 See HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 333.

3 See PARA 1020 post; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 345.

4 See PARA 1021 post; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 348. It is not possible to pass responsibility for a criminal action to another by a contractual term: *C Gabriel Ltd v Enfield London*

*Borough Council* [1971] RTR 265, DC (skip causing obstruction on highway). Obstructions to the highway are to be distinguished from interference with traffic: *LCC v Cutts* [1961] 1 All ER 600 at 603, [1961] 1 WLR 292 at 297, DC, per Lord Parker of Waddington CJ.

As to the saving for the law of nuisance under the Road Traffic Act 1960 see s 269.

5 See the Local Government Act 1972 s 235 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 555.

6 See PARA 748 post.

7 See HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 339.

8 See the Highways Act 1980 ss 140 (as amended), 149, 150; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 354.

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## **228. Repairs to highways.**

Most highways are maintainable at the public expense, although in some cases the liability to repair may rest upon an individual or on no one<sup>1</sup>. Expenses due to extraordinary traffic or excessive weight may be recovered from the person responsible for it either at common law if the matter amounts to a nuisance, or under statute where the highway is maintainable at public expense and whether the user is lawful or not<sup>2</sup>. Persons executing works in a highway are subject to various duties at common law or statute, and in particular undertakers' works executed in streets under statutory powers are generally subject to the street works code<sup>3</sup>.

Traffic may be diverted from any road where works are being or are proposed to be executed<sup>4</sup>.

1 See the Highways Act 1980 Pt IV (ss 36-61) (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 249 et seq.

2 See *ibid* s 59 (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 307-313.

3 See *ibid* ss 171-175 (as amended); the New Roads and Street Works Act 1991 Pt III (ss 48-106) (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 406 et seq.

4 See the Road Traffic Regulation Act 1984 s 14 (as substituted and amended); and PARA 755 post.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(iv) Cognate Law/229. Dual carriageways, roundabouts and street refuges.

## **229. Dual carriageways, roundabouts and street refuges.**

A highway authority<sup>1</sup> may construct and maintain, in a made-up carriageway<sup>2</sup> comprised in a highway maintainable at public expense by the authority, works: (1) for separating parts of the carriageway to be used by traffic moving in opposite directions<sup>3</sup>; (2) at crossroads or other junctions for regulating the movements of traffic<sup>4</sup>; and (3) for providing places of refuge for the protection of pedestrians crossing the carriageway<sup>5</sup>.

1 For the meaning of 'highway authority' see the Highways Act 1980 ss 1-3 (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq.

2 'Made-up carriageway' means a carriageway, or part of it, which has been metalled or in any other way provided with a surface suitable for the passage of vehicles: *ibid* s 329(1).

3 See *ibid* s 64(1)(a); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 487.

4 See *ibid* s 64(1)(b); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 487. Works for this purpose must not stop the movement of traffic: *Birmingham and Midland Motor Omnibus Co Ltd v Worcestershire County Council* [1967] 1 All ER 544, [1967] 1 WLR 409, CA.

5 See the Highways Act 1980 s 68; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 549.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(iv) Cognate Law/230. Animals.

### 230. Animals.

A person who brings an animal onto the highway must use all reasonable care to prevent it doing damage to other persons; and if animals are driven along a highway without proper control over them and damage is caused, this may amount to negligence<sup>1</sup>.

If any livestock which is kept by any person strays onto the highway owing to the negligence or lack of reasonable care of the owner, he will be liable for any injury or damage caused<sup>2</sup>.

If any horse, cattle, sheep, goats or swine are at any time found straying or lying on or at the side of a highway, except on any common, waste or uninclosed ground, their keeper is guilty of an offence<sup>3</sup>.

1 See ANIMALS vol 2 (2008) PARA 756. Negligence cannot be established merely by proof that a defendant has failed to provide against a possibility that a tame animal of mild disposition will do something contrary to its ordinary nature: *Aldham v United Dairies (London) Ltd* [1940] 1 KB 507, [1939] 4 All ER 522, CA; applied in *Haines v Watson* [1981] RTR 90, CA. A driver overtaking animals should give them adequate clearance: *Carryfast Ltd v Hack* [1981] RTR 464. As to negligence generally see NEGLIGENCE.

2 Animals Act 1971 s 8(1). No liability for negligence will attach if the animals strayed from unfenced land which was common land, land in an area where fencing is not customary or a town or village green and the person placing them on the land had a right to do so: s 8(2). This includes a licensee of the owner: *Davies v Davies* [1975] QB 172, [1974] 1 All ER 817, CA. As to animals trespassing and straying onto the highway see ANIMALS vol 2 (2008) PARA 754.

3 See the Highways Act 1980 s 155(1); and ANIMALS vol 2 (2008) PARA 754. 'Keeper' means the person in whose possession the animals are: s 155(1). A person guilty of such an offence is liable to a fine not exceeding level 3 on the standard scale: s 155(2) (amended by virtue of the Criminal Justice Act 1982 ss 35, 37, 38, 46). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended); see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164 (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(iv) Cognate Law/231. Carriage of explosives and other dangerous substances.

### **231. Carriage of explosives and other dangerous substances.**

Regulations made by the Secretary of State<sup>1</sup> regulate the carriage of explosives by road<sup>2</sup>, including their proper packing and marking for carriage<sup>3</sup>. Regulations made by the Secretary of State also govern the carriage of dangerous goods by road<sup>4</sup>.

If an accident which occasions loss of life or personal injury occurs by explosion or fire in connection with a vehicle in which an explosive, any petroleum-spirit or any of a large number of inflammable substances is being carried, notice must be given to the Health and Safety Executive<sup>5</sup>.

Regulations control the carriage of dangerous or inflammable substances on public service vehicles<sup>6</sup>.

1 As to the Secretary of State see PARA 236 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 post.

2 See the Carriage of Explosives by Road Regulations 1996, SI 1996/2093 (as amended); and EXPLOSIVES vol 17(2) (Reissue) PARA 999 et seq. See also CARRIAGE AND CARRIERS vol 7 (2008) PARA 748 et seq.

3 See EXPLOSIVES vol 17(2) (Reissue) PARAS 1000-1002.

4 See eg the Carriage of Dangerous Goods by Road Regulations 1996, SI 1996/2095 (as amended); the Carriage of Dangerous Goods and Use of Transportable Pressure Receptacles Regulations 2007, SI 2007/1573; para 1663 post; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 555.

5 See the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885 (as amended); and EXPLOSIVES vol 17(2) (Reissue) PARA 1042. See also the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163 (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 399. As to the investigations and inquiries which may be carried out by the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 397-398.

6 See the Public Service Vehicles (Conditions of Fitness, Equipment, Use and Certification) Regulations 1981, SI 1981/257, reg 44; and PARA 333 post.

### **UPDATE**

### **231 Carriage of explosives and other dangerous substances**

NOTES 2, 4--SI 1996/2093, SI 1996/2095 and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348.

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### **232. Carriers.**

A common carrier<sup>1</sup> of goods is bound to carry goods when required, subject to certain lawful excuses, and must carry them by his normal route and deliver them within a reasonable time<sup>2</sup>. He has particular duties in respect of animals<sup>3</sup>. He is liable for loss or damage of goods except in the case of an act of God or of the Queen's enemies, fault of the consignor or inherent vice<sup>4</sup>, but his liability is limited in the case of certain valuable objects<sup>5</sup>. The consignor impliedly warrants that the goods are not dangerous<sup>6</sup>. An unpaid seller may stop goods in transit<sup>7</sup>. These duties and liabilities may, however, be varied by contract<sup>8</sup>.

A common carrier of passengers is in certain circumstances bound to carry passengers and their luggage<sup>9</sup>. The carrier owes a duty to his passengers to take all due care for their safety<sup>10</sup>, but this duty may normally be varied by special conditions in the contract<sup>11</sup>.

A universal service provider may, for any purpose in connection with the provision of a universal postal service, require the owner or operator of a ship or aircraft carrying on regular communications with places in the United Kingdom, one of which is not readily accessible by road, to carry mail-bags in the ship or aircraft<sup>12</sup>.

1 For the meaning of 'common carrier' see CARRIAGE AND CARRIERS vol 7 (2008) PARA 3.

2 See CARRIAGE AND CARRIERS vol 7 (2008) PARA 7 et seq.

3 See CARRIAGE AND CARRIERS vol 7 (2008) PARAS 108-110.

4 See CARRIAGE AND CARRIERS vol 7 (2008) PARA 16.

5 See CARRIAGE AND CARRIERS vol 7 (2008) PARA 27 et seq.

6 See CARRIAGE AND CARRIERS vol 7 (2008) PARA 105.

7 See CARRIAGE AND CARRIERS vol 7 (2008) PARA 766 et seq; SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 256-258.

8 See CARRIAGE AND CARRIERS vol 7 (2008) PARAS 24, 71 et seq.

9 See CARRIAGE AND CARRIERS vol 7 (2008) PARAS 38, 54-55.

10 See CARRIAGE AND CARRIERS vol 7 (2008) PARA 39 et seq.

11 See CARRIAGE AND CARRIERS vol 7 (2008) PARA 44.

12 See the Postal Services Act 2000 s 94; and POST OFFICE.

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### **233. Application of the factories legislation.**

Any premises in which persons are employed in manual labour<sup>1</sup> and in which the construction, reconstruction or repair of locomotives, vehicles or other plant for use for transport purposes is carried on as ancillary to a transport undertaking or other industrial or commercial undertaking, are included in the expression 'factory' and the factories legislation applies to them<sup>2</sup>. However, premises used for the purpose of housing vehicles where only cleaning, washing, running repairs or minor adjustments are carried out are not subject to the factories legislation<sup>3</sup>. Premises used for housing locomotives are not subject to the factories legislation unless they are used for the purposes of a railway undertaking carrying out running repairs to locomotives<sup>4</sup>.

- 1 For the meaning of 'manual labour' see HEALTH AND SAFETY AT WORK vol 52) (2009) PARA 318.
- 2 See the Factories Act 1961 s 175(2)(f); and HEALTH AND SAFETY AT WORK vol 52) (2009) PARA 319.
- 3 See ibid s 175(10); and HEALTH AND SAFETY AT WORK vol 52) (2009) PARA 319. As to the meanings of 'running repairs', 'minor adjustments' and 'cleaning' see HEALTH AND SAFETY AT WORK vol 52) (2009) PARA 319.
- 4 See ibid s 175(10); and HEALTH AND SAFETY AT WORK vol 52) (2009) PARA 319.

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### **234. Supply, sale, hire purchase and hire of motor vehicles etc.**

In a contract of sale or hire purchase of goods, including motor vehicles, there are generally implied: (1) a condition that the seller has, or will have, the right to sell the goods<sup>1</sup>; (2) warranties for quiet possession and freedom from incumbrance<sup>2</sup>; (3) a condition that the goods are reasonably fit for the purpose for which they are required, where the purpose is expressly or impliedly made known<sup>3</sup>; and (4) in certain cases, a condition that the goods are of merchantable quality<sup>4</sup>. Warranties of fitness and for quiet enjoyment are also implied in contracts for the hire of vehicles<sup>5</sup>.

In certain circumstances, it is unlawful to supply, sell, offer for sale or expose for sale<sup>6</sup>: (a) a vehicle in an unroadworthy condition<sup>7</sup>; (b) a goods vehicle lacking the necessary certificates<sup>8</sup>; (c) vehicle parts which are defective or unsuitable<sup>9</sup>; (d) motor cyclists' protective helmets which fall short of the prescribed requirements<sup>10</sup>; and (e) reflectors or tail lamps which do not comply with the prescribed conditions<sup>11</sup>.

1 See the Sale of Goods Act 1979 s 12(1) (as amended); the Supply of Goods (Implied Terms) Act 1973 s 8(1) (a), (2) (as substituted and amended); and CONSUMER CREDIT vol 9(1) (Reissue) PARA 24; SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 69.

2 See the Sale of Goods Act 1979 s 12(2) (as amended); the Supply of Goods (Implied Terms) Act 1973 s 8(1) (b), (2) (as substituted and amended); and CONSUMER CREDIT vol 9(1) (Reissue) PARA 24; SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 69.

3 See the Sale of Goods Act 1979 s 14(3) (as amended); the Supply of Goods (Implied Terms) Act 1973 s 10(3) (as substituted and amended); and CONSUMER CREDIT vol 9(1) (Reissue) PARA 24; SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 78.

4 See the Sale of Goods Act 1979 s 14(2) (as substituted); the Supply of Goods (Implied Terms) Act 1973 s 10(2) (as substituted); and CONSUMER CREDIT vol 9(1) (Reissue) PARA 24; SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 80.

5 See BAILMENT vol 3(1) (2005 Reissue) PARAS 53, 55.

6 As to the meanings of 'sell' and 'offer for sale' see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 1 et seq.

7 See the Road Traffic Act 1988 s 75(1); and PARA 694 post. It is also unlawful to alter a vehicle so that its use on the road would be unlawful: see s 75(4) (as amended); and PARA 694 post.

8 See ibid s 65 (as amended); and PARA 701 post.

9 See ibid s 76 (as amended); and PARA 695 post.



10 See *ibid* s 17; and PARA 640 post.

11 See *ibid* s 83; and PARA 408 post.

## UPDATE

### **234-235 Supply, sale, hire purchase and hire of motor vehicles etc, Employees and agents**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(1) ROAD TRAFFIC AND HIGHWAY LEGISLATION/(iv) Cognate Law/235. Employees and agents.

### **235. Employees and agents.**

A statute may expressly or by implication impose liability upon an employer or principal for an offence, such as using a motor vehicle on a road without third party insurance<sup>1</sup>, which is an act or omission of his employee or agent<sup>2</sup>. It is an implied term of a contract of employment that the employee will not be required to do an unlawful act, and therefore that the employer will insure as required a vehicle which the employee is to use<sup>3</sup>.

Where the driver of a vehicle is an employee his employer is liable for negligence and other torts committed by the employee in doing something which he is employed to do<sup>4</sup>. The owner of a vehicle is also liable for the negligent driving of another person as his agent where he allows that person to drive the vehicle in his presence or authorises him to drive it in the execution of the owner's own purposes over which he retains some control; but is not liable if the driver is merely a bailee engaged exclusively upon his own purposes<sup>5</sup>. A cab driver is normally, as between himself and the owner of the cab, a bailee of the cab from the owner<sup>6</sup>, but the effect of certain provisions of the London Hackney Carriages Act 1843<sup>7</sup> and of the Town Police Clauses Act 1847<sup>8</sup>, in districts where either statute applies, is to put the cab driver in the position of an employee so that the owner is thus made liable to other persons for the driver's torts<sup>9</sup>.

Where a vehicle and driver are hired, the hirer is generally liable for the driver's negligence only in so far as he has a right to control the manner of driving; where the driver is an employee of the owner of the vehicle, there is a presumption against such a transfer as would render the hirer liable for his acts<sup>10</sup>.

1 See under the Road Traffic Act 1988 s 143 (as amended): see PARA 937 post; and INSURANCE vol 25 (2003 Reissue) PARA 729 et seq.

2 As to the liability for the criminal and statutory offences of employees and agents generally see AGENCY vol 1 (2008) PARA 155; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 59-64. A passenger in a car being used for a criminal purpose may be, but is not necessarily, liable for motoring offences committed by the driver: *Webster v Wishart* 1955 SLT 243.

3 *Gregory v Ford* [1951] 1 All ER 121; *Semtex Ltd v Gladstone* [1954] 2 All ER 206, [1954] 1 WLR 945. See also the Road Traffic Act 1988 s 143(2); para 653 post; and EMPLOYMENT vol 39 (2009) PARAS 39, 53.

- 4 See EMPLOYMENT vol 39 (2009) PARA 31; TORT vol 45(2) (Reissue) PARA 329.
- 5 See AGENCY vol 1 (2008) PARA 151; BAILMENT vol 3(1) (2005 Reissue) PARA 91.
- 6 See *Doggett v Waterloo Taxi-Cab Co Ltd* [1910] 2 KB 336, CA.
- 7 The London Hackney Carriages Act 1843 applies in the City of London and the metropolitan police district: see the London Hackney Carriages Act 1843 s 2 (as amended); and PARA 1487 post. As to hackney carriages in London see generally para 1098 et seq post.
- 8 As to the application of the Town Police Clauses Act 1847 see PARA 1432 post. For instances of convictions of cab drivers as 'servants' for falsifying accounts and for 'larceny' of takings see *R v Solomons* [1909] 2 KB 980, CCA; *R v Messer* [1913] 2 KB 421, CCA.
- 9 See *Morley v Dunscombe* (1848) 11 LTOS 199; *Playle v Kew* (1886) 2 TLR 849; *Bygraves v Dicker* [1923] 2 KB 585, DC.
- 10 See BAILMENT vol 3(1) (2005 Reissue) PARA 61.

## UPDATE

### **234-235 Supply, sale, hire purchase and hire of motor vehicles etc, Employees and agents**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(2) ADMINISTRATION AND FINANCE/236. The Secretary of State and other authorities.

## **(2) ADMINISTRATION AND FINANCE**

### **236. The Secretary of State and other authorities.**

The powers and duties in respect of roads, bridges, vehicles, road traffic, tramways and rail transport are vested in the Secretary of State for Transport<sup>1</sup>. He is thus now 'the Minister' for the purposes of the Road Traffic Acts 1930<sup>2</sup> and 1960<sup>3</sup>, and the Transport Acts 1968<sup>4</sup> and 1980<sup>5</sup>. He is also 'the Secretary of State' for the purposes of the subsequent road traffic legislation<sup>6</sup>.

Traffic commissioners<sup>7</sup> must act under the general directions of the Secretary of State<sup>8</sup>.

County councils have the responsibility for public transport within their areas<sup>9</sup>. Metropolitan counties<sup>10</sup> are all passenger transport areas and the county council is the passenger transport authority<sup>11</sup>. In a non-metropolitan county<sup>12</sup> the county council is the highway authority for its area<sup>13</sup>.

The Secretary of State is the traffic authority for every highway in England and Wales for which he is the highway authority within the meaning of the Highways Act 1980<sup>14</sup>. In Greater London, the council of the London borough or the Common Council of the City of London is the traffic authority for all the roads in the borough or, as the case may be, in the City which are not GLA roads<sup>15</sup> and for which the Secretary of State is not the traffic authority<sup>16</sup>. Outside Greater London, the council of the county or metropolitan district is the traffic authority for all the roads

in the county, or, as the case may be, the district for which the Secretary of State is not the traffic authority<sup>17</sup>.

It is the duty of every local authority upon which functions are conferred by or under the Road Traffic Regulation Act 1984 so to exercise those functions as, so far as practicable having due regard to certain matters<sup>18</sup>, to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway<sup>19</sup>. Local authorities also have certain functions in relation to speed limits on restricted roads<sup>20</sup>, traffic regulation orders<sup>21</sup>, the use of the highway by public service vehicles<sup>22</sup>, pedestrian crossings<sup>23</sup>, school crossings<sup>24</sup>, street playgrounds<sup>25</sup>, road safety information and training<sup>26</sup> and the provision of bus stations<sup>27</sup>.

Certain functions are carried out by the Driver and Vehicle Licensing Agency (DVLA), which is an executive agency of the Department for Transport and is accountable to the Secretary of State<sup>28</sup>.

1 These powers and duties were originally vested in the Minister of Transport under the Ministry of Transport Act 1919 s 2(1) (repealed). Functions relating to roads, bridges and ferries in Wales were transferred to the Secretary of State for Wales by the Secretary of State for Wales and Minister of Land and Natural Resources Order 1965, SI 1965/319, art 3, Sch 2. As from 12 November 1970, the Ministry of Transport (with other ministries) was dissolved, and its functions transferred to the Secretary of State for the Environment by the Secretary of State for the Environment Order 1970, SI 1970/1681, art 2. As from 27 October 1976, the transport functions of the Secretary of State for the Environment (ie those relating to highways, road traffic, road and rail transport, ports, docks and harbours) were transferred to the Secretary of State for Transport by the Secretary of State for Transport Order 1976, SI 1976/1775, art 2. As from 24 May 1979 the functions of the Secretary of State for Transport were transferred to the Minister of Transport by the Minister of Transport Order 1979, SI 1979/571, art 2; and as from 26 February 1981 the powers exercised by the Minister of Transport were transferred again to the Secretary of State for Transport by the Transfer of Functions (Transport) Order 1981, SI 1981/238, art 2. The functions of the Secretary of State for Transport were transferred to the Secretary of State for the Environment, Transport and the Regions by the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971, art 3, apart from his functions under the Goods Vehicles (Licensing of Operators) Act 1995 s 49(2) (as amended) (see PARA 1376 post), which were transferred to the Secretary of State (see the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971, art 3(3)(a)). By the Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001, SI 2001/2568, art 7(1), the functions of the Secretary of State for the Environment, Transport and the Regions were transferred to the Secretary of State for Transport, Local Government and the Regions as from 13 August 2001. As from that date, the functions of the Secretary of State under the Channel Tunnel Rail Link Act 1996 s 29(4), Sch 3 para 2 were transferred to the Secretary of State for Transport, Local Government and the Regions and the Secretary of State for Environment, Food and Rural Affairs, acting jointly; and the function of the Secretary of State for the Environment, Transport and the Regions under the Road Traffic Regulation Act 1984 s 7(6) (as amended) (see PARA 749 post) was transferred to the Secretary of State: Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001, SI 2001/2568, arts 5, 6(1). Some functions of the Home Secretary were transferred to the Secretary of State for Transport, Local Government and the Regions as from 26 November 2001: see the Transfer of Functions (Miscellaneous) Order 2001, SI 2001/3500, art 5. As from 25 November 2002, transport functions of the Secretary of State for Transport, Local Government and the Regions were transferred to the Secretary of State for Transport: see the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626, arts 4-8.

As to the transfer of certain functions, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 post.

2 See the Road Traffic Act 1930 s 121(1).

3 See the Road Traffic Act 1960 s 257(1).

4 See the Transport Act 1968 s 159(1) (definition amended by the Railways Act 1993 s 152, Sch 14).

5 See the Transport Act 1980 s 70(2) (definition substituted by the Railways Act 1993 s 134, Sch 11 para 9(4)). The Secretary of State is also 'the Minister' for the purposes of the Highways Act 1980: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49.

6 Ie for the purposes of the Road Traffic Regulation Act 1984, the Road Traffic Acts (see PARA 202 ante), the Transport Acts 1978, 1981, 1982, 1983 and 1985, the Public Passenger Vehicles Act 1981, the Road Traffic (Driver Licensing and Information Systems) Act 1989, the Radioactive Material (Road Transport) Act 1991, the

Road Traffic Act 1991, the Road Traffic (Driving Instruction by Disabled Persons) Act 1993, the Deregulation and Contracting Out Act 1994, the Road Traffic (New Drivers) Act 1995, the Goods Vehicles (Licensing of Operators) Act 1995, the Road Traffic Reduction Act 1997, the Road Traffic Reduction (National Targets) Act 1998 and the Road Traffic (Testing of Vehicles) Act 1999.

'Secretary of State' means one of Her Majesty's principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1. The office of Secretary of State is a unified office, and in law each Secretary of State is generally capable of performing the functions of all or any of them: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355. Accordingly, many modern statutes refer simply to 'the Secretary of State' without reference to a particular department or ministry.

7 As to traffic commissioners see PARA 1138 et seq post.

8 See the Public Passenger Vehicles Act 1981 s 4(4)(a) (as substituted); and PARA 1139 post.

9 See PARA 1252 et seq post.

10 For the metropolitan counties see the Local Government Act 1972 s 1(2), Sch 1 Pt I; and LOCAL GOVERNMENT vol 69 (2009) PARA 24.

11 See the Transport Act 1968 s 9 (as amended); and PARA 247 post. For the duties, powers and rights of passenger transport authorities see Pt II (ss 9-23A) (as amended); and PARA 247 et seq post.

12 For the non-metropolitan counties see the Local Government Act 1972 ss 1(2), 20(2) (as substituted), Sch 1 Pt II, Sch 4 Pt I (as substituted); and LOCAL GOVERNMENT vol 69 (2009) PARA 24. 'Non-metropolitan county' means any county other than a metropolitan county (see s 270(2)), and thus includes any county in Wales.

13 See the Highways Act 1980 s 1(2) (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 56.

14 See the Road Traffic Regulation Act 1984 s 121A(1) (as added and amended); and PARA 731 post.

15 As to GLA roads see PARA 725 post.

16 See the Road Traffic Regulation Act 1984 s 121A(2) (as added and amended); and PARA 731 post.

17 See *ibid* s 121A(3) (as added); and PARA 731 post. As to a local traffic authority's duty to prepare reports relating to the levels of road traffic in its area see PARA 240 post. As to the Secretary of State's duty to publish reports containing targets for road traffic reduction see PARA 241 post.

18 *le* (1) the desirability of securing and maintaining reasonable access to premises; (2) the effect on the amenities of any locality affected and (without prejudice to the generality of this head) the importance of regulating and restricting the use of roads by heavy commercial vehicles (see PARA 220 ante) so as to preserve or improve the amenities of the areas through which the roads run; (3) the national air quality strategy; (4) the importance of facilitating the passage of public service vehicles and of securing the safety and convenience of persons using or desiring to use them; and (5) any other matters appearing to the local authority to be relevant: see *ibid* s 122(2) (as amended); and PARA 734 post. As to the national air quality strategy see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 192 et seq.

19 See *ibid* s 122(1) (as amended); and PARA 734 post. For the reserve powers of the Secretary of State to control local authorities see s 124, Sch 9 Pt I (as amended); and PARA 736 ante. For local authority powers in respect of parking places on and off the highway see ss 28-33 (as amended), ss 35-44 (as amended); and PARA 781 et seq post. For local authority powers to make byelaws see LOCAL GOVERNMENT vol 69 (2009) PARA 553 et seq.

20 See *ibid* ss 71-75 (as amended); and PARA 837 et seq post.

21 See *ibid* ss 1-8 (as amended); and PARA 742 et seq post.

22 See *ibid* s 19 (as amended); and PARA 767 post.

23 See *ibid* s 23 (as amended); and PARA 776 et seq post.

24 See *ibid* s 26 (as amended); and PARA 780 et seq post.

25 See *ibid* ss 29-31 (as amended); and PARA 782 et seq post.

26 See the Road Traffic Act 1988 s 39 (as amended); and PARA 222 ante.

27 See the Road Traffic Regulation Act 1984 s 38 (as amended); and PARA 795 post.

28 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 511.

## UPDATE

### 236-245 Administration and Finance

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(2) ADMINISTRATION AND FINANCE/237. The Welsh Assembly and the Welsh Ministers.

### 237. The Welsh Assembly and the Welsh Ministers.

With the establishment of the National Assembly for Wales<sup>1</sup> certain functions of Ministers of the Crown, in particular powers to make subordinate legislation, were transferred to the National Assembly for Wales so far as they were exercisable in relation to Wales<sup>2</sup>. Functions transferred to the Assembly included certain functions under the Road Traffic Regulation Act 1984<sup>3</sup>, the Transport Act 1985<sup>4</sup>, the Road Traffic Act 1988<sup>5</sup>, the Road Traffic Offenders Act 1988<sup>6</sup>, the Road Traffic Act 1991<sup>7</sup>, the Transport and Works Act 1992<sup>8</sup>, the Road Traffic Reduction Act 1997<sup>9</sup> and the Road Traffic Reduction (National Targets) Act 1998<sup>10</sup>. Certain other functions were to be exercised concurrently with the relevant Minister of the Crown<sup>11</sup>, and functions under certain enactments were exercisable by a Minister of the Crown only with the agreement of, or after consultation with, the Assembly<sup>12</sup>. Functions under certain subordinate legislation were transferred<sup>13</sup>.

Pursuant to the establishment of the Welsh Assembly Government under the Government of Wales Act 2006<sup>14</sup>, these functions are now generally the responsibility of the Welsh Ministers<sup>15</sup>. Further transfers of ministerial functions to the Welsh Ministers may be effected by Order in Council<sup>16</sup>.

1 See the Government of Wales Act 1998; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

2 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1.

3 See *ibid* Sch 1. Functions under the Road Traffic Regulation Act 1984 were transferred to the Assembly except s 17(2), (3) (s 17(2) as amended) with respect to special roads generally, s 20 (as amended), s 21 (as amended), s 23 (as amended), s 25 (other than s 25(4) together with other provisions of s 25 so far as relating to thereto), s 28, s 64 (as amended) (other than so far as that provision confers the power to prescribe a variant of any sign of a type prescribed by the Ministers and carrying words in English, being a variant identical with a sign of that type except for the substitution or addition of words in Welsh (and any increase in size needed to accommodate the substituted or added words), and the power to authorise signs not otherwise prescribed), s 65 (as amended) (so far as it relates to the giving of general directions), s 81, s 85(2) (as amended) (so far as it relates to the giving of general directions), s 86 (as amended), s 88, ss 95-97 (as amended), ss 99-103 (as amended) (in relation to specified parts of roads), ss 104-106 (as amended), ss 130-132 (as amended), ss 136-140 (as amended), s 141A (as added), Sch 6 (as amended): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and the National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044, art 2, Sch 1.

4 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 Sch 1. The functions that were transferred were those in the Transport Act 1985 s 19(7), Pt IV (ss 57-87) (as amended), Pt V (ss 88-112) (as amended) (except ss 110, 111 (now repealed)): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

5 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 Sch 1. The functions that were transferred were those in the Road Traffic Act 1988 s 13(2), s 13A (as added), s 27(6), s 31(2), s 36(5) (as amended) (so far as exercisable by the Secretary of State for Wales but only to the extent that functions were exercisable by the National Assembly for Wales under the Road Traffic Regulation Act 1984 s 64 (as amended)), and in the Road Traffic Act 1988 159 (as amended): National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

6 See *ibid* Sch 1. The functions that were transferred were those in the Road Traffic Offenders Act 1988 s 34A (as added), s 34B (as added and amended) (except s 34B(9) (as added and amended)), s 34C (as added and amended): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

7 See *ibid* Sch 1. The functions that were transferred were those in the Road Traffic Act 1991 s 31(6), s 43, Sch 3 (as amended): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

8 See *ibid* Sch 1. The functions that were transferred were those in the Transport and Works Act 1992 except: the order-making function under s 1 and s 3 where any order thereunder would have effect both in Wales and England; functions under s 25(4), Pt II (ss 26-59) (as amended), s 60; the order, rule and regulation-making powers conferred by s 2, s 4, s 6(2)-(6) (as amended), s 7(1)(a), (4), s 8, s 10, s 15; and the functions vested in a Minister of the Crown under s 9(4), (5): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. The Transport and Works Act 1992 s 23(10) (as amended) had effect as if the references to the Welsh Office were references to the Assembly and in relation thereto the reference to the Parliamentary Commissioner Act 1967 had effect as if it were a reference to the Government of Wales Act 1998 s 111(2), Sch 9 (as amended) (now repealed: see the Public Services Ombudsman (Wales) Act 2005 s 39, Sch 6 paras 65, 69, Sch 7): National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Orders made by the Assembly were subject to special parliamentary procedure to the extent provided for by the references in the Acquisition of Land Act 1981 ss 12-18 (as amended), Sch 3 para 5 (see *COMPULSORY ACQUISITION OF LAND* vol 18 (2009) PARA 605): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

9 See *ibid* Sch 1.

10 See *ibid* Sch 1.

11 See *ibid* art 2(b), Sch 1. The functions to be exercised concurrently were those conferred by the following provisions: the Ministry of Transport Act 1919 s 17 (as amended); the Transport Act 1968 s 57 (this power was exercisable by the Assembly free from approval by the Treasury); the Road Traffic Act 1988 ss 39(1), 40 (free from approval by the Treasury); and the Transport and Works Act 1992 s 9: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

12 See *ibid* art 5, Sch 2. The functions to be exercised subject to constraint were functions under the Road Traffic Regulation Act 1984 s 81(2) (exercisable only after consultation with the Assembly) and the order, rule and regulation-making functions under the Transport and Works Act 1992 s 1, s 3, s 6 (as amended), s 7(4), s 8, s 10, s 15 (exercisable only with the agreement of the Assembly).

13 National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a). The functions that were transferred were those in the Traffic Signs Regulations and General Directions 1994, SI 1994/1519, Direction 49 (revoked: see now the Traffic Signs Regulations and General Directions 2002, SI 2002/3113 (as amended)).

14 As to the establishment of the Welsh Assembly Government see the Government of Wales Act 2006 Pt 2 (ss 45-92); and *CONSTITUTIONAL LAW AND HUMAN RIGHTS*. As to the National Assembly for Wales constituted under the Government of Wales Act 2006 see Pt 1 (ss 1-44); and *CONSTITUTIONAL LAW AND HUMAN RIGHTS*.

15 The Welsh Ministers are the First Minister and the Welsh Ministers established under *ibid* ss 46, 48 (see *CONSTITUTIONAL LAW AND HUMAN RIGHTS*): see s 45(2).

16 See *ibid* s 58, Sch 3 paras 1-8; and *CONSTITUTIONAL LAW AND HUMAN RIGHTS*.

## UPDATE

### 236-245 Administration and Finance

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(2) ADMINISTRATION AND FINANCE/238. General transport duty in relation to Wales.

### **238. General transport duty in relation to Wales.**

The Welsh Ministers<sup>1</sup> must: (1) develop policies for the promotion and encouragement of safe, integrated, sustainable, efficient and economic transport facilities and services to, from and within Wales; and (2) carry out their functions so as to implement those policies<sup>2</sup>.

1 As to the Welsh Ministers see PARA 237 ante.

2 Transport (Wales) Act 2006 s 1(1). The transport facilities and services mentioned in s 1(1) are: (1) those required to meet the needs of persons living or working in Wales, or visiting or travelling through Wales; and (2) those required for the transportation of freight: s 1(2). Those facilities and services include facilities and services for pedestrians and cyclists: s 1(3).

## **UPDATE**

### **236-245 Administration and Finance**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(2) ADMINISTRATION AND FINANCE/239. Transport strategy for Wales.

### **239. Transport strategy for Wales.**

The Welsh Ministers<sup>1</sup> must prepare and publish a document to be known as the Wales Transport Strategy<sup>2</sup>. The strategy must set out: (1) the policies developed by the Welsh Ministers<sup>3</sup>; and (2) how the Welsh Ministers propose to discharge their duty<sup>4</sup>. The Welsh Ministers must keep the strategy under review and may from time to time revise it<sup>5</sup>. If they revise the strategy, they must publish (as they consider appropriate): (a) the whole strategy as revised; or (b) the revised parts<sup>6</sup>. In preparing or revising the strategy, the Welsh Ministers must consult: (i) each local authority in Wales<sup>7</sup>; (ii) each county council or district council in England whose area abuts Wales; (iii) any other persons they consider appropriate<sup>8</sup>. The strategy and any revision of it do not have effect until approved by the National Assembly for Wales<sup>9</sup>.

1 The Transport (Wales) Act 2006 refers to 'the Assembly', which is defined as the National Assembly for Wales (see s 14(2)), but ministerial functions are now carried out by the Welsh Ministers: see PARA 237 ante.

2 Ibid s 2(1).

3 le under ibid s 1(1)(a) (see PARA 238 head (1) ante).

4 Ibid s 2(2). The text refers to the duty under s 1(1)(b) (see PARA 238 head (2) ante).

5 Ibid s 2(3).

6 Ibid s 2(4).

7 In the Transport (Wales) Act 2006, 'local authority in Wales' means a county council or county borough council in Wales: s 14(3).

8 Ibid s 2(5).

9 Ibid s 2(6). The function under s 2(6) must not be delegated: see s 2(7). As to the National Assembly for Wales constituted under the Government of Wales Act 2006 see PARA 237 note 14 ante.

## **UPDATE**

### **236-245 Administration and Finance**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **239 Transport strategy for Wales**

TEXT AND NOTE 9--Repealed: SI 2007/1388.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(2) ADMINISTRATION AND FINANCE/240. Reports relating to levels of road traffic.

### **240. Reports relating to levels of road traffic.**

It is the duty of every local traffic authority<sup>1</sup> to prepare, at such time or times as the Secretary of State<sup>2</sup> directs, a report containing an assessment of the levels of local road traffic<sup>3</sup> in its area, and a forecast of the growth in those levels<sup>4</sup>. The report must also specify targets for a reduction in the levels of local road traffic in the area, or a reduction in the rate of growth in the levels of such traffic<sup>5</sup>. However, a local traffic authority is not obliged to specify such targets in relation to its area, or in relation to any part of its area, if it considers it inappropriate to do so<sup>6</sup>. The report must also contain any other information or proposals which relate to levels of local road traffic in the area, and which are required by guidance issued by the Secretary of State<sup>7</sup> or directions by the Mayor of London<sup>8</sup>. Such a report prepared by a London council must take account of the Mayor of London's transport strategy<sup>9</sup> and the council's local implementation plan<sup>10</sup>.



Where a local traffic authority has prepared such a report it must send the report to the Secretary of State and, if the council is a London council, send a copy to the Mayor of London<sup>11</sup>, and publish a copy in such manner as it considers appropriate<sup>12</sup>. The Secretary of State must lay a copy of every such report received by him before each House of Parliament<sup>13</sup>.

1 For the meanings of 'traffic authority' and 'local traffic authority' see PARA 731 post; definitions applied by the Road Traffic Reduction Act 1997 s 1.

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 'Local road traffic' means traffic consisting of mechanically propelled vehicles on roads for which the Secretary of State is not the traffic authority (see PARA 236 ante): Road Traffic Reduction Act 1997 s 1. As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.

4 Ibid s 2(1). The provisions of the Road Traffic Reduction Act 1997 came into force on 10 March 2000: see s 4; and the Road Traffic Reduction Act 1997 (Commencement) (England and Wales) Order 2000, SI 2000/735.

5 Road Traffic Reduction Act 1997 s 2(2). The report may specify different targets for different parts of the local traffic authority's area or for different classes of local road traffic: see s 2(4).

6 Ibid s 2(5). Where targets are not specified the report must state that the local traffic authority considers it inappropriate to do so, and its reasons for so considering: s 2(5).

7 The Secretary of State may issue guidance to local traffic authorities in relation to:

4 (1) the preparation and content of reports under ibid s 2; and

5 (2) consultation in connection with the preparation of such reports,

and a local traffic authority must have regard to any guidance when preparing a report: s 2(6).

8 Ibid s 2(3). The Mayor of London may give directions or issue guidance to London councils in relation to any matter in relation to which the Secretary of State may issue guidance under s 2(6) (see the text and note 7 supra): s 2(6A) (added by the Greater London Authority Act 1999 s 280(2), (5)). 'London council' means a London borough council or the Common Council of the City of London: Road Traffic Reduction Act 1997 s 1 (definition added by the Greater London Authority Act 1999 s 280(1)). As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81; as to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq; and as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

The Mayor of London must not give any direction or issue any guidance under the Road Traffic Reduction Act 1997 s 2(6A) (as added) which conflicts with guidance under s 2(6): s 2(6B) (added by the Greater London Authority Act 1999 s 280(2), (5)). A London council preparing a report under the Road Traffic Reduction Act 1997 s 2 (as amended) must comply with any directions given under s 2(6A) (as added), and must have regard to any guidance issued under s 2(6A) (as added): s 2(6C) (added by the Greater London Authority Act 1999 s 280(2), (5)).

9 'The Mayor of London's transport strategy' means the transport strategy prepared and published under the Greater London Authority Act 1999 s 142 (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 263): Road Traffic Reduction Act 1997 s 1 (definition added by the Greater London Authority Act 1999 s 280(1)).

10 Road Traffic Reduction Act 1997 s 2(4A) (added by the Greater London Authority Act 1999 s 280(2), (4)). Any targets specified in such a report pursuant to the Road Traffic Reduction Act 1997 s 2(2) (see the text and note 5 supra), and any proposals contained in such a report pursuant to s 2(3) (see the text to note 8 supra), must be in conformity with the Mayor of London's transport strategy and the council's local implementation plan: s 2(4A) (as so added). 'Local implementation plan', in relation to a London council, means the plan prepared by the council under the Greater London Authority Act 1999 s 145 (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 264): Road Traffic Reduction Act 1997 s 1 (definition added by the Greater London Authority Act 1999 s 280(1)).

11 Road Traffic Reduction Act 1997 s 2(7)(a) (amended by the Greater London Authority Act 1999 s 280(2), (6)).

12 Road Traffic Reduction Act 1997 s 2(7)(b).

13 Ibid s 2(8). There is to be paid out of money provided by Parliament any expenses incurred by the Secretary of State under or by virtue of the Road Traffic Reduction Act 1997, and any increase attributable to that Act in the sums payable out of money so provided under any other Act: s 3.

## UPDATE

### 236-245 Administration and Finance

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(2) ADMINISTRATION AND FINANCE/241. Reports containing targets for road traffic reduction.

#### 241. Reports containing targets for road traffic reduction.

The Secretary of State<sup>1</sup> is under a duty, with the aim of reducing the adverse environmental, social and economic impacts of road traffic<sup>2</sup>, to set and publish in a report targets for road traffic reduction<sup>3</sup>. However, where the Secretary of State considers that other targets, or other measures, are more appropriate for the purpose of reducing the adverse impacts of road traffic, he must instead publish a report explaining his reasoning and including an assessment of the impact of the other targets or other measures on road traffic reduction<sup>4</sup>. In considering how to comply with these requirements, the Secretary of State must have regard to the adverse impacts of road traffic, including<sup>5</sup>:

- 18 (1) the emission of gases which contribute to climate change<sup>6</sup>;
- 19 (2) effects on air quality<sup>7</sup>;
- 20 (3) effects on health<sup>8</sup>;
- 21 (4) traffic congestion<sup>9</sup>;
- 22 (5) effects on land and biodiversity<sup>10</sup>;
- 23 (6) danger to other road users<sup>11</sup>; and
- 24 (7) social impacts<sup>12</sup>.

In considering how to comply with the above requirements, the Secretary of State must have regard to the mobility needs of persons with disabilities<sup>13</sup> and the need for adequate provision of taxi services in rural and non-rural areas<sup>14</sup>.

The Secretary of State must, at such times as he deems appropriate, publish further reports on progress in reducing the adverse environmental, social and economic impacts of road traffic and in achieving any targets set, and updating any earlier<sup>15</sup> targets and assessments<sup>16</sup>. The Secretary of State must lay a copy of any report published before Parliament<sup>17</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For these purposes, 'road traffic' means traffic consisting of mechanically propelled vehicles on roads, but excluding vehicles constructed or adapted to carry more than eight passengers in addition to the driver: Road Traffic Reduction (National Targets) Act 1998 s 1. As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.

- 3 Ibid s 2(1). For the corresponding provisions for Northern Ireland see ss 4, 5.
- 4 Ibid s 2(2).
- 5 Ibid s 2(3).
- 6 Ibid s 2(3)(a).
- 7 Ibid s 2(3)(b).
- 8 Ibid s 2(3)(c).
- 9 Ibid s 2(3)(d).
- 10 Ibid s 2(3)(e).
- 11 Ibid s 2(3)(f).
- 12 Ibid s 2(3)(g).
- 13 Ibid s 2(4)(a).
- 14 Ibid s 2(4)(b). As to taxis see PARA 1431 et seq post.
- 15 The targets and assessments already set or made pursuant to ibid s 2(1), (2) (see the text and notes 1-4 supra).
- 16 Ibid s 2(5).
- 17 Ibid s 2(6). There must be paid out of money provided by Parliament any expenses incurred by the Secretary of State under or by virtue of the Road Traffic Reduction (National Targets) Act 1998: s 3.

## UPDATE

### 236-245 Administration and Finance

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(2) ADMINISTRATION AND FINANCE/242. Disclosure to foreign authorities of licensing and registration information.

### 242. Disclosure to foreign authorities of licensing and registration information.

The Secretary of State<sup>1</sup> may make any information held by him (in any form) for the purposes of:

- 25 (1) Part III or Part IV of the Road Traffic Act 1988<sup>2</sup> (licensing of drivers of vehicles); or
- 26 (2) Part II of the Vehicle Excise and Registration Act 1994<sup>3</sup> (registration of vehicles),

available to the authorities of any country or territory outside the United Kingdom<sup>4</sup> with responsibility under the law of that country or territory for the regulation of drivers or vehicles for use by them in the discharge of that responsibility<sup>5</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 le the Road Traffic Act 1988 Pt III (ss 87-109) (as amended), Pt IV (ss 110-122) (as amended): see PARAS 442-502 post.

3 le the Vehicle Excise and Registration Act 1994 Pt II (ss 21-28) (as amended): see PARA 518 et seq post.

4 For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

5 Road Safety Act 2006 s 49(1). As to disclosure of information for equivalent purposes under Northern Ireland licensing legislation see the Road Safety Act 2006 s 49(2).

## **UPDATE**

### **236-245 Administration and Finance**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **242 Disclosure to foreign authorities of licensing and registration information**

TEXT AND NOTES--The Secretary of State may disclose information to which the Road Safety Act 2006 s 49A(2) applies to any person or body referred to in s 49A(3): Road Safety Act 2006 s 49A(1) (s 49A, 49B added by the Local Transport Act 2008 s 129). The Road Safety Act 2006 s 49A(2) applies to information that (1) is derived from particulars contained in a register of vehicles that is maintained in a country or territory outside the United Kingdom; and (2) has been obtained by the Secretary of State from the authority or authorities of that country or territory with responsibility under the law of that country or territory for maintaining the register: Road Safety Act 2006 s 49A(2). As to the persons and bodies to whom the information to which s 49A(2) applies may be disclosed, see the Road Traffic Act 2006 s 49A(3). The Secretary of State may use information to which s 49A(2) applies for any of the following purposes: (a) to check the accuracy of information which has been obtained under regulations made by virtue of the Vehicle Excise and Registration Act 1994 s 22A(2) (see PARA 521); (b) to check the accuracy of records maintained by the Secretary of State in connection with any functions exercisable by the Secretary of State under or by virtue of the Vehicle Excise and Registration Act 1994; (c) to check the accuracy of records maintained, or caused to be maintained, under the Road Traffic Act 1988 s 45(6B) (see PARA 660) or 49(3A) (see PARA 679); (d) to promote compliance with ss 47 (see PARA 657) or 53 (see PARA 676); (e) where appropriate, to amend or supplement any information mentioned in the foregoing provisions of s 49B(2) or information contained in any records so mentioned; and (f) to trace a non-resident parent, within the meaning of SI 1992/1812.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(2) ADMINISTRATION AND FINANCE/243. Secretary of State's power to make regulations.

### **243. Secretary of State's power to make regulations.**

The Secretary of State<sup>1</sup> has general powers to make regulations<sup>2</sup> for any purpose for which they may be made under the statutory provisions regulating: (1) the minimum age and licensing of drivers of motor vehicles<sup>3</sup>; (2) public service vehicles<sup>4</sup>; (3) the carriage of goods by road<sup>5</sup>; (4) the licensing of drivers of large goods vehicles<sup>6</sup>; (5) third party liabilities<sup>7</sup>; and (6) driving instruction<sup>8</sup>. He may also make regulations generally as to the use of motor vehicles<sup>9</sup> and trailers<sup>10</sup> on roads<sup>11</sup>, their construction and equipment and the conditions under which they may be used<sup>12</sup>. The Secretary of State has power to make regulations as to any matter incidental to the operation of the provisions relating to fixed penalties<sup>13</sup>.

Before making certain regulations the Secretary of State must consult with such representative organisations as he thinks fit<sup>14</sup>.

The Secretary of State may by regulations make such provision by way of substitution for or adaptation of the provisions relating to drivers' hours<sup>15</sup> as he considers necessary or expedient to take account of the operation of any relevant Community provision<sup>16</sup>. The Secretary of State may also by order make certain modifications to the provisions as to permitted driving time and periods of duty<sup>17</sup> and may make regulations requiring drivers and their employers to keep written records of drivers' hours<sup>18</sup>. Before making any such order or regulations the Secretary of State must consult with such representative organisations as he thinks fit<sup>19</sup>.

The Secretary of State may make regulations for the purpose of carrying the Vehicle Excise and Registration Act 1994 into effect<sup>20</sup>.

Any power to make regulations conferred on the Secretary of State by the Road Traffic Regulation Act 1984, the Vehicle Excise and Registration Act 1994, the Road Traffic Act 1988, the Road Traffic Offenders Act 1988, the Public Passenger Vehicles Act 1981, and the Goods Vehicles (Licensing of Operators) Act 1995 is exercisable by statutory instrument and, with certain exceptions<sup>21</sup>, the instrument is subject to annulment in pursuance of a resolution of either House of Parliament<sup>22</sup>. Similar provisions apply to the Transport Act 1968<sup>23</sup>, and the Transport Act 1982<sup>24</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 As to the specific regulation-making powers see eg paras 412, 422 post.

3 See the Road Traffic Act 1988 s 105 (as amended), which gives power to the Secretary of State to make regulations for the purposes of Pt III (ss 87-109) (as amended) and the relevant provisions of the Road Traffic Offenders Act 1988: see PARA 443 post. As to minimum driving ages see s 101 (as amended); and PARA 478 post.

4 See the Public Passenger Vehicles Act 1981 s 59 (as amended) (procedure in respect of operators' licences), s 60 (as amended) (for the purpose of carrying that Act into effect) (see PARA 1133 post), which gives power to the Secretary of State to make regulations for the purposes of Pt I (ss 1-29) (as amended) (general provisions as to road passenger transport). The powers under s 60 (as amended) are extended to making regulations under the Transport Act 1985 Pt I (ss 1-30) (as amended) (general provisions relating to road passenger transport), Pt II (ss 34-46) (as amended) (regulation of road passenger transport in London): see s 134; and PARA 1135 post.

5 See the Goods Vehicles (Licensing of Operators) Act 1995 s 57, which refers to regulations for the purposes of that Act; and PARA 1321 post.

6 See the Road Traffic Act 1988 s 120 (as substituted), which refers to regulations for the purposes of Pt IV (ss 110-122) (as amended); and PARA 490 post.

7 See *ibid* s 160, which refers to regulations for the purposes of Pt VI (ss 143-162) (as amended); and PARA 962 post.

8 See *ibid* s 141 (as amended), which refers to regulations for the purposes of Pt V (ss 123-142) (as amended); and PARA 412 post.

9 For the meaning of 'motor vehicle' see PARA 210 ante.

10 For the meaning of 'trailer' see PARA 210 ante.

11 For the meaning of 'road' see PARA 206 ante.

12 See the Road Traffic Act 1988 s 41 (as amended) (which also provides for the making of regulations in respect of a variety of specified matters); and PARA 260 post. As to the construction and use regulations generally see PARA 267 et seq post.

13 See the Road Traffic Offenders Act 1988 s 84; and PARA 1090 post.

14 See the Road Traffic Regulation Act 1984 s 134(2) (as amended) (see PARA 720 post); the Road Traffic Act 1988 s 195(2) (which applies to regulations under the Road Traffic Act 1988 other than regulations under s 88(3) (see PARA 446 post) or Pt V (as amended) (see PARA 413 et seq post); the Road Traffic Offenders Act 1988 s 88(2) (which refers to regulations under s 84) (see PARA 1090 post); the Public Passenger Vehicles Act 1981 s 61(2) (as amended) (which applies to regulations under that Act and under the Transport Act 1985 Pts I, II (as amended) (see PARA 1135 post) (see s 135(1))); and the Goods Vehicles (Licensing of Operators) Act 1995 s 57(12) (which applies to regulations under that Act) (see PARA 1321 post). As from a day to be appointed the Road Traffic Act 1988 s 195(2) is amended by the Road Safety Act 2006 ss 42, 59, Sch 6 paras 1, 30, Sch 7, so as to remove the reference to regulations under the Road Traffic Act 1988 Pt V (as amended). At the date at which this volume states the law no such day had been appointed.

15 In the provisions of the Transport Act 1968 Pt VI (ss 95-103) (as amended), or provisions supplemental or incidental to that part: see PARA 1380 et seq post.

16 See *ibid* s 95(1) (as amended); and PARA 1380 post.

17 See *ibid* s 96(12); and PARA 1389 post.

18 See *ibid* s 98(1), (2) (as amended); and PARA 1418 post.

19 See *ibid* s 101(6); and PARA 1382 post.

20 See the Vehicle Excise and Registration Act 1994 s 57(1) (as amended); and PARA 521 post.

21 The exceptions are regulations made under:

6 (1) the Road Traffic Regulation Act 1984 s 86 (as amended), s 97 (as amended), s 140 (as amended) (see s 134(3) (prospectively amended); and PARA 720 post);

7 (2) the Road Traffic Act 1988 s 8(3), s 11(2), s 14 (as amended), s 15 (as amended) (where exercisable for the purposes of s 15(3) or (3A) (as added)), s 34A (prospectively added) or s 189 (s 195(3) (amended by the Road Traffic Act 1988 (Amendment) Regulations 1992, SI 1992/3105, reg 4; and, as from a day to be appointed, by the Countryside and Rights of Way Act 2000 s 67, Sch 7 para 7(a)); and

8 (3) the Goods Vehicles (Licensing of Operators) Act 1995 s 30(3) (see s 57(11); and PARA 1321 post).

22 See the Public Passenger Vehicles Act 1981 s 61(1) (see PARA 1134 post); the Road Traffic Regulation Act 1984 s 134(1), (3) (prospectively amended) (see PARA 720 post); the Vehicle Excise and Registration Act 1994 s 57(6), (7) (see PARA 521 post); the Road Traffic Act 1988 s 195(1), (3) (as amended); and the Road Traffic Offenders Act 1988 s 88(3) (see PARA 1090 post). As to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 Sch 11 paras 33-35; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

As from a day to be appointed, the Road Traffic Act 1988 s 195(3) is amended, so as to provide that a statutory instrument whereby any power conferred by the Road Traffic Act 1988 upon the Secretary of State to make regulations (with the exceptions noted in note 21 head (2) *supra*) is exercised (otherwise than for the purposes of s 97(1ZA) (prospectively added) is subject to annulment in pursuance of a resolution of either House of

Parliament: s 195(3) (prospectively amended by the Road Safety Act 2006 ss 38(4), 59, Sch 7). At the date at which this volume states the law no such day had been appointed.

Regulations under the Road Traffic Regulation Act 1984 s 86 (as amended), s 140 (as amended) and the Road Traffic Act 1988 s 189 do not have effect unless approved by a resolution of each House of Parliament: see the Road Traffic Regulation Act 1984 s 134(4); and the Road Traffic Act 1988 s 195(5). Regulations under the Road Traffic Regulation Act 1984 s 97 (as amended), the Road Traffic Act 1988 s 8(3), s 11(2), s 14 (as amended), s 15 (as amended) (where made for the purposes of s 15(3) or (3A) (as added)), or the Goods Vehicles (Licensing of Operators) Act 1995 s 30(3) may not be made unless a draft has been approved by each House of Parliament: see the Road Traffic Regulation Act 1984 s 134(5); the Road Traffic Act 1988 s 195(4) (amended by the Road Traffic Act 1988 (Amendment) Regulations 1992, SI 1992/3105, reg 4); and the Goods Vehicles (Licensing of Operators) Act 1995 s 57(10). As from the day on which the Traffic Management Act 2004 Sch 11 para 3(2) comes into force in relation to England, the Road Traffic Regulation Act 1984 s 134(5) is amended so as to refer also to s 101B (as added and amended) (see PARA 873 post): see s 134(5) (amended by the Lord Chancellor (Modification of Functions) Order 2007, SI 2007/1756, art 3). The Traffic Management Act 2004 Sch 11 para 3 came into force in relation to England, to the extent that it inserts the Road Traffic Regulation Act 1984 s 101B (as added and amended), on 23 July 2007 and is to come into force for remaining purposes on 31 March 2008: see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053, arts 1-3.

As from a day to be appointed, the Road Traffic Act 1988 s 195(4) is amended, so as to add references to regulations made under s 34A (prospectively added) and s 97(1ZA) (prospectively added), by the Countryside and Rights of Way Act 2000 s 67, Sch 7 para 7(b) and by the Road Safety Act 2006 s 38(4). At the date at which this volume states the law no such day had been appointed under either amending Act.

23 See the Transport Act 1968 s 157 (amended by the Statute Law (Repeals) Act 2004). Orders or regulations made under the Transport Act 1968 Pt II (ss 9-23A) (as amended) and Pt VI (ss 95-103) (as amended) (except s 95(1) (as amended), s 96(12), s 100(1), (2)) are subject to annulment in pursuance of a resolution of either House of Parliament: ss 22(2), 101(3) (amended by the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 s 2(1)). No order or regulations under the Transport Act 1968 s 95(1) (as amended), ss 96(12), 100(1) may be made unless a draft of the order or regulations has been laid before, and approved by a resolution of, each House of Parliament: s 101(3) (as so amended), s 101(3A) (added by the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 s 2(1)).

24 See the Transport Act 1982 s 73.

## UPDATE

### 236-245 Administration and Finance

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(2) ADMINISTRATION AND FINANCE/244. Inquiries.

#### 244. Inquiries.

Formerly, the Secretary of State<sup>1</sup> was given power under various statutes to hold inquiries<sup>2</sup>. This has been replaced by more general provisions in the Inquiries Act 2005, under which a Minister may cause an inquiry to be held in relation to a case where it appears to him that particular events have caused, or are capable of causing, public concern, or there is public concern that particular events may have occurred<sup>3</sup>. The Minister appoints the inquiry panel<sup>4</sup> and must as soon as is reasonably practicable make a statement in the prescribed manner to the relevant Parliament or Assembly<sup>5</sup>. Such a statement, which may be oral or written, must state: (1) who

is to be, or has been, appointed as chairman of the inquiry; (2) whether the Minister has appointed, or proposes to appoint, any other members to the inquiry panel, and if so how many; and (3) what are to be, or are, the inquiry's terms of reference<sup>6</sup>. One or more persons may be appointed to act as assessors to assist the inquiry panel<sup>7</sup>.

The procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct<sup>8</sup>. In particular, the chairman may take evidence on oath, and for that purpose may administer oaths<sup>9</sup>. The chairman of an inquiry may by notice require a person to attend to give evidence, to provide evidence in the form of a written statement, to produce documents relating to a matter in question at the inquiry, or to produce any other thing in his custody or under his control<sup>7</sup> for inspection, examination or testing by or on behalf of the inquiry panel<sup>10</sup>.

Restrictions may be imposed by the Minister and/or the chairman on attendance at an inquiry, or at any particular part of an inquiry, and on disclosure or publication of any evidence or documents given, produced or provided to an inquiry<sup>11</sup>. Subject to any such restrictions, the chairman must take such steps as he considers reasonable to secure that members of the public, including reporters, are able to attend the inquiry or to see and hear a simultaneous transmission of proceedings at the inquiry and to obtain or view a record of evidence and documents given, produced or provided to the inquiry or inquiry panel<sup>12</sup>. However, no recording or broadcast of proceedings at an inquiry may be made except at the request of the chairman or with the permission of the chairman and in accordance with any terms on which permission is given, and any such request or permission must be framed so as not to enable a person to see or hear by means of a recording or broadcast anything that he is prohibited from seeing or hearing<sup>13</sup>.

The chairman of the inquiry must deliver a report to the Minister setting out the facts determined by the inquiry panel and the recommendations of the panel, where the terms of reference require it to make recommendations<sup>14</sup>. Before making such a report the chairman may deliver to the Minister an interim report containing anything that a report may contain<sup>15</sup>. A report or interim report of an inquiry must be signed by each member of the inquiry panel, and if the inquiry panel is unable to produce a unanimous report or interim report, the report or interim report must reasonably reflect the points of disagreement<sup>16</sup>. It is the duty of the Minister to arrange for reports of an inquiry to be published<sup>17</sup>, and to lay reports, either at the time of publication or as soon afterwards as is reasonably practicable, before the relevant Parliament or Assembly<sup>18</sup>.

An application for judicial review<sup>19</sup> of a decision made by the Minister in relation to an inquiry or by a member of an inquiry panel must be brought within 14 days after the day on which the applicant became aware of the decision, unless that time limit is extended by the court<sup>20</sup>.

Special provisions apply to inquiries relating to Wales<sup>21</sup>, and to inquiries held by two or more Ministers acting jointly<sup>22</sup>.

Under the Road Traffic Act 1988, where an accident arises owing to the presence of a mechanically propelled vehicle<sup>23</sup> on a road<sup>24</sup>, the Secretary of State may cause an inquiry to be made into the cause of the accident<sup>25</sup>; and if in any case the Secretary of State considers that an inquiry to be made by him under this provision should be made by means of the holding of a public inquiry, he may direct a public inquiry to be held<sup>26</sup>. Where, owing to the presence of a vehicle on a road<sup>27</sup>, an accident occurs within Greater London<sup>28</sup> and it appears to the Secretary of State that the sole or a contributory cause of the accident was: (a) the nature or character of the road or road surface<sup>29</sup>; or (b) a defect in the design or construction of the vehicle or in the materials used in the construction of the road or vehicle<sup>30</sup>, he may, if he thinks fit, cause an inquiry to be held into the cause of the accident<sup>31</sup>. Where he holds an inquiry under the Road Traffic Act 1988: (i) notice of the inquiry may be given and published in accordance with such general or special directions as he may give<sup>32</sup>; (ii) the Secretary of State and, if authorised by him, the person appointed to hold the inquiry, may by order require any person, subject to the payment or tender of the reasonable expenses of his attendance, to attend as a witness and



give evidence or to produce any documents in his possession or power which relate to any matter in question at the inquiry and are such as would be subject to production in a court of law<sup>33</sup>; (iii) the person holding the inquiry has power to take evidence on oath and for that purpose to administer oaths<sup>34</sup>; and (iv) the Secretary of State may make such order as to the payment of the costs incurred by him in connection with the inquiry<sup>35</sup> by such party as he thinks fit<sup>36</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 See eg the Road Traffic Act 1960 s 248 (repealed), the Road Traffic Regulation Act 1984 ss 128, 129 (repealed) and the Road Traffic Act 1988 s 179 (repealed). There is still power to hold inquiries under certain provisions of the Road Traffic Act 1988: see the text and notes 23-36 infra.

3 See the Inquiries Act 2005 s 1(1); and ADMINISTRATIVE LAW.

4 See *ibid* ss 3, 4; and ADMINISTRATIVE LAW.

5 See *ibid* s 6(1); and ADMINISTRATIVE LAW. As to the relevant Parliament or Assembly see s 43(1).

6 See *ibid* s 6(2), (4); and ADMINISTRATIVE LAW.

7 See *ibid* s 11; and ADMINISTRATIVE LAW.

8 See *ibid* s 17(1); and ADMINISTRATIVE LAW.

9 See *ibid* s 17(2); and ADMINISTRATIVE LAW.

10 See *ibid* s 21; and ADMINISTRATIVE LAW.

11 See *ibid* ss 19, 20; and ADMINISTRATIVE LAW.

12 See *ibid* s 18(1); and ADMINISTRATIVE LAW.

13 See *ibid* s 18(2); and ADMINISTRATIVE LAW.

14 See *ibid* s 24(1); and ADMINISTRATIVE LAW. The report may also contain anything else that the panel considers to be relevant to the terms of reference, including any recommendations the panel sees fit to make despite not being required to do so by the terms of reference.

15 See *ibid* s 24(3); and ADMINISTRATIVE LAW.

16 See *ibid* s 24(4)-(6); and ADMINISTRATIVE LAW.

17 See *ibid* s 25(1), (3), (4); and ADMINISTRATIVE LAW. In certain circumstances the chairman is given this duty: see s 25(2).

18 See *ibid* s 26; and ADMINISTRATIVE LAW.

19 As to judicial review see JUDICIAL REVIEW.

20 See *ibid* s 38(1); and ADMINISTRATIVE LAW. Section 38(1) does not apply where an earlier time limit applies by virtue of the CPR (see CIVIL PROCEDURE), and does not apply to a decision as to the contents of the report or an interim report of the inquiry, or a decision of which the applicant could not have become aware until the publication of the report or an interim report: s 38(2), (3).

21 See *ibid* ss 27, 29; and ADMINISTRATIVE LAW.

22 See *ibid* ss 32-34; and ADMINISTRATIVE LAW.

23 As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.

24 For the meaning of 'road' see PARA 206 ante.

25 Road Traffic Act 1988 s 181(1) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 76). A person authorised by the Secretary of State may, on production if so required of his authority, inspect any vehicle in

connection with which the accident arose, and for that purpose may enter at any reasonable time any premises where the vehicle is: Road Traffic Act 1988 s 181(2) (amended by the Road Traffic Act 1991 Sch 4 para 76). If a person obstructs a person so authorised in the performance of his duty, he is guilty of an offence: Road Traffic Act 1988 s 181(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post. A report made by or to the Secretary of State as a result of an inquiry under the Road Traffic Act 1988 s 181 (as amended) cannot be used as evidence by or on behalf of a person by or against whom any legal proceedings are instituted in consequence of the accident to which the inquiry relates: s 181(5).

26 Ibid s 181(4).

27 For these purposes, 'road' includes a highway, a bridge carrying a highway, and any lane, mews, footway, square, court, alley or passage, whether a thoroughfare or not: ibid s 182(2).

28 'Greater London' means the administrative area comprising the areas of the London boroughs, the City of London, the Inner Temple and the Middle Temple: see the London Government Act 1963 s 2(1); and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

29 Road Traffic Act 1988 s 182(1)(a).

30 Ibid s 182(1)(b).

31 Ibid s 182(1). As to inquests into road deaths in London see the Coroners Act 1988 s 18 (as amended); and CORONERS vol 9(2) (2006 Reissue) PARAS 977, 1023.

32 Road Traffic Act 1988 s 180(1)(a).

33 Ibid s 180(1)(b). A person who without reasonable excuse fails to comply with such an order is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale: s 180(3); Road Traffic Offenders Act 1988 ss 9, 33, Sch 2 Pt II.

34 Road Traffic Act 1988 s 180(1)(c).

35 This includes such reasonable sum not exceeding £30 a day as the Secretary of State may determine for the services of any officer engaged in the inquiry: ibid s 180(1)(d).

36 Ibid s 180(1)(d). He may certify the amount of the costs so incurred: see s 180(1)(d). Any amount so certified by him to be paid by any person is recoverable from that person by the Secretary of State summarily as a civil debt: s 180(2).

## UPDATE

### 236-245 Administration and Finance

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(2) ADMINISTRATION AND FINANCE/245. Financial provisions.

### 245. Financial provisions.

There is to be paid out of money provided by Parliament certain of the expenses incurred by the Secretary of State<sup>1</sup>, namely: (1) certain expenses under the Road Traffic Regulation Act

1984<sup>2</sup>; (2) certain expenses in relation to road safety information and training under the Road Traffic Act 1988<sup>3</sup>; and (3) expenditure which would formerly have been defrayed out of the road fund<sup>4</sup>.

Sums received by the Secretary of State in respect of fees and costs must be paid to the appropriate government department or fund<sup>5</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 These are advances made towards expenses incurred by councils in discharging their obligations imposed by or under any provision of the Road Traffic Regulation Act 1984, except s 72 (see PARA 838 post), s 74 (as amended) (see PARA 841 post) and s 75 (as amended) (see PARA 845 post), in relation to the erection, maintenance, alteration or removal of traffic signs: see s 79; and PARA 839 post. The provisions of s 79 are extended to bollards and other obstructions: see ss 92(6), 94(6) (as substituted); and PARAS 858-859 post.

The expenses also include grants towards the cost of providing and maintaining off-street parking places, whether in the open or under cover, or for certain other purposes: see s 56(a); and PARA 819 post.

3 See the Road Traffic Act 1988 ss 39(1), 40 (s 40 as substituted) and PARAS 222-223 ante.

4 Miscellaneous Financial Provisions Act 1955 s 4(2). The road fund was wound up as from 1 April 1956: s 4(1) (repealed).

5 Thus the following are paid into the Consolidated Fund:

- 9 (1) money in respect of fees payable under the Goods Vehicles (Licensing of Operators) Act 1995 (see s 45(8));
- 10 (2) money in respect of fees for licences and test fees payable under the Road Traffic Act 1988 Pt III (ss 87-109) (as amended), Pt IV (ss 110-122) (as amended) and Pt V (123-142) (as amended) (except any in respect of test fees as to which regulations provide that they are to be paid to the person conducting the test and retained by him as remuneration) (ss 106, 140);
- 11 (3) money in respect of fees payable under s 45 (as amended) (see PARA 660 post), s 46 (as amended) (see PARA 662 post), ss 49-51 (as amended) (see PARA 679 post), ss 54-62 (as amended) (see PARA 702 et seq post), s 72(9) (as substituted) (see PARA 692 post), s 80 (see PARA 714 post) (s 84(4)); and
- 12 (4) money in respect of fees for public service vehicle licences etc (Public Passenger Vehicles Act 1981 s 52(3) (as amended)).

As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

## UPDATE

### 236-245 Administration and Finance

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(3) PASSENGER SERVICES/(i) Passenger Services in London/246. The Greater London Authority and Transport for London.

## (3) PASSENGER SERVICES

## **(i) Passenger Services in London**

### **246. The Greater London Authority and Transport for London.**

The Greater London Authority Act 1999 establishes the Greater London Authority, which consists of the Mayor of London and the London Assembly<sup>1</sup>. The Greater London Authority has various general functions, among which is a general transport duty<sup>2</sup>. Transport responsibilities are set out in Part IV of the Greater London Authority Act 1999<sup>3</sup>.

In particular, the Greater London Authority Act 1999 provides for the establishment of Transport for London<sup>4</sup>, which has various functions including the provision of public passenger transport services to, from or within Greater London<sup>5</sup>. In relation to public passenger transport services, the structure of fares and services must be determined<sup>6</sup>; Transport for London must co-operate with other interested persons in co-ordinating transport services<sup>7</sup>; extra passenger transport services and facilities may be provided<sup>8</sup>; and Transport for London must publicise any plans as to services and fares<sup>9</sup>.

<sup>1</sup> See the Greater London Authority Act 1999 ss 1, 2, Sch 1; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq.

<sup>2</sup> See *ibid* s 141; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 262.

<sup>3</sup> See *ibid* Pt IV (ss 141-303); and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 262 et seq.

<sup>4</sup> See *ibid* s 154; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 270.

<sup>5</sup> See *ibid* s 173; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 299.

Passenger transport undertakings were transferred to the London Passenger Transport Board by the London Passenger Transport Act 1933 s 5 (amended by the Statute Law Revision Act 1960; and the Statute Law (Repeals) Act 2004). As to proof of a signed map being for all purposes conclusive evidence of the extent of the London Passenger Transport Area see the London Passenger Transport Act 1933 s 104. Undertakings of the London Passenger Transport Board were subsequently transferred to London Regional Transport and then to Transport for London. See further LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq; RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 4.

<sup>6</sup> See the Greater London Authority Act 1999 s 174; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 303.

<sup>7</sup> See *ibid* ss 175, 176; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 298.

<sup>8</sup> See *ibid* s 177; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 300.

<sup>9</sup> See *ibid* s 178; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 304.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(3) PASSENGER SERVICES/(ii) Passenger Services outside London/247. Passenger transport areas, authorities and executives.

## **(ii) Passenger Services outside London**

### **247. Passenger transport areas, authorities and executives.**

Subject to any order relating to the alteration or abolition of passenger transport areas<sup>1</sup>, each of the metropolitan counties<sup>2</sup> is a passenger transport area<sup>3</sup>.

Each metropolitan county has a passenger transport authority<sup>4</sup>, and the passenger transport authority for a passenger transport area is the metropolitan county passenger transport authority for the county which is coterminous with or includes that passenger transport area<sup>5</sup>.

The passenger transport executive for a passenger transport area is the body which immediately before 6 January 1986 was the passenger transport executive for the designated<sup>6</sup> area corresponding to that passenger transport area<sup>7</sup>.

Each of the councils of the districts comprised in a county which is coterminous with or includes a passenger transport area and each of the following bodies namely, the passenger transport authority, the passenger transport executive and any subsidiary of the passenger transport executive, has power to enter into and carry out agreements with one another for the giving of assistance by that council to that body or, as the case may be, by that body to that council by way of making available to the assisted party any services or facilities provided by, or any property of, the assisting party<sup>8</sup>.

1 Transport Act 1968 s 9(1) (substituted by the Transport Act 1985 s 57(1); and amended by s 58(2)). Orders relating to the alteration or abolition of passenger transport areas are made under the Local Government Act 1985 s 42(1)(c) (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 53.

2 As to the metropolitan counties see PARA 236 note 10 ante.

3 Transport Act 1968 s 9(1)(a) (as substituted: see note 1 supra).

4 See the Local Government Act 1985 s 28; and LOCAL GOVERNMENT vol 69 (2009) PARA 49.

5 Transport Act 1968 s 9(1)(b) (as substituted: see note 1 supra).

6 I.e. designated for the purposes of ibid Pt II (ss 9-23A) (as amended) by an order under s 9(1) (as originally enacted).

7 Ibid s 9(1)(c) (as substituted: see note 1 supra). The passenger transport executive for a passenger transport area consists of a Director General appointed by the passenger transport authority in accordance with s 9 (as amended), Sch 5 Pt II (as amended) and not less than two nor more than eight other members so appointed by the passenger transport authority after consultation with the Director General: s 9(2) (substituted by the Transport Act 1985 s 57(1)). The Secretary of State may make provision by order inter alia as to the constitution, proceedings and procedures of the passenger transport executive: see the Transport Act 1968 s 9(3), Sch 5 (s 9(3) substituted by the Transport Act 1985 s 57(1); and the Transport Act 1968 Sch 5 amended by the Superannuation Act 1972 s 29(4), Sch 8; the Local Government Act 1974 ss 35(1), (2), 42(2), Sch 6 para 22(12), Sch 8; and the Transport Act 1985 ss 57(6), 139(3), Schs 3, 8). Before making such an order the Secretary of State must consult with the passenger transport authority for the passenger transport area and the councils of the districts comprised in the county which is coterminous with or includes the area: Transport Act 1968 s 9(4) (substituted by the Transport Act 1985 s 57(1); and amended by s 58(1)). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

8 Transport Act 1968 s 9(5) (amended by the Transport Act 1985 ss 57(1), 58(2)).

## UPDATE

### 247 [Areas], authorities and executives

TEXT AND NOTES 1-7--Transport Act 1968 s 9(1) amended: Local Transport Act 2008 ss 98(4), 131, Sch 7 Pt 4.

TEXT AND NOTES 1-3--The passenger transport areas established under the Transport Act 1968 s 9(1)(a) are now known as integrated transport areas: Local Transport Act 2008 s 77(1). Transport Act 1968 s 9(1)(a) amended: Local Transport Act 2008 Sch 4 para 2(2).

TEXT AND NOTES 4, 5--A metropolitan county passenger transport authority established under the Local Government Act 1985 s 28(1) is now known as an Integrated Transport

Authority: Local Transport Act 2008 s 77(2). Transport Act 1968 s 9(1)(b) amended: Local Transport Act 2008 Sch 4 para 2(3). As to arrangements relating to an Integrated Transport Authority, see PARA 247A. As to the power of an Integrated Transport Authority to take action if it determines that doing so will promote the economic, social or environmental well-being of its area, see PARA 247B.

TEXT AND NOTES 6, 7--Transport Act 1968 s 9(1)(c) amended: Local Transport Act 2008 Sch 4 para 2(4).

NOTE 7--Transport Act 1968 s 9(2)-(4) amended: Local Transport Act 2008 Sch 4 paras 2(5)-(7). Transport Act 1968 Sch 5 amended: Local Transport Act 2008 Sch 4 para 17.

TEXT AND NOTE 8--Transport Act 1968 s 9(5) amended: Local Transport Act 2008 Sch 4 para 2(8).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(3) PASSENGER SERVICES/(ii) Passenger Services outside London/247A. Arrangements relating to Integrated Transport Authorities.

## **247A. Arrangements relating to Integrated Transport Authorities.**

### **1. Power to establish a new ITA**

The Secretary of State may by order designate any area in England outside Greater London as an integrated transport area, and establish an Integrated Transport Authority ('ITA') for the integrated transport area: Local Transport Act 2008 s 78(1). An order may be made only if the Secretary of State, having had regard to a scheme prepared and published under s 80 (see PARA 247A.2) or s 81 (see PARA 247A.3), considers that the establishment of the ITA is likely to improve the exercise of statutory functions relating to transport in the area to be designated, and the effectiveness and efficiency of transport within that area: Local 950Transport Act 2008 s 78(2). The requirement in s 78(2) to have regard to a scheme does not apply in relation to any area if a direction has been given under s 81 in relation to the area and any period specified in the direction for the preparation and publication of a scheme has expired: s 78(3). An integrated transport area may be designated by an order only if it consists of the whole of two or more counties or districts: s 78(4). A local government area may be included in an integrated transport area designated by an order only if (1) it was included in the scheme prepared and published under s 80 or 81; or (2) in the circumstances described in s 78(3), it is the area of an authority to whom the direction under s 81 was given: s 78(5). No part of an integrated transport area established under s 78 may be separated from the rest of it by a territory which is part of another local government area but which is not included in the integrated transport area: s 78(6). Before making an order the Secretary of State must consult such representatives of the appropriate authorities and such other persons as the Secretary of State considers appropriate: s 78(7). As to the meaning of 'appropriate authorities', see s 78(8). In making an order the Secretary of State must have regard to the need to (a) reflect the identities and interests of local communities; and (b) secure effective and convenient local government: s 78(9). An order under s 78 may make, in relation to the ITA (i) provision about its constitutional arrangements within the meaning given by s 84(2) (see PARA 247A.6); and (ii) any provision which may be made by an order under s 86, 87, 88 or 89A (see PARAS 247A.7, 247A.8): Local Transport Act 2008 s 79(1) (amended by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 123).

### **2. Authorities' review: new ITA**

Any two or more of the following authorities may undertake a review of the effectiveness and efficiency of transport within an area satisfying the requirements of the Local Transport Act 2008 s 80(2), (3): (1) a council for a county in England comprised in an area for which there is no Integrated Transport Authority ('ITA'); or (2) a council for a district in England comprised in an area for which there is no ITA: Local Transport Act 2008 s 80(1). A review area must include (a) if the review is being undertaken by a county council, the whole of one or more of the districts in the county or, if there are no districts in the county, the whole of the county; and (b) if the review is being undertaken by a district council, the whole of the district: s 80(2). A review area may also include (i) the whole of any county the council for which is not taking part in the review; and (ii) the whole of any district the council for which is not taking part in the review: s 80(3). Where two or more authorities, having undertaken a review under s 80(1), conclude that the designation of an area as an integrated transport area, and the establishment of an ITA for that area, would improve the exercise of statutory functions relating to transport in the area, and the effectiveness and efficiency of transport within the area, they must prepare and publish a scheme for the establishment of an ITA for the area: s 80(4).

### **3. Secretary of State's power to direct a review: new ITA**

The Secretary of State may direct two or more of the following authorities to undertake a review of the effectiveness and efficiency of transport within the whole or any part of the authorities' combined area: (1) a council for a county in England comprised in an area for which there is no Integrated Transport Authority ('ITA'); or (2) a council for a district in England comprised in an area for which there is no ITA: Local Transport Act 2008 s 81(1), (2). The Secretary of State may give a direction only if he considers that the review and any scheme are likely to improve (a) the exercise of statutory functions relating to transport in an integrated transport area or proposed integrated transport area; and (b) the effectiveness and efficiency of transport within such an area: s 81(3). A direction may require the preparation and publication of a scheme for the establishment of an ITA for any area, being an area which is capable of being designated by an order under s 78 (see PARA 247A.1), which consists of the whole or any part of the authorities' combined area: s 81(4). The review must be undertaken jointly by all the authorities subject to the direction: s 81(5). The provision which may be made by a direction includes provision for (i) the timetable for the review and for the preparation and publication of a scheme; (ii) the procedures to be followed in carrying out the review; (iii) particular issues which the review and any scheme must address; and (iv) the implementation of any scheme: s 81(6). The authorities to which a direction is given must, in carrying out the review and preparing any scheme, do so in the manner that they consider most likely to improve (A) the exercise of statutory functions relating to transport in their combined area; and (B) the effectiveness and efficiency of transport within that area: s 81(7).

### **4. Authorities' review of arrangements**

Any one or more of (1) an Integrated Transport Authority ('ITA'); (2) a district council for an area comprised in an integrated transport area; (3) a county council for an area comprised in an integrated transport area; or (4) a county council or district council for an area which could be comprised in a proposed integrated transport area, may undertake a review of one or more of the following matters: (a) those in relation to which an order may be made under the Local Transport Act 2008 ss 84-91 (see PARAS 247A.6-247A.11); and (b) in relation to an ITA or any executive body of the ITA existing at the time of the review, any matter concerning the ITA or the executive body which the ITA has power to determine: Local Transport Act 2008 s 82(1)-(3). A review under s 82 must relate to one or more integrated transport areas or proposed integrated transport areas: s 82(4). Where one or more authorities, having undertaken a review under s 82(1), conclude that the exercise of the power to make an order under any one or more

of ss 84-91 would improve (i) the exercise of statutory functions relating to transport in an integrated transport area or proposed integrated transport area; or (ii) the effectiveness and efficiency of transport within such an area, they must prepare and publish a scheme relating to the power to make that order or those orders: s 82(5). A 'proposed integrated transport area' means one which may be designated by an order under s 90 (see PARA 247A.10): s 82(6).

## **5. Secretary of State's power to direct a review of arrangements**

The Secretary of State may direct one or more of (1) an Integrated Transport Authority ('ITA'); (2) a district council for an area comprised in an integrated transport area; (3) a county council for an area comprised in an integrated transport area; or (4) a county council or district council for an area which could be comprised in any proposed integrated transport area to which the direction relates, to undertake a review of one or more matters mentioned in the Local Transport Act 2008 s 83(3): s 83(1), (2). The matters are (a) those in relation to which an order may be made under ss 84-91 (see PARAS 247A.6 to 247A.11); or (b) in relation to an ITA or any executive body of the ITA existing at the time of the direction, any matter concerning the ITA or the executive body which the ITA has power to determine: s 83(3). The Secretary of State may give a direction only if he considers that the review and any scheme are likely to improve (i) the exercise of statutory functions relating to transport in an integrated transport area or proposed integrated transport area; or (ii) the effectiveness and efficiency of transport within such an area: s 83(4).

## **6. Constitutional arrangements**

The Secretary of State may by order make provision about the constitutional arrangements of an Integrated Transport Authority ('ITA'): Local Transport Act 2008 s 84(1). Constitutional arrangements, in relation to an ITA, means (1) the membership of the ITA, including the number and appointment of members of the ITA and the remuneration of, and pensions or allowances payable to or in respect of, any member of the ITA; (2) the voting powers of members of the ITA, including the provision for different weight to be given to the vote of different descriptions of member; (3) the executive arrangements of the ITA; and (4) the functions of any executive body of the ITA: s 84(2). As to the meaning of 'executive arrangements', see s 84(3). As to the provision which may be made by an order by virtue of head (4), see s 84(4). An order may not provide for the budget of an ITA to be agreed otherwise than by the ITA: s 84(5). An order made by virtue of head (1) which includes provision about the number and appointment of members of the ITA must provide (a) for a majority of the members of the ITA to be appointed by the ITA's constituent councils; (b) for those members to be appointed from among the elected members of the constituent councils; and (c) for each of the representative councils to appoint at least one of its elected members as a member of the ITA: Local Transport Act 2008 s 85(1). The constituent councils of an ITA are (i) any county council; and (ii) any district council for an area within the integrated transport area of the ITA: s 85(2). As to which councils are representative councils for the purposes of head (c), see s 85(3). If an order under s 84 provides for members of an ITA to be appointed otherwise than from among elected members of its constituent councils, the order must provide, by virtue of s 84(2)(b), for those members to be non-voting members: s 85(4). The voting members of an ITA may resolve that provision made in accordance with s 85(4) is not to apply in the case of the ITA: s 85(5).

## **7. Delegation of functions**

The Secretary of State may, to any extent, by order delegate to an Integrated Transport Authority ('ITA') or an eligible local transport authority any function of his (1) which does not consist of a power to make regulations or other instruments of a legislative character or a



power to fix fees or charges; and (2) which the Secretary of State considers can appropriately be exercised by the ITA or eligible local transport authority: Local Transport Act 2008 s 86(1). An 'eligible local transport authority' means an authority which has been designated as a local transport authority by an order made under s 90 or 91 (see PARAS 247A.10, 247A.11), or under the Local Democracy, Economic Development and Construction Act 2009 s 106 or 107 (see TRADE AND INDUSTRY vol 97 (2010) PARA 1003): Local Transport Act 2008 s 86(3) (amended by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 124).

The Secretary of State may also, to any extent, by order provide for the delegation of an ITA, or to an eligible local transport authority, of any functions of a local authority (a) which is exercisable by the local authority in relation to an area which is comprised in the ITA's integrated transport area or the eligible local transport authority's area; and (b) which the Secretary of State considers can appropriately be exercised by the ITA or eligible local transport authority: Local Transport Act 2008 s 87(1). A delegation by virtue of s 87 may be made subject to conditions: s 87(2). An order made under s 87 which provides for the delegation of any function of a charging authority within the meaning of the Transport Act 2000 Pt 3 (ss 163-200) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 901 et seq) may be made (i) where the area in relation to which the order has effect comprises all or part of the area of one charging authority, only with the consent of that authority; or (ii) where that area comprises all or part of the area of two or more charging authorities, only with the consent of a majority of those authorities: Local Transport Act 2008 s 87(3).

## **8. Conferral of a power to direct**

The Secretary of State may by order confer on (1) an Integrated Transport Authority ('ITA'); or (2) an authority which has been designated as a local transport authority by an order under the Local Transport Act 2008 ss 90 or 91 (see PARAS 257A.10, 247A.11) or under the Local Democracy, Economic Development and Construction Act 2009 ss 106 or 107 (see TRADE AND INDUSTRY vol 97 (2010) PARA 1003), a power to give a direction about the exercise of an eligible power: Local Transport Act 2008 s 88(1) (amended by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 126). An eligible power means a power of a council for a county, metropolitan district or non-metropolitan district comprised in an area for which there is no county council, which the council has (a) as highway authority by virtue of the Highways Act 1980 s 1; or (b) as traffic authority by virtue of the Road Traffic Regulation Act 1984 s 121A (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 293): Local Transport Act 2008 s 88(2). An order under s 88 may provide that, if an authority exercises any power in contravention of a direction under such an order, the directing authority may take such steps as it considers appropriate to reverse or modify the effect of the exercise of the power: Local Transport Act 2008 s 89(1).

## **9. Transfers of functions of a combined authority**

The Secretary of State may by order transfer functions of a combined authority established under the Local Democracy, Economic Development and Construction Act 2009 s 103 (see TRADE AND INDUSTRY vol 97 (2010) PARA 1002) to an Integrated Transport Authority ('ITA'): Local Transport Act 2008 s 89A(1) (s 89A added by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 127). Such an order may only be made in relation to functions that relate to transport and are exercisable by the combined authority in relation to an area that becomes, or becomes part of, the ITA's integrated transport area by virtue of an order under the Local Transport Act 2008 Pt 5 (ss 77-102A): s 89A(2).

## **10. Changing the boundaries of an integrated transport area**

The Secretary of State may by order designate an integrated transport area in England by (1) including a county or district in an integrated transport area; or (2) removing a county or district from an integrated transport area: Local Transport Act 2008 s 90(1). An order which changes the boundaries of an integrated transport area may be made only if each council mentioned in s 92(9) has consented to the boundary change: Local Transport Act 2008 s 92(8). The councils are (a) any council for a county or a metropolitan district, and any unitary council whose area is comprised in the existing integrated transport area, and would not be comprised in the proposed integrated transport area; and (b) any council for a county or a metropolitan district, and any unitary council, whose area is not comprised in the existing integrated transport area, and would be comprised in the proposed integrated transport area: s 92(9). As to the meaning of 'unitary council', see s 92(10). No part of an integrated transport area established under s 90 may be separated from the rest of it by a territory which is part of another local government area but which is not included in the integrated transport area: Local Transport Act 2008 s 90(2). Where by virtue of an order a territory ceases to be comprised in an integrated transport area, the order (a) must make provision for designating an authority to be a local transport authority for the territory for the purposes of the Transport Act 2000 s 108(4) (see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1190); and (b) may transfer functions to that authority from the Integrated Transport Authority ('ITA') which was formerly the local transport authority: Local Transport Act 2008 s 90(3). Provision made by virtue of s 90(3) may designate different authorities for different parts of the territory: s 90(4). The reference to an authority under s 90(3) does not include a combined authority established under the Local Democracy, Economic Development and Construction Act 2009 s 103, and the Transport Act 2008 s 90(3) does not apply if the territory becomes part of the area of a combined authority by virtue of an order under the Local Democracy, Economic Development and Construction Act 2009 ss 103 or 106 (see TRADE AND INDUSTRY vol 97 (2010) PARAS 1002, 1003): Local Transport Act 2008 s 90(5), (6) (added by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 128).

## **11. Dissolution of an integrated transport area**

The Secretary of State may by order dissolve an integrated transport area and abolish the Integrated Transport Authority ('ITA') for the integrated transport area: Local Transport Act 2008 s 91(1). An order which makes provision for dissolution of an integrated transport area may be made only with the consent of a majority of the councils falling within s 92(7): Local Transport Act 2008 s 92(6). The councils are (1) the councils for any metropolitan districts whose areas are comprised in the integrated transport area; (2) the councils for any counties whose areas are comprised in the integrated transport area; and (3) any unitary councils for any non-metropolitan districts whose areas are comprised in the integrated transport area: s 92(7). The order (a) must make provision for designating an authority to be a local transport authority for the territory previously comprised in the integrated transport area for the purposes of the Transport Act 2000 s 108(4) (see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1190); and (b) may transfer functions to that authority from the ITA which was formerly the local transport authority: Local Transport Act 2008 s 91(2). Provision made by virtue of s 91(2) may designate different authorities for different parts of the territory: s 91(3). The reference to an authority under s 91(2) does not include a combined authority established under the Local Democracy, Economic Development and Construction Act 2009 s 103, and the Transport Act 2008 s 91(2) does not apply if the territory or part of a territory that becomes the area or part of the area of a combined authority by virtue of an order under the Local Democracy, Economic Development and Construction Act 2009 ss 103 or 106 (see TRADE AND INDUSTRY vol 97 (2010) PARAS 1002, 1003): Local Transport Act 2008 s 91(4), (5) (added by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 129).

## **12. Further provisions about orders**

An order made under the Local Transport Act 2008 s 84-91 (see PARAS 247A.6-247A.11) may be made only if the Secretary of State, having had regard to a scheme prepared and published under s 82 or 83 (see PARAS 247A.4, 247A.5), considers that the making of the order is likely to improve (1) the exercise of statutory functions relating to transport in the area or areas to which the order relates; or (2) the effectiveness and efficiency of transport within that area or those areas: Local Transport Act 2008 s 92(2). The requirement in s 92(2) to have regard to a scheme does not apply in relation to any matter if a direction has been given under s 83 in relation to the matter and any period specified in the direction for the preparation and publication of a scheme has expired: s 92(3). Before making an order the Secretary of State must consult (a) such representatives of authorities mentioned in ss 82(2) and 83(2); and (b) such other persons as the Secretary of State considers appropriate: s 92(4). In making an order the Secretary of State must have regard to the need (i) to reflect the identities and interests of local communities; and (ii) to secure effective and convenient local government: s 92(5).

### **13. Incidental provision**

The Secretary of State may by order make incidental, consequential, transitional or supplementary provision for the purpose of, or in consequence of, an order under the Local Transport Act 2008 Pt 5 Ch 2 (ss 78-98), or for giving full effect to such an order: Local Transport Act 2008 s 93(1). The provision which may be included by virtue of s 93 in an order includes provision for the transfer of property, rights and liabilities by (1) the order; (2) a scheme by the Secretary of State under the order; or (3) a scheme required to be made under the order by a person other than the Secretary of State: Local Transport Act 2008 s 93(2). The provision which may be included by virtue of s 93(2) in an order includes provision (a) for the creation or imposition by the Secretary of State of new rights or liabilities in respect of anything transferred by or under an order; (b) for the management or custody of transferred property; and (c) for bodies to make agreements with respect to any property, income rights, liabilities and expense of, and any financial relations between, the parties to the agreement: s 93(3). The provision which may be included by virtue of s 93 in an order includes provision amending, modifying, repealing or revoking any enactment, whenever passed or made: s 93(4). The provision which may be included by virtue of s 93(4) does not include provision amending or disapplying the Local Government and Housing Act 1989 ss 15-17, Sch 1 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 375-377): Local Transport Act 2008 s 93(5).

### **14. Guidance**

The Secretary of State may give guidance about anything which could be done by a local authority under the Local Transport Act 2008 Pt 5 Ch 2 (ss 78-98) and, in exercising any functions under Pt 5 Ch 2, a local authority must have regard to such guidance: Local Transport Act 2008 s 96(1), (4). Any guidance under s 96 must be given in writing and may be varied or revoked by further guidance in writing: s 96(2).

### **15. Power to change name of an ITA**

An Integrated Transport Authority ('ITA') may, by resolution in relation to which the requirements under s 97(2) are met, change the name by which it is known: Local Transport Act 2008 s 97(1). The requirements are (1) that the resolution is considered at a meeting of the ITA which is specially convened for the purpose; (2) that particulars of the resolution were included in the notice of the meeting; and (3) that the resolution is passed at the meeting by not less than two-thirds of the members of the ITA who vote on it: s 97(2). An ITA which changes its name under s 97 must send notice of the change to the Secretary of State, and publish the notice in such manner as the Secretary of State may direct: s 97(3). A change of name under s 97 does not affect the rights or obligations of the ITA concerned or any other

person, or render defective any legal proceedings, and any legal proceedings may be commenced or continued as if there had been no change of name: s 97(4).

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## **247B. Power of an Integrated Transport Authority to promote well-being.**

### **1. Power to promote well-being**

An Integrated Transport Authority ('ITA') has power to take any action if the ITA determines that doing so is likely to achieve any one or more of the following objects: (1) the promotion or improvement of the economic well-being of its area; (2) the promotion or improvement of the social well-being of its area; or (3) the promotion or improvement of the environmental well-being of its area: Local Transport Act 2008 s 99(1). The power under s 99(1) may be exercised in relation to or for the benefit of the whole or any part of the integrated transport area, or all or any persons resident or present in, or travelling in or through, the integrated transport area: s 99(2). The power under s 99(1) includes power to (a) incur expenditure; (b) give financial assistance to any person; (c) enter into arrangements or agreements with any person; (d) co-operate with, or facilitate or co-ordinate the activities of, any person; (e) exercise on behalf of any person any functions of that person; and (f) provide staff, goods, services or accommodation to any person: s 99(3). The power under s 99(1) includes power to do anything in relation to, or for the benefit of, any person or area situated outside its areas if it considers that doing so is likely to achieve any one or more of the objects in s 99(1): s 99(4).

### **2. Limits on the power to promote well-being**

The power under the Local Transport Act 2008 s 99(1) (see PARA 247B.1) does not enable an Integrated Transport Authority ('ITA') to do anything which it is unable to do by virtue of any prohibition, restriction or limitation on its powers which is contained in any enactment: Local Transport Act 2008 s 100(1). The power under s 99(1) does not enable an ITA to raise money, whether by precepts, borrowing or otherwise: s 100(2). The Secretary of State may by order make provision preventing ITA's from doing, by virtue of s 99(1), anything which is specified, or is of a description specified, in the order: s 100(3). The power under s 100(3) may be exercised in relation to (1) all ITA's; (2) particular ITA's; or (3) ITA's of particular descriptions: s 100(4). Before making an order under s 100(3), the Secretary of State must consult (a) such representatives of ITA's; (b) such representatives of local government; and (c) such other persons as the Secretary of State considers appropriate: s 100(5). Section 100(5) does not apply to an order under s 100(3) which is made only for the purpose of amending an earlier order under s 100(3) (i) so as to extend the earlier order, or any provision of the earlier order, to a particular ITA or ITA's of a particular description; or (ii) so that the earlier order, or any provision of the earlier order, ceases to apply to a particular ITA or to ITA's of a particular description: s 100(6). Before exercising the power under s 99(1), an ITA must have regard to any guidance for the time being issued by the Secretary of State about the exercise of that power: s 100(7).

### **3. Power to amend or repeal enactments**

If the Secretary of State thinks an enactment, whenever passed or made, prevents or obstructs Integrated Transport Authorities ('ITA's') from exercising their power under the Local Transport Act 2008 s 99(1) (see PARA 247B.1), he may by order made by statutory instrument amend, repeal, revoke or disapply that enactment: Local Transport Act 2008 s 101(1). The power under s 101(1) may be exercised in relation to (1) all ITA's; (2) particular ITA's; or (3) ITA's of a particular description: s 101(2). Before making an order under s 101 the Secretary of State must consult (a) such representatives of ITA's; (b) such representatives of local government; and (c) such other persons as appear to the Secretary of State likely to be affected by the proposals: Local Transport Act 2008 s 102(1). If, following consultation under s 102(1), the Secretary of State proposes to make an order under s 101, he must lay before each House of Parliament a document which (i) explains the proposals; (ii) sets them out in the form of a draft order; and (iii) gives details of consultation under s 102(1): s 102(2). As to the application of the Local Transport Act 2008 Pt 5 Ch 3 (ss 99-102A) to a combined authority (see TRADE AND INDUSTRY vol 97 (2010) PARA 1002 et seq), see the Local Transport Act 2008 s 102A (added by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 130).

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#### **248. General functions of passenger transport authorities and executives.**

It is the duty of the passenger transport executive<sup>1</sup> for each passenger transport area<sup>2</sup> in England to secure the provision of such public passenger transport services<sup>3</sup> as the passenger transport authority<sup>4</sup> for the area considers it appropriate for the passenger transport executive to secure for meeting any public transport requirements within the area which in the passenger transport authority's view would not be met apart from any action taken by the passenger transport executive for that purpose<sup>5</sup>. The passenger transport authority must seek and have regard to the advice of the passenger transport executive for its area in determining which services it would be appropriate for the passenger transport executive to secure under these provisions<sup>6</sup>.

Where it appears to the passenger transport authority for any passenger transport area that it would be appropriate for the passenger transport executive for that area to take any measures for the purpose of or in connection with promoting, so far as relates to that area: (1) the availability of public passenger transport services other than subsidised services<sup>7</sup> and the operation of such services, in conjunction with each other and with any available subsidised services, so as to meet any public transport requirements the passenger transport authority considers it appropriate to meet<sup>8</sup>; or (2) the convenience of the public (including persons who are elderly or disabled) in using all available public passenger transport services (whether subsidised or not)<sup>9</sup>, the passenger transport authority may from time to time formulate general policies with respect to the description of such measures to be taken by the passenger transport executive for that area, and the passenger transport executive must take such measures as appear to it to be appropriate for carrying out those policies<sup>10</sup>.

It is the duty both of the passenger transport authority and of the passenger transport executive for any passenger transport area, in exercising or performing any of their functions under the above provisions, to have regard to the transport needs of members of the public who are elderly or disabled and to the bus strategy made jointly by the passenger transport authority and the councils for the metropolitan districts comprised in the area<sup>11</sup>.

1 As to passenger transport executives see PARA 247 ante. No person who is for the time being: (1) the operator of any public passenger transport services; (2) a director of any company or (as the case may be) an employee of any company or other person who is such an operator; (3) a director or employee of any company which is a member of a group of interconnected bodies corporate any one or more of which is such an operator, is to be appointed as a member, officer or servant of the passenger transport executive for any passenger transport area; and any person so appointed who subsequently becomes such an operator, director, partner or employee must immediately vacate his membership of the passenger transport executive, or (as the case may be) his office or employment with the passenger transport executive: Transport Act 1968 s 9A(8) (s 9A added by the Transport Act 1985 s 57(2)). For the purposes of the Transport Act 1968 s 9A(8) (as added) any two bodies corporate are to be treated as interconnected if one of them is a body corporate of which the other is a subsidiary or if both of them are subsidiaries of the same body corporate; and 'group of inter-connected bodies corporate' means a group consisting of two or more bodies corporate all of which are interconnected with each other in the sense given above: s 9A(10) (as so added). References to the operator of, or to persons operating, any public passenger transport services are to be read as if contained in the Transport Act 1985 (see PARA 1252 post): Transport Act 1968 s 9A(11) (as so added).

2 As to passenger transport areas see PARA 247 ante.

3 For the meaning of 'public passenger transport services' see PARA 1252 note 3 post; definition applied by the Transport Act 1968 s 9A(11) (as added: see note 1 supra).

4 As to passenger transport authorities see PARA 247 ante.

5 Transport Act 1968 s 9A(3) (as added (see note 1 supra); and substituted by the Transport Act 2000 s 161, Sch 11 paras 2, 3(1), (3)). The passenger transport executive has power to enter into an agreement providing for service subsidies for the purpose of securing the provision of any service under the Transport Act 1968 s 9A(3) (as added and substituted); but its power to do so: (1) is exercisable only where the service would not be provided without subsidy; and (2) is subject to the Transport Act 1985 ss 89-92 (s 89 as amended) (see PARAS 1277-1279 post) concerning tendering for local services etc: Transport Act 1968 s 9A(4) (as so added). References to agreements providing for service subsidies are to be read as if contained in the Transport Act 1985 (see PARA 1252 note 8 post): Transport Act 1968 s 9A(11) (as so added).

6 Ibid s 9A(3A) (s 9A as added (see note 1 supra); and s 9A(3A) added by the Transport Act 2000 Sch 11 para 3(3)).

7 References to subsidised services are references to services provided under an agreement providing for service subsidies entered into: (1) by the passenger transport executive for the area in question or for any other area under the Transport Act 1968 s 9A(4) (as added) (see note 5 supra); or (2) by any non-metropolitan county or district council under the Transport Act 1985 s 63 (as amended) (see PARA 1252 post): Transport Act 1968 s 9A(9) (as added: see note 1 supra).

8 Ibid s 9A(5)(a) (as added: see note 1 supra).

9 Ibid s 9A(5)(b) (as added: see note 1 supra).

10 Ibid s 9A(5) (as added: see note 1 supra). It is the duty of the passenger transport authority for any passenger transport area, in formulating any such policies, and of the passenger transport executive for any passenger transport area, in carrying out any such policies, to have regard to a combination of economy, efficiency and effectiveness: s 9A(6) (as so added; and amended by the Transport Act 2000 Sch 11 para 3(4)). This duty does not mean that the passenger transport executive must avoid the site of an existing bus station owned by a bus company when exercising its powers to purchase land for a transport interchange: *Yorkshire Traction Co Ltd v Secretary of State for Transport* (1997) 75 P & CR 437, CA.

11 Transport Act 1968 s 9A(7) (as added (see note 1 supra); and amended by the Transport Act 2000 Sch 11 para 3(5)).

## UPDATE

### 248 General functions of authorities and executives

TEXT AND NOTES--Transport Act 1968 s 9A amended: Local Transport Act 2008 Sch 4 para 3.

NOTE 5--Transport Act 1968 s 9A(4) amended, s 9(4A) added: Local Transport Act 2008 s 67(2), (3).

TEXT AND NOTE 11--Transport Act 1968 s 9A(7) amended: Local Transport Act 2008 ss 10(8), 131, Sch 7 Pt 1.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(3) PASSENGER SERVICES/(ii) Passenger Services outside London/249. General powers of the passenger transport executive.

## **249. General powers of the passenger transport executive.**

The passenger transport executive<sup>1</sup> for a passenger transport area<sup>2</sup> has power<sup>3</sup>:

- 27 (1) to carry passengers by road within, to or from that area<sup>4</sup>;
- 28 (2) to carry passengers by any other form of land transport or by any form of water transport (including, in either case, hovercraft<sup>5</sup>) between places in that area, or between places in that area and any place outside it, but within the permitted distance, that is to say the distance of 25 miles from the nearest point on the boundary of that area<sup>6</sup>;
- 29 (3) so far as the passenger transport executive considers requisite in connection with the exercise of its powers of transport in head (1) or head (2) above, or to avoid an interruption of existing services<sup>7</sup>, to carry passengers as mentioned in head (1) or head (2) above between places outside that area<sup>8</sup>;
- 30 (4) to carry luggage or other goods<sup>9</sup> in any vehicle or vessel used for the carriage of passengers, pursuant to head (1), head (2) or head (3) above, or in a trailer drawn by any vehicle so used<sup>10</sup>;
- 31 (5) to store within its area goods which have been or are to be carried by the passenger transport executive and, so far as any premises provided for the purposes of that or any other part of its business are not required for those purposes, to use them to provide facilities for the storage of other goods<sup>11</sup>;
- 32 (6) with the approval of the passenger transport authority<sup>12</sup>, to enter into and carry out agreements with any person who is the operator of, or who has an estate or interest in, or right over, a network, station or light maintenance depot, or some part of a network, station or light maintenance depot, in connection with the building, replacement, redevelopment, refurbishment, repair, maintenance, operation or staffing of the network, station or light maintenance depot or any part<sup>13</sup>;
- 33 (7) to arrange, with the approval of the passenger transport authority, with any person providing passenger transport services by air for the provision of such services between places in that area, or between such places and places outside it, and to include in such arrangements provisions for the making of payments to that person by the passenger transport executive<sup>14</sup>;
- 34 (8) to let passenger vehicles on hire with or without trailers for the carriage of goods<sup>15</sup>;
- 35 (9) to let locomotives and other rolling stock on hire to any person who is<sup>16</sup> the franchisee or the franchise operator under a franchise agreement to which the passenger transport executive is a party<sup>17</sup>;
- 36 (10) to let locomotives and other rolling stock on hire to a person not falling within head (9) above for or in connection with the provision of railway passenger services within that area or within the permitted distance, or, with the written consent of the Secretary of State<sup>18</sup>, for or in connection with the provision of railway passenger services outside that area and beyond the permitted distance<sup>19</sup>;

- 37 (11) with the approval of the passenger transport authority, to enter into and carry out agreements with the owner of any locomotive or other rolling stock concerning the persons to whom, or the terms on which, the locomotive or other rolling stock may be let on hire<sup>20</sup>;
- 38 (12) to carry on the activities of undertakings transferred to, resumed by or acquired by the passenger transport executive<sup>21</sup>, which the passenger transport executive would not otherwise have the power to carry on<sup>22</sup>;
- 39 (13) in places where persons using the services and facilities provided by the passenger transport executive may require them, to provide for both for those and other persons facilities for the purchase and consumption of food and drink, places of refreshment and such other amenities or facilities as it may appear to the passenger transport executive requisite or expedient to provide<sup>23</sup>;
- 40 (14) to provide interchange facilities for the purpose of enabling passengers travelling by one means of transport to continue their journey by another<sup>24</sup>;
- 41 (15) subject to the provisions relating to travel concessions on services provided by passenger transport executives<sup>25</sup>, to demand, take and recover or waive such charges for the services and facilities provided by the passenger transport executive, and to make the use of those services and facilities subject to such terms and conditions, as it thinks fit<sup>26</sup>;
- 42 (16) to construct, manufacture, produce, purchase, maintain and repair anything required for the purpose of its business<sup>27</sup>;
- 43 (17) to enter into and carry out agreements with any person for the carrying on by that person, whether as agent for the passenger transport executive or otherwise, of any activities which the passenger transport executive has power to carry on<sup>28</sup>;
- 44 (18) with the approval of the passenger transport authority, to arrange to transfer to a person with whom an agreement under head (17) above has been made, in such manner and on such terms as may be provided for by the arrangements, any part of the undertaking or property of the passenger transport executive relevant to the carrying on of the agreement<sup>29</sup>;
- 45 (19) to acquire by agreement any undertaking or part of an undertaking if its assets are wholly or mainly assets which the passenger transport executive requires for its business purposes<sup>30</sup>;
- 46 (20) for the purposes of its business, to lend money, or give guarantees<sup>31</sup>;
- 47 (21) for the purposes of its business, to form, promote and assist in forming a company to carry on any of its activities, and, if the company is a subsidiary of the passenger transport executive, to transfer to it any part of the undertaking or property of the passenger transport executive<sup>32</sup>;
- 48 (22) to acquire land<sup>33</sup> by agreement, either: (a) for the purposes of its business<sup>34</sup>; or (b) with the approval of the passenger transport authority, for the purpose of adding it to and disposing of it with other contiguous land of the passenger transport executive of which it proposes to dispose<sup>35</sup>;
- 49 (23) to develop its own land for its own business purposes in such manner as it thinks fit<sup>36</sup>;
- 50 (24) with the approval of the passenger transport authority, to develop, for the use of others, any part of its land not required for its own business purposes<sup>37</sup>, or where the use of its land can be combined with its use for other purposes to develop the land by constructing or adapting buildings on it for use wholly or partly by other persons<sup>38</sup>, and to acquire adjoining land for such development<sup>39</sup>, with a view to selling or otherwise disposing of the land or any interest in it, or the buildings or any part of the buildings, after the development is carried out<sup>40</sup>;
- 51 (25) to dispose of land, absolutely or for a term of years, with the approval of the passenger transport authority, and to dispose of any interest or right in property<sup>41</sup>;



- 52 (26) to do anything to advance the skill of employees and the efficiency of their equipment and its operation, including provision for training, education and research<sup>42</sup>;
- 53 (27) to provide houses, hostels and other like accommodation for its employees<sup>43</sup>;
- 54 (28) to make loans to its employees to enable them to acquire housing, and to guarantee loans made by building societies and other bodies to its employees for that purpose<sup>44</sup>;
- 55 (29) to invest any sums not immediately required by it for its business purposes<sup>45</sup>;
- 56 (30) to turn its resources to account so far as not required for its business purposes<sup>46</sup>;
- 57 (31) with the approval of the passenger transport authority, to promote or oppose any Bill in Parliament<sup>47</sup>;
- 58 (32) to establish and administer pension schemes and pension funds for its employees and ex-employees and to pay pensions to or in respect of such persons<sup>48</sup>;
- 59 (33) to provide technical assistance, advice or research services to any person on any matters in which it has skill or experience<sup>49</sup>; and
- 60 (34) to do all other things necessary, in its opinion, to facilitate the proper carrying on of its business<sup>50</sup>.

If the passenger transport authority for a passenger transport area so requests in writing, the Secretary of State may authorise the passenger transport executive for that area to purchase compulsorily any land which the passenger transport executive or any of its wholly-owned subsidiaries requires for the purposes of its business<sup>51</sup>.

In the exercise of certain of its powers<sup>52</sup> the passenger transport executive must act as though it were a company engaged on a commercial enterprise<sup>53</sup>.

Each of the powers conferred by the above provisions is deemed to be in addition to, and not in derogation of, any other of them; but those provisions relate only to the capacity of the passenger transport executive for a designated area as a statutory corporation and nothing in those provisions is to be construed as authorising the disregard by the passenger transport executive of any enactment or rule of law, or any requirement of Part II of the Transport Act 1968<sup>54</sup> as to the approval of the passenger transport authority or the consent of the Secretary of State for a particular exercise of any of those powers<sup>55</sup>.

The statutory provisions relating to the acquisition of ferries by local authorities<sup>56</sup> apply to the passenger transport executive for a passenger transport area as if the passenger transport executive were a local authority for that area<sup>57</sup>.

It is the duty of a passenger transport executive to control any subsidiary so as to ensure that the subsidiary does not engage in activities in which the passenger transport executive has no power to engage<sup>58</sup>.

1 As to passenger transport executives see PARA 247 ante.

2 As to passenger transport areas see PARA 247 ante.

3 Transport Act 1968 s 10(1) (amended by the Transport Act 1985 s 57(6), Sch 3 para 2). As to the railway functions of the passenger transport executives see the Railways Act 2005 s 13. As to the duty of passenger transport executives to advise the Secretary of State see s 52. See further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 64-65.

4 Transport Act 1968 s 10(1)(i).

5 For the meaning of 'hovercraft' see PARA 218 ante.

6 Transport Act 1968 s 10(1)(ii) (amended by the Transport Act 1985 Sch 3 para 3).

7 le an interruption of existing services which would otherwise result from an exercise by the passenger transport executive of any of its functions under the Transport Act 1968 Pt II (ss 9-23A) (as amended).

8 Ibid s 10(1)(iii).

9 'Goods' includes animals and mails: *ibid* s 159(1).

10 Ibid s 10(1)(iv).

11 Ibid s 10(1)(v). Goods carried by or services or facilities provided by a subsidiary of the passenger transport executive or by a person providing bus services under an agreement with the passenger transport executive are deemed to be goods carried by or services or facilities provided by the passenger transport executive: s 10(2) (amended by the Transport Act 1985 s 139(3), Sch 8).

12 As to passenger transport authorities see PARA 247 ante.

13 Transport Act 1968 s 10(1)(via) (added by the Railways Act 1993 s 36(1)).

14 Transport Act 1968 s 10(1)(vii).

15 Ibid s 10(1)(viii).

16 le a franchisee or franchise operator within the meaning of the Railways Act 1993 Pt I (ss 1-83) (as amended): see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 130.

17 Transport Act 1968 s 10(1)(viiia) (added by the Railways Act 1993 s 36(1), (2)).

18 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

19 Transport Act 1968 s 10(1)(viiib) (added by the Railways Act 1993 s 36(1), (2)).

20 Transport Act 1968 s 10(1)(viiic) (added by the Railways Act 1993 s 36(1), (2)).

21 le an undertaking transferred to the passenger transport executive under the Transport Act 1968 s 17(1) (repealed), resumed by the passenger transport executive under s 17(2)(b) (repealed), or acquired by the passenger transport executive otherwise than under s 17 (repealed). The passenger transport executive needs the approval of the passenger transport authority before carrying on any activities which it would not otherwise have the power to carry on in respect of an undertaking not acquired under s 17 (repealed): s 10(1)(ix). The passenger transport executive only has power to carry on activities which were carried on by the undertaking immediately before the date of the transfer, the date of the disposal which gave rise to the resumption or the date of the acquisition: s 10(1)(ix).

22 Ibid s 10(1)(ix).

23 Ibid s 10(1)(x). At any place where the passenger transport executive, in exercise of its powers under s 10(1)(x), provides a car park, it has power to repair motor vehicles for any persons, and to sell to any persons petrol, oil and spare parts and accessories for motor vehicles, whether or not those persons are using the car park: s 10(1)(xi). Where the services and facilities are provided by a subsidiary of the passenger transport executive or by a person providing bus services under an agreement with the passenger transport executive, they are deemed to be provided by the passenger transport executive: s 10(2) (as amended: see note 11 *supra*).

24 Ibid s 10(1)(xii).

25 le subject to *ibid* s 15(2) (as amended) (see PARA 251 post) and the Transport Act 1985 s 104(1) (see PARA 1294 post).

26 Transport Act 1968 s 10(1)(xiii). However, without prejudice to any other limitation on the power conferred by s 10(1)(xiii) subsisting by virtue of s 10(7) (see the text and note 57 *infra*), s 10(1)(xiii) is not to be construed as entitling the passenger transport executive to carry passengers by any form of land or water transport on terms or conditions which: (1) purport, whether directly or indirectly, to exclude or limit its liability in respect of the death of, or bodily injury to, any passenger; or (2) purport, whether directly or indirectly, to prescribe the time within which or the manner in which any such liability may be enforced: s 10(1)(xiii).

27 Ibid s 10(1)(xiv). Things required for the purposes of the business of a subsidiary of the passenger transport executive or by a person providing bus services in the area under an agreement with the passenger transport executive are deemed to be things required for the purposes of the business of the passenger transport executive: s 10(2) (as amended: see note 11 supra).

28 Ibid s 10(1)(xv). This includes the power to enter into agreements for the provision of combined services for the through carriage of passengers or goods, for the quoting of through rates, and for the pooling of receipts or expenses, and to include in any such agreement provision for the making of payments to that person by the passenger transport executive, and to enter into any such agreement notwithstanding that it involves the delegation of functions of the passenger transport executive under any enactment relating to part of its undertaking: s 10(1)(xv).

29 Ibid s 10(1)(xvi) (amended by the Local Government Act 1974 ss 35(1), (2), 42(2), Sch 6 para 22(1), Sch 8).

30 Transport Act 1968 s 10(1)(xvii).

31 See ibid s 10(1)(xviii). The money may be lent to, and a guarantee may be given for the benefit of, any person for the purposes of an undertaking carried on by that person or, where that person is a body corporate, by any undertaking carried on by a subsidiary of that body corporate: s 10(1)(xviii). As to the passenger transport executive's borrowing powers see PARA 250 post.

32 Ibid s 10(1)(xix), which also provides that this power may be exercised jointly with any other person, and gives power to subscribe for or acquire by agreement any securities of any body corporate.

33 'Land' includes land covered by water and any interest or right in, over or under land: ibid s 159(1).

34 Ibid s 10(1)(xx)(a).

35 Ibid s 10(1)(xx)(b).

36 Ibid s 10(1)(xxi).

37 Ibid s 10(1)(xxii)(a).

38 Ibid s 10(1)(xxii)(b).

39 Ibid s 10(1)(xxii)(c).

40 Ibid s 10(1)(xxii).

41 Ibid s 10(1)(xxiii) (amended by the Transport Act 1985 Sch 3 para 4). The passenger transport executive's powers of disposal of property relate to that which it no longer needs, in its opinion, for the purposes of its business: Transport Act 1968 s 10(1)(xxiii).

42 See ibid s 10(1)(xxiv). Persons employed by any subsidiary of the passenger transport executive are deemed to be employed by the passenger transport executive: s 10(2) (as amended: see note 11 supra).

43 Ibid s 10(1)(xxv). See also note 42 supra.

44 Ibid s 10(1)(xxvi). See also note 42 supra.

45 Ibid s 10(1)(xxvii).

46 Ibid s 10(1)(xxviii).

47 Ibid s 10(1)(xxix). The effect of this provision is to confer on the passenger transport executive also the power, with the consent of the passenger transport authority, to apply for or object to orders under the Transport and Works Act 1992 ss 1, 3: see s 20 (as amended); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 302.

48 Transport Act 1968 s 10(1)(xxx). The passenger transport executive has power to enter into agreements with other persons for securing or preserving the pension rights of its employees or ex-employees: s 10(1)(xxx). See also note 42 supra.

49 Ibid s 10(1)(xxxi).

50 Ibid s 10(1)(xxxii).

51 Ibid s 10(3) (amended by the Acquisition of Land Act 1981 s 34(1), Sch 4 para 18; and the Transport Act 1985 Sch 3 para 2). The Acquisition of Land Act 1981 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 556 et seq) applies to the compulsory purchase: see the Transport Act 1968 s 10(3) (as so amended). The power of purchasing land compulsorily includes power to acquire an easement or other right in, over or under land by the creation of a new right; but this does not apply to an easement or other right in, over or under any land which would for the purposes of the Acquisition of Land Act 1981 form part of a common, open space or fuel or field garden allotment: Transport Act 1968 s 10(4) (amended by the Acquisition of Land Act 1981 Sch 4 para 18).

52 Ie when exercising its powers under the Transport Act 1968 s 10(1)(viii) (see head (8) in the text), s 10(1)(xi) (see note 23 supra), s 10(1)(xx)(b) (see head (22) in the text), s 10(1)(xxii) (see head (24) in the text).

53 Ibid s 134(2), (3)(b) (amended by the Transport Act 1980 s 69, Sch 9 Pt III).

54 Ie the Transport Act 1968 Pt II (ss 9-23A) (as amended).

55 Ibid s 10(7).

56 Ie the Ferries (Acquisition by Local Authorities) Act 1919: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 896.

57 Transport Act 1968 s 10(5) (amended by the Transport Act 1985 Sch 3 para 2).

58 Transport Act 1968 s 10(8). This includes activities in which the passenger transport executive has no power to engage because the requisite consent or approval has not been obtained: s 10(8).

## UPDATE

### 249 General powers of the passenger transport executive

TEXT AND NOTES 1-50--Transport Act 1968 s 10(1) further amended: Local Transport Act 2008 Sch 4 para 4.

TEXT AND NOTE 4--Head (1). Transport Act 1968 s 10(1)(i) repealed: Local Transport Act 2008 ss 66(6)(a), 131, Sch 7 Pt 3.

TEXT AND NOTES 7, 8--Transport Act 1968 s 10(1)(iii) amended: Local Transport Act 2008 s 131, Sch 7 Pt 3.

TEXT AND NOTES 9, 10--Transport Act 1968 s 10(1)(iv) amended: Local Transport Act 2008 s 131, Sch 7 Pt 3.

TEXT AND NOTE 15--Head (8). Transport Act 1968 s 10(1)(viii) substituted, s 10(2A) added: Local Transport Act 2008 s 66(2), (3).

TEXT AND NOTE 51--Transport Act 1968 s 10(3) further amended: Local Transport Act 2008 Sch 4 para 4.

TEXT AND NOTES 56, 57--Transport Act 1968 s 10(5) further amended: Local Transport Act 2008 Sch 4 para 4.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(3) PASSENGER SERVICES/(ii) Passenger Services outside London/250. Financial provisions.

### 250. Financial provisions.

In respect of each accounting period, a passenger transport executive<sup>1</sup> must charge to its revenue account all charges proper to be made to that account, including proper provision for

depreciation or renewal of assets<sup>2</sup>, and may make charges to capital account representing interest or expenditure of a capital nature<sup>3</sup>.

A passenger transport executive must so perform its functions as to ensure so far as practicable that the combined revenues of the passenger transport executive and any of its subsidiaries for any accounting period are not less than is sufficient to meet their combined charges properly chargeable to revenue account in that period<sup>4</sup>. If in any accounting period it is not practicable for a passenger transport executive to ensure that those combined revenues meet those combined charges, then in the next accounting period those combined charges must include an amount equal to the deficit from the previous accounting period<sup>5</sup>.

The passenger transport executive for any passenger transport area<sup>6</sup> may establish and maintain a general reserve, and the passenger transport authority may give the passenger transport executive directions as to any matter relating to the establishment or management of any general reserve and the carrying of sums to its credit, or the application of it<sup>7</sup>.

The passenger transport executive for any passenger transport area may borrow temporarily, by way of overdraft or otherwise, such sums as it needs to meet its obligations and discharge its functions<sup>8</sup>, but must ensure that the aggregate of sums outstanding on any temporary loans does not exceed the limit approved by the passenger transport authority<sup>9</sup>. With the approval of the passenger transport authority, the passenger transport executive may borrow, otherwise than by way of temporary loan, from any person and in any manner for specified purposes<sup>10</sup>. The passenger transport authority for the passenger transport executive's area may lend money to the passenger transport executive<sup>11</sup>. The passenger transport authority has power to make grants to the passenger transport executive for any purpose<sup>12</sup>. Proper accounts and other records must be kept by passenger transport executives<sup>13</sup>.

1 As to passenger transport executives see PARA 247 ante.

2 Transport Act 1968 s 11(2). This duty extends to securing that any subsidiary of the passenger transport executive complies with this provision: see s 11(2).

3 Ibid s 11(3). Such charges may be made for any period which ends with or before the end of the accounting period in which the project or scheme to which the expenditure relates is completed: s 11(3).

4 Transport Act 1983 ss 1, 2(1) (s 1 amended by the Transport Act 1985 s 57(6), Sch 3 para 30). Any deficit or potential deficit is to be disregarded to the extent to which it is covered by an appropriation from reserves proposed by the passenger transport executive and approved by the passenger transport authority: see the Transport Act 1983 s 2(3) (amended by the Transport Act 2000 s 274, Sch 31 Pt II). A passenger transport authority must have regard to this duty of the passenger transport executive in performing the passenger transport authority's functions under the Transport Act 1983 Pt I (ss 1-9) (as amended) (see PARA 251 post) and the Transport Act 1968 Pt II (ss 9-23A) (as amended): Transport Act 1983 s 2(4) (amended by the London Regional Transport Act 1984 s 71(3), Sch 6 para 29, Sch 7; and the Transport Act 2000 Sch 31 Pt II). As to passenger transport authorities see PARA 247 ante. When approving or consenting to a level of charges under the Transport Act 1968 s 15(2)(a) (as amended) (see PARA 251 post), the passenger transport authority must have regard in particular to the extent to which its decision will affect the amount of revenue grants that will be needed to enable the passenger transport executive to comply with its duty under the Transport Act 1983 s 2 (as amended), and to the need to achieve a proper balance between the interests of the ratepayers in its area and the interests of transport users: s 6(7) (amended by the London Regional Transport Act 1984 Sch 7).

5 See the Transport Act 1983 s 2(2).

6 As to passenger transport areas see PARA 247 ante.

7 Transport Act 1968 s 11(3A) (added by the Local Government Act 1972 s 202(2), Sch 24 para 2). This is expressed to be without prejudice to any power of the passenger transport executive to establish specific reserves. The money held in a general reserve may not be applied otherwise than for the purposes of the passenger transport executive or one of its subsidiaries: Transport Act 1968 s 11(3A) (as so added).

8 I.e. under ibid Pt II (as amended). As to the general functions of the passenger transport executive see PARA 248 ante.

9 Ibid s 12(1), (2) (s 12(1) amended by the Transport Act 1985 Sch 3 para 2). All money borrowed by the passenger transport executive must be charged indifferently on all its revenues, and all securities created by it rank equally without priority except in the case of money borrowed by temporary loan without security or where a right of priority is conferred by a security for a liability incurred in pursuance of the Transport Act 1968: s 12(5). A passenger transport executive is deemed to be a local authority for the purposes of the enactments relating to loans by or borrowing from the Public Works Loan Commissioners (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 1384-1388): s 12(7)(a).

10 Ibid s 12(3). The specified purposes are:

- 13 (1) for meeting capital expenses incurred in connection with the provision or improvement of assets in connection with its business (s 12(3)(a));
- 14 (2) for the provision of working capital (s 12(3)(b));
- 15 (3) for acquiring all or part of an undertaking (s 12(3)(c));
- 16 (4) for making any payment by way of compensation it is required to make by or under the Transport Act 1968 Pt II (as amended) (s 12(3)(d) (amended by the Transport Act 1985 s 139(3), Sch 8));
- 17 (5) for subscribing for or acquiring securities of a body corporate otherwise than by way of investment (Transport Act 1968 s 12(3)(e));
- 18 (6) for the payment of interest charged to capital account under s 11(3) (see the text and note 3 supra) (s 12(3)(f));
- 19 (7) to pay off any debt incurred by the passenger transport executive, or any liability assumed by or transferred to the passenger transport executive under Pt II (as amended) (s 12(3)(g));
- 20 (8) for making any loan or fulfilling any guarantee under s 10(1)(xviii) (see PARA 249 head (20) ante) (s 12(3)(h)); and
- 21 (9) for any purpose for which capital money is properly applicable, whether or not specified in heads (1)-(8) supra (s 12(3)(j)).

The passenger transport executive must control any subsidiary so as to ensure that it does not borrow from any person (otherwise than by way of temporary loan) without the approval of the passenger transport authority or for any purpose other than those specified in heads (1)-(5), (9) supra or for paying off its debts: s 12(3).

11 Ibid s 12(4) (amended by the Transport Act 1985 Sch 3 para 6; and the Local Government and Housing Act 1989 s 194(1), Sch 11 para 16). The rate of interest payable by the passenger transport executive to the passenger transport authority in respect of the loan must be not less than that which would be payable by the passenger transport authority if it were to borrow the same sum on equivalent terms (disregarding any terms as to interest) from another person: Transport Act 1968 s 12(4) (as so amended).

12 Ibid s 13 (substituted by the Transport Act 1985 Sch 3 para 7).

13 Transport Act 1968 s 14(1)(a) (amended by the Transport Act 1985 Sch 3 para 2). As soon as the accounts of the passenger transport executive for any accounting period have been audited in accordance with the Audit Commission Act 1998 (see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 628; LOCAL GOVERNMENT vol 69 (2009) PARA 744 et seq) it must send a copy of any statement of accounts prepared by it for that period pursuant to regulations under the Audit Commission Act 1998 s 27 (see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 628) to the Secretary of State, to the passenger transport authority and to each of the councils of the districts comprised in the county which is coterminous with or includes the passenger transport executive's area, together with a copy of the auditor's opinion on that statement: Transport Act 1968 s 14(3) (substituted by the Audit Commission Act 1998 s 54(1), Sch 3 para 2).

## UPDATE

### 250 Financial provisions

NOTE 4--Transport Act 1983 s 1 further amended: Local Transport Act 2008 Sch 4 para 50.

NOTE 9--Transport Act 1968 s 12(1) further amended: Local Transport Act 2008 Sch 4 para 5.

NOTE 13--Transport Act 1968 s 14(1) further amended: Local Transport Act 2008 Sch 4 para 6.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(3) PASSENGER SERVICES/(ii) Passenger Services outside London/251. Supervisory functions of passenger transport authorities.

## **251. Supervisory functions of passenger transport authorities.**

The passenger transport executive<sup>1</sup> for a passenger transport area<sup>2</sup> must submit to the passenger transport authority<sup>3</sup> and obtain its approval<sup>4</sup> of:

- 61 (1) such annual or other estimates of income or expenditure of the passenger transport executive or its subsidiaries as the passenger transport authority may require to be submitted, and any major change proposed to be made in such estimates after their approval by the passenger transport authority<sup>5</sup>;
- 62 (2) any proposed substantial outlay by the passenger transport executive or its subsidiaries, or by any other person in pursuance of arrangements with the passenger transport executive, on capital account<sup>6</sup>; and
- 63 (3) any agreement proposed to be entered into by the passenger transport executive<sup>7</sup>.

The passenger transport executive must obtain the passenger transport authority's approval: (a) before making, or authorising or consenting to the making of, any alteration in the general level of charges for transport services or facilities provided by the passenger transport executive or a subsidiary<sup>8</sup>; and (b) subject to the statutory provisions relating to travel concessions on services provided by passenger transport executives<sup>9</sup>, for any proposal of the passenger transport executive for reducing or waiving those charges in a particular case or cases of a particular class<sup>10</sup>.

The passenger transport executive must provide the passenger transport authority at such time or intervals and in such form and manner as the passenger transport authority may require with information as to operations, capital expenditure and revenue expenditure which are planned or under consideration by the passenger transport executive, and must give the authority such returns, accounts and other information with respect to the property and activities of the passenger transport executive or any subsidiary as the passenger transport authority may require<sup>11</sup>. The passenger transport authority may from time to time cause a review of the organisation of the passenger transport executive's undertaking, and give, as a result of the review, such directions as appear to be requisite to the passenger transport authority to secure the most efficient operation of the passenger transport executive's undertaking, and the passenger transport executive may not make or permit any substantial change in its manner of organisation except under such a direction of, or with the approval of, the passenger transport authority<sup>12</sup>.

1 As to passenger transport executives see PARA 247 ante.

2 As to passenger transport areas see PARA 247 ante.

3 As to passenger transport authorities see PARA 247 ante.

4 Transport Act 1968 s 15(1) (amended by the Transport Act 1985 Sch 3 para 2). Any approval or direction given by the passenger transport authority under the Transport Act 1968 Pt II (ss 9-23A) (as amended) must be in writing: s 15(7). Notwithstanding anything in Pt II (as amended), nothing done by the passenger transport executive for a passenger transport area is to be held to be unlawful on the ground that the approval of the passenger transport authority for that area to the doing of that thing was required by or under Pt II (as amended) and that it was done without obtaining that approval; but if it appears to the passenger transport authority that the passenger transport executive proposes to do anything, or have done anything, without the approval of the passenger transport authority which in the opinion of the passenger transport authority requires that approval, the passenger transport authority may, after consultation with the passenger transport executive, give to the passenger transport executive such directions as appear to the passenger transport authority to be appropriate to secure so far as practicable the observance of the rights of the passenger transport authority in relation to the doing of that thing, and those directions may include directions to discontinue any specified activity or dispose of any specified assets; and the passenger transport executive must comply with any such directions notwithstanding that they may result in the passenger transport executive having to dispose of any assets at a loss or incurring liability to other persons: s 15(6) (amended by the Transport Act 1985 s 57(6), Sch 3 para 2).

5 Transport Act 1968 s 15(1)(b) (substituted by the Local Government Act 1972 s 202(2), Sch 24 para 5).

6 Transport Act 1968 s 15(1)(c) (substituted by the Local Government Act 1972 Sch 24 para 5).

7 Transport Act 1968 s 15(1)(d) (amended by the Railways Act 2005 s 59(6), Sch 13 Pt 1). As to such agreements see eg para 249 heads (17), (18) ante.

8 Transport Act 1968 s 15(2)(a) (amended by the Transport Act 1985 s 139(2), (3), Sch 8). Any expenditure incurred by the passenger transport authority in performing its functions under the Transport Act 1968 Pt II (as amended) must be defrayed by the passenger transport executive: s 15(5).

9 le subject to the Transport Act 1985 s 104(2): see PARA 1294 post.

10 Transport Act 1968 s 15(2)(b) (amended by the Transport Act 1985 Sch 3 para 10(2)).

11 Transport Act 1968 s 15A(2) (s 15A added by the Local Government Act 1972 s 202(2), Sch 24 para 4).

12 Transport Act 1968 s 15A(3) (as added: see note 11 supra). A passenger transport authority must, whenever the Secretary of State so requires, cause a review to be made of the organisation of the passenger transport executive for the purpose of determining whether, in the interests of managing the activities of the passenger transport executive in the most efficient manner, any particular activities of the passenger transport executive should be managed as separate units with separate accounts: Transport Act 1983 s 7(1). The passenger transport authority must inform the passenger transport executive in writing of the results of any such review and of the passenger transport authority's conclusions arising from it; and the report under the Transport Act 1968 s 16 (as amended) (see PARA 252 post) for the accounting period of the passenger transport executive in which it is so informed must contain a statement showing the steps it has taken or proposes to take in the light of the passenger transport authority's conclusions: Transport Act 1983 s 7(2) (amended by the London Regional Transport Act 1984 s 71(3)(b), Sch 7). Nothing in the Transport Act 1983 s 7 (as amended) affects the power of a passenger transport authority to cause reviews to be made of the organisation of a passenger transport executive under the Transport Act 1968 s 15A(3) (as added): Transport Act 1983 s 7(3) (amended by the London Regional Transport Act 1984 Sch 7).

## UPDATE

### 251 Supervisory functions of passenger transport authorities

TEXT AND NOTES 1-7--Transport Act 1968 s 15(1) further amended: Local Transport Act 2008 Sch 4 para 7.

NOTE 4--Transport Act 1968 s 15(6) further amended: Local Transport Act 2008 Sch 4 para 7.



1663)/1. LEGISLATION AND ADMINISTRATION/(3) PASSENGER SERVICES/(ii) Passenger Services outside London/252. Annual reports.

## **252. Annual reports.**

The passenger transport authority<sup>1</sup> and the passenger transport executive<sup>2</sup> for any passenger transport area<sup>3</sup> must prepare an annual joint report, which must be published by the passenger transport authority in such manner as it considers appropriate, on the exercise and performance by the passenger transport authority and the passenger transport executive of their respective functions<sup>4</sup>.

Where the activities of the passenger transport executive or of one of its subsidiaries include the carrying on of the business of the carriage of passengers by road other than local services, the report must include a statement of the amount of turnover in respect of that business, the extent to which it contributed to or restricted the profit or loss of the passenger transport executive or subsidiary before taxation, and the method by which the figures were arrived at<sup>5</sup>.

1 As to passenger transport authorities see PARA 247 ante.

2 As to passenger transport executives see PARA 247 ante.

3 As to passenger transport areas see PARA 247 ante.

4 Transport Act 1968 s 16(1) (amended by the Local Government Act 1972 s 202(2), Sch 24 Pt I para 6; and the Transport Act 1985 s 57(6), Sch 3). As to the general duties of the passenger transport authority and the passenger transport executive see PARAS 248-251 ante. The report must also include any matters which, by virtue of an order under the Transport Act 1968 s 9(3) (see PARA 247 ante), are required to be reported: s 16(1), Sch 5 Pt III para 15. The report must also include a statement of the steps taken or proposed to implement the finding of any review of the passenger transport executive's organisation carried out by the passenger transport authority at the requirement of the Secretary of State: see the Transport Act 1983 s 7(2) (as amended); and PARA 251 ante. The report must include a statement of steps taken by the passenger transport executive in respect of inviting tenders for other persons to carry on any of its activities: s 8(5) (amended by the London Regional Transport Act 1984 s 71(3)(b), Sch 7).

5 Transport Act 1968 s 16(2)(a)-(c) (amended by the Local Government Act 1974 ss 35(1), (2), 42(2), Sch 6 para 22(5), Sch 8; and the Transport Act 1985 s 57(6), Sch 3 para 12).

## **UPDATE**

## **252 Annual reports**

NOTES 1-4--Transport Act 1968 s 16(1) further amended: Local Transport Act 2008 Sch 4 para 8.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/ (4) CONSTITUTION AND JURISDICTION OF THE TRANSPORT TRIBUNAL/253. Constitution.

## **(4) CONSTITUTION AND JURISDICTION OF THE TRANSPORT TRIBUNAL**

## **253. Constitution.**

The Transport Tribunal<sup>1</sup> is a court of record<sup>2</sup> and has an official seal which is to be judicially noticed<sup>3</sup>. The tribunal consists of a president and two or more chairmen appointed by the Lord Chancellor (referred to as judicial members)<sup>4</sup>, and two or more other members appointed by the Secretary of State<sup>5</sup>. The president of the tribunal must be a person who has a ten year general qualification within the meaning of the Courts and Legal Services Act 1990<sup>6</sup>, or an advocate or solicitor in Scotland of at least ten years' standing<sup>7</sup>. Each chairman must be a person who has a seven year general qualification<sup>8</sup>, or an advocate or solicitor in Scotland of at least seven years' standing<sup>9</sup>.

1 The number of members of the Transport Tribunal is no longer to be subject to any limit, and the tribunal is no longer to be required to sit in two divisions: Transport Act 1985 s 117(1). Section 117(2), Sch 4 (see PARAS 254-258 post) has effect (in place of the existing law) with respect to the constitution, powers and proceedings of the tribunal: s 117(2).

2 As to courts of record see COURTS.

3 Transport Act 1985 s 117(2), Sch 4 para 1.

4 Ibid Sch 4 para 2(1)(a).

5 Ibid Sch 4 para 2(1)(b). The Lord Chancellor must consult the Secretary of State before exercising any of his powers under Sch 4 para 2 (as amended): Sch 4 para 15 (amended by the Transfer of Functions (Transport Tribunal) Order 1989, SI 1989/495, art 2; and the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999, SI 1999/678, art 2(1), Schedule). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. For transitional provisions and savings relating to the appointment and tenure of office of the president, chairmen and other members of the tribunal see the Transport Act 1985 s 139(1), Sch 6. As to pensions and other benefits of members see the Judicial Pensions and Retirement Act 1993; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 725.

6 Transport Act 1985 Sch 4 para 2(2)(a) (Sch 4 para 2(2) substituted by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 65). As to the meaning of 'ten year general qualification' see the Courts and Legal Services Act 1990 s 71 (as amended); para 895 post; and LEGAL PROFESSIONS vol 65 (2008) PARA 742.

7 Transport Act 1985 Sch 4 para 2(2)(b) (as substituted: see note 6 supra).

8 Ibid Sch 4 para 2(2A)(a) (Sch 4 para 2(2A) added by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 65). As to the meaning of 'seven year general qualification' see the Courts and Legal Services Act 1990 s 71 (as amended); para 895 post; and LEGAL PROFESSIONS vol 65 (2008) PARA 742.

9 Transport Act 1985 Sch 4 para 2(2A)(b) (as added: see note 8 supra).

## UPDATE

### 253 Constitution

TEXT AND NOTES 6-9--1985 Act Sch 4 para 2(2)(a), (2A)(a) substituted, Sch 4 para 2(2)(b), (2A)(b) amended: Tribunals, Courts and Enforcement Act 2007 Sch 10 para 17.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/ (4) CONSTITUTION AND JURISDICTION OF THE TRANSPORT TRIBUNAL/254. Tenure of office.

### 254. Tenure of office.

Each judicial member<sup>1</sup> of the Transport Tribunal holds office until the day on which he attains the age<sup>2</sup> of 70 and must then retire<sup>3</sup>. The Lord Chancellor may, if he thinks fit, remove a judicial member from office on the ground of incapacity or misbehaviour<sup>4</sup>, but only with the concurrence of the appropriate senior judge<sup>5</sup>. A judicial member may at any time by notice in writing to the Lord Chancellor resign his office<sup>5</sup>.

Subject to the above<sup>6</sup> and to the provisions relating to remuneration<sup>7</sup>, a judicial member must hold and vacate office in accordance with such terms and conditions as may be determined by the Lord Chancellor at the time of his appointment and will, on ceasing to hold office, be eligible for reappointment<sup>8</sup>. A member of the tribunal appointed by the Secretary of State must hold and vacate office in accordance with such terms and conditions (both as to his term of office and otherwise) as may be determined by the Secretary of State at the time of his appointment and will, on ceasing to hold office, be eligible for reappointment<sup>9</sup>. A person must not be appointed as a member of the tribunal by the Secretary of State for a term extending beyond the end of the completed year of service in which he reaches 70<sup>10</sup>. Where the Secretary of State considers it desirable in the public interest that a person should be appointed for a term exceeding that allowed<sup>11</sup>, that person may be appointed for such term, not extending beyond the date on which he reaches 75, as the Secretary of State thinks fit<sup>12</sup>. A member appointed by the Secretary of State may at any time by notice in writing to the Secretary of State resign his office<sup>13</sup>.

1 For the meaning of 'judicial member' see PARA 253 ante.

2 See PARA 1280 note 19 post.

3 Transport Act 1985 s 117(2), Sch 4 para 3(1) (amended by the Judicial Pensions and Retirement Act 1993 ss 26, 31, Sch 6 para 57). This is expressed to be subject to the Transport Act 1985 Sch 4 para 3(2) (repealed), Sch 4 para 3(3)-(4) (see the text and notes 4-5 infra) and to the Judicial Pensions and Retirement Act 1993 s 26(4)-(6) (power to authorise continuance in office up to the age of 75: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 725).

4 Transport Act 1985 Sch 4 para 3(3). The Lord Chancellor must consult the Secretary of State before exercising any of his powers under Sch 4 para 3 (as amended): Sch 4 para 15 (amended by the Transfer of Functions (Transport Tribunal) Order 1989, SI 1989/495, art 2; and the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999, SI 1999/678, art 2(1), Schedule). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 Transport Act 1985 Sch 4 para 3(3A) (added by the Constitutional Reform Act 2005 s 15(1), Sch 4 para 179(1), (2)). The appropriate senior judge is the Lord Chief Justice of England and Wales, unless the judicial member who is to be removed exercises functions wholly or mainly in Scotland, in which case it is the Lord President of the Court of Session: Transport Act 1985 Sch 4 para 3(3B) (added by the Constitutional Reform Act 2005 Sch 4 para 179(2)). For the purposes of the Transport Act 1985, 'functions' includes powers, duties and obligations: s 137(1).

5 Ibid Sch 4 para 3(4).

6 Ie subject to ibid Sch 4 para 3(1)-(4) (as amended): see the text and notes 3-5 supra.

7 Ie ibid Sch 4 para 6: see PARA 255 post.

8 Ibid Sch 4 para 3(5).

9 Ibid Sch 4 para 4(1).

10 Ibid Sch 4 para 4(2), which is expressed to be subject to Sch 4 para 4(3) (see the text and note 12 infra).

11 Ie under ibid Sch 4 para 4(2): see the text and note 10 supra.

12 Ibid Sch 4 para 4(3).

13 Ibid Sch 4 para 4(4).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/ (4) CONSTITUTION AND JURISDICTION OF THE TRANSPORT TRIBUNAL/255. Remuneration and expenses of staff.

## **255. Remuneration and expenses of staff.**

The Lord Chancellor may make available to the Transport Tribunal such staff as he considers necessary for assisting the tribunal in the proper execution of its duties<sup>1</sup>. There must be paid to the members of the tribunal such remuneration as the Lord Chancellor may with the consent of the Treasury determine<sup>2</sup>. Any remuneration so payable and any other expenses of the tribunal must be met by the Lord Chancellor<sup>3</sup>.

1 Transport Act 1985 s 117(2), Sch 4 para 5 (amended by the Transfer of Functions (Transport Tribunal) Order 1989, SI 1989/495, art 2). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 Transport Act 1985 Sch 4 para 6 (amended by the Transfer of Functions (Transport Tribunal) Order 1989, SI 1989/495, art 2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

3 Transport Act 1985 Sch 4 para 7 (amended by the Transfer of Functions (Transport Tribunal) Order 1989, SI 1989/495, art 2).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/ (4) CONSTITUTION AND JURISDICTION OF THE TRANSPORT TRIBUNAL/256. Powers and proceedings.

## **256. Powers and proceedings.**

The Transport Tribunal has for the purpose of the exercise of any of its functions<sup>1</sup> full jurisdiction to hear and determine all matters whether of law or of fact<sup>2</sup>. As respects the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry on and inspection of property, and other matters necessary or proper for the due exercise of its jurisdiction the tribunal has all such powers, rights and privileges as are vested in the High Court<sup>3</sup>. Execution may be had of any order of the tribunal as if it were an order of the High Court<sup>4</sup>.

On an appeal from any determination of a traffic commissioner<sup>5</sup> under the Public Passenger Vehicles Act 1981<sup>6</sup>, the Goods Vehicles (Licensing of Operators) Act 1995<sup>7</sup>, the Transport Act 1985 or the Road Transport (Passenger Vehicles Cabotage) Regulations 1999<sup>8</sup>, the tribunal has power to make such order as it thinks fit or to remit the matter to the traffic commissioner for rehearing and determination by him in any case where it considers it appropriate, and any such order is binding on the traffic commissioner<sup>9</sup>. The tribunal may not on any such appeal take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal<sup>10</sup>.

The president or, in his absence, such one of the other judicial members<sup>11</sup> as the president or (if the president is unable for any reason to exercise the power conferred on him<sup>12</sup>) the Lord Chief Justice may direct, must preside at any sitting of the tribunal<sup>13</sup>, and is referred to as the presiding member<sup>14</sup>. If at any sitting of the tribunal the members sitting are evenly divided as to

any decision, the presiding member has a second or casting vote, but otherwise decisions of the tribunal are by a majority of the members sitting<sup>15</sup>.

Subject to the provisions regarding the presiding member<sup>16</sup>, the Lord Chancellor may from time to time make general rules governing the procedure and practice of the tribunal and generally for carrying into effect the tribunal's duties and powers<sup>17</sup>. Such rules may provide for:

- 64 (1) the awarding of costs by the tribunal<sup>18</sup>;
- 65 (2) the reference of any question to a member of the tribunal, or to any other person appointed by it, for report after holding a local inquiry<sup>19</sup>;
- 66 (3) the review by the tribunal of decisions previously given by it<sup>20</sup>;
- 67 (4) the number of members of the tribunal to constitute a quorum<sup>21</sup>;
- 68 (5) enabling the tribunal to dispose of any proceedings notwithstanding that in the course of those proceedings there has been a change in the persons sitting as members of the tribunal<sup>22</sup>; and
- 69 (6) the right of audience before the tribunal<sup>23</sup>.

Such rules may also, subject to the consent of the Treasury, prescribe the scale of fees for and in connection with proceedings before the tribunal<sup>24</sup>.

The Secretary of State<sup>25</sup> must give to the tribunal such assistance it may reasonably require<sup>26</sup>. The Secretary of State must place at the disposal of the tribunal any information in his possession which he considers will be of assistance to the tribunal in connection with any matter before it, and is entitled to appear and be heard in any proceedings before the tribunal<sup>27</sup>.

The tribunal may sit in any part of Great Britain in such place or places as may be convenient for the determination of the proceedings before it<sup>28</sup>.

1 For the meaning of 'functions' see PARA 254 note 5 ante.

2 Transport Act 1985 s 117(2), Sch 4 para 8(1), which is expressed to be subject to Sch 4 para 9(2) (see the text and note 10 infra). Although it is desirable that a series of reasoned judgments disclosing the principles on which the tribunal proceeds should be built up, the tribunal has a duty to decide each case as a matter of discretion, and should therefore not regard itself as bound by its own previous decisions nor make rules so as to prevent itself or the licensing authority from examining each case on its merits. The tribunal may substitute its own decision for that of the licensing authority, but when it sits as an appellate tribunal without witnesses, it is not free to substitute its own findings of fact without good cause, and if it does so it commits an error of law: *Merchandise Transport Ltd v British Transport Commission* [1962] 2 QB 173, [1961] 3 All ER 495, CA.

3 Transport Act 1985 Sch 4 para 8(2).

4 Ibid Sch 4 para 8(3).

5 For the meaning of 'traffic commissioner' see PARA 1138 note 7 post; definition applied by virtue of ibid s 137(1), (2).

6 As to appeals from any determination of a traffic commissioner under the Public Passenger Vehicles Act 1981 see PARA 1164 post.

7 As to rights of appeal from any determination of a traffic commissioner under the Goods Vehicles (Licensing of Operators) Act 1995 see PARA 1369 post.

8 I.e. the Road Transport (Passenger Vehicles Cabotage) Regulations 1999, SI 1999/3413 (as amended): see PARA 1656 post.

9 Transport Act 1985 Sch 4 para 9(1) (amended by the Goods Vehicles (Licensing of Operators) Act 1995 s 60(1), (2), Sch 7 para 10, Sch 8 Pt I; and the Road Transport (Passenger Vehicles Cabotage) Regulations 1999, SI 1999/3413, reg 10(5)).

10 Transport Act 1985 Sch 4 para 9(2).

- 11 For the meaning of 'judicial member' see PARA 253 ante.
- 12 Ie by the Transport Act 1985 Sch 4 para 10(1) (as amended): see the text and note 13 infra.
- 13 Ibid Sch 4 para 10(1) (amended by the Constitutional Reform Act 2005 s 15(1), Sch 4 para 179(1), (3)(a)). Before exercising his functions under the Transport Act 1985 Sch 4 para 10(1) (as amended), the Lord Chief Justice must: (1) consult the Lord Chancellor; and (2) obtain the agreement of the Lord President of the Court of Session: Sch 4 para 10(1A) (added by the Constitutional Reform Act 2005 Sch 4 para 179(3)(b)). The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4): see CONSTITUTIONAL LAW AND HUMAN RIGHTS) to exercise these functions of his: Transport Act 1985 Sch 4 para 10(4) (added by the Constitutional Reform Act 2005 Sch 4 para 179(3)(c)). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 14 Transport Act 1985 Sch 4 para 10(2).
- 15 Ibid Sch 4 para 10(3).
- 16 Ie subject to ibid Sch 4 para 10 (as amended): see the text and notes 11-15 supra.
- 17 Ibid Sch 4 para 11(1) (amended by the Transfer of Functions (Transport Tribunal) Order 1989, SI 1989/495, art 2). As to the rules governing procedure and practice see the Transport Tribunal Rules 2000, SI 2000/3226 (amended by SI 2001/4041; SI 2002/643).
- 18 Transport Act 1985 Sch 4 para 11(2)(a).
- 19 Ibid Sch 4 para 11(2)(b).
- 20 Ibid Sch 4 para 11(2)(c).
- 21 Ibid Sch 4 para 11(2)(d).
- 22 Ibid Sch 4 para 11(2)(e).
- 23 Ibid Sch 4 para 11(2)(f).
- 24 Ibid Sch 4 para 11(3). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.
- 25 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 26 Transport Act 1985 Sch 4 para 12(1).
- 27 Ibid Sch 4 para 12(2).
- 28 Ibid Sch 4 para 13(1). For the meaning of 'Great Britain' see PARA 205 note 3 ante.

## **UPDATE**

### **256 Powers and proceedings**

NOTE 17--SI 2000/3226 further amended: SI 2008/2142.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/ (4) CONSTITUTION AND JURISDICTION OF THE TRANSPORT TRIBUNAL/257. Appeals.

### **257. Appeals.**

An appeal lies, in accordance with rules made by the Lord Chancellor, from the Transport Tribunal to the Court of Appeal<sup>1</sup>. No appeal lies from the tribunal upon a question of fact or locus standi<sup>2</sup>. An appeal must not be brought except in conformity with such rules of court as may from time to time be made in relation to such appeals by the authority having power to make rules of court for the Court of Appeal<sup>3</sup>. On the hearing of an appeal the Court of Appeal may draw all such inferences as are not inconsistent with the facts expressly found and are necessary for determining the question of law, and may make any order which the tribunal could have made, and also any such further or other order as may be just<sup>4</sup>. The costs of and incidental to an appeal are at the discretion of the court, but neither the tribunal nor any member of the tribunal is liable to any costs by reason or in respect of any appeal<sup>5</sup>. The decision of the Court of Appeal is final<sup>6</sup>. However, where there has been a difference of opinion between the Court of Appeal and the Court of Session in Scotland, either of those courts in which a matter affected by such a difference of opinion is pending may give leave to appeal to the House of Lords on such terms as to costs as that court must determine<sup>7</sup>.

1 Transport Act 1985 s 117(2), Sch 4 para 14(1) (amended by the Transfer of Functions (Transport Tribunal) Order 1989, SI 1989/495, art 2). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 Transport Act 1985 Sch 4 para 14(2).

3 Ibid Sch 4 para 14(3). See generally CIVIL PROCEDURE.

4 Ibid Sch 4 para 14(4).

5 Ibid Sch 4 para 14(5).

6 Ibid Sch 4 para 14(6).

7 See ibid Sch 4 para 14(7). As from a day to be appointed, Sch 4 para 14(7) is amended by the Constitutional Reform Act 2005 s 40(4), Sch 9 para 42(1), (3) so as to refer to the Supreme Court instead of the House of Lords. At the date at which this volume states the law no such day had been appointed.

## UPDATE

### 257 Appeals

TEXT AND NOTE 1--Permission to appeal is not required: *Banga (t/a Banga Travel) v Secretary of State for the Transport Department* [2008] All ER (D) 25 (Jan).

NOTE 7--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/ (4) CONSTITUTION AND JURISDICTION OF THE TRANSPORT TRIBUNAL/258. Annual report.

### 258. Annual report.

The Transport Tribunal must make annually a report of all its proceedings to the Lord Chancellor and the report must be laid before Parliament<sup>1</sup>.

1 Transport Act 1985 s 117(2), Sch 4 para 16 (amended by the Transfer of Functions (Transport Tribunal) Order 1989, SI 1989/495, art 2). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(5) DISABLED PERSONS TRANSPORT ADVISORY COMMITTEE/259. The Disabled Persons Transport Advisory Committee and Secretary of State's guidance.

## **(5) DISABLED PERSONS TRANSPORT ADVISORY COMMITTEE**

### **259. The Disabled Persons Transport Advisory Committee and Secretary of State's guidance.**

The Disabled<sup>1</sup> Persons Transport Advisory Committee was established under the Transport Act 1985<sup>2</sup>. The Committee consists of a chairman appointed by the Secretary of State<sup>3</sup>, and not less than 10, nor more than 20, other members appointed by the Secretary of State after consultation with such bodies as appear to him to be representative of the interests of persons likely to be significantly concerned with matters within the competence of the Committee<sup>4</sup>. The Secretary of State may appoint one or more members of the Committee to be deputy chairman or, as the case may be, deputy chairmen of the Committee<sup>5</sup>. The Secretary of State must, so far as is reasonably practicable, secure that at all times at least half of the membership of the Committee consists of persons who are disabled<sup>6</sup>.

It is the duty of the Committee to consider any matter, relating to the needs of disabled persons in connection with public passenger transport, which is referred to it by the Secretary of State or which it thinks it appropriate to consider without such a reference, and to give such advice to the Secretary of State on any matter which it has considered as it thinks appropriate<sup>7</sup>. The Committee must make an annual report to the Secretary of State, who must lay a copy of it before each House of Parliament<sup>8</sup>. The Secretary of State must from time to time issue guidance as to measures that may be taken with a view to: (1) making access to vehicles used in the provision of public passenger transport services<sup>9</sup> by road<sup>10</sup> easier for disabled persons<sup>11</sup>; and (2) making such vehicles better adapted to the needs of disabled persons<sup>12</sup>. The Secretary of State must consult the Committee before issuing any such guidance<sup>13</sup>.

The Secretary of State must make arrangements for the Committee to be provided with such administrative support and office accommodation as he considers appropriate<sup>14</sup>. He must also provide the Committee with funds with which to pay to its members such travelling and other allowances, and to defray such other expenses in connection with its functions<sup>15</sup>, as he may determine<sup>16</sup>.

Any person appointed to be a member of the Committee holds and vacates office in accordance with the terms of his appointment and, on ceasing to be a member of the Committee, is eligible for reappointment<sup>17</sup>. Any person so appointed may at any time resign his office by written notice given to the Secretary of State<sup>18</sup>.

The Committee must meet whenever convened by the chairman and at least four times a year<sup>19</sup>. Without prejudice to the discretion of the chairman to call a meeting whenever he thinks fit, he must call one when required to do so by any five members of the Committee<sup>20</sup>. Minutes must be kept of the proceedings of every meeting of the Committee<sup>21</sup>. The Committee may determine its own procedure, including the quorum at its meetings<sup>22</sup>; and it may delegate the exercise and performance of any of its functions to such of its sub-committees as it thinks fit<sup>23</sup>.

The validity of any proceedings of the Committee are not affected by any vacancy amongst the members, by any defect in the appointment of a member or by any failure to comply with the



requirement of at least half of the membership of the committee consisting of disabled persons<sup>24</sup>.

1 As to the power to make provision for the interpretation of 'disabled': see the Chronically Sick and Disabled Persons Act 1970 s 28; and SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1063.

2 Transport Act 1985 s 125(1).

3 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 Transport Act 1985 s 125(2).

5 Ibid s 125(4).

6 Ibid s 125(3).

7 Ibid s 125(5).

8 Ibid s 125(6).

9 For the meaning of 'public passenger transport services' see PARA 1252 note 3 post.

10 For the meaning of 'road' see PARA 206 ante.

11 Transport Act 1985 s 125(7)(a).

12 Ibid s 125(7)(b).

13 Ibid s 125(8).

14 Ibid s 125(9), Sch 5 para 1.

15 For the meaning of 'functions' see PARA 254 note 5 ante.

16 Transport Act 1985 Sch 5 para 2.

17 Ibid Sch 5 para 3(1).

18 Ibid Sch 5 para 3(2).

19 Ibid Sch 5 para 4(1).

20 Ibid Sch 5 para 4(2).

21 Ibid Sch 5 para 4(3).

22 Ibid Sch 5 para 4(4), which is expressed to be subject to Sch 5 para 4(1)-(3) (see the text to notes 19-21 supra).

23 Ibid Sch 5 para 5.

24 Ibid Sch 5 para 6. The text refers to the requirement imposed by s 125(3): see the text to note 6 supra.

## UPDATE

### **259 The Disabled Persons Transport Advisory Committee and Secretary of State's guidance**

TEXT AND NOTES 15, 16--Transport Act 1985 Sch 5 para 2 amended: Local Transport Act 2008 s 72(2).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/1. LEGISLATION AND ADMINISTRATION/(5) DISABLED PERSONS TRANSPORT ADVISORY COMMITTEE/259A. Public Transport Users' Committee for England.

## **259A. Public Transport Users' Committee for England.**

The following provisions are not yet in force.

### **1. Constitution**

The Secretary of State may by order establish a body corporate, to be known as the Public Transport Users' Committee for England ('the Committee'): Transport Act 1985 s 125A(1) (added by the Local Transport Act 2008 s 73(1)). The Secretary of State may by order provide for a body established under s 125A(1) to be known by a different name, and may make such provision, including provision amending, repealing or revoking any provision of the 1985 Act or any other enactment, as appears to the Secretary of State to be necessary in consequence of the order: Transport Act 1985 s 125A(2), (6). An order under s 125A(1) may include provision (1) about the status and membership of the Committee; (2) about the proceedings of the Committee; (3) about the declaration by members of any financial or other interests, and the recording of such interests; (4) about officers and staff of the Committee; (5) about the discharge of the functions of the Committee; (6) about the making of reports by the Committee to the Secretary of State or such other persons as the Secretary of State may determine; (7) about the making of payments to or in respect of officers, staff and members of the Committee; (8) about the payment of pensions and the making of other payments to or in respect of former officers and staff of the Committee; (9) about the keeping of accounts by the Committee and their audit and submission to the Secretary of State; (10) about the acquisition and disposal by the Committee of property, rights and liabilities; (11) authorising the Committee to charge for any services it provides in the discharge of any of its functions; (12) requiring the Committee to have regard to the policies and activities of such other persons or bodies as the Secretary of State may determine; and (13) for the transfer of staff, property, rights and liabilities to the Committee: s 125A(3). The Secretary of State may make payments to the Committee of such amounts, at such times, and on such conditions, if any, as the Secretary of State considers appropriate: s 125A(4). The Secretary of State may by order make provision for the transfer of staff, property, rights and liabilities from the Committee to any other person: s 125A(5).

### **2. Functions of the Committee**

The Committee may consider and make recommendations or representations to the Secretary of State about any matter relating to (1) prescribed public passenger transport services, or public passenger transport services that are of a prescribed description, to the extent that they operate in England, or (2) prescribed public passenger transport facilities in England, or public passenger transport facilities in England that are of a prescribed description: Transport Act 1985 s 125B(1) (ss 125B, 125C added by the Local Transport Act 2008 s 73(1)). The Committee must consider and make recommendations to the Secretary of State about any such matter if asked to do so by the Secretary of State: Transport Act 1985 s 125B(2). The Secretary of State may by order (a) confer further functions on the Committee; (b) remove functions from the Committee; (c) make changes to any functions of the Committee; and (d) transfer any functions of the Committee to another person: s 125B(3). An order under s 125B(3) may confer a function on the Committee, or make changes to a function of the Committee, only if the new function, or the function as changed, relates to public passenger transport services, so far as operating in England, or public passenger transport facilities in England: s 125B(4). The

functions that may be conferred on the Committee under head (a) above include a power (i) to enter into arrangements with another body for discharging functions on behalf of that body in relation to England; (ii) to give effect to any such arrangements; and (iii) to enter into arrangements with another body for that body to discharge any functions of the Committee on behalf of the Committee: s 125B(5). Where an order under s 125B(3) confers on the Committee power to make recommendations or representations to a body or person, the Secretary of State may by order confer on the body or person functions in respect of such recommendations and representations, but only if the new function relates to public passenger transport services, so far as operating in England, or public passenger transport facilities in England: Transport Act 1985 s 125C(1)-(3). The discharge of a function by the Committee on behalf of another body does not affect the responsibility of the body for the discharge of the function, and the discharge of a function by another body on behalf of the Committee does not affect the responsibility of the Committee for the discharge of the function: s 125B(6), (7).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(1) IN GENERAL/260. Power to make regulations.

## **2. CONSTRUCTION OF VEHICLES**

### **(1) IN GENERAL**

#### **260. Power to make regulations.**

The Secretary of State<sup>1</sup> may make regulations generally as to the use of motor vehicles<sup>2</sup> and trailers<sup>3</sup> on roads, their construction and equipment<sup>4</sup> and the conditions under which they may be so used<sup>5</sup>. In particular, the regulations may make provision with respect to any of the following matters:

- 70 (1) the width, height and length of motor vehicles and trailers and the load carried by them, the diameter of wheels, and the width, nature and condition of tyres, of motor vehicles and trailers<sup>6</sup>;
- 71 (2) the emission or consumption of smoke, fumes or vapour and the emission of sparks, ashes and grit<sup>7</sup>;
- 72 (3) noise<sup>8</sup>;
- 73 (4) the maximum weight unladen<sup>9</sup> of heavy locomotives<sup>10</sup> and heavy motor cars<sup>11</sup>, and the maximum weight laden<sup>12</sup> of motor vehicles and trailers, and the maximum weight to be transmitted to the road<sup>13</sup> or any specified area of the road by a motor vehicle or trailer of any class<sup>14</sup> or by any part or parts of such a vehicle or trailer in contact with the road, and the conditions under which the weights may be required to be tested<sup>15</sup>;
- 74 (5) the particulars to be marked on motor vehicles and trailers, by means of the fixing of plates or otherwise, and the circumstances in which they are to be marked<sup>16</sup>;
- 75 (6) the towing of or drawing of vehicles by motor vehicles<sup>17</sup>;
- 76 (7) the number and nature of brakes, and securing that brakes, silencers and steering gear are efficient and kept in proper working order<sup>18</sup>;
- 77 (8) lighting equipment and reflectors<sup>19</sup>;
- 78 (9) the testing and inspection, by persons authorised by or under the regulations, of the brakes, silencers, steering gear, tyres, lighting equipment and reflectors of motor vehicles and trailers on any premises where they are, if the owner of the premises consents<sup>20</sup>;

- 79 (10) speed limiters<sup>21</sup>;  
 80 (11) the appliances to be fitted for:
- 1
1. (a) signalling the approach of a motor vehicle<sup>22</sup>; or
  2. (b) enabling the driver<sup>23</sup> of a motor vehicle to become aware of the approach of another vehicle from the rear<sup>24</sup>; or
  3. (c) intimating any intended change of speed or direction of a motor vehicle<sup>25</sup>,
- 2
- 81 and the use of any such appliance, and for securing that any such appliance is efficient and kept in proper working order<sup>26</sup>; and
- 82 (12) for prohibiting the use of appliances fitted to motor vehicles for signalling their approach, being appliances for signalling by sound, at any times, or on or in any roads or localities, specified in the regulations<sup>27</sup>.

The Secretary of State may, as respects goods vehicles<sup>28</sup>, make regulations prescribing other descriptions of weight which are not to be exceeded in the case of such vehicles<sup>29</sup> and providing that weights of any description or other particulars which are to be marked on particular goods vehicles may be determined in accordance with regulations relating to the determination of weights<sup>30</sup>.

Regulations under these provisions with respect to lighting equipment and reflectors: (i) may require that lamps be kept lit at such times and in such circumstances as may be specified in the regulations<sup>31</sup>; and (ii) may extend, in like manner as to motor vehicles and trailers, to vehicles of any description used on roads, whether or not they are mechanically propelled<sup>32</sup>.

Regulations under these provisions with respect to speed limiters may include provision: (A) as to the checking and sealing of speed limiters by persons authorised in accordance with the regulations and the making of charges by them<sup>33</sup>; (B) imposing or providing for the imposition of conditions to be complied with by authorised persons<sup>34</sup>; and (C) as to the withdrawal of authorisations<sup>35</sup>.

Different regulations may be made under these provisions as respects different classes of vehicles or as respects the same class of vehicles in different circumstances and as respects different times of the day or night and as respects roads in different localities<sup>36</sup>.

In framing regulations under these provisions prescribing a weight of any description which is not to be exceeded in the case of goods vehicles of a class for which a certificate of conformity<sup>37</sup> or Minister's approval certificate<sup>38</sup> may be issued<sup>39</sup>, the Secretary of State must have regard to the design weight of the like description determined for vehicles of that class<sup>40</sup> and must secure that the first-mentioned weight does not exceed the design weight<sup>41</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'motor vehicle' see PARA 210 ante. As to use of vehicles see PARA 583 et seq post.

3 For the meaning of 'trailer' see PARA 210 ante. As to trailers see PARA 596 et seq post.

4 See PARA 267 et seq post.

5 Road Traffic Act 1988 s 41(1). The provisions of s 41(2)-(4) (as amended) (see the text and notes 6-32 infra) do not affect the generality of s 41(1): s 41(1). As to temporary exemption from the application of regulations under s 41 (as amended) see s 43 (as amended); and PARA 266 post. As to the power to prohibit the driving of foreign goods vehicles or public service vehicles where regulations under s 41 (as amended) have been, or will be, contravened see the Road Traffic (Foreign Vehicles) Act 1972 s 1, Sch 2 (as amended); and PARA 1644 post.

The following regulations have been made under the Road Traffic Act 1988 s 41 (as amended) or have effect as if so made: the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742 (as amended) (see

PARA 529 et seq post); the International Carriage of Dangerous Goods (Rear Marking of Motor Vehicles) Regulations 1975, SI 1975/2111; the Public Service Vehicles (Conditions of Fitness, Equipment, Use and Certification) Regulations 1981, SI 1981/257 (as amended) (see PARA 1134 post); the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748 (as amended) (see PARA 1134 post); the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078 (as amended) (see PARA 267 et seq post); the Road Vehicles Lighting Regulations 1989, SI 1989/1796 (as amended) (see PARA 378 et seq post); and the Road Vehicles (Authorised Weight) Regulations 1998, SI 1998/3111 (see PARA 584 post).

6 Road Traffic Act 1988 s 41(2)(a). As to dimensions of vehicles see PARA 271 et seq post. As to loads see PARA 584 et seq post.

7 Ibid s 41(2)(b). As to the control of emissions see PARA 345 et seq post. As from a day to be appointed, regulations may also make provision for the modification of motor vehicles to enable them to be propelled using fuel stored under pressure: s 41(2)(ba) (prospectively added by the Road Safety Act 2006 s 56(1)-(3)). Regulations under the Road Traffic Act 1988 s 41 (as amended) with respect to the modification of motor vehicles to enable them to be propelled using fuel stored under pressure may include provision: (1) as to the examination, by persons authorised in accordance with regulations, of motor vehicles that have been so modified, the issuing of certificates by them in respect of such vehicles and the making of charges by them; (2) requiring authorised persons to notify the Secretary of State of any such examinations carried out by them; (3) as to appeals against any decision by an authorised person not to issue a certificate; (4) as to applications to the Secretary of State for authorisation and charges in connection with them; (5) imposing or providing for the imposition of conditions to be complied with by authorised persons; (6) as to the withdrawal of authorisations. s 41(2A) (prospectively added by the Road Safety Act 2006 s 56(4)). At the date at which this volume states the law no such day had been appointed.

8 Ibid s 41(2)(c). As to the control of noise see PARA 610 et seq post.

9 As to the method of calculating the weight of motor vehicles see PARA 209 ante.

10 For the meaning of 'heavy locomotive' see PARA 217 ante.

11 For the meaning of 'heavy motor car' see PARA 213 ante. For the meaning of 'motor car' see PARA 212 ante.

12 As to laden weight see PARA 584 post.

13 For the meaning of 'road' see PARA 206 ante.

14 As to classes of vehicles see PARA 208 ante.

15 Road Traffic Act 1988 s 41(2)(d).

16 Ibid s 41(2)(e) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 50). As to plates and markings see PARA 364 et seq post.

17 Road Traffic Act 1988 s 41(2)(f).

18 Ibid s 41(2)(g). As to brakes see PARA 287 et seq post; as to steering see PARA 300 post; and as to silencers see PARA 345 et seq post.

19 Ibid s 41(2)(h). As to lighting of vehicles see PARA 378 et seq post.

20 Ibid s 41(2)(j). As to testing and inspection see PARA 375 post.

21 Ibid s 41(2)(jj) (added by the Road Traffic Act 1991 Sch 4 para 50). As to speed limiters see PARA 308 et seq post.

22 Road Traffic Act 1988 s 41(2)(k)(i).

23 For the meaning of 'driver' see PARA 207 ante.

24 Road Traffic Act 1988 s 41(2)(k)(ii).

25 Ibid s 41(2)(k)(iii).

26 Ibid s 41(2)(k). As to equipment of vehicles see PARA 287 et seq post.

27 Ibid s 41(2)(l). As from a day to be appointed, regulations may also make provision for speed assessment equipment detection devices: s 41(2)(m) (prospectively added by the Road Safety Act 2006 s 18(1)(a)). 'Speed assessment equipment detection device' means a device the purpose, or one of the purposes, of which is to detect, or interfere with the operation of, equipment used to assess the speed of motor vehicles: Road Traffic Act 1988 s 41(7) (definition prospectively added by the Road Safety Act 2006 s 18(1)(b)). At the date at which this volume states the law no such day had been appointed.

28 For the meaning of 'goods vehicle' see PARA 220 ante.

29 Road Traffic Act 1988 s 41(3)(a).

30 Ibid s 41(3)(d). Regulations relating to the determination of weights are made under s 49 (as amended): see PARA 679 post.

31 Ibid s 41(4)(a). As to the lighting of vehicles see PARA 378 et seq post.

32 Ibid s 41(4)(b). As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.

33 Ibid s 41(4A)(a) (s 41(4A) added by the Road Traffic Act 1991 Sch 4 para 50(4)).

34 Road Traffic Act 1988 s 41(4A)(b) (as added: see note 33 supra).

35 Ibid s 41(4A)(c) (as added: see note 33 supra). As to speed limiters see PARA 308 et seq post.

36 Ibid s 41(5).

37 For the meaning of 'certificate of conformity' see PARA 705 note 10 post.

38 For the meaning of 'Minister's approval certificate' see PARA 706 post.

39 Ie under the Road Traffic Act 1988 s 57 (as amended) (see PARA 705 post) or s 58 (see PARA 706 post).

40 Ie determined by virtue of ibid s 54: see PARA 702 post.

41 Ibid s 41(6).

## UPDATE

### 260-266 In General

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(1) IN GENERAL/261. Breach of requirement as to brakes, steering-gear or tyres.

### 261. Breach of requirement as to brakes, steering-gear or tyres.

A person who:

- 83 (1) contravenes or fails to comply with a construction and use requirement<sup>1</sup> as to brakes, steering-gear or tyres<sup>2</sup>; or
- 84 (2) uses on a road<sup>3</sup> a motor vehicle<sup>4</sup> or trailer<sup>5</sup> which does not comply with such a requirement, or causes or permits<sup>6</sup> a motor vehicle or trailer to be so used<sup>7</sup>,

is guilty of an offence<sup>8</sup>.

1 'Construction and use requirements' means requirements, whether applicable generally or at specified times or in specified circumstances, imposed under the Road Traffic Act 1988 s 41 (as amended) (see PARA 260 ante); s 41(7). As to the construction of vehicles see PARA 267 et seq post; and as to the use of vehicles see PARA 583 et seq post.

2 Ibid s 41A(a) (s 41A added by the Road Traffic Act 1991 s 8(2)). As to brakes, steering gear and tyres see PARA 287 et seq post.

3 For the meaning of 'road' see PARA 206 ante.

4 For the meaning of 'motor vehicle' see PARA 210 ante.

5 For the meaning of 'trailer' see PARA 210 ante.

6 To 'cause' a user involves some express or positive mandate from the person causing to the other person, or some authority from the former to the latter, arising in the circumstances of the case; to 'permit' is a looser and vaguer term which may denote permission which is merely inferred or an express permission, general or particular, as distinguished from a mandate: *McLeod (or Houston) v Buchanan* [1940] 2 All ER 179 at 187, HL, per Lord Wright; followed in *Shave v Rosner* [1954] 2 QB 113, [1954] 2 All ER 280, DC (where it was held that to cause involves some degree of dominance or control over the person who uses the vehicle). To establish a charge of permitting the use of a vehicle in contravention of regulations it must be proved that the defendant or some person for whose acts he is responsible had knowledge of the facts constituting the contravention: *James & Son Ltd v Smeed* [1955] 1 QB 78, [1954] 3 All ER 273, DC (applied in *Ross Hillman Ltd v Bond* [1974] QB 435, [1974] 2 All ER 287, DC); *Hutchings v Giles* [1955] Crim LR 784, DC. See also *Forsyth v Phillips* (1963) 108 Sol Jo 36, DC (employers shut their eyes to the obvious); *John Henshall (Quarries) Ltd v Harvey* [1965] 2 QB 233, [1965] 1 All ER 725, DC (company was not guilty of aiding and abetting an illegal action done by a minor employee); *Grays Haulage Co Ltd v Arnold* [1966] 1 All ER 896, [1966] 1 WLR 534, DC (knowledge was the essence of permitting, there being no actual knowledge and no evidence that the appellants knew of circumstances which would have fixed them with suspicion); *Dixon Bool Transport Ltd v Forsyth* [1967] Crim LR 52, DC. Lack of such knowledge is, however, in general no defence to a charge against an employer of using or causing the use of the vehicle in contravention of an absolute prohibition: *Green v Burnett* [1955] 1 QB 78 at 86, [1954] 3 All ER 273 at 275, DC; *Hunter v Clark* 1956 JC 59. Cf *Rushton v Martin* [1952] WN 258, DC, where the person charged was the employer's group manager. A person cannot permit if he is not in a position to forbid: *Goodbarne v Buck* [1940] 1 KB 771, [1940] 1 All ER 613, CA; *Lloyd v Singleton* [1953] 1 QB 357, [1953] 1 All ER 291, DC. A driver has been held to be using a vehicle even though he was driving under the instructions of another person (*Gifford v Whittaker* [1942] 1 KB 501, [1942] 1 All ER 604, DC); but see *Hamilton v Blair and Meechan* 1962 SLT 69, where the owner hiring out the vehicle was held to be the user whilst the hirer had it (distinguished in *Mickleborough v BRS (Contracts) Ltd* [1977] RTR 389, DC). Where a garage proprietor had redelivered a vehicle to the owner after repair, he ceased to have any control over it, and consequently did not cause it to be used subsequently by the owner while it was defective: *Shave v Rosner* supra. In the case of a limited company, unlawful use is caused where someone exercising a directing mind over the company's affairs has knowledge of the facts rendering the user unlawful: *Ross Hillman Ltd v Bond* supra. A corporation may, through its agent, be guilty of aiding and abetting a breach of regulations: *Provincial Motor Cab Co Ltd v Dunning* [1909] 2 KB 599, DC. Where an offence is of using or causing or permitting a use, a restricted meaning is given to 'using': see *Windle v Dunning & Son Ltd* [1968] 2 All ER 46, [1968] 1 WLR 552, DC (following *McLeod v Penman* 1962 JC 31 at 46, where Lord Clyde said that normally 'using' is applicable to the actual driver); *Carmichael & Sons (Worcester) Ltd v Cottle* [1971] RTR 11, DC (car-hire firm was held not to be using a car which was being driven by a hirer); *Garrett v Hooper* [1973] RTR 1, DC (a partner was held not to be using a car owned by the partnership and being driven by his co-partner on partnership business); *Crawford v Haughton* [1972] 1 All ER 535, [1972] 1 WLR 572, DC (an owner was held not to be using a vehicle being driven at his specific request and with his full knowledge by a person who was not his employee). See further INSURANCE vol 25 (2003 Reissue) PARA 720.

7 Road Traffic Act 1988 s 41A(b) (as added: see note 2 supra).

8 Ibid s 41A (as added: see note 2 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale if committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers or to a fine not exceeding level 4 on the standard scale in any other case; disqualification is discretionary; endorsement is obligatory; and 3 penalty points may be attributed: Road Traffic Offenders Act 1988 s 9, s 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry added by the Road Traffic Act 1991 s 26, Sch 2). An offence under the Road Traffic Act 1988 s 41A (as added) of breaching a requirement as to brakes, steering-gear or tyres is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3 (entry added by the Road Traffic Act 1991 s 48, Sch 4 para 112(2)). As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal

proceedings generally see PARA 1023 et seq post. For the meaning of 'goods vehicle' see PARA 220 ante. As to the exemption of certain special vehicles see PARA 376 post.

## UPDATE

### 260-266 In General

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(1) IN GENERAL/262. Breach of requirement as to weight applicable to goods and passenger vehicles.

### **262. Breach of requirement as to weight applicable to goods and passenger vehicles.**

A person who:

- 85 (1) contravenes or fails to comply with a construction and use requirement<sup>1</sup> as to any description of weight applicable to a goods vehicle<sup>2</sup> or a motor vehicle<sup>3</sup> or trailer<sup>4</sup> adapted to carry more than eight passengers<sup>5</sup>; or
- 86 (2) uses on a road<sup>6</sup> a vehicle which does not comply with such a requirement, or causes or permits<sup>7</sup> a vehicle to be so used<sup>8</sup>,

is guilty of an offence<sup>9</sup>.

In any proceedings for such an offence in which there is alleged a contravention of or failure to comply with a construction and use requirement as to any description of weight applicable to a goods vehicle, it is a defence to prove either<sup>10</sup>:

- 87 (a) that, at the time when the vehicle was being used on the road, it was proceeding to a weighbridge which was the nearest available one to the place where the loading of the vehicle was completed for the purpose of being weighed<sup>11</sup>, or it was proceeding from a weighbridge after being weighed to the nearest point at which it was reasonably practicable to reduce the weight to the relevant limit, without causing an obstruction on any road<sup>12</sup>; or
- 88 (b) in a case where the limit of that weight was not exceeded by more than 5 per cent, that that limit was not exceeded at the time when the loading of the vehicle was originally completed<sup>13</sup> and that since that time no person has made any addition to the load<sup>14</sup>.

1 For the meaning of 'construction and use requirements' see PARA 261 note 1 ante.

2 For the meaning of 'goods vehicle' see PARA 220 ante.

3 For the meaning of 'motor vehicle' see PARA 210 ante.

4 For the meaning of 'trailer' see PARA 210 ante.



5 Road Traffic Act 1988 s 41B(1)(a) (s 41B added by the Road Traffic Act 1991 s 8(2)). As to laden weight see PARA 584 et seq post.

6 For the meaning of 'road' see PARA 206 ante.

7 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

8 Road Traffic Act 1988 s 41B(1)(b) (as added: see note 5 supra).

9 Road Traffic Act 1988 s 41B(1) (as added: see note 5 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry added by the Road Traffic Act 1991 s 26, Sch 2). An offence under the Road Traffic Act 1988 s 41B (as added) of breaching a requirement as to weight in relation to goods and passenger vehicles is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3 (entry added by the Road Traffic Act 1991 s 48, Sch 4 para 112(2)). As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post. As to the exemption of certain special vehicles see PARA 376 post.

10 Road Traffic Act 1988 s 41B(2) (as added: see note 5 supra).

11 Ibid s 41B(2)(a)(i) (as added: see note 5 supra). The vehicle has to be proceeding to the nearest weighbridge actually available, not the nearest one known to the driver: *Vehicle and Operator Services Agency v F & S Gibbs Transport Services Ltd* [2006] EWHC 1109 (Admin), 170 JP 586, DC.

12 Road Traffic Act 1988 s 41B(2)(a)(ii) (as added: see note 5 supra).

13 Ibid s 41B(2)(b)(i) (as added: see note 5 supra).

14 Ibid s 41B(2)(b)(ii) (as added: see note 5 supra).

## UPDATE

### 260-266 In General

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### 263. Breach of requirement as to speed assessment equipment detection devices.

As from a day to be appointed, a person who:

- 89 (1) contravenes or fails to comply with a construction or use requirement<sup>1</sup> as to speed assessment equipment detection devices<sup>2</sup>; or
- 90 (2) uses on a road<sup>3</sup> a motor vehicle<sup>4</sup> or trailer<sup>5</sup> which does not comply with such a requirement, or causes or permits<sup>6</sup> a motor vehicle or trailer to be so used,

is guilty of an offence<sup>7</sup>.

1 For the meaning of 'construction and use requirements' see PARA 261 note 1 ante.

2 For the meaning of 'speed assessment equipment detection device' see PARA 260 note 27 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 For the meaning of 'motor vehicle' see PARA 210 ante.

5 For the meaning of 'trailer' see PARA 210 ante.

6 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

7 Road Traffic Act 1988 s 41C (prospectively added by the Road Safety Act 2006 s 18(2)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale if the offence was committed on a special road and level 3 on the standard scale in any other case: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry prospectively added by the Road Safety Act 2006 s 18(6)). 'Special road' in England and Wales has the same meaning as in the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 731): Road Traffic Offenders Act 1988 s 98(1) (definition prospectively added by the Road Safety Act 2006 s 18(4)). An offence under the Road Traffic Act 1988 s 41C (as added) is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3 (entry prospectively added by the Road Safety Act 2006 s 18(7)). At the date at which this volume states the law no day had been appointed for the commencement of these provisions. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post. As to the exemption of certain special vehicles see PARA 376 post.

## UPDATE

### 260-266 In General

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(1) IN GENERAL/264. Breach of requirements as to control of vehicle, mobile telephones etc.

### 264. Breach of requirements as to control of vehicle, mobile telephones etc.

A person who contravenes or fails to comply with a construction and use requirement<sup>1</sup>:

- 91 (1) as to not driving a motor vehicle<sup>2</sup> in a position which does not give proper control or a full view of the road and traffic ahead, or not causing or permitting<sup>3</sup> the driving of a motor vehicle by another person in such a position<sup>4</sup>; or
- 92 (2) as to not driving or supervising the driving of a motor vehicle while using a hand-held mobile telephone or other hand-held interactive communication device, or not causing or permitting the driving of a motor vehicle by another person using such a telephone or other device<sup>5</sup>,

is guilty of an offence<sup>6</sup>.

1 For the meaning of 'construction and use requirements' see PARA 261 note 1 ante.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

4 As to such a requirement see the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 104; and PARA 618 post.

5 As to such a requirement see *ibid* reg 110 (as added); and PARA 624 post.

6 Road Traffic Act 1988 s 41D (added by the Road Safety Act 2006 s 26(1)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale if committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers and level 3 on the standard scale in any other case: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry added by the Road Safety Act 2006 s 26(4)). For the meaning of 'goods vehicle' see PARA 220 ante. An offence under the Road Traffic Act 1988 s 41C (as added) is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3 (entry added by the Road Safety Act 2006 s 26(5)). As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 *et seq* post. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 *et seq* post. As to the exemption of certain special vehicles see PARA 376 post.

## UPDATE

### 260-266 In General

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### 265. Breach of other construction and use requirements.

A person who:

- 93 (1) contravenes or fails to comply with any construction or use requirement<sup>1</sup> other than a construction and use requirement: (a) as to brakes, steering-gear or tyres<sup>2</sup>; (b) as to any description of weight applicable to a goods vehicle<sup>3</sup> or a motor vehicle<sup>4</sup> or trailer<sup>5</sup> adapted to carry more than eight passengers<sup>6</sup>; (c) as to control of a vehicle, mobile telephones etc<sup>7</sup>; or (d) as from a day to be appointed, as to speed assessment equipment detection devices<sup>8</sup>; or
- 94 (2) uses on a road<sup>9</sup> a motor vehicle or trailer which does not comply with such a requirement, or causes or permits<sup>10</sup> a motor vehicle or trailer to be so used<sup>11</sup>,

is guilty of an offence<sup>12</sup>.

1 For the meaning of 'construction and use requirements' see PARA 261 note 1 ante.

2 I.e. a requirement within the Road Traffic Act 1988 s 41A(a) (as added): see PARA 261 ante. As to brakes, steering gear and tyres see PARA 287 *et seq* post.

3 For the meaning of 'goods vehicle' see PARA 220 ante.

4 For the meaning of 'motor vehicle' see PARA 210 ante.

- 5 For the meaning of 'trailer' see PARA 210 ante.
- 6 Ie a requirement within the Road Traffic Act 1988 s 41B(1)(a) (as added): see PARA 262 ante.
- 7 Ie a requirement within ibid s 41D (as added): see PARA 264 ante.
- 8 Ibid s 42(a) (s 42 substituted by the Road Traffic Act 1991 s 8(2); amended by the Road Safety Act 2006 26(2); and prospectively amended by s 18(3)). At the date at which this volume states the law no day had been appointed for the prospective amendment of this provision to come into force. The requirement in head (d) in the text is one within the Road Traffic Act 1988 s 41C (prospectively added): see PARA 263 ante. For the meaning of 'speed assessment equipment detection device' see PARA 260 note 27 ante.
- 9 For the meaning of 'road' see PARA 206 ante.
- 10 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.
- 11 Road Traffic Act 1988 s 42(b) (as substituted: see note 8 supra).
- 12 Ibid s 42 (as substituted and amended: see note 8 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale if committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers, or a fine not exceeding level 3 on the standard scale in any other case: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry substituted by the Road Traffic Act 1991 s 26, Sch 2). An offence under the Road Traffic Act 1988 s 42 (as substituted and amended) of breaching other construction and use requirements is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3 (entry amended by the Road Traffic Act 1991 s 48, Sch 4 para 112(3)). As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post. As to the exemption of certain special vehicles see PARA 376 post.

The Secretary of State may make payments to police authorities in relation to the prevention, detection and enforcement of offences under the Road Traffic Act 1988 s 42 (as substituted and amended): see the Serious Organised Crime and Police Act 2005 s 155. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

## UPDATE

### 260-266 In General

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **266. Temporary exemption from application of regulations as to construction, weight, equipment and use of vehicles.**

Where any regulations as to construction, weight, equipment and use of vehicles<sup>1</sup> (except regulations made with respect to any description of weight of goods vehicles<sup>2</sup>, other than their maximum unladen weight<sup>3</sup>, or regulations made in respect of descriptions of weights of goods vehicles<sup>4</sup>) contain provisions varying the requirements as regards the construction or weight of any class<sup>5</sup> of vehicles, provision must be made by the regulations for exempting from those

provisions for such period, not being less than five years, as may be specified in the regulations any vehicle of that class registered under the Vehicle Excise and Registration Act 1994<sup>6</sup> before the expiration of one year from the making of the regulations<sup>7</sup>.

No such provision contained in regulations as to construction, weight, equipment and use of vehicles as imposes or varies requirements with respect to the braking systems with which motor vehicles<sup>8</sup> must be equipped is to be taken, for the above purposes or for the purposes of any other provision of the regulations, to be one relating to the construction of vehicles<sup>9</sup>.

Where regulations as to construction, weight, equipment and use of vehicles contain provisions varying the requirements as regards the construction or weight of any class of vehicle, and the Secretary of State<sup>10</sup> is satisfied:

- 95 (1) that it is requisite that those provisions are to apply at a date specified in the regulations to vehicles registered before the expiration of one year from the making of the regulations, or to such of them as are specified in the regulations<sup>11</sup>; and
- 96 (2) that no undue hardship or inconvenience will be caused by their application then to those vehicles<sup>12</sup>,

then, if the regulations state that the Secretary of State is so satisfied, the temporary exemption<sup>13</sup> does not apply in relation to those provisions<sup>14</sup>.

1    le regulations under the Road Traffic Act 1988 s 41 (as amended): see PARA 260 ante. As to the construction of vehicles see PARA 267 et seq post; and as to the use of vehicles see PARA 583 et seq post.

2    For the meaning of 'goods vehicle' see PARA 220 ante.

3    Road Traffic Act 1988 s 43(4)(a). As to the maximum laden weight of a vehicle see PARA 220 note 5 ante.

4    Ibid s 43(4)(b). Such regulations are made by virtue of s 41(3) (as amended): see PARA 260 ante.

5    As to classes of vehicles see PARA 208 ante.

6    As to registration under the Vehicle Excise and Registration Act 1994 see PARA 518 et seq post.

7    Road Traffic Act 1988 s 43(1) (amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 24(1)).

8    For the meaning of 'motor vehicle' see PARA 210 ante.

9    Road Traffic Act 1988 s 43(2). As to brakes see PARA 287 et seq post.

10   As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

11   Road Traffic Act 1988 s 43(3)(a).

12   Ibid s 43(3)(b).

13   le ibid s 43(1) (as amended): see the text to note 7 supra.

14   Ibid s 43(3). The Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 2 was made under this provision in relation to certain vehicles registered before 1 November 1990.

## **UPDATE**

### **260-266 In General**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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## **(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES**

### **(i) In general**

#### **267. Application of statutory provisions.**

Save where the context otherwise requires, the statutory provisions relating to construction and use<sup>1</sup> apply to both wheeled<sup>2</sup> vehicles and track-laying<sup>3</sup> vehicles<sup>4</sup>.

Where a provision is applied by those statutory provisions to a motor vehicle first used<sup>5</sup> on or after a specified date, it does not apply to that vehicle if it was manufactured at least six months before that date<sup>6</sup>.

Where an exemption<sup>7</sup> from, or relaxation of, a provision is applied by those statutory provisions to a motor vehicle first used before a specified date, it also applies to a motor vehicle first used on or after that date if it was manufactured at least six months before that date<sup>8</sup>.

The statutory provisions relating to construction and use apply with modifications to vehicles in respect of which an approval certificate has been issued<sup>9</sup>.

1    Ie the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078 (as amended).

2    'Wheeled', in relation to a vehicle, means so constructed that the whole weight of the vehicle is transmitted to the road surface by means of wheels: *ibid* reg 3(2), Table. 'Wheel' means a wheel the tyre or rim of which when the vehicle is in motion on a road is in contact with the ground; and any two wheels of a motor vehicle or trailer are to be regarded, other than for the purposes of reg 26 (as amended) (see PARA 297 post) and reg 27 (as amended) (see PARA 298 post), as one wheel if the distance between the centres of the areas of contact between such wheels and the road surface is less than 460 mm: reg 3(2), Table, (7). For the meaning of 'road' see PARA 206 ante. For the meanings of 'motor vehicle' and 'trailer' see PARA 210 ante.

3    'Track-laying', in relation to a vehicle, means so designed and constructed that the weight of the vehicle is transmitted to the road surface either by means of continuous tracks or by a combination of wheels and continuous tracks in such circumstances that the weight transmitted to the road surface by the tracks is not less than half the weight of the vehicle: *ibid* reg 3(2), Table.

4    *Ibid* reg 4(1). The Secretary of State is satisfied that it is requisite that the provisions of reg 40(2) (see PARA 316 post) should apply as from 11 August 1986 to track-laying vehicles registered before the expiration of one year from 25 June 1986; and that, notwithstanding that those provisions will then apply to these vehicles, no undue hardship or inconvenience will be caused as a result: regs 1, 4(6). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5    For these purposes, the date on which a motor vehicle is first used is: (1) in the case of a vehicle not falling within head (2) *infra*, and which is registered, the date on which it was registered; (2) in each of the following cases, the date of manufacture of the vehicle: (a) a vehicle which is being or has been used under a trade licence as defined in the Vehicle Excise and Registration Act 1994 s 11 (as amended) (see PARA 521 note 3 post) (otherwise than for the purposes of demonstration or testing or of being delivered from premises of the manufacturer by whom it was made or of a distributor of vehicles, or dealer in vehicles, to premises of a

distributor of vehicles, dealer in vehicles or purchaser of vehicles or to premises of a person obtaining possession of vehicles under a hiring agreement or hire purchase agreement); (b) a vehicle belonging, or which has belonged, to the Crown and which is or was used or appropriated for use for naval, military or air force purposes; (c) a vehicle belonging, or which has belonged, to a visiting force or a headquarters or defence organisation to which in each case the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736 (see PARA 1641 post) applies; (d) a vehicle which has been used on roads outside Great Britain before being imported into Great Britain; and (e) a vehicle which has been used otherwise than on roads after being sold or supplied by retail and before being registered: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table, (2A), (3) (reg 3(2A) added by SI 1993/2199). In head (2)(e) supra 'sold or supplied by retail' means sold or supplied otherwise than to a person acquiring it solely for the purpose of re-sale or re-supply for a valuable consideration: reg 3(3). For the meaning of 'Great Britain' see PARA 205 note 3 ante.

6 Ibid reg 4(2).

7 As to exemptions see PARA 268 post.

8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 4(3).

9 See ibid reg 3A, Sch 2A (both added by SI 1996/3017; and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 2A amended by SI 2000/3197). As to approval certificates see PARA 700 post.

## UPDATE

### 267 Application of statutory provisions

NOTE 9--SI 1986/1078 Sch 2A further amended: SI 20092196.

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### 268. Exemptions.

Certain of the statutory provisions relating to construction and use<sup>1</sup> do not apply in respect of a vehicle of a class specified in heads (1) to (11) below<sup>2</sup>:

- 97 (1) a vehicle proceeding to a port for export<sup>3</sup>;
- 98 (2) a vehicle brought temporarily into Great Britain<sup>4</sup> by a person resident abroad, provided that the vehicle complies in every respect with the prescribed requirements<sup>5</sup> relating to motor vehicles<sup>6</sup> or trailers<sup>7</sup>;
- 99 (3) a vehicle manufactured in Great Britain which complies with the prescribed requirements<sup>8</sup> as if the vehicle had been brought temporarily into Great Britain, and either is exempt from car tax<sup>9</sup> or has been zero-rated<sup>10</sup>;
- 100 (4) a vehicle in the service of a visiting force or of a headquarters<sup>11</sup>;
- 101 (5) a vehicle which has been submitted for an examination<sup>12</sup> while it is being used on a road in connection with the carrying out of that examination and is being so used by a person who is empowered<sup>13</sup> to carry out that examination, or by a person acting under the direction of a person so empowered<sup>14</sup>;
- 102 (6) a motor car<sup>15</sup> or a motor cycle<sup>16</sup> in respect of which a certificate has been issued by the officer in charge of the National Collections of Road Transport<sup>17</sup>, stating that it was designed before 1 January 1905 and constructed before 31 December 1905<sup>18</sup>;

- 103 (7) either (a) a towing implement<sup>19</sup> which is being drawn by a motor vehicle while it is not attached to any vehicle except the one drawing it if the towing implement is not being so drawn during the hours of darkness and the vehicle by which it is being so drawn is not driven at a speed exceeding 20 miles per hour; or (b) a vehicle which is being drawn by a motor vehicle in the exercise of a statutory power of removal<sup>20</sup>;
- 104 (8) tramcars<sup>21</sup>;
- 105 (9) a public works vehicle which has a maximum design weight of 7,500 kg and is specifically designed for use and used solely for the purpose of street cleansing<sup>22</sup>;
- 106 (10) a vehicle being used by a police authority which has been authorised by a chief constable to perform accident reconstruction duties<sup>23</sup>; and
- 107 (11) a vehicle being used on a road by a vehicle examiner<sup>24</sup>, who has been authorised in writing by the Secretary of State for the purpose of: (a) submitting the vehicle for an examination<sup>25</sup> in order to ascertain whether the examination is carried out in accordance with regulations<sup>26</sup>; or (b) removing the vehicle following that examination<sup>27</sup>.

1    le certain provisions of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078 (as amended), subject to reg 4(7) (as added) (see note 27 infra).

2    See *ibid* reg 4(4) (amended by SI 2005/3165).

3    Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 4(4), Table item 1 col 2. The statutory provisions which do not apply in the case of such vehicles are Pt II (regs 7-65) (as amended) (see PARA 271 et seq post), in so far as it relates to construction and equipment, except reg 16 (as amended) (in so far as it concerns parking brakes) (see PARA 287 post), reg 20 (see PARA 292 post), reg 30 (as amended) (see PARA 301 post), reg 34 (see PARA 305 post), reg 37 (as amended) (see PARA 312 post), reg 53 (see PARA 342 post), and regs 66-69 (reg 66 as amended) (see PARAS 364-367 post), reg 71 (as amended) (see PARA 371 post): reg 4(4), Table item 1 col 3 (amended by SI 1994/14).

4    For the meaning of 'Great Britain' see PARA 205 note 3 ante.

5    le the requirements contained in the International Convention on Road Traffic (Geneva, 19 September 1949; TS 49 (1958); Cmnd 578) arts 21, 22(1) and Annex 6 Pts I, II (so far as they relate to direction indicators and stop lights) and Pt III, or the International Convention relative to Motor Traffic (Paris, 24 April 1926; TS 11 (1930); Cmd 3510) art 3.

6    For the meaning of 'motor vehicle' see PARA 210 ante.

7    Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 4(4), Table item 2 col 2 (amended by SI 1988/271). For the meaning of 'trailer' see PARA 210 ante. The statutory provisions which do not apply in the case of vehicles mentioned in head (2) in the text are the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Pt II (as amended) (see PARA 271 et seq post) in so far as it relates to construction and equipment (except reg 7 (as amended) (see PARA 271 post), reg 8 (as amended) (see PARA 273 post), reg 10 (as substituted) (see PARA 277 post), reg 10A (as added) (see PARA 278 post), reg 40 (see PARA 316 post), and reg 53 (see PARA 342 post)); and additionally, in respect of any passenger vehicle with a maximum gross weight exceeding 10 tonnes registered in one or more member states, reg 36A(2), (7), (9) (as added and amended) (see PARA 308 post); and additionally, in respect of any goods vehicle with a maximum gross weight exceeding 12 tonnes registered in one or more member states, reg 36(B)(2), (9), (11) (as added and amended) (see PARA 309 post); and regs 66-69 (reg 66 as amended) (see PARAS 364-367 post) and reg 71 (as amended) (see PARA 371 post): reg 4(4), Table item 2 col 3 (amended by SI 1994/14; SI 1995/1201; SI 1997/530; SI 2003/1946).

8    See note 5 supra.

9    Car tax was abolished with effect from midnight on 12 November 1992, even if a car had already been ordered, provided that, on 12 November 1992, it had not been invoiced, paid for, or collected: see the Car Tax Act 1983 ss 1(2A), 7A (repealed); and the Car Tax (Abolition) Act 1992 ss 1, 3 (repealed).

10   Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 4(4), Table item 3 col 2 (amended by SI 1988/271). A vehicle is zero-rated under the Value Added Tax Regulations 1995, SI 1995/2518, reg 123 (see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 123): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 4(4), Table item 3 col 2 (as so amended), reg 3(2A) (added by SI



1993/2199). The statutory provisions which do not apply in the case of vehicles mentioned in head (3) in the text are the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Pt II (as amended) (see PARA 271 et seq post) in so far as it relates to construction and equipment (except reg 7 (as amended) (see PARA 271 post), reg 8 (as amended) (see PARA 273 post), reg 10 (as substituted) (see PARA 277 post), reg 10A (as added) (see PARA 278 post), reg 40 (see PARA 316 post), reg 53 (see PARA 342 post)); and regs 66-69 (reg 66 as amended) (see PARAS 364-367 post) and reg 71 (as amended) (see PARA 371 post): reg 4(4), Table item 3 col 3 (amended by SI 1994/14; SI 1995/1201; SI 1997/530).

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 4(4), Table item 4 col 2. The statutory provisions which do not apply in the case of vehicles mentioned in head (4) in the text are Pt II (as amended) (see PARA 271 et seq post) in so far as it relates to construction and equipment (except reg 16 (as amended) (in so far as it concerns parking brakes) (see PARA 287 post), reg 21 (revoked), reg 53 (see PARA 342 post) and reg 61 (as amended) (see PARA 354 post)); and regs 66-69 (reg 66 as amended) (see PARAS 364-367 post), reg 71 (as amended) (see PARA 371 post), regs 75-79 (as amended) (see PARAS 584-588 post) and reg 93A (as added) (see PARA 606 post): reg 4(4), Table item 4 col 3 (amended by SI 1994/14; SI 1995/1201; SI 1996/3133). 'Vehicle in the service of a visiting force or of a headquarters' means a vehicle so described in the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(9)(b) (see PARA 1641 post; and ARMED FORCES vol 2(2) (Reissue) PARA 142): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table, (2A) (reg 3(2A) as added: see note 10 supra).

12 Ie under the Road Traffic Act 1988 s 45 (as amended) (see PARA 660 post) or s 49 (as amended) (see PARA 679 post).

13 See note 12 supra.

14 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 4(4), Table item 5 col 2 (amended by SI 1988/271); Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2A) (as added: see note 10 supra). The statutory provisions which do not apply in the case of vehicles mentioned in head (5) in the text are the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Pt II (as amended) (see PARA 271 et seq post), regs 75-79 (as amended) (see PARAS 584-588 post) and reg 100 (see PARA 614 post): reg 4(4), Table item 5 col 3 (amended by SI 1994/14).

15 For the meaning of 'motor car' see PARA 212 ante.

16 For the meaning of 'motor cycle' see PARA 214 ante.

17 Ie the officer in charge of the National Collections of Road Transport, at the Science Museum in London. As to the Science Museum see NATIONAL CULTURAL INSTITUTIONS vol 77 (2010) PARA 875.

18 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 4(4), Table item 6 col 2. The statutory provisions which do not apply in the case of vehicles mentioned in head (6) in the text are reg 16 (as amended) (see PARA 287 post) (except in so far as it applies Sch 3 requirements 3, 6 (as amended) (see PARA 287 post)), reg 21 (revoked), reg 37(4) (see PARA 312 post), reg 63 (see PARA 356 post) and reg 99(4) (see PARA 612 post): reg 4(4), Table item 6 col 3.

19 'Towing implement' means a device on wheels designed for the purpose of enabling a motor vehicle to draw another vehicle by the attachment of that device to that other vehicle in such a manner that part of that other vehicle is secured to and either rests on or is suspended from the device and some but not all of the wheels on which that other vehicle normally runs are raised off the ground: *ibid* reg 3(2), Table. For the meaning of 'wheel' see PARA 267 note 2 ante.

20 *Ibid* reg 4(4), Table item 7 col 2. The statutory provisions which do not apply in the case of vehicles mentioned in head (7) in the text are Pt II (as amended) (see PARA 271 et seq post) in so far as it relates to the construction and equipment of trailers (except reg 20 (see PARA 292 post)): reg 4(4), Table item 7 col 3. 'Statutory power of removal' means a power conferred by or under any enactment to remove or move a vehicle from any road or from any part of a road: reg 3(2), Table.

21 *Ibid* reg 4(4), Table item 8 col 2 (item 8 added by SI 1992/1217). The statutory provisions which do not apply in the case of such vehicles are the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Pt II (as amended) (see PARA 271 et seq post), Pt III (regs 66-74) (as amended) (see PARA 364 et seq post) and Pt IV (regs 75-109) (as amended) (see PARA 584 et seq post): reg 4(4), Table item 8 col 3 (as so added). As to trams see PARA 1532 et seq post.

22 *Ibid* reg 4(4), Table item 9 col 2 (item 9 added by SI 2001/3208). The statutory provisions which do not apply in the case of such vehicles are the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(1E) (as added and amended) and reg 15(5B) (as added) in respect of the requirements in EC Council Directive 98/12 (OJ L81, 18.3.1998, p 1) and ECE Regulation 13.09 which require the fitting of ABS to goods vehicles over 3,500 kg in weight (see PARA 287 post): Road Vehicles (Construction and Use) Regulations

1986, SI 1986/1078, reg 4(4), Table item 9 col 3 (as so added). For the meaning of 'ECE Regulation' see PARA 270 note 2 post. For the meaning of 'ABS' see PARA 290 note 2 post.

23 Ibid reg 4(4), Table item 10 col 2 (item 10 added by SI 2001/3208). The statutory provisions which do not apply in the case of such vehicles are the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(1E) (as added and amended) and reg 15(5B) (as added) in respect of the requirements in EC Council Directive 98/12 and ECE Regulation 13.09 which prohibit the use of an isolation switch for the operation of ABS (see PARA 287 post): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 4(4), Table item 10 col 3 (as so added).

24 'Vehicle examiner' means an examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 post): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 4(8) (added by SI 2005/3165).

25 Ie under the Road Traffic Act 1988 s 45 (as amended): see PARA 660 et seq post.

26 Ie regulations made under ibid s 45 (as amended).

27 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 4(4), Table item 11 col 2 (item 11 added by SI 2005/3165). The statutory provisions which do not apply in the case of such vehicles are the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Pt II (as amended) (see PARA 271 et seq post), reg 67 (see PARA 365 post), regs 75-79 (as amended) (see PARAS 584-588 post) and reg 100 (see PARA 614 post): reg 4(4), Table item 11 col 3 (as so added). The exemption provided by head (11) in the text applies only to the extent that the vehicle examiner using the vehicle in question reasonably believes that any defects in that vehicle do not give rise to a danger of injury to any person while it is being used by that person for a purpose mentioned in that item: reg 4(7) (added by SI 2005/3165).

## UPDATE

### 268 Exemptions

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(i) In general/269. Provision as respects the Trade Descriptions Act 1968.

### 269. Provision as respects the Trade Descriptions Act 1968.

Nothing in any of the statutory provisions relating to construction and use<sup>1</sup> by which any vehicle or any of its parts or equipment is required to be marked with a specification number or the registered certification trade mark of the British Standards Institution<sup>2</sup> or with an approval mark<sup>3</sup>, or by which such a marking is treated as evidence of compliance with a standard to which the marking relates, is to be taken to authorise any person to apply any such marking to the vehicle, part or equipment in contravention of the Trade Descriptions Act 1968<sup>4</sup>.

1 Ie the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078 (as amended).

2 As to the requirement to mark any vehicle, parts or equipment with a specification number or the registered certification trade mark of the British Standards Institution see eg ibid reg 42 (see PARA 331 post) and reg 47 (as amended) (see PARA 335 post). As to the British Standards Institution see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 446.

3 As to approval marks see the Motor Vehicles (Designation of Approval Marks) Regulations 1979, SI 1979/1088 (as amended). As to the requirement to mark any vehicle, parts or equipment with an approval mark see eg the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 25 (as amended); and PARA 296 post.

4 Ibid reg 5. As to the Trade Descriptions Act 1968 see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 471 et seq.

## UPDATE

### 269 Provision as respects the Trade Descriptions Act 1968

NOTE 4--SI 1986/1078 reg 5 revoked: SI 2008/1277.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(i) In general/270. Compliance with European Directives and ECE Regulations.

### 270. Compliance with European Directives and ECE Regulations.

For the purposes of any regulation which requires or permits a vehicle to comply with the requirements of a Community Directive<sup>1</sup> or an ECE Regulation<sup>2</sup>, a vehicle is deemed so to have complied at the date of its first use<sup>3</sup> only if<sup>4</sup>:

- 108 (1) a certificate<sup>5</sup> has been issued in relation to it<sup>6</sup>; or
- 109 (2) an approval mark<sup>7</sup> has been applied<sup>8</sup>; or
- 110 (3) it was, before it was used on a road<sup>9</sup>, subject to a relevant type approval requirement<sup>10</sup>.

1 'Community Directive', followed by a number, means the Directive adopted by the Council or the Commission of the European Communities or the European Parliament and the Council of the European Union of which identifying particulars are given in the item in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3, Sch 2 Table 1 col 3 in which that number appears in col 2; where such a Directive amends a previous Directive mentioned in col 3(d) of the Table the reference to the amending Directive includes a reference to that previous Directive as so amended; and any reference to a Directive which has been amended by the Act of Accession is a reference to the Directive as so amended: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (entry amended by SI 1989/1865; SI 2005/3165).

2 'ECE Regulation', followed by a number, means the Regulation, annexed to the Agreement concerning the adoption of uniform conditions of approval for motor vehicles equipment and parts and reciprocal recognition thereof (Geneva, 20 March 1958; TS 7 (1965); Cmnd 2535), to which the United Kingdom is a party, of which identifying particulars are given in the item in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 2 Table II col 3(a), (b) and (c) (as amended) in which that number appears in col 2 (as amended); and where that number contains more than two digits, it refers to that Regulation with the amendments in force at the date specified in col 3(d) (as amended) in that item: reg 3(2), Table.

3 For the meaning of 'first used' see PARA 267 note 5 ante.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 6(1).

5 Ie one of the following certificates:

- 22 (1) a type approval certificate issued by the Secretary of State under the Motor Vehicles (Type Approval) Regulations 1980, SI 1980/1182, reg 5 (as amended) or of the Agricultural or Forestry Tractors and Tractor Components (Type Approval) Regulations 1988, SI 1988/1567, reg 5 (see PARA 715 post);

- 23 (2) a certificate of conformity issued by the manufacturer of the vehicle under the Motor Vehicles (Type Approval) Regulations 1980, SI 1980/1182, reg 6 or of the Agricultural or Forestry Tractors and Tractor Components (Type Approval) Regulations 1988, SI 1988/1567, reg 6 (see PARA 715 post);
- 24 (3) a certificate issued under a provision of the law of any member state of the European Union which corresponds to the provisions mentioned in heads (1) and (2) supra; or
- 25 (4) a sound level measurement certificate issued by the Secretary of State under the Motorcycles (Sound Level Measurement Certificates) Regulations 1980, SI 1980/765, reg 4 (as amended),

being in each case a certificate issued by reason of the vehicle's conforming to the requirements of the European Directive in question: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2A) (added by SI 1993/2199); Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 6(2) (amended by SI 1989/1865). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 6(1)(a).

7 le a marking designated as an approval mark by the Motor Vehicles (Designation of Approval Marks) Regulations 1979, SI 1979/1088, reg 4, being in each case a mark shown in reg 4, Sch 2 col 2 (as amended) of an item which refers, in col 5 (as amended), to the ECE Regulation in question, applied as indicated in col 4 (as amended) in that item: reg 6(3).

8 Ibid reg 6(1)(b).

9 For the meaning of 'road' see PARA 206 ante.

10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 6(1)(c). A relevant type approval requirement is a requirement of the Motor Vehicles (Type Approval) (Great Britain) Regulations 1984, SI 1984/981 (as amended) (see PARA 700 post) or the Motor Vehicles (Type Approval for Goods Vehicles) (Great Britain) Regulations 1982, SI 1982/1271 (as amended) (see PARA 702 post) which appears: (1) in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 6(4), Sch 2 Table I col 4 (as amended) in the item in which the European Directive in question appears in Sch 2 Table I col 3 (as amended); or (2) in Sch 2 Table II col 4 (as amended) in the item in which the ECE Regulation in question appears in Sch 2 Table II col 3 (as amended): reg 6(4).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(ii) Dimensions and Manoeuvrability/271. Length.

## **(ii) Dimensions and Manoeuvrability**

### **271. Length.**

The overall length<sup>1</sup> of a vehicle or combination of vehicles<sup>2</sup> of a class specified in heads (1) to (13) below must not exceed the maximum length specified in each head<sup>3</sup>:

- 111 (1) in the case of a motor vehicle<sup>4</sup> drawing one trailer<sup>5</sup> which is not a semi-trailer<sup>6</sup>, 18.75 metres<sup>7</sup>;
- 112 (2) in the case of an articulated bus, 18.75 metres<sup>8</sup>;
- 113 (3) in the case of a bus drawing a trailer, 18.75 metres<sup>9</sup>;
- 114 (4) in the case of an articulated vehicle the semi-trailer of which does not meet specified requirements<sup>10</sup> and is not a low loader<sup>11</sup>, 15.5 metres<sup>12</sup>;
- 115 (5) in the case of an articulated vehicle, the semi-trailer of which meets specified requirements<sup>13</sup> and is not a low loader, 16.5 metres<sup>14</sup>;

- 116 (6) in the case of an articulated vehicle, the semi-trailer of which is a low loader, 18 metres<sup>15</sup>;
- 117 (7) in the case of a wheeled motor vehicle other than a bus, 12 metres<sup>16</sup>;
- 118 (8) in the case of a bus with two axles, 13.5 metres<sup>17</sup>;
- 119 (9) in the case of a bus with more than two axles, 15 metres<sup>18</sup>;
- 120 (10) in the case of a track-laying<sup>19</sup> motor vehicle, 9.2 metres<sup>20</sup>;
- 121 (11) in the case of an agricultural trailed appliance<sup>21</sup> manufactured on or after 1 December 1985, 15 metres<sup>22</sup>;
- 122 (12) in the case of a semi-trailer manufactured on or after 1 May 1983 which does not meet specified requirements<sup>23</sup> and is not a low loader, 12.2 metres<sup>24</sup>;
- 123 (13) in the case of a composite trailer<sup>25</sup> drawn by a goods vehicle<sup>26</sup> being a motor vehicle having a maximum gross weight<sup>27</sup> exceeding 3,500 kilograms or an agricultural motor vehicle<sup>28</sup>, 14.04 metres<sup>29</sup>;
- 124 (14) in the case of a trailer, not being a semi-trailer or composite trailer, with at least four wheels which is drawn by a goods vehicle being a motor vehicle having a maximum gross weight exceeding 3,500 kilograms or an agricultural trailer<sup>30</sup>, 12 metres<sup>31</sup>; and
- 125 (15) in the case of any other trailer not being an agricultural trailed appliance or a semi-trailer, 7 metres<sup>32</sup>.

Heads (1), (4), (5) and (6) above do not apply to<sup>33</sup>:

- 126 (a) a vehicle combination which includes a trailer which is constructed and normally used for the conveyance of indivisible loads<sup>34</sup> of exceptional length<sup>35</sup>; or
- 127 (b) a vehicle combination consisting of a broken-down vehicle<sup>36</sup> (including an articulated vehicle) being drawn by a motor vehicle in consequence of a breakdown<sup>37</sup>; or
- 128 (c) an articulated vehicle, the semi-trailer of which is a low loader manufactured before 1 April 1991<sup>38</sup>.

Heads (11) to (15) above do not apply to<sup>39</sup>:

- 129 (i) a trailer which is constructed and normally used for the conveyance of indivisible loads of exceptional length<sup>40</sup>;
- 130 (ii) a broken-down vehicle, including an articulated vehicle, which is being drawn by a motor vehicle in consequence of a breakdown<sup>41</sup>; or
- 131 (iii) a trailer being a drying or mixing plant designed for the production of asphalt or of bituminous or tar macadam and used mainly for the construction, repair or maintenance of roads, or a road planing machine so used<sup>42</sup>.

Head (12) above does not apply to a semi-trailer which is a car transporter or a semi-trailer which is normally used on international journeys any part of which takes place outside the United Kingdom<sup>43</sup>.

Where a motor vehicle is drawing two trailers, only one of those trailers may exceed an overall length of 7 metres<sup>44</sup>; and, where a motor vehicle is drawing three trailers, none of those trailers is permitted to exceed an overall length of 7 metres<sup>45</sup>. Where a motor vehicle is drawing two or more trailers, or one trailer constructed and normally used for the conveyance of indivisible loads of exceptional length, the overall length of that motor vehicle must not exceed 9.2 metres; and the overall length of the combination of vehicles<sup>46</sup> must not exceed 25.9 metres, unless specified conditions<sup>47</sup> have been complied with<sup>48</sup>.

No person is to use or cause or permit<sup>49</sup> to be used on a road a trailer with an overall length exceeding 18.65 metres unless specified requirements<sup>50</sup> are complied with<sup>51</sup>.

1 For the meaning of 'overall length' see PARA 272 post.

2 In the case of a combination of vehicles the overall length is to be calculated in accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 81(g), (h): see PARA 591 post.

3 Ibid reg 7(1), which is expressed to be subject to reg 7(2)-(6) (as amended) (see the text and notes 7-10 infra).

4 For the meaning of 'motor vehicle' see PARA 210 ante.

5 For the meaning of 'trailer' see PARA 210 ante.

6 'Semi-trailer' means a trailer which is constructed or adapted to form part of an articulated vehicle including (without prejudice to the generality of that) a vehicle which is not itself a motor vehicle but which has some or all of its wheels driven by the drawing vehicle: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (definition amended by SI 1987/676). For the meaning of 'wheel' see PARA 267 note 2 ante.

'Articulated vehicle' means a heavy motor car or a motor car, not being an articulated bus, with a trailer so attached that part of the trailer is superimposed on the drawing vehicle and, when the trailer is uniformly loaded, not less than 20% of the weight of its load is borne by the drawing vehicle: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table. For the meaning of 'heavy motor car' see PARA 213 ante; and for the meaning of 'motor car' see PARA 212 ante.

'Articulated bus' means a bus so constructed that: (1) it can be divided into two parts, both of which are vehicles and one of which is a motor vehicle, but cannot be so divided without the use of facilities normally available only at a workshop; and (2) passengers carried by it can at all times pass from either part to the other: reg 3(2), Table. 'Bus' means a motor vehicle which is constructed or adapted to carry more than eight seated passengers in addition to the driver: reg 3(2), Table. For the meaning of 'driver' see PARA 207 ante.

7 Ibid reg 7(1), Table item 1 (substituted by SI 1998/1188). In the case of a motor vehicle drawing one trailer where: (1) the motor vehicle is a showman's vehicle as defined in the Vehicle Excise and Registration Act 1994 s 62(1) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 730); and (2) the trailer is used primarily as living accommodation by one or more persons and is not also used for the carriage of goods or burden which are not needed for the purpose of such residence in the vehicle, the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 7(1), Table item 1 (as substituted) applies with the substitution of 22 metres for 18.75 metres: reg 7(2) (amended by SI 1991/2125).

A motor vehicle drawing a trailer which is not a semi-trailer must comply with the requirements of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 7(5A) (as added and amended): reg 7(5XA) (added by SI 1998/1188). These requirements, in relation to a combination of vehicles, are that at least one of the vehicles in the combination is not a goods vehicle or, if both vehicles in the combination are goods vehicles that: (1) the maximum distance measured parallel to the longitudinal axis of the combination of vehicles from the foremost point of the loading area behind the driver's cab to the rear of the trailer, less the distance between the rear of the motor vehicle and the front of the trailer, does not exceed 15.65 metres; and (2) the maximum distance measured parallel to the longitudinal axis of the combination of vehicles from the foremost point of the loading area behind the driver's cab to the rear of the trailer does not exceed 16.4 metres; but head (1) supra does not apply if both vehicles in the combination are car transporters: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 7(5A) (added by SI 1991/2125; and amended by SI 1998/1188). 'Car transporter' means a trailer which is constructed and normally used for the purpose of carrying at least two other wheeled vehicles: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (definition added by SI 1990/317). For the meaning of 'wheeled' see PARA 267 note 2 ante.

For the purposes of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 7(5A) (as added and amended): (a) where the forward end of the loading area of a motor vehicle is bounded by a wall, the thickness of the wall is to be regarded as part of the loading area; and (b) any part of a vehicle designed primarily for use as a means of attaching another vehicle to it and any fitting designed for use in connection with any such part is to be disregarded in determining the distance between the rear of a motor vehicle and the front of a trailer being drawn by it: reg 7(6A) (added by SI 1991/2125).

For the purposes of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 7(5A), (6), (7) (reg 7(5A) as added and amended), a reference to the front of a vehicle is a reference to the transverse plane passing through the extreme forward projecting points of the vehicle; and a reference to the rear of a vehicle is a reference to the transverse plane passing through the extreme rearward projecting points of the vehicle, inclusive (in each case) of all parts of the vehicle, of any receptacle which is of a permanent character and accordingly strong enough for repeated use, and any fitting on, or attached to the vehicle but exclusive of: (i) the items set out in PARA 272 head (1) post (definition of 'overall length'); and (ii) in the case of a semi-trailer,

the items set out in PARA 272 head (2)(a) post: reg 7(7B) (added by SI 1991/2125). 'Transverse plane' means a vertical plane at right angles to the longitudinal axis of a vehicle: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

8 Ibid reg 7(1), Table item 2 (amended by SI 2003/182).

9 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 7(1), Table item 2A (added by SI 2003/182).

10 In the requirements of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 7(6). The requirements of reg 7(6), in relation to a semi-trailer, are that: (1) the longitudinal distance from the axis of the kingpin to the rear of the semi-trailer does not exceed 12.5 metres in the case of a car transporter, or 12 metres in any other case; and (2) no point in the semi-trailer forward of the transverse plane passing through the axis of the king pin is more than 4.19 metres from the axis of the king pin, in the case of a car transporter, or 2.04 metres from the axis of the king pin, in any other case: reg 7(6). For the purposes of reg 7(6), the longitudinal distance from the axis of the king pin to the rear of a semi-trailer is the distance between a transverse plane passing through the axis of the king pin and the rear of the semi-trailer: reg 7(7). Where a semi-trailer has more than one king-pin or is constructed so that it can be used with a king-pin in different positions, references to a distance from the king-pin are to be construed, in relation to a vehicle which was manufactured after 1 January 1999, as a reference to the foremost king-pin or, as the case may be, the foremost king-pin position; and, in relation to any other vehicle, as a reference to the rearmost king-pin or, as the case may be, the rearmost king-pin position: reg 7(7A) (added by SI 1990/1163; and amended by SI 1998/1188; SI 1998/3112).

11 'Low loader' means a semi-trailer which is constructed and normally used for the carriage of engineering equipment so constructed that the major part of the load platform does not extend over or between the wheels and the upper surface of which is below the height of the topmost point of the tyres of those wheels, measured on level ground and when: (1) any adjustable suspension is at the normal travelling height; (2) all pneumatic tyres are suitably inflated for use when the vehicle is fully laden; and (3) the semi-trailer is unladen: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (definition added by SI 1990/317).

'Engineering equipment' means engineering plant and any other plant or equipment designed and constructed for the purpose of engineering operations: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (definition added by SI 1990/317). 'Engineering plant' means: (a) movable plant or equipment being a motor vehicle or trailer specially designed and constructed for the special purposes of engineering operations, and which cannot, owing to the requirements of those purposes, comply with all the requirements of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078 (as amended) and which is not constructed primarily to carry a load other than a load being either excavated materials raised from the ground by apparatus on the motor vehicle or trailer or materials which the vehicle or trailer is specially designed to treat while carried thereon; or (b) a mobile crane which does not comply in all respects with the requirements of those regulations: reg 3(2), Table.

'Pneumatic tyre' means a tyre which: (i) is provided with, or together with the wheel upon which it is mounted forms, a continuous closed chamber inflated to a pressure substantially exceeding atmospheric pressure when the tyre is in the condition in which it is normally used, but is not subjected to any load; (ii) is capable of being inflated and deflated without removal from the wheel or vehicle; and (iii) is such that, when it is deflated and is subjected to a normal load, the sides of the tyre collapse: reg 3(2), Table.

12 Ibid reg 7(1), Table item 3.

13 See note 10 supra.

14 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 7(1), Table item 3A (added by SI 1990/317).

15 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 7(1), Table item 3B (added by SI 1990/317).

16 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 7(1), Table item 4 (amended by SI 2003/182).

17 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 7(1), Table item 4A (added by SI 2003/182).

18 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 7(1), Table item 4B (added by SI 2003/182).

19 For the meaning of 'track-laying' see PARA 267 note 3 ante.

20 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 7(1), Table item 5.

21 'Agricultural trailed appliance' means a trailer: (1) which is an implement constructed or adapted: (a) for use off roads for the purpose of agriculture, horticulture or forestry and which is only used for one or more of those purposes; and (b) so that, save in the case of an appliance manufactured before 1 December 1985, or a towed roller, its maximum gross weight (see note 26 *infra*) is not more than twice its unladen weight; but (2) which is not: (a) a vehicle which is used primarily as living accommodation by one or more persons, and which carries no goods or burden except those needed by such one or more persons for the purposes of their residence in the vehicle; or (b) an agricultural, horticultural or forestry implement rigidly but not permanently mounted on any vehicle whether or not any of the weight of the implement is supported by one or more of its own wheels; so however that such an implement is an agricultural trailed appliance if part of the weight of the implement is supported by one or more of its own wheels, and the longitudinal axis of the greater part of the implement is capable of articulating in the horizontal plane in relation to the longitudinal axis of the rear portion of the vehicle on which it is mounted: *ibid* reg 3(2), Table.

'Unladen weight' means the weight of a vehicle or trailer inclusive of the body and all parts (the heavier being taken where alternative bodies or parts are used) which are necessary to or ordinarily used with the vehicle or trailer when working on a road, but exclusive of the weight of water, fuel or accumulators used for the purpose of the supply of power for the propulsion of the vehicle or, as the case may be, of any vehicle by which the trailer is drawn, and of loose tools and loose equipment: reg 3(2), Table.

22 *Ibid* reg 7(1), Table item 6.

23 See note 10 *supra*.

24 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 7(1), Table item 7.

25 'Composite trailer' means a combination of a converter dolly and a semi-trailer: *ibid* reg 3(2), Table. For the purposes of reg 7 (as amended), a composite trailer is to be treated as one trailer, not being a semi-trailer or a converter dolly: see reg 3(11). 'Converter dolly' means: (1) a trailer which is: (a) equipped with two or more wheels; (b) designed to be used in combination with a semi-trailer without any part of the weight of the semi-trailer being borne by the drawing vehicle; and (c) not itself a part either of the semi-trailer or the drawing vehicle when being so used; or (2) a trailer which is: (a) equipped with two or more wheels; (b) designed to be used in combination with a semi-trailer with part of the weight of the semi-trailer being borne by the drawing vehicle; (c) not itself a part either of the semi-trailer or the drawing vehicle when being so used; and (d) used solely for the purposes of agriculture, horticulture or forestry, or for any two or for all of those purposes: reg 3(2), Table (item amended by SI 1991/1526).

26 'Goods vehicle' means a motor vehicle or trailer constructed or adapted for use for the carriage or haulage of goods or burden of any description: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

27 'Gross weight' means: (1) in relation to a motor vehicle, the sum of the weights transmitted to the road surface by all the wheels of the vehicle; (2) in relation to a trailer, the sum of the weights transmitted to the road surface by all the wheels of the trailer and of any weight of the trailer imposed on the drawing vehicle: *ibid* reg 3(2), Table.

'Maximum gross weight' means: (a) in the case of a vehicle equipped with a Ministry plate in accordance with reg 70 (as amended) (see PARA 368 *post*), the design gross weight shown in column 3 of that plate (where the plate is in the form required by reg 70, Sch 10 (reg 70 as amended) or reg 3(2), Sch 10B (as added) (see PARA 368 *post*)) or in column 4 of that plate (where the plate is in the form required by reg 70, Sch 10A (reg 70 as amended; Sch 10A as added) or reg 3(2), Sch 10C (as added) (see PARA 368 *post*)) or, if no such weight is shown, the gross weight shown in column 2 of that plate; (b) in the case of a vehicle not equipped with a Ministry plate, but which is equipped with a plate in accordance with reg 66 (as amended) (see PARA 364 *post*), the maximum gross weight shown on the plate in respect of Sch 8 Pt I item 7 in the case of a motor vehicle and Sch 8 Pt II item 6 in the case of a trailer; (c) in any other case, the weight which the vehicle is designed or adapted not to exceed when the vehicle is travelling on a road: reg 3(2), Table (definition amended by SI 1990/1981; SI 1994/329).

28 'Agricultural motor vehicle' means a motor vehicle which is constructed or adapted for use off roads for the purpose of agriculture, horticulture or forestry and which is primarily used for one or more of those purposes, not being a dual-purpose vehicle: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

'Dual-purpose vehicle' means a vehicle constructed or adapted for the carriage both of passengers and of goods or burden of any description, being a vehicle of which the unladen weight does not exceed 2,040 kilograms, and which either: (1) is so constructed or adapted that the driving power of the engine is, or by the appropriate use of the controls of the vehicle can be, transmitted to all the wheels of the vehicle; or (2) satisfies the following



conditions as to construction, namely: (a) the vehicle must be permanently fitted with a rigid roof, with or without a sliding panel; (b) the area of the vehicle to the rear of the driver's seat must: (i) be permanently fitted with at least one row of transverse seats (fixed or folding) for two or more passengers and those seats must be properly sprung or cushioned and provided with upholstered back-rests, attached either to the seats or to a side or the floor of the vehicle; and (ii) be lit on each side and at the rear by a window or windows of glass or other transparent material having an area or aggregate area of not less than 1,850 square cm on each side and not less than 770 square cm at the rear; and (c) the distance between the rearmost part of the steering wheel and the back-rests of the row of transverse seats satisfying the requirements specified in head (b)(i) supra (or, if there is more than one such row of seats, the distance between the rearmost part of the steering wheel and the back-rests of the rearmost such row) must, when the seats are ready for use, be not less than one-third of the distance between the rearmost part of the steering wheel and the rearmost part of the floor of the vehicle: reg 3(2), Table.

29 Ibid reg 7(1), Table item 7A (added by SI 1990/317).

30 'Agricultural trailer' means a trailer which is constructed or adapted for the purpose of agriculture, horticulture or forestry and which is only used for one or more of those purposes, not being an agricultural trailed appliance: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

31 Ibid reg 7(1), Table item 8.

32 Ibid reg 7(1), Table item 9.

33 Ibid reg 7(3) (substituted by SI 1990/317; and amended by SI 1991/2125).

34 'Indivisible load' means a load which cannot without undue expense or risk of damage be divided into two or more loads for the purpose of conveyance on a road: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table. A vehicle used for carrying indivisible loads exceeding the permitted length on all but 46 of 177 journeys was not normally so used: *Peak Trailer and Chassis Ltd v Jackson* [1967] 1 All ER 172, [1967] 1 WLR 155, DC. As to the indivisibility of loads see *Kingdom v Williams* [1975] RTR 333, DC; *Patterson v Redpath Bros Ltd* [1979] 2 All ER 108, [1979] 1 WLR 553, DC (where it was held that whether a load is indivisible is tested by reference to the goods carried).

35 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 7(3)(a) (as substituted: see note 33 supra). As to what is exceptional length see *Peak Trailer and Chassis Ltd v Jackson* [1967] 1 All ER 172, [1967] 1 WLR 155, DC; *Cook v Briddon* [1975] RTR 505, DC.

36 Any reference to a broken-down vehicle includes a reference to any towing implement which is being used for the drawing of any such vehicle: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 4(5). For the meaning of 'towing implement' see PARA 268 note 19 ante.

37 Ibid reg 7(3)(b) (as substituted: see note 33 supra).

38 Ibid reg 7(3)(c) (as substituted: see note 33 supra).

39 Ibid reg 7(3A) (added by SI 1990/317).

40 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 7(3A)(a) (as added: see note 39 supra).

41 Ibid reg 7(3A)(b) (as added: see note 39 supra).

42 Ibid reg 7(3A)(c) (as added: see note 39 supra).

43 Ibid reg 7(3B) (added by SI 1990/317). For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

44 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 7(4)(a). See also note 48 infra.

45 Ibid reg 7(4)(b). See also note 48 infra.

46 See note 2 supra.

47 Ie the conditions specified in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, regs 81, 82, Sch 12 paras 1, 2 (Sch 12 para 1 as amended): see PARA 590 post.

48 Ibid reg 7(5). Where a broken down articulated vehicle is being towed by a motor vehicle in consequence of a breakdown: (1) reg 7(5) has effect in relation to the combination of vehicles as if reg 7(5)(b) were omitted;

and (2) for the purposes of reg 7(4) (see the text to notes 43-44 supra) and of reg 7(5) as so modified, the articulated vehicle is to be regarded as a single trailer: reg 7(8).

49 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

50 See note 47 supra.

51 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 7(9).

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## 272. Meaning of 'overall length'.

'Overall length' in relation to a vehicle, means the distance between transverse planes<sup>1</sup> passing through the extreme forward and rearward projecting points of the vehicle inclusive of all parts of the vehicle, of any receptacle which is of a permanent character and accordingly strong enough for repeated use, and any fitting on, or attached to, the vehicle except:

132 (1) for all purposes:

3

4. (a) any driving mirror;
5. (b) any expanding or extensible contrivance forming part of a turntable fire escape fixed to a vehicle;
6. (c) any snow-plough fixed in front of a vehicle;
7. (d) any receptacle specially designed to hold and keep secure a seal issued for the purposes of customs clearance;
8. (e) any tailboard which is let down while the vehicle is stationary in order to facilitate its loading or unloading<sup>2</sup>;
9. (f) any tailboard which is let down in order to facilitate the carriage of, but which is not essential for the support of, loads which are in themselves so long as to extend at least as far as the tailboard when upright;
10. (g) any fitting attached to a part of, or to a receptacle on, a vehicle which does not increase the carrying capacity of the part or receptacle but which enables it to be transferred from a road vehicle to a railway vehicle or from a railway vehicle to a road vehicle, secured to a railway vehicle by a locking device, and carried on a railway vehicle by the use of stanchions;
11. (h) any plate, whether rigid or movable, fitted to a trailer<sup>3</sup> constructed for the purpose of carrying other vehicles and designed to bridge the gap between that trailer and a motor vehicle<sup>4</sup> constructed for that purpose and to which the trailer is attached so that, while the trailer is attached to the motor vehicle, vehicles which are to be carried by the motor vehicle may be moved from the trailer to the motor vehicle before a journey begins, and vehicles which have been carried on the motor vehicle may be moved from it to the trailer after a journey ends;
12. (i) any sheeting or other readily flexible means of covering or securing a load;
13. (j) any empty receptacle which itself forms a load;
14. (k) any receptacle which contains an indivisible load<sup>5</sup> of exceptional length;
15. (l) any receptacle manufactured before 30 October 1985, not being a maritime container<sup>6</sup>, namely a container designed primarily for carriage on sea transport without an accompanying road vehicle;
16. (m) any special appliance or apparatus<sup>7</sup> which does not itself increase the carrying capacity of the vehicle; or

17. (n) any rearward projecting buffer made of rubber or other resilient material; and  
 4 133 (2) for the purposes of the provisions relating to length<sup>8</sup> and turning circles<sup>9</sup>:  
 5 18. (a) any part of a trailer (not being in the case of an agricultural trailed  
 appliance<sup>10</sup> a drawbar or other thing with which it is equipped for the purpose of  
 being towed) designed primarily for use as a means of attaching it to another vehicle  
 and any fitting designed for use in connection with any such part;  
 19. (b) the thickness of any front or rear wall on a semi-trailer<sup>11</sup> and of any part  
 forward of such front wall or rearward of such rear wall which does not increase the  
 vehicle's load-carrying space<sup>12</sup>.

6

1 For the meaning of 'transverse plane' see PARA 271 note 7 ante.

2 As to tailboards see *Guest Scottish Carriers Ltd v Trend* [1967] 3 All ER 52, [1967] 1 WLR 1371, DC; *Corp v Toleman International Ltd* [1981] RTR 385, DC.

3 For the meaning of 'trailer' see PARA 210 ante.

4 For the meaning of 'motor vehicle' see PARA 210 ante.

5 For the meaning of 'indivisible load' see PARA 271 note 34 ante.

6 'Container' means an article of equipment, not being a motor vehicle or trailer, having a volume of at least 8 cubic metres, constructed wholly or mostly of metal and intended for repeated use for the carriage of goods or burden: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

7 le as described in ibid reg 81(c): see PARA 591 note 1 post.

8 le for the purposes of ibid reg 7 (as amended): see PARA 271 ante.

9 le for the purposes of ibid reg 13A (as added and amended) (see PARA 283 post), reg 13B (as added and amended) (see PARA 284 post) and reg 13C (as added) (see PARA 285 post).

10 For the meaning of 'agricultural trailed appliance' see PARA 271 note 21 ante.

11 For the meaning of 'semi-trailer' see PARA 271 note 6 ante.

12 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (amended by SI 1991/2125; SI 1998/1188; SI 2003/182). A removable container for carrying livestock must be included (*Claude Hughes & Co (Carlisle) Ltd v Hyde* [1963] 2 QB 757, [1963] 1 All ER 598, DC), but not the rear lifting gear of a car transporter when fully raised (*Bason v Vipond* [1962] 1 All ER 520, [1962] 1 WLR 271, DC).

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### 273. Width.

The overall width<sup>1</sup> of a vehicle of a class specified in heads (1) to (8) below, other than a broken-down vehicle<sup>2</sup> which is being drawn in consequence of the breakdown<sup>3</sup>, must not exceed the maximum width specified in each head<sup>4</sup>:

- 134 (1) in the case of a locomotive<sup>5</sup>, other than an agricultural motor vehicle<sup>6</sup>, 2.75 metres<sup>7</sup>;

- 135 (2) in the case of a refrigerated vehicle<sup>8</sup>, 2.60 metres<sup>9</sup>;
- 136 (3) in the case of any other motor vehicle<sup>10</sup>, 2.55 metres<sup>11</sup>;
- 137 (4) in the case of a trailer<sup>12</sup> drawn by a motor vehicle having a maximum gross weight<sup>13</sup> exceeding 3,500 kilograms, 2.55 metres<sup>14</sup>;
- 138 (5) in the case of an agricultural trailer<sup>15</sup>, 2.55 metres<sup>16</sup>;
- 139 (6) in the case of an agricultural trailed appliance<sup>17</sup>, 2.55 metres<sup>18</sup>;
- 140 (7) in the case of any other trailer drawn by a vehicle other than a motor cycle<sup>19</sup>, 2.3 metres<sup>20</sup>; and
- 141 (8) in the case of a trailer drawn by a motor cycle, 1.5 metres<sup>21</sup>.

No person is to use or cause or permit<sup>22</sup> to be used on a road<sup>23</sup> a wheeled<sup>24</sup> agricultural motor vehicle drawing a wheeled trailer if, when the longitudinal axes of the vehicles are parallel but in different vertical planes, the overall width of the two vehicles, measured as if they were one vehicle, exceeds 2.55 metres<sup>25</sup>.

- 1 For the meaning of 'overall width' see PARA 274 post.
- 2 As to the meaning of 'broken-down vehicle' see PARA 271 note 36 ante.
- 3 See the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 8(2).
- 4 Ibid reg 8(1).
- 5 For the meaning of 'locomotive' see PARA 217 note 3 ante.
- 6 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.
- 7 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 8(1), Table item 1.
- 8 For these purposes, 'refrigerated vehicle' means any vehicle which is specially designed for the carriage of goods at low temperature and of which the thickness of each of the side walls, inclusive of insulation, is at least 45 mm: *ibid* reg 8(4).
- 9 *Ibid* reg 8(1), Table item 2 (amended by SI 1988/1871).
- 10 For the meaning of 'motor vehicle' see PARA 210 ante.
- 11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 8(1), Table item 3 (amended by SI 1995/3051).
- 12 For the meaning of 'trailer' see PARA 210 ante.
- 13 *Ie* determined as provided in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 66 (as amended), Sch 8 Pt I: see PARA 364 post. For the meaning of 'maximum gross weight' see PARA 271 note 27 ante.
- 14 *Ibid* reg 8(1), Table item 4 (amended by SI 1995/3051).
- 15 For the meaning of 'agricultural trailer' see PARA 271 note 30 ante.
- 16 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 8(1), Table item 5 (amended by SI 1995/3051).
- 17 For the meaning of 'agricultural trailed appliance' see PARA 271 note 21 ante.
- 18 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 8(1), Table item 6 (amended by SI 1995/3051).
- 19 For the meaning of 'motor cycle' see PARA 214 ante.
- 20 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 8(1), Table item 7.
- 21 *Ibid* reg 8(1), Table item 8.

- 22 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.
- 23 For the meaning of 'road' see PARA 206 ante.
- 24 For the meaning of 'wheeled' see PARA 267 note 2 ante.
- 25 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 8(3) (amended by SI 1995/3051).

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#### **274. Meaning of 'overall width'.**

'Overall width' means the distance between longitudinal planes<sup>1</sup> passing through the extreme lateral projecting points of the vehicle inclusive of all parts of the vehicle, of any receptacle which is of permanent character and accordingly strong enough for repeated use, and any fitting on, or attached to, the vehicle except:

- 142 (1) any driving mirror;
  - 143 (2) any snow-plough fixed in front of the vehicle;
  - 144 (3) so much of the distortion of any tyre as is caused by the weight of the vehicle;
  - 145 (4) any receptacle specially designed to hold and keep secure a seal issued for the purposes of customs clearance;
  - 146 (5) any lamp or reflector fitted to the vehicle<sup>2</sup>;
  - 147 (6) any sideboard which is let down while the vehicle is stationary in order to facilitate its loading or unloading;
  - 148 (7) any fitting attached to part of, or to a receptacle on, a vehicle which does not increase the carrying capacity of the part or receptacle but which enables it to be:
- 7
- 20. (a) transferred from a road vehicle to a railway vehicle or from a railway vehicle to a road vehicle;
  - 21. (b) secured to a railway vehicle by a locking device; and
  - 22. (c) carried on a railway vehicle by the use of stanchions;
- 8
- 149 (8) any sheeting or other readily flexible means of covering or securing a load;
  - 150 (9) any receptacle with an external width, measured at right angles to the longitudinal axis of the vehicle, which does not exceed 2.5 metres;
  - 151 (10) any empty receptacle which itself forms a load;
  - 152 (11) any receptacle which contains an indivisible load<sup>3</sup> of exceptional width;
  - 153 (12) any receptacle manufactured before 30 October 1985, not being a maritime container<sup>4</sup>, namely a container designed primarily for carriage on sea transport without an accompanying road vehicle;
  - 154 (13) any special appliance or apparatus<sup>5</sup> which does not itself increase the carrying capacity of the vehicle; or
  - 155 (14) any apparatus fitted to a bus<sup>6</sup> which enables it to be guided wholly or mainly by means of wheels<sup>7</sup> bearing outwards against fixed apparatus, provided that no part of the apparatus projects more than 75 millimetres beyond the side of the bus<sup>8</sup> when the wheels of the bus are parallel to its longitudinal axis<sup>9</sup>.

1 'Longitudinal plane' means a vertical plane parallel to the longitudinal axis of a vehicle: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

2 le in accordance with the Road Vehicles Lighting Regulations 1989, SI 1989/1796 (as amended) (see PARA 378 et seq post): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, regs 3(2), Table, (2A) (reg 3(2A) added by SI 1993/2199).

3 For the meaning of 'indivisible load' see PARA 271 note 34 ante.

4 For the meaning of 'container' see PARA 272 note 6 ante.

5 le as described in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 81(c): see PARA 591 note 1 post.

6 For the meaning of 'bus' see PARA 271 note 6 ante.

7 For the meaning of 'wheel' see PARA 267 note 2 ante.

8 For these purposes, the reference to the side of a bus is a reference to the longitudinal plane passing through the extreme lateral projecting points of the vehicle inclusive of all parts of the vehicle, of any receptacle which is of permanent character and accordingly strong enough for repeated use, and any fitting on, or attached to, the vehicle except those items referred to in heads (1)-(14) in the text: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (entry amended by SI 1995/3051).

9 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (as amended: see note 8 supra).

## **UPDATE**

### **274 Meaning of 'overall width'**

TEXT AND NOTES--SI 1989/1796 reg 3(2), Table further amended: SI 2009/3220.

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### **275. Height of buses.**

The overall height<sup>1</sup> of a bus<sup>2</sup> must not exceed 4.57 metres<sup>3</sup>.

1 For the meaning of 'overall height' see PARA 276 post.

2 For the meaning of 'bus' see PARA 271 note 6 ante.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 9(1).

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### **276. Meaning of 'overall height'.**

'Overall height' means the vertical distance between the ground and the point on the vehicle which is furthest from the ground, calculated when:

- 156 (1) the tyres of the vehicle are suitably inflated for the use to which it is being put;
- 157 (2) the vehicle is at its unladen weight<sup>1</sup>; and
- 158 (3) the surface of the ground under the vehicle is reasonably flat;

but, in the case of a trolley bus<sup>2</sup>, exclusive of the power collection equipment mounted on the roof of the vehicle<sup>3</sup>.

1 For the meaning of 'unladen weight' see PARA 271 note 21 ante.

2 For the meaning of 'trolley bus' see PARA 219 ante; and for the meaning of 'bus' see PARA 271 note 6 ante. As to trolley buses see PARA 1627 et seq post.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

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## **277. Indication of overall travelling height.**

No person may drive<sup>1</sup> or cause or permit<sup>2</sup> to be driven on a road<sup>3</sup> a motor vehicle<sup>4</sup> with an overall travelling height<sup>5</sup> exceeding 3 metres unless a notice is displayed in the cab, in such a manner that it can easily be read by the driver, and the notice meets the requirements specified in heads (1) to (7) below<sup>6</sup>.

No person may use or cause or permit to be used on a road a motor vehicle with an overall travelling height exceeding 3 metres if any letters or numbers are displayed in the cab, otherwise than in a notice which meets the specified requirements, where they could be read by the driver, and which could be understood as indicating a height associated with the vehicle or any trailer drawn by it<sup>7</sup>.

The requirements in respect of a notice are that:

- 159 (1) the notice gives an indication of vehicle height expressed in feet and inches, or in both feet and inches and in metres<sup>8</sup>;
- 160 (2) the numbers giving the indication in feet and inches are at least 40 millimetres tall<sup>9</sup>;
- 161 (3) the height expressed in feet and inches and, where applicable, the height expressed in metres are: (a) if the vehicle is a vehicle to which certain high level equipment is fitted<sup>10</sup>, not less than the predetermined height<sup>11</sup> or the overall travelling height, whichever is the greater<sup>12</sup>; or (b) if the vehicle is not a vehicle to which to which certain high level equipment is fitted, not less than the overall travelling height<sup>13</sup>;
- 162 (4) if the vehicle is not a relevant vehicle<sup>14</sup>, the height expressed in feet and inches does not exceed the overall travelling height by more than 150 millimetres<sup>15</sup>;
- 163 (5) if the vehicle is a relevant vehicle, the height expressed in feet and inches does not exceed the overall travelling height by more than 1 metre<sup>16</sup>;

- 164 (6) if the height is expressed in both feet and inches and in metres, the height expressed in feet and inches and the height expressed in metres do not differ by more than 50 millimetres<sup>17</sup>; and
- 165 (7) no other letters or numbers which could be understood as being an indication of any height associated with the vehicle or any trailer drawn by it are displayed in the notice<sup>18</sup>.

The above provisions<sup>19</sup> do not apply:

- 166 (i) if, having regard to the lengths of road which the driver might drive along in the course of fulfilling the purpose of the journey taking into account any possibility of unforeseen diversions and the driver having difficulty in finding his way, it is highly unlikely that the driver would during the course of the journey encounter any bridge or other overhead structure which does not exceed by at least 1 metre, in the case of certain vehicles with high level equipment<sup>20</sup> the maximum travelling height or, in any other case, the overall travelling height<sup>21</sup>;
- 167 (ii) to a vehicle on a particular journey and at a particular time if one or more documents are being carried in the vehicle which are within the easy reach of the driver and that or those documents describe a route or a choice of routes which the driver must take in order to fulfil the purpose of the journey without risk of the vehicle, its load or equipment or any trailer drawn by the vehicle, its load or equipment, colliding with any bridge or other overhead structure, and the vehicle is on such a route which is so described or is off that route by reason of a diversion that could not reasonably have been foreseen at the beginning of the journey<sup>22</sup>;
- 168 (iii) to a vehicle on a particular journey if one or more documents are being carried in the vehicle which are within the easy reach of the driver and that or those documents contain information as to the height of bridges and other overhead structures under which the vehicle and any trailer drawn by it could pass and the height of bridges and other overhead structures under which the vehicle and any trailer drawn by it could not pass, without the vehicle, its load or equipment or any such trailer, its load or equipment, colliding with any bridge or other overhead structure, and the information is such that, having regard in particular to the prescribed matters<sup>23</sup>, it would enable any driver to fulfil the purpose of the journey without there being any risk of the vehicle, its load or equipment or any trailer, its load or equipment, colliding with any bridge or other overhead structure while on the journey<sup>24</sup>.

1 For the meaning of 'drive' see PARA 207 ante.

2 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 For the meaning of 'motor vehicle' see PARA 210 ante.

5 For these purposes, 'overall travelling height', in relation to a motor vehicle means: (1) if it is not drawing a trailer, the overall height for the time being of the vehicle, its equipment and load; or (2) if it is drawing one or more trailers, the overall height for the time being of the combination of vehicles, their equipment and loads: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 10(9)(b) (reg 10 substituted by SI 1997/530). For the meaning of 'trailer' see PARA 210 ante.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 10(1) (as substituted: see note 5 supra). This is expressed to be subject to reg 10(2)-(10) (as substituted). The provisions of reg 10(1), (2) (as substituted) do not apply to a motor vehicle if it has an overall travelling height of not more than 4 metres and: (1) it is a vehicle registered or put into circulation in an EEA state and is being used in international traffic; or (2) it is a motor vehicle drawing a trailer registered or put into circulation in an EEA state and that trailer is being used in international traffic: reg 10(8) (as so substituted). For these purposes, 'international traffic' and



'registered or put into circulation' have the same meanings as in EC Directive 85/3 (OJ L2, 3.1.85, p 14) art 3: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 10(10) (as so substituted). For the meaning of 'EEA state' see PARA 278 note 13 post; definition applied by reg 10(9)(a) (as so substituted).

7 Ibid reg 10(2) (as substituted: see note 5 supra). See also note 6 supra.

8 Ibid reg 10(3)(a) (as substituted: see note 5 supra).

9 Ibid reg 10(3)(b) (as substituted: see note 5 supra).

10 Ie a vehicle to which ibid reg 10A (as added) applies: see PARA 278 post. For the meaning of 'high level equipment' see PARA 278 note 4 post; definition applied by reg 10(9)(a) (as substituted: see note 5 supra).

11 Ie the predetermined height mentioned in ibid reg 10A(2)(a) (as added): see PARA 278 post.

12 Ibid reg 10(3)(c)(i) (as substituted: see note 5 supra).

13 Ibid reg 10(3)(c)(ii) (as substituted: see note 5 supra).

14 For these purposes, a motor vehicle is a 'relevant vehicle' if at any particular time: (1) the vehicle or any trailer drawn by it is fitted with high level equipment with a maximum height of more than 3 m; and (2) the overall travelling height is less than the maximum travelling height: ibid reg 10(9)(c) (as substituted: see note 5 supra). For the meaning of 'maximum travelling height' see PARA 278 note 25 post; definition applied by reg 10(9)(a) (as so substituted).

15 Ibid reg 10(3)(d) (as substituted: see note 5 supra).

16 Ibid reg 10(3)(e) (as substituted: see note 5 supra).

17 Ibid reg 10(3)(f) (as substituted: see note 5 supra).

18 Ibid reg 10(3)(g) (as substituted: see note 5 supra).

19 Ie ibid reg 10(1) (as substituted): see the text and notes 1-5 supra.

20 Ie in the case of a vehicle to which ibid reg 10A (as added) applies: see PARA 278 post.

21 Ibid reg 10(4) (as substituted: see note 5 supra).

22 Ibid reg 10(5) (as substituted: see note 5 supra).

23 The matters so prescribed are: (1) the roads which the driver might drive along in the course of fulfilling the purpose of the journey taking into account any possibility of unforeseen diversions and of the driver having difficulty in finding his way; (2) the height of bridges and other overhead structures that would be encountered were the vehicle to proceed along any of those roads; and (3) the setting of any device of a description specified in ibid reg 10A(2) (as added) (see PARA 278 post): reg 10(7) (as substituted: see note 5 supra).

24 Ibid reg 10(6) (as substituted: see note 5 supra).

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## **278. Warning devices where certain high level equipment is fitted to a vehicle.**

No person may drive<sup>1</sup> or cause or permit<sup>2</sup> to be driven on a road<sup>3</sup> certain vehicles fitted with high level equipment<sup>4</sup> unless the vehicle is fitted with a warning device and the specified requirements<sup>5</sup> are satisfied in respect of the device, the vehicle and any relevant trailer<sup>6</sup> drawn by the vehicle<sup>7</sup>. The vehicles are:

- 169 (1) a motor vehicle first used on or after 1 April 1993, if the vehicle or any relevant trailer drawn by it is fitted with high level equipment with a maximum height<sup>8</sup> of more than 3 metres<sup>9</sup>; and
- 170 (2) a motor vehicle first used before 1 April 1993, if any relevant trailer drawn by it is fitted with such equipment<sup>10</sup>.

The above provisions relating to warning devices<sup>11</sup> do not apply to:

- 171 (a) a motor vehicle which has an overall travelling height of not more than 4 metres and is a vehicle registered or put into circulation<sup>12</sup> in an EEA state<sup>13</sup> and is being used in international traffic<sup>14</sup> or is a motor vehicle drawing a trailer registered or put into circulation in an EEA state and that trailer is being used in international traffic<sup>15</sup>;
- 172 (b) an agricultural motor vehicle<sup>16</sup>;
- 173 (c) an industrial tractor<sup>17</sup>;
- 174 (d) a works truck<sup>18</sup>;
- 175 (e) a motor vehicle owned by the Secretary of State for Defence<sup>19</sup> and used for naval, military or air force purposes or a motor vehicle so used while being driven by a person for the time being subject to orders of a member of the armed forces of the Crown<sup>20</sup>;
- 176 (f) a motor vehicle drawing a trailer owned by the Secretary of State for Defence and used for naval, military or air force purposes or a motor vehicle drawing such a trailer while being driven by a person for the time being subject to orders of a member of the armed forces of the Crown<sup>21</sup>;
- 177 (g) a motor vehicle used by employees of a fire and rescue authority for the purposes of that authority under the Fire and Rescue Services Act 2004<sup>22</sup>;
- 178 (h) a motor vehicle that is constructed and normally used for the purpose of carrying at least two other vehicles<sup>23</sup>;
- 179 (i) a motor vehicle drawing a car transporter<sup>24</sup>; or
- 180 (j) a motor vehicle whose maximum travelling height<sup>25</sup> does not exceed its overall travelling height<sup>26</sup>.

The specified requirements are:

- 181 (i) that the device, the vehicle and any relevant trailer drawn by it are so constructed, maintained and adjusted, and the connections between the vehicle and those trailers are such, that the device would give a visible warning to the driver if, whilst the vehicle was being driven, the height of the highest point of any high level equipment fitted to the vehicle or any of those trailers were to exceed a predetermined height<sup>27</sup>; and
- 182 (ii) the predetermined height referred to in head (i) above does not exceed the overall travelling height by more than 1 metre<sup>28</sup>.

The provisions relating to warning devices<sup>29</sup> do not apply in relation to a particular journey if, having regard to the lengths of road which the driver might drive along in the course of fulfilling the purpose of the journey and taking into account any possibility of unforeseen diversions and the driver having difficulty in finding his way, it is highly unlikely that the driver would during the course of the journey be confronted with any bridge or other overhead structure which does not exceed the maximum travelling height by at least 1 metre<sup>30</sup>.

1 For the meaning of 'drive' see PARA 207 ante.

2 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 A reference to high level equipment, in relation to a motor vehicle or to a trailer drawn by a motor vehicle, is a reference to equipment which is so fitted to the vehicle or the trailer that: (1) the equipment can be raised by means of a power operated device; and (2) the raising or lowering of the equipment is capable of altering the overall travelling height of the motor vehicle when the vehicle and every trailer drawn by it is unladen: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 10C(1), (2), (3) (reg 10C added by SI 1997/530). A reference to high level equipment in relation to a tipper which is: (a) a motor vehicle first used before 1 April 1998; or (b) a trailer manufactured before that date, is to be construed as not including the relevant part of the tipper: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 10C(1), (4) (as so added). Where equipment fitted to a vehicle would otherwise be high level equipment, that equipment is not to be regarded as high level equipment if: (i) the equipment is so designed and constructed that it can be fixed in a stowed position by a locking device when travelling and it is not possible for a person in the cab to interfere with the locking device; and (ii) the equipment is fixed in that position by the locking device: reg 10C(1), (5) (as so added). 'Tipper' means a vehicle that is so constructed that it can be unloaded by part of the vehicle (the 'relevant part') being tipped sideways or rearwards, and 'relevant part' is to be construed accordingly; and a reference to equipment fitted to a vehicle includes part of the vehicle: reg 10C(1), (6)(f), (g) (as so added). For the meanings of 'motor vehicle' and 'trailer' see PARA 210 ante. For the meaning of 'overall travelling height' see PARA 277 note 5 ante; definition applied by reg 10C(1), (6)(e) (as so added).

5 Ie the requirements contained in *ibid* reg 10A(2) (as added): see heads (i), (ii) in the text.

6 'Relevant trailer' means a trailer manufactured on or after 1 April 1993 not being: (1) an agricultural trailer; (2) an agricultural trailed appliance; (3) a works trailer; (4) a trailer used by employees of a fire and rescue authority for the purposes of that authority under the Fire and Rescue Services Act 2004; (5) a broken-down vehicle (including an articulated vehicle) being drawn by a motor vehicle in consequence of a breakdown: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 10C(7) (as added (see note 4 *supra*); and amended in relation to England by SI 2004/3168; and in relation to Wales by SI 2005/2929). For the meaning of 'agricultural trailer' see PARA 271 note 30 ante; as to the meaning of 'agricultural trailed appliance' see PARA 271 note 21 ante; for the meaning of 'broken down-vehicle' see PARA 271 note 36 ante; and for the meaning of 'articulated vehicle' see PARA 271 note 6 ante.

'Works trailer' means a trailer designed for use in private premises and used on a road only in delivering goods from or to such premises to or from a vehicle on a road in the immediate neighbourhood, or in passing from one part of any such premises to another or to other private premises in the immediate neighbourhood or in connection with road works while at or in the immediate neighbourhood of the site of such works: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

7 *Ibid* reg 10A(1) (reg 10A added by SI 1997/530). No person is to be taken to have failed to comply with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 10A(1) (as added) on the ground that a motor vehicle or a relevant trailer was not fitted with a warning device and the requirements in heads (i) and (ii) in the text were not being satisfied as mentioned in reg 10A(1) (as added): (1) before 1 October 1998, if the motor vehicle was first used before 1 April 1998 or the relevant trailer was manufactured before that date; or (2) before 1 April 1998 in relation to any other motor vehicle or relevant trailer: reg 10A(3) (as so added).

8 'Maximum height', in relation to any high level equipment fitted to a vehicle, means the height of the highest point of that equipment above the ground when it is raised as far as possible by means of that device and the vehicle is unladen: *ibid* reg 10C(1), (6)(c) (as added: see note 4 *supra*).

9 *Ibid* reg 10B(1)(a) (reg 10B added by SI 1997/530).

10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 10B(1)(b) (as added: see note 9 *supra*).

11 Ie *ibid* reg 10A (as added).

12 'Registered or put into circulation' has the same meaning as in EC Directive 85/3 (OJ L2, 3.1.85, p 14) art 3: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 10B(2) (as added: see note 9 *supra*).

13 'EEA state' means a state which is a contracting party to the EEA Agreement; and 'EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (Cm 2073), as adjusted by the Protocol signed at Brussels on 17 March 1993: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 10C(1), (6)(a), (b) (as added: see note 4 *supra*).

14 'International traffic' has the same meanings as in EC Directive 85/3 (OJ L2, 3.1.85, p 14) art 3: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 10B(2) (as added: see note 9 *supra*).

- 15 Ibid reg 10B(2) (as added: see note 9 supra).
- 16 Ibid reg 10B(3)(a) (as added: see note 9 supra). For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.
- 17 Ibid reg 10B(3)(b) (as added: see note 9 supra). 'Industrial tractor' means a tractor, not being an agricultural motor vehicle, which: (1) has an unladen weight not exceeding 7,370 kg; (2) is designed and used primarily for work off roads, or for work on roads in connection only with road construction or maintenance (including any such tractor when fitted with an implement or implements designed primarily for use in connection with such work, whether or not any such implement is of itself designed to carry a load); and (3) has a maximum speed not exceeding 20 mph: reg 3(2), Table.  
  
'Maximum speed' means the speed which a vehicle is incapable, by reason of its construction, of exceeding on the level under its own power when fully laden: reg 3(2), Table.
- 18 Ibid reg 10B(3)(c) (as added: see note 9 supra). 'Works truck' means a motor vehicle (other than a straddle carrier) designed for use in private premises and used on a road only in delivering goods from or to such premises to or from a vehicle on a road in the immediate neighbourhood, or in passing from one part of any such premises to another or to other private premises in the immediate neighbourhood or in connection with road works while at or in the immediate neighbourhood of the site of such works: reg 3(2), Table. 'Straddle carrier' means a motor vehicle constructed to straddle and lift its load for the purpose of transportation: reg 3(2), Table.
- 19 As to the Secretary of State for Defence see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 438 et seq.
- 20 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 10B(3)(d) (as added: see note 9 supra).
- 21 Ibid reg 10B(3)(e) (as added: see note 9 supra).
- 22 Ibid reg 10B(3)(f) (as added (see note 9 supra); and amended in relation to England by SI 2004/3168; and in relation to Wales by SI 2005/2929).
- 23 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 10B(3)(g) (as added: see note 9 supra).
- 24 Ibid reg 10B(3)(h) (as added: see note 9 supra). For the meaning of 'car transporter' see PARA 271 note 7 ante.
- 25 'Maximum travelling height', in relation to a motor vehicle to which ibid reg 10A (as added) applies, means: (1) if the overall travelling height could be increased by raising any high level equipment fitted to the vehicle or to any relevant trailer drawn by it that is not for the time being at its maximum height, the greatest overall travelling height that could be achieved by raising such equipment (without making any other changes to the vehicle, its load or equipment or to any trailer drawn by it, its load or equipment); or (2) in any other case, the overall travelling height: reg 10C(1), (6)(d) (as added (see note 4 supra); and amended by SI 1998/1188).
- 26 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 10B(3)(i) (as added: see note 9 supra).
- 27 Ibid reg 10A(2)(a) (as added: see note 7 supra).
- 28 Ibid reg 10A(2)(b) (as added: see note 7 supra).
- 29 Ie ibid reg 10A(1) (as added): see the text and notes 1-7 supra.
- 30 Ibid reg 10A(4) (as added: see note 7 supra).

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## **279. Specified permitted overhang.**

The overhang<sup>1</sup> of a wheeled<sup>2</sup> vehicle of a specified class must not, subject to any exemption, exceed the specified distance<sup>3</sup>.

In the case of a motor tractor<sup>4</sup>, except for a track-laying<sup>5</sup> vehicle and an agricultural motor vehicle<sup>6</sup>, the maximum overhang is 1.83 metres<sup>7</sup>.

In the case of a heavy motor car<sup>8</sup> and a motor car<sup>9</sup>, except:

- 183 (1) a bus<sup>10</sup>;
- 184 (2) a refuse vehicle<sup>11</sup>;
- 185 (3) a works truck<sup>12</sup>;
- 186 (4) a track-laying vehicle;
- 187 (5) an agricultural motor vehicle;
- 188 (6) a motor car which is an ambulance;
- 189 (7) a vehicle designed to dispose of its load to the rear, if the overhang does not exceed 1.15 metres;
- 190 (8) a vehicle first used before 2 January 1933; and
- 191 (9) a vehicle first used before 1 January 1966 if the distance between the centres of the rearmost and foremost axles<sup>13</sup> does not exceed 2.29 metres and the specified distance<sup>14</sup> is not exceeded by more than 76 millimetres,

the maximum overhang is 60 per cent of the distance between the transverse plane which passes through the centre or centres of the foremost wheel or wheels and the transverse plane which passes through the foremost point from which the overhang is to be measured<sup>15</sup>. Heating plant on a vehicle designed and mainly used to heat the surface of a road or similar surface in the process of construction, repair or maintenance must be disregarded<sup>16</sup>.

1 For the meaning of 'overhang' see PARA 280 post.

2 For the meaning of 'wheeled' see PARA 267 note 2 ante.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 11(1). The corresponding provisions of earlier regulations were not infringed when the permitted overhang was only exceeded if the vehicle was used with its tailboard down (*Andrews v HE Kershaw Ltd* [1952] 1 KB 70, [1951] 2 All ER 764, DC), but were infringed where the permitted overhang was exceeded when a tailboard which was designed to increase the vehicle's capacity was down (*Guest Scottish Carriers Ltd v Trend* [1967] 3 All ER 52, [1967] 1 WLR 1371, DC), or where the permitted overhang was exceeded when a container which was designed to be clipped onto the bed of the vehicle was clipped on (*Hawkins v Harold A Russett Ltd* [1983] 1 All ER 215, DC).

4 For the meaning of 'motor tractor' see PARA 216 ante.

5 For the meaning of 'track-laying' see PARA 267 note 3 ante.

6 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

7 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 11(1), Table item 1.

8 For the meaning of 'heavy motor car' see PARA 213 ante. A heavy motor car is to be taken to comply with the requirements of *ibid* reg 11(1) if it meets the requirements of EC Directive 97/27 (OJ L233, 25.8.97, p 1) Annex I para 7.6.2: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 11(3) (added by SI 1998/1188).

9 For the meaning of 'motor car' see PARA 212 ante.

10 For the meaning of 'bus' see PARA 271 note 6 ante.

11 'Refuse vehicle' means a vehicle designed for use and used solely in connection with street cleansing, the collection or disposal of refuse, or the collection or disposal of the contents of gullies or cesspools: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

12 For the meaning of 'works truck' see PARA 278 note 18 ante.

13 For the purposes of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078 (as amended), other than reg 26 (as amended) (see PARA 297 post) and reg 27 (as amended) (see PARA 298 post), in counting the number of axles of, and in determining the sum of the weights transmitted to the road surface by any one axle of, a vehicle, all the wheels of which the centres of the areas of contact with the road surface can be included between any two transverse planes less than 0.5 metres apart are to be treated as constituting one axle: reg 3(2), Table, (8) (amended by SI 1992/2016). For the meaning of 'wheel' see PARA 267 note 2 ante. For the meaning of 'transverse plane' see PARA 271 note 7 ante.

14 See the text to note 15 infra.

15 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 11(1), Table item 2. The overhang is to be measured as provided for in reg 3(2): see PARA 280 post. In the case of an agricultural motor vehicle the distance measured horizontally and PARALLEL to the longitudinal axis of the rear portion of the vehicle between the transverse planes passing through the rearmost point of the vehicle and through the centre of the rear or the rearmost axle must not exceed 3 metres: reg 11(2).

16 Ibid reg 11(1), Table.

## UPDATE

### 279 Specified permitted overhang

NOTE 8--Directive 97/27 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

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### 280. Meaning of 'overhang'.

'Overhang' means the distance measured horizontally and PARALLEL to the longitudinal axis of a vehicle between two transverse planes<sup>1</sup> passing through the following two points:

192 (1) the rearmost point of the vehicle exclusive of:

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23. (a) any expanding or extensible contrivance forming part of a turntable fire escape fixed to a vehicle;

24. (b) in the case of a motor car<sup>2</sup> constructed solely for the carriage of passengers and their effects and adapted to carry not more than eight passengers exclusive of the driver<sup>3</sup>, any luggage carrier fitted to the vehicle; and

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193 (2) in the case of a motor vehicle<sup>4</sup> having not more than three axles<sup>5</sup> of which only one is not a steering axle, the centre point of that axle, in the case of a motor vehicle having three axles of which the front axle is the only steering axle and of a motor vehicle having four axles of which the two foremost are the only steering axles, a point 110 millimetres behind the centre of a straight line joining the centre points of the two rearmost axles, and, in any other case, a point situated on the longitudinal axis of the vehicle and such that a line drawn from it at right angles to that axis will pass through the centre of the minimum turning circle of the vehicle<sup>6</sup>.

- 1 For the meaning of 'transverse plane' see PARA 271 note 7 ante.
- 2 For the meaning of 'motor car' see PARA 212 ante.
- 3 For the meaning of 'driver' see PARA 207 ante.
- 4 For the meaning of 'motor vehicle' see PARA 210 ante.
- 5 As to the meaning of 'axle' see PARA 279 note 13 ante.
- 6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

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### **281. Minimum ground clearance.**

A wheeled<sup>1</sup> trailer<sup>2</sup> which is a goods vehicle<sup>3</sup> and manufactured on or after 1 April 1984 must have a minimum ground clearance<sup>4</sup> of not less than 160 millimetres if the trailer has an axle interspace<sup>5</sup> of more than 6 metres but less than 11.5 metres, and a minimum ground clearance of not less than 190 millimetres if the trailer has an axle interspace of 11.5 metres or more<sup>6</sup>.

The above provisions do not apply in the case of a trailer:

- 194 (1) which is fitted with a suspension system with which, by the operation of a control, the trailer may be lowered or raised, while that system is being operated to enable the trailer to pass under a bridge or other obstruction over a road<sup>7</sup> provided that at such times the system is operated so that no part of the trailer (excluding any wheel) touches the ground or is likely to do so<sup>8</sup>; or
- 195 (2) while it is being loaded or unloaded<sup>9</sup>.

- 1 For the meaning of 'wheeled' see PARA 267 note 2 ante.
- 2 For the meaning of 'trailer' see PARA 210 ante.
- 3 For the meaning of 'goods vehicle' see PARA 271 note 26 ante.

4 'Ground clearance' means the shortest distance between the ground and the lowest part of that portion of the trailer, excluding any part of a suspension, steering or braking system attached to any axle, any wheel and any air skirt, which lies within the area formed by the overall width of the trailer and the middle 70% of the axle interspace, such distance being ascertained when the trailer: (1) is fitted with suitable tyres which are inflated to a pressure recommended by the manufacturer; and (2) is reasonably horizontal and standing on ground which is reasonably flat: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 12(3). A brake drum and a brake disc are deemed to form part of the wheel and not of the braking system: reg 3(2), Table, (6). For the meaning of 'axle interspace' see note 5 infra; and for the meaning of 'overall width' see PARA 274 ante.

5 'Axle interspace' means: (1) in the case of a semi-trailer, the distance between the point of support of the semi-trailer at its forward end and, if it has only one axle, the centre of that axle or, if it has more than one axle, the point halfway between the centres of the foremost and rearmost of those axles; and (2) in the case of any other trailer, the distance between the centre of its front axle or, if it has more than one axle at the front, the point halfway between the centres of the foremost and rearmost of those axles, and the centre of its rear axle or, if it has more than one axle at the rear, the point halfway between the centre of the foremost and rearmost of those axles: *ibid* reg 12(3). For the meaning of 'semi-trailer' see PARA 271 note 6 ante; and as to the meaning of 'axle' see PARA 279 note 13 ante.

- 6 *Ibid* reg 12(1).

- 7 For the meaning of 'road' see PARA 206 ante.
- 8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 12(2)(a).
- 9 Ibid reg 12(2)(b).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(ii) Dimensions and Manoeuvrability/282. Turning circle for buses.

## **282. Turning circle for buses.**

Every bus<sup>1</sup> first used<sup>2</sup> on or after 1 April 1982<sup>3</sup> is required to be able to move on either lock so that, both with and without all its wheels<sup>4</sup> in contact with the ground, no part of it projects outside the area contained between concentric circles with radii of 12.5 metres and 5.3 metres<sup>5</sup>.

When such a bus moves forward from rest, on either lock, so that its outermost point describes a circle of 12.5 metres radius, no part of the vehicle may project beyond the longitudinal plane<sup>6</sup> which, at the beginning of the manoeuvre, defines the overall width<sup>7</sup> of the vehicle on the side opposite to the direction in which it is turning by more than 0.8 metres, if it is a rigid vehicle of 12 metres or less in overall length<sup>8</sup>, or 1.2 metres, if it is a rigid bus of over 12 metres in overall length or an articulated bus<sup>9</sup>.

- 1 For the meaning of 'bus' see PARA 271 note 6 ante.
- 2 For the meaning of 'first used' see PARA 267 note 5 ante.
- 3 See the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 13(1).
- 4 For the meaning of 'wheel' see PARA 267 note 2 ante.
- 5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 13(2) (amended by SI 1998/1188). In relation to a vehicle manufactured before 1 June 1998, the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 13(2) (as amended) has effect as if the words 'both with and without all its wheels in contact with the ground' were omitted: reg 13(2A) (added by SI 1998/1188).
- 6 For the meaning of 'longitudinal plane' see PARA 274 note 1 ante.
- 7 For the meaning of 'overall width' see PARA 274 ante.
- 8 'Rigid vehicle' means a motor vehicle which is not constructed or adapted to form part of an articulated vehicle or articulated bus: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table. For the meaning of 'motor vehicle' see PARA 210 ante; for the meaning of 'articulated vehicle' see PARA 271 note 6 ante; for the meaning of 'articulated bus' see PARA 271 note 6 ante; and for the meaning of 'overall length' see PARA 272 ante.
- 9 Ibid reg 13(3) (amended by SI 1998/1188; SI 2003/182). For these purposes, the two rigid portions of an articulated bus must be in line at the beginning of the manoeuvre: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 13(4).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE



OF VEHICLES/(ii) Dimensions and Manoeuvrability/283. Turning circle for articulated vehicles other than those incorporating a car transporter.

**283. Turning circle for articulated vehicles other than those incorporating a car transporter.**

Every articulated vehicle<sup>1</sup>, other than:

- 196 (1) an articulated vehicle the semi-trailer<sup>2</sup> of which: (a) was manufactured before 1 April 1990 and has an overall length<sup>3</sup> that does not exceed the overall length it had on that date; (b) is a car transporter<sup>4</sup>, a low loader<sup>5</sup> or a stepframe low loader<sup>6</sup> or is constructed and normally used for the conveyance of indivisible loads<sup>7</sup> of exceptional length<sup>8</sup>;
- 197 (2) an articulated vehicle having an overall length not exceeding 15.5 metres and of which the drawing vehicle was first used before 1 June 1998 or the trailer was first used before that date<sup>9</sup>; or
- 198 (3) an articulated vehicle when an axle of the trailer is raised to aid traction<sup>10</sup>,

must be able to move on either lock so that both with and without all its wheels<sup>11</sup> in contact with the surface of the road (and with certain disregards<sup>12</sup>) no part of it projects outside the area contained between concentric circles with radii of 12.5 metres and 5.3 metres<sup>13</sup>.

1 For the meaning of 'articulated vehicle' see PARA 271 note 6 ante.

2 For the meaning of 'semi-trailer' see PARA 271 note 6 ante.

3 For the meaning of 'overall length' see PARA 272 ante.

4 For the meaning of 'car transporter' see PARA 271 note 7 ante.

5 For the meaning of 'low loader' see PARA 271 note 11 ante.

6 'Stepframe low loader' means a semi-trailer (not being a low loader) which is constructed and normally used for the carriage of engineering equipment and is so constructed that the upper surface of the major part of the load platform is at a height of less than 1 metre above the ground when measured on level ground and when: (1) any adjustable suspension is at the normal travelling height; (2) all pneumatic tyres are suitably inflated for use when the vehicle is fully laden; and (3) the semi-trailer is unladen: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (definition added by SI 1990/317). For the meaning of 'engineering equipment' see PARA 271 note 11 ante; and for the meaning of 'pneumatic tyre' see PARA 271 note 11 ante.

7 For the meaning of 'indivisible load' see PARA 271 note 34 ante.

8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 13A(2)(a) (reg 13A added by SI 1990/317; and substituted by SI 2000/3197).

9 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 13A(2)(b) (as added and substituted: see note 8 supra).

10 Ibid reg 13A(2)(c) (as added and substituted: see note 8 supra).

11 For the meaning of 'wheel' see PARA 267 note 2 ante.

12 Ie disregarding the items set out in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table paras (a)-(m) in the definition of 'overall width' (see PARA 274 heads (1)-(13) ante) and in reg 3(2), Table paras (i)(a)-(o) in the definition of 'overall length' (see PARA 272 heads (1)(a)-(n) ante).

13 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 13A(1) (as added and substituted: see note 8 supra). In relation to a vehicle manufactured before 1 June 1998, reg 13A(1) (as added and substituted) has effect as if the words 'both with and without all its wheels in contact with the surface of the road and' were omitted: reg 13A(3) (as so added and substituted). An articulated vehicle is to be taken to

comply with reg 13A(1) (as added and substituted) if the semi-trailer comprised in it is, by virtue of EC Council Directive 97/27 (OJ L233, 25.8.97, p 1) Annex 1 para 7.6.1.2, deemed to comply with Annex 1 para 7.6.1: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 13A(4) (as so added and substituted).

## UPDATE

### **283 Turning circle for articulated vehicles other than those incorporating a car transporter**

NOTE 13--Directive 97/27 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(ii) Dimensions and Manoeuvrability/284. note 13--Directive 97/27 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).Turning circle for articulated vehicles incorporating a car transporter.

### **284. NOTE 13--Directive 97/27 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).Turning circle for articulated vehicles incorporating a car transporter.**

Every articulated vehicle<sup>1</sup> having an overall length<sup>2</sup> exceeding 15.5 metres, the semi-trailer<sup>3</sup> of which is a car transporter<sup>4</sup>, other than:

- 199 (1) an articulated vehicle, the semi-trailer of which was manufactured before 1 April 1990, and the distance from the front of the trailer to the rearmost axle<sup>5</sup> is no greater than it was on that date<sup>6</sup>; and
- 200 (2) an articulated vehicle the semi-trailer of which is a low loader<sup>7</sup> or a stepframe low loader<sup>8</sup>,

must be able to move on either lock so that both with and without all its wheels<sup>9</sup> in contact with the surface of the road (and with certain disregards<sup>10</sup>) no part of the motor vehicle<sup>11</sup> drawing the car transporter, or the car transporter to the rear of the transverse plane<sup>12</sup> passing through the king pin, projects outside the area between concentric circles with radii of 12.5 metres and 5.3 metres<sup>13</sup>.

1 For the meaning of 'articulated vehicle' see PARA 271 note 6 ante.

2 For the meaning of 'overall length' see PARA 272 ante.

3 For the meaning of 'semi-trailer' see PARA 271 note 6 ante.

4 See the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 13B(1) (reg 13B(1)-(4) added by SI 1990/317). For the meaning of 'car transporter' see PARA 271 note 7 ante.

5 As to the meaning of 'axle' see PARA 279 note 13 ante.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 13B(2) (as added: see note 4 supra).

7 For the meaning of 'low loader' see PARA 271 note 11 ante.

8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 13B(3) (as added: see note 4 supra). For the meaning of 'stepframe low loader' see PARA 283 note 6 ante.

9 For the meaning of 'wheel' see PARA 267 note 2 ante.

10 In disregarding the items set out in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table paras (a)-(m) in the definition of 'overall width' (see PARA 274 heads (1)-(13) ante) and in reg 3(2), Table paras (i)(a)-(o) in the definition of 'overall length' (see PARA 272 heads (1)(a)-(n) ante).

11 For the meaning of 'motor vehicle' see PARA 210 ante.

12 For the meaning of 'transverse plane' see PARA 271 note 7 ante.

13 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 13B(4) (as added (see note 4 supra); and amended by SI 1998/1188). In relation to a vehicle manufactured before 1 June 1998, the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 13B(4) (as added and amended) has effect as if the words 'both with and without all its wheels in contact with the surface of the road' were omitted: reg 13B(5) (added by SI 1998/1188). An articulated vehicle is to be taken to comply with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 13B(4) (as added and amended) if the semi-trailer comprised in it is, by virtue of EC Council Directive 97/27 (OJ L233, 25.8.97, p 1) Annex 1 para 7.6.1.2, deemed to comply with Annex 1 para 7.6.1: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 13B(6) (added by SI 1998/1188).

## UPDATE

### 284 Turning circle for articulated vehicles incorporating a car transporter

NOTE 13--Directive 97/27 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(ii) Dimensions and Manoeuvrability/285. Turning circle for heavy motor cars.

### 285. Turning circle for heavy motor cars.

Every vehicle:

- 201 (1) which is a heavy motor car<sup>1</sup> or a vehicle combination which consists of a heavy motor car drawing one trailer<sup>2</sup> which is not a semi-trailer<sup>3</sup>;
- 202 (2) which was manufactured, or, in the case of a vehicle combination, where the part consisting of a heavy motor car was manufactured, after 31 May 1998<sup>4</sup>; and
- 203 (3) which is not a vehicle falling within any of the specified descriptions<sup>5</sup>,

must be able to move on either lock so that, both with and without all its wheels<sup>6</sup> in contact with the surface of the road (and with certain disregards<sup>7</sup>) no part of it projects outside the area contained between concentric circles with radii of 12.5 metres and 5.3 metres<sup>8</sup>.

1 For the meaning of 'heavy motor car' see PARA 213 ante.

2 For the meaning of 'trailer' see PARA 210 ante.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 13C(1)(a) (reg 13C added by SI 1998/1188). For the meaning of 'semi-trailer' see PARA 271 note 6 ante.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 13C(1)(b) (as added: see note 3 supra).

5 Ibid reg 13C(1)(c) (as added: see note 3 supra). The descriptions of vehicles are: (1) a vehicle having four or more axles where the distance between the foremost and rearmost axles exceeds 6.4 metres; (2) a vehicle or a vehicle combination to which reg 13 (as amended) (see PARA 282 ante), reg 13A (as added and amended) (see PARA 283 ante), or reg 13B (as added and amended) (see PARA 284 ante) applies; and (3) a vehicle constructed and normally used for the carriage of indivisible loads of abnormal length: reg 13C(2) (as so added). As to the meaning of 'axle' see PARA 279 note 13 ante. For the meaning of 'indivisible load' see PARA 271 note 34 ante.

6 For the meaning of 'wheel' see PARA 267 note 2 ante.

7 Ie disregarding the items set out in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table paras (a)-(m) in the definition of 'overall width' (see PARA 274 heads (1)-(13) ante) and in reg 3(2), Table paras (i)(a)-(o) in the definition of 'overall length' (see PARA 272 heads (1)(a)-(1)(n) ante).

8 Ibid reg 13C(3) (as added: see note 3 supra).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(ii) Dimensions and Manoeuvrability/286. Connecting sections and direction-holding of articulated buses.

## **286. Connecting sections and direction-holding of articulated buses.**

The connecting section of the two parts of every articulated bus<sup>1</sup> first used<sup>2</sup> on or after 1 April 1982<sup>3</sup> must be constructed so as comply with the ECE Regulation<sup>4</sup> relating to such a section<sup>5</sup>.

Every such articulated bus is required to be constructed so that, when the vehicle is moving in a straight line, the longitudinal median planes<sup>6</sup> of its two parts coincide and form a continuous plane without any deflection<sup>7</sup>.

1 For the meaning of 'articulated bus' see PARA 271 note 6 ante.

2 For the meaning of 'first used' see PARA 267 note 5 ante.

3 See the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 14(1).

4 Ie the provisions specified in ECE Regulation 36 para 5.9 as regards vehicles within the scope of that Regulation. For the meaning of 'ECE Regulation' see PARA 270 note 2 ante.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 14(2).

6 For the meaning of 'longitudinal plane' see PARA 274 note 1 ante.

7 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 14(3).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(iii) Brakes/287. Braking systems of certain vehicles first used on or after 1 April 1983.

## **(iii) Brakes**

## 287. Braking systems of certain vehicles first used on or after 1 April 1983.

Subject to certain exceptions<sup>1</sup>, the braking system<sup>2</sup> of every wheeled<sup>3</sup> vehicle of a class specified in heads (1) to (6) below which, in the case of a motor vehicle<sup>4</sup>, is first used<sup>5</sup> on or after 1 April 1983 or which, in the case of a trailer<sup>6</sup>, is manufactured on or after 1 October 1982 must comply with the relevant construction, fitting and performance requirements<sup>7</sup>. The vehicles are:

- 204 (1) passenger vehicles<sup>8</sup> and dual-purpose vehicles<sup>9</sup> which have three or more wheels<sup>10</sup> except:
  - 11
  - 25. (a) dual-purpose vehicles constructed or adapted to carry not more than two passengers exclusive of the driver<sup>11</sup>;
  - 26. (b) motor cycles<sup>12</sup> with sidecar attached;
  - 27. (c) vehicles with three wheels, an unladen weight<sup>13</sup> not exceeding 410 kilograms, a maximum design speed<sup>14</sup> not exceeding 50 kilometres per hour and an engine capacity not exceeding 50 cubic centimetres; and
  - 28. (d) buses<sup>15</sup>;
- 12
- 205 (2) buses having a maximum gross weight<sup>16</sup> which does not exceed 5,000 kilograms<sup>17</sup>;
- 206 (3) buses having a maximum gross weight which exceeds 5,000 kilograms<sup>18</sup>;
- 207 (4) dual-purpose vehicles not within head (1) above and goods vehicles<sup>19</sup>, having a maximum gross weight which does not exceed 3,500 kilograms, and not being motor cycles with a sidecar attached<sup>20</sup>;
- 208 (5) goods vehicles with a maximum gross weight which: (a) exceeds 3,500 kilograms but does not exceed 12,000 kilograms<sup>21</sup>; or (b) exceeds 12,000 kilograms<sup>22</sup>;
- 209 (6) trailers with a maximum total design axle weight<sup>23</sup> which: (a) does not exceed 750 kilograms<sup>24</sup>; (b) exceeds 750 kilograms but does not exceed 3,500 kilograms<sup>25</sup>; (c) exceeds 3,500 kilograms but does not exceed 10,000 kilograms<sup>26</sup>; or (d) exceeds 10,000 kilograms<sup>27</sup>.

The above requirements as to braking systems<sup>28</sup> do not apply to<sup>29</sup>:

- 210 (i) an agricultural trailer<sup>30</sup> or agricultural trailed appliance<sup>31</sup> that is not, in either case, drawn at a speed exceeding 20 miles per hour<sup>32</sup>;
- 211 (ii) a locomotive<sup>33</sup>;
- 212 (iii) a motor tractor<sup>34</sup>;
- 213 (iv) an agricultural motor vehicle<sup>35</sup> unless it is first used after 1 June 1986 and is driven at more than 20 miles per hour<sup>36</sup>;
- 214 (v) a vehicle which has a maximum speed not exceeding 25 kilometres per hour<sup>37</sup>;
- 215 (vi) a works trailer<sup>38</sup>;
- 216 (vii) a works truck<sup>39</sup>;
- 217 (viii) a public works vehicle<sup>40</sup>;
- 218 (ix) a trailer designed and constructed, or adapted, to be drawn exclusively by a vehicle to which head (ii), (iii), (v), (vii) or (viii) above apply<sup>41</sup>;
- 219 (x) certain other types of trailer<sup>42</sup>;
- 220 (xi) a trailer which is manufactured before 1 January 1997 and has a maximum total design axle weight that does not exceed 750 kilograms<sup>43</sup>; or

221 (xii) a vehicle manufactured by Leyland Vehicles Limited and known as the Atlantean Bus, if first used before 1 October 1984<sup>44</sup>.

1 le subject to the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(2) (as amended) (see the text and notes 29-44 infra) and reg 15(3), (4) (as amended) (see note 7 infra). As to braking systems of vehicles other than vehicles first used on or after 1 April 1983 see the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 16, Sch 3 (reg 16 amended by SI 1990/1981; SI 1992/352; SI 1995/551; SI 1996/3033; SI 1998/2429; SI 2001/3208; and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 3 amended by SI 1987/676; SI 1990/1981; SI 1992/352; SI 1995/551; SI 2001/3208).

2 For the meaning of 'braking system' see PARA 281 note 4 ante.

3 For the meaning of 'wheeled' see PARA 267 note 2 ante.

4 For the meaning of 'motor vehicle' see PARA 210 ante.

5 For the meaning of 'first used' see PARA 267 note 5 ante.

6 For the meaning of 'trailer' see PARA 210 ante.

7 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(1) (amended by SI 1990/1981; SI 1995/551). The relevant construction, fitting and performance requirements are those specified in EEC Commission Directive 79/489 (OJ L128, 26.5.79, p 12) Annexes I, II, VII and, if relevant, Annexes III-VI, VIII; EEC Commission Directive 85/647 (OJ L380, 31.12.85, p 1) Annexes I, II and VII and, if relevant, Annexes III-VI, VIII, X-XII; EEC Commission Directive 88/194 (OJ L92, 9.4.88, p 47) Annexes I, II and VII and, if relevant, Annexes III-VI, VIII, X-XII; or EEC Commission Directive 91/422 (OJ L233, 22.8.91, p 21) Annexes I, II and VII and, if relevant, Annexes III-VI, VIII, X-XII (all of which amend EEC Council Directive 71/320 (OJ L202, 6.9.71, p 37) on the approximation of the laws of the member states relating to the braking devices of certain categories of motor vehicles and of their trailers): see the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(1A)-(1D) (reg 15(1A) added by SI 1987/676; and amended by SI 1990/1981; SI 1995/551; Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(1B) added by SI 1987/676; and substituted by SI 1990/1981; Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(1C) added by SI 1990/1981; and amended by SI 1995/551; Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(1D) added by SI 1995/551). As to the application of the testing requirements contained in the relevant European legislation see the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(3)-(7) (reg 15(3) amended by SI 1987/676; SI 1990/1981; SI 1992/352; SI 1995/551; SI 2001/3208; Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(3A), (3B) added by SI 1987/676; and amended by SI 1995/551; SI 2001/3208; Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(4) substituted by SI 1990/1981; and amended by SI 1992/352; SI 2001/3208; Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(5) added by SI 1987/676; substituted by SI 1992/352; and amended by SI 2001/3208; Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(5A) added by SI 1992/352; and amended by SI 1995/551; SI 2001/3208; Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(6) added by SI 1987/676; Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(7) added by SI 1987/676; and amended by SI 1990/1981; SI 1995/551; SI 2001/3208).

Subject to certain exceptions, the braking system of every wheeled vehicle of a class specified in heads (1)-(6) in the text which, in the case of a motor vehicle, is first used on or after 1 May 2002 or which, in the case of a trailer, is manufactured on or after 1 May 2002 must comply with the construction, fitting and performance requirements of EC Council Directive 98/12 (OJ L81, 18.3.1998, p 1) Annexes I, II and VII and, if relevant, Annexes III-VI, VIII, X-XIV: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(1E) (added by SI 2001/3208; and amended by SI 2002/1474).

For the purposes of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(1)-(7) (as amended), the date on which a trailer was manufactured is to be taken to be the date on which its manufacture was completed except that, in the case of a trailer whose manufacture has been completed for more than eight years and which has been the subject of a notifiable alteration under the Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, reg 30, it is to be taken to be the date on which the notifiable alteration was completed: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(8) (added by SI 2001/3208). A trailer, whose manufacture has been completed for more than eight years and which has been the subject of a notifiable alteration under the Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, reg 30, must comply with all requirements of European Community Directives relating to braking systems which applied to the trailer at the date when the notifiable alteration was completed: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(9) (added by SI 2001/3208).

8 'Passenger vehicle' means a vehicle constructed solely for the carriage of passengers and their effects: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

9 For the meaning of 'dual-purpose vehicle' see PARA 271 note 28 ante.

10 For the meaning of 'wheel' see PARA 267 note 2 ante.

11 For the meaning of 'driver' see PARA 207 ante.

12 For the meaning of 'motor cycle' see PARA 214 ante.

13 For the meaning of 'unladen weight' see PARA 271 note 21 ante.

14 For the meaning of 'maximum speed' see PARA 278 note 17 ante.

15 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(1) (as amended: see note 7 supra), Table item 1 (amended by SI 1995/551). For the meaning of 'bus' see PARA 271 note 6 ante.

16 For the meaning of 'maximum gross weight' see PARA 271 note 27 ante.

17 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(1) (as amended: see note 7 supra), Table item 2.

18 Ibid reg 15(1) (as amended: see note 7 supra), Table item 3.

19 For the meaning of 'goods vehicle' see PARA 271 note 26 ante.

20 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(1) (as amended: see note 7 supra), Table item 4.

21 Ibid reg 15(1) (as amended: see note 7 supra), Table item 5.

22 Ibid reg 15(1) (as amended: see note 7 supra), Table item 6.

23 'Axle weight' means, in relation to each axle of a vehicle, the sum of the weights transmitted to the road surface by all the wheels of that axle, having regard to the provisions of *ibid* reg 3(8) (as amended) (see PARA 279 note 13 ante): reg 3(2), Table. As to the meaning of 'axle' see PARA 279 note 13 ante.

'Maximum total design axle weight' means: (1) in the case of a trailer equipped with a Ministry plate in accordance with reg 70 (as amended) (see PARA 368 post), the sum of the relevant axle weights; (2) in the case of a trailer which is not equipped with a Ministry plate, but which is equipped with a plate in accordance with reg 66 (as amended) (see PARA 364 post), the sum of the maximum axle weights shown on the plate in respect of reg 66 (as amended), Sch 8 Pt II item 4 (see PARA 364 post); or (3) in the case of any other trailer, the sum of the axle weights which the trailer is designed or adapted not to exceed when the vehicle is travelling on a road, and for the purposes of head (1) *supra* the relevant axle weight, in respect to an axle, is the design axle weight shown in column 3 or column 4 of the Ministry plate in relation to that axle or if no such weight is shown, the axle weight shown in column 2 of that plate in relation to that axle: reg 3(2), Table (definition added by SI 1990/1981; and amended by SI 1994/329).

24 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(1) (as amended: see note 7 supra), Table item 7.

25 Ibid reg 15(1) (as amended: see note 7 supra), Table item 8.

26 Ibid reg 15(1) (as amended: see note 7 supra), Table item 9.

27 Ibid reg 15(1) (as amended: see note 7 supra), Table item 10.

28 Ie the requirements specified in *ibid* reg 15(1), (1A), (1C), (1D), (1E) (reg 15(1) as amended; reg 15(1A), (1C), (1D), (1E) as added and amended): see the text and notes 1-7 *supra*.

29 Ibid reg 15(2) (amended by SI 1987/676; SI 1990/1981; SI 1995/551; SI 2001/3208).

30 For the meaning of 'agricultural trailer' see PARA 271 note 30 ante.

31 For the meaning of 'agricultural trailed appliance' see PARA 271 note 21 ante.

32 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(2)(a).

- 33 Ibid reg 15(2)(b). For the meaning of 'locomotive' see PARA 217 note 3 ante.
- 34 Ibid reg 15(2)(c). For the meaning of 'motor tractor' see PARA 216 ante.
- 35 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.
- 36 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(2)(d).
- 37 Ibid reg 15(2)(e).
- 38 Ibid reg 15(2)(f). For the meaning of 'works trailer' see PARA 278 note 6 ante.
- 39 Ibid reg 15(2)(g). For the meaning of 'works truck' see PARA 278 note 18 ante.
- 40 Ibid reg 15(2)(h). 'Public works vehicle' means a mechanically propelled vehicle which is used on a road by or on behalf of:
- 26 (1) the Central Scotland Water Development Board;
  - 27 (2) a ferry undertaking;
  - 28 (3) a highway or roads authority (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq);
  - 29 (4) a local authority (see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq);
  - 30 (5) a market undertaking (see MARKETS, FAIRS AND STREET TRADING);
  - 31 (6) the Environment Agency (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq);
  - 32 (7) an operator of an electronic communications code network (see TELECOMMUNICATIONS vol 97 (2010) PARA 174);
  - 33 (8) a police authority (see POLICE vol 36(1) (2007 Reissue) PARA 139 et seq);
  - 34 (9) a universal service provider (within the meaning of the Postal Services Act 2000) in connection with the provision of a universal postal service (within the meaning of that Act (see POST OFFICE vol 36(2) (Reissue) PARA 24);
  - 35 (10) a public electricity supplier within the meaning of the Electricity Act 1989 Pt I (ss 1-64) (as amended) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1241);
  - 36 (11) a gas transporter within the meaning of the Gas Act 1986 Pt I (ss 1-48) (as amended) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 805);
  - 37 (12) a statutory undertaker within the meaning of the Highways Act 1980 s 329(1) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 80);
  - 38 (13) an undertaking for the supply of district heating;
  - 39 (14) a water authority within the meaning of the Water (Scotland) Act 1980; or
  - 40 (15) a water or sewerage undertaker within the meaning of the Water Act 1989 (see WATER AND WATERWAYS vol 100 (2009) PARAS 108, 137),
- for the purpose of works which such a body has a duty or power to carry out, and which is used only for the carriage of the crew, and goods which are needed for works in respect of which the vehicle is used: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (definition amended by the Environment Act 1995 s 120, Sch 22 para 233(1); by virtue of the Utilities Act 2000 s 76(7); and by SI 1990/1981; SI 1996/252; SI 2001/1149; SI 2003/2155). As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.
- 41 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(2)(i).
- 42 Ibid reg 15(2)(j) (substituted by SI 1996/3033). The types of trailer referred to in the text are trailers falling within the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 16(3)(b), (bb), (bc), (d), (e), (f) or (g) (reg 16(3)(b) as substituted, reg 16(3)(bb), (bc) as added): see note 1 supra.



43 Ibid reg 15(2)(ja) (added by SI 1996/3033).

44 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(2)(k).

## UPDATE

### **287 Braking systems of certain vehicles first used on or after 1 April 1983**

NOTE 7--Directive 71/320 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

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### **288. Vacuum or pressure brake warning devices.**

Every motor vehicle<sup>1</sup> which is equipped with a braking system<sup>2</sup> which embodies a vacuum or pressure reservoir or reservoirs must be equipped with a device so placed as to be readily visible to the driver<sup>3</sup> of the vehicle and which is capable of indicating any impending failure of, or deficiency in, the vacuum or pressure system<sup>4</sup>. That requirement does not apply in respect of:

- 222 (1) certain vehicles to which specified provisions apply or which comply with specified requirements<sup>5</sup>;
- 223 (2) certain agricultural motor vehicles<sup>6</sup>;
- 224 (3) vehicles with an unladen weight<sup>7</sup> not exceeding 3,050 kilograms propelled by an internal combustion engine, if the vacuum in the reservoir or reservoirs is derived directly from the induction system of the engine, and if, in the event of a failure of, or deficiency in, the vacuum system, the brakes of that braking system are sufficient under the most adverse conditions to bring the vehicle to rest within a reasonable distance<sup>8</sup>; or
- 225 (4) a vehicle first used before 1 October 1937<sup>9</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'braking system' see PARA 281 note 4 ante.

3 For the meaning of 'driver' see PARA 207 ante.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17(1), which is expressed to be subject to reg 17(2) (as amended): see the text and notes 5-9 infra.

5 Ibid reg 17(2)(a) (substituted by SI 2001/3208). The vehicles referred to in the text are vehicles to which the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15(1) (as amended), reg 15(1A), (1C) (as added and amended), reg 15(1D) (as added) or reg 15(1E) (as added and amended) (see PARA 287 ante) applies, or which comply with the requirements of reg 15 (as amended), EEC Council Directive 79/489 (OJ L128, 26.5.79, p 12), EEC Commission Directive 85/647 (OJ L380, 31.12.85, p 1), EEC Commission Directive 88/194 (OJ L92, 9.4.88, p 47), EC Commission Directive 91/422 (OJ L233, 22.8.91, p 21), EC Council Directive 98/12 (OJ L81, 18.3.1998, p 1), or ECE Regulation 13.03, 13.04, 13.05, 13.06, 13.07, 13.08 or 13.09. For the meaning of 'ECE Regulation' see PARA 270 note 2 ante.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17(2)(b) (amended by SI 1998/2429). The agricultural motor vehicles referred to in the text are vehicles which comply with EEC Council Directive 76/432 (OJ L122, 8.5.76, p 1) on the approximation of the laws of the member states relating to the

braking devices of wheeled agricultural or forestry tractors (as amended) or EC Commission Directive 96/63 (OJ L253, 10.5.96, p 13) amending Council Directive 76/432.

7 For the meaning of 'unladen weight' see PARA 271 note 21 ante.

8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17(2)(c).

9 Ibid reg 17(2)(d).

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### **289. Couplings on trailer pneumatic braking systems.**

No service line<sup>1</sup> comprised in a pneumatic braking system fitted to a trailer is to be equipped with a relevant coupling<sup>2</sup> unless that coupling is of the prescribed type<sup>3</sup> and complies with the prescribed dimensions<sup>4</sup> and requirements<sup>5</sup>.

No emergency line<sup>6</sup> comprised in a pneumatic braking system fitted to a trailer is to be equipped with a relevant coupling unless that coupling is of the prescribed type<sup>7</sup> and complies with the prescribed dimensions<sup>8</sup>.

No secondary line<sup>9</sup> comprised in a pneumatic braking system fitted to a trailer is to be equipped with a relevant coupling unless that coupling is of the prescribed type<sup>10</sup> and complies with the prescribed dimensions<sup>11</sup>.

1 For these purposes, 'service line' has the same meaning as in the British Standard specification: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17A(1) (reg 17A added by SI 1996/3033). 'The British Standard specification' means the British Standard specification for dimensions of 'contact' type couplings for air pressure braking systems on trailers and semi-trailers and their towing vehicles, and the arrangements of these couplings on articulated and drawbar combinations, published by the British Standards Institution under reference number BS AU 138a: 1980 or BS AU 138b: 2000: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17A(1) (as so added; and amended by SI 2001/3208). For the meaning of 'trailer' see PARA 210 ante. As to the British Standards Institution see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 446.

2 For these purposes, a relevant coupling is a coupling that is physically capable of being connected to a BS coupling: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17A(2) (as added: see note 1 supra). 'BS coupling' means a coupling which: (1) is of the type, shown in figure 1, 4 or 5 of the British Standard specification BS AU 138a: 1980 or figure 1, 2 or 3 of the British Standard specification BS AU 138b: 2000; and (2) complies with the dimensions shown in figure 1, 4 or 5 of the British Standard specification BS AU 138a: 1980 or figure 1, 2 or 3 of the British Standard specification BS AU 138b: 2000; and 'coupling' has the same meaning as in the British Standard specification: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17A(1) (as so added; definition substituted by SI 2001/3208).

3 I.e. the type shown in figure 2 of the British Standard specification BS AU 138a: 1980 or figure 4 of the British Standard specification BS AU 138b: 2000.

4 I.e. the dimensions shown in figure 2 of the British Standard specification BS AU 138a: 1980 or figure 4 of the British Standard specification BS AU 138b: 2000.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17A(3) (as added (see note 1 supra); and amended by SI 2001/3208). This is expressed to be subject to the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17A(6), (7) (as added). The prescribed requirements are those in the British Standard specification para 3.4.3, except so far as it requires it to be of a type shown in figure 2 of the British Standard specification BS AU 138a: 1980 or figure 4 of the British Standard specification BS AU 138b: 2000: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17A(3) (as so added and amended). For the purposes of reg 17A(3), (4), (5) (as added and amended), a reference to the dimensions

shown in a figure in the British Standard specification does not include any dimension marked 'M22 x 1.5': Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17A(6) (as so added).

Regulation 17A(3) (as added and amended) does not prevent a line being equipped with a relevant coupling which fulfils the requirements of: (1) a standard or code of practice of a national standards body or equivalent body of any EEA state; (2) any international standard recognised for use as a standard by any EEA state; or (3) a technical specification or code of practice which, whether mandatory or not, is recognised for use as a standard by a public authority of any EEA state, where the standard, code of practice, international standard or technical specification provides, in relation to couplings, a level of safety and compatibility with BS couplings of the type shown in figure 1 of the British Standard specification BS AU 138a: 1980 or figure 1 of the British Standard specification BS AU 138b: 2000 equivalent to that provided by those specifications as modified in accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17A(6) (as added): reg 17A(7) (as so added; and substituted by SI 2001/3208). The Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17A(7) (as added and substituted) has effect: (a) in relation to reg 17A(4) (as added), as if for 'reg 17A(3)' there were substituted the words 'reg 17A(4)' and for the words 'figure 1' (first and second places) there were substituted the words 'figure 4' and 'figure 2' respectively; and (b) in relation to reg 17A(5) (as added), as if for the words 'reg 17A(3)' there were substituted the words 'reg 17A(5)' and for the words 'figure 1' (first and second places) there were substituted the words 'figure 5' and 'figure 3' respectively: reg 17A(8) (as so added; and substituted by SI 2001/3208). 'EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (Cm 2073), as adjusted by the Protocol signed at Brussels on 17 March 1993; and 'EEA state' means a state which is a contracting party to the EEA Agreement: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17A(1) (as so added).

6 For these purposes, 'emergency line' has the same meaning as in the British Standard specification: *ibid* reg 17A(1) (as added: see note 1 *supra*).

7 *Ie* the type shown in figure 3 of the British Standard specification BS AU 138a: 1980 or figure 5 of the British Standard specification BS AU 138b: 2000.

8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17A(4) (as added (see note 1 *supra*); and amended by SI 2001/3208). This is expressed to be subject to the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17A(6)-(8) (reg 17A(6) as added; reg 17(7), (8) as added and substituted) (see note 5 *supra*). The prescribed dimensions are those shown in figure 3 of the British Standard specification BS AU 138a: 1980 or figure 5 of the British Standard specification BS AU 138b: 2000: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17A(4) (as so added and amended).

9 For these purposes, 'secondary line' has the same meaning as in the British Standard specification: *ibid* reg 17A(1) (as added: see note 1 *supra*).

10 *Ie* the type shown in figure 6 of the British Standard specification BS AU 138a: 1980 or figure 6 of the British Standard specification BS AU 138b: 2000.

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17A(5) (as added (see note 1 *supra*); and amended by SI 2001/3208). This is expressed to be subject to the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17A(6)-(8) (reg 17A(6) as added; reg 17(7), (8) as added and substituted) (see note 5 *supra*). The prescribed dimensions are those shown in figure 6 of the British Standard specification BS AU 138a: 1980 or figure 6 of the British Standard specification BS AU 138b: 2000: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 17A(5) (as so added and amended).

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## **290. Maintenance and efficiency of brakes.**

Every part of every braking system<sup>1</sup> and of its means of operation fitted to a vehicle must be maintained in good and efficient working order and be properly adjusted<sup>2</sup>.

Every wheeled<sup>3</sup> motor vehicle<sup>4</sup> except:

226 (1) an agricultural motor vehicle<sup>5</sup> which is not driven at more than 20 miles per hour<sup>6</sup>;

- 227 (2) a works truck<sup>7</sup>;
- 228 (3) a pedestrian-controlled vehicle<sup>8</sup>; and
- 229 (4) an industrial tractor<sup>9</sup>,

which is of a specified class<sup>10</sup> must, subject to any relevant exemption<sup>11</sup>, be so maintained that: (a) its service braking system<sup>12</sup> has a total braking efficiency not less than that prescribed<sup>13</sup>; and (b) if the vehicle is a heavy motor car<sup>14</sup>, a motor car<sup>15</sup> first used<sup>16</sup> on or after 1 January 1915 or a motor cycle<sup>17</sup> first used on or after 1 January 1927, its secondary braking system<sup>18</sup> has a total braking efficiency not less than that prescribed<sup>19</sup>.

The brakes of every agricultural motor vehicle which is first used on or after 1 June 1986 and is not driven at more than 20 miles per hour, and of every agricultural trailer<sup>20</sup> manufactured on or after 1 December 1985 must be capable of achieving a braking efficiency of not less than 25 per cent when the weight of the vehicle is equal to the total maximum axle weights<sup>21</sup> which the vehicle is designed to have<sup>22</sup>.

Certain vehicles or combinations of vehicles<sup>23</sup> must be so maintained that their brakes are capable, without the assistance of stored energy<sup>24</sup>, of holding it stationary on a gradient of at least the prescribed percentage for that vehicle or combination<sup>25</sup>.

1 For the meaning of 'braking system' see PARA 281 note 4 ante.

2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 18(1). Without prejudice to reg 18(3) (see the text and notes 3-19 infra), where a vehicle is fitted with an anti-lock braking system ('the ABS') then, while the vehicle is completing a journey at the beginning of which the ABS was operating correctly or is being driven to a place where the ABS is to undergo repairs, any fault in the ABS is to be disregarded for the purposes of reg 18(1): reg 18(1A), (1B) (added by SI 1992/352). 'Anti-lock braking system' means a part of a service braking system which automatically controls the degree of slip, in the direction of rotation of the wheel or wheels, on one or more wheels of the vehicle during braking: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (definition added by SI 2001/3208).

Where a goods vehicle of a specified category is being used to tow a trailer of a specified category and both vehicles are fitted with an ISO 7638 connector to provide a dedicated power supply to the anti-lock braking system, then these connectors are to be used regardless of any alternative method available on the vehicles to provide such power: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 18(1C) (added by SI 2001/3208). 'ISO' means International Organisation for Standardisation; and 'ISO 7638 connector' means an electrical connector that complies with standard ISO 7638: 1997-1 or ISO 7638: 1997-2 and is used to provide a dedicated power supply and a communication link between the tow vehicle and trailer: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (definitions added by SI 2001/3208).

3 For the meaning of 'wheeled' see PARA 267 note 2 ante.

4 For the meaning of 'motor vehicle' see PARA 210 ante.

5 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 18(2)(a).

7 Ibid reg 18(2)(b). For the meaning of 'works truck' see PARA 278 note 18 ante.

8 Ibid reg 18(2)(c). 'Pedestrian-controlled vehicle' means a motor vehicle which is controlled by a pedestrian and not constructed or adapted for use or used for the carriage of a driver or passenger: reg 3(2), Table.

9 Ibid reg 18(2)(d) (added by SI 1995/551). For the meaning of 'industrial tractor' see PARA 278 note 17 ante.

10 I.e. a class specified in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 18(3), Table I col 2 (amended by SI 1990/1981; SI 1992/352; SI 1995/551; SI 2001/3208). See also the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 18(7).

11 I.e. any exemption shown in ibid reg 18(3), Table I col 4.

12 'Service braking system' means the braking system of a vehicle which is designed and constructed to have the highest braking efficiency of any of the braking systems with which the vehicle is equipped: ibid reg

3(2), Table. 'Braking efficiency' means the maximum braking force capable of being developed by the brakes of a vehicle, expressed as a percentage of the weight of the vehicle including any persons or load carried in the vehicle: reg 3(2), Table.

13    Ie as shown in *ibid* reg 18(3), Table I col 3(a).

14    For the meaning of 'heavy motor car' see PARA 213 ante.

15    For the meaning of 'motor car' see PARA 212 ante.

16    For the meaning of 'first used' see PARA 267 note 5 ante.

17    For the meaning of 'motor cycle' see PARA 214 ante.

18    'Secondary braking system' means a braking system of a vehicle applied by a secondary means of operation independent of the service braking system or by one of the sections comprised in a split braking system: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

'Split braking system' means, in relation to a motor vehicle, a braking system so designed and constructed that: (1) it comprises two independent sections of mechanism capable of developing braking force such that, excluding the means of operation, a failure of any part (other than a fixed member or a brake shoe anchor pin) of one of the said sections will not cause a decrease in the braking force capable of being developed by the other section; (2) the said two sections are operated by a means of operation which is common to both sections; and (3) the braking efficiency of either of the said two sections can be readily checked: reg 3(2), Table.

19    *Ibid* reg 18(3). The total braking system so prescribed is that shown in reg 18(3), Table I col 3(b): reg 18(3). As to the circumstances in which a goods vehicle is not deemed to comply with the requirements of reg 18(3) see reg 18(4); and as to the circumstances in which a bus is not deemed to comply with the requirements of reg 18(3) see reg 18(4A)-(4C) (added by SI 1995/551). A vehicle which is subject to, and which complies with the requirements in, the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 18, Table I item 1 and Table II item 1 is not to be treated as failing, by reason of its braking efficiency, to comply with reg 15 (as amended) (see PARA 287 ante) or with EEC Commission Directive 79/489 (OJ L128, 26.5.79, p 12), EEC Commission Directive 85/647 (OJ L380, 31.12.85, p 1), EEC Commission Directive 88/194 (OJ L92, 9.4.88, p 47), EC Commission Directive 91/422 (OJ L233, 22.8.91, p 21), EC Council Directive 98/12 (OJ L81, 18.3.1998, p 1) or ECE Regulation 13.03, 13.04, 13.05, 13.06, 13.07, 13.08 or 13.09: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 18(8) (amended by SI 1990/1981; SI 1992/352; SI 1995/551; SI 2001/3208). For the meaning of 'ECE Regulation' see PARA 270 note 2 ante.

20    For the meaning of 'agricultural trailer' see PARA 271 note 30 ante.

21    For the meaning of 'axle weight' see PARA 287 note 23 ante.

22    Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 18(5).

23    Ie every vehicle or combination of vehicles specified in an item in *ibid* reg 18(6), Table II col 2.

24    'Stored energy', in relation to a braking system of a vehicle, means energy (other than the muscular energy of the driver or the mechanical energy of a spring) stored in a reservoir for the purpose of applying the brakes under the control of the driver, either directly or as a supplement to his muscular energy: *ibid* reg 3(2), Table.

25    *Ibid* reg 18(6). The percentage is prescribed in reg 18(6), Table II col 3.

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## **291. Application of brakes of trailers.**

Where a trailer<sup>1</sup> is drawn by a motor vehicle<sup>2</sup>, the driver<sup>3</sup> (or in the case of a locomotive<sup>4</sup> one of the persons employed in driving or tending the locomotive) must be in a position readily to

operate any brakes required<sup>5</sup> to be fitted to the trailer as well as the brakes of the motor vehicle unless a person other than the driver (or in the case of a locomotive a person other than one of the persons employed in driving or tending the locomotive) is in a position and competent efficiently to apply the brakes of the trailer<sup>6</sup>.

The above provisions do not, however, apply to a trailer which:

- 230 (1) is fitted<sup>7</sup> with brakes which automatically come into operation on the overrun of the trailer<sup>8</sup>; or
- 231 (2) is a broken-down vehicle<sup>9</sup> being drawn, whether or not in consequence of a breakdown, in such a manner that it cannot be steered by its own steering gear<sup>10</sup>.

1 For the meaning of 'trailer' see PARA 210 ante.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'driver' see PARA 207 ante.

4 For the meaning of 'locomotive' see PARA 217 note 3 ante.

5 le required by the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078 (as amended).

6 Ibid reg 19 (amended by SI 1990/1981).

7 le in compliance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078 (as amended).

8 Ibid reg 19 proviso (a).

9 As to the meaning of 'broken-down vehicle' see PARA 271 note 36 ante.

10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 19 proviso (b) (amended by SI 1990/1981).

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## **(iv) Wheels, Springs, Tyres and Tracks**

### **292. General requirement as to wheels and tracks.**

Every motor cycle<sup>1</sup> and invalid carriage<sup>2</sup> must be a wheeled<sup>3</sup> vehicle, and every other motor vehicle<sup>4</sup> and every trailer<sup>5</sup> must be either a wheeled vehicle or a track-laying<sup>6</sup> vehicle<sup>7</sup>.

1 For the meaning of 'motor cycle' see PARA 214 ante.

2 For the meaning of 'invalid carriage' see PARA 215 ante.

3 For the meaning of 'wheeled' see PARA 267 note 2 ante.

4 For the meaning of 'motor vehicle' see PARA 210 ante.

5 For the meaning of 'trailer' see PARA 210 ante.

6 For the meaning of 'track-laying' see PARA 267 note 3 ante.

7 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 20.

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### **293. Springs and resilient material.**

Every motor vehicle<sup>1</sup> and every trailer<sup>2</sup>, other than a works truck<sup>3</sup> or works trailer<sup>4</sup>, must be equipped with suitable and sufficient springs between each wheel<sup>5</sup> and the frame of the vehicle<sup>6</sup>. In the case of a track-laying<sup>7</sup> vehicle:

- 232 (1) resilient material must be interposed between the rims of the weight-carrying rollers and the road surface so that the weight of the vehicle, other than that borne by any wheel, is supported by the resilient material<sup>8</sup>; and
- 233 (2) where the vehicle is a heavy motor car<sup>9</sup>, motor car<sup>10</sup> or trailer, other than a works truck or works trailer, it must have suitable springs between the frame of the vehicle and the weight-carrying rollers<sup>11</sup>.

The above provisions do not apply to:

- 234 (a) a wheeled<sup>12</sup> vehicle with an unladen weight<sup>13</sup> not exceeding 4,070 kilograms which is: (i) a motor tractor<sup>14</sup> any unsprung wheel of which is fitted with a pneumatic tyre<sup>15</sup>; (ii) a motor tractor used in connection with railway shunting and which is used on a road<sup>16</sup> only when passing from one railway track to another in connection with such use<sup>17</sup>; (iii) a vehicle specially designed, and mainly used, for work on rough ground or unmade roads and every wheel of which is fitted with a pneumatic tyre and which is not driven at more than 20 miles per hour<sup>18</sup>; or (iv) a vehicle constructed or adapted for, and being used for, road sweeping and every wheel of which is fitted with either a pneumatic tyre or a resilient tyre<sup>19</sup> and which is not driven at more than 20 miles per hour<sup>20</sup>;
- 235 (b) an agricultural motor vehicle<sup>21</sup> which is not driven at more than 20 miles per hour<sup>22</sup>;
- 236 (c) an agricultural trailer<sup>23</sup>, or an agricultural trailed appliance<sup>24</sup>;
- 237 (d) a trailer used solely for the haulage of felled trees<sup>25</sup>;
- 238 (e) a motor cycle<sup>26</sup>;
- 239 (f) a mobile crane<sup>27</sup>;
- 240 (g) a pedestrian-controlled vehicle<sup>28</sup> all the wheels of which are equipped with pneumatic tyres<sup>29</sup>;
- 241 (h) a road roller<sup>30</sup>;
- 242 (i) a broken-down vehicle<sup>31</sup>; or
- 243 (j) a vehicle first used<sup>32</sup> on or before 1 January 1932<sup>33</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'trailer' see PARA 210 ante.

3 For the meaning of 'works truck' see PARA 278 note 18 ante.

4 For the meaning of 'works trailer' see PARA 278 note 6 ante.

- 5 For the meaning of 'wheel' see PARA 267 note 2 ante.
- 6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 22(1), (4).
- 7 For the meaning of 'track-laying' see PARA 267 note 3 ante.
- 8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 22(2)(a).
- 9 For the meaning of 'heavy motor car' see PARA 213 ante.
- 10 For the meaning of 'motor car' see PARA 212 ante.
- 11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 22(2)(b), (4).
- 12 For the meaning of 'wheeled' see PARA 267 note 2 ante.
- 13 For the meaning of 'unladen weight' see PARA 271 note 21 ante.
- 14 For the meaning of 'motor tractor' see PARA 216 ante.
- 15 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 22(3)(a)(i). For the meaning of 'pneumatic tyre' see PARA 271 note 11 ante.
- 16 For the meaning of 'road' see PARA 206 ante.
- 17 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 22(3)(a)(ii).
- 18 Ibid reg 22(3)(a)(iii).
- 19 'Resilient tyre' means a tyre, not being a pneumatic tyre, which is of soft or elastic material, having regard to the proviso that save where otherwise provided, a tyre is not deemed to be of soft or elastic material unless that material is either: (1) continuous round the circumference of the wheel; or (2) fitted in sections so that so far as reasonably practicable no space is left between the ends of the sections, and is of such thickness and design as to minimise, so far as reasonably possible, vibration when the vehicle is in motion and so constructed as to be free from any defect which might in any way cause damage to the surface of a road: *ibid* reg 3(2), Table, (5).
- 20 Ibid reg 22(3)(a)(iv).
- 21 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.
- 22 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 22(3)(b).
- 23 For the meaning of 'agricultural trailer' see PARA 271 note 30 ante.
- 24 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 22(3)(c). For the meaning of 'agricultural trailed appliance' see PARA 271 note 21 ante.
- 25 Ibid reg 22(3)(d).
- 26 Ibid reg 22(3)(e). For the meaning of 'motor cycle' see PARA 214 ante.
- 27 Ibid reg 22(3)(f).
- 28 For the meaning of 'pedestrian-controlled vehicle' see PARA 290 note 8 ante.
- 29 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 22(3)(g).
- 30 Ibid reg 22(3)(h).
- 31 Ibid reg 22(3)(i). As to the meaning of 'broken-down vehicle' see PARA 271 note 36 ante.
- 32 For the meaning of 'first used' see PARA 267 note 5 ante.
- 33 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 22(3)(j).



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## **294. Wheel loads.**

Each of the following vehicles, that is to say:

- 244 (1) a semi-trailer<sup>1</sup> with more than two wheels<sup>2</sup>;
- 245 (2) a track-laying<sup>3</sup> vehicle with more than two wheels<sup>4</sup>; and
- 246 (3) any other vehicle with more than four wheels<sup>5</sup>,

other than a road roller<sup>6</sup>, must be fitted with a compensating arrangement which will ensure that under the most adverse conditions every wheel will remain in contact with the road<sup>7</sup> and will not be subject to abnormal variations of load<sup>8</sup>.

The above provisions do not apply in respect of a steerable wheel on which the load does not exceed: (a) if it is a wheeled<sup>9</sup> vehicle, 4,250 kilograms<sup>10</sup>; and (b) if it is a track-laying vehicle, 2,540 kilograms<sup>11</sup>.

1 For the meaning of 'semi-trailer' see PARA 271 note 6 ante.

2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 23(1)(a). For the meaning of 'wheel' see PARA 267 note 2 ante.

3 For the meaning of 'track-laying' see PARA 267 note 3 ante.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 23(1)(b).

5 Ibid reg 23(1)(c).

6 Ibid reg 23(2).

7 For the meaning of 'road' see PARA 206 ante.

8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 23(3). In the application of reg 23(3) to an agricultural motor vehicle, wheels which are in line transversely on one side of the longitudinal axis of the vehicle are to be regarded as one wheel: reg 23(5). For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

9 For the meaning of 'wheeled' see PARA 267 note 2 ante.

10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 23(4)(a) (amended by SI 1998/3112).

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 23(4)(b).

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## **295. Tyres.**

Every wheel<sup>1</sup> of a vehicle of a class specified in heads (1) to (7) below must be fitted with a tyre of a specified type which complies with any conditions specified in that head; but those requirements do not apply to a road roller and are subject, in the case of any item in heads (1) to (7) below, to the exemptions specified<sup>2</sup>:

- 247 (1) Locomotives<sup>3</sup> not falling in head (6) below must be fitted with pneumatic<sup>4</sup> or resilient<sup>5</sup> tyres<sup>6</sup>.
- 248 (2) Motor tractors<sup>7</sup> not falling in head (6) below must be fitted with pneumatic or resilient tyres, but no recut pneumatic tyre<sup>8</sup> is to be fitted to any wheel of a vehicle with an unladen weight<sup>9</sup> of less than 2,540 kilograms unless the diameter of the rim<sup>10</sup> of the wheel is at least 405 millimetres<sup>11</sup>.
- 249 (3) Heavy motor cars<sup>12</sup> not falling in head (6) below must be fitted with pneumatic tyres, except in the case of the following, if every wheel not fitted with a pneumatic tyre is fitted with a resilient tyre: (a) a vehicle mainly used for work on rough ground; (b) a tower wagon; (c) a vehicle fitted with a turntable fire escape; (d) a refuse vehicle; (e) a works truck<sup>13</sup>; and (f) a vehicle first used<sup>14</sup> before 3 January 1933<sup>15</sup>.
- 250 (4) Motor cars<sup>16</sup> not falling in head (6) below must be fitted with pneumatic tyres, but no recut tyre is to be fitted to any wheel of a vehicle unless it is: (a) an electrically propelled goods vehicle<sup>17</sup>; or (b) a goods vehicle with an unladen weight of at least 2,540 kilograms and the diameter of the rim of the wheel is at least 405 millimetres. There is an exemption for the following, if every wheel not fitted with a pneumatic tyre is fitted with a resilient tyre: a vehicle mainly used for work on rough ground, a refuse vehicle, a works truck, a vehicle with an unladen weight not exceeding 1,270 kilograms if electrically propelled or 1,020 kilograms in any other case, a tower wagon, a vehicle fitted with a turn-table fire escape and a vehicle first used before 3 January 1933<sup>18</sup>.
- 251 (5) Motor cycles<sup>19</sup> must be fitted with pneumatic tyres but no recut tyre is to be fitted, except in the case of the following, if every wheel not fitted with a pneumatic tyre is fitted with a resilient tyre, that is to say a works truck and a pedestrian-controlled vehicle<sup>20</sup>.
- 252 (6) Agricultural motor vehicles<sup>21</sup> which are not driven at more than 20 miles per hour must be fitted with pneumatic or resilient tyres, but no recut pneumatic tyre is to be fitted to any wheel of a vehicle with an unladen weight of less than 2,540 kilograms unless the diameter of the rim of the wheel is at least 405 millimetres. The requirement to be fitted with pneumatic or resilient tyres does not apply to a vehicle of which every steering wheel is fitted with a smooth-soled tyre which is not less than 60 millimetres wide where it touches the road and, in the case of a wheeled<sup>22</sup> vehicle, every driving wheel is fitted with a smooth-soled tyre which satisfies certain criteria<sup>23</sup>.
- 253 (7) Trailers<sup>24</sup> must be fitted with pneumatic tyres, and except in the case of a trailer mentioned in head (d) below, no recut tyre is to be fitted to any wheel of a trailer drawn by a heavy motor car or a motor car if the trailer has an unladen weight not exceeding 2,040 kilograms if it is a living van<sup>25</sup>, or 1,020 kilograms in any other case, or is not constructed or adapted to carry any load, other than plant or other special appliance which is a permanent or essentially permanent fixture and has a gross weight<sup>26</sup> not exceeding 2,290 kilograms. There is an exemption in the case of:

13

- 29. (a) an agricultural trailer<sup>27</sup> manufactured before 1 December 1985;
- 30. (b) an agricultural trailed appliance<sup>28</sup>;
- 31. (c) a trailer used to carry water for a road roller being used in connection with road works;
- 32. (d) the following, if every wheel which is not fitted with a pneumatic tyre is fitted with a resilient tyre, that is to say a works trailer<sup>29</sup>, a refuse vehicle, a trailer

drawn by a heavy motor car every wheel of which is not required to be fitted with a pneumatic tyre, a broken-down vehicle or a trailer drawn by a vehicle which is not a heavy motor car or a motor car<sup>30</sup>.

14

A wheel of a vehicle, not being a vehicle constructed or assembled by a person not ordinarily engaged in the trade or business of manufacturing vehicles of that description, may not be fitted with a temporary use spare tyre<sup>31</sup> unless either: (i) the vehicle is a passenger vehicle<sup>32</sup>, not being a bus<sup>33</sup>, first used before 1 April 1987; or (ii) the vehicle complies at the time of its first use with the relevant EC requirements<sup>34</sup>.

1 For the meaning of 'wheel' see PARA 267 note 2 ante.

2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 24(1), (2).

3 For the meaning of 'locomotive' see PARA 217 ante.

4 For the meaning of 'pneumatic tyre' see PARA 271 note 11 ante.

5 For the meaning of 'resilient tyre' see PARA 293 note 19 ante.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 24(1), Table item 1.

7 For the meaning of 'motor tractor' see PARA 216 ante.

8 'Recut pneumatic tyre' means a pneumatic tyre in which all or part of its original tread pattern has been cut deeper or burnt deeper or a different tread pattern has been cut deeper or burnt deeper than the original tread pattern: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

9 For the meaning of 'unladen weight' see PARA 271 note 21 ante.

10 'Rim diameter' is to be interpreted in accordance with the British Standards BS AU 50: Pt 2: s 1: 1980 entitled 'British Standard Automobile Series: Specification for Tyres and Wheels Pt 2. Wheels and rims s 1. Rim profiles and dimensions (including openings for valves)' which came into effect on 28 November 1980 (see now BS AU 50: Pt 4: 1991; BS AU 50: Pt 4: 1995); and 'rim diameter size code' is to be interpreted in accordance with that British Standard: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (definition added by SI 1990/1981).

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 24(1), Table item 2.

12 For the meaning of 'heavy motor car' see PARA 213 ante.

13 For the meaning of 'works truck' see PARA 278 note 18 ante.

14 For the meaning of 'first used' see PARA 267 note 5 ante.

15 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 24(1), Table item 3.

16 For the meaning of 'motor car' see PARA 212 ante.

17 For the meaning of 'goods vehicle' see PARA 271 note 26 ante.

18 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 24(1), Table item 4.

19 For the meaning of 'motor cycle' see PARA 214 ante.

20 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 24(1), Table item 5. For the meaning of 'pedestrian-controlled vehicle' see PARA 290 note 8 ante.

21 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

22 For the meaning of 'wheeled' see PARA 267 note 2 ante.

23 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 24(1), Table item 6. The smooth-soled tyre must be not less than 150 mm wide if the unladen weight of the vehicle exceeds 3,050 kg, or 76 mm wide in any other case, and either is shod with diagonal cross-bars not less than 76 mm wide or more than 20 mm thick extending the full breadth of the tyre and so arranged that the space between adjacent bars is not more than 76 mm or is shod with diagonal cross-bars of resilient material not less than 60 mm wide extending the full breadth of the tyre and so arranged that the space between adjacent bars is not more than 76 mm: see reg 24(1), Table item 6.

24 For the meaning of 'trailer' see PARA 210 ante.

25 'Living van' means a vehicle used primarily as living accommodation by one or more persons, and which is not also used for the carriage of goods or burden which are not needed by such one or more persons for the purpose of their residence in the vehicle: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

26 For the meaning of 'gross weight' see PARA 271 note 27 ante.

27 For the meaning of 'agricultural trailer' see PARA 271 note 30 ante.

28 For the meaning of 'agricultural trailed appliance' see PARA 271 note 21 ante.

29 For the meaning of 'works trailer' see PARA 278 note 6 ante.

30 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 24(1), Table item 7.

31 'Temporary use spare tyre' means a pneumatic tyre which is designed for use on a motor vehicle only: (1) in the event of the failure of one of the tyres normally fitted to a wheel of the vehicle; and (2) at a speed lower than that for which such normally fitted tyres are designed: *ibid* reg 3(2), Table.

32 For the meaning of 'passenger vehicle' see PARA 287 note 8 ante.

33 For the meaning of 'bus' see PARA 271 note 6 ante.

34 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 24(3), (4) (reg 24(3) amended by SI 1992/3088). The relevant EC requirements are ECE Regulation 64 or EEC Council Directive 92/23 (OJ L129, 14.5.92, p 95) relating to tyres for motor vehicles and their trailers and to their fitting (as amended): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 24(3) (as so amended). For the meaning of 'ECE Regulation' see PARA 270 note 2 ante.

## UPDATE

### 295 Tyres

NOTE 34--Directive 92/23 replaced with effect from 1 November 2017: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

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### 296. Tyre loads and speed ratings.

Any tyre fitted to the axle<sup>1</sup> of a vehicle mentioned in heads (1) to (3) below must comply with the relevant requirements<sup>2</sup>:

- 254 (1) a vehicle which is of one or more of the following descriptions and first used<sup>3</sup> before 1 April 1991, namely: (a) a goods vehicle<sup>4</sup>; (b) a trailer; (c) a bus<sup>5</sup>; and (d) any other specified class of vehicle<sup>6</sup>;

- 255 (2) a vehicle which is of one or more of the following descriptions and first used on or after 1 April 1991, namely: (a) a goods vehicle; (b) a trailer; (c) a bus; and (d) any other specified class of vehicle<sup>7</sup>, and does not fall within head (3) below<sup>8</sup>; and
- 256 (3) any vehicle falling within one of the following classes and first used on or after 1 April 1991: (a) engineering plant<sup>9</sup>; (b) track-laying<sup>10</sup> vehicles; (c) vehicles equipped with tyres of speed category Q; (d) works trucks<sup>11</sup>; and (e) motor vehicles with a maximum speed<sup>12</sup> not exceeding 30 miles per hour, not being vehicles of a class otherwise specified<sup>13</sup>, or trailers while being drawn by such vehicles<sup>14</sup>.

The above provisions do not apply to any tyre fitted to the axle of a vehicle if the vehicle is broken down<sup>15</sup> or proceeding to a place where it is to be broken up and being drawn by a motor vehicle at a speed not exceeding 20 miles per hour<sup>16</sup>.

1 As to the meaning of 'axle' see PARA 279 note 13 ante.

2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 25(1) (reg 25 substituted by SI 1990/1981; and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 25(1) amended by SI 1995/551). This is expressed to be subject to the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 25(3), (4) (reg 25(4) as amended), reg 25(7A) (as added and amended), reg 25(7B) (as added).

The relevant requirements are the requirements of reg 25(5), (6) (as substituted), in the case of reg 25(1), Table I item 1 (as substituted) (see head (1) in the text), of reg 25(5)-(7) (as substituted and amended), in the case of reg 25(1), Table I item 2 (as substituted) (see head (2) in the text), and of reg 25(5) (as substituted and amended), in the case of reg 25(1), Table I item 3 (as substituted) (see head (3) in the text). The requirements of reg 25(5) (as substituted) are that the tyre, as respects strength, must be designed and manufactured adequately to support the maximum permitted axle weight for the axle: reg 25(5) (as so substituted). The requirements of reg 25(6) (as substituted and amended) are that the tyre must be designed and manufactured adequately to support the maximum permitted axle weight for the axle when the vehicle is driven at the speed shown in reg 25(6), Table II col 3 (as substituted and amended) in the item in which the vehicle is described in Table II col 2 (as substituted and amended) (the lowest relevant speed being applicable to a vehicle which is described in more than one item): reg 25(6) (as so substituted; and amended by SI 1991/2710; SI 1992/3088). The requirement of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 25(7) (as substituted and amended) is that the tyre when first fitted to the vehicle was marked with a designated approval mark or complied with the requirements of ECE Regulation 30, 30.01, 30.02 or 54, but this requirement does not apply to a retreaded tyre: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 25(7) (as so substituted; and amended by SI 1991/2710; SI 1992/3088). Where in relation to any vehicle first used on or after 1 April 1991 a tyre supplied by a manufacturer for the purposes of tests or trials of that tyre is fitted to an axle of that vehicle, the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 25(7) (as substituted and amended) does not apply to that tyre while it is being used for those purposes: reg 25(4) (as so substituted; and amended by SI 1991/2710). The requirements of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 25(6), (7) (as substituted and amended) do not apply to any tyre fitted to the axle of a vehicle of a class specified in an item in reg 25(7A), Table III col 2 (as added) while the vehicle is being driven or drawn at a speed not exceeding that specified in that item in Table III col 3 (as added): reg 25(7A) (added by SI 1991/2710; and amended by SI 1995/551). For the meaning of 'ECE Regulation' see PARA 270 note 2 ante.

'Retreaded tyre' means a tyre which has been reconditioned to extend its useful life by replacement of the tread rubber or by replacement of the tread rubber and renovation of the sidewall rubber: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (definition added by SI 1990/1981).

'Maximum permitted axle weight' means in relation to an axle: (1) in the case of a vehicle which is equipped with a Ministry plate in accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 70 (as amended), the axle weight shown in column 2 of that plate (where the plate is in the form required by reg 70 (as amended), Sch 10 or Sch 10B (as added)) or in column 2 of that plate (where the plate is in the form required by reg 70 (as amended), Sch 10A (as added) or Sch 10C (as added)) (see PARA 368 post) in relation to that axle; (2) in the case of a vehicle which is not equipped with a Ministry plate but which is equipped with a plate in accordance with reg 66 (as amended), the maximum axle weight shown for that axle on the plate in respect of reg 66 (as amended), Sch 8 Pt I item 9 in the case of a motor vehicle and Sch 8 Pt II item 7 in the case of a trailer; and (3) in any other case, the weight which the axle is designed or adapted not to exceed when the vehicle is travelling on a road: reg 3(2), Table (definition added by SI 1990/1981; and amended by SI 1994/329). As to Ministry plates see PARA 368 post. As to the meaning of 'axle' see PARA 279 note 13 ante; and for the meaning of 'axle weight' see PARA 287 note 23 ante. For the meaning of 'motor vehicle' see PARA 210 ante.

Where a tyre fitted to the axle of a vehicle: (a) bears a speed category symbol and load-capacity index, being marks that were moulded on to or into the tyre at the time that it was manufactured; (b) is designed and manufactured so as to be capable of operating safely at the speed and load indicated by those marks; and (c) is designed so as to be capable of being fitted to the axle of a vehicle of a class specified in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 25(7A) (as added and amended), Table III col 2 item 1, 2, 3 or 4 (as added) (see note 6 *infra*), reg 25(7) (as substituted and amended) does not apply to the tyre if: (i) the vehicle is being driven or drawn at a speed that does not exceed the speed indicated by the speed category symbol or 50 mph (whichever is the less); and (ii) the load on the tyre does not exceed the load indicated by the load-capacity index: reg 25(7B), (7C) (added by SI 1995/551).

3 For these purposes, any reference to the first use is, in relation to a trailer, to be construed as a reference to the date which is six months after the date of manufacture of the trailer: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 25(10) (as substituted: see note 2 *supra*). For the general meaning of 'first used' see PARA 267 note 5 *ante*. For the meaning of 'trailer' see PARA 210 *ante*.

4 For the meaning of 'goods vehicle' see PARA 271 note 26 *ante*.

5 For the meaning of 'bus' see PARA 271 note 6 *ante*.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 25(1) (as substituted and amended: see note 2 *supra*), Table I item 1 (Table I substituted by SI 1991/2710). The specified classes of vehicles are agricultural motor vehicles, agricultural trailers, agricultural trailed appliances, agricultural trailed appliance conveyors and works trailers: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 25(7A), Table III col 2 (added by SI 1991/2710). For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 *ante*; for the meaning of 'agricultural trailer' see PARA 271 note 30 *ante*; for the meaning of 'agricultural trailed appliance' see PARA 271 note 21 *ante*; and for the meaning of 'works trailer' see PARA 278 note 6 *ante*. 'Agricultural trailed appliance conveyor' means an agricultural trailer which: (1) has an unladen weight which does not exceed 510 kg; (2) is clearly and indelibly marked with its unladen weight; (3) has a pneumatic tyre fitted to each one of its wheels; and (4) is designed and constructed for the purpose of conveying one agricultural trailed appliance or one agricultural, horticultural or forestry implement: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

7 For the specified classes of vehicles see note 6 *supra*.

8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 25(1) (as substituted and amended: see note 2 *supra*), Table I item 2 (as substituted: see note 6 *supra*).

9 For the meaning of 'engineering plant' see PARA 271 note 11 *ante*.

10 For the meaning of 'track-laying' see PARA 267 note 3 *ante*.

11 For the meaning of 'works truck' see PARA 278 note 18 *ante*.

12 For the meaning of 'maximum speed' see PARA 278 note 17 *ante*.

13 The vehicles of a class specified in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 25(6), Table II items 2, 3 (as substituted and amended), in reg 25(7A) (as added and amended) (see note 2 *supra*), and in head (3)(a)-(d) in the text.

14 *Ibid* reg 25(1), Table I item 3 (as substituted: see note 6 *supra*), reg 25(2) (substituted by SI 1991/2710).

15 As to the meaning of 'broken-down vehicle' see PARA 271 note 36 *ante*.

16 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 25(3) (as substituted: see note 2 *supra*).

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## 297. Mixing of tyres.

Pneumatic tyres<sup>1</sup> of different types of structure<sup>2</sup> must not be fitted to the same axle<sup>3</sup> of a wheeled<sup>4</sup> vehicle<sup>5</sup>.

A wheeled motor vehicle<sup>6</sup> having only two axles each of which is equipped with one or two single wheels<sup>7</sup> must not be fitted with<sup>8</sup>:

- 257 (1) a diagonal-ply tyre<sup>9</sup> or a bias-belted tyre<sup>10</sup> on its rear axle if a radial-ply tyre<sup>11</sup> is fitted on its front axle<sup>12</sup>; or
- 258 (2) a diagonal-ply tyre on its rear axle if a bias-belted tyre is fitted on the front axle<sup>13</sup>.

However, that prohibition does not apply to a vehicle to an axle of which there are fitted wide tyres<sup>14</sup> not specially constructed for use on engineering plant<sup>15</sup> or to a vehicle which has a maximum speed<sup>16</sup> not exceeding 30 miles per hour<sup>17</sup>.

Pneumatic tyres fitted to the steerable axles of a wheeled vehicle or the driven axles<sup>18</sup> of a wheeled vehicle, not being steerable axles, must all be of the same type of structure<sup>19</sup>.

The above provisions<sup>20</sup> do not prohibit the fitting of a temporary use spare tyre<sup>21</sup> to a wheel of a passenger vehicle<sup>22</sup>, not being a bus<sup>23</sup>, unless it is driven at a speed exceeding 50 miles per hour<sup>24</sup>.

1 For the meaning of 'pneumatic tyre' see PARA 271 note 11 ante.

2 For these purposes, 'type of structure', in relation to a tyre, means a type of structure of a tyre of a kind defined in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 26(1)-(5) (as amended) (see the text and notes 5-24 infra): reg 26(6).

3 For these purposes, 'axle' includes: (1) two or more stub axles which are fitted on opposite sides of the longitudinal axis of the vehicle so as to form: (a) a pair in the case of two stub axles; and (b) pairs in the case of more than two stub axles; and (2) a single stub axle which is not one of a pair: *ibid* reg 26(6). 'Stub axle' means an axle on which only one wheel is mounted: reg 26(6). As to the meaning of 'axle' generally see PARA 279 note 13 ante.

4 For the meaning of 'wheeled' see PARA 267 note 2 ante.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 26(1).

6 For the meaning of 'motor vehicle' see PARA 210 ante.

7 For the meaning of 'wheel' see PARA 267 note 2 ante.

8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 26(2).

9 For these purposes, 'a diagonal-ply tyre' means a pneumatic tyre, the structure of which is such that the ply cords extend to the bead so as to be laid at alternate angles of substantially less than 90° to the peripheral line of the tread, but not being a bias-belted tyre: *ibid* reg 26(6).

10 For these purposes, 'a bias-belted tyre' means a pneumatic tyre, the structure of which is such that the ply cords extend to the bead so as to be laid at alternate angles of substantially less than 90° to the peripheral line of the tread, and are constrained by a circumferential belt comprising two or more layers of substantially inextensible cord material laid at alternate angles smaller than those of the ply cord structure: *ibid* reg 26(6).

11 For these purposes, 'a radial-ply tyre' means a pneumatic tyre, the structure of which is such that the ply cords extend to the bead so as to be laid at an angle of substantially 90° to the peripheral line of the tread, the ply cord structure being stabilised by a substantially inextensible circumferential belt: *ibid* reg 26(6).

12 *Ibid* reg 26(2)(a).

13 *Ibid* reg 26(2)(b).

14 'Wide tyre' means a pneumatic tyre of which the area of contact with the road surface is not less than 300 mm in width when measured at right angles to the longitudinal axis of the vehicle: *ibid* reg 3(2), Table.

- 15 For the meaning of 'engineering plant' see PARA 271 note 11 ante.
- 16 For the meaning of 'maximum speed' see PARA 278 note 17 ante.
- 17 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 26(3).
- 18 For these purposes, 'a driven axle' means an axle through which power is transmitted from the engine of a vehicle to the wheels on that axle: *ibid* reg 26(6).
- 19 *Ibid* reg 26(4) (amended by SI 1990/1981).
- 20 *Ie* the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 26(1), (2), (4) (as amended).
- 21 For the meaning of 'temporary use spare tyre' see PARA 295 note 31 ante.
- 22 For the meaning of 'passenger vehicle' see PARA 287 note 8 ante.
- 23 For the meaning of 'bus' see PARA 271 note 6 ante.
- 24 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 26(5).

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## **298. Condition and maintenance of tyres.**

A wheeled<sup>1</sup> motor vehicle<sup>2</sup> or trailer<sup>3</sup> a wheel<sup>4</sup> of which is fitted with a pneumatic tyre<sup>5</sup> must not be used on a road<sup>6</sup> if:

- 259 (1) the tyre is unsuitable having regard to the use to which the motor vehicle or trailer is being put or to the types of tyres fitted to its other wheels<sup>7</sup>;
- 260 (2) the tyre is not so inflated as to make it fit for the use to which the motor vehicle or trailer is being put<sup>8</sup>;
- 261 (3) the tyre has a cut in excess of 25 millimetres or 10 per cent of the section width of the tyre, whichever is the greater, measured in any direction on the outside of the tyre and deep enough to reach the ply or cord<sup>9</sup>;
- 262 (4) the tyre has any lump, bulge or tear caused by separation or partial failure of its structure<sup>10</sup>;
- 263 (5) the tyre has any of the ply or cord exposed<sup>11</sup>;
- 264 (6) the base of any groove<sup>12</sup> which showed in the original tread pattern<sup>13</sup> of the tyre is not clearly visible<sup>14</sup>;
- 265 (7) either (a) the grooves of the tread pattern of the tyre do not have a depth of at least 1 millimetre throughout a continuous band measuring at least three-quarters of the breadth of the tread and round the entire outer circumference of the tyre<sup>15</sup>; or (b) if the grooves of the original tread pattern of the tyre did not extend beyond three-quarters of the breadth of the tread, any groove which showed in the original tread pattern does not have a depth of at least 1 millimetre<sup>16</sup>; or
- 266 (8) the tyre is not maintained in such condition as to be fit for the use to which the vehicle or trailer is being put or has a defect which might in any way cause damage to the surface of the road or damage to persons on or in the vehicle or to other persons using the road<sup>17</sup>.



The above provisions do not prohibit the use on a road of a motor vehicle or trailer by reason only of the fact that a wheel of the vehicle or trailer is fitted with a tyre which is deflated or not fully inflated and which has any of the defects described in head (3), (4) or (5) above, if the tyre and the wheel to which it is fitted are so constructed as to make the tyre in that condition fit for the use to which the motor vehicle or trailer is being put and the outer sides of the wall of the tyre are so marked as to enable the tyre to be identified as having been constructed to comply with the requirements as to condition and maintenance of tyres<sup>18</sup>.

Head (1) above does not prohibit the use on a road of a passenger vehicle<sup>19</sup>, not being a bus<sup>20</sup>, by reason only of the fact that a wheel of the vehicle is fitted with a temporary use spare tyre<sup>21</sup>, unless the vehicle is driven at a speed exceeding 50 miles per hour<sup>22</sup>.

Nothing in heads (1) to (7) above applies to:

- 267 (i) an agricultural motor vehicle<sup>23</sup> that is not driven at more than 20 miles per hour<sup>24</sup>;
- 268 (ii) an agricultural trailer<sup>25</sup>;
- 269 (iii) an agricultural trailed appliance<sup>26</sup>; or
- 270 (iv) a broken-down vehicle<sup>27</sup> or a vehicle proceeding to a place where it is to be broken up, being drawn, in either case, by a motor vehicle at a speed not exceeding 20 miles per hour<sup>28</sup>.

Nothing in heads (6) and (7) above applies to a three-wheeled motor cycle<sup>29</sup> the unladen weight<sup>30</sup> of which does not exceed 102 kilograms and which has a maximum speed<sup>31</sup> of 12 miles per hour or a pedestrian-controlled<sup>32</sup> works truck<sup>33</sup>; nor does anything in head (7) above apply to a motor cycle with an engine capacity which does not exceed 50 cubic centimetres<sup>34</sup>.

With effect from 1 January 1992, heads (7) and (8) above do not apply to:

- 271 (A) passenger vehicles other than motor cycles constructed or adapted to carry no more than eight seated passengers in addition to the driver<sup>35</sup>;
- 272 (B) goods vehicles with a maximum gross weight<sup>36</sup> which does not exceed 3,500 kilograms<sup>37</sup>; and
- 273 (C) light trailers<sup>38</sup> not falling within head (B) above<sup>39</sup>,

first used<sup>40</sup> on or after 3 January 1933<sup>41</sup>; but such vehicles must comply with certain requirements<sup>42</sup>.

A recut pneumatic tyre must not be fitted to any wheel of a motor vehicle or trailer if its ply or cord has been cut or exposed by the recutting process or it has been wholly or partially recut in a pattern other than the manufacturer's recut tread pattern<sup>43</sup>.

1 For the meaning of 'wheeled' see PARA 267 note 2 ante.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'trailer' see PARA 210 ante.

4 For the meaning of 'wheel' see PARA 267 note 2 ante.

5 For the meaning of 'pneumatic tyre' see PARA 271 note 11 ante.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 27(1), which is expressed to be subject to reg 27(2)-(4) (as amended) (see the text and notes 18-42 infra). For the meaning of 'road' see PARA 206 ante.

7 Ibid reg 27(1)(a).

8 Ibid reg 27(1)(b).

9 Ibid reg 27(1)(c).

10 Ibid reg 27(1)(d).

11 Ibid reg 27(1)(e).

12 For these purposes, the references to grooves are references if a tyre has been recut, to the grooves of the manufacturer's recut tread pattern and, if a tyre has not been recut, to the grooves which showed when the tyre was new: *ibid* reg 27(6)(b) (amended by SI 1990/1981). 'Tread pattern' means the combination of plain surfaces and grooves extending across the breadth of the tread and round the entire outer circumference of the tyre but excludes any: (1) tie bars or tread wear indicators; (2) features which are designed to wear out substantially before the rest of the pattern under normal conditions of use; and (3) other minor features; and 'tread wear indicator' means any bar, not being a tie-bar, projecting from the base of a groove of the tread pattern of a tyre and moulded between two or more features of the tread pattern of a tyre for the purpose of indicating the extent of the wear of such tread pattern: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 27(6)(a). 'Tie-bar' means any part of a tyre moulded in the tread pattern of the tyre for the purpose of bracing two or more features of such tread pattern: reg 27(6)(a). 'Breadth of tread' means the breadth of that part of the tyre which can contact the road under normal conditions of use measured at 90° to the peripheral line of the tread: reg 27(6)(a).

13 For these purposes, 'original tread pattern' means in the case of: (1) a retreaded tyre, the tread pattern of the tyre immediately after the tyre was retreaded; (2) a wholly recut tyre, the manufacturer's recut tread pattern; (3) a partially recut tyre, on that part of the tyre which has been recut, the manufacturer's recut tread pattern, and on the other part, the tread pattern of the tyre when new; and (4) any other tyre, the tread pattern of the tyre when the tyre was new: *ibid* reg 27(6)(a).

14 Ibid reg 27(6)(f).

15 Ibid reg 27(6)(g)(i).

16 Ibid reg 27(6)(g)(ii).

17 Ibid reg 27(6)(h).

18 Ibid reg 27(2).

19 For the meaning of 'passenger vehicle' see PARA 287 note 8 ante.

20 For the meaning of 'bus' see PARA 271 note 6 ante.

21 For the meaning of 'temporary use spare tyre' see PARA 295 note 31 ante.

22 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 27(3).

23 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

24 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 27(4)(a)(i).

25 Ibid reg 27(4)(a)(ii). For the meaning of 'agricultural trailer' see PARA 271 note 30 ante.

26 Ibid reg 27(4)(a)(iii). For the meaning of 'agricultural trailed appliance' see PARA 271 note 21 ante.

27 As to the meaning of 'broken-down vehicle' see PARA 271 note 36 ante.

28 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 27(4)(a)(iv).

29 'Three-wheeled motor cycle' means a motor cycle having three wheels, not including a two-wheeled motor cycle with a sidecar attached: *ibid* reg 3(2), Table. For the meaning of 'motor cycle' see PARA 214 ante.

30 For the meaning of 'unladen weight' see PARA 271 note 21 ante.

31 For the meaning of 'maximum speed' see PARA 278 note 17 ante.

32 For the meaning of 'pedestrian-controlled vehicle' see PARA 290 note 8 ante.

33 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 27(4)(b). For the meaning of 'works truck' see PARA 278 note 18 ante.

34 Ibid reg 27(4)(c).

35 Ibid reg 27(4)(e)(i) (reg 27(4)(e) added by SI 1990/1981). For the meaning of 'driver' see PARA 207 ante.

36 For the meaning of 'maximum gross weight' see PARA 271 note 27 ante.

37 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 27(4)(e)(ii) (as added (see note 35 supra); and amended by SI 1991/2710).

38 'Light trailer' means a trailer with a maximum gross weight which does not exceed 3,500 kg: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (definition added by SI 1990/1981).

39 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 27(4)(e)(iii) (as added: see note 35 supra).

40 For these purposes, a reference to first use is, in relation to a trailer, to be construed as a reference to the date which is six months after the date of manufacture of the trailer: ibid reg 27(6)(c) (added by SI 1990/1981).

41 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 27(4)(e) (as added: see note 35 supra).

42 Ibid reg 27(4)(d) (added by SI 1990/1981). The requirements are that the grooves of the tread pattern of every tyre fitted to the wheels of such a vehicle must be of a depth of at least 1.6 mm throughout a continuous band comprising the central three-quarters of the breadth of tread and round the entire outer circumference of the tyre: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 27(4)(f) (added by SI 1990/1981).

43 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 27(5).

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## **299. Tracks.**

Every part of every track of a track-laying<sup>1</sup> vehicle which comes into contact with the road<sup>2</sup> must be flat and have a width of not less than 12.5 millimetres<sup>3</sup>.

The area of the track which is in contact with the road must not at any time be less than 225 square centimetres in respect of every 1,000 kilograms of the total weight which is transferred to the road by the tracks<sup>4</sup>.

The tracks of a vehicle must not have any defect which might damage the road or cause danger to any person on or in the vehicle or using the road, and must be properly adjusted and maintained in good and efficient working order<sup>5</sup>.

1 For the meaning of 'track-laying' see PARA 267 note 3 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 28(1).

4 Ibid reg 28(2).

5 Ibid reg 28(3).

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## **(v) Steering**

### **300. Maintenance of steering gear.**

All steering gear fitted to a motor vehicle<sup>1</sup> must at all times while the vehicle is used on a road<sup>2</sup> be maintained in good and efficient working order and be properly adjusted<sup>3</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 29.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(vi) Vision/301. View to the front.

## **(vi) Vision**

### **301. View to the front.**

Every motor vehicle<sup>1</sup> must be so designed and constructed that the driver<sup>2</sup> of it, while controlling the vehicle, can at all times have a full view of the road<sup>3</sup> and traffic ahead of the motor vehicle<sup>4</sup>.

All glass or other transparent material fitted to a motor vehicle must be maintained in such condition that it does not obscure the vision of the driver while the vehicle is being driven on a road<sup>5</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'driver' see PARA 207 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 30(1). Instead of complying with the requirement of reg 30(1), a vehicle may comply with EEC Council Directive 77/649 (OJ L267, 19.10.77, p 1) on the approximation of the laws of the member states relating to the field of vision of motor vehicle drivers (as amended), EEC Council Directive 81/643 (OJ L231, 15.8.81, p 41), EEC Commission Directive 88/366 (OJ L181, 12.7.88, p 40) and EEC Commission 90/630 (OJ L341, 6.12.90, p 20) or, in the case of an agricultural motor vehicle, EEC Commission Directive 79/1073 (OJ L331, 27.12.79, p 20): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 30(2) (amended by SI 1991/2003). For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 30(3).

## **UPDATE**

### 301 View to the front

NOTE 4--Directive 77/649 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

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### 302. Glass in wheeled vehicles first used before 1 June 1978, and in caravans first used before 1 September 1978 and track-laying vehicles.

In the case of a motor vehicle<sup>1</sup> which is:

- 274 (1) a wheeled<sup>2</sup> vehicle, not being a caravan<sup>3</sup>, first used<sup>4</sup> before 1 June 1978<sup>5</sup>;
- 275 (2) a caravan first used before 1 September 1978<sup>6</sup>; or
- 276 (3) a track-laying<sup>7</sup> vehicle<sup>8</sup>,

the glass fitted to any window specified in heads (a) to (d) below of a vehicle of a class specified in the relevant head must be safety glass<sup>9</sup>:

- 277 (a) in the case of wheeled vehicles first used on or after 1 January 1959, being passenger vehicles<sup>10</sup> or dual-purpose vehicles<sup>11</sup>, the windscreens and all outside windows must be safety glass<sup>12</sup>;
- 278 (b) in the case of wheeled vehicles first used on or after 1 January 1959, being goods vehicles<sup>13</sup> (other than dual-purpose vehicles), locomotives<sup>14</sup> or motor tractors<sup>15</sup>, the windscreens and all windows in front<sup>16</sup> of and on either side of the driver's seat must be safety glass<sup>17</sup>;
- 279 (c) in the case of wheeled vehicles not mentioned in heads (1) and (2) above, the windscreens and windows facing to the front on the outside, except glass fitted to the upper decks<sup>18</sup> of a double-decked vehicle<sup>19</sup> must be safety glass<sup>20</sup>;
- 280 (d) in the case of track-laying vehicles, the windscreens and windows facing to the front must be safety glass<sup>21</sup>.

The above provisions do not apply to glass which is legibly and permanently marked with a designated approval mark<sup>22</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'wheeled' see PARA 267 note 2 ante.

3 For these purposes, and for the purposes of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 32 (as amended) (see PARA 303 post), 'caravan' means a trailer which is constructed (and not merely adapted) for human habitation: reg 31(4) (substituted by SI 1987/676).

4 For the meaning of 'first used' see PARA 267 note 5 ante.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 31(1)(a).

- 6 Ibid reg 31(1)(b).
- 7 For the meaning of 'track-laying' see PARA 267 note 3 ante.
- 8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 31(1)(c).
- 9 Ibid reg 31(2). For these purposes, and for the purposes of reg 32 (as amended) (see PARA 303 post), 'safety glass' means glass so constructed or treated that, if fractured, it does not fly into fragments likely to cause severe cuts: reg 31(4) (as substituted: see note 3 supra).
- 10 For the meaning of 'passenger vehicle' see PARA 287 note 8 ante.
- 11 For the meaning of 'dual-purpose vehicle' see PARA 271 note 28 ante.
- 12 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 31(2), Table item 1.
- 13 For the meaning of 'goods vehicle' see PARA 271 note 26 ante.
- 14 For the meaning of 'locomotive' see PARA 217 note 3 ante.
- 15 For the meaning of 'motor tractor' see PARA 216 ante.
- 16 For the purposes of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 31 (as amended), any windscreen or window at the front of the vehicle the inner surface of which is at an angle exceeding 30° to the longitudinal axis of the vehicle is deemed to face to the front: reg 31(3).
- 17 Ibid reg 31(2), Table item 2.
- 18 'Deck' means a floor or platform on which seats are provided for the accommodation of passengers: ibid reg 3(2), Table.
- 19 'Double-decked vehicle' means a vehicle having two decks one of which is wholly or partly above the other and each of which is provided with a gangway serving seats on that deck only: ibid reg 3(2), Table. 'Gangway' means the space provided for obtaining access from any entrance to the passengers' seats or from any such seat to an exit other than an emergency exit, but excluding a staircase and any space in front of a seat which is required only for the use of passengers occupying that seat or a seat in the same row of seats: reg 3(2), Table. 'Staircase' means a staircase by means of which passengers on a double-decked vehicle may pass to and from the upper deck of the vehicle: reg 3(2), Table (definition added by SI 1987/1133).
- 20 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 31(2), Table item 3.
- 21 Ibid reg 31(2), Table item 4.
- 22 Ibid reg 31(5) (added by SI 1992/3088). For these purposes, and for the purposes of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 32 (as amended) (see PARA 303 post), 'designated approval mark' means the marking designated as an approval mark by the Motor Vehicles (Designation of Approval Marks) Regulations 1979, SI 1979/1088, reg 5 and shown in Sch 4 item 31 or 32 (as amended) (those items being markings relating to EEC Council Directive 92/22 (OJ L129, 14.5.92, p 11) on safety glazing and glazing materials on motor vehicles and their trailers (as amended)): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 31(4) (definition added by SI 1992/3088). As to approval marks see PARA 700 et seq post.

## UPDATE

### **302 Glass in wheeled vehicles first used before 1 June 1978, and in caravans first used before 1 September 1978 and track-laying vehicles**

NOTE 22--Directive 92/22 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(vi) Vision/303. Glass in caravans first used on or after 1 September 1978 and wheeled motor vehicles first used on or after 1 June 1978.

**303. Glass in caravans first used on or after 1 September 1978 and wheeled motor vehicles first used on or after 1 June 1978.**

In the case of:

- 281 (1) a caravan<sup>1</sup> first used on or after 1 September 1978<sup>2</sup>; and
- 282 (2) a wheeled<sup>3</sup> motor vehicle<sup>4</sup> and a wheeled trailer<sup>5</sup>, not being a caravan, first used<sup>6</sup> on or after 1 June 1978<sup>7</sup>,

the windows specified in heads (1) to (3) below in relation to a vehicle of a class specified in the relevant head must be constructed of the material specified<sup>8</sup>:

- 283 (a) in the case of windscreens<sup>9</sup> and other windows wholly or partly on either side of the driver's<sup>10</sup> seat fitted to motor vehicles first used on or after 1 April 1985, the windows must be constructed of specified safety glass (1980)<sup>11</sup>;
- 284 (b) in the case of windscreens and other windows wholly or partly on either side of the driver's seat fitted to a motor vehicle first used before 1 April 1985, the windows must be constructed of specified safety glass<sup>12</sup>, or specified safety glass (1980)<sup>13</sup>;
- 285 (c) in the case of all other windows, the windows must be constructed of specified safety glass, specified safety glass (1980), or safety glazing<sup>14</sup>.

The windscreens and all other windows of security vehicles<sup>15</sup> or vehicles being used for police purposes are not subject to the requirements specified in heads (a) to (c) above, but must be constructed of either safety glass or safety glazing<sup>16</sup>.

The windscreen of motor cycles<sup>17</sup> not equipped with an enclosed compartment for the driver or for a passenger are not subject to the requirements specified in heads (a) to (c) above, but must be constructed of safety glazing<sup>18</sup>.

Any windscreens or other windows which are wholly or partly in front of or on either side of the driver's seat, and which are temporarily fitted to motor vehicles to replace any windscreens or other window which have broken must be constructed of safety glazing, and must be fitted only while the vehicles are being driven or towed either to premises where new windscreens or other windows are to be permanently fitted to replace the windscreens or other windows which have broken, or to complete the journey in the course of which the breakage occurred<sup>19</sup>.

Windows forming all or part of a screen or door in the interior of a bus<sup>20</sup> first used on or after 1 April 1988 must be constructed either of safety glazing or of specified safety glass (1980)<sup>21</sup>.

Windows being: (i) windows (other than windscreens) of motor vehicles being engineering plant<sup>22</sup>, industrial tractors<sup>23</sup>, agricultural motor vehicles<sup>24</sup> (other than agricultural motor vehicles first used on or after 1 June 1986 and driven at more than 20 miles per hour) which are wholly or partly in front of or on either side of the driver's seat<sup>25</sup>; (ii) windows of the upper deck<sup>26</sup> of a double-decked<sup>27</sup> bus<sup>28</sup>; or (iii) windows in the roof of a vehicle<sup>29</sup>, must be constructed of either specified safety glass, specified safety glass (1980) or safety glazing<sup>30</sup>.

In the case of motor vehicles and trailers which have not at any time been fitted with permanent windows and which are being driven or towed to a place where permanent windows are to be fitted, any temporary windscreens and any other temporary windows must be constructed of either specified safety glass, specified safety glass (1980) or safety glazing<sup>31</sup>.

No requirement in the above provisions that a windscreen or other window is to be constructed of specified safety glass or of specified safety glass (1980) applies to a windscreen or other window which is manufactured in France, marked with the specified marking<sup>32</sup>, and fitted to a vehicle first used before 1 October 1986<sup>33</sup>.

The above provisions<sup>34</sup> do not apply to a window which is legibly and permanently marked with a designated approval mark<sup>35</sup>.

1 For the meaning of 'caravan' see PARA 302 note 3 ante.

2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 32(1)(a).

3 For the meaning of 'wheeled' see PARA 267 note 2 ante.

4 For the meaning of 'motor vehicle' see PARA 210 ante.

5 For the meaning of 'trailer' see PARA 210 ante.

6 For the meaning of 'first used' see PARA 267 note 5 ante.

7 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 32(1)(b).

8 Ibid reg 32(2). As to the requirements for visual transmission of light see reg 32(10), (11), (11A), (12), (12B), (12C) (reg 32(11A) added by SI 2003/3145; and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 32(12B), (12C) added by SI 1992/3088).

9 For these purposes, 'windscreen' includes a windshield: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 32(13).

10 For the meaning of 'driver' see PARA 207 ante.

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 32(2), Table item 1. For these purposes, 'specified safety glass (1980)' means glass complying with the requirements of either: (1) the British Standard Specification for Safety Glass for Land Transport published on 30 June 1967 under the number BS 857 as amended by Amendment Slip No 1 published on 15 January 1973 under the number AMD 1088, Amendment Slip No 2 published on 30 September 1980 under the number AMD 3402, and Amendment Slip No 4 published on 15 February 1981 under the number AMD 3548 (including the requirements as to marking); or (2) British Standard Specification for Road Vehicle Safety Glass for Land Transport published on 28 November 1980 under the number BS AU 178 (including the requirements as to marking) (see now BS AU 178a: 1992); or (3) ECE Regulation 43 (including the requirements as to marking): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 32(13). For the meaning of 'ECE Regulation' see PARA 270 note 2 ante.

12 For these purposes, 'specified safety glass' means glass complying with the requirements of either British Standard Specification for Safety Glass for Land Transport published on 30 June 1967 under the number BS 857 as amended by Amendment Slip No 1 published on 15 January 1973 under the number AMD 1088 (including the requirements as to marking) or British Standard Specification for Road Vehicle Safety Glass published in December 1975 under the number BS 5282 as amended by Amendment Slip No 1 published on 31 March 1976 under the number AMD 1927, and as amended by Amendment Slip No 2 published on 31 January 1977 under the number AMD 2185 (including the requirements as to marking) (see now BS AU 178a: 1992): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 32(13).

13 Ibid reg 32(2), Table item 2.

14 Ibid reg 32(2), Table item 3. For these purposes, 'safety glazing' means material (other than glass) which is so constructed or treated that, if fractured, it does not fly into fragments likely to cause severe cuts: reg 32(13).

15 For these purposes, 'security vehicle' means a motor vehicle which is constructed (and not merely adapted) for the carriage of either: (1) persons who are likely to require protection from any criminal offence involving violence; or (2) dangerous substances, bullion, money, jewellery, documents or other goods or burden which, by reason of their nature or value, are likely to require protection from any criminal offence: ibid reg 32(13).

16 Ibid reg 32(3).

17 For the meaning of 'motor cycle' see PARA 214 ante.



- 18 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 32(4).
- 19 Ibid reg 32(5).
- 20 For the meaning of 'bus' see PARA 271 note 6 ante.
- 21 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 32(6).
- 22 For the meaning of 'engineering plant' see PARA 271 note 11 ante.
- 23 For the meaning of 'industrial tractor' see PARA 278 note 17 ante.
- 24 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.
- 25 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 32(7)(a).
- 26 For the meaning of 'deck' see PARA 302 note 18 ante.
- 27 For the meaning of 'double-decked vehicle' see PARA 302 note 19 ante.
- 28 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 32(7)(b).
- 29 Ibid reg 32(7)(c).
- 30 Ibid reg 32(7).
- 31 Ibid reg 32(8).
- 32 Ie a marking consisting of the letters 'TP GS' or 'TP GS E': see ibid reg 32(9).
- 33 Ibid reg 32(9).
- 34 Ie ibid reg 32(2), (6)-(8) (see the text and notes 8-14, 20-31 supra).
- 35 Ibid reg 32(12A) (added by SI 1992/3088).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(vi) Vision/304. Mirrors and other devices for indirect vision.

### **304. Mirrors and other devices for indirect vision.**

A motor vehicle<sup>1</sup>, not being a road roller, which is of a class specified in heads (1) to (11) below must be fitted with such mirror<sup>2</sup> or mirrors or other device for indirect vision<sup>3</sup>, if any, as specified, and any mirror or other device for indirect vision which is fitted to such a vehicle must, whether or not it is required to be fitted, comply with any specified requirements<sup>4</sup>:

- 286 (1) a motor vehicle which is:
- 15
- 33. (a) drawing a trailer, if a person is carried on the trailer so that he has an uninterrupted view to the rear and has an efficient means of communicating to the driver the effect of signals given by the drivers of other vehicles to the rear;
- 34. (b) a works truck<sup>5</sup>, a track-laying<sup>6</sup> agricultural motor vehicle<sup>7</sup> and a wheeled<sup>8</sup> agricultural motor vehicle first used<sup>9</sup> before 1 June 1978, if, in each case, the driver can easily obtain a view to the rear;
- 35. (c) a pedestrian-controlled vehicle<sup>10</sup>;

- 36. (d) a chassis being driven from the place where it has been manufactured to the place where it is to receive a vehicle body; or
- 37. (e) an agricultural motor vehicle which has an unladen weight<sup>11</sup> exceeding 7,370 kilograms and which is a track-laying vehicle or is a wheeled vehicle first used before 1 June 1978,

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- 287 does not require mirrors or other devices for indirect vision to be fitted<sup>12</sup>;
- 288 (2) a motor vehicle not included in head (1) above, which is: (a) a wheeled locomotive<sup>12</sup> or a wheeled motor tractor<sup>14</sup> first used in either case on or after 1 June 1978; (b) an agricultural motor vehicle, not being a track-laying vehicle with an unladen weight not exceeding 7, 370 kilograms (which falls in head (11) below) or a wheeled agricultural motor vehicle first used after 1 June 1986 which is driven at more than 20 miles per hour (which falls in head (8) below); or (c) a works truck, is required to have at least one mirror fitted externally on the offside<sup>15</sup>;
- 289 (3) a wheeled motor vehicle not included in head (1) above or head (4) below first used on or after 1 April 1983 which is: (a) a bus<sup>16</sup>; or (b) a goods vehicle<sup>17</sup> with a maximum gross weight<sup>18</sup> exceeding 3,500 kilograms (not being an agricultural motor vehicle or one which is not driven at more than 20 miles per hour) other than a vehicle described in head (5) below, is required to have mirrors complying with the relevant European legislation<sup>19</sup> or, except in the case of a goods vehicle first used on or after 1 April 1985, at least one exterior mirror<sup>20</sup> fitted on the offside of the vehicle, and at least one interior mirror<sup>21</sup>, unless a mirror so fitted would give the driver no view of the rear of the vehicle, and at least one exterior mirror fitted on the nearside of the vehicle unless an interior mirror gives the driver an adequate view to the rear<sup>22</sup>;
- 290 (4) a wheeled motor vehicle not included in head (1) above first used on or after 26 January 2007 which is: (a) a bus; (b) a goods vehicle with a maximum gross weight: (i) exceeding 3,500 kilograms but not exceeding 7,500 kilograms; or (ii) exceeding 7,500 kilograms but not exceeding 12,000 kilograms (not being an agricultural motor vehicle or one which is not driven at more than 20 miles per hour), is required to have mirrors and/or other devices for indirect vision complying with the relevant European legislation<sup>23</sup>;
- 291 (5) a goods vehicle not being an agricultural motor vehicle with a maximum gross weight exceeding 12,000 kilograms which is first used on or after 1 October 1988 and before 26 January 2007 is required to have mirrors complying with the relevant European legislation<sup>24</sup>;
- 292 (6) a goods vehicle not being an agricultural motor vehicle with a maximum gross weight exceeding 12,000 kilograms which is first used on or after 26 January 2007 is required to have mirrors or other devices for indirect vision complying with the relevant European legislation<sup>25</sup>;
- 293 (7) a two-wheeled motor cycle<sup>26</sup> with or without a sidecar attached does not require mirrors or other devices for indirect vision to be fitted<sup>27</sup>;
- 294 (8) a wheeled motor vehicle, not in heads (1) to (7) above, which is first used on or after 1 June 1978 (or, in the case of a Ford Transit motor car, 10 July 1978) and before 26 January 2010 is required to have at least one exterior mirror fitted on the offside of the vehicle, and at least one interior mirror, unless a mirror so fitted would give the driver no view to the rear of the vehicle, and at least one exterior mirror fitted on the nearside of the vehicle unless an interior mirror gives the driver an adequate view to the rear<sup>28</sup>;
- 295 (9) a wheeled motor vehicle, not in heads (1) to (7) above, which is first used on or after 26 January 2010, is required to have mirrors complying with the relevant European legislation<sup>29</sup>;
- 296 (10) a wheeled motor vehicle, not in heads (1) to (7) above, first used before 1 June 1978 (or, in the case of a Ford Transit motor car, 10 July 1978) and a track-laying motor vehicle which is not an agricultural motor vehicle first used on or after

- 1 January 1958, which in either case is: (a) a bus; (b) a dual-purpose vehicle<sup>30</sup>; or (c) a goods vehicle, is required to have at least one exterior mirror fitted on the offside of the vehicle and either one interior mirror or one exterior mirror fitted on the near-side of the vehicle<sup>31</sup>;
- 297 (11) a motor vehicle, whether wheeled or track-laying, not in heads (1) to (10) above is required to have at least one interior or exterior mirror<sup>32</sup>.

Each exterior mirror with which a vehicle is required to be fitted<sup>33</sup> will, if the vehicle has a technically permissible maximum weight<sup>34</sup> exceeding 3,500 kilograms, be a Class II mirror<sup>35</sup> and will in any other case be a Class II or a Class III mirror<sup>36</sup>.

In the case of a wheeled motor vehicle described in head (1), (2), (10) or (11) above which is first used on or after 1 April 1969, the edges of any mirror fitted internally must be surrounded by some material such as will render it unlikely that severe cuts would be caused if the mirror or that material were struck by any occupant of the vehicle<sup>37</sup>.

In the case of a motor vehicle falling within head (1) above which is first used on or after 1 June 1978, or within head (7) above which is first used on or after 1 October 1978, or within head (8) above:

- 298 (A) each mirror must be fixed to the vehicle in such a way that it remains steady under normal driving conditions<sup>38</sup>;
- 299 (B) each exterior mirror on a vehicle fitted with windows and a windscreen must be visible to the driver, when in his driving position, through a side window or through the portion of the windscreen which is swept by the windscreen wiper<sup>39</sup>;
- 300 (C) where the bottom edge of an exterior mirror is less than 2 metres above the road surface when the vehicle is laden, that mirror must not project more than 20 centimetres beyond the overall width<sup>40</sup> of the vehicle or, in a case where the vehicle is drawing a trailer which has an overall width greater than that of the drawing vehicle, more than 20 centimetres beyond the overall width of the trailer<sup>41</sup>;
- 301 (D) where the bottom edge of an exterior mirror, which complies with the relevant European legislation<sup>42</sup>, is less than 2 metres above the road surface when the vehicle is laden, that mirror must not project more than 25 centimetres beyond the overall width of the vehicle or, in the case where the vehicle is drawing a trailer which has an overall width greater than that of the drawing vehicle, more than 25 centimetres beyond the overall width of the trailer<sup>43</sup>;
- 302 (E) each interior mirror must be capable of being adjusted by the driver when in his driving position<sup>44</sup>; and
- 303 (F) except in the case of a mirror which, if knocked out of its alignment, can be returned to its former position without needing to be adjusted, each exterior mirror on the driver's side of the vehicle must be capable of being adjusted by the driver when in his driving position, but this requirement does not prevent such a mirror from being locked into position from the outside of the vehicle<sup>45</sup>.

Instead of complying with the above requirements<sup>46</sup> a vehicle may comply with the appropriate European legislation<sup>47</sup> and a mirror may comply with the requirements as to construction and testing set out in the appropriate European legislation<sup>48</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For these purposes, 'mirror' means any device with a reflecting surface, excluding devices such as periscopes, intended to give a clear view to the rear, side or front of the vehicle: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(7)(b) (reg 33 substituted by SI 2005/3165). In the case of an agricultural motor vehicle or a vehicle described in head (2) or head (8) in the text when drawing a trailer, the references to a vehicle in the definitions in the Road Vehicles (Construction and Use) Regulations 1986, SI

1986/1078, reg 33(7) (as substituted) are to be construed as including references to that trailer: reg 33(8) (as so substituted). For the meaning of 'driver' see PARA 207 ante. For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante. For the meaning of 'trailer' see PARA 210 ante.

3 'Devices for indirect vision' means devices to observe the traffic area adjacent to the vehicle which cannot be observed by direct vision and may include conventional mirrors, camera-monitors or other devices able to present information about the indirect field of vision to the driver: *ibid* reg 33(7)(a) (as substituted: see note 2 *supra*).

4 *Ibid* reg 33(1) (as substituted: see note 2 *supra*).

5 For the meaning of 'works truck' see PARA 278 note 18 ante.

6 For the meaning of 'track-laying' see PARA 267 note 3 ante.

7 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

8 For the meaning of 'wheeled' see PARA 267 note 2 ante.

9 For the meaning of 'first used' see PARA 267 note 5 ante.

10 For the meaning of 'pedestrian-controlled vehicle' see PARA 290 note 8 ante.

11 For the meaning of 'unladen weight' see PARA 271 note 21 ante.

12 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(1), Table item 1 (as substituted: see note 2 *supra*). If any mirrors are fitted to a vehicle specified in heads (1)(a)-(e) in the text, which is a wheeled vehicle first used on or after 1 June 1978, they must comply with EEC Council Directive 71/127 (OJ L68, 22.3.71, p 1) on the approximation of the laws of the member states relating to the rear-view mirrors of motor vehicles, Annex I item 2, EEC Council Directive 79/795 (OJ L239, 22.9.79, p 1) Annex I item 2, EEC Commission Directive 86/562 (OJ L327, 27.11.86, p 49) Annex II, EEC Commission Directive 88/321 (OJ L147, 14.6.88, p 77) Annex II or ECE Regulation 46.01 paras 4-8 and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(4) (as substituted) (see heads (A)-(F) in the text); and in all other cases there are no requirements except as specified in reg 33(3) (as substituted) (see the text to note 37 *infra*): reg 33(1), Table item 1 (as so substituted). There are no requirements as to other devices for indirect vision where fitted. For the meaning of 'ECE Regulation' see PARA 270 note 2 ante.

13 For the meaning of 'locomotive' see PARA 217 note 3 ante.

14 For the meaning of 'motor tractor' see PARA 216 ante.

15 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(1), Table item 2 (as substituted: see note 2 *supra*). There are no requirements to be complied with by any mirrors fitted except as specified in reg 33(2), (3) (see the text to notes 33-37 *infra*), and no requirements as to other devices for indirect vision where fitted: reg 33(1), Table item 2 (as so substituted).

16 For the meaning of 'bus' see PARA 271 note 6 ante.

17 For the meaning of 'goods vehicle' see PARA 271 note 26 ante.

18 For the meaning of 'maximum gross weight' see PARA 271 note 27 ante.

19 *Ie* EEC Commission Directive 79/795 (OJ L239, 22.9.79, p 1) Annex I item 3, EEC Commission Directive 86/562 (OJ L327, 27.11.86, p 49) Annex III para 2.1, EEC Commission Directive 88/321 (OJ L147, 14.6.88, p 77) Annex III para 2.1 or ECE Regulation 46.01 para 16.2.1.

20 For these purposes, 'exterior mirror' means a device defined in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(7)(a) (as substituted) (see note 2 *supra*), which can be fitted on the external surface of a vehicle: reg 33(7)(d) (as substituted: see note 2 *supra*).

21 For these purposes, 'interior mirror' means a device defined in *ibid* reg 33(7)(a) (as substituted) (see note 2 *supra*), which can be fitted in the passenger compartment of a vehicle: reg 33(7)(c) (as substituted: see note 2 *supra*).

22 *Ibid* reg 33(1), Table item 3 (as substituted: see note 2 *supra*). Any mirrors fitted must comply with EEC Council Directive 71/127 (OJ L68, 22.3.71, p 1) Annex I item 2, EEC Commission Directive 79/795 (OJ L239, 22.9.79, p 1) Annex I item 2, EEC Commission Directive 86/562 (OJ L327, 27.11.86, p 49) Annex II, EEC Commission Directive 88/321 (OJ L147, 14.6.88, p 77) Annex II or ECE Regulation 46.01 paras 4-8: Road

Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(1), Table item 3 (as so substituted). See also reg 33(6) (as so substituted). There are no requirements as to other devices for indirect vision where fitted.

23 le, in the case of vehicles within head (4)(a) and (b)(ii) in the text, mirrors and other devices for indirect vision complying with EC Parliament and Council Directive 2003/97 (OJ L25, 29.1.2004, p 1) on the approximation of the laws of the member states relating to the type-approval of devices for indirect vision and of vehicles equipped with these devices, Annex III or EC Council Directive 2005/27 (OJ L81, 30.3.2005, p 44) Annex III or ECE Regulation 46.02 para 15; and in the case of vehicles within head (4)(b)(i) in the text, mirrors or other devices for indirect vision complying with EC Council Directive 2005/27 (OJ L81, 30.3.2005, p 44): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(1), Table item 4 (as substituted: see note 2 supra). Any mirrors fitted must comply with EC Parliament and Council Directive 2003/97 (OJ L25, 29.1.2004, p 1) Annex I para 6 or EC Council Directive 2005/27 (OJ L81, 30.3.2005, p 44) Annex I para 6 or ECE Regulation 46.02 paras 4, 5 and 6.1: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(1), Table item 4 (as so substituted). Any other devices for indirect vision fitted must comply with EC Parliament and Council Directive 2003/97 (OJ L25, 29.1.2004, p 1) Annex II Pt B or ECE Regulation 46.02 paras 4, 5 and 6.2: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(1), Table item 4 (as so substituted).

24 Ibid reg 33(1), Table item 5 (as substituted: see note 2 supra). The relevant European legislation is EEC Commission Directive 86/562 (OJ L327, 27.11.86, p 49) Annex III para 2.1, EEC Commission Directive 88/321 (OJ L147, 14.6.88, p 77) Annex III para 2.1 or ECE Regulation 46.01 para 16.2.1. Any mirrors fitted must comply with EEC Commission Directive 86/562 (OJ L327, 27.11.86, p 49) Annex II, EEC Commission Directive 88/321 (OJ L147, 14.6.88, p 77) Annex II or ECE Regulation 46.01 paras 4-8: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(1), Table item 5 (as so substituted). There are no requirements as to other devices for indirect vision where fitted.

25 Ibid reg 33(1), Table item 6 (as substituted: see note 2 supra). The relevant European legislation is EC Parliament and Council Directive 2003/97 (OJ L25, 29.1.2004, p 1) Annex III or EC Council Directive 2005/27 (OJ L81, 30.3.2005, p 44) Annex III or ECE Regulation 46.02 para 15. Any mirrors fitted must comply with EC Parliament and Council Directive 2003/97 (OJ L25, 29.1.2004, p 1) Annexes I and II or EC Council Directive 2005/27 (OJ L81, 30.3.2005, p 44) Annexes I and II or ECE Regulation 46.02 paras 4, 5 and 6.1; and any other devices for indirect vision where fitted must comply with EC Parliament and Council Directive 2003/97 (OJ L25, 29.1.2004, p 1) Annex II Pt B or ECE Regulation 46.02 paras 4, 5 and 6.2: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(1), Table item 6 (as so substituted).

26 For the meaning of 'motor cycle' see PARA 214 ante.

27 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(1), Table item 7 (as substituted: see note 2 supra). Any mirrors that are fitted must, if the vehicle is first used on or after 1 October 1978, comply with EEC Council Directive 71/127 (OJ L68, 22.3.71, p 1) Annex I item 2, EEC Commission Directive 79/795 (OJ L239, 22.9.79, p 1) Annex I item 2, EEC Commission Directive 80/780 (OJ L229, 30.8.80, p 49) Annex I item 2, EEC Commission Directive 86/562 (OJ L327, 27.11.86, p 49) Annex II, EEC Commission Directive 88/321 (OJ L147, 14.6.88, p 77) Annex II or ECE Regulation 46.01 paras 4-8 and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(4) (as substituted) (see heads (A)-(F) in the text), and in any other case there are no requirements: reg 33(1), Table item 7 (as so substituted). See also reg 33(6) (as so substituted). There are no requirements as to other devices for indirect vision where fitted.

28 Ibid reg 33(1), Table item 8 (as substituted: see note 2 supra). Any mirrors that are fitted must comply with EEC Council Directive 71/127 (OJ L68, 22.3.71, p 1) Annex I item 2, EEC Commission Directive 79/795 (OJ L239, 22.9.79, p 1) Annex I item 2, EEC Commission Directive 86/562 (OJ L327, 27.11.86, p 49) Annex II, EEC Commission Directive 88/321 (OJ L147, 14.6.88, p 77) Annex II or ECE Regulation 46.01 paras 4-8 and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(2) (as substituted) (see the text and notes 33-36 infra), reg 33(4) (as substituted) (see heads (A)-(F) in the text): reg 33(1), Table item 8 (as so substituted). See also reg 33(6) (as so substituted). There are no requirements as to other devices for indirect vision where fitted.

29 Ibid reg 33(1), Table item 9 (as substituted: see note 2 supra). Any mirrors that are fitted must comply with EC Parliament and Council Directive 2003/97 (OJ L25, 29.1.2004, p 1) Annex I para 6, Annex II or EC Council Directive 2005/27 (OJ L81, 30.3.2005, p 44) Annex I para 6, Annex II or ECE Regulation 46.02 paras 4, 5 and 6.1; any other devices for indirect vision if fitted must comply with EC Parliament and Council Directive 2003/97 (OJ L25, 29.1.2004, p 1) Annex II Pt B or ECE Regulation 46.02 paras 4, 5 and 6.2: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(1), Table item 9 (as so substituted).

30 For the meaning of 'dual-purpose vehicle' see PARA 271 note 28 ante.

31 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(1), Table item 10 (as substituted: see note 2 supra). The requirements that must be satisfied by any mirrors fitted are the same as

for reg 33(1), Table item 3 (as substituted): see note 22 supra. There are no requirements as to other devices for indirect vision where fitted.

32 Ibid reg 33(1), Table item 11 (as substituted: see note 2 supra). The requirements that must be satisfied by any mirrors fitted are the same as for reg 33(1), Table item 3 (as substituted): see note 22 supra. There are no requirements as to other devices for indirect vision where fitted.

33 Ie in accordance with ibid reg 33(1), Table item 2 or 8 (as substituted): see heads (1), (8) in the text.

34 Ie as mentioned in EEC Council Directive 71/127 (OJ L68, 22.3.71, p 1) Annex I.

35 Ie as described in EEC Council Directive 71/127 (OJ L68, 22.3.71, p 1) Annex I.

36 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(2) (as substituted: see note 2 supra). The classes are as described in EEC Council Directive 71/127 (OJ L68, 22.3.71, p 1) Annex I.

37 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(3) (as substituted: see note 2 supra).

38 Ibid reg 33(4)(a) (as substituted: see note 2 supra).

39 Ibid reg 33(4)(b) (as substituted: see note 2 supra).

40 For the meaning of 'overall width' see PARA 274 ante.

41 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(4)(c) (as substituted: see note 2 supra).

42 Ie the requirements of EC Parliament and Council Directive 2003/97 (OJ L25, 29.1.2004, p 1) or EC Council Directive 2005/27 (OJ L81, 30.3.2005, p 44) or ECE Regulation 46.02.

43 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(4)(d) (as substituted: see note 2 supra).

44 Ibid reg 33(4)(e) (as substituted: see note 2 supra).

45 Ibid reg 33(4)(f) (as substituted: see note 2 supra).

46 Ie the requirements of ibid reg 33(1)-(4) (as substituted) (see the text and notes 1-45 supra).

47 See ibid reg 33(5) (as substituted: see note 2 supra). The appropriate European legislation is whichever of the following Directives relates to the class of vehicle in question: EEC Council Directive 71/127 (OJ L68, 22.3.71, p 1), EEC Council Directive 74/346 (OJ L191, 15.7.74, p 1), EEC Commission Directive 79/795 (OJ L239, 22.9.79, p 1), EEC Commission Directive 80/780 (OJ L229, 30.8.80, p 49), EEC Commission Directive 85/205 (OJ L90, 29.3.85, p 1), EEC Commission Directive 86/562 (OJ L327, 27.11.86, p 49), EEC Commission Directive 88/321 (OJ L147, 14.6.88, p 77) or ECE Regulation 46.01. As to compliance with European legislation see PARA 270 ante.

48 See the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 33(6) (as substituted: see note 2 supra). The appropriate European legislation is: EEC Council Directive 71/127 (OJ L68, 22.3.71, p 1) Annex I, excluding paras 2.3.4 and 2.6; EEC Commission Directive 79/795 (OJ L239, 22.9.79, p 1) Annex I, excluding paras 2.3.3 and 2.6; EC Parliament and Council Directive 2003/97 (OJ L25, 29.1.2004, p 1) Annex II, excluding para 3.4; or EC Council Directive 2005/27 (OJ L81, 30.3.2005, p 44) Annex II, excluding para 3.4.

## UPDATE

### 304 Mirrors and other devices for indirect vision

TEXT AND NOTES--See also European Parliament and EC Council Directive 2007/38 (OJ L184, 14.7.2007, p 25) on the retrofitting of mirrors to heavy goods vehicles registered in the community.

NOTES--SI 1986/1078 reg 33(1) amended, reg 33(6A)-(6H), (7)(e), (f), (9) added: SI 2009/142.

NOTES 23, 25, 29, 42, 48--Directive 2003/97 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

NOTE 47--Directive 74/346 replaced: European Parliament and EC Council Directive 2009/59 (OJ L198, 30.7.2009, p 9).

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### **305. Windscreen wipers and washers.**

Every vehicle fitted with a windscreen must, unless the driver<sup>1</sup> can obtain an adequate view to the front of the vehicle without looking through the windscreen, be fitted with one or more efficient automatic windscreen wipers capable of clearing the windscreen so that the driver has an adequate view of the road<sup>2</sup> in front of both sides of the vehicle and to the front of the vehicle<sup>3</sup>.

Every wheeled<sup>4</sup> vehicle so required to be fitted with a wiper or wipers must also be fitted with a windscreen washer capable of cleaning, in conjunction with the windscreen wiper, the area of the windscreen swept by the wiper of mud or similar deposit<sup>5</sup>. This requirement does not apply in respect of:

- 304 (1) an agricultural motor vehicle<sup>6</sup>, other than a vehicle first used<sup>7</sup> on or after 1 June 1986 which is driven at more than 20 miles per hour<sup>8</sup>;
- 305 (2) a track-laying vehicle<sup>9</sup>;
- 306 (3) a vehicle having a maximum speed<sup>10</sup> not exceeding 20 miles per hour<sup>11</sup>; or
- 307 (4) a vehicle being used to provide a local service<sup>12</sup>.

Every wiper and washer fitted in accordance with the above provisions must at all times while a vehicle is being used on a road be maintained in efficient working order and be properly adjusted<sup>13</sup>.

1 For the meaning of 'driver' see PARA 207 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 34(1). Instead of complying with reg 34(1) and reg 34(2) (see the text to notes 4-5 infra), a vehicle may, however, comply with EEC Council Directive 78/318 (OJ L81, 28.3.78, p 49) on the approximation of the laws of the member states relating to the wiper and washer systems of motor vehicles (as amended): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36(4). Instead of complying with reg 34(1), an agricultural motor vehicle may comply with EEC Commission Directive 79/1073 (OJ L331, 27.12.79, p 20) adapting to technical progress EEC Council Directive 74/347 (OJ L191, 15.7.74, p 5) on the approximation of the laws of the member states relating to the field of vision and windscreen wipers of wheeled agricultural or forestry tractors: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 34(5).

4 For the meaning of 'wheeled' see PARA 267 note 2 ante.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 34(2). See also note 3 supra.

6 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

7 For the meaning of 'first used' see PARA 267 note 5 ante.

- 8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 34(3)(a).
- 9 Ibid reg 34(3)(b). For the meaning of 'track-laying vehicle' see PARA 267 note 3 ante.
- 10 For the meaning of 'maximum speed' see PARA 278 note 17 ante.
- 11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 34(3)(c).
- 12 Ibid reg 34(3)(d). For the meaning of 'local service' see PARA 1177 post; definition applied by reg 34(3)(d).
- 13 Ibid reg 34(6).

## UPDATE

### 305 Windscreen wipers and washers

NOTE 3--Directive 74/347 replaced with effect from 1 May 2008: European Parliament and EC Council Directive 2008/2 (OJ L24, 29.1.2008, p 30) on the field of vision and windscreen wipers for wheeled agricultural or forestry tractors (codified version). References to the repealed directive are to be construed as references to the new directive (see art 6 and Annex III). Directive 78/318 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

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## (vii) Instruments and Equipment

### 306. Speedometers.

Every motor vehicle<sup>1</sup> must be fitted with a speedometer which, if the vehicle is first used<sup>2</sup> on or after 1 April 1984, must be capable of indicating speed in both miles per hour and kilometres per hour, either simultaneously or, by the operation of a switch, separately<sup>3</sup>.

The above provisions do not apply to:

- 308 (1) a vehicle having a maximum speed<sup>4</sup> not exceeding 25 miles per hour<sup>5</sup>;
- 309 (2) a vehicle which it is at all times unlawful to drive at more than 25 miles per hour<sup>6</sup>;
- 310 (3) an agricultural motor vehicle<sup>7</sup> which is not driven at more than 20 miles per hour<sup>8</sup>;
- 311 (4) a motor cycle<sup>9</sup> first used before 1 April 1984, the engine of which has a cylinder capacity not exceeding 100 cubic centimetres<sup>10</sup>;
- 312 (5) an invalid carriage<sup>11</sup> first used before 1 April 1984<sup>12</sup>;
- 313 (6) a works truck<sup>13</sup> first used before 1 April 1984<sup>14</sup>;
- 314 (7) a vehicle first used before 1 October 1937<sup>15</sup>; or
- 315 (8) a vehicle equipped with recording equipment marked with a marking designated as an approval mark<sup>16</sup>, whether or not the vehicle is required to be equipped with that equipment, and which, as regards the visual indications given



by that equipment of the speed of the vehicle, complies with the specified requirements<sup>17</sup> relating to such indications and installations<sup>18</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'first used' see PARA 267 note 5 ante.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 35(1). Instead of complying with reg 35(1), a vehicle may comply with EC Commission Directive 97/39 (OJ L177, 5.7.97, p 15) or with ECE Regulation 39: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 35(3) (amended by SI 1998/1188). For the meaning of 'ECE Regulation' see PARA 270 note 2 ante.

4 For the meaning of 'maximum speed' see PARA 278 note 17 ante.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 35(2)(a).

6 Ibid reg 35(2)(b).

7 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 35(2)(c).

9 For the meaning of 'motor cycle' see PARA 214 ante.

10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 35(2)(d).

11 For the meaning of 'invalid carriage' see PARA 215 ante.

12 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 35(2)(e).

13 For the meaning of 'works truck' see PARA 278 note 18 ante.

14 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 35(2)(f).

15 Ibid reg 35(2)(g).

16 Ie by the Motor Vehicles (Designation of Approval Marks) Regulations 1979, SI 1979/1088, reg 5 and shown in Sch 4 item 3 (as amended): see PARA 714 post.

17 Ie the requirements specified in EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) on recording equipment in road transport (as amended). See PARA 1380 et seq post.

18 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 35(2)(h).

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### **307. Maintenance of speedometer.**

Every instrument for indicating speed fitted<sup>1</sup> to a motor vehicle<sup>2</sup> must be kept free from any obstruction which might prevent its being easily read and must at all material times<sup>3</sup> be maintained in good working order<sup>4</sup>.

1 Ie in compliance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 35(1) or (3) (as amended) (see PARA 306 ante) or to which reg 35(2)(h) (see PARA 306 head (8) ante) relates and which is not, under EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) on recording equipment in road transport (as amended) (see PARA 1384 et seq post), required to be equipped with the recording equipment mentioned in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 35(2)(h).

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For these purposes, 'at all material times' means all times when the motor vehicle is in use on a road, except when: (1) the vehicle is being used on a journey during which, as a result of a defect, the instrument ceased to be in good working order; or (2) as a result of a defect, the instrument has ceased to be in good working order and steps have been taken to have the vehicle equipped with all reasonable expedition, by means of repairs or replacement, with an instrument which is good working order: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36(2). For the meaning of 'road' see PARA 206 ante.

4 Ibid reg 36(1).

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### **308. Speed limiters for coaches and buses.**

Each of the following vehicles, that is to say:

- 316 (1) every coach<sup>1</sup> which: (a) was first used<sup>2</sup> on or after 1 April 1974 and before 1 January 1988; and (b) has, or if a speed limiter<sup>3</sup> were not fitted to it would have, a maximum speed exceeding 112.65 kilometres per hour<sup>4</sup>;
- 317 (2) every bus<sup>5</sup> which: (a) is first used on or after 1 January 1988; (b) has a maximum gross weight exceeding 7.5 tonnes; and (c) has, or if a speed limiter were not fitted to it would have, a maximum speed exceeding 100 kilometres per hour<sup>6</sup>;
- 318 (3) every bus not being a bus to which head (2) above applies, which: (a) is first used on or after 1 January 2005; (b) has a maximum gross weight exceeding 5 tonnes but not exceeding 10 tonnes; and (c) has, or if a speed limiter were not fitted to it would have, a maximum speed exceeding 100 kilometres per hour<sup>7</sup>;
- 319 (4) every bus which: (a) is first used on or after 1 January 2005; (b) has a maximum gross weight not exceeding 5 tonnes; and (c) has, or if a speed limiter were not fitted to it would have, a maximum speed exceeding 100 kilometres per hour<sup>8</sup>;
- 320 (5) every bus, not being a bus to which head (2) above applies, which: (a) was first used on or after 1 October 2001 and before 1 January 2005; (b) complies with the specified limit values in respect of Euro III emission standards<sup>9</sup>; (c) has a maximum gross weight not exceeding 10 tonnes; and (d) has, or if a speed limiter were not fitted to it would have, a maximum speed exceeding 100 kilometres per hour<sup>10</sup>,

must be fitted with a speed limiter in respect of which such of the prescribed requirements<sup>11</sup> are met as apply to that speed limiter<sup>12</sup>.

The above provisions do not apply to a vehicle:

- 321 (i) being taken to a place where a speed limiter is to be installed, calibrated, repaired or replaced<sup>13</sup>;
- 322 (ii) completing a journey in the course of which the speed limiter has accidentally ceased to function<sup>14</sup>;
- 323 (iii) which is owned by the Secretary of State for Defence and used for naval, military or air force purposes<sup>15</sup>;

- 324 (iv) which is used for naval, military or air force purposes while being driven by a person for the time being subject to the orders of a member of the armed forces of the Crown<sup>16</sup>; or
- 325 (v) while it is being used for fire and rescue authority purposes<sup>17</sup>.

A speed limiter required to be fitted must be: (A) sealed by an authorised sealer<sup>18</sup> in such a manner as to protect the limiter against any improper interference or adjustment and against any interruption of its power supply<sup>19</sup>; and (B) maintained in good and efficient working order<sup>20</sup>.

1 'Coach' means a large bus with a maximum gross weight of more than 7.5 tonnes and with a maximum speed exceeding 60 mph: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (definition added by SI 1987/1133). 'Large bus' means a vehicle constructed or adapted to carry more than 16 seated passengers in addition to the driver: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (definition added by SI 1987/1133). For the meaning of 'maximum gross weight' see PARA 271 note 27 ante; and for the meaning of 'maximum speed' see PARA 278 note 17 ante. For the meaning of 'driver' see PARA 207 ante.

2 For the meaning of 'first used' see PARA 267 note 5 ante.

3 For these purposes, 'speed limiter' means a device designed to limit the maximum speed of a motor vehicle by controlling the power output from the engine of the vehicle: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A(14) (reg 36A added by SI 1988/271).

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A(1) (as added (see note 3 supra); and amended by SI 1997/1340).

5 For the meaning of 'bus' see PARA 271 note 6 ante.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A(2) (as added (see note 3 supra); and amended by SI 1997/1340).

7 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A(2A) (reg 36A as added (see note 3 supra); and reg 36A(2A)-(2E) added by SI 2004/2102).

8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A(2B) (as added: see notes 3, 7 supra). Regulation 36A (as added and amended) applies on or after 1 January 2008 in the case of such a vehicle used solely for national transport operations: reg 36A(2E) (as so added). 'National transport operations' means transport operations within the United Kingdom; and 'transport operations' means the transportation of passengers in vehicles designed for such a purpose and to which reg 36A (as added and amended) applies: reg 36A(14) (as added (see note 3 supra); definitions added by SI 2004/2102). For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

9 As set out in EEC Council Directive 88/77 (OJ L36, 9.2.1988, p 33), as amended by amendments up to and including those effected by EC Commission Directive 2001/27 (OJ L107, 18.4.2001, p 10). 'Euro III emission standards' means the emission limits given in EC Parliament and Council Directive 1999/96 (OJ L44, 16.2.2000, p 1) (amending EC Council Directive 88/77 (OJ L36, 9.2.1988, p 33)) Annex 1 section 6.2.1 tables rows A: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A(14) (reg 36A as added (see note 3 supra); definition added by SI 2005/3170).

10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A(2C) (as added (see notes 3, 7 supra); and amended by SI 2005/3170). The Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A (as added and amended) applies: (1) on or after 1 January 2006 in the case of such a vehicle used for both national and international transport operations; (2) on or after 1 January 2007 in the case of such a vehicle used solely for national transport operations: reg 36A(2D) (as added: see notes 3, 7 supra). 'International transport operations' means transport operations outside the United Kingdom: reg 36A(14) (as added (see note 3 supra); definition added by SI 2004/2102).

11 For the requirements as to speed limiters see the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A(5)-(12) (as added (see note 3 supra); reg 36A(6) amended by SI 1997/1340; Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A(7) substituted by SI 2004/2102; Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A(7A) added by SI 2005/3170; Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A(8), (9) amended by SI 2004/2102).

12 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A(4) (as added: see note 3 supra).

13 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A(13)(a) (as added: see note 3 supra).

14 Ibid reg 36A(13)(b) (as added: see note 3 supra).

15 Ibid reg 36A(13)(c) (reg 36A as added (see note 3 supra); and reg 36A(13)(c) added by SI 2005/3170). As to the Secretary of State for Defence see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 438 et seq. As to use of vehicles for naval, military or air force purposes see ARMED FORCES.

16 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A(13)(d) (reg 36A as added (see note 3 supra); and reg 36A(13)(d) added by SI 2005/3170).

17 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A(13)(e) (reg 36A as added (see note 3 supra); and reg 36A(13)(e) added by SI 2005/3170). As to fire and rescue authorities see FIRE SERVICES.

18 For the meaning of 'authorised sealer' see PARA 310 post. The requirement for the speed limiter to be sealed applies with the omission of the reference to an authorised sealer if: (1) a speed limiter was fitted before 1 August 1992 to a vehicle first used before that date; or (2) a speed limiter was sealed outside the United Kingdom: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A(10) (as added: see note 3 supra).

19 Ibid reg 36A(5)(a) (as added: see note 3 supra).

20 Ibid reg 36A(5)(b) (as added: see note 3 supra).

## UPDATE

### 308 Speed limiters for coaches and buses

TEXT AND NOTES 8-10--Heads (4) and (5) are subject to head (vi) (see TEXT AND NOTES 13-17): SI 1986/1078 reg 36A(2B), (2C) (amended by SI 2009/142). SI 1986/1078 reg 36A(2D), (2E) revoked: SI 2009/142.

TEXT AND NOTES 13-17--Also, head (vi) which is operated by or on behalf of Her Majesty's Prison Service and used primarily for the purpose of moving Category A prisoners: SI 1986/1078 reg 36A(13)(f) (added by SI 2009/142). 'Category A prisoners' means that prison security category which is applied to prisoners whose escape would be highly dangerous to the public or the police or to the security of the state, no matter how unlikely that escape might be, and for whom the aim must be to make escape impossible: SI 1986/1078 reg 36A(14) (definition added by SI 2009/142).

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### 309. Speed limiters for goods vehicles.

Each of the following vehicles, that is to say:

- 326 (1) every motor vehicle<sup>1</sup> which: (a) is a goods vehicle<sup>2</sup>; (b) has a maximum gross weight<sup>3</sup> exceeding 7,500 kilograms but not exceeding 12,000 kilograms; (c) is first used<sup>4</sup> on or after 1 August 1992 and before 1 January 2005; and (d) has, or if a

- speed limiter<sup>5</sup> were not fitted to it would have, a relevant speed<sup>6</sup> exceeding 60 miles per hour<sup>7</sup>;
- 327 (2) every motor vehicle which: (a) is a goods vehicle; (b) has a maximum gross weight exceeding 3,500 kilograms but not exceeding 12,000 kilograms; (c) is first used on or after 1 January 2005; and (d) has, or if a speed limiter were not fitted to it would have, a relevant speed exceeding 90 kilometres per hour<sup>8</sup>;
- 328 (3) every motor vehicle, not being a motor vehicle to which head (1) above applies, which: (a) is a goods vehicle; (b) has a maximum gross weight exceeding 3,500 kilograms but not exceeding 12,000 kilograms; (c) was first used on or after 1 October 2001 and before 1 January 2005; (d) complies with the limit values in respect of Euro III emission standards<sup>9</sup>; and (e) has, or if a speed limiter were not fitted to it would have, a relevant speed exceeding 90 kilometres per hour<sup>10</sup>;
- 329 (4) every vehicle which: (a) is a goods vehicle; (b) has a maximum gross weight exceeding 12,000 kilograms; (c) is first used on or after 1 January 1988; and (d) has, or if a speed limiter were not fitted to it would have, a relevant speed exceeding 90 kilometres per hour<sup>11</sup>,

must be fitted with a speed limiter in respect of which such of the specified requirements<sup>12</sup> are met as apply to that speed limiter<sup>13</sup>.

The above provisions do not apply to a vehicle:

- 330 (i) which is being taken to a place where a speed limiter is to be installed, calibrated, repaired or replaced<sup>14</sup>;
- 331 (ii) which is completing a journey in the course of which the speed limiter has accidentally ceased to function<sup>15</sup>;
- 332 (iii) is owned by the Secretary of State for Defence<sup>16</sup> and used for naval, military or air force purposes<sup>17</sup>;
- 333 (iv) is used for naval, military or air force purposes while being driven by a person for the time being subject to the orders of a member of the armed forces of the Crown<sup>18</sup>;
- 334 (v) while it is being used for fire and rescue authority<sup>19</sup>, ambulance<sup>20</sup> or police<sup>21</sup> purposes<sup>22</sup>; or
- 335 (vi) at a time when it is being used on a public road<sup>23</sup> during any calendar week if it is being used only in passing from land in the occupation of the person keeping the vehicle to other land in his occupation and it has not been used on public roads for distances exceeding an aggregate of six miles in that calendar week<sup>24</sup>.

A speed limiter required to be fitted must be: (A) sealed by an authorised sealer<sup>25</sup> in such a manner as to protect the limiter against any improper interference or adjustment or against any interruption of its power supply<sup>26</sup>; and (B) maintained in good and efficient working order<sup>27</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'goods vehicle' see PARA 271 note 26 ante.

3 For the meaning of 'maximum gross weight' see PARA 271 note 27 ante.

4 For the meaning of 'first used' see PARA 267 note 5 ante.

5 For the meaning of 'speed limiter' see PARA 308 note 3 ante; definition applied by the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36B(15) (reg 36B added by SI 1991/1527; and substituted by SI 1993/3048).

6 For these purposes, 'relevant speed' means a speed which a vehicle is incapable, by means of its construction, of exceeding on the level under its own power when unladen: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36B(15) (as added and substituted: see note 5 supra).

7 Ibid reg 36B(1) (as added and substituted (see note 5 supra); and amended by SI 2004/2102).

8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36B(1A) (reg 36B as added and substituted (see note 5 supra); and reg 36B(1A)-(1D) added by SI 2004/2102). The Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36B (as added, substituted and amended) applies on or after 1 January 2008 in the case of such a vehicle with a maximum gross weight not exceeding 7,500 kg and used solely for national transport operations: reg 36B(1D) (as so added). 'National transport operations' means transport operations within the United Kingdom; and 'transport operations' means the transportation of goods in vehicles designed for such a purpose and to which reg 36B (as added, substituted and amended) applies: reg 36B(15) (as added and substituted (see note 5 supra); definitions added by SI 2004/2102). For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

9 Ie as set out in EEC Council Directive 88/77 (OJ L36, 9.2.1988, p 33), as amended by amendments up to and including those effected by EC Commission Directive 2001/27 (OJ L107, 18.4.2001, p 10). 'Euro III emission standards' means the emission limits given in EC Parliament and Council Directive 1999/96 (OJ L44, 16.2.2000, p 1) (amending EC Council Directive 88/77 (OJ L36, 9.2.1988, p 33)) Annex 1 section 6.2.1 tables rows A: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36B(15) (as added and substituted (see note 5 supra); definition added by SI 2005/3170).

10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36B(1B) (reg 36B as added and substituted (see note 5 supra); reg 36B(1B) as added (see note 8 supra); and substituted by SI 2005/3170). The Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36B (as added, substituted and amended) applies: (1) on or after 1 January 2006 in the case of such a vehicle used for both national and international transport operations; and (2) on or after 1 January 2007 in the case of such a vehicle used solely for national transport operations: reg 36B(1C) (reg 36B as so added and substituted; and reg 36B(1C) as added (see note 8 supra)). 'International transport operations' means transport operations outside the United Kingdom: reg 36B(15) (reg 36B as so added and substituted; definition added by SI 2004/2102).

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36B(2) (as added and substituted (see note 5 supra); and amended by SI 2003/1946; SI 2004/2102).

12 For the specified requirements see the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36B(7)-(13), (16) (as added and substituted (see note 5 supra); reg 36B(8) amended by SI 2003/1946; Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36B(9) further substituted by SI 1996/2064; and amended by SI 2004/2102; Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36B(10), (11) amended by SI 2004/2102; Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36B(16) amended by SI 1994/329).

13 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36B(6) (as added and substituted: see note 5 supra).

14 Ibid reg 36B(14)(a) (as added and substituted: see note 5 supra).

15 Ibid reg 36B(14)(b) (as added and substituted: see note 5 supra).

16 As to the Secretary of State for Defence see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 438 et seq.

17 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36B(14)(c) (as added and substituted: see note 5 supra). As to use of vehicles for naval, military or air force purposes see ARMED FORCES.

18 Ibid reg 36B(14)(d) (as added and substituted: see note 5 supra). See also ARMED FORCES.

19 See FIRE SERVICES vol 18(2) (Reissue) PARA 35 et seq.

20 See HEALTH SERVICES vol 54 (2008) PARA 12.

21 As to police vehicles see POLICE vol 36(1) (2007 Reissue) PARA 525.

22 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36B(14)(e) (as added and substituted (see note 5 supra); and amended in relation to England by SI 2004/3168; and in relation to Wales by SI 2005/2929).

23 For the meaning of 'public road' see PARA 519 note 5 post; definition applied by the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36B(14)(f) (as added (see note 5 supra); and substituted by SI 1995/1458).

24 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36B(14)(f) (as added and substituted: see notes 5, 23 supra).

25 For the meaning of 'authorised sealer' see PARA 310 post. The requirement for a speed limiter to be sealed applies with the omission of the reference to an authorised sealer if: (1) the speed limiter was fitted before 1 August 1992 to a vehicle first used before that date; or (2) the speed limiter was sealed outside the United Kingdom: *ibid* reg 36B(12) (as added and substituted: see note 5 supra).

26 *Ibid* reg 36B(7)(a) (as added and substituted: see note 5 supra).

27 *Ibid* reg 36B(7)(b) (as added and substituted: see note 5 supra).

## UPDATE

### 309 Speed limiters for goods vehicles

NOTES 7-10--SI 1986/1078 reg 36B(1), (1A), (1B) amended, reg 36B(1C), (1D) revoked: SI 2009/142.

TEXT AND NOTES 14-24--Also, head (vii) which is an emergency tactical response vehicle operated by or on behalf of Her Majesty's Prison Service and used primarily for the purpose of transporting people or equipment (or both) to restore order within Her Majesty's prisons or immigration detention centres: SI 1986/1078 reg 36B(14)(g) (added by SI 2009/142).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(vii) Instruments and Equipment/310. Authorised sealers of speed limiters.

### 310. Authorised sealers of speed limiters.

The Secretary of State<sup>1</sup> may authorise an individual proposing to seal speed limiters<sup>2</sup> other than on behalf of another person, a firm, or a corporation to seal speed limiters<sup>3</sup>, and a person or body so authorised is referred to as an 'authorised sealer'<sup>4</sup>. An authorised sealer must comply with the prescribed conditions<sup>5</sup> and with such other conditions as may from time to time be imposed by the Secretary of State<sup>6</sup>. An authorised sealer may charge for sealing a speed limiter<sup>7</sup>.

The Secretary of State may at any time withdraw an authorisation so granted<sup>8</sup>. An authorisation: (1) in respect of an individual terminates if he dies, is adjudged bankrupt or becomes incapable by reason of mental disorder of managing or administering his property and affairs<sup>9</sup>; (2) in respect of a firm terminates if the firm is dissolved or if all the partners are adjudged bankrupt<sup>10</sup>; (3) in respect of a company terminates if: (a) the company goes into liquidation or enters administration; (b) a receiver or manager of the trade or business of the company is appointed; or (c) possession is taken by or on behalf of the holders of any debenture secured by a floating charge, or any property of the company comprised in or subject to the charge<sup>11</sup>.

An authorised sealer must not seal a speed limiter fitted to a vehicle<sup>12</sup> unless he is satisfied that the speed limiter fulfils the statutory requirements<sup>13</sup>. When sealing a speed limiter fitted to a vehicle<sup>14</sup>, an authorised sealer must do so in such a manner that the speed limiter fulfils the

statutory requirements<sup>15</sup>. When an authorised sealer has sealed a speed limiter fitted to a vehicle<sup>16</sup>, he must supply the owner with a plate which fulfils the statutory requirements<sup>17</sup>.

- 1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 2 As to speed limiters see PARAS 308-309 ante.
- 3 le for the purposes of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A (as added, substituted and amended) (see PARA 308 ante) or reg 36B (as added, substituted and amended) (see PARA 309 ante).
- 4 Ibid reg 36C, Sch 3B para 1 (reg 36C, Sch 3B added by SI 1992/422).
- 5 le the conditions set out in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 3B paras 6-10 (as added and amended): see the text and notes 13-17 infra.
- 6 Ibid Sch 3B para 2 (as added: see note 4 supra).
- 7 Ibid Sch 3B para 3 (as added: see note 4 supra).
- 8 Ibid Sch 3B para 4 (as added: see note 4 supra).
- 9 Ibid Sch 3B para 5(1) (as added: see note 4 supra). A person is incapable of managing his property and affairs if he is a patient within the meaning of the Mental Health Act 1983 Pt VII (ss 93-113) (as amended): see MENTAL HEALTH vol 30(2) (Reissue) PARA 681.
- 10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 3B para 5(2) (as added: see note 4 supra).
- 11 Ibid Sch 3B para 5(3) (as added (see note 4 supra); and amended by SI 2003/2096).
- 12 le a vehicle to which the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A (as added, substituted and amended) (see PARA 308 ante) or, as the case may be, reg 36B (as added, substituted and amended) (see PARA 309 ante) applies.
- 13 Ibid Sch 3B para 6 (as added (see note 4 supra); and amended by SI 2003/1946).
- 14 See note 12 supra.
- 15 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 3B paras 7, 8 (as added (see note 4 supra); and amended by SI 2003/1946).
- 16 See note 12 supra.
- 17 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 3B paras 9, 10 (Sch 3B as added (see note 4 supra); and Sch 3B para 10 amended by SI 2003/1946). For these purposes, the statutory requirements are those in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 70A (as added, substituted and amended) (see PARA 369 post): Sch 3B paras 9, 10 (Sch 3B as so added; and Sch 3B para 10 as so amended).

## UPDATE

### 310 Authorised sealers of speed limiters

NOTE 9--SI 1986/1078 Sch 3B para 5(1) amended: SI 2007/1898.

TEXT AND NOTE 13--SI 1986/1078 Sch 3B para 6 substituted: SI 2007/3132.



1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(vii) Instruments and Equipment/311. Impersonation of, or of person employed by, authorised examiner.

### **311. Impersonation of, or of person employed by, authorised examiner.**

A person is guilty of an offence if, with intent to deceive, he falsely represents himself to be, or to be employed by, a person authorised in accordance with regulations<sup>1</sup> with respect to the checking and sealing of speed limiters<sup>2</sup>.

1 The regulations made under the Road Traffic Act 1988 s 41 (as amended): see PARA 260 ante.

2 Ibid s 177 (substituted by the Road Traffic (Vehicle Testing) Act 1999 s 7(1), Schedule para 3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## **UPDATE**

### **311 Impersonation of, or of person employed by, authorised examiner**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(vii) Instruments and Equipment/312. Audible warning instruments.

### **312. Audible warning instruments.**

Every motor vehicle<sup>1</sup> (other than an agricultural motor vehicle<sup>2</sup>, unless it is being driven at more than 20 miles per hour) which has a maximum speed<sup>3</sup> of more than 20 miles per hour must be fitted with a horn<sup>4</sup>, not being a reversing alarm<sup>5</sup> or a two-tone horn<sup>6</sup>.

The sound emitted by any horn, other than a reversing alarm, a boarding aid alarm<sup>7</sup> or a two-tone horn, fitted to a wheeled<sup>8</sup> vehicle first used<sup>9</sup> on or after 1 August 1973 must be continuous and uniform and not strident<sup>10</sup>. A reversing alarm or a boarding aid alarm fitted to a wheeled vehicle must not be strident<sup>11</sup>.

No motor vehicle is to be fitted with a bell, gong, siren or two-tone horn<sup>12</sup>. However, this prohibition does not apply to motor vehicles:

- 336 (1) used for fire and rescue authority<sup>13</sup>, ambulance<sup>14</sup> or police<sup>15</sup> purposes<sup>16</sup>;
- 337 (2) used for Serious Organised Crime Agency purposes<sup>17</sup>;
- 338 (3) owned by a body formed primarily for the purposes of fire salvage and used for those or similar purposes<sup>18</sup>;
- 339 (4) owned by the Forestry Commission<sup>19</sup> or by local authorities and used from time to time for the purposes of fighting fires<sup>20</sup>;

- 340 (5) owned by the Secretary of State for Defence<sup>21</sup> and used for the purposes of the disposal of bombs or explosives<sup>22</sup>;
- 341 (6) used for the purposes of the Blood Transfusion Service<sup>23</sup>;
- 342 (7) used by Her Majesty's Coastguard or the Coastguard Auxiliary Service<sup>24</sup> to aid persons in danger or vessels in distress on or near the coast<sup>25</sup>;
- 343 (8) used for the purposes of rescue operations at mines<sup>26</sup>;
- 344 (9) owned by the Secretary of State for Defence and used by the Royal Air Force Mountain Rescue Service for the purposes of rescue operations in connection with crashed aircraft or any other emergencies<sup>27</sup>;
- 345 (10) owned by the Royal National Lifeboat Institution<sup>28</sup> and used for the purposes of launching lifeboats<sup>29</sup>;
- 346 (11) under the lawful control of the Commissioners for Her Majesty's Revenue and Customs and used from time to time for the purposes of investigation of serious crime<sup>30</sup>; or
- 347 (12) owned or operated by the Secretary of State for Defence and used for the purpose of any activity: (a) which prevents or decreases the exposure of persons to radiation arising from a radiation accident or radiation emergency<sup>31</sup>; or (b) in connection with an event which could lead to a radiation accident or radiation emergency<sup>32</sup>.

The requirement for the horn to be continuous, uniform and not strident<sup>33</sup> and the prohibition of bells, gongs, sirens and two-tone horns<sup>34</sup> do not apply so as to make it unlawful for:

- 348 (i) a motor vehicle to be fitted with an instrument or apparatus, not being a two-tone horn, designed to emit a sound for the purpose of informing members of the public that goods are on the vehicle for sale<sup>35</sup>;
- 349 (ii) a vehicle to be fitted with a bell, gong or siren, if the purpose of it is to prevent theft or attempted theft of the vehicle or its contents<sup>36</sup> or, in the case of a bus<sup>37</sup>, if the purpose of it is to summon help for the driver, the conductor or an inspector<sup>38</sup>.

Instead of complying with the above provisions<sup>39</sup>, a vehicle may comply with the applicable European legislation<sup>40</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

3 For the meaning of 'maximum speed' see PARA 278 note 17 ante.

4 For these purposes, and for the purposes of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 99 (as amended) (see PARA 612 post), 'horn' means an instrument, not being a bell, gong or siren, capable of giving audible and sufficient warning of the approach or position of the vehicle to which it is fitted: reg 37(10)(a). References to a bell, gong or siren include references to any instrument or apparatus capable of emitting a sound similar to that emitted by a bell, gong or siren: reg 37(10)(b).

5 For these purposes, and for the purposes of ibid reg 99 (as amended) (see PARA 612 post), 'reversing alarm' means a device fitted to a motor vehicle and designed to warn persons that the vehicle is reversing or is about to reverse: reg 37(10)(c).

6 Ibid reg 37(1). For these purposes, and for the purposes of reg 99 (as amended) (see PARA 612 post), 'two-tone horn' means an instrument which, when operated, automatically produces a sound which alternates at regular intervals between two fixed notes: reg 37(10)(d). As to the use of audible warning instruments see PARA 612 post.

7 For these purposes, and for the purposes of ibid reg 99 (as amended) (see PARA 612 post), 'boarding aid alarm' means an alarm for a power operated lift or ramp fitted to a bus to enable wheelchair users to board and alight and designed to warn persons that the lift or ramp is in operation: reg 37(10)(e) (added by SI 2000/1971).

8 For the meaning of 'wheeled' see PARA 267 note 2 ante.

9 For the meaning of 'first used' see PARA 267 note 5 ante.

10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 37(2) (amended by SI 2000/1971). The provisions of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 37(2) (as amended) do not apply so as to make it unlawful for a motor vehicle to be fitted with an instrument or apparatus, not being a two-tone horn, designed to emit a sound for the purpose of informing members of the public that goods are on the vehicle for sale: reg 37(6).

11 Ibid reg 37(3) (amended by SI 2000/1971).

12 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 37(4).

13 As to fire and rescue service vehicles see FIRE SERVICES vol 18(2) (Reissue) PARA 35 et seq.

14 As to ambulances see HEALTH SERVICES vol 54 (2008) PARA 12.

15 As to police vehicles see POLICE vol 36(1) (2007 Reissue) PARA 525.

16 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 37(5)(a) (amended in relation to England by SI 2004/3168; and in relation to Wales by SI 2005/2929).

17 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 37(5)(aa) (added by SI 2006/594). As to the Serious Organised Crime Agency see POLICE vol 36(1) (2007 Reissue) PARA 430 et seq.

18 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 37(5)(b).

19 As to the Forestry Commission see FORESTRY vol 52 (2009) PARA 34 et seq.

20 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 37(5)(c).

21 As to the Secretary of State for Defence see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 438 et seq.

22 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 37(5)(d).

23 Ibid reg 37(5)(e). As to the Blood Transfusion Service see HEALTH SERVICES vol 54 (2008) PARA 147.

24 See SHIPPING AND MARITIME LAW vol 93 (2008) PARAS 56-57.

25 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 37(5)(f).

26 Ibid reg 37(5)(g) (substituted by SI 1994/2567). See HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 832 et seq; MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 517.

27 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 37(5)(h). See ARMED FORCES.

28 As to the Royal National Lifeboat Institution see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 940.

29 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 37(5)(i).

30 Ibid reg 37(5)(j) (added by SI 2005/2560). 'Serious crime' has the meaning given by the Police Act 1997 s 93(4) (save for the omission of the words 'and, where the authorising officer is within subsection (5)(h), it relates to an assigned matter within the meaning of section 1(1) of the Customs and Excise Management Act 1979') (see POLICE vol 36(1) (2007 Reissue) PARA 483): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 37(5)(j) (as so added).

31 'Radiation accident' and 'radiation emergency' have the same meanings as in the Radiation (Emergency Preparedness and Public Information Regulations 2001, SI 2001/2975 (as amended) (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 668): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 37(9A) (added by SI 2005/2560).

32 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 37(5)(k) (added by SI 2005/2560).

33 le the provisions of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 37(2) (as amended): see the text and notes 7-10 *supra*.

34 le the provisions of *ibid* reg 37(4): see the text to note 12 *supra*.

35 *Ibid* reg 37(6).

36 *Ibid* reg 37(7)(a). Every bell, gong or siren fitted to a vehicle by virtue of reg 37(7)(a), and every device fitted to a motor vehicle first used on or after 1 October 1982 so as to cause a horn to sound for the purpose mentioned in reg 37(7)(a), must be fitted with a device designed to stop the bell, gong, siren or horn emitting noise for a continuous period of more than five minutes; and every such device must at all times be maintained in good working order: reg 37(8).

37 For the meaning of 'bus' see PARA 271 note 6 *ante*.

38 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 37(7)(b).

39 le reg 37(1), (2), (4)-(8) (reg 37(5) as amended).

40 *Ibid* reg 37(9). The applicable European legislation is EEC Council Directive 70/388 (OJ L176, 10.8.70, p 12) on the approximation of the laws of the member states relating to audible warning devices for vehicles (as amended) or ECE Regulation 28 or, if the vehicle is an agricultural motor vehicle, EEC Council Directive 74/151 (OJ L84, 28.3.74, p 25) on the approximation of the laws of the member states relating to certain parts and characteristics of wheeled agricultural or forestry tractors (as amended): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 37(9). For the meaning of 'ECE Regulation' see PARA 270 note 2 *ante*. As to compliance with European legislation see PARA 270 *ante*.

## UPDATE

### 312 Audible warning instruments

TEXT AND NOTES 1-32--Also, head (13) used for mountain rescue purposes: SI 1986/1078 reg 37(5)(l) (added by SI 2009/3221).

NOTE 40--Directive 70/388 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1). Directive 74/151 replaced: European Parliament and EC Council Directive 2009/63 (OJ L214, 19.8.2009, p 23).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(vii) Instruments and Equipment/313. Motor cycle sidestands.

### 313. Motor cycle sidestands.

No motor cycle<sup>1</sup> first used on or after 1 April 1986 is to be fitted with any sidestand<sup>2</sup> which is capable of disturbing the stability or direction of the motor cycle when it is in motion under its own power or closing automatically if the angle of the inclination of the motor cycle is inadvertently altered when it is stationary<sup>3</sup>.

1 For the meaning of 'motor cycle' see PARA 214 *ante*.

2 For these purposes, 'sidestand' means a device fitted to a motor cycle which, when fully extended or pivoted to its open position, supports the vehicle from one side only and so that both the wheels of the motor cycle are on the ground: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 38(2). For the meaning of 'wheel' see PARA 267 note 2 *ante*.

3 Ibid reg 38(1).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(viii) Fuel Tanks/314. Petrol tanks.

## **(viii) Fuel Tanks**

### **314. Petrol tanks.**

Every fuel tank which is fitted to a wheeled<sup>1</sup> vehicle for the purpose of supplying fuel to the propulsion unit or to an ancillary engine or to any other equipment forming part of the vehicle<sup>2</sup> must:

- 350 (1) be constructed and maintained so that the leakage of any liquid from the tank is adequately prevented<sup>3</sup>;
- 351 (2) be constructed and maintained so that the leakage of vapour from the tank is adequately prevented<sup>4</sup>; and
- 352 (3) if it contains petroleum spirit<sup>5</sup> and is fitted to a vehicle first used on or after 1 July 1973: (a) be made only of metal; and (b) be fixed in such a position and so maintained as to be reasonably secure from damage<sup>6</sup>.

Instead of complying with these requirements as to construction, a vehicle may comply with the relevant European legislation<sup>7</sup>.

1 For the meaning of 'wheeled' see PARA 267 note 2 ante.

2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 39(1) (substituted by SI 1990/2212).

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 39(2)(a) (reg 39(2) added by SI 1990/2212).

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 39(2)(b) (as added: see note 3 supra). Notwithstanding the requirement of reg 39(2)(b) (as added), the fuel tank may be fitted with a device which, by the intake of air or the emission of vapour, relieves changes of pressure in the tank: reg 39(3) (added by SI 1990/2212).

5 ie as defined in the Petroleum (Consolidation) Act 1928 s 23 (as amended): see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1626.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 39(2)(c) (as added: see note 3 supra). Head (3)(a) in the text does not have effect in relation to a two-wheeled motor cycle (with or without a sidecar) first used on or after 1 February 1993: reg 39(3A) (added by SI 1992/3285). For the meaning of 'motor cycle' see PARA 214 ante.

7 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 39(4) (renumbered and amended by SI 1990/2212). The relevant European requirements are the requirements of EEC Council Directive 70/221 (OJ L76, 6.4.70, p 23) on the approximation of the laws of the member states relating to liquid fuel tanks and rear protective devices for motor vehicles and their trailers (as amended), in so far as they relate to fuel tanks, or ECE Regulation 34 or 34.01 or, if the vehicle is an agricultural motor vehicle, of EEC Council Directive 74/151 (OJ L84, 28.3.74, p 25) on the approximation of the laws of the member states relating to certain parts and characteristics of wheeled agricultural or forestry tractors (as amended): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 39(4) (as so renumbered and amended). For the meaning of 'ECE Regulation' see PARA 270 note 2 ante. As to compliance with European legislation see PARA 270 ante.

**UPDATE****314 Petrol tanks**

NOTE 7--Directive 70/221 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1). Directive 74/151 replaced: European Parliament and EC Council Directive 2009/63 (OJ L214, 19.8.2009, p 23).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(viii) Fuel Tanks/315. Unleaded petrol.

**315. Unleaded petrol.**

Every motor vehicle<sup>1</sup>, other than an excluded vehicle<sup>2</sup>, which is: (1) propelled by a spark ignition engine which is capable of running on petrol<sup>3</sup>; and (2) is first used on or after 1 April 1991<sup>4</sup>, must be designed and constructed for running on unleaded petrol<sup>5</sup>.

No person may use or cause or permit<sup>6</sup> to be used such a vehicle on a road<sup>7</sup> if it: (a) has been deliberately altered or adjusted for running on leaded petrol<sup>8</sup>; and (b) as a direct result of such alteration or adjustment it is incapable of running on unleaded petrol<sup>9</sup>.

Every fuel tank<sup>10</sup> fitted to such a vehicle must be so constructed and fitted that it cannot readily be filled from a petrol pump delivery nozzle which has an external diameter of 23.6 millimetres or greater without the aid of a device, such as a funnel, not fitted to the vehicle<sup>11</sup>. This does not apply to a vehicle in respect of which both of the following conditions are satisfied, that is to say:

353 (i) that at the time of its first use<sup>12</sup> the vehicle is so designed and constructed that prolonged continuous running on leaded petrol would not cause any device designed to control the emission of carbon monoxide, hydrocarbons or nitrogen oxides to malfunction<sup>13</sup>; and

354 (ii) that it is conspicuously and legibly marked in a position immediately visible to a person filling the fuel tank with the word 'UNLEADED' or the prescribed symbol<sup>14</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 The Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 39A, Sch 3A Pt I (as added and amended) has effect for the purpose of excluding certain vehicles first used before specified dates from the application of reg 39A (as added): reg 39A(4), Sch 3A Pt I (reg 39A, Sch 3A added by SI 1988/1524; and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 3A Pt I amended by SI 1990/1131).

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 39A(3)(a) (as added: see note 2 supra). For these purposes, 'petrol' has the same meaning as in EEC Council Directive 85/210 (OJ L96, 3.4.85, p 25) on the approximation of the laws of the member states concerning the lead content of petrol (repealed): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 39A(5) (as so added).

4 Ibid reg 39A(3)(b) (as added: see note 2 supra).

5 Ibid reg 39A(1) (as added: see note 2 supra). For these purposes, 'unleaded petrol' has the same meaning as in EC Council Directive 85/210 (OJ L96, 3.4.85, p 25) (repealed): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 39A(5) (as so added).

6 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

7 For the meaning of 'road' see PARA 206 ante.

8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 39A(2)(a) (as added: see note 2 supra). For these purposes, 'leaded petrol' has the same meaning as in EC Council Directive 85/210 (OJ L96, 3.4.85, p 25) (repealed): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 39A(5) (as so added).

9 Ibid reg 39A(2)(b) (as added: see note 2 supra). For these purposes, a vehicle is to be regarded as incapable of running on unleaded petrol at any particular time if, and only if, in its state of adjustment at that time prolonged continuous running on such petrol would damage the engine: reg 39A(6) (as so added).

10 For these purposes, 'fuel tank', in relation to a vehicle, means a fuel tank used in connection with the propulsion of the vehicle: ibid reg 39B(3) (reg 39B added by SI 1988/1524).

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 39B(1) (as added: see note 10 supra).

12 For the meaning of 'first used' see PARA 267 note 5 ante.

13 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 39B(2)(a) (as added: see note 10 supra).

14 Ibid reg 39B(2)(b) (as added: see note 10 supra). For the prescribed symbol see the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 39B(1), Sch 3A Pt II (as added: see note 2 supra).

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### **316. Gas propulsion systems and gas-fired appliances.**

A vehicle which is: (1) a motor vehicle<sup>1</sup> which first used<sup>2</sup> gas<sup>3</sup> as a fuel for its propulsion before 19 November 1982<sup>4</sup>; or (2) a trailer<sup>5</sup> manufactured before 19 November 1982 to which there is fitted a gas container<sup>6</sup>, must be so constructed that it complies with the relevant statutory provisions<sup>7</sup>.

A vehicle which is: (a) a motor vehicle which first used gas as a fuel for its propulsion on or after 19 November 1982<sup>8</sup>; or (b) a motor vehicle first used on or after 1 May 1984 or a trailer manufactured on or after 19 November 1982 which is in either case equipped with a gas container or a gas-fired appliance<sup>9</sup>, must comply with the relevant statutory provisions<sup>10</sup>.

A vehicle which first used gas as a fuel for its propulsion on or after 13 November 1999 must comply with the relevant statutory provisions<sup>11</sup>.

The requirements of the above provisions are in addition to, and not in derogation from, the requirements of any regulations made under powers conferred by the Petroleum (Consolidation) Act 1928, the Health and Safety at Work etc Act 1974, the Control of Pollution Act 1974 or any other Act or any codes of practice issued under the Health and Safety at Work etc Act 1974<sup>12</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'first used' see PARA 267 note 5 ante.

3 'Gas' means any fuel which is wholly gaseous at 17.5°C under a pressure of 1.013 bar absolute: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

4 Ibid reg 40(1)(a).

5 For the meaning of 'trailer' see PARA 210 ante.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 40(1)(b). For these purposes, 'gas container' has the meaning given in reg 40, Sch 4 where compliance with the provisions of Sch 4 (gas containers) is concerned and otherwise has the meaning given in reg 40, Sch 5 (amended by SI 2003/1690) (gas systems): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 40(4).

7 Ibid reg 40(1). The relevant statutory provisions are those contained in Sch 4 (gas containers) or, as the case may be, Sch 5 (as amended: see note 6 supra) (gas systems): reg 40(1).

8 Ibid reg 40(2)(a).

9 'Gas-fired appliance' means a device carried on a motor vehicle or trailer when in use on a road, which consumes gas and which is neither: (1) a device owned or operated by or with the authority of gas suppliers for the purpose of detecting gas; nor (2) an engine for the propulsion of a motor vehicle; nor (3) a lamp which consumes acetylene gas: ibid reg 3(2), Table. The definition refers to devices owned or operated by or with the authority of the British Gas Corporation, which has been abolished: see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 777.

10 Ibid reg 40(2). The relevant statutory provisions are those contained in Sch 5 (as amended: see note 6 supra) (gas systems) or ECE Regulation 67 or 67.01: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 40(2) (amended by SI 2003/1690). For the meaning of 'ECE Regulation' see PARA 270 note 2 ante. As to compliance with European legislation see PARA 270 ante.

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 40(2A) (added by SI 2003/1690). The relevant statutory provisions are those contained in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 5 (as amended: see note 6 supra) (gas systems) or ECE Regulation 67.01: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 40(2A) (as so added).

12 Ibid reg 40(3). See further HEALTH AND SAFETY AT WORK; ENVIRONMENTAL QUALITY AND PUBLIC HEALTH.

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## **(ix) Minibuses**

### **317. Minibuses to which the statutory requirements apply.**

The statutory requirements relating to the construction and use of minibuses<sup>1</sup> apply to every minibus<sup>2</sup> first used<sup>3</sup> on or after 1 April 1988 except a vehicle: (1) manufactured by Land Rover UK Limited and known as the Land Rover; or (2) constructed or adapted for the secure transport of prisoners<sup>4</sup>.

1 I.e. the requirements of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 41, Sch 6: see PARA 318 et seq post. However, a minibus which is required by reg 41 to meet the requirements specified in Sch 6 need not meet them if it meets the requirements of such of the Annexes to EC Parliament and Council Directive 2001/85 (OJ L42, 13.2.2002, p 1) (relating to special provisions for vehicles used for the carriage of passengers comprising more than eight seats in addition to the driver's seat) as apply to that minibus: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 41A (added by SI 2005/2987).

2 'Minibus' means a motor vehicle which is constructed or adapted to carry more than eight but not more than 16 seated passengers in addition to the driver: ibid reg 3(2), Table. For the meaning of 'motor vehicle' see PARA 210 ante. For the meaning of 'driver' see PARA 207 ante.

3 For the meaning of 'first used' see PARA 267 note 5 ante.



- 4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 41.

## **UPDATE**

### **317 Minibuses to which the statutory requirements apply**

NOTE 1--SI 1986/1078 reg 41A amended: SI 2009/142. Directive 2001/85 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

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### **318. Exhaust pipes.**

The outlet of every exhaust pipe fitted to a minibus<sup>1</sup> must be either at the rear or on the off side of the vehicle<sup>2</sup>.

- 1 For the meaning of 'minibus' see PARA 317 note 2 ante.

- 2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 41, Sch 6 para 1.

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### **319. Number and position of doors.**

Every minibus<sup>1</sup> must be fitted with at least: (1) one service door<sup>2</sup> on the near side of the vehicle<sup>3</sup>; and (2) one emergency door<sup>4</sup> either at the rear or on the off side of the vehicle but so that any emergency door fitted on the off side of the vehicle is in addition to the driver's door<sup>5</sup> and there is no requirement for an emergency door on a minibus if it has a service door at the rear in addition to the service door on the near side<sup>6</sup>.

No minibus is to be fitted with any door on its off side other than a driver's door and an emergency door<sup>7</sup>.

- 1 For the meaning of 'minibus' see PARA 317 note 2 ante.

- 2 For these purposes, 'service door' means a door fitted to a minibus for use by passengers in normal circumstances: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 41, Sch 6 para 14.

- 3 Ibid Sch 6 para 2(1)(a).

- 4 For these purposes, 'emergency door' means a door fitted to a minibus for use by passengers in an emergency: ibid Sch 6 para 14.

5 For these purposes, 'driver's door' means a door fitted to a minibus for use by the driver: *ibid* Sch 6 para 14. For the meaning of 'driver' see PARA 207 ante.

6 *Ibid* Sch 6 para 2(1)(b).

7 *Ibid* Sch 6 para 2(2).

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### **320. Emergency doors.**

Every emergency door<sup>1</sup> fitted to a minibus<sup>2</sup> must:

355 (1) be clearly marked, in letters not less than 25 millimetres high, on both the inside and the outside, 'EMERGENCY DOOR' or 'FOR EMERGENCY USE ONLY', and the means of its operation must be clearly indicated on or near the door<sup>3</sup>;

356 (2) if hinged, open outwards<sup>4</sup>;

357 (3) be capable of being operated manually<sup>5</sup>; and

358 (4) when fully opened, give an aperture in the body of the vehicle not less than 1,210 millimetres high nor less than 530 millimetres wide<sup>6</sup>.

1 For the meaning of 'emergency door' see PARA 319 note 4 ante.

2 For the meaning of 'minibus' see PARA 317 note 2 ante.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 41, Sch 6 para 3(a).

4 *Ibid* Sch 6 para 3(b).

5 *Ibid* Sch 6 para 3(c).

6 *Ibid* Sch 6 para 3(d).

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### **321. Power-operated doors.**

Every power-operated door fitted to a minibus<sup>1</sup> must:

359 (1) incorporate transparent panels so as to enable a person immediately inside the door to see any person immediately outside the door<sup>2</sup>;

360 (2) be capable of being operated by a mechanism controlled by the driver<sup>3</sup> of the vehicle when in the driving seat<sup>4</sup>;

361 (3) be capable, in the event of an emergency or a failure of the supply of power for the operation of the door, of being opened from both inside and outside the vehicle by controls which: (a) override all other controls; (b) are placed on, or adjacent to, the door; and (c) are accompanied by markings which clearly indicate

- their position and method of operation and state that they may not be used by passengers except in an emergency<sup>5</sup>;
- 362 (4) have a soft edge so that a trapped finger is unlikely to be injured<sup>6</sup>; and
- 363 (5) be controlled by a mechanism by virtue of which if the door, when closing, meets a resistance exceeding 150 newtons, either the door will cease to close and begin to open or the closing force will cease and the door will become capable of being opened manually<sup>7</sup>.

No minibus is to be equipped with a system for the storage or transmission of energy in respect of the opening or closing of any door which, either in normal operation or if the system fails, is capable of adversely affecting the operation of the vehicle's braking system<sup>8</sup>.

- 1 For the meaning of 'minibus' see PARA 317 note 2 ante.
- 2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 41, Sch 6 para 4(1)(a).
- 3 For the meaning of 'driver' see PARA 207 ante.
- 4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 6 para 4(1)(b).
- 5 Ibid Sch 6 para 4(1)(c).
- 6 Ibid Sch 6 para 4(1)(d).
- 7 Ibid Sch 6 para 4(1)(e).
- 8 Ibid Sch 6 para 4(2).

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### **322. Locks, handles and hinges of doors.**

No minibus<sup>1</sup> is to be fitted with:

- 364 (1) a door which can be locked from the outside unless, when so locked, it is capable of being opened from inside the vehicle when stationary<sup>2</sup>;
- 365 (2) a handle or other device for opening any door, other than the driver's door<sup>3</sup>, from inside the vehicle unless the handle or other device is designed so as to prevent, so far as is reasonably practicable, the accidental opening of the door, and is fitted with a guard or transparent cover or so designed that it must be raised to open the door<sup>4</sup>;
- 366 (3) a door which is not capable of being opened, when not locked, from inside and outside the vehicle by a single movement of the handle or other device for opening the door<sup>5</sup>;
- 367 (4) a door in respect of which there is not a device capable of holding the door closed so as to prevent any passenger falling through the doorway<sup>6</sup>;
- 368 (5) a side door which opens outwards and is hinged at the edge nearest the rear of the vehicle except in the case of a door having more than one rigid panel<sup>7</sup>;
- 369 (6) a door, other than a power-operated door, in respect of which there is not either: (a) a slam lock of the two-stage type; or (b) a device by means of which the driver, when occupying the driver's seat, is informed if the door is not securely

closed, such device being operated by movement of the handle or other device for opening the door or, in the case of a handle or other device with a spring-return mechanism, by movement of the door as well as of the handle or other device<sup>8</sup>.

The provisions of heads (1), (3), (4) and (6) above do not apply in respect of a near side rear door forming part of a pair of doors fitted at the rear of a vehicle if that door is capable of being held securely closed by the other door of that pair<sup>9</sup>.

- 1 For the meaning of 'minibus' see PARA 317 note 2 ante.
- 2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 41, Sch 6 para 5(a).
- 3 For the meaning of 'driver's door' see PARA 319 note 5 ante. For the meaning of 'driver' see PARA 207 ante.
- 4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 6 para 5(b).
- 5 Ibid Sch 6 para 5(c).
- 6 Ibid Sch 6 para 5(d).
- 7 Ibid Sch 6 para 5(e).
- 8 Ibid Sch 6 para 5(f).
- 9 Ibid Sch 6 para 5 proviso.

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### **323. View of doors.**

Every minibuses<sup>1</sup> must be fitted with mirrors or other means so that the driver<sup>2</sup>, when occupying the driver's seat, can see clearly the area immediately inside and outside every service door<sup>3</sup> of the vehicle<sup>4</sup>. This requirement is deemed to be satisfied in respect of a rear service door if a person 1.3 metres tall standing 1 metre behind the vehicle is visible to the driver when occupying the driver's seat<sup>5</sup>.

- 1 For the meaning of 'minibus' see PARA 317 note 2 ante.
- 2 For the meaning of 'driver' see PARA 207 ante.
- 3 For the meaning of 'service door' see PARA 319 note 2 ante.
- 4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 41, Sch 6 para 6(1).
- 5 Ibid Sch 6 para 6(2).

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### 324. Access to doors.

There must be unobstructed access from every passenger seat in a minibus<sup>1</sup> to at least two doors one of which must be on the nearside of the vehicle and one of which must be either at the rear or on the offside of the vehicle<sup>2</sup>. However, access to one only of those doors may be obstructed by either or both of:

- 370 (1) a seat which when tilted or folded does not obstruct access to that door<sup>3</sup>; and
- 371 (2) a lifting platform or ramp which: (a) does not obstruct the handle or other device on the inside for opening the door with which the platform or ramp is associated; and (b) when the door is open, can be pushed or pulled out of the way from the inside so as to leave the doorway clear for use in an emergency<sup>4</sup>.

1 For the meaning of 'minibus' see PARA 317 note 2 ante.

2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 41, Sch 6 para 7(1).

3 Ibid Sch 6 para 7(2)(a).

4 Ibid Sch 6 para 7(2)(b).

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### 325. Grab handles and hand rails.

Every minibus<sup>1</sup> must be fitted as respects every side service door<sup>2</sup> with a grab handle or a hand rail to assist passengers to get on or off the vehicle<sup>3</sup>.

1 For the meaning of 'minibus' see PARA 317 note 2 ante.

2 For the meaning of 'service door' see PARA 319 note 2 ante.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 41, Sch 6 para 8.

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### 326. Seats.

No seat is to be fitted to any door of a minibus<sup>1</sup>. Every seat and every wheelchair anchorage fitted to a minibus must be fixed to the vehicle<sup>2</sup>. No seat, other than a wheelchair, fitted to a minibus is to be less than 400 millimetres wide, and, in ascertaining the width of a seat, no account is to be taken of any arm-rests, whether or not they are folded back or otherwise put out of use<sup>3</sup>.

No minibus is to be fitted with an anchorage for a wheelchair in such a manner that a wheelchair secured to the anchorage would face either side of the vehicle<sup>4</sup>.

No minibus is to be fitted with a seat:

- 372 (1) facing either side of the vehicle and immediately forward of a rear door unless the seat is fitted with an arm-rest or similar device to guard against a passenger on that seat falling through the doorway<sup>5</sup>; or
- 373 (2) so placed that a passenger on it would, without protection, be liable to be thrown through any doorway which is provided with a power-operated door or down any steps, unless the vehicle is fitted with a screen or guard which affords adequate protection against that occurrence<sup>6</sup>.

1 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 41, Sch 6 para 9(1). For the meaning of 'minibus' see PARA 317 note 2 ante.

2 Ibid Sch 6 para 9(2).

3 Ibid Sch 6 para 9(3).

4 Ibid Sch 6 para 9(4).

5 Ibid Sch 6 para 9(5)(a).

6 Ibid Sch 6 para 9(5)(b).

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### **327. Electrical equipment and wiring.**

No minibus<sup>1</sup> is to be fitted with any:

- 374 (1) electrical circuit which is liable to carry a current exceeding that for which it was designed<sup>2</sup>;
- 375 (2) cable for the conduct of electricity unless it is suitably insulated and protected from damage<sup>3</sup>;
- 376 (3) electrical circuit, other than a charging circuit, which includes any equipment other than: (a) a starter motor; (b) a glow plug; (c) an ignition circuit; and (d) a device to stop the vehicle's engine, unless it includes a fuse or circuit breaker so, however, that one fuse or circuit breaker may serve more than one circuit<sup>4</sup>; or
- 377 (4) electrical circuit with a voltage exceeding 100 volts unless there is connected in each pole of the main supply of electricity which is not connected to earth a manually-operated switch which is: (a) capable of disconnecting the circuit, or, if there is more than one, every circuit, from the main supply; (b) not capable of disconnecting any circuit supplying any lamp with which the vehicle is required to be fitted; and (c) located inside the vehicle in a position readily accessible to the driver<sup>5</sup>.

These provisions do not apply in respect of a high tension ignition circuit or a circuit within a unit of equipment<sup>6</sup>.

- 1 For the meaning of 'minibus' see PARA 317 note 2 ante.
- 2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 41, Sch 6 para 10(1)(a). As to the supply of electricity see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1041.
- 3 Ibid Sch 6 para 10(1)(b).
- 4 Ibid Sch 6 para 10(1)(c).
- 5 Ibid Sch 6 para 10(1)(d).
- 6 Ibid Sch 6 para 10(2).

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### **328. Fuel tanks.**

No minibus<sup>1</sup> is to be fitted with a fuel tank or any apparatus for the supply of fuel which is in the compartments or other spaces provided for the accommodation of the driver<sup>2</sup> or passengers<sup>3</sup>.

- 1 For the meaning of 'minibus' see PARA 317 note 2 ante.
- 2 For the meaning of 'driver' see PARA 207 ante.
- 3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 41, Sch 6 para 11.

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### **329. Lighting of steps.**

Every minibus<sup>1</sup> must be provided with lamps to illuminate every step at a passenger exit or in a gangway<sup>2</sup>.

- 1 For the meaning of 'minibus' see PARA 317 note 2 ante.
- 2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 41, Sch 6 para 12.

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### **330. General construction and maintenance.**

Every minibus<sup>1</sup>, including all bodywork and fittings, must be soundly and properly constructed of suitable materials and maintained in good and serviceable condition, and must be of such design as to be capable of withstanding the loads and stresses likely to be met in the normal operation of the vehicle<sup>2</sup>.

- 1 For the meaning of 'minibus' see PARA 317 note 2 ante.
- 2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 41, Sch 6 para 13.

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### **331. Fire extinguishing apparatus.**

No person is to use or cause or permit<sup>1</sup> to be used on a road<sup>2</sup> a minibus<sup>3</sup> first used<sup>4</sup> on or after 1 April 1988 unless it carries suitable and efficient apparatus for extinguishing fire which is of a specified type<sup>5</sup>. Such apparatus must be:

- 378 (1) readily available for use<sup>6</sup>;
- 379 (2) clearly marked with the appropriate British Standards Institution<sup>7</sup> specification number<sup>8</sup>; and
- 380 (3) maintained in good and efficient working order<sup>9</sup>.

The above provisions do not apply to a vehicle manufactured by Land Rover UK Limited and known as the Land Rover<sup>10</sup>.

- 1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.
- 2 For the meaning of 'road' see PARA 206 ante.
- 3 For the meaning of 'minibus' see PARA 317 note 2 ante.
- 4 For the meaning of 'first used' see PARA 267 note 5 ante.
- 5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 42(1). For the specified type of fire extinguisher see reg 42(1), Sch 7 Pt I (substituted by SI 1989/2360).
- 6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 42(2)(a).
- 7 As to the British Standards Institution see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 446.
- 8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 42(2)(b).
- 9 Ibid reg 42(2)(c).
- 10 Ibid reg 42(3).

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1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(ix) Minibuses/332. First aid equipment.

### **332. First aid equipment.**

No person is to use or cause or permit<sup>1</sup> to be used on a road<sup>2</sup> a minibus<sup>3</sup> first used<sup>4</sup> on or after 1 April 1988 unless it carries a receptacle which contains the prescribed first aid equipment<sup>5</sup>.

The receptacle must be:

- 381 (1) maintained in a good condition<sup>6</sup>;
- 382 (2) suitable for the purpose of keeping the first aid equipment in good condition<sup>7</sup>;
- 383 (3) readily available for use<sup>8</sup>; and
- 384 (4) prominently marked as a first aid receptacle<sup>9</sup>.

The first aid equipment must be maintained in good condition and must be of a good and reliable quality and of a suitable design<sup>10</sup>.

The above provisions do not apply to a vehicle manufactured by Land Rover UK Limited and known as the Land Rover<sup>11</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 For the meaning of 'minibus' see PARA 317 note 2 ante.

4 For the meaning of 'first used' see PARA 267 note 5 ante.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 43(1). The prescribed equipment is: (1) ten antiseptic wipes, foil packed; (2) one conforming disposable bandage, not less than 7.5 cm wide; (3) two triangular bandages; (4) one packet of 24 assorted adhesive dressings; (5) three large sterile unmedicated ambulance dressings, not less than 15.0 cm by 20.0 cm; (6) two sterile eye pads, with attachments; (7) 12 assorted safety pins; and (8) one pair of rustless blunt-ended scissors: reg 43(1), Sch 7 Pt II.

6 Ibid reg 43(2)(a).

7 Ibid reg 43(2)(b).

8 Ibid reg 43(2)(c).

9 Ibid reg 43(2)(d).

10 Ibid reg 43(3).

11 Ibid reg 43(4).

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### **333. Carriage of dangerous substances.**

No person is to use or cause or permit<sup>1</sup> to be used on a road<sup>2</sup> a minibus<sup>3</sup> by which any highly inflammable or otherwise dangerous substance is carried unless that substance is carried in

containers so designed and constructed, and unless the substance is so packed, that, notwithstanding an accident to the vehicle, it is unlikely that damage to the vehicle or injury to passengers in the vehicle will be caused by the substance<sup>4</sup>.

The above provisions do not apply:

- 385 (1) in relation to the electrolyte of a battery installed in an electric wheelchair, provided that the wheelchair is securely fixed to the vehicle<sup>5</sup>; or
- 386 (2) to a vehicle manufactured by Land Rover UK Limited and known as the Land Rover<sup>6</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 For the meaning of 'minibus' see PARA 317 note 2 ante.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 44(1). As to the carriage of dangerous substances generally see CARRIAGE AND CARRIERS vol 7 (2008) PARA 748 et seq; EXPLOSIVES vol 17(2) (Reissue) PARA 999 et seq; HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 655 et seq; PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 699 et seq.

5 Ibid reg 44(2).

6 Ibid reg 44(3).

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## **(x) Protective Systems**

### **334. Seat belt anchorage points.**

Every vehicle, being:

- 387 (1) a bus<sup>1</sup> first used on or after 1 April 1982<sup>2</sup>;
- 388 (2) a wheeled<sup>3</sup> motor car<sup>4</sup> first used<sup>5</sup> on or after 1 January 1965<sup>6</sup>;
- 389 (2) a three-wheeled motor cycle<sup>7</sup> which has an unladen weight<sup>8</sup> exceeding 255 kilograms and which was first used on or after 1 September 1970<sup>9</sup>; and
- 390 (3) every heavy motor car<sup>10</sup> first used on or after 1 October 1988<sup>11</sup>,

must be equipped with anchorage points for vehicle seat belts<sup>12</sup>.

This provision does not apply to:

- 391 (a) a goods vehicle<sup>13</sup> (other than a dual-purpose vehicle<sup>14</sup>): (i) which was first used before 1 April 1967<sup>15</sup>; or (ii) which was first used on or after 1 April 1980 and before 1 October 1988 and has a maximum gross weight<sup>16</sup> exceeding 3,500 kilograms<sup>17</sup>; or (iii) which was first used before 1 April 1980 or, if the vehicle is of a model manufactured before 1 October 1979, was first used before 1 April 1982 and, in either case, has an unladen weight exceeding 1,525 kilograms<sup>18</sup>;
- 392 (b) an agricultural motor vehicle<sup>19</sup>;

- 393 (c) a motor tractor<sup>20</sup>;
- 394 (d) a works truck<sup>21</sup>;
- 395 (e) an electrically-propelled goods vehicle first used before 1 October 1988<sup>22</sup>;
- 396 (f) a pedestrian-controlled vehicle<sup>23</sup>;
- 397 (g) a vehicle which has been used on roads outside Great Britain<sup>24</sup> and has been imported into Great Britain, whilst it is being driven from the place where it has arrived in Great Britain to a place of residence of the owner or driver<sup>25</sup> of the vehicle, or from any such place to a place where, by previous arrangement, it will be provided with the required anchorage points<sup>26</sup> and the required seat belts<sup>27</sup>;
- 398 (h) a vehicle having a maximum speed<sup>28</sup> not exceeding 16 miles per hour<sup>29</sup>;
- 399 (i) a motor cycle equipped with a driver's seat of a type requiring the driver to sit astride it, and which is constructed or assembled by a person not ordinarily engaged in the trade or business of manufacturing vehicles of that description<sup>30</sup>; or
- 400 (j) a locomotive<sup>31</sup>.

1 For the meaning of 'bus' see PARA 271 note 6 ante.

2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 46(1)(a) (reg 46 substituted by SI 2001/1043).

3 For the meaning of 'wheeled' see PARA 267 note 2 ante.

4 For the meaning of 'motor car' see PARA 212 ante.

5 For the meaning of 'first used' see PARA 267 note 5 ante.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 46(1)(b) (as substituted: see note 2 supra).

7 For the meaning of 'three-wheeled motor cycle' see PARA 298 note 29 ante; and for the meaning of 'motor cycle' see PARA 214 ante.

8 For the meaning of 'unladen weight' see PARA 271 note 21 ante.

9 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 46(1)(c) (as substituted: see note 2 supra).

10 For the meaning of 'heavy motor car' see PARA 213 ante.

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 46(1)(d) (as substituted: see note 2 supra).

12 See *ibid* reg 46(3)-(6) (as substituted: see note 2 supra). As to seat belts see PARA 335 post.

13 For the meaning of 'goods vehicle' see PARA 271 note 26 ante.

14 For the meaning of 'dual-purpose vehicle' see PARA 271 note 28 ante.

15 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 46(2)(a)(i) (as substituted: see note 2 supra).

16 For the meaning of 'maximum gross weight' see PARA 271 note 27 ante.

17 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 46(2)(a)(ii) (as substituted: see note 2 supra).

18 *Ibid* reg 46(2)(a)(iii) (as substituted: see note 2 supra).

19 *Ibid* reg 46(2)(b) (as substituted: see note 2 supra). For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

20 *Ibid* reg 46(2)(c) (as substituted: see note 2 supra). For the meaning of 'motor tractor' see PARA 216 ante.

- 21 Ibid reg 46(2)(d) (as substituted: see note 2 supra). For the meaning of 'works truck' see PARA 278 note 18 ante.
- 22 Ibid reg 46(2)(e) (as substituted: see note 2 supra).
- 23 Ibid reg 46(2)(f) (as substituted: see note 2 supra). For the meaning of 'pedestrian-controlled vehicle' see PARA 290 note 8 ante.
- 24 For the meaning of 'Great Britain' see PARA 205 note 3 ante.
- 25 For the meanings of 'owner' and 'driver' see PARA 207 ante.
- 26 Ie such anchorage points as are required by the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 46 (as substituted).
- 27 Ibid reg 46(2)(g) (as substituted: see note 2 supra). The seatbelts referred to in the text are those required by reg 47 (as amended): see PARA 335 post.
- 28 For the meaning of 'maximum speed' see PARA 278 note 17 ante.
- 29 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 46(2)(h) (as substituted: see note 2 supra).
- 30 Ibid reg 46(2)(i) (as substituted: see note 2 supra).
- 31 Ibid reg 46(2)(j) (as substituted: see note 2 supra). For the meaning of 'locomotive' see PARA 217 note 3 ante.

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### **335. Seat belts.**

Every vehicle which is required to be equipped with a seat belt anchorage point<sup>1</sup> must be provided with a body-restraining device<sup>2</sup> or a seat belt<sup>3</sup> for the use of persons in the driver's seat or in specified passenger seats<sup>4</sup>. The requirement does not apply to vehicles being used in certain circumstances<sup>5</sup> or in relation to seats where other restraints are fitted<sup>6</sup>. Every seat belt which is required to be provided must be appropriately secured to the anchorage points, or in the case of a child restraint<sup>7</sup> to anchorages specially provided for it, or in the case of a disabled person's seat belt<sup>8</sup> first fitted before 1 October 2001 to the vehicle or to the seat which is occupied by the person wearing the belt<sup>9</sup>. Every seat belt, other than a disabled person's belt or a particular type of seat belt<sup>10</sup>, provided for any person in a vehicle to which the requirement applies must be legibly and permanently marked with a British Standard mark or a designated approval mark or with an EC Component Type-Approval Mark<sup>11</sup>.

1 Ie every vehicle to which the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 46 (as substituted) applies: see PARA 334 ante.

2 For these purposes, 'body-restraining belt' means a seat belt designed to provide restraint for both the upper and lower parts of the trunk of the wearer in the event of an accident to the vehicle: ibid reg 47(8) (amended by SI 1987/1133).

3 For these purposes, 'seat belt' means a belt intended to be worn by a person in a vehicle and designed to prevent or lessen injury to its wearer in the event of an accident to the vehicle and includes, in the case of a child restraint, any special chair to which the belt is attached: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(8) (amended by SI 1987/1133).

4 See the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(2) (amended by SI 1987/1133; SI 1989/1478; SI 2001/1043). For these purposes, 'specified passenger's seat' means: (1) in the case of a vehicle which has one forward-facing front seat alongside the driver's seat, that seat, and in the case of a vehicle which has more than one such seat, the one furthest from the driver's seat; or (2) if the vehicle normally has no seat which is the specified passenger's seat under head (1) supra, the forward-facing front seat for a passenger which is foremost in the vehicle and furthest from the driver's seat, unless there is a fixed partition separating that seat from the space in front of it alongside the driver's seat: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(8) (amended by SI 1987/1133).

5 See the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(4) (amended by SI 1987/1133; SI 1989/1478; SI 1994/3270; SI 2001/1043); and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(4A) (added by SI 2001/1043).

6 See the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(7A)-(7C) (added by SI 1994/3270; and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(7A) amended by SI 1996/163).

7 For these purposes, 'child restraint' means a seat belt for the use of a young person which is designed either to be fitted directly to a suitable anchorage or to be used in conjunction with a seat belt for an adult and held in place by the restraining action of that belt: see the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(8) (amended by SI 1987/1133).

8 For these purposes, 'disabled person's belt' means a seat belt which has been specially designed or adapted for use by an adult or young person suffering from some physical defect or disability and which is intended for use solely by such a person: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(8) (amended by SI 1987/1133).

9 See the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(5) (amended by SI 1987/1133; SI 2001/1043).

10 Is a seat belt mentioned in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(4)(c) (amended by SI 1987/1133; SI 1989/1478; SI 1994/3270).

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(7) (amended by SI 1987/1133; SI 1994/3270; SI 1996/163; SI 2001/1043). As to British Standard marks and designated approval marks see the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(8) (amended by SI 1987/1133; SI 1989/1478; SI 1991/2003; SI 1994/3270; SI 1998/2429). The EC Component Type-Approval Mark must comply with EC Community Directive 2000/3 (OJ L4, 9.1.2003, p 12) Annex III: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(7) (amended by SI 2001/1043).

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### **336. Maintenance of seat belts and anchorage points.**

The following provisions apply to every seat belt with which a motor vehicle<sup>1</sup> is required to be provided<sup>2</sup>, the anchorages, fastenings, adjusting device and retracting mechanism, if any, of every such seat belt, and every anchorage with which a goods vehicle<sup>3</sup> is required<sup>4</sup> to be provided<sup>5</sup>.

The anchorage points provided for seat belts must be used only as anchorages for the seat belts for which they are intended to be used or capable of being used<sup>6</sup>.

All load-bearing members of the vehicle structure or panelling within 30 centimetres of each anchorage point must be maintained in a sound condition and free from serious corrosion, distortion or fracture<sup>7</sup>.

The adjusting device and, if fitted, the retracting mechanism of the seat belt must be so maintained that the belt may be readily adjusted to the body of the wearer, either

automatically or manually, according to the design of the device and, if fitted, the retracting mechanism<sup>8</sup>.

The seat belt and its anchorages, fastenings and adjusting device must be maintained free from any obvious defect which would be likely to affect adversely the performance by the seat belt of the function of restraining the body of the wearer in the event of an accident to the vehicle<sup>9</sup>.

The buckle or other fastening of the seat belt must:

- 401 (1) be so maintained that the belt can be readily fastened or unfastened<sup>10</sup>;
- 402 (2) be kept free from any temporary or permanent obstruction<sup>11</sup>; and
- 403 (3) except in the case of a disabled person's seat belt, be readily accessible to a person sitting in the seat for which the seat belt is provided<sup>12</sup>.

The webbing or other material which forms the seat belt must be maintained free from cuts or other visible faults (as, for example, extensive fraying) which would be likely to affect adversely the performance of the belt when under stress<sup>13</sup>.

The ends of every seat belt, other than a disabled person's seat belt, must be securely fastened to the anchorage points provided for them<sup>14</sup>. The ends of every disabled person's seat belt must, when the seat belt is being used for the purpose for which it was designed and constructed, be securely fastened either to some part of the structure of the vehicle or to the seat which is being occupied by the person wearing the belt so that the body of the person wearing the belt would be restrained in the event of an accident to the vehicle<sup>15</sup>.

None of the above requirements<sup>16</sup> applies if the vehicle is being used: (a) on a journey after the start of which the requirement ceased to be complied with<sup>17</sup>; or (b) after the requirement ceased to be complied with and steps have been taken for such compliance to be restored with all reasonable expedition<sup>18</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 In accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47 (as amended): see PARA 335 ante.

3 For the meaning of 'goods vehicle' see PARA 271 note 26 ante.

4 In accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 46(3) and Table item 4 (as substituted): see PARA 334 ante.

5 Ibid reg 48(1) (amended by SI 1987/1133; SI 2001/1043). For these purposes, the anchorages and anchorage points of a seat belt must, in the case of a seat which incorporates integral seat belt anchorages, include the system by which the seat assembly itself is secured to the vehicle structure: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 48(2). Expressions which are used in reg 48 (as amended) and are defined in reg 47 (as amended) have the same meaning in reg 48 (as amended) as they have in reg 47 (as amended): reg 48(6).

6 Ibid reg 48(3).

7 Ibid reg 48(4)(a).

8 Ibid reg 48(4)(b).

9 Ibid reg 48(4)(c).

10 Ibid reg 48(4)(d)(i).

11 Ibid reg 48(4)(d)(ii).

12 Ibid reg 48(4)(d)(iii).

- 13 Ibid reg 48(4)(e).
- 14 Ibid reg 48(4)(f).
- 15 Ibid reg 48(4)(g).
- 16 Ie the requirements specified in ibid reg 48(4)(a)-(g): see the text to notes 7-15 supra.
- 17 Ibid reg 48(5)(a).
- 18 Ibid reg 48(5)(b).

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**337. Minibuses and coaches to be fitted with additional seat belts when used in certain circumstances.**

No person is to use or cause or permit<sup>1</sup> to be used on a road<sup>2</sup> a coach<sup>3</sup> or minibus<sup>4</sup> wholly or mainly for the purpose of carrying a group of three or more children<sup>5</sup> where the group of children is on an organised trip<sup>6</sup> and the journey is being made for the purposes of the trip<sup>7</sup>, unless the appropriate number<sup>8</sup> of forward-facing passenger seats<sup>9</sup> fitted to the vehicle meet the relevant statutory requirements<sup>10</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 For the meaning of 'coach' see PARA 308 note 1 ante.

4 For the meaning of 'minibus' see PARA 317 note 2 ante.

5 For these purposes, a child is a person who is aged three years or more but is under the age of 16 years: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 48A(10) (reg 48A added by SI 1996/163).

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 48A(2)(a) (as added: see note 5 supra). Without prejudice to the generality of reg 48A(2)(a) (as added), a group of children is, for these purposes, to be regarded as being on an organised trip if they are being carried to or from their school or from one part of their school premises to another: reg 48A(4) (as so added).

7 Ibid reg 48A(2)(b) (as added: see note 5 supra).

8 For these purposes, the reference to the appropriate number is a reference to the number of children being carried in the vehicle, excluding disabled children in wheelchairs: ibid reg 48A(3) (as added: see note 5 supra).

9 For these purposes, a rearward-facing seat is to be treated as a forward-facing seat which meets the requirements of ibid reg 48A (as added and amended) if the coach or minibus concerned was first used on or after 1 October 2001, and the rearward-facing seat complies with the requirements of reg 46 (as substituted) (see PARA 334 ante) and reg 47 (as amended) (see PARA 335 ante): reg 48A(3A) (added by SI 2001/1043).

10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 48A(1) (as added: see note 5 supra). The relevant statutory requirements are those in reg 48A(6)-(9) (as so added). Without prejudice to the meaning of reg 48A(2)(b) (as added) (see the text to note 7 supra), reg 48A(1) (as added) does not apply to a vehicle if it is being used in the provision of a bus service of a description specified in the Fuel Duty Grant

(Eligible Bus Services) Regulations 1985, SI 1985/1886, reg 2, Schedule para 2 or if it is otherwise being used wholly or mainly for the purpose of providing a transport service for the general public: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 48A(5) (as so added).

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### **338. Rear under-run protective device.**

Every wheeled<sup>1</sup> goods vehicle<sup>2</sup> being either:

- 404 (1) a motor vehicle<sup>3</sup> with a maximum gross weight<sup>4</sup> which exceeds 3,500 kilograms and which was first used<sup>5</sup> on or after 1 April 1984<sup>6</sup>; or
- 405 (2) a trailer<sup>7</sup> manufactured on or after 1 May 1983 with an unladen weight<sup>8</sup> which exceeds 1,020 kilograms<sup>9</sup>,

must be equipped<sup>10</sup> with a rear under-run protective device<sup>11</sup>.

This provision does not apply to:

- 406 (a) a motor vehicle which has a maximum speed<sup>12</sup> not exceeding 15 miles per hour<sup>13</sup>;
- 407 (b) a motor car<sup>14</sup> or a heavy motor car<sup>15</sup> constructed or adapted to form part of an articulated vehicle<sup>16</sup>;
- 408 (c) an agricultural trailer<sup>17</sup>;
- 409 (d) engineering plant<sup>18</sup>;
- 410 (e) a fire engine<sup>19</sup>;
- 411 (f) an agricultural motor vehicle<sup>20</sup>;
- 412 (g) a vehicle fitted at the rear with apparatus specially designed for spreading material on a road<sup>21</sup>;
- 413 (h) a vehicle so constructed that it can be unloaded by part of the vehicle being tipped rearwards<sup>22</sup>;
- 414 (i) a vehicle owned by the Secretary of State for Defence<sup>23</sup> and used for naval, military or air force purposes<sup>24</sup>;
- 415 (j) a vehicle to which no bodywork has been fitted and which is being driven or towed: (i) for the purpose of a quality or safety check by its manufacturer or a dealer in, or distributor of, such vehicles<sup>25</sup>; or (ii) to a place where, by previous arrangement, bodywork is to be fitted or work preparatory to the fitting of bodywork is to be carried out<sup>26</sup>; or (iii) by previous arrangement, to premises of a dealer in, or distributor of, such vehicles<sup>27</sup>;
- 416 (k) a vehicle which is being driven or towed to a place where, by previous arrangement, a device is to be fitted so that it complies with these provisions<sup>28</sup>;
- 417 (l) a vehicle specially designed and constructed, and not merely adapted, to carry other vehicles loaded onto it from the rear<sup>29</sup>;
- 418 (m) a trailer specially designed and constructed, and not merely adapted, to carry round timber, beams or girders, being items of exceptional length<sup>30</sup>;
- 419 (n) a vehicle fitted with a tail lift so constructed that the lift platform forms part of the floor of the vehicle and this part has a length of at least 1 metre measured parallel to the longitudinal axis of the vehicle<sup>31</sup>;



- 420 (o) a trailer having a base or centre in a country outside Great Britain<sup>32</sup> from which it normally starts its journeys, provided that a period of not more than 12 months has elapsed since the vehicle was last brought into Great Britain<sup>33</sup>;
- 421 (p) a vehicle specially designed, and not merely adapted, for the carriage and mixing of liquid concrete<sup>34</sup>;
- 422 (q) a vehicle designed and used solely for the delivery of coal by means of a special conveyor which is carried on the vehicle and when in use is fitted to the rear of the vehicle so as to render its being equipped with a rear under-run protective device impracticable<sup>35</sup>; or
- 423 (r) an agricultural trailed appliance<sup>36</sup>.

1 For the meaning of 'wheeled' see PARA 267 note 2 ante.

2 For the meaning of 'goods vehicle' see PARA 271 note 26 ante.

3 For the meaning of 'motor vehicle' see PARA 210 ante.

4 For the meaning of 'maximum gross weight' see PARA 271 note 27 ante.

5 For the meaning of 'first used' see PARA 267 note 5 ante.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 49(1)(a).

7 For the meaning of 'trailer' see PARA 210 ante.

8 For the meaning of 'unladen weight' see PARA 271 note 21 ante.

9 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 49(1)(b).

10 This provision is subject to *ibid* reg 49(4)-(6) (reg 49(4) amended by SI 1987/676; Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 49(6) amended by SI 1998/1188).

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 49(3). For these purposes, 'rear under-run protective device' means a device within the description given in EEC Commission Directive 79/490 (OJ L128, 26.5.79, p 22) Annex para II.5.4: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 49(7).

12 For the meaning of 'maximum speed' see PARA 278 note 17 ante.

13 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 49(2)(a).

14 For the meaning of 'motor car' see PARA 212 ante.

15 For the meaning of 'heavy motor car' see PARA 213 ante.

16 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 49(2)(b). For the meaning of 'articulated vehicle' see PARA 271 note 6 ante.

17 *Ibid* reg 49(2)(c). For the meaning of 'agricultural trailer' see PARA 271 note 30 ante.

18 *Ibid* reg 49(2)(d). For the meaning of 'engineering plant' see PARA 271 note 11 ante.

19 *Ibid* reg 49(2)(e). As to fire engines see FIRE SERVICES vol 18(2) (Reissue) PARA 68 et seq.

20 *Ibid* reg 49(2)(f). For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

21 *Ibid* reg 49(2)(g).

22 *Ibid* reg 49(2)(h).

23 As to the Secretary of State for Defence see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 438 et seq.

24 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 49(2)(i). See also ARMED FORCES.

- 25 Ibid reg 49(2)(j)(i).
- 26 Ibid reg 49(2)(j)(ii).
- 27 Ibid reg 49(2)(j)(iii).
- 28 Ibid reg 49(2)(k).
- 29 Ibid reg 49(2)(l).
- 30 Ibid reg 49(2)(m).
- 31 Ibid reg 49(2)(n).
- 32 For the meaning of 'Great Britain' see PARA 205 note 3 ante.
- 33 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 49(2)(o).
- 34 Ibid reg 49(2)(p).
- 35 Ibid reg 49(2)(q).
- 36 Ibid reg 49(2)(r). For the meaning of 'agricultural trailed appliance' see PARA 271 note 21 ante.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(x) Protective Systems/339. Maintenance of rear under-run protective device.

### **339. Maintenance of rear under-run protective device.**

Every rear under-run protective device fitted to a vehicle<sup>1</sup> must at all times when the vehicle is on a road<sup>2</sup> be maintained free from any obvious defect which would be likely to affect adversely the performance of the device in the function of giving resistance in the event of an impact from the rear<sup>3</sup>.

1    le every device fitted in compliance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 49 (as amended): see PARA 338 ante. For the meaning of 'rear under-run protective device' see PARA 338 note 11 ante.

2    For the meaning of 'road' see PARA 206 ante.

3    Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 50.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(x) Protective Systems/340. Sideguards.

### **340. Sideguards.**

Every wheeled<sup>1</sup> goods vehicle<sup>2</sup> being:

- 424 (1) a motor vehicle<sup>3</sup> first used<sup>4</sup> on or after 1 April 1984 with a maximum gross weight<sup>5</sup> which exceeds 3,500 kilograms<sup>6</sup>;
- 425 (2) a trailer<sup>7</sup> manufactured on or after 1 May 1983 with an unladen weight<sup>8</sup> which exceeds 1,020 kilograms<sup>9</sup>;
- 426 (3) a semi-trailer<sup>10</sup> manufactured before 1 May 1983 which has a relevant plate<sup>11</sup> showing a gross weight exceeding 26,000 kilograms and which forms part of an articulated vehicle<sup>12</sup> with a relevant train weight<sup>13</sup> exceeding 32,520 kilograms<sup>14</sup>; or
- 427 (4) a wheeled goods vehicle<sup>15</sup>, whether of a description falling within heads (a) to (p) below or not, which is a semi-trailer some or all of the wheels<sup>16</sup> of which are driven by the drawing vehicle<sup>17</sup>,

must be securely fitted with a sideguard to give protection on certain sides of the vehicle<sup>18</sup>. A sideguard with which a vehicle is so required to be fitted must comply with all the prescribed specifications<sup>19</sup>.

These provisions do not apply to:

- 428 (a) a motor vehicle which has a maximum speed<sup>20</sup> not exceeding 15 miles per hour<sup>21</sup>;
- 429 (b) an agricultural trailer<sup>22</sup>;
- 430 (c) engineering plant<sup>23</sup>;
- 431 (d) a fire engine<sup>24</sup>;
- 432 (e) an agricultural motor vehicle<sup>25</sup>;
- 433 (f) a vehicle so constructed that it can be unloaded by part of the vehicle being tipped sideways or rearwards<sup>26</sup>;
- 434 (g) a vehicle owned by the Secretary of State for Defence<sup>27</sup> and used for naval, military or air force purposes<sup>28</sup>;
- 435 (h) a vehicle to which no bodywork has been fitted and which is being driven or towed: (i) for the purpose of a quality or safety check by its manufacturer or a dealer in, or distributor of, such vehicles<sup>29</sup>; (ii) to a place where, by previous arrangement, bodywork is to be fitted or work preparatory to the fitting of bodywork is to be carried out<sup>30</sup>; or (iii) by previous arrangement to premises of a dealer in, or distributor of, such vehicles<sup>31</sup>;
- 436 (i) a vehicle which is being driven or towed to a place where by previous arrangement a sideguard is to be fitted so that it complies with this provision<sup>32</sup>;
- 437 (j) a refuse vehicle<sup>33</sup>;
- 438 (k) a trailer specially designed and constructed, and not merely adapted, to carry round timber, beams or girders, being items of exceptional length<sup>34</sup>;
- 439 (l) a motor car<sup>35</sup> or a heavy motor car<sup>36</sup> constructed or adapted to form part of an articulated vehicle<sup>37</sup>;
- 440 (m) a vehicle specially designed and constructed, and not merely adapted, to carry other vehicles loaded onto it from the front or the rear<sup>38</sup>;
- 441 (n) a trailer with a load platform: (i) no part of any edge of which is more than 60 millimetres inboard from the tangential plane; and (ii) the upper surface of which is not more than 750 millimetres from the ground throughout that part of its length under which a sideguard would have to be fitted<sup>39</sup> if this exemption did not apply to it<sup>40</sup>;
- 442 (o) a trailer having a base or centre in a country outside Great Britain<sup>41</sup> from which it normally starts its journeys, provided that a period of not more than 12 months has elapsed since the vehicle was last brought into Great Britain<sup>42</sup>; or
- 443 (p) an agricultural trailed appliance<sup>43</sup>.

Instead of complying with the above provisions, a vehicle may comply with the appropriate European legislation<sup>44</sup>.

- 1 For the meaning of 'wheeled' see PARA 267 note 2 ante.
- 2 For the meaning of 'goods vehicle' see PARA 271 note 26 ante.
- 3 For the meaning of 'motor vehicle' see PARA 210 ante.
- 4 For the meaning of 'first used' see PARA 267 note 5 ante.
- 5 For the meaning of 'maximum gross weight' see PARA 271 note 27 ante.
- 6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 51(1)(a).
- 7 For the meaning of 'trailer' see PARA 210 ante.
- 8 For the meaning of 'unladen weight' see PARA 271 note 21 ante.
- 9 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 51(1)(b).
- 10 For the meaning of 'semi-trailer' see PARA 271 note 6 ante.
- 11 For these purposes, 'relevant plate' means a Ministry plate (see PARA 368 post), where fitted, and in other cases a plate fitted in accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 66 (as amended) (see PARA 364 post): reg 51(8).
- 12 For the meaning of 'articulated vehicle' see PARA 271 note 6 ante.
- 13 'Train weight', in relation to a motor vehicle which may draw a trailer, means the maximum laden weight for the motor vehicle together with any trailer which may be drawn by it: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.
- 14 Ibid reg 51(1)(c).
- 15 For the meaning of 'goods vehicle' see PARA 271 note 26 ante.
- 16 For the meaning of 'wheel' see PARA 267 note 2 ante.
- 17 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 51(2A) (added by SI 1987/676).
- 18 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 51(3). A sideguard must be fitted on any side of the vehicle where: (1) if it is a semi-trailer, the distance between the transverse planes passing through the centre of its foremost axle and through the centre of its king pin or, in the case of a vehicle having more than one king pin, the rearmost one, exceeds 4.5 metres; or (2) if it is any other vehicle, the distance between the centres of any two consecutive axles exceeds 3 metres: reg 51(3)(a), (b). For the meaning of 'transverse plane' see PARA 271 note 7 ante. As to the meaning of 'axle' see PARA 279 note 13 ante.  
  
For these purposes, and for the purposes of reg 76 (as amended) (see PARA 585 post), reg 77 (as amended) (see PARA 586 post), reg 79 (as amended) (see PARA 588 post), Sch 11 (as amended) (see PARA 584 post) and Sch 11A (as added and amended) (see PARA 585 post), the distance between any two axles is to be obtained by measuring the shortest distance between the line joining the centres of the areas of contact with the road surface of the wheels of one axle and the line joining the centres of the areas of contact with the road surface of the wheels of the other axle: reg 3(10) (amended by SI 1988/1287; SI 1992/2016; SI 1994/329).
- 19 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 51(4), which is expressed to be subject to reg 51(6), (7). The specifications prescribed are those listed in reg 51(5): reg 51(4).
- 20 For the meaning of 'maximum speed' see PARA 278 note 17 ante.
- 21 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 51(2)(a).
- 22 Ibid reg 51(2)(b). For the meaning of 'agricultural trailer' see PARA 271 note 30 ante.
- 23 Ibid reg 51(2)(c). For the meaning of 'engineering plant' see PARA 271 note 11 ante.
- 24 Ibid reg 51(2)(d). As to fire engines see FIRE SERVICES vol 18(2) (Reissue) PARA 35 et seq.
- 25 Ibid reg 51(2)(e). For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

26 Ibid reg 51(2)(f).

27 As to the Secretary of State for Defence see ARMED FORCES vol 2(2) (Reissue) PARA 2; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 438 et seq.

28 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 51(2)(g). See also ARMED FORCES.

29 Ibid reg 51(2)(h)(i).

30 Ibid reg 51(2)(h)(ii).

31 Ibid reg 51(2)(h)(iii).

32 Ibid reg 51(2)(i).

33 Ibid reg 51(2)(j).

34 Ibid reg 51(2)(k).

35 For the meaning of 'motor car' see PARA 212 ante.

36 For the meaning of 'heavy motor car' see PARA 213 ante.

37 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 51(2)(l).

38 Ibid reg 51(2)(m).

39 Ie in accordance with ibid reg 51(5)(d)-(g) (see note 19 supra).

40 Ibid reg 51(2)(n).

41 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

42 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 51(2)(o).

43 Ibid reg 51(2)(p). For the meaning of 'agricultural trailed appliance' see PARA 271 note 21 ante.

44 Ibid reg 51(9) (added by SI 1989/1695). The appropriate European legislation is EEC Council Directive 89/297 (OJ L124, 5.5.89, p 1) on the approximation of the laws of the member states relating to the lateral protection (side guards) of certain motor vehicles and their trailers. As to compliance with European legislation see PARA 270 ante.

## UPDATE

### 340 Sideguards

NOTE 44--Directive 89/297 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(x) Protective Systems/341. Maintenance of sideguards.

### 341. Maintenance of sideguards.

Every sideguard fitted to a vehicle<sup>1</sup> must at all times when the vehicle is on a road<sup>2</sup> be maintained free from any obvious defect which would be likely to affect adversely its effectiveness<sup>3</sup>.

1 le in compliance with the requirements of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 51 (as amended): see PARA 340 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 52.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(x) Protective Systems/342. Mascots.

### **342. Mascots.**

No mascot, emblem or other ornamental object is to be carried by a motor vehicle<sup>1</sup> first used<sup>2</sup> on or after 1 October 1937 in any position where it is likely to strike any person with whom the vehicle may collide unless the mascot is not liable to cause injury to such person by reason of any projection on it<sup>3</sup>.

Instead of complying with this provision, a vehicle may comply with the relevant European legislation<sup>4</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'first used' see PARA 267 note 5 ante.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 53(1).

4 Ibid reg 53(2). The relevant European legislation is EEC Council Directive 74/483 (OJ L266, 2.10.74, p 4) on the approximation of the laws of the member states relating to the external projections of motor vehicles (as amended), or EEC Commission Directive 79/488 (OJ L128, 26.5.79, p 1) adapting to technical progress EEC Council Directive 74/483 (OJ L266, 2.10.74, p 4), or ECE Regulation 26.01: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 53(2). For the meaning of 'ECE Regulation' see PARA 270 note 2 ante. As to compliance with European legislation see PARA 270 ante.

## **UPDATE**

### **342 Mascots**

NOTE 4--Directive 74/483 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1). EEC Commission Directive 79/488 is further adopted to technical progress by EC Commission Directive 2007/15 (OJ L75 15.3.2007).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(x) Protective Systems/343. Strength of superstructure.

**343. Strength of superstructure.**

Every coach<sup>1</sup> which is:

- 444 (1) a single-decked vehicle<sup>2</sup>;
- 445 (2) equipped with a compartment below the deck for the luggage of passengers<sup>3</sup>;  
and
- 446 (3) first used<sup>4</sup> on or after 1 April 1993<sup>5</sup>,

must comply with the relevant European legislation<sup>6</sup>.

1 For the meaning of 'coach' see PARA 308 note 1 ante.

2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 53A(1)(a) (reg 53A added by SI 1987/1133). 'Single-decked vehicle' means a vehicle upon which no part of a deck or gangway is vertically above another deck or gangway: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table. For the meaning of 'deck' see PARA 302 note 18 ante; and for the meaning of 'gangway' see PARA 302 note 19 ante.

3 Ibid reg 53A(1)(b) (as added: see note 2 supra).

4 For the meaning of 'first used' see PARA 267 note 5 ante.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 53A(1)(c) (as added (see note 2 supra); and amended by SI 1989/2360).

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 53A(2) (as added: see note 2 supra). The relevant requirements are those of ECE Regulation 66: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 53A(2) (as so added). For the meaning of 'ECE Regulation' see PARA 270 note 2 ante. As to compliance with European legislation see PARA 270 ante. A coach which is required to meet these requirements need not meet them if it meets the requirements of such of the Annexes to EC Parliament and Council Directive 2001/85 (OJ L42, 13.2.2002, p 1) (relating to special provisions for vehicles used for the carriage of passengers comprising more than eight seats in addition to the driver's seat and amending EC Council Directives 70/156 (OJ L42, 23.2.70, p 1) and 97/27 (OJ L233, 25.8.97, p 1)) as apply to that coach: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 53C (added by SI 2005/2987).

**UPDATE****343 Strength of superstructure**

NOTE 6--SI 1986/1078 reg 53C amended: SI 2009/142. Directives 97/27, 2001/85 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(x) Protective Systems/344. Additional exits from double-decked coaches.

**344. Additional exits from double-decked coaches.**

Every coach<sup>1</sup> which is: (1) a double-decked vehicle<sup>2</sup>; and (2) first used<sup>3</sup> on or after 1 April 1990<sup>4</sup>, must be equipped with two staircases<sup>5</sup>, one of which must be located in one half of the vehicle and the other in the other half of the vehicle<sup>6</sup>. However, instead of being so equipped with two

staircases, every such coach may be equipped in accordance with the following provisions with a hammer or other similar device with which in case of emergency any side window of the vehicle may be broken<sup>7</sup>.

Where a vehicle is equipped with: (a) a staircase located in one half of the vehicle<sup>8</sup>; and (b) an emergency exit<sup>9</sup> located in the same half of the upper deck<sup>10</sup> of the vehicle, the hammer or the similar device must be located in the other half of that deck<sup>11</sup>.

Any hammer or other similar device with which a vehicle is so equipped must be located in a conspicuous readily accessible position in the upper deck of the vehicle<sup>12</sup>.

There must be displayed, in a conspicuous position in close proximity to the hammer or other similar device, a notice which must contain in clear and indelible lettering<sup>13</sup>: (i) in letters not less than 25 millimetres high, the heading 'IN EMERGENCY'<sup>14</sup>; and (ii) in letters not less than 10 millimetres high, instructions that in case of emergency the hammer or device is to be used first to break any side window by striking the glass near the edge of the window and then to clear any remaining glass from the window aperture<sup>15</sup>.

A coach which is required to meet these requirements need not meet them if it meets the requirements of the relevant European legislation<sup>16</sup>.

1 For the meaning of 'coach' see PARA 308 note 1 ante.

2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 53B(1)(a) (reg 53B added by SI 1987/1133). For the meaning of 'double-decked vehicle' see PARA 302 note 19 ante.

3 For the meaning of 'first used' see PARA 267 note 5 ante.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 53B(1)(b) (as added: see note 2 supra).

5 For the meaning of 'staircase' see PARA 302 note 19 ante.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 53B(2) (as added: see note 2 supra). For these purposes, a staircase, emergency exit, hammer or other similar device, as the case may be, is to be considered to be located in the other half of the vehicle if the shortest distance between any part of that staircase, exit, hammer or device, as the case may be, and any part of any other staircase, emergency exit, hammer or device is not less than one half of the overall length of the vehicle: reg 53B(7) (as so added). For the meaning of 'overall length' see PARA 272 ante.

7 Ibid reg 53B(3) (as added: see note 2 supra).

8 Ibid reg 53B(4)(a) (as added: see note 2 supra).

9 I.e. complying with the Public Service Vehicles (Conditions of Fitness, Equipment, Use and Certification) Regulations 1981, SI 1981/257, reg 21(8): see PARA 1134 post.

10 For the meaning of 'deck' see PARA 302 note 18 ante.

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 53B(4) (as added: see note 2 supra).

12 Ibid reg 53B(5) (as added: see note 2 supra).

13 Ibid reg 53B(6) (as added: see note 2 supra).

14 Ibid reg 53B(6)(a) (as added: see note 2 supra).

15 Ibid reg 53B(6)(b) (as added: see note 2 supra).

16 Ibid reg 53C (added by SI 2005/2987). The relevant requirements are such of the Annexes to EC Parliament and Council Directive 2001/85 (OJ L42, 13.2.2002, p 1) (relating to special provisions for vehicles used for the carriage of passengers comprising more than eight seats in addition to the driver's seat and amending EC Council Directives 70/156 (OJ L42, 23.2.70, p 1) and 97/27 (OJ L233, 25.8.97, p 1)) as apply to that



coach: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 53C (as so added). As to compliance with European legislation see PARA 270 ante.

## **UPDATE**

### **344 Additional exits from double-decked coaches**

TEXT AND NOTE 16--SI 1986/1078 reg 53C amended: SI 2009/142. Directives 97/27, 2001/85 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(xi) Control of Emissions/345. Exhaust systems and silencers.

## **(xi) Control of Emissions**

### **345. Exhaust systems and silencers.**

Every vehicle propelled by an internal combustion engine must be fitted with an exhaust system<sup>1</sup> including a silencer<sup>2</sup> and the exhaust gases from the engine must not escape into the atmosphere without first passing through the silencer<sup>3</sup>.

1 'Exhaust system' means a complete set of components through which the exhaust gases escape from the engine unit of a motor vehicle including those which are necessary to limit the noise caused by the escape of those gases: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table. For the meaning of 'motor vehicle' see PARA 210 ante.

2 'Silencer' means a contrivance suitable and sufficient for reducing as far as may be reasonable the noise caused by the escape of exhaust gases from the engine of a motor vehicle: *ibid* reg 3(2), Table.

3 *Ibid* reg 54(1). Instead of complying with reg 54(1) a vehicle may comply with EEC Council Directive 77/212 (OJ L66, 12.3.77, p 33), EEC Commission Directive 81/334 (OJ L131, 18.5.81, p 6), EEC Council Directive 84/372 (OJ L196, 26.7.84, p 47), EEC Council Directive 84/424 (OJ L238, 6.9.84, p 31) or EEC Council Directive 92/97 (OJ L371, 19.12.92, p 1) (all of which amend EEC Council Directive 70/157 (OJ L42, 23.2.70, p 16) on the approximation of the laws of the member states relating to the permissible sound level and the exhaust system of motor vehicles (as amended)) or ECE Regulation 51.02 or, in the case of a motor cycle other than a moped, EEC Council Directive 78/1015 (OJ L349, 13.12.78, p 21) (repealed), EEC Council Directive 87/56 (OJ L24, 27.1.87, p 42) or EEC Council Directive 89/235 (OJ L98, 11.4.89, p 1): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 54(3) (amended by SI 1996/2329). For these purposes, 'moped' has the meaning given to it in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 69, Sch 9 para 5 (see PARA 367 post): reg 54(4). For the meaning of 'motor cycle' see PARA 214 ante. For the meaning of 'ECE Regulation' see PARA 270 note 2 ante.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(xi) Control of Emissions/346. Maintenance of exhaust systems and silencers.

### **346. Maintenance of exhaust systems and silencers.**

Every exhaust system<sup>1</sup> and silencer<sup>2</sup> must be maintained in good and efficient working order and must not after the date of manufacture be altered so as to increase the noise made by the escape of exhaust gases<sup>3</sup>.

1 For the meaning of 'exhaust system' see PARA 345 note 1 ante.

2 For the meaning of 'silencer' see PARA 345 note 2 ante.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 54(2) (amended by SI 1994/14).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(xi) Control of Emissions/347. Noise limits for certain vehicles with three or more wheels.

### **347. Noise limits for certain vehicles with three or more wheels.**

Every wheeled<sup>1</sup> motor vehicle<sup>2</sup> having at least three wheels<sup>3</sup> and first used<sup>4</sup> on or after 1 October 1983 which is<sup>5</sup>:

447 (1) a vehicle, not falling within head (2) or head (3) below, with or without bodywork<sup>6</sup>;

448 (2) a vehicle not falling within head (3) below which is:

17

38. (a) engineering plant<sup>7</sup>;

39. (b) a locomotive<sup>8</sup> other than an agricultural motor vehicle<sup>9</sup>;

40. (c) a motor tractor<sup>10</sup> other than an industrial tractor<sup>11</sup> or an agricultural motor vehicle<sup>12</sup>;

41. (d) a public works vehicle<sup>13</sup>;

42. (e) a works truck<sup>14</sup>;

43. (f) a refuse vehicle<sup>15</sup>; or

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449 (3) a vehicle which:

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44. (a) has a compression ignition engine<sup>16</sup>;

45. (b) is so constructed or adapted that the driving power of the engine is, or by appropriate use of the controls can be, transmitted to all wheels of the vehicle<sup>17</sup>; and

46. (c) falls within certain other categories<sup>18</sup>,

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must be so constructed that it complies with the relevant requirements<sup>19</sup> as to noise limits<sup>20</sup>.

This provision does not apply to:

450 (i) certain vehicles first used on or after 1 October 1996<sup>21</sup>;

451 (ii) a motor cycle<sup>22</sup> with a sidecar attached<sup>23</sup>;

452 (iii) an agricultural motor vehicle which is first used before 1 June 1986 or which is not driven at more than 20 miles per hour<sup>24</sup>;

453 (iv) an industrial tractor<sup>25</sup>;

454 (v) a road roller<sup>26</sup>;

- 455 (vi) a vehicle specially constructed, and not merely adapted, for the purposes of fighting fires or salvage from fires at or in the vicinity of airports, and having an engine power exceeding 220 kilowatts<sup>27</sup>;
- 456 (vii) a vehicle which runs on rails<sup>28</sup>; or
- 457 (viii) a vehicle manufactured by Leyland Vehicles Limited and known as the Atlantean Bus, if first used before 1 October 1984<sup>29</sup>.

Instead of complying with the above provisions, a vehicle may comply at the time of its first use with the relevant European legislation<sup>30</sup>.

The above provisions do not apply to a motor vehicle which is: (A) proceeding to a place where, by previous arrangement, noise emitted by it is about to be measured for the purpose of ascertaining whether or not the vehicle complies with the provisions as to noise limits, or the vehicle is about to be mechanically adjusted, modified or equipped for the purpose of securing that it so complies; or (B) returning from such a place immediately after the noise has been so measured<sup>31</sup>.

1 For the meaning of 'wheeled' see PARA 267 note 2 ante.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'wheel' see PARA 267 note 2 ante.

4 For the meaning of 'first used' see PARA 267 note 5 ante.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 55(1) (amended by SI 1996/2329).

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 55(1)(a).

7 Ibid reg 55(1)(b)(i). For the meaning of 'engineering plant' see PARA 271 note 11 ante.

8 For the meaning of 'locomotive' see PARA 217 note 3 ante.

9 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 55(1)(b)(ii). For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

10 For the meaning of 'motor tractor' see PARA 216 ante.

11 For the meaning of 'industrial tractor' see PARA 278 note 17 ante.

12 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 55(1)(b)(iii).

13 Ibid reg 55(1)(b)(iv). For the meaning of 'public works vehicle' see PARA 287 note 40 ante.

14 Ibid reg 55(1)(b)(v). For the meaning of 'works truck' see PARA 278 note 18 ante.

15 Ibid reg 55(1)(b)(vi). For the meaning of 'refuse vehicle' see PARA 279 note 11 ante.

16 Ibid reg 55(1)(c)(i).

17 Ibid reg 55(1)(c)(ii).

18 Ibid reg 55(1)(c)(iii). The categories are EEC Council Directive 77/212 (OJ L66, 12.3.77, p 33) art 1, categories I.1.1, I.1.2 or I.1.3.

19 I.e. the requirements set out in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 55(3), Table item 1, 2, 3 or 4. As to the measurement of sound levels see reg 55(6) (amended by SI 1994/14).

20 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 55(3), which is expressed to be subject to reg 55(4), (5).

21 Ibid reg 55(1A) (added by SI 1996/2329). The vehicles mentioned in head (i) in the text are vehicles to which an item in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 55A, Table (as added) applies: see PARA 348 post. See also reg 55(6A) (added by SI 1996/2329).

22 For the meaning of 'motor cycle' see PARA 214 ante.

23 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 55(2)(a).

24 Ibid reg 55(2)(b).

25 Ibid reg 55(2)(c).

26 Ibid reg 55(2)(d).

27 Ibid reg 55(2)(e). See FIRE SERVICES vol 18(2) (Reissue) PARA 68 et seq.

28 Ibid reg 55(2)(f).

29 Ibid reg 55(2)(g).

30 Ibid reg 55(7) (amended by SI 1996/2329). The relevant European legislation is EEC Council Directive 77/212 (OJ L66, 12.3.77, p 33), EEC Commission Directive 81/334 (OJ L131, 18.5.81, p 6), EEC Council Directive 84/372 (OJ L196, 26.7.84, p 47), EEC Council Directive 84/424 (OJ L238, 6.9.84, p 31), EEC Council Directive 84/424 (OJ L238, 6.9.84, p 31), EEC Council Directive 92/97 (OJ L371, 19.12.92, p 1) or EC Commission Directive 96/20 (OJ L92, 13.4.96, p 23) (all of which amend EEC Council Directive 70/157 (OJ L42, 23.2.70, p 16) on the approximation of the laws of the member states relating to the permissible sound level and the exhaust system of motor vehicles (as amended)) or ECE Regulation 51.02: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 55(7). For the meaning of 'ECE Regulation' see PARA 270 note 2 ante. As to compliance with European legislation see PARA 270 ante.

31 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 59.

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### **348. Noise limits for certain vehicles first used on or after 1 October 1996.**

A motor vehicle<sup>1</sup> first used<sup>2</sup> on or after 1 October 1996, being:

- 458 (1) a motor vehicle with less than four wheels<sup>3</sup>;
- 459 (2) a special vehicle<sup>4</sup>;
- 460 (3) a motor vehicle with a maximum speed<sup>5</sup> not exceeding 25 kilometres per hour<sup>6</sup>; and
- 461 (4) a motor vehicle not being a vehicle to which heads (1) to (3) above apply<sup>7</sup>,

must be so constructed that it meets the prescribed requirements<sup>8</sup> relating to noise limits<sup>9</sup>.

The above provisions do not apply to:

- 462 (a) a vehicle with fewer than three wheels<sup>10</sup>;
- 463 (b) a motor cycle<sup>11</sup> with a sidecar attached;
- 464 (c) an agricultural motor vehicle<sup>12</sup> which is first used before 1 June 1986 or which is not driven at more than 20 miles per hour;
- 465 (d) an industrial tractor<sup>13</sup>;
- 466 (e) a road roller;

- 467 (f) a vehicle specially constructed, and not merely adapted, for the purposes of fighting fires or salvage from fires at or in the vicinity of airports, and having an engine power exceeding 220 kilowatts;
- 468 (g) a vehicle which runs on rails; or
- 469 (h) a vehicle manufactured by Leyland Vehicles Limited and known as the Atlantean Bus, if first used before 1 October 1984<sup>14</sup>.

Instead of complying with the above provisions, a vehicle may comply at the time of its first use with the relevant European legislation<sup>15</sup>.

The above provisions do not apply to a motor vehicle which is: (i) proceeding to a place where, by previous arrangement, noise emitted by it is about to be measured for the purpose of ascertaining whether or not the vehicle complies with the provisions as to noise limits, or the vehicle is about to be mechanically adjusted, modified or equipped for the purpose of securing that it so complies; or (ii) returning from such a place immediately after the noise has been so measured<sup>16</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'first used' see PARA 267 note 5 ante.

3 See the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 55A(1), Table item 1 (reg 55A added by SI 1996/2329). For the meaning of 'wheel' see PARA 267 note 2 ante.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 55A(1), Table item 1 (as added: see note 3 supra). For these purposes, 'special vehicle' means a vehicle which is: (1) engineering plant; (2) a locomotive other than an agricultural motor vehicle; (3) a motor tractor other than an industrial tractor or an agricultural motor vehicle; (4) a public works vehicle; or (5) a works truck: reg 55A(3) (as so added). For the meaning of 'engineering plant' see PARA 271 note 11 ante; for the meaning of 'locomotive' see PARA 217 note 3 ante; for the meaning of 'motor tractor' see PARA 216 ante; for the meaning of 'industrial tractor' see PARA 278 note 17 ante; for the meaning of 'public works vehicle' see PARA 287 note 40 ante; and for the meaning of 'works truck' see PARA 278 note 18 ante.

5 For the meaning of 'maximum speed' see PARA 278 note 17 ante.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 55A(1), Table item 1 (as added: see note 3 supra).

7 Ibid reg 55A(1), Table item 2 (as added: see note 3 supra).

8 Ie the requirements specified in ibid reg 55A(1), Table col 4 (as added: see note 3 supra).

9 Ibid reg 55A(1) (as added: see note 3 supra). This is expressed to be subject to reg 55A(2)-(5) (as added) (see the text and notes 10-15 infra), reg 59 (as amended) (see the text to note 16 infra) and Sch 7XA (added by SI 1996/2329; and amended by SI 2000/3197; SI 2007/361; SI 2007/2544).

10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 55A(2)(a) (as added: see note 3 supra).

11 Ibid reg 55A(2)(b) (as added: see note 3 supra). For the meaning of 'motor cycle' see PARA 214 ante.

12 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

13 For the meaning of 'industrial tractor' see PARA 278 note 17 ante.

14 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 55A(2)(b) (as added: see note 3 supra).

15 Ibid reg 55A(5) (as added: see note 3 supra). The relevant European legislation is EEC Council Directive 77/212 (OJ L66, 12.3.77, p 33), EEC Commission Directive 81/334 (OJ L131, 18.5.81, p 6), EEC Council Directive 84/372 (OJ L196, 26.7.84, p 47), EEC Council Directive 84/424 (OJ L238, 6.9.84, p 31), EEC Council Directive 92/97 (OJ L371, 19.12.92, p 1) or EEC Commission Directive 96/20 (OJ L92, 13.4.96, p 23) (all of which amend EEC Council Directive 70/157 (OJ L42, 23.2.70, p 16) on the approximation of the laws of the member states

relating to the permissible sound level and the exhaust system of motor vehicles (as amended)) or ECE Regulation 51.02; or, in the case of a vehicle to which the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 55A(1), Table item 2 (as added) applies, EEC Council Directive 92/97 (OJ L371, 19.12.92, p 1), EC Commission Directive 96/20 (OJ L92, 13.4.96, p 23) or ECE Regulation 51.02: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 55A(5) (as so added). For the meaning of 'ECE Regulation' see PARA 270 note 2 ante. As to compliance with European legislation see PARA 270 ante.

16 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 59 (amended by SI 1996/2329).

## UPDATE

### **348 Noise limits for certain vehicles first used on or after 1 October 1996**

NOTE 9--SI 1986/1078 Sch 7XA further amended: SI 2009/2196.

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### **349. Noise limits for agricultural motor vehicles and industrial tractors.**

Every wheeled<sup>1</sup> vehicle first used<sup>2</sup> on or after 1 April 1983 being an agricultural motor vehicle<sup>3</sup> or an industrial tractor<sup>4</sup>, other than<sup>5</sup>: (1) an agricultural motor vehicle which is first used on or after 1 June 1986 and which is driven at more than 20 miles per hour<sup>6</sup>; or (2) a road roller<sup>7</sup>, must be constructed:

- 470 (a) so that its sound level does not exceed, when measured under the specified conditions<sup>8</sup>, the prescribed sound levels<sup>9</sup>; and
- 471 (b) so that the device designed to reduce the exhaust noise meets the prescribed requirements<sup>10</sup>.

The above provisions do not apply to a motor vehicle which is: (i) proceeding to a place where, by previous arrangement, noise emitted by it is about to be measured for the purpose of ascertaining whether or not the vehicle complies with the provisions as to noise limits, or the vehicle is about to be mechanically adjusted, modified or equipped for the purpose of securing that it so complies; or (ii) returning from such a place immediately after the noise has been so measured<sup>11</sup>.

1 For the meaning of 'wheeled' see PARA 267 note 2 ante.

2 For the meaning of 'first used' see PARA 267 note 5 ante.

3 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

4 For the meaning of 'industrial tractor' see PARA 278 note 17 ante.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 56(1).

6 Ibid reg 56(1)(a).

7 Ibid reg 56(1)(b).

8 le when measured under the conditions specified in EEC Council Directive 74/151 (OJ L84, 28.3.74, p 25) on the approximation of the laws of the member states relating to certain parts and characteristics of wheeled agricultural or forestry tractors, Annex VI para I.3 by the method specified in Annex VI para I.4.1 using the prescribed apparatus.

9 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 56(2)(a). The prescribed sound levels are: (1) if it is a vehicle with engine power of less than 65 kilowatts, 89 acoustic decibels; (2) if it is a vehicle with engine power of 65 kilowatts or more, and first used before 1 October 1991, 92 acoustic decibels; or (3) if it is a vehicle with engine power of 65 kilowatts or more, and first used on or after 1 October 1991, 89 acoustic decibels: reg 56(2)(a).

10 Ibid reg 56(2)(b). The requirements so prescribed are those specified in EEC Council Directive 74/151 (OJ L84, 28.3.74, p 25) on the approximation of the laws of the member states relating to certain parts and characteristics of wheeled agricultural or forestry tractors, Annex VI para II.1; and, if fibrous absorbent material is used, the requirements specified in Annex VI paras II.4.1-II.4.3: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 56(2)(b).

11 Ibid reg 59.

## **UPDATE**

### **349 Noise limits for agricultural motor vehicles and industrial tractors**

NOTES 8, 10--Directive 74/151 replaced: European Parliament and EC Council Directive 2009/63 (OJ L214, 19.8.2009, p 23).

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### **350. Construction requirements relating to noise limits for motor cycles.**

Every motor vehicle<sup>1</sup> first used<sup>2</sup> on or after 1 April 1983 which is a moped<sup>3</sup> or a two-wheeled<sup>4</sup> motor cycle<sup>5</sup>, whether or not with sidecar attached, which is not a moped<sup>6</sup>, must be so constructed that it meets the relevant construction requirements<sup>7</sup>.

The above provisions do not apply to a motor vehicle which is: (1) proceeding to a place where, by previous arrangement, noise emitted by it is about to be measured for the purpose of ascertaining whether or not the vehicle complies with the provisions as to noise limits, or the vehicle is about to be mechanically adjusted, modified or equipped for the purpose of securing that it so complies; or (2) returning from such a place immediately after the noise has been so measured<sup>8</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'first used' see PARA 267 note 5 ante.

3 For these purposes, 'moped' has the meaning given to it in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 69, Sch 9 para 5 (see PARA 367 post): reg 57(5) (reg 57 substituted by SI 1994/14).

4 For the meaning of 'wheeled' see PARA 267 note 2 ante.

5 For the meaning of 'motor cycle' see PARA 214 ante.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 57(1) (as substituted: see note 3 supra).

7 Ibid reg 57(1) (as substituted: see note 3 supra). The relevant construction requirements are: (1) if the vehicle is first used before 1 April 1991, the requirements of Sch 7A Pt I Table item 1 or 2 (Sch 7A added by SI 1994/14); and (2) if the vehicle is first used on or after that date, the requirements of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 7A Pt I Table item 2 (as so added): reg 57(2) (as so substituted).

Instead of complying with reg 57(2) (as substituted), a vehicle first used before 1 April 1991 may comply at the time of its first use with EEC Council Directive 78/1015 (OJ L349, 13.12.78, p 21) on the approximation of the laws of the member states on the permissible sound level and exhaust system of motor cycles, or EEC Council Directive 87/56 (OJ L24, 27.1.87, p 42) or EEC Council Directive 89/235 (OJ L98, 11.4.89, p 1): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 57(3) (as so substituted). Instead of complying with reg 57(2) (as substituted), a vehicle first used on or after 1 April 1991 may comply at the time of its first use with EEC Council Directive 87/56 (OJ L24, 27.1.87, p 42) or EEC Council Directive 89/235 (OJ L98, 11.4.89, p 1): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 57(4) (as so substituted).

8 Ibid reg 59 (amended by SI 1994/14).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(xi) Control of Emissions/351. Exhaust systems for motor cycles.

### **351. Exhaust systems for motor cycles.**

Any original silencer<sup>1</sup> forming part of the exhaust system<sup>2</sup> of a vehicle to which the construction requirements relating to noise limits for motor cycles<sup>3</sup> apply must be so constructed that the vehicle meets the relevant statutory requirements<sup>4</sup>.

The above provisions do not apply to a motor vehicle which is: (1) proceeding to a place where, by previous arrangement, noise emitted by it is about to be measured for the purpose of ascertaining whether or not the vehicle complies with the provisions as to noise limits, or the vehicle is about to be mechanically adjusted, modified or equipped for the purpose of securing that it so complies; or (2) returning from such a place immediately after the noise has been so measured<sup>5</sup>.

1 For these purposes, 'original silencer', in relation to a vehicle, means a silencer which was fitted to the vehicle when it was manufactured: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 57A(14) (reg 57A added by SI 1994/14). For the meaning of 'silencer' see PARA 345 note 2 ante.

2 For the meaning of 'exhaust system' see PARA 345 note 1 ante.

3 I.e. the requirements of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 57 (as substituted): see PARA 350 ante. For the meaning of 'motor cycle' see PARA 214 ante.

4 See ibid reg 57A(1)-(14) (reg 57A as added (see note 1 supra); and reg 57A(8A) added by SI 1996/16).

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 59 (amended by SI 1995/1201).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(xi) Control of Emissions/352. Maintenance requirements relating to noise limits for motor cycles.



### 352. Maintenance requirements relating to noise limits for motor cycles.

No person is to use or cause or permit<sup>1</sup> to be used on a road<sup>2</sup> a motor cycle<sup>3</sup> to which the construction requirements relating to noise limits for motor cycles<sup>4</sup> apply if the following three conditions are all fulfilled<sup>5</sup>:

- 472 (1) the vehicle does not meet the noise limit requirements<sup>6</sup>;
- 473 (2) any part of the vehicle is not in good and efficient working order or the vehicle has been altered<sup>7</sup>; and
- 474 (3) the noise made by the vehicle would have been materially less, so far as applicable, were all parts of the vehicle in good and efficient working order or had the vehicle not been altered<sup>8</sup>.

The above provisions do not apply to a motor vehicle which is: (a) proceeding to a place where, by previous arrangement, noise emitted by it is about to be measured for the purpose of ascertaining whether or not the vehicle complies with the provisions as to noise limits, or the vehicle is about to be mechanically adjusted, modified or equipped for the purpose of securing that it so complies; or (b) returning from such a place immediately after the noise has been so measured<sup>9</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 For the meaning of 'motor cycle' see PARA 214 ante.

4 I.e. the requirements of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 57 (as substituted): see PARA 350 ante.

5 Ibid reg 57B(1) (reg 57B added by SI 1994/14).

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 57B(2) (as added: see note 5 supra). For these purposes, a vehicle meets the noise limit requirements if: (1) in the case of a vehicle first used before 1 April 1991 and not fitted with a replacement silencer, it meets the requirements of Sch 7A Pt I Table item 1 or 2 (Sch 7A added by SI 1994/14); (2) in the case of a vehicle first used before 1 April 1991 and fitted with a replacement silencer, it meets the requirements of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 7A Pt I Table item 1 or 3 (as so added); (3) in the case of a vehicle first used on or after 1 April 1991 and not fitted with a replacement silencer, it meets the requirements of Sch 7A Pt I Table item 2 (as so added); (4) in the case of a vehicle first used on or after 1 April 1991 and fitted with a replacement silencer, it meets the requirements of Sch 7A Pt I Table item 3 (as so added): reg 57B(5) (as so added). 'Replacement silencer', in relation to a vehicle, means a silencer fitted to the vehicle not being an original silencer: reg 57B(6) (as so added). For the meaning of 'silencer' see PARA 345 note 2 ante. As to noise control see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 817 et seq.

7 Ibid reg 57B(3) (as added: see note 5 supra).

8 Ibid reg 57B(4) (as added: see note 5 supra).

9 Ibid reg 59 (amended by SI 1995/1201).

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### 353. Radio interference suppression.

Every wheeled<sup>1</sup> vehicle, other than a vehicle constructed or assembled by a person not ordinarily engaged in the trade or business of manufacturing vehicles of that description<sup>2</sup>, which is propelled by a spark ignition engine and: (1) is first used<sup>3</sup> on or after 1 April 1974 and before 1 January 1996<sup>4</sup>; or (2) is first used on or after 1 January 1996 and is a vehicle for the purposes of the relevant European provisions<sup>5</sup>, must be so constructed that it complies with the relevant European legislation<sup>6</sup>. Every agricultural and forestry tractor<sup>7</sup> which is propelled by a spark ignition engine and is first used on or after 1 April 1974 must be so constructed that it meets the relevant European requirements<sup>8</sup>.

The requirements of the relevant European legislation<sup>9</sup> must be met by electrical/electronic sub-assemblies<sup>10</sup> as components or separate technical units first used on or after 1 October 2002<sup>11</sup>.

1 For the meaning of 'wheeled' see PARA 267 note 2 ante.

2 See the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 60(2). Regulation 60(2) does not affect the application to such vehicles of the Wireless Telegraphy (Control of Interference from Ignition Apparatus) Regulations 1973, SI 1973/1217 (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 553): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 60(2).

3 For the meaning of 'first used' see PARA 267 note 5 ante.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 60(1A)(a) (reg 60(1A) added by SI 1996/2329).

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 60(1A)(b) (as added: see note 4 supra). The relevant European provisions are EC Council Directive 70/156 (OJ L42, 23.2.70, p 1) on the approximation of the laws of the member states relating to the type-approval of motor vehicles and their trailers (as amended).

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 60(1)(a) (substituted by SI 1996/2329). The relevant European legislation is EEC Council Directive 72/245 (OJ L152, 6.7.72, p 15) on the approximation of the laws of the member states relating to the suppression of radio interference produced by spark-ignition engines fitted to motor vehicles, Annex 1 para 6 or EC Commission Directive 95/54 (OJ L266, 8.11.95, p 1) adapting to technical progress EEC Council Directive 72/245 (OJ L152, 6.7.72, p 15) Annex 1 para 6, as read with Annex 1 para 8, whether or not those Directives apply to the vehicle: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 60(1)(a) (as so substituted). As to descriptions of radiation level see reg 60(1B) (added by SI 1996/2329).

Instead of complying with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 60(1)(a) (as substituted) a vehicle may comply at the time of first use with EEC Council Directive 72/245 (OJ L152, 6.7.72, p 15) on the approximation of the laws of the member states relating to the suppression of radio interference produced by spark-ignition engines fitted to motor vehicles or EC Commission Directive 95/54 (OJ L266, 8.11.95, p 1) adapting to technical progress EEC Council Directive 72/245 (OJ L152, 6.7.72, p 15), or ECE Regulation 10, 10.01 or 10.02: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 60(1D) (added by SI 1996/2329; and amended by SI 2002/2126). For the meaning of 'ECE Regulation' see PARA 270 note 2 ante. As to compliance with European legislation see PARA 270 ante.

7 'Agricultural or forestry tractor' means an agricultural or forestry tractor within the meaning of EEC Council Directive 82/890 (OJ L378, 31.12.82, p 45) amending the Directives on the approximation of the laws of the member states relating to wheeled agricultural or forestry tractors: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (definition added by SI 1996/2329).

8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 60(1)(b) (substituted by SI 1996/2329). The relevant European requirements are those of EEC Council Directive 72/245 (OJ L152, 6.7.72, p 15) on the approximation of the laws of the member states relating to the suppression of radio interference produced by spark-ignition engines fitted to motor vehicles, Annex 1 para 6, EEC Council Directive 75/322 (OJ L147, 9.6.75, p 28) on the approximation of the laws of the member states relating to the suppression of radio interference produced by spark-ignition engines fitted to wheeled agricultural or forestry tractors, Annex 1 para 6 or EC Commission Directive 95/54 (OJ L266, 8.11.95, p 1) adapting to technical progress EEC Council Directive 72/245 (OJ L152, 6.7.72, p 15) Annex 1 para 6: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 60(1)(b) (as so substituted).

Instead of complying with reg 60(1)(b) (as substituted) a vehicle may comply at the time of first use with EEC Council Directive 75/322 (OJ L147, 9.6.75, p 28) on the approximation of the laws of the member states relating

to the suppression of radio interference produced by spark-ignition engines fitted to wheeled agricultural or forestry tractors: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 60(1E) (added by SI 1996/2329).

9 le EEC Council Directive 72/245 (OJ L152, 6.7.72, p 15) as amended by EC Council Directive 95/54 (OJ L266, 8.11.95, p 1).

10 For these purposes, 'electrical/electronic sub-assembly' has the same meaning as in EC Council Directive 95/54 (OJ L266, 8.11.95, p 1): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 60(3) (added by SI 1996/2329).

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 60(1C) (added by SI 1996/2329; and substituted by SI 2002/2126). The Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 60(1C) (as added and substituted) does not apply to electrical/electronic sub-assemblies described as: (1) replacement parts intended for use on vehicles manufactured in accordance with type approvals granted before 1 January 1996 in compliance with EEC Council Directive 72/245 (OJ L152, 6.7.72, p 15) or EEC Council Directive 72/306 (OJ L190, 20.8.72, p 1) including any subsequent extension that may have been granted to such type approvals; (2) electrical/electronic sub-assemblies fitted to any vehicle under an authorisation having effect under the Police Act 1997 Pt III (ss 91-108) (as amended) or the Regulation of Investigatory Powers Act 2000 Pt II (ss 26-48) (as amended): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 60(1F) (added by SI 1996/2329; and substituted by SI 2002/2126).

## UPDATE

### 353 Radio interference suppression

NOTES 6, 8, 9, 11--Directive 72/245 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

NOTE 8--Directive 75/322 replaced: European Parliament and EC Council Directive 2009/64 (OJ L216, 20.8.2009, p 1).

NOTE 11--Directive 72/306 replaced with effect from 2 January 2013: EC Council Regulation 715/2007 (OJ L171, 29.6.2007, p 1) (as amended).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(xi) Control of Emissions/354. Emissions of smoke, vapour, gas, oily substances etc.

### 354. Emissions of smoke, vapour, gas, oily substances etc.

Every vehicle must be constructed and maintained so as not to emit any avoidable smoke or avoidable visible vapour<sup>1</sup>.

Every motor vehicle<sup>2</sup> using solid fuel must be fitted with a tray or shield to prevent ashes and cinders from falling onto the road<sup>3</sup>, and an efficient appliance to prevent any emission of sparks or grit<sup>4</sup>.

Every wheeled<sup>5</sup> vehicle being:

- 475 (1) a vehicle propelled by a compression ignition engine and equipped with a device designed to facilitate starting the engine by causing it to be supplied with excess fuel<sup>6</sup>;
- 476 (2) a vehicle first used on or after 1 April 1973 and propelled by a compression ignition engine<sup>7</sup>; and

477 (3) a vehicle first used on or after 1 January 1972 and propelled by a spark ignition engine other than a two-stroke engine<sup>8</sup>,

must be constructed so as to comply with the prescribed requirements<sup>9</sup>.

Certain types of motor vehicle must be so constructed as to comply with the prescribed requirements relating to conformity of production models<sup>10</sup>.

No person is to use or cause or permit<sup>11</sup> to be used on a road any motor vehicle:

- 478 (a) from which any smoke, visible vapour, grit, sparks, ashes, cinders or oily substance is emitted if that emission causes, or is likely to cause, damage to any property or injury or danger to any person who is, or who may reasonably be expected to be, on the road<sup>12</sup>;
- 479 (b) which is subject to the requirement as to engine type<sup>13</sup>, if the fuel injection equipment, the engine speed governor or any other parts of the engine by which it is propelled have been altered or adjusted so as to increase the emission of smoke<sup>14</sup>; or
- 480 (c) which is subject to the requirement that a device used to facilitate starting the engine should not be readily operated by a person inside the vehicle if the device is used while the vehicle is in motion<sup>15</sup>.

Certain of the above provisions do not apply to motor vehicles first used on or after 1 January 2001<sup>16</sup>.

No person is to use or cause or permit to be used on a road a vehicle first used on or after 1 August 1975 and propelled by a four-stroke spark ignition engine, if the vehicle is in such a condition and running on such fuel that<sup>17</sup>: (i) when the engine is idling the carbon monoxide content of the exhaust emissions from the engine exceeds the specified amount<sup>18</sup>; and (ii) when the engine is running without load at a rotational speed of 2,000 revolutions per minute, the hydrocarbon content of those emissions exceeds the specified amount<sup>19</sup>.

No person is to use or cause or permit to be used on a road certain vehicles<sup>20</sup> which are propelled by a spark ignition engine, if the vehicle is in such a condition and running on such fuel that the provisions relating to emissions from such vehicles apply to the vehicle<sup>21</sup>.

No person is to use or cause or permit to be used on a road a vehicle propelled by a compression ignition engine, if the vehicle is in such a condition and running on such fuel that the provisions relating to emissions from compression ignition engines apply to the vehicle<sup>22</sup>.

Further requirements apply to motor vehicles first used on or after 1 January 2001<sup>23</sup>. A motor vehicle in any category<sup>24</sup> must comply with such design, construction and equipment requirements and such limit values as may be specified for a motor vehicle of that category and weight by any specified Community Directive<sup>25</sup> and from such date as is specified<sup>26</sup> by that Community Directive<sup>27</sup>. No person is to use or cause or permit to be used on a road such a motor vehicle if the motor vehicle does not comply with such limit values as may apply to it by virtue of any specified Community Directive<sup>28</sup>, and from such date as is specified by that Community Directive, unless (subject to exemptions) the following conditions are satisfied with respect to it<sup>29</sup>:

- 481 (A) the failure to meet the limit values does not result from an alteration to the propulsion unit or exhaust system of the motor vehicle;
- 482 (B) those limit values would not be met nor would the emissions of gaseous and particulate pollutants and smoke and evaporative emissions be materially reduced if maintenance work of a kind which would fall within the scope of a normal periodic service of the vehicle were carried out on the motor vehicle; and

483 (c) the failure to meet those limit values does not result from any device designed to control the emission of gaseous and particulate pollutants and smoke and evaporative emissions which is fitted to the motor vehicle being other than in good and efficient working order<sup>30</sup>.

1 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(1) (amended by SI 1991/1526; SI 1995/2210). Instead of complying with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(1) (as amended), a vehicle may comply with a relevant instrument: reg 61(3B) (added by SI 1991/1526). A reference to a vehicle complying with a relevant instrument is a reference to a vehicle complying: (1) if it is propelled by a compression ignition engine, with EEC Council Directive 72/306 (OJ L190, 20.8.72, p 1) on the approximation of the laws of the member states relating to the measures to be taken against the emission of pollutants from diesel engines for use in vehicles (as amended), or in the case of an agricultural vehicle first used before 1 January 2001, EEC Council Directive 77/537 (OJ L220, 29.8.77, p 38) on the approximation of the laws of the member states relating to the measures to be taken against the emission of pollutants from diesel engines for use in wheeled agricultural or forestry tractors (as amended), or ECE Regulation 24.01, 24.02 or 24.03; or (2) if it is propelled by a spark ignition engine, with any instrument mentioned in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(4), Table II col 4(a) (Table II added by SI 1990/1131; and substituted by SI 1997/1544; and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Table II col 4(a) amended by SI 2000/3197); Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(4) (amended by SI 1991/1526; SI 1993/2199; SI 2000/3197). For the meaning of 'ECE Regulation' see PARA 270 note 2 ante. As to atmospheric cleanliness see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 189 et seq.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(2).

5 For the meaning of 'wheeled' see PARA 267 note 2 ante.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(3) (as amended), Table I item 1 (Table I renumbered by SI 1990/1131).

7 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(3) (as amended), Table I item 2 (as renumbered: see note 6 supra).

8 Ibid reg 61(3) (as amended), Table I item 3 (as renumbered (see note 6 supra); and amended by SI 1993/2199). No person is to use or cause or permit to be used on a road a motor vehicle to which the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(3) (as amended), Table I item 3 (as renumbered) applies unless it is so maintained that the means to prevent vapours or gases in the engine escaping into the atmosphere otherwise than through the combustion chamber of the engine specified in reg 61(3) (as amended), Table I item 3 col 3 (as renumbered) are in good working order: reg 61(6) (amended by SI 1990/1131). As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

9 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(3) (amended by SI 1990/1131). The prescribed requirements are contained in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(3) (as amended), Table I col 3 (as renumbered: see note 6 supra). Instead of complying with such provisions of reg 61(3) (as amended), Table I (as renumbered) as apply to it, a vehicle may at the time of its first use comply with a relevant instrument (see note 1 supra): reg 61(3C) (added by SI 1991/1526).

10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(3A) (added by SI 1990/1131). For the motor vehicles and production models see the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(3A) (as so added), Table II (added by SI 1990/1131; substituted by SI 1997/1544; and amended by SI 2000/3197).

No person is to use or cause or permit to be used on a road a motor vehicle to which an item in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(3A) (as added), Table II (as added, substituted and amended) applies if, in relation to the emission of the substances specified in column 6 of the item, the vehicle does not comply with the requirements relating to conformity of production models specified in column 4 unless the following conditions are satisfied in respect to it: (1) the failure to meet those requirements in relation to the emission of those substances does not result from an alteration to the propulsion unit or exhaust system of the vehicle; (2) those requirements would not be met in relation to the emission of those substances nor would such emissions be materially reduced if maintenance work of a kind which would fall within the scope of a normal periodic service of the vehicle were to be carried out on the vehicle; and (3)

the failure to meet those requirements in relation to such emissions does not result from any device designed to control the emission of carbon monoxide, hydrocarbons, oxides of nitrogen or particulates fitted to the vehicle being other than in good and efficient working order: reg 61(7) (added by SI 1990/1131; and amended by SI 1992/2137; SI 1996/2329). The Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(7) (as amended) is subject to reg 61(8), (9), (10) (reg 61(8)-(10) added by SI 1990/1131; and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(10) substituted by SI 1992/2137; and amended by SI 1996/3017; SI 1998/1000).

11 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

12 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(5)(a). An emission occurs from a vehicle onto a road where a substance spills from one part of a vehicle onto another part of the vehicle and later spills from that other part of the vehicle onto the road: *Tidwell v Llewellyn* [1965] Crim LR 732, DC.

13 Is the requirement contained in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(3) (as amended), Table I item 2 (as renumbered) (whether or not it is deemed to comply with that requirement by virtue of reg 61(4) (as amended) (see note 1 supra)).

14 Ibid reg 61(5)(b) (amended by SI 1990/1131).

15 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(5)(c) (amended by SI 1990/1131).

16 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(2A) (added by SI 2000/3197), disapplying the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(3) (as amended), reg 61(3A) (as added), reg 61(3C) (as added), reg 61(4)(a) (as amended), reg 61(5)(b) (as amended), reg 61(5)(c) (as amended), reg 61(6)-(10) (as amended), reg 61(11) (as added and amended).

17 Ibid reg 61(10A) (added by SI 1991/1526; and substituted by SI 1995/2210). For the application of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(10A) (as added) see reg 61(10AD), (10B) (reg 61(10AD) added by SI 1995/2210; and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(10B) added by SI 1991/1526; and amended by SI 1992/2137; SI 1992/3285; SI 1995/2210; SI 1996/2085; SI 1996/3017; SI 1998/1000).

18 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(10A)(a) (as added and substituted: see note 17 supra). The specified amount is: (1) in the case of a vehicle first used before 1 August 1986, 4.5%; or (2) in the case of a vehicle first used on or after 1 August 1986, 3.5%, of the total exhaust emissions from the engine by volume: see reg 61(10A)(a) (as so added and substituted).

19 Ibid reg 61(10A)(b) (as added and substituted: see note 17 supra). The hydrocarbon content of the emissions exceeds the specified amount if it exceeds 0.12% of the total exhaust emissions from the engine by volume: see reg 61(10A)(b) (as so added and substituted).

20 The vehicles are: (1) a passenger car which is first used on or after 1 August 1992 and before 1 August 1995, and is of a description mentioned in the Annex to the emissions publication; (2) a vehicle which is not a passenger car, is first used on or after 1 August 1994 and is of a description mentioned in the Annex to the emissions publication; (3) a passenger car which is first used on or after 1 August 1995; or (4) a vehicle which is not a passenger car, is first used on or after 1 July 2002, and has a maximum gross weight not exceeding 3,500 kg: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(10AB) (added by SI 1995/2210; and amended by SI 1996/2085; SI 1998/1563; SI 2003/3145). For these purposes, 'passenger car' means a motor vehicle which: (a) is constructed or adapted for use for the carriage of passengers and is not a goods vehicle; (b) has no more than five seats in addition to the driver's seat; and (c) has a maximum gross weight not exceeding 2,500 kg: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(11A) (added by SI 1995/2210). For the meaning of 'goods vehicle' see PARA 271 note 26 ante. For the meaning of 'maximum gross weight' see PARA 271 note 27 ante.

21 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(10AA) (added by SI 1995/2210). The provisions referred to in the text are those contained in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(10AA) (as added), Sch 7B Pt I (added by SI 1995/2210; and amended by SI 1999/1521; SI 2000/1434; SI 2001/1825; SI 2002/227; SI 2003/3145; SI 2004/1706; SI 2005/1641; SI 2007/1817). The Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(10AA) (as added) does not apply to a vehicle if, at the date that the engine was manufactured, that engine was incapable of meeting the requirements specified in that provision: reg 61(10AE) (added by SI 1991/1526). As to the application of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(10AA) (as added) see also reg 61(10B) (as added and amended); and note 16 supra.

22 Ibid reg 61(10BA) (added by SI 1995/2210). The provisions mentioned in the text are those contained in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 7B Pt II (added by SI 1995/2210;

and amended by SI 2000/1434; SI 2003/3145). As to the application of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(10BA) (as added) see reg 61(10BB) (added by SI 1995/2210).

23 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61A(1) (reg 61A added by SI 2000/3197). The Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 4(2) (see PARA 267 text to note 6 ante) does not apply to any requirement imposed on a vehicle by or under reg 61A (as added and amended): reg 61A(9) (as so added).

24 'Category' means a category for the purpose of Annex II to the Framework Directive: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61A(8)(a) (as added: see note 23 supra). 'Framework Directive' means EEC Council Directive 70/156 (OJ L42, 23.2.1970, p 1) as amended by EEC Council Directive 87/403 (OJ L220, 8.8.1987, p 44), EEC Council Directive 92/53 (OJ L225, 10.8.1992, p 1), EEC Commission Directive 93/81 (OJ L 264, 23.10.1993, p 49) and EC Commission Directive 98/14 (OJ L91, 25.3.1998, p 1): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (definition added by SI 1996/2329; and amended by SI 2001/3208).

25 In any Community Directive specified in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61A, Table item 1 or 2 (as added and amended). The Directives specified are EEC Council Directive 70/220 (OJ L76, 6.4.1970, p 1), EC Parliament and Council Directive 96/69 (OJ L282, 1.11.1996, p 64), ECE Regulation 83.04, EC Parliament and Council Directive 98/69 (OJ L350, 28.12.1998, p 1), EC Commission Directive 1999/102 (OJ L334, 28.12.1999, p 43), EC Parliament and Council Directive 2001/1 (OJ L35, 6.2.2001, p 34) (Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61A, Table item 1 (as added (see note 23 supra); and amended by SI 2001/1825); and EC Council Directive 2005/55 (OJ L275, 20.10.2005, p 1), ECE Regulation 49.02, EC Council Directive 2005/78 (OJ L313, 21.11.2005, p 1) and EC Council Directive 2006/51 (OJ L152, 7.6.2006, p 11) (Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61A, Table item 2 (as so added; and substituted by SI 2006/2565).

26 'Date as is specified' means, in relation to any vehicle and: (1) in relation to limit values set by a Community Directive specified in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61A, Table item 1 or 2 (as added and amended), the date specified by that Community Directive as that from which member states are required to prohibit the registration or the entry into service of that vehicle if it does not comply with those limit values; or (2) in relation to emission control and monitoring systems and devices, the date specified by a Community Directive specified in reg 61A, Table item 1 or 2 (as added and amended) as that from which member states are required to ensure that such equipment is fitted to that vehicle, provided that, where a Community Directive specified in reg 61A, Table item 2 (as added and substituted) re-enacts a requirement imposed by a Community Directive that had been specified in that item immediately before 9 November 2006, the date as is specified is the date that had been specified by that previous Directive: reg 61A(8)(b) (as added (see note 23 supra); and substituted by SI 2006/2565). 'Limit values' means the permitted amounts of gaseous and particulate pollutants and smoke and evaporative emissions: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61A(8)(c) (as so added).

27 Ibid reg 61A(2) (as added: see note 23 supra). This is subject to reg 61A(5)-(7) (as so added; and reg 61A(7) substituted by SI 2006/2565) and to the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 7XA (added by SI 1996/2329; and amended by SI 2000/3197; SI 2007/361; SI 2007/2544).

28 See note 25 supra.

29 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61A(3) (as added: see note 23 supra).

30 Ibid reg 61A(3)(a)-(c) (as added: see note 23 supra). This is subject to reg 61A(4)-(7) (as so added; and reg 61A(4) amended by SI 2001/306; SI 2001/3208) and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 7XA (as added and amended: see note 27 supra).

## UPDATE

### 354 Emissions of smoke, vapour, gas, oily substances etc

TEXT AND NOTES--See the Motor Vehicles (Refilling of Air Conditioning Systems by Service Providers) Regulations 2009, SI 2009/2194, which provides that a service provider must not fill an air conditioning system with fluorinated greenhouse gases where there has been an abnormal leak of refrigerant and that leak has not yet been repaired.

NOTE 1--Directive 72/306 repealed and replaced with effect from 2 January 2013: EC Council Regulation 715/2007 (OJ L171, 29.6.2007, p 1) (as amended). All heavy duty

vehicles to be covered (from 3 January 2009) by European Parliament and EC Council Directive 2005/55 (OJ L275, 20.10.2005, p1) (as amended by Regulation 715/2007 art 16.1). Directive 2005/55 replaced with effect from 31 December 2013: see NOTE 25. SI 1986/1078 reg 61(4) further amended: SI 2007/3132. See also the Motor Vehicles (Replacement of Catalytic Converters and Pollution Control Devices) Regulations 2009, SI 2009/1899.

NOTE 21--SI 1986/1078 Sch 7B Pt I further amended: SI 2008/1702, SI 2009/1806.

NOTE 22--SI 1986/1078 reg 61(10BB) amended: SI 2007/3132.

NOTE 24--Directive 70/156 further amended from 3 January 2009: EC Council Regulation 715/2007 (OJ L171, 29.6.2007, p 1). The amendments adapt Directive 70/156 to accommodate EC Council Regulation 715/2007 (OJ L171, 29.6.2007, p 1). See note below.

NOTE 25--Directives 70/220, 96/69, 98/69, 1999/102, 2001/1 replaced with effect from 2 January 2013: EC Council Regulation 715/2007 (OJ L171, 29.6.2007, p 1) (amended by EC Commission Regulation 2008/692 (OJ L199, 28.7.2008, p 1), and European Parliament and EC Council Regulation 595/2009 (OJ L188, 18.7.2009, p 1)) on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information. The regulation establishes common technical requirements for type approval of motor vehicles, and replacement parts with regard to their emissions. It also lays down rules for in-service conformity, durability of pollution control devices, on-board diagnostic systems, measurement of fuel consumption and accessibility of vehicle repair and maintenance information. Whilst the regulation lays down fundamental provisions on vehicle emissions, the technical specifications will be laid down by individual implementing measures.

Directive 2005/55 amended (from 3 January 2009) by Regulation 715/2007 art 16.1 so as to cover all heavy duty vehicles. Directives 2005/55, 2005/78 replaced with effect from 31 December 2013: European Parliament and EC Council Regulation 595/2009 (OJ L188, 18.7.2009, p 1).

NOTE 30--SI 1986/1078 reg 61B added: SI 2009/2196.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(xi) Control of Emissions/355. Lavatories etc.

### **355. Lavatories etc.**

No wheeled<sup>1</sup> vehicle first used<sup>2</sup> after 15 January 1931 is to be equipped with any closet or urinal which can discharge directly on to a road<sup>3</sup>.

Every tank into which a closet or urinal with which a vehicle is equipped empties, and every closet or urinal which does not empty into a tank, must contain chemicals which are non-inflammable and non-irritant and provide an efficient germicide<sup>4</sup>.

1 For the meaning of 'wheeled' see PARA 267 note 2 ante.

2 For the meaning of 'first used' see PARA 267 note 5 ante.



3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 62(1). For the meaning of 'road' see PARA 206 ante.

4 Ibid reg 62(2).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(xi) Control of Emissions/356. Wings.

### 356. Wings.

Each of the following vehicles, that is to say:

- 484 (1) invalid carriages<sup>1</sup>;
- 485 (2) heavy motor cars<sup>2</sup>, motor cars<sup>3</sup> and motor cycles<sup>4</sup>, not being agricultural motor vehicles<sup>5</sup> or pedestrian-controlled vehicles<sup>6</sup>;
- 486 (3) agricultural motor vehicles driven at more than 20 miles per hour<sup>7</sup>; and
- 487 (4) trailers<sup>8</sup>,

must be equipped with wings or other similar fittings to catch, so far as practicable, mud or water thrown up by the rotation of its wheels<sup>9</sup> or tracks<sup>10</sup>.

The above requirements do not apply in respect of:

- 488 (a) a works truck<sup>11</sup>;
- 489 (b) a living van<sup>12</sup>;
- 490 (c) a water cart<sup>13</sup>;
- 491 (d) an agricultural trailer<sup>14</sup> drawn by a motor vehicle<sup>15</sup> which is not driven at a speed in excess of 20 miles per hour<sup>16</sup>;
- 492 (e) an agricultural trailed appliance<sup>17</sup>;
- 493 (f) an agricultural trailed appliance conveyor<sup>18</sup>;
- 494 (g) a broken-down vehicle<sup>19</sup>;
- 495 (h) a heavy motor car, motor car or trailer in an unfinished condition which is proceeding to a workshop for completion<sup>20</sup>;
- 496 (i) a trailer used for or in connection with the carriage of round timber and the rear wheels of any heavy motor car or motor car drawing a semi-trailer<sup>21</sup> so used<sup>22</sup>; or
- 497 (j) a trailer drawn by a motor vehicle the maximum speed<sup>23</sup> of which is restricted<sup>24</sup> to 20 miles per hour or less<sup>25</sup>.

1 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 63(1)(a). For the meaning of 'invalid carriage' see PARA 215 ante.

2 For the meaning of 'heavy motor car' see PARA 213 ante.

3 For the meaning of 'motor car' see PARA 212 ante.

4 For the meaning of 'motor cycle' see PARA 214 ante.

5 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 63(1)(b). For the meaning of 'pedestrian-controlled vehicle' see PARA 290 note 8 ante.

- 7 Ibid reg 63(1)(c).
- 8 Ibid reg 63(1)(d). For the meaning of 'trailer' see PARA 210 ante.
- 9 For the meaning of 'wheel' see PARA 267 note 2 ante.
- 10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 63(2), which is expressed to be subject to reg 63(3), (5). Instead of complying with reg 63(2), a vehicle may comply with EEC Council Directive 78/549 (OJ L168, 26.6.78, p 45) on the approximation of the laws of the member states relating to the wheel guards of motor vehicles (as amended): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 63(5). The requirements of reg 63(2) apply, in the case of a trailer with more than two wheels, only in respect of the rearmost two wheels: reg 63(3).
- 11 Ibid reg 63(4)(a). For the meaning of 'works truck' see PARA 278 note 18 ante.
- 12 Ibid reg 63(4)(b). For the meaning of 'living van' see PARA 295 note 25 ante.
- 13 Ibid reg 63(4)(c).
- 14 For the meaning of 'agricultural trailer' see PARA 271 note 30 ante.
- 15 For the meaning of 'motor vehicle' see PARA 210 ante.
- 16 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 63(4)(d).
- 17 Ibid reg 63(4)(e).
- 18 Ibid reg 63(4)(f). For the meaning of 'agricultural trailed appliance conveyor' see PARA 296 note 6 ante.
- 19 Ibid reg 63(4)(g). As to the meaning of 'broken-down vehicle' see PARA 271 note 36 ante.
- 20 Ibid reg 63(4)(h).
- 21 For the meaning of 'semi-trailer' see PARA 271 note 6 ante.
- 22 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 63(4)(i).
- 23 For the meaning of 'maximum speed' see PARA 278 note 17 ante.
- 24 Ie under the Road Traffic Regulation Act 1984 s 86, Sch 6 (as amended): see PARA 851 post.
- 25 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 63(4)(j).

## UPDATE

### 356 Wings

NOTE 10--Directive 78/549 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(xi) Control of Emissions/357. Spray suppression devices.

### 357. Spray suppression devices.

Every wheeled<sup>1</sup> goods vehicle<sup>2</sup> which is:

- 498 (1) a motor vehicle<sup>3</sup> first used<sup>4</sup> on or after 1 April 1986 having a maximum gross weight<sup>5</sup> exceeding 12,000 kilograms<sup>6</sup>;
- 499 (2) a trailer<sup>7</sup> manufactured on or after 1 May 1985 having a maximum gross weight exceeding 3,500 kilograms<sup>8</sup>; or
- 500 (3) a trailer, whenever manufactured, having a maximum gross weight exceeding 16,000 kilograms and two or more axles<sup>9</sup>,

which is of a class specified in heads (a) to (d) below must not be used on a road<sup>10</sup> on or after the date specified in the relevant head, unless it is fitted, in relation to the wheels<sup>11</sup> on each of its axles, with such containment devices<sup>12</sup> as satisfy the technical requirements and other provisions about containment devices specified in the British Standard Specification<sup>13</sup>, provided that, in the case of a containment device fitted before 1 January 1985, those requirements are deemed to be complied with if that containment device substantially conforms to those requirements<sup>14</sup>. The specified classes and dates are:

- 501 (a) in the case of a trailer manufactured before 1 January 1975, 1 October 1987<sup>15</sup>;
- 502 (b) in the case of a trailer manufactured on or after 1 January 1975 but before 1 May 1985, 1 October 1986<sup>16</sup>;
- 503 (c) in the case of a trailer manufactured on or after 1 May 1985, 1 May 1985<sup>17</sup>;
- and
- 504 (d) in the case of a motor vehicle, 1 April 1986<sup>18</sup>.

These provisions do not apply to:

- 505 (i) a motor vehicle so constructed that the driving power of its engine is, or can by use of its controls be, transmitted to all the wheels on at least one front axle and on at least one rear axle<sup>19</sup>;
- 506 (ii) a motor vehicle of which no part which lies within the specified area<sup>20</sup> is less than 400 millimetres vertically above the ground when the vehicle is standing on reasonably flat ground<sup>21</sup>;
- 507 (iii) a works truck<sup>22</sup>;
- 508 (iv) a works trailer<sup>23</sup>;
- 509 (v) a broken-down vehicle<sup>24</sup>;
- 510 (vi) a motor vehicle which has a maximum speed<sup>25</sup> not exceeding 30 miles per hour<sup>26</sup>;
- 511 (vii) certain vehicles of a kind to which the provisions relating to sideguards apply<sup>27</sup>;
- 512 (viii) a vehicle specially designed, and not merely adapted, for the carriage and mixing of liquid concrete<sup>28</sup>;
- 513 (ix) a vehicle which is being driven or towed to a place where by previous arrangement a device is to be fitted so that it complies with the specified requirements<sup>29</sup>; or
- 514 (x) a vehicle fitted with a spray-suppression system<sup>30</sup> if the spray suppression devices with which the vehicle is equipped are legibly and permanently marked with a designated approval mark<sup>31</sup>.

1 For the meaning of 'wheeled' see PARA 267 note 2 ante.

2 For the meaning of 'goods vehicle' see PARA 271 note 26 ante.

3 For the meaning of 'motor vehicle' see PARA 210 ante.

4 For the meaning of 'first used' see PARA 267 note 5 ante.

- 5 For the meaning of 'maximum gross weight' see PARA 271 note 27 ante.
- 6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 64(1)(a).
- 7 For the meaning of 'trailer' see PARA 210 ante.
- 8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 64(1)(b).
- 9 Ibid reg 64(1)(c). As to the meaning of 'axle' see PARA 279 note 13 ante.
- 10 For the meaning of 'road' see PARA 206 ante.
- 11 For the meaning of 'wheel' see PARA 267 note 2 ante.
- 12 For these purposes, 'containment device' means any device described in the original specification or the amended specification: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 64(4) (definition substituted by SI 1986/1597). 'The original specification' means the British Standard Specification for Spray Reducing Devices for Heavy Goods Vehicles published under the reference BS AU 200: Part 1: 1984 and BS AU 200: Part 2: 1984; and 'the amended specification' means the original specification as amended and published under the reference BS AU 200: Part 1a: 1986 and BS AU 200: Part 2a: 1986: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 64(4) (definitions substituted by SI 1986/1597).
- 13 For these purposes, 'the British Standard Specification' means: (1) in relation to a containment device fitted before 1 May 1987, Part 1a of the amended specification and Part 2 of the original specification; and (2) in relation to a containment device fitted on or after 1 May 1987, Part 1a and Part 2a of the amended specification: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 64(4) (definition substituted by SI 1986/1597).
- 14 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 64(3). Nothing in reg 64 (as amended) derogates from any requirement specified in reg 63 (as amended) (see PARA 356 ante): reg 64(5).
- 15 Ibid reg 64(3), Table item 1.
- 16 Ibid reg 64(3), Table item 2.
- 17 Ibid reg 64(3), Table item 3.
- 18 Ibid reg 64(3), Table item 4.
- 19 Ibid reg 64(2)(a).
- 20 For these purposes, 'the specified area' means the area formed by the overall length of the vehicle and the middle 80% of the shortest distance between the inner edges of any two wheels on opposite sides of the vehicle (such distance being ascertained when the vehicle is fitted with suitable tyres inflated to a pressure recommended by the manufacturer, but excluding any bulging of the tyres near the ground): ibid reg 64(4).
- 21 Ibid reg 64(2)(b).
- 22 Ibid reg 64(2)(c). For the meaning of 'works truck' see PARA 278 note 18 ante.
- 23 Ibid reg 64(2)(d). For the meaning of 'works trailer' see PARA 278 note 6 ante.
- 24 Ibid reg 64(2)(e).
- 25 For the meaning of 'maximum speed' see PARA 278 note 17 ante.
- 26 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 64(2)(f).
- 27 Ibid reg 64(2)(g). The vehicles mentioned in the text are vehicles of a kind specified in reg 51(2)(b)-(h), (j), (k), (o) or (p): see PARA 340 ante.
- 28 Ibid reg 64(2)(h).
- 29 Ibid reg 64(2)(i). The requirements are those specified in reg 64(3): see the text to note 14 supra.
- 30 In accordance with the requirements of EEC Council Directive 91/226 (OJ L103, 23.4.91, p 5) on the approximation of the laws of the member states relating to the spray-suppression systems of certain categories of motor vehicles and their trailers, Annex III.

31 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 64(2A) (added by SI 1992/646). For these purposes, 'designated approval mark' means the marking designated as an approval mark by the Motor Vehicles (Designation of Approval Marks) Regulations 1979, SI 1979/1088, reg 5 and shown in Sch 4 item 30 (as amended): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 64(4) (definition added by SI 1992/646).

## **UPDATE**

### **357 Spray suppression devices**

NOTE 30--Directive 91/226 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(xi) Control of Emissions/358. Maintenance of spray suppression devices.

### **358. Maintenance of spray suppression devices.**

Every part of every containment device<sup>1</sup> with which a vehicle is required to be fitted<sup>2</sup> must at all times when the vehicle is on a road<sup>3</sup> be maintained free from any obvious defect which would be likely to affect adversely the effectiveness of the device<sup>4</sup>.

1 For the meaning of 'containment device' see PARA 357 note 12 ante.

2 Ie by the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 64 (as amended): see PARA 357 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 65.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(xii) Recycling/A. RE-USE AND RECOVERY OF MATERIALS AND COMPONENTS OF VEHICLES/359. Design requirements.

## **(xii) Recycling**

### **A. RE-USE AND RECOVERY OF MATERIALS AND COMPONENTS OF VEHICLES**

#### **359. Design requirements.**

A producer<sup>1</sup> must ensure that materials and components of vehicles<sup>2</sup> put on the market do not contain lead, mercury, cadmium or hexavalent chromium except in specified<sup>3</sup> cases<sup>4</sup>. A producer must at the request of the enforcement authority submit technical documents or other information showing that the materials and components of vehicles put on the market

comply with these requirements<sup>5</sup> and must ensure that he keeps the information necessary for him to submit to the enforcement authority<sup>6</sup> such documents for a period of four years from the date that he puts the materials and components on the market<sup>7</sup>. Where the enforcement authority has reasonable grounds for suspecting that any or all of the above requirements<sup>8</sup> have not been complied with, it may serve a compliance notice on the producer<sup>9</sup>.

Anyone who contravenes any of the above requirements<sup>10</sup> is guilty of an offence<sup>11</sup>. However, in proceedings against any person for such an offence it is a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence<sup>12</sup>. Where in any proceedings against any person for such an offence the defence of due diligence involves an allegation that the commission of the offence was due to the act or default of another; or to reliance on information given by another, that person is not, without the leave of the court, entitled to rely on the defence unless, not less than seven clear days before the hearing of the proceedings, he has served a notice on the person bringing the proceedings<sup>13</sup>. A person is not entitled to rely on the defence of due diligence by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular: (1) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and (2) to whether he had any reason to disbelieve the information<sup>14</sup>.

Where the commission by any person of an offence under these provisions is due to the act or default committed by some other person in the course of any business of his, the other person is guilty of the offence and may be proceeded against and punished whether or not proceedings are taken against the first-mentioned person<sup>15</sup>. Where a body corporate is guilty of such an offence<sup>16</sup> in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly<sup>17</sup>.

The enforcement authority must not commence proceedings for an offence under these provisions unless a compliance notice has been served on the producer and the time limit specified for compliance in the compliance notice has expired<sup>18</sup>.

1 'Producer' means the vehicle manufacturer or the professional importer of a vehicle into a member state: End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 2.

2 'Vehicle' means any vehicle designated as category M1 or N1 defined in EEC Council Directive 70/156 (OJ L42, 23.2.1970, p 1) relating to the type-approval of motor vehicles and their trailers, Annex IIA, and three wheel motor vehicles as defined in EEC Council Directive 92/61 (OJ L225, 10.8.92, p 72) relating to the type-approval of two or three wheel motor vehicles, but excluding motor tricycles: End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 2. These regulations apply to vehicles and end-of-life vehicles including their components and materials: reg 3(1). 'End-of-life vehicle' means a vehicle which is waste within the meaning of EC Council Directive 75/442 (OJ L194, 25.7.75, p 39) on waste ('the Waste Directive') art 1(a): End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 2. Part VII (regs 44-50) applies also to waste motor vehicles as defined in reg 50: reg 3(2). Only the provisions of Pt VII apply to three-wheel motor vehicles: reg 3(4). As to Pt VII, relating to site licences for the keeping and treatment of waste motor vehicles, see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 651.

The regulations apply irrespective of how the vehicle has been serviced or repaired during use and irrespective of whether it is equipped with components supplied by the producer or with other components whose fitting as spare or replacement parts accords with the appropriate Community or domestic provisions: reg 3(3).

3 *Ibid* in the cases listed in *ibid* Sch 1.

4 *Ibid* reg 6. The End-of-Life Vehicles Regulations 2003, SI 2003/2635 (as amended) partially implement EC Parliament and Council Directive 2000/53 (OJ L 269, 21.10.2000, p 34) on end-of-life vehicles.

5 End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 7.

6 It is the duty of the Secretary of State to enforce *ibid* Pt III (regs 6-13) and Pt IV (regs 14-26) (see PARA 360 post) and in carrying out his duties he may appoint the Vehicle Certification Agency, an executive agency of the Department for Transport: reg 25. As to the Vehicle Certification Agency see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 511.

7 *Ibid* reg 8.

8 *Ie* the requirements of *ibid* regs 6-8: see the text and notes 1-7 *supra*.

9 *Ibid* reg 9(1). A compliance notice must: (1) state that the enforcement authority suspects a requirement of Pt III has been contravened; (2) specify the reason it is suspected that a requirement of Pt III has been contravened and give particulars thereof; (3) require the producer to whom notice is given: (a) to comply with the requirements of the regulations where it is suspected that he is in breach; or (b) to provide evidence to the satisfaction of the enforcement authority that the requirements of the regulations have been met; (4) specify the period of time within which the producer must comply with the notice issued by the enforcement authority; and (5) warn the producer that unless the requirement is complied with, or satisfactory evidence has been provided within the period specified in the notice, he may be prosecuted under reg 10 (see the text and notes 10-11 *infra*): reg 9(2).

10 *Ie* the requirements of *ibid* reg 6, 7 or 8: see reg 10(a)-(c).

11 *Ibid* reg 10. A person guilty of an offence or contravening a requirement of reg 6 is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine: regs 10(a), 11(1). A person guilty of an offence of contravening reg 7 or reg 8 is liable on summary conviction to a fine not exceeding level 5 on the standard scale: regs 10(b), (c), 11(2). With reference to a fine or penalty on summary conviction for an offence, the 'statutory maximum' means the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (amended by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58(b)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140. The 'prescribed sum', in relation to the penalty provided for an offence, means £5,000 or such other sum as is for the time being substituted therefor by an order in force under the Magistrates' Courts Act 1980 s 143(1) (as substituted): s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)(c)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141. If it appears to the Secretary of State that there has been a change in the value of money since the relevant date, he may by order substitute for the sum for the time being specified in the Magistrates' Courts Act 1980 s 32(9) (as amended) such other sum as appears to him justified by the change: s 143(1), (2)(b) (substituted by the Criminal Justice Act 1982 s 48(1)). As to the standard scale see PARA 230 note 3 *ante*.

12 End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 12(1).

13 *Ibid* reg 12(2). Such a notice must give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it: reg 12(3).

14 *Ibid* reg 12(4).

15 *Ibid* reg 13(1).

16 *Ie* including where it is so guilty by virtue of *ibid* reg 13(1): see the text and note 15 *supra*.

17 *Ibid* reg 13(2). Where the affairs of a body corporate are managed by its members, reg 13(2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: reg 13(3).

18 *Ibid* reg 26(1).

## UPDATE

### 359 Design requirements

NOTE 2--SI 2003/2635 reg 3(2) revoked, reg 3(4) substituted: SI 2007/3538.

1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(xii) Recycling/A. RE-USE AND RECOVERY OF MATERIALS AND COMPONENTS OF VEHICLES/360. Information requirements.

### **360. Information requirements.**

A producer<sup>1</sup> must use specified material and component coding standards<sup>2</sup> to facilitate the identification of those materials and components suitable for reuse<sup>3</sup> and recovery<sup>4</sup>. A producer must at the request of the enforcement authority<sup>5</sup> submit information showing that material and component coding standards have been used<sup>6</sup>, and must ensure that he keeps the information necessary for him to comply with a request from the enforcement authority to submit such information for a period of four years from the date that he puts the materials and/or components on the market<sup>7</sup>.

A producer must provide dismantling information<sup>8</sup> for each type of new vehicle<sup>9</sup> put on the market within six months after the date that vehicles of that type are first put on the market and at the request of the enforcement authority submit to it such dismantling information<sup>10</sup>. The dismantling information must identify, in so far as it is needed by treatment facilities, the different materials and components of the vehicle, and the location of all hazardous substances<sup>11</sup> in the vehicle in order to achieve the objectives of the relevant European legislation<sup>12</sup>, namely, the reuse of components which are suitable for reuse, the recovery of components which cannot be reused and giving preference to recycling when environmentally viable, without prejudice to requirements regarding the safety of vehicles and environmental requirements such as air emissions and noise control<sup>13</sup>.

A producer of components used in vehicles must make available to authorised treatment facilities<sup>14</sup>, upon request from those facilities, information concerning dismantling, storage and testing of components which can be reused<sup>15</sup>.

A producer must publish information on:

- 515 (1) the design of vehicles and their components with a view to their recoverability and recyclability;
- 516 (2) the environmentally sound treatment of end-of-life vehicles, in particular the removal of all fluids and dismantling;
- 517 (3) the development and optimisation of ways to reuse, recycle and recover end-of-life vehicles and their components;
- 518 (4) the progress achieved with regard to recovery and recycling to reduce the waste to be disposed of and to increase the recovery and recycling rates<sup>16</sup>.

A producer must make such information accessible to prospective buyers of vehicles, and include the information in promotional literature used in the marketing of new vehicles<sup>17</sup>.

Where an enforcement authority has reasonable grounds for suspecting that any or all of the requirements of specified regulations<sup>18</sup> have not been complied with, it may serve a compliance notice on the producer<sup>19</sup>. A producer who fails to comply with any or all of the legal requirements to submit information showing that material and component coding standards have been used<sup>20</sup>, to provide dismantling information<sup>21</sup>, and to publish and make available information<sup>22</sup>, is guilty of an offence<sup>23</sup>. The enforcement authority must not commence proceedings for such an offence unless a compliance notice has been served on the producer and the time limit specified for compliance in the compliance notice has expired<sup>24</sup>.

1 For the meaning of 'producer' see PARA 359 note 1 ante.



2     Ie those referred to in the End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 15. For the purposes of reg 14, 'material and component coding standards' means the standards established by the Commission pursuant to EC Parliament and Council Directive 2000/53 (OJ L269, 21.10.2000, p 34) on end-of-life vehicles, art 8(2) in accordance with the procedure laid down in art 11: End-of-Life Vehicles Regulations 2003, SI 2003/2635, regs 2, 15. As to the nomenclature of the material and component coding standards for end-of-life vehicles in accordance with EC Commission Decision 138/2003 (OJ L53, 28.2.2003, p 58) see the End-of-Life Vehicles Regulations 2003, SI 2003/2635, Sch 2.

3     'Reuse' means any operation by which components of end-of-life vehicles are used for the same purpose for which they were conceived: *ibid* reg 2. For the meaning of 'end-of-life vehicle' see PARA 359 note 2 *ante*.

4     *Ibid* reg 14. 'Recovery' means any of the applicable operations provided for in EC Council Directive 75/442 (OJ L194, 25.7.75, p 39) on waste ('the Waste Directive') Annex IIB: End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 2.

5     As to the enforcement authority see PARA 359 note 6 *ante*.

6     End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 16.

7     *Ibid* reg 17.

8     'Dismantling information' means all information required for the correct and environmentally sound treatment of end-of-life vehicles: *ibid* reg 2. 'Treatment' means any activity after the end-of-life vehicle has been handed over to a facility for depollution, dismantling, shearing, shredding, recovery or preparation for disposal of the shredder wastes, and any other operation carried out for the recovery and/or disposal of the end-of-life vehicle and its components; and 'treated' is to be construed accordingly: reg 2.

9     For the meaning of 'vehicle' see PARA 359 note 2 *ante*.

10    End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 18(1).

11    'Hazardous substance' means any substance which is considered to be dangerous under EEC Directive 67/548 (OJ 196, 16.8.1967, p 1): End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 2. See ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 651.

12    Ie in EC Parliament and Council Directive 2000/53 (OJ L 269, 21.10.2000, p 34) art 7.

13    End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 18(2).

14    'Authorised treatment facility' means any establishment or undertaking carrying out treatment operations which holds a site licence that meets the requirements of *ibid* P VII (regs 44-50) and Sch 5 in compliance with EC Parliament and Council Directive 2000/53 (OJ L 269, 21.10.2000, p 34) art 6 and the Waste Directive arts 9, 10 and 11: End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 2.

15    *Ibid* reg 19(1). This obligation is without prejudice to any duty of confidence in respect of industrial or commercial information apart from that imposed by the End-of-Life Vehicles Regulations 2003, SI 2003/2635 (as amended): reg 19(2).

16    *Ibid* reg 20(1).

17    *Ibid* reg 20(2).

18    Ie *ibid* reg 16 (see the text and notes 5-6 *supra*), reg 18 (see the text and notes 8-13 *supra*), reg 20 (see the text and notes 16-17 *supra*): see reg 21(a)-(c).

19    *Ibid* reg 21. Such a notice must: (1) state that the enforcement authority suspects that a requirement of Pt IV (regs 14-26) has been contravened; (2) specify the reason it is suspected that a requirement of Pt IV has been contravened and give particulars thereof; (3) require the producer to comply with the requirement; (4) specify the period of time within which the producer must comply with the requirement; and (5) warn the producer that unless the requirement is complied with or satisfactory evidence has been provided within the period specified in the notice he may be prosecuted under reg 23 (see the text and notes 20-23 *infra*): reg 22.

20    Ie *ibid* reg 16 (see the text and notes 5-6 *supra*).

21    Ie *ibid* reg 18 (see the text and notes 8-13 *supra*).

22    Ie *ibid* reg 20 (see the text and notes 16-17 *supra*).

23 Ibid reg 23. A producer who is guilty of an offence under reg 23 is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 24. As to the standard scale see PARA 230 note 3 ante.

24 Ibid reg 26(1).

## UPDATE

### 360 Information requirements

NOTE 11--From 1 June 2015, Directive 67/548 is repealed and replaced by Regulation 1272/2008: art 60. The regulation comes into effect in phases starting 1 December 2010: for full transitional provisions see: art 61.

NOTE 14--Definition of 'authorised treatment facility' substituted: SI 2003/2635 reg 2 (amended by SI 2007/3538). SI 2003/2635 Pt VII (ss 44-50) revoked: SI 2007/3538.

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#### 361. Certificate of destruction.

When an authorised treatment facility<sup>1</sup> accepts delivery of an end-of-life vehicle<sup>2</sup> transferred to it for treatment<sup>3</sup>, it must issue a certificate of destruction<sup>4</sup> to the last holder or owner of the vehicle<sup>5</sup> and it must not impose any charge on the last holder or owner of an end-of-life vehicle for the issue of a certificate of destruction<sup>6</sup>. A certificate of destruction is validly issued for these purposes only where it is issued by an authorised treatment facility and it meets the statutory requirements<sup>7</sup>.

Any person who contravenes a requirement of any of the above provisions<sup>8</sup> is guilty of an offence<sup>9</sup>.

A certificate of destruction validly issued: (1) by an authorised treatment facility in another EEA state<sup>10</sup> or in Gibraltar; or (2) where permitted by a licensing authority in another EEA state or in Gibraltar, by a producer, dealer or collector on behalf of an authorised treatment facility, in accordance with the relevant European legislation<sup>11</sup> has legal effect and all rights, powers, liabilities, obligations and restrictions arising out of or incidental to such certificates or their issue are to be recognised and available in law, and are to be enforced, allowed and followed accordingly<sup>12</sup>.

1 For the meaning of 'authorised treatment facility' see PARA 360 note 14 ante.

2 For the meaning of 'end-of-life vehicle' and 'vehicle' see PARA 359 note 2 ante.

3 For the meaning of 'treatment' see PARA 360 note 8 ante.

4 The certificate of destruction issued by the authorised treatment facility on the form which is to be approved by the Secretary of State, must contain at least the information listed in the End-of-Life Vehicles Regulations 2003, SI 2003/2635, Sch 3, which sets out EC Council Decision 2002/151 (OJ L50, 21.2.2002, p 94) Annex concerning certificates of destruction: End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 29 (amended by SI 2005/263).

5 End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 27.

6 Ibid reg 28.

7 Ibid reg 29A (added by SI 2005/263). The requirements are those of the End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 29 (as amended).

8 Ie a requirement of ibid reg 27, reg 28, or reg 29A (as added).

9 Ibid reg 31. A person guilty of an offence under reg 31 is liable on summary conviction to a fine not exceeding level 3 on the standard scale: reg 32. As to the standard scale see PARA 230 note 3 ante. In Great Britain, it is the duty of the Secretary of State to enforce Pt V (regs 27-36): see reg 30.

10 'An EEA state' means a state which is a contracting party to the EEA Agreement; and the EEA Agreement means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (Cm 2073) as adjusted by the Protocol signed at Brussels on 17 March 1993: End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 2.

11 Ie EC Parliament and Council Directive 2000/53 (OJ L269, 21.10.2000, p 34) on end-of-life vehicles, art 5(3) and EC Council Decision 2002/151 (OJ L50, 21.2.2002, p 94).

12 End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 33.

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### **362. Re-use and recovery of materials and components of vehicles: disclosure of information.**

A person is guilty of an offence if he discloses any information which was obtained by him from the register<sup>1</sup>. This does not, however, apply to a disclosure made:

519 (1) to any of the following authorities: (a) the Secretary of State; (b) the Environment Agency; (c) the Scottish Environment Protection Agency; (d) the Director General of Fair Trading; (e) a local weights and measures authority; (f) in Northern Ireland the Department of Enterprise, Trade and Investment or the Department of the Environment; (g) the Scottish Ministers; or

520 (2) to a motor vehicle insurance company; or

521 (3) in connection with the investigation of any criminal offence or for the purposes of any civil or criminal proceedings<sup>2</sup>.

1 End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 35(1). A person guilty of an offence under reg 35 is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine: reg 35(3). As to the statutory maximum see PARA 359 note 11 ante. 'Register' means the record kept by or on behalf of the Secretary of State for Transport of the vehicles registered by him in Great Britain or in Northern Ireland under the Vehicle Excise and Registration Act 1994 s 21 (see PARA 519 post): End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 36(1), (2). As to the register see PARA 519 et seq post. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Ibid reg 35(1).

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1663)/2. CONSTRUCTION OF VEHICLES/(2) CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF VEHICLES/(xii) Recycling/B. REGISTRATION OF VEHICLE PRODUCERS/363. Registration of producers.

## ***B. REGISTRATION OF VEHICLE PRODUCERS***

### **363. Registration of producers.**

Each producer<sup>1</sup> was required by 30 April 2005 to apply to the Secretary of State<sup>2</sup> for registration and declare responsibility for those vehicles which he had placed on the market before the date of his application for registration<sup>3</sup>. From 1 May 2005 each producer must apply to the Secretary of State for registration and declare responsibility for those vehicles which he places on the market, which were not the subject of a previous application for registration before 30 April 2005, within six months of placing those vehicles on the market<sup>4</sup>. Where a producer's application for registration meets the specified requirements, the Secretary of State must, within 28 days of receipt of the application for registration<sup>5</sup>, notify the producer that his application for registration has been granted<sup>6</sup>. Where a producer's application for registration is refused, the Secretary of State must notify the producer in writing within 28 days of that decision together with the reasons for the decision<sup>7</sup>.

Where a producer who has made a declaration under these provisions subsequently ceases to place vehicles on the market he must inform the Secretary of State within 28 days of the change in his circumstances<sup>8</sup>. A registered producer must inform the Secretary of State of any change in circumstances which relate to his registration (except those relating to the Secretary of State's decision to ascribe responsibility to a producer in respect of vehicles placed on the market<sup>9</sup>) within 28 days of the occurrence of any change<sup>10</sup>. The details provided by a producer in compliance with these obligations are to be included in the register of producers to be maintained by the Secretary of State<sup>11</sup>. A producer who has made a declaration is to be treated as remaining responsible for the vehicles in respect of which a declaration has been made<sup>12</sup>, but special provisions apply where the business of a producer is transferred in whole or in part to another person<sup>13</sup>.

The Secretary of State has the power to ascribe responsibility to a producer in respect of vehicles which have been placed on the market where no producer has made a declaration of responsibility<sup>14</sup>.

Each producer must establish a system for the collection of the vehicles for which he has declared responsibility for placing on the market, or for which the Secretary of State has ascribed responsibility to him, which the producer anticipates will become end-of-life vehicles<sup>15</sup>. A producer's system for collection must be reasonably accessible to any person who wants to deliver an end-of-life vehicle to it for which that producer is responsible<sup>16</sup>, and it must contain sufficient capacity to treat those end-of-life vehicles for which he is responsible<sup>17</sup>.

Each producer<sup>18</sup> is required to attain specified reuse, recovery and recycling targets in respect of those end-of-life vehicles treated at authorised treatment facilities which comprise all or part of the system he has established for collection of vehicles<sup>19</sup>, and where those targets have been attained, the producer or authorised treatment facility must send a certificate of compliance to the Secretary of State<sup>20</sup>.

The Secretary of State must maintain and make available a register relating to those producers who register in accordance with the above requirements and containing prescribed<sup>21</sup> information<sup>22</sup>.

Enforcement of these provisions is the responsibility of the Secretary of State, who may appoint the Environment Agency to act on his behalf<sup>23</sup>, and powers of entry and inspection are given to the Secretary of State and any person appointed by him to act on his behalf<sup>24</sup>. There is a

compliance notice procedure<sup>25</sup>, and failure to comply with the statutory requirements is an offence<sup>26</sup>.

The Secretary of State has power to enter into agreements to implement the detailed rules of the European legislation<sup>27</sup>, where he is satisfied that it will achieve one or more of the objectives<sup>28</sup> of that legislation<sup>29</sup>, and to enforce such agreements<sup>30</sup>.

1 'Producer' means the vehicle manufacturer or the professional importer of a vehicle into the United Kingdom: End-of-Life Vehicles (Producer Responsibility) Regulations, SI 2005/263, reg 2. 'Vehicle' means any vehicle designated as category M1 or N1 defined in EEC Council Directive 70/156 (OJ L42, 23.2.1970, p 1) relating to the type-approval of motor vehicles and their trailers, Annex IIA, and three-wheel motor vehicles as defined in EC Parliament and Council Directive 2002/24 (OJ L124, 9.5.2002, p 1) relating to the type-approval of two- or three-wheel motor vehicles, but excluding motor tricycles: End-of-Life Vehicles (Producer Responsibility) Regulations, SI 2005/263, reg 2.

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 End-of-Life Vehicles (Producer Responsibility) Regulations, SI 2005/263, reg 7(1). The regulations implement European Parliament and Council Directive 2000/53 (OJ L269, 21.10.2000, p 34) on end-of-life vehicles, arts 5(1), (2), (4), 7. The End-of-Life Vehicles (Producer Responsibility) Regulations, SI 2005/263, apply to vehicles and end-of-life vehicles including their components and materials (reg 3(1)) and apply irrespective of how the vehicle has been serviced or repaired during use and irrespective of whether it is equipped with components supplied by the producer or with other components whose fitting as spare or replacement parts accords with the appropriate Community or domestic provisions (reg 3(2)). 'End-of-life vehicle' means a vehicle which is waste within the meaning of EC Council Directive 75/442 (OJ L194, 25.7.75, p 39) on waste ('the Waste Directive') art 1(a): End-of-Life Vehicles (Producer Responsibility) Regulations, SI 2005/263, reg 2. Nothing in the regulations affects the application of existing Community legislation and relevant national legislation, in particular as regards safety standards, air emissions, noise controls and the protection of soil and water: reg 4.

4 Ibid reg 7(2). An application by a producer to register must be made in writing and contain at least the information set out in Sch 1: reg 7(4).

5 The time limit was 21 days after receipt in the case of an application for registration made under ibid reg 7(1) (see the text and notes 1-3 supra).

6 Ibid reg 7(7).

7 Ibid reg 7(8).

8 Ibid reg 7(3).

9 Ie those mentioned in ibid reg 8 (see the text and note 14 infra).

10 Ibid reg 7(9).

11 Ibid reg 7(5).

12 Ibid reg 7(6).

13 See ibid reg 9.

14 See ibid reg 8, Sch 2.

15 Ibid reg 10(1). As to the particulars of the system see reg 10(2)-(7), Sch 3. Regulation 10(6) does not apply to three-wheel motor vehicles: reg 6. As to approval by the Secretary of State see reg 13. Where a producer has submitted an application for approval of his system and it is anticipated that the number of end-of-life vehicles will change in a subsequent year, he must submit a revised application for approval of the system: see reg 14.

16 Ibid reg 11.

17 Ibid reg 12.

18 Where an authorised treatment facility treats end-of-life vehicles which it is not obliged to treat under an agreement between the owner or operator of that facility and a producer, the owner or operator of that

authorised treatment facility must attain the targets for reuse, recovery and recycling: reg 18(3). 'Authorised treatment facility' means any establishment or undertaking carrying out treatment operations which holds a site licence that meets the requirements of the End-of-Life Vehicles Regulations 2003, SI 2003/2635, Pt VII (regs 44-50) and Sch 5 (see PARA 360 note 14 ante): End-of-Life Vehicles (Producer Responsibility) Regulations, SI 2005/263, reg 2.

19 See *ibid* reg 18. Regulations 18-20 do not apply to special-purpose vehicles as defined in EEC Council Directive 70/156 (OJ L42, 23.2.70, p 1) art 4(1)(a), 2nd indent, or to three-wheel motor vehicles: End-of-Life Vehicles (Producer Responsibility) Regulations, SI 2005/263, regs 5, 6.

20 *Ibid* reg 19(1). As to details of the certificate see reg 19(2), (3), Sch 4; and as to approval of persons to issue certificates of compliance see reg 20.

21 *Ie* as prescribed in *ibid* Sch 5.

22 *Ibid* reg 21(1). See further reg 21(2)-(6).

23 *Ibid* reg 24(1), (4), (5). As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 *et seq*.

24 See *ibid* reg 22, Sch 6.

25 *Ibid* reg 16. As to the content of the compliance notice see reg 17.

26 See *ibid* reg 23. A person guilty of an offence under reg 23 is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine: reg 25. As to the statutory maximum see PARA 359 note 11 *ante*.

27 *Ie* European Parliament and Council Directive 2000/53 (OJ L 269, 21.10.2000, p 34) art 5(4).

28 *Ie* as set out in *ibid* art 1.

29 End-of-Life Vehicles (Producer Responsibility) Regulations, SI 2005/263, reg 26.

30 *Ibid* reg 27. Failure to comply with the terms of an agreement is treated as if it were a breach of the End-of-Life Vehicles (Producer Responsibility) Regulations, SI 2005/263, and a person failing to comply is guilty of an offence: reg 27(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine: reg 27(2).

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### **(3) PLATES, MARKINGS, TESTING AND INSPECTION**

#### **(i) Plates**

#### **364. Plates for goods vehicles and buses.**

Every vehicle being:

522 (1) a wheeled<sup>1</sup> heavy motor car<sup>2</sup> or motor car<sup>3</sup> first used<sup>4</sup> on or after 1 January 1968 not being: (a) a dual-purpose vehicle<sup>5</sup>; (b) an agricultural motor vehicle<sup>6</sup>; (c) a works truck<sup>7</sup>; (d) a pedestrian-controlled vehicle<sup>8</sup>; (e) save as provided in head (2) below, a passenger vehicle<sup>9</sup>; or (f) a vehicle which is an exempted vehicle<sup>10</sup>;

523 (2) a bus<sup>11</sup>, whether or not it is an articulated bus<sup>12</sup>, first used on or after 1 April 1982<sup>13</sup>;

- 524 (3) a wheeled locomotive<sup>14</sup> or motor tractor<sup>15</sup> first used on or after 1 April 1973 not being: (a) an agricultural motor vehicle<sup>16</sup>; (b) an industrial tractor<sup>17</sup>; (c) a works truck<sup>18</sup>; (d) engineering plant<sup>19</sup>; or (e) a pedestrian-controlled vehicle<sup>20</sup>;
- 525 (4) a wheeled trailer<sup>21</sup> manufactured on or after 1 January 1968 which exceeds 1,020 kilograms in weight unladen<sup>22</sup> not being: (a) a trailer not constructed or adapted to carry any load, other than plant or special appliances or apparatus which is a permanent or essentially permanent fixture, and not exceeding 2,290 kilograms in total weight<sup>23</sup>; (b) a living van<sup>24</sup> not exceeding 2,040 kilograms in weight unladen and fitted with pneumatic tyres<sup>25</sup>; (c) a works trailer<sup>26</sup>; (d) certain trailers to which the braking provisions do not apply<sup>27</sup>; or (e) a trailer which was manufactured and used outside Great Britain<sup>28</sup> before it was first used in Great Britain<sup>29</sup>; and
- 526 (5) a converter dolly<sup>30</sup> manufactured on or after 1 January 1979<sup>31</sup>,

must be equipped with a plate securely attached to the vehicle in a conspicuous and readily accessible position which either: (i) contains the required particulars relating to a motor vehicle<sup>32</sup> or, as the case may be, a trailer<sup>33</sup>, and complies with the relevant provisions<sup>34</sup>; or (ii) complies with the relevant European requirements<sup>35</sup>.

- 1 For the meaning of 'wheeled' see PARA 267 note 2 ante.
- 2 For the meaning of 'heavy motor car' see PARA 213 ante.
- 3 For the meaning of 'motor car' see PARA 212 ante.
- 4 For the meaning of 'first used' see PARA 267 note 5 ante.
- 5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 66(1)(a)(i). For the meaning of 'dual-purpose vehicle' see PARA 271 note 28 ante.
- 6 Ibid reg 66(1)(a)(ii). For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.
- 7 Ibid reg 66(1)(a)(iii). For the meaning of 'works truck' see PARA 278 note 18 ante.
- 8 Ibid reg 66(1)(a)(iv). For the meaning of 'pedestrian-controlled vehicle' see PARA 290 note 8 ante.
- 9 Ibid reg 66(1)(a)(v). For the meaning of 'passenger vehicle' see PARA 287 note 8 ante.
- 10 Ibid reg 66(1)(a)(vi) (added by SI 1996/3017). Exempted vehicles are vehicles exempt from the Road Traffic Act 1988 s 63(1): see PARA 700 post.
- 11 For the meaning of 'bus' see PARA 271 note 6 ante.
- 12 For the meaning of 'articulated bus' see PARA 271 note 6 ante.
- 13 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 66(1)(b).
- 14 For the meaning of 'locomotive' see PARA 217 note 3 ante.
- 15 For the meaning of 'motor tractor' see PARA 216 ante.
- 16 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 66(1)(c)(i).
- 17 Ibid reg 66(1)(c)(ii). For the meaning of 'industrial tractor' see PARA 278 note 17 ante.
- 18 Ibid reg 66(1)(c)(iii).
- 19 Ibid reg 66(1)(c)(iv). For the meaning of 'engineering plant' see PARA 271 note 11 ante.
- 20 Ibid reg 66(1)(c)(v).
- 21 For the meaning of 'trailer' see PARA 210 ante.

- 22 For the meaning of 'unladen weight' see PARA 271 note 21 ante.
- 23 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 66(1)(d)(i).
- 24 For the meaning of 'living van' see PARA 295 note 25 ante.
- 25 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 66(1)(d)(ii). For the meaning of 'pneumatic tyre' see PARA 271 note 11 ante.
- 26 Ibid reg 66(1)(d)(iii). For the meaning of 'works trailer' see PARA 278 note 6 ante.
- 27 Ibid reg 66(1)(d)(iv). The trailers referred to in the text are those which are mentioned in reg 16(3)(b)-(g) (as amended): see PARA 287 ante.
- 28 For the meaning of 'Great Britain' see PARA 205 note 3 ante.
- 29 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 66(1)(d)(v).
- 30 For the meaning of 'converter dolly' see PARA 271 note 25 ante.
- 31 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 66(1)(e).
- 32 Ie the particulars required by ibid Sch 8 Pt I.
- 33 Ie the particulars required by ibid Sch 8 Pt II (amended by SI 1991/1526).
- 34 Ie the requirements of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 8 Pt III (amended by SI 1990/1131; SI 2001/306).
- 35 See the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 66(2), (4)-(7) (reg 66(5)-(7) added by SI 1998/3112). The relevant European requirements are those specified in the Annex to EEC Commission Directive 78/507 (OJ L155, 13.6.78, p 31) adapting to technical progress EEC Council Directive 76/114 (OJ L24, 30.1.76, p 1) or, in the case of a vehicle first used before 1 October 1982, in the Annex to EEC Council Directive 76/114 (OJ L24, 30.1.76, p 1) on the approximation of the laws of the member states relating to statutory plates and inscriptions for motor vehicles and their trailers, and their location and method of attachment, such requirements being in any case modified as provided in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 66(3); reg 66(2). As to compliance with European legislation see PARA 270 ante.

## **UPDATE**

### **364 Plates for goods vehicles and buses**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 35--Directive 76/114 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

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### **365. Vehicle identification numbers.**



A wheeled<sup>1</sup> vehicle which is first used<sup>2</sup> on or after 1 April 1980 and to which the provisions relating to type approval<sup>3</sup> apply must be equipped with a plate which is in a conspicuous and readily accessible position, is affixed to a vehicle part which is not normally subject to replacement and shows clearly and indelibly<sup>4</sup>:

- 527 (1) the vehicle identification number<sup>5</sup>;
- 528 (2) the name of the manufacturer<sup>6</sup>; and
- 529 (3) the approval reference number of either: (a) the type approval certificate which relates to the vehicle model or the model variant of the vehicle model, as the case may be<sup>7</sup>; or (b) the Minister's approval certificate which relates to the vehicle<sup>8</sup>.

The information required under head (3) above may be shown clearly and indelibly on an additional plate which is fitted in a conspicuous and readily accessible position and which is affixed to a vehicle part which is not normally subject to replacement<sup>9</sup>.

The vehicle identification number of every such vehicle must be marked on the chassis, frame or other similar structure, on the off side of the vehicle, in a clearly visible and accessible position, and by a method such as hammering or stamping, in such a way that it cannot be obliterated or deteriorate<sup>10</sup>.

1 For the meaning of 'wheeled' see PARA 267 note 2 ante.

2 For the meaning of 'first used' see PARA 267 note 5 ante.

3 Ie the Motor Vehicles (Type Approval) Regulations 1980, SI 1980/1182 (as amended).

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 67(1), (2).

5 Ibid reg 67(2)(a). The vehicle identification number must be in accordance with the requirements specified: (1) in the case of a vehicle first used before 1 April 1987, in EEC Council Directive 76/114 (OJ L24, 30.1.76, p 1) on the approximation of the laws of the member states relating to statutory plates and inscriptions for motor vehicles and their trailers, and their location and method of attachment, Annex paras 3.1.1, 3.1.2; or (2) in any case, EEC Commission Directive 78/507 (OJ L155, 13.6.78, p 31) adapting to technical progress EEC Council Directive 76/114 (OJ L24, 30.1.76, p 1), Annex sections 3, 4: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 67(2)(a)(i), (ii).

6 Ibid reg 67(2)(b).

7 Ibid reg 67(2)(c)(i). The type approval certificate is issued in accordance with the provisions of the Type Approval (Great Britain) Regulations 1980, SI 1980/1182, reg 9(1), Sch 3 Pt I.

8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 67(2)(c)(ii). As to Minister's approval certificates see the Motor Vehicles (Type Approval) (Great Britain) Regulations 1984, SI 1984/981, reg 9(2), Sch 4 Pt 1A (as added); and see PARA 700 post.

9 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 67(2), proviso.

10 Ibid reg 67(3).

## **UPDATE**

### **365 Vehicle identification numbers**

NOTE 5--Directive 76/114 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

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### **366. Plates on agricultural trailed appliances.**

Every wheeled<sup>1</sup> agricultural trailed appliance<sup>2</sup> manufactured on or after 1 December 1985 must be equipped with a plate which is affixed to the vehicle in a conspicuous and readily accessible position and which is clearly and indelibly marked with the following particulars<sup>3</sup>:

- 530 (1) the name of the manufacturer of the appliance<sup>4</sup>;
- 531 (2) the year in which the appliance was manufactured<sup>5</sup>;
- 532 (3) the maximum gross weight<sup>6</sup>;
- 533 (4) the unladen weight<sup>7</sup>; and
- 534 (5) the maximum load which would be imposed by the appliance on the drawing vehicle<sup>8</sup>.

In the case of a towed roller consisting of several separate rollers used in combination, a single plate satisfies the above requirement<sup>9</sup>.

- 1 For the meaning of 'wheeled' see PARA 267 note 2 ante.
- 2 For the meaning of 'agricultural trailed appliance' see PARA 271 note 21 ante.
- 3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 68(1).
- 4 Ibid reg 68(2)(a).
- 5 Ibid reg 68(2)(b).
- 6 Ibid reg 68(2)(c). For the meaning of 'maximum gross weight' see PARA 271 note 27 ante.
- 7 Ibid reg 68(2)(d). For the meaning of 'unladen weight' see PARA 271 note 21 ante.
- 8 Ibid reg 68(2)(e).
- 9 Ibid reg 68(3).

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### **367. Plates for motor cycles.**

Every motor cycle<sup>1</sup> first used<sup>2</sup> on or after 1 August 1977 which is not:

- 535 (1) propelled by an internal combustion engine with a cylinder capacity exceeding 150 cubic centimetres if the vehicle was first used before 1 January 1982 or 125 cubic centimetres if it was first used on or after 1 January 1982<sup>3</sup>;
- 536 (2) a mowing machine<sup>4</sup>; or
- 537 (3) a pedestrian-controlled vehicle<sup>5</sup>,

must be equipped with a plate which is securely affixed to the vehicle in a conspicuous and readily accessible position and which complies with the following requirements<sup>6</sup>.

The plate so required must be firmly attached to a part of the motor cycle which is not normally subject to replacement during the life of the motor cycle<sup>7</sup>. The plate must be in the form of the prescribed diagram<sup>8</sup>, have dimensions not less than 30 millimetres in width by 50 millimetres<sup>9</sup> in height and must show the manufacturer's name, the category<sup>10</sup>, details relating to engine capacity, weight and speed<sup>11</sup>, and the vehicle identification number (VIN)<sup>12</sup>.

The information on the plate must be shown in characters not less than 4 millimetres in height and in the positions on the plate indicated in the prescribed diagram<sup>13</sup>.

No information, other than that provided for in the prescribed diagram, is to be marked within the rectangle which is shown in that diagram<sup>14</sup>.

1 For the meaning of 'motor cycle' see PARA 214 ante.

2 For the meaning of 'first used' see PARA 267 note 5 ante.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 69(1)(a).

4 Ibid reg 69(1)(b).

5 Ibid reg 69(1)(c). For the meaning of 'pedestrian-controlled vehicle' see PARA 290 note 8 ante.

6 Ibid reg 69(2).

7 Ibid reg 69(2), Sch 9 para 1.

8 For the prescribed form of diagram see ibid Sch 9 para 2.

9 In the case of a plate fitted to a vehicle first used before 1 January 1982 or to a moped, this dimension must be 40 mm: ibid Sch 9 para 2 note 4.

10 The categories are 'standard motor cycle' and 'moped': ibid Sch 9 para 2 note 1. For these purposes, 'standard motor cycle' means a motor cycle which is not a moped; and 'moped' means a motor cycle which: (1) has a kerbside weight not exceeding 250 kg; and (2) if propelled by an internal combustion engine, has an engine with a cylinder capacity which does not exceed 50 cubic cm; and (3) is designed to have a maximum speed not exceeding 30 mph when driven under the conditions set out in Sch 9 para 6: Sch 9 para 5. For the meaning of 'maximum speed' see PARA 278 note 17 ante.

A motor cycle is to be regarded as complying with head (3) supra if it cannot exceed 35 mph when tested under the following conditions: (a) the surface on which it is tested must be dry asphalt or concrete; (b) the rider must be a person not exceeding 75 kilograms in weight; (c) no passenger or load is to be carried; (d) the test route must be so located that acceleration to, and deceleration from, maximum speed can take place elsewhere than on the test route itself; (e) the test route must not have a gradient exceeding 5%; (f) the motor cycle must be ridden in opposite directions along the test route and the speed recorded for the purpose of the test must, in order to minimise the effect of wind resistance and gradient, be the average of speeds shown for each direction; (g) when being driven along the test route, the motor cycle must be driven in such manner and in such gear as to achieve the maximum speed of which it is capable; and (h) if the motor cycle is fitted with a device which can, without the use of specialist tools or equipment, be readily modified or removed so as to increase its maximum speed, the test must be carried out with the device in the modified condition or, as the case may be, without the device: Sch 9 para 6.

11 The details are: (1) for standard motor cycles: (a) the engine capacity; (b) the maximum engine power; and (c) the power to weight ratio, provided that the details under heads (1)(a) and (1)(b) supra need not be shown for a vehicle first used before 1 January 1982; and (2) for mopeds: (a) the engine capacity; (b) the kerbside weight; and (c) the maximum speed: ibid Sch 9 para 2 note 2. For these purposes, 'maximum engine power' means the maximum net power the motor cycle engine will develop, in kilowatts, when measured in accordance with the test conditions specified in the International Standard number ISO 4106 developed by the technical committee of the International Organisation for Standardisation, and approved by member bodies, including the United Kingdom, and published under the reference ISO 1978 4106-09-01 (see now ISO 4106: 1993): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 9 para 5. For these purposes, 'power to weight ratio' means the ratio of the maximum engine power to the kerbside weight of the vehicle measured, as regards the maximum engine power, in kilowatts and, as regards the kerbside weight, in 1,000 kg: Sch 9 para 5. 'Kerbside weight' means the weight of a vehicle when it carries: (i) in the case of a motor

vehicle, no person and a full supply of fuel in its tank, an adequate supply of other liquids incidental to its propulsion and no load other than the loose tools and equipment with which it is normally equipped; and (2) in the case of a trailer, no person and is otherwise unladen: reg 3(2), Table.

12 The vehicle identification number must be marked in the form used by the manufacturer to identify any one individual vehicle: *ibid* Sch 9 para 2 note 3.

13 *Ibid* Sch 9 para 3.

14 *Ibid* Sch 9 para 4.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(3) PLATES, MARKINGS, TESTING AND INSPECTION/(i) Plates/368. Ministry plates.

### **368. Ministry plates.**

Every goods vehicle<sup>1</sup> in respect of which a plating certificate has been issued must, from the specified date<sup>2</sup> be equipped with a Ministry plate<sup>3</sup> securely affixed, so as to be legible at all times, in a conspicuous and readily accessible position, and in the cab of the vehicle if it has one<sup>4</sup>.

1 The vehicle to which the Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478 (as amended) apply (see PARA 676 post): see the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, regs 3(2A), 70(1) (reg 3(2A) added by SI 1993/2199). For the meaning of 'goods vehicle' see PARA 271 note 26 ante.

2 The date so specified is: (1) in the case of a vehicle to which the Motor Vehicles (Type Approval for Goods Vehicles) (Great Britain) Regulations 1982, 1982/1271 (as amended) (see PARA 702 post) apply, the date of the fourteenth day after the plate was issued; or (2) in the case of any other vehicle, the date by which it is required by those regulations to be submitted for examination for plating: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 70(2).

3 For these purposes, 'Ministry plate' means a plate which: (1) is issued by the Secretary of State following the issue or amendment of a plating certificate; and (2) subject to *ibid* reg 70(4), contains the particulars required by Sch 10, Sch 10A (added by SI 1987/676), the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 10B (added by SI 1994/329) or the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 10C (added by SI 1994/329): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (definition amended by SI 1998/3112); Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 70(3) (added by SI 1998/3112). Instead of particulars of the gross weight, train weight and axle weights of the vehicle to which it relates, a Ministry plate may contain particulars of the maximum authorised weight for the vehicle, maximum authorised weight for a combination of which the vehicle forms part, and maximum authorised axle weights for the vehicle, determined in accordance with the Road Vehicles (Authorised Weight) Regulations 1998, SI 1998/3111 (see PARA 584 post); and the form of the plate must be amended accordingly: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 70(4) (added by SI 1998/3112). For the meaning of 'gross weight' see PARA 271 note 27 ante; for the meaning of 'train weight' see PARA 340 note 13 ante; and for the meaning of 'axle weight' see PARA 287 note 23 ante.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 70(1).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(3) PLATES, MARKINGS, TESTING AND INSPECTION/(i) Plates/369. Plates for speed limiters.

### **369. Plates for speed limiters.**

Every vehicle to which the provisions relating to speed limiters apply<sup>1</sup> and which is fitted with a speed limiter must be equipped with a plate which is in conspicuous position in the driving compartment of the vehicle and is clearly and indelibly marked with the speed at which the speed limiter has been set<sup>2</sup>.

1     Ie every vehicle to which the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 36A (as added and amended) (see PARA 308 ante) or reg 36B (as added and amended) (see PARA 309 ante) applies.

2     Ibid reg 70A(1)-(3) (reg 70A added by SI 1988/271; and substituted by SI 1993/3048; and the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 70A(3) amended by SI 1996/2064; SI 2004/2102).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(3) PLATES, MARKINGS, TESTING AND INSPECTION/(ii) Marking/370. Marking of dimensions on certain vehicles.

## **(ii) Marking**

### **370. Marking of dimensions on certain vehicles.**

Every vehicle which is not a goods vehicle<sup>1</sup> fitted with a Ministry plate<sup>2</sup> containing the required particulars<sup>3</sup> and which is either<sup>4</sup>:

- 538 (1)     a bus<sup>5</sup> or a heavy motor car<sup>6</sup> which was manufactured after 31 May 1998<sup>7</sup>; or
- 539 (2)     a trailer<sup>8</sup> used in combination with a vehicle falling within head (1) above and manufactured after 31 May 1998<sup>9</sup>,

is not to be used unless:

- 540 (a)     the vehicle is equipped with a plate securely attached to the vehicle in a conspicuous and readily accessible position and containing the specified particulars as to the dimensions of the vehicle<sup>10</sup>; or
- 541 (b)     those particulars are included in the particulars shown on the plate with which the vehicle is equipped<sup>11</sup>.

1     For the meaning of 'goods vehicle' see PARA 271 note 26 ante.

2     Ie in accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 70 (as amended): see PARA 368 ante. For the meaning of 'Ministry plate' see PARA 368 note 3 ante.

3     Ie the particulars required by ibid reg 70 (as amended), Sch 10A (as added) or Sch 10C (as added): see PARA 368 ante.

4     Ibid reg 70B(1) (reg 70B added by SI 1998/1188).

5     For the meaning of 'bus' see PARA 271 note 6 ante.

6     For the meaning of 'heavy motor car' see PARA 213 ante.

7     Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 70B(1)(a) (as added: see note 4 supra).

8     For the meaning of 'trailer' see PARA 210 ante.

9 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 70B(1)(b) (as added: see note 4 supra).

10 Ibid reg 70B(2)(a) (as added: see note 4 supra). The particulars are those specified in EC Council Directive 96/53 (OJ L235, 17.9.96, p 59) laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic (amended by EC Parliament and Council Directive 2002/7 (OJ L67, 9.3.2002, p 47)).

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 70B(2)(b) (as added: see note 4 supra). A plate is attached to a vehicle in accordance with reg 66 (as amended): see PARA 364 ante.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(3) PLATES, MARKINGS, TESTING AND INSPECTION/(ii) Marking/371. Marking of weights on certain vehicles.

### **371. Marking of weights on certain vehicles.**

The following vehicles (other than an agricultural motor vehicle<sup>1</sup> which is either a track-laying<sup>2</sup> vehicle not exceeding 3,050 kilograms in unladen weight<sup>3</sup> or a wheeled<sup>4</sup> vehicle), that is to say<sup>5</sup>:

- 542 (1) a locomotive<sup>6</sup>;
- 543 (2) a motor tractor<sup>7</sup>;
- 544 (3) a bus<sup>8</sup> which is registered<sup>9</sup>; or
- 545 (4) an unbraked wheeled trailer<sup>10</sup>,

must be plainly marked in a conspicuous place on the outside of the vehicle, on its near side with: (a) if it is a vehicle falling in head (1), (2) or (3) above, its unladen weight<sup>11</sup>; and (b) if it is a vehicle falling in head (4) above, its maximum gross weight<sup>12</sup>.

1 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

2 For the meaning of 'track-laying' see PARA 267 note 3 ante.

3 For the meaning of 'unladen weight' see PARA 271 note 21 ante.

4 For the meaning of 'wheeled' see PARA 267 note 2 ante.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 71(1).

6 For the meaning of 'locomotive' see PARA 217 note 3 ante.

7 For the meaning of 'motor tractor' see PARA 216 ante.

8 For the meaning of 'bus' see PARA 271 note 6 ante.

9 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 71(1)(c) (amended by SI 1994/329). Registration of buses is under the Vehicle Excise and Registration Act 1994 or any enactment repealed by it: see the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 71(1)(c). As to registration under the Vehicle Excise and Registration Act 1994 see PARA 518 et seq post.

10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 71(1)(d) (amended by SI 1996/3033). The Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 71(1)(d) (as amended) refers to trailers other than a trailer mentioned in reg 16(3)(b)-(g) (as amended): see PARA 287 ante. 'Unbraked trailer' means any trailer other than one which, whether or not reg 15 (as amended) (see PARA 287 ante) or reg 16 (as amended) (see PARA 287 ante) applies to it, is equipped with a braking system in accordance with reg 15 (as amended) or reg 16 (as amended): reg 3(2), Table. For the meaning of 'trailer' see PARA 210 ante.

11 Ibid reg 71(2)(a).

12 Ibid reg 71(2)(b). For the meaning of 'maximum gross weight' see PARA 271 note 27 ante.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(3) PLATES, MARKINGS, TESTING AND INSPECTION/(ii) Marking/372. Marking of date of manufacture of trailers.

### **372. Marking of date of manufacture of trailers.**

The year of manufacture of every trailer<sup>1</sup> that:

- 546 (1) is not a motor vehicle<sup>2</sup>;
- 547 (2) is manufactured on or after 1 January 1997<sup>3</sup>; and
- 548 (3) has a maximum total design axle weight<sup>4</sup> not exceeding 750 kilograms<sup>5</sup>,

must be marked on the chassis, frame or other similar structure on the nearside of the vehicle, in a clearly visible and accessible position, and by a method such as hammering or stamping, in such a way that it cannot be obliterated or deteriorate<sup>6</sup>.

1 For the meaning of 'trailer' see PARA 210 ante.

2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 71A(1)(a) (reg 71A added by SI 1996/3033). For the meaning of 'motor vehicle' see PARA 210 ante.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 71A(1)(b) (as added: see note 2 supra).

4 For the meaning of 'maximum total design axle weight' see PARA 287 note 23 ante.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 71A(1)(c) (as added: see note 2 supra).

6 Ibid reg 71A(2) (as added: see note 2 supra).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(3) PLATES, MARKINGS, TESTING AND INSPECTION/(ii) Marking/373. Additional markings.

### **373. Additional markings.**

Any weight which may not be exceeded<sup>1</sup> in the case of a goods vehicle<sup>2</sup> for which a plating certificate has been issued, may be marked on either side, or on both sides, of the vehicle<sup>3</sup>.

Where at any time any such goods vehicle is drawing, or being drawn by, another vehicle and those vehicles may not be used together in excess of a laden weight applicable to those vehicles<sup>4</sup>, that weight may be marked on either side, or on both sides, of that goods vehicle<sup>5</sup>.

1 le by virtue of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 80 (as amended): see PARA 589 post.

2 le a goods vehicle to which the Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478 (as amended) apply (see PARA 676 post): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, regs 3(2A), 72(1) (reg 3(2A) added by SI 1993/2199). For the meaning of 'goods vehicle' see PARA 271 note 26 ante.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 72(1), (2). This is expressed to be without prejudice to reg 70 (as amended): see PARA 368 ante.

Where at any time any such goods vehicle may not be used by virtue of any provision contained in reg 75 (as amended) (see PARA 584 post) in excess of a weight which is less than the gross weight which may not be exceeded by that vehicle by virtue of reg 80 (as amended) (see PARA 589 post), the first-mentioned weight may be marked on either side, or on both sides, of the vehicle: reg 72(3). For the meaning of 'gross weight' see PARA 271 note 27 ante.

4 le by virtue of any provision contained in *ibid* reg 76 (as amended) (see PARA 585 post) and reg 77 (as amended) (see PARA 586 post).

5 *Ibid* reg 72(4).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(3) PLATES, MARKINGS, TESTING AND INSPECTION/(iii) Testing and Inspection/374. Test date discs.

### **(iii) Testing and Inspection**

#### **374. Test date discs.**

Every Ministry test date disc<sup>1</sup> which is issued, following the issue of a goods vehicle test certificate, in respect of a trailer and for which a plating certificate has been issued must be carried on the trailer in a legible condition and in a conspicuous and readily accessible position in which it is clearly visible by daylight from the near side of the road, from the date of its issue until but not beyond the date of expiry of that test certificate or the date of issue of a further test certificate for that trailer, whichever date is the earlier<sup>2</sup>.

1 For these purposes, 'Ministry test date disc' means a plate issued by the Secretary of State for a goods vehicle, being a trailer, following the issue of a goods vehicle test certificate for that trailer under the Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478 (as amended) (see PARA 676 post) and containing the following particulars: (1) the identification mark allotted to that trailer and shown in that certificate; (2) the date until which that certificate is valid; and (3) the number of the vehicle testing station shown in that certificate: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, regs 3(2A), 73(2) (reg 3(2A) added by SI 1993/2199). For the meaning of 'goods vehicle' see PARA 271 note 26 ante; and for the meaning of 'trailer' see PARA 210 ante. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 73(1).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(3) PLATES, MARKINGS, TESTING AND INSPECTION/(iii) Testing and Inspection/375. Testing and inspection.

#### **375. Testing and inspection.**



Subject to the conditions specified below, the following persons are empowered to test and inspect the brakes<sup>1</sup>, silencers<sup>2</sup>, steering gear<sup>3</sup> and tyres<sup>4</sup> of any vehicle, on any premises where that vehicle is located<sup>5</sup>:

- 549 (1) a police constable in uniform<sup>6</sup>;
- 550 (2) a person appointed by the Metropolitan Police Commissioner<sup>7</sup> to inspect public carriages<sup>8</sup>;
- 551 (3) a person appointed by the police authority for a police area<sup>9</sup> to test the conditions of vehicles on roads<sup>10</sup>;
- 552 (4) a goods vehicle examiner<sup>11</sup>;
- 553 (5) a certifying officer<sup>12</sup>; and
- 554 (6) a duly appointed<sup>13</sup> public service vehicle examiner<sup>14</sup>.

The conditions are as follows:

- 555 (a) any person empowered as mentioned in heads (1) to (6) above must produce his authorisation, if required to do so<sup>15</sup>;
  - 556 (b) no such person may enter any premises unless the consent of the owner of those premises has first been obtained<sup>16</sup>;
  - 557 (c) no such person may test or inspect any vehicle on any premises unless<sup>17</sup>:
- 21
- 47. (i) the owner of the vehicle<sup>18</sup> consents<sup>19</sup>;
  - 48. (ii) notice has been given to that owner personally or left at his address not less than 48 hours before the time of the proposed test or inspection, or has been sent to him at least 72 hours before that time by the recorded delivery service to his address last known to the person giving the notice<sup>20</sup>; or
  - 49. (iii) the test or inspection is made within 48 hours of an accident<sup>21</sup> in which the vehicle was involved<sup>22</sup>.
- 22

1 For the construction requirements as to brakes see PARAS 287-289 ante.

2 For the meaning of 'silencer' see PARA 345 note 2 ante. For the construction requirements as to silencers see PARA 345 et seq ante.

3 As to the maintenance of steering gear see PARA 300 ante.

4 For the construction requirements as to tyres see PARA 292 et seq ante.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 74(1).

6 Ibid reg 74(1)(a). As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

7 As to the Metropolitan Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 183 et seq.

8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 74(1)(b). The text refers to a person appointed for the purposes of the Metropolitan Public Carriage Act 1869: see PARA 1138 et seq post.

9 As to police authorities and areas see POLICE vol 36(1) (2007 Reissue) PARA 136 et seq.

10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, regs 3(2A), 74(1)(c) (reg 3(2A) added by SI 1993/2199). The text refers to a person appointed to act for the purposes of the Road Traffic Act 1988 s 67 (as amended): see PARA 684 post.

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, regs 3(2A), 74(1)(d) (reg 3(2A) as added: see note 10 supra). As to goods vehicle examiners see PARA 698 post.

- 12 Ibid reg 74(1)(e). As to such officers see PARA 698 post.
- 13 Ie under the Road Traffic Act 1988 s 66A (as added and amended): see PARA 698 post.
- 14 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 74(1)(f).
- 15 Ibid reg 74(2)(a).
- 16 Ibid reg 74(2)(b).
- 17 Ibid reg 74(2)(c).
- 18 For these purposes, the owner of the vehicle is deemed to be:
  - 41 (1) in the case of a vehicle which is for the time being registered under the Vehicle Excise and Registration 1994 (see PARA 518 et seq post), and is not being used under a trade licence under that Act, the person appearing as the owner of the vehicle in the register kept by the Secretary of State under that Act;
  - 42 (2) in the case of a vehicle used under a trade licence, the holder of the licence; or
  - 43 (3) in the case of a vehicle exempt from excise duty by virtue of the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208 (see PARA 1636 et seq post), the person resident outside the United Kingdom who has brought the vehicle into Great Britain,and, in the case of heads (1) and (2) supra, the address of the owner as shown on the said register or, as the case may be, on the licence may be treated as his address: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 74(3). For the meaning of 'United Kingdom' see PARA 224 note 5 ante; and for the meaning of 'Great Britain' see PARA 205 note 3 ante.
- 19 Ibid reg 74(2)(c)(i).
- 20 Ibid reg 74(2)(c)(ii).
- 21 Ie an accident to which the Road Traffic Act 1988 s 170 (as amended) applies: see PARA 645 post.
- 22 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 74(2)(c) (iii).

## UPDATE

### 375 Testing and inspection

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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## (4) VEHICLES OF SPECIAL TYPES

**376. Authorisation of use on roads of special vehicles not complying with regulations as to construction, weight, equipment and use of vehicles.**

The Secretary of State<sup>1</sup> may by order authorise, subject to such restrictions and conditions as may be specified by or under the order, the use on roads<sup>2</sup>:

- 558 (1) of special motor vehicles<sup>3</sup> or trailers<sup>4</sup>, or special types of motor vehicles or trailers, which are constructed either for special purposes or for tests or trials<sup>5</sup>;
- 559 (2) of vehicles or trailers, or types of vehicles or trailers, constructed for use outside the United Kingdom<sup>6</sup>;
- 560 (3) of new or improved types of motor vehicles or trailers, whether wheeled or wheelless, or of motor vehicles or trailers equipped with new or improved equipment or types of equipment<sup>7</sup>; and
- 561 (4) of vehicles or trailers carrying loads of exceptional dimensions<sup>8</sup>.

The provisions relating to using a vehicle in a dangerous condition<sup>9</sup> and the general regulation of construction and use<sup>10</sup> do not apply in relation to the use of such vehicles, trailers, or types in accordance with the order<sup>11</sup>.

The Secretary of State may by order make provision for securing that, subject to such restrictions and conditions as may be specified by or under the order, regulations as to construction, weight, equipment and use of vehicles<sup>12</sup> are to have effect in their application to such vehicles, trailers and types of vehicles and trailers as are mentioned in heads (1) to (4) above subject to such modifications or exceptions as may be specified in the order<sup>13</sup>.

The powers conferred by the above provisions on the Secretary of State to make orders are exercisable by statutory instrument, except in the case of orders applying only to specified vehicles or to vehicles of specified persons; and in all cases the order may be varied or revoked by subsequent order of the Secretary of State<sup>14</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 For the meaning of 'motor vehicle' see PARA 210 ante.

4 For the meaning of 'trailer' see PARA 210 ante.

5 Road Traffic Act 1988 s 44(1)(a). The Road Vehicles (Authorisation of Special Types) (General) Order 2003, SI 2003/1998, has been made under this power: see PARA 377 post.

6 Road Traffic Act 1988 s 44(1)(b). See note 5 supra. For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

7 Ibid s 44(1)(c). See note 5 supra.

8 Ibid s 44(1)(d). See note 5 supra.

9 Ie ibid s 40A (as added): see PARA 625 post.

10 Ie ibid ss 41-42 (as amended): see PARAS 260-265 ante.

11 Ibid s 44(1) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 51).

12 Ie regulations under the Road Traffic Act 1988 s 41 (as amended): see PARA 260 ante.

13 Ibid s 44(2).

14 Ibid s 44(3).

## UPDATE

### 376-377 Vehicles of Special Types

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(4) VEHICLES OF SPECIAL TYPES/377. Authorised special types of vehicles.

#### 377. Authorised special types of vehicles.

The Secretary of State<sup>1</sup> has authorised, subject to certain conditions and restrictions, the use on roads of certain motor vehicles<sup>2</sup> and trailers<sup>3</sup> which do not comply in all respects with the standard construction and use requirements<sup>4</sup> and which fall within a recognised category of special vehicles<sup>5</sup>. A vehicle that falls within a recognised category of special vehicles is authorised to be used on roads by virtue of these provisions if (but only if) it complies with the authorisation requirements<sup>6</sup> applicable to vehicles in that category<sup>7</sup>. The following are recognised categories of special vehicles:

- 562 (1) the following special vehicles and vehicle combinations<sup>8</sup> for haulage, lifting, engineering and vehicle recovery<sup>9</sup>: (a) abnormal indivisible load vehicles<sup>10</sup>; (b) mobile cranes<sup>11</sup>; (c) engineering plant<sup>12</sup>; (d) road recovery vehicles<sup>13</sup>;
- 563 (2) special vehicles for agriculture, as follows<sup>14</sup>: (a) agricultural motor vehicles<sup>15</sup>; (b) agricultural trailers<sup>16</sup>; (c) agricultural trailed appliances<sup>17</sup>;
- 564 (3) motor vehicles or trailers that are used for, or in connection with, the carriage of a load of exceptional width<sup>18</sup>;
- 565 (4) local excavation vehicles<sup>19</sup>;
- 566 (5) vehicles for tests, trials or for use outside the United Kingdom<sup>20</sup>, namely: (a) any motor vehicle or trailer which is constructed for use outside the United Kingdom<sup>21</sup>; (b) any type of motor vehicle or trailer which is constructed for use outside the United Kingdom<sup>22</sup>; (c) any new or improved type of motor vehicle or trailer which is constructed for tests or trials<sup>23</sup>; (d) any motor vehicle or trailer which is equipped with new or improved equipment<sup>24</sup>; (e) any motor vehicle or trailer which is equipped with new or improved types of equipment<sup>25</sup>;
- 567 (6) track-laying motor vehicles or trailers<sup>26</sup>;
- 568 (7) straddle carriers<sup>27</sup>;
- 569 (8) vehicles fitted with a moveable platform<sup>28</sup>;
- 570 (9) pedestrian-controlled road maintenance vehicles that are not constructed or used to carry a driver or passenger<sup>29</sup>;
- 571 (10) motor cutters<sup>30</sup>;
- 572 (11) cutter trailers<sup>31</sup>;
- 573 (12) operational military vehicles<sup>32</sup> in any case where compliance with any otherwise applicable regulations<sup>33</sup> by any such vehicle would directly compromise the vehicle's operational capability<sup>34</sup>;
- 574 (13) track-laying vehicles belonging to the Royal National Lifeboat Institution<sup>35</sup>;
- 575 (14) highway testing vehicles<sup>36</sup>;
- 576 (15) vehicles propelled by compressed natural gas<sup>37</sup>.

Requirements are imposed in respect of:

- 577 (i) authorisation<sup>38</sup>;
- 578 (ii) police notification<sup>39</sup>;
- 579 (iii) the employment of persons as attendants<sup>40</sup>;
- 580 (iv) the visibility and marking of forward, rearward and lateral projections of loads<sup>41</sup>;
- 581 (v) giving notice to, and indemnifying, highway and bridge authorities<sup>42</sup>;
- 582 (vi) the passage over bridges of Part 2 vehicles and track-laying agricultural motor vehicles<sup>43</sup>;
- 583 (vii) the construction and use of special type agricultural vehicles<sup>44</sup>;
- 584 (viii) the drawing of trailers by special type agricultural vehicles<sup>45</sup>;
- 585 (ix) notifying and obtaining the consent of the Secretary of State in cases of excessive width or length<sup>46</sup>;
- 586 (x) the restriction on width and speed of motor vehicles or trailers carrying loads of exceptional width<sup>47</sup>;
- 587 (xi) obtaining the consent of the road authorities in respect of track-laying vehicles<sup>48</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'trailer' see PARA 210 ante.

4 'Standard construction and use requirements', in relation to a motor vehicle or trailer, means the requirements of such of the regulations made under the Road Traffic Act 1988 s 41 (as amended) (see PARA 260 ante) as would, apart from the Road Vehicles (Authorisation of Special Types) (General) Order 2003, SI 2003/1998, apply to that motor vehicle or trailer: art 8(3). As to such regulations see the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078 (as amended) (see PARA 267 et seq ante); the Road Vehicles Lighting Regulations 1989, SI 1989/1796 (as amended) (see PARA 378 et seq post); and the Road Vehicles (Authorised Weight) Regulations 1998, SI 1998/3111 (see PARA 584 post).

5 Road Vehicles (Authorisation of Special Types) (General) Order 2003, SI 2003/1998, art 8(1). 'Recognised category of special vehicles' means a description of vehicles that is stated by a provision of the Road Vehicles (Authorisation of Special Types) (General) Order 2003, SI 2003/1998, to be a recognised category of special vehicles: arts 3(1), 8(2).

6 'Authorisation requirements', in relation to a recognised category of special vehicles: (1) means all the requirements specified in the Road Vehicles (Authorisation of Special Types) (General) Order 2003, SI 2003/1998, as being applicable to vehicles in that category; and (2) includes such of the requirements of regulations made under the Road Traffic Act 1988 s 41 (as amended) as are specified in the Road Vehicles (Authorisation of Special Types) (General) Order 2003, SI 2003/1998, as being applicable to vehicles in that category (subject to any modifications or exceptions so specified): Road Vehicles (Authorisation of Special Types) (General) Order 2003, SI 2003/1998, arts 3(1), 9(2). Where any provision of the Road Vehicles (Authorisation of Special Types) (General) Order 2003, SI 2003/1998, specifies any of the regulations mentioned in art 9(2)(b) as being applicable to any recognised category of special vehicles, that provision is not to be construed as applying any requirement of those regulations to a vehicle in that category if that requirement may reasonably be regarded, in all the circumstances, as not relevant to the vehicle in question (eg if the requirement relates to trailers and the vehicle in question is not a trailer): art 9(3).

7 Ibid art 9(1).

8 'Vehicle combination' means a motor vehicle towing one or more trailers, any trailer or trailers towed by it, and any other motor vehicle used for the purpose of assisting the propulsion of the trailer or trailers on the road: ibid art 3(1).

9 Ibid art 10(1). A vehicle that falls within any recognised category of special vehicles mentioned in art 10(1) is referred to in the Road Vehicles (Authorisation of Special Types) (General) Order 2003, SI 2003/1998, as a Part 2 vehicle: art 10(2). As to a Part 2 vehicle combination see art 10(3). The categories of vehicles specified in art 10(1)(a), (b), (c) or (d) are defined in Schs 1-4 respectively: art 10(4).

10 Ibid art 10(1)(a). 'Abnormal indivisible load' has the meaning given in Sch 1 para 2; and 'abnormal indivisible load vehicle' has the meaning given in Sch 1 para 3: art 3(1).

11 Ibid art 10(1)(b). 'Mobile crane' has the meaning given in Sch 2 para 2: art 3(1).

12 Ibid art 10(1)(c). 'Engineering plant' has the meaning given in Sch 3 para 2: art 3(1).

13 Ibid art 10(1)(d). 'Road recovery vehicle' has the meaning given in Sch 4 para 1: art 3(1).

14 Ibid art 19(1). A vehicle that falls within any recognised category of special vehicles mentioned in art 19(1) is referred to in the Road Vehicles (Authorisation of Special Types) (General) Order 2003, SI 2003/1998, as a special type agricultural vehicle: arts 3(1), 19(2).

15 'Agricultural motor vehicle' means a motor vehicle (not being a dual-purpose vehicle) which: (1) is constructed or adapted for use off-road for the purpose of agriculture, horticulture or forestry; and (2) is primarily used for one or more of those purposes: ibid arts 3(1), 19(3). For the meaning of 'dual-purpose vehicle' see PARA 271 note 28 ante; definition applied by art 19(4).

16 For the meaning of 'agricultural trailer' see PARA 271 note 30 ante; definition applied by ibid art 19(3).

17 For the meaning of 'agricultural trailed appliance' see PARA 271 note 21 ante; definition applied by ibid art 19(3).

18 Ibid art 28(1). A vehicle carries a load of exceptional width where the overall width of the vehicle carrying a load, together with the width of any lateral projection or projections of the load, exceeds 4.3 metres: art 28(2). For the meaning of 'overall width' see PARA 274 ante; definition applied by art 4(1).

19 Ibid art 32(1). Local excavation vehicles are defined in Sch 10 para 1: arts 3(1), 32(2).

20 Ibid art 36(1). This does not include: (1) any motor vehicle or trailer which is not a wheeled vehicle; or (2) any motor vehicle or trailer which is, or forms part of, a recognised category of special vehicles specified in art 10(1)(a), (b), (c) or (d) (see head (1) in the text): art 36(2). For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

21 Ibid art 36(1)(a).

22 Ibid art 36(1)(b).

23 Ibid art 36(1)(c).

24 Ibid art 36(1)(d).

25 Ibid art 36(1)(e).

26 Ibid art 41(1). This does not include any track-laying vehicle that falls within any other recognised category of special vehicles: art 41(2). For the meaning of 'track-laying' see PARA 267 note 3 ante; definition applied by art 3(1). As to restrictions on the use of a track-laying vehicle see art 43.

27 Ibid art 45. As to restrictions on use, speed and width see art 47.

28 Ibid art 49(1). For these purposes, 'moveable platform' means a platform that is attached to, and may be moved by means of, an extensible boom: art 49(6).

29 Ibid art 50(1). 'Road maintenance vehicle' means a motor vehicle that is specially constructed or adapted for the purposes of carrying out one or more of the following operations: (1) gritting roads; (2) laying road markings; (3) clearing frost, snow or ice from roads; or (4) any other work of maintaining roads: art 50(5).

30 Ibid art 51(1). 'Motor cutters' means motor vehicles that are specially constructed: (1) to be used as grass cutters and hedge trimmers; and (2) to be controlled by a person other than a pedestrian: art 51(6). As to width and guarding requirements see art 51(3)-(5).

31 Ibid art 52(1). 'Cutter trailer' means a trailer that is specially constructed or adapted for use as a grass cutter and hedge trimmer: art 52(8). As to width, weight and guarding requirements and speed restriction see art 52(3)-(7).

32 'Operational military vehicles' means any motor vehicle or trailer that is intended for: (1) operational use for military action or the carrying out of a strategic, tactical, service or administrative military mission, the process of carrying on combat, including movement, supply, attack, defence and manoeuvres needed to gain

the objectives of any battle or campaign or use for military support to the civil community; (2) training in connection with such operational use; (3) the carrying or recovery of vehicles or equipment in connection with such operational use or training: *ibid* art 53(6). For further requirements see art 53(3)-(5).

33 *Ie* regulations made under the Road Traffic Act 1988 s 41 (as amended).

34 Road Vehicles (Authorisation of Special Types) (General) Order 2003, SI 2003/1998, art 53(1).

35 *Ibid* art 54(1). 'RNLI track-laying vehicle' means any track-laying motor vehicle or track-laying trailer that is the property of the Royal National Lifeboat Institution: art 54(4). As to the Royal National Lifeboat Institution see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 940. Such vehicles may only be used on roads either: (1) for the purpose of towing lifeboats; or (2) in connection with the launching of lifeboats: art 54(3).

36 *Ibid* art 55(1). 'Highway testing vehicle' means any motor vehicle or trailer that is used in, or in connection with, the conduct of experiments or trials of roads or bridges as permitted under the Highways Act 1980 s 283 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 55): Road Vehicles (Authorisation of Special Types) (General) Order 2003, SI 2003/1998, art 55(3).

37 *Ibid* art 56(1).

38 See *ibid* arts 11-18, 20-27, 29-31, 33-35, 37-40, 42-44, 46-47, 49(2)-(5), 50(2)-(4), 51(2)-(5), 52(2)-(7), 53(2)-(5), 54(2), 55(2), 56(2), Schs 1-4, 10, 11.

39 See *ibid* arts 12(1), 13(2), 15(3), 17(3), 23(2), 24(4), 31(3), 34(3), 38(2), 39(2), 48(2), Sch 5.

40 See *ibid* arts 12(1), 14(1), 15(4), 23(3), 24(5), 31(3), 34(4), Sch 6.

41 See *ibid* arts 16, 25, Sch 8.

42 See *ibid* arts 17(1), 26(2), 35(2), 40(2), Sch 9.

43 See *ibid* arts 18, 27.

44 See *ibid* art 21.

45 See *ibid* art 22.

46 See *ibid* arts 15(5), 23(4), 34(5), Sch 7.

47 See *ibid* art 30.

48 See *ibid* art 44.

## **UPDATE**

### **376-377 Vehicles of Special Types**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(i) Fitting of Lamps, Reflectors, Rear Markings and Devices/378. Colour of light shown by lamps and reflectors.

## **(5) LIGHTING OF VEHICLES**

### **(i) Fitting of Lamps, Reflectors, Rear Markings and Devices**

### 378. Colour of light shown by lamps and reflectors.

No vehicle is to be fitted with a lamp or retro reflective material which is capable of showing<sup>1</sup> a red light to the front, except<sup>2</sup>:

- 588 (1) a red and white chequered domed lamp, or a red and white segmented mast-mounted warning beacon<sup>3</sup>, fitted to a fire service control vehicle and intended for use at the scene of an emergency<sup>4</sup>;
- 589 (2) a side marker lamp<sup>5</sup> or a side retro reflector<sup>6</sup>;
- 590 (3) retro reflective material or a retro reflector designed primarily to reflect light to one or both sides of the vehicle and attached to or incorporated in any wheel<sup>7</sup> or tyre of a pedal cycle<sup>8</sup>, a trailer drawn by, or a sidecar attached to, a pedal cycle, a solo motor bicycle<sup>9</sup> or motor bicycle combination<sup>10</sup> or an invalid carriage<sup>11</sup>; or
- 591 (4) a traffic sign<sup>12</sup>.

No vehicle is to be fitted with a lamp or retro reflective material which is capable of showing any light to the rear, other than a red light, except<sup>13</sup>:

- 592 (a) amber light from a direction indicator<sup>14</sup> or side marker lamp<sup>15</sup>;
- 593 (b) white light from a reversing lamp<sup>16</sup>;
- 594 (c) white light from a work lamp<sup>17</sup>;
- 595 (d) light to illuminate the interior of a vehicle<sup>18</sup>;
- 596 (e) light from an illuminated rear registration plate<sup>19</sup>;
- 597 (f) light for the purposes of illuminating a taxi meter<sup>20</sup>;
- 598 (g) in the case of a bus<sup>21</sup>, light for the purposes of illuminating a route indicator<sup>22</sup>;
- 599 (h) blue light and white light from a chequered domed lamp fitted to a police control vehicle and intended for use at the scene of an emergency<sup>23</sup>;
- 600 (i) white light from a red and white chequered domed lamp, or a red and white segmented mast-mounted warning beacon, fitted to a fire service control vehicle and intended for use at the scene of an emergency<sup>24</sup>;
- 601 (j) green light and white light from a chequered domed lamp fitted to an ambulance control vehicle and intended for use at the scene of an emergency<sup>25</sup>;
- 602 (k) blue light from a warning beacon or rear special warning lamp<sup>26</sup> fitted to an emergency vehicle<sup>27</sup>, or from any device fitted to a vehicle used for police purposes<sup>28</sup>;
- 603 (l) amber light from a warning beacon fitted to:
  - 23
  - 50. (i) a road clearance vehicle<sup>29</sup>;
  - 51. (ii) a vehicle constructed or adapted for the purpose of collecting refuse<sup>30</sup>;
  - 52. (iii) a breakdown vehicle<sup>31</sup>;
  - 53. (iv) a vehicle having a maximum speed<sup>32</sup> not exceeding 25 miles per hour or any trailer<sup>33</sup> drawn by such a vehicle<sup>34</sup>;
  - 54. (v) a vehicle having an overall width<sup>35</sup>, including any load, exceeding 2.9 metres<sup>36</sup>;
  - 55. (vi) a vehicle used for the purposes of testing, maintaining, improving, cleansing or watering roads or for any purpose incidental to any such use<sup>37</sup>;
  - 56. (vii) a vehicle used for the purpose of inspecting, cleansing, maintaining, adjusting, renewing or installing any apparatus which is in, on, under or over a road, or for any purpose incidental to any such use<sup>38</sup>;
  - 57. (viii) a vehicle used for or in connection with any purpose for which it is authorised to be used on roads<sup>39</sup>;
  - 58. (ix) a vehicle used for escort purposes<sup>40</sup>;



- 59. (x) a vehicle used by the Commissioners for Revenue and Customs<sup>41</sup> for the purpose of testing fuels<sup>42</sup>;
  - 60. (xi) a vehicle used for the purpose of surveying<sup>43</sup>; or
  - 61. (xii) a vehicle used for the removal or immobilisation of vehicles in exercise of a statutory power or duty<sup>44</sup>;
- 24
- 604 (m) green light from a warning beacon fitted to a vehicle used by a medical practitioner registered by the General Medical Council<sup>45</sup>, whether with full, provisional or limited registration<sup>46</sup>;
  - 605 (n) yellow light from a warning beacon fitted to a vehicle for use at airports<sup>47</sup>;
  - 606 (o) light of any colour from a traffic sign which is attached to a vehicle<sup>48</sup>;
  - 607 (p) amber light from a lamp attached to or incorporated in a pedal of a pedal cycle<sup>49</sup>;
  - 608 (q) white light or amber light from a lamp which is designed to emit light primarily to one or both sides of the vehicle, and is attached to or incorporated in any wheel or tyre of a pedal cycle or a trailer drawn by, or a sidecar attached to, a pedal cycle<sup>50</sup>;
  - 609 (r) reflected light from amber pedal retro reflectors<sup>51</sup>;
  - 610 (s) reflected light of any colour from retro reflective material or a retro reflector designed primarily to reflect light to one or both sides of the vehicle and attached to or incorporated in any wheel or tyre of: (i) a pedal cycle; (ii) a trailer drawn by, or a sidecar attached to, a pedal cycle; (iii) a solo motor bicycle or motor bicycle combination; or (iv) an invalid carriage<sup>52</sup>;
  - 611 (t) reflected light from amber retro reflective material on a road clearance vehicle<sup>53</sup>;
  - 612 (u) reflected light from yellow retro reflective registration plates<sup>54</sup>;
  - 613 (v) reflected blue, yellow and white light from a retro reflective plate displaying a prescribed<sup>55</sup> distinguishing sign<sup>56</sup>;
  - 614 (w) reflected light from yellow retro reflective material incorporated in a prescribed rear marking<sup>57</sup> fitted in the appropriate manner to certain vehicles<sup>58</sup>;
  - 615 (x) reflected light from orange retro reflective material incorporated in a sign fitted to the rear of a vehicle carrying a dangerous substance<sup>59</sup>;
  - 616 (y) reflected light from yellow retro reflective material incorporated in a prescribed sign<sup>60</sup> and fitted to the rear of a bus<sup>61</sup>; or
  - 617 (z) reflected light from yellow retro reflective material incorporated in a sign fitted to the rear of a bus<sup>62</sup>.

1 Material designed primarily to reflect light is, when reflecting light, to be treated as showing a light; and material capable of reflecting an image is not, when reflecting the image of a light, to be so treated: Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(3).

2 Ibid reg 11(1) (amended by SI 1994/2280).

3 'Warning beacon' means a lamp that is capable of emitting a flashing or rotating beam of light throughout 360° in the horizontal plane: Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table.

4 Ibid reg 11(1)(a). As to fire service control vehicles see FIRE SERVICES vol 18(2) (Reissue) PARA 68 et seq.

5 'Side marker lamp' means a lamp fitted to the side of a vehicle or its load and used to render the vehicle more visible to other road users: ibid reg 3(2), Table.

6 Ibid reg 11(1)(b). 'Side retro reflector' means a reflector fitted to the side of a vehicle or its load and used to render the vehicle more visible from the side: reg 3(2), Table.

7 For the meaning of 'wheel' see PARA 267 note 2 ante; definition applied by ibid reg 3(2), Table.

8 'Pedal cycle' means a vehicle which is not constructed or adapted to be propelled by mechanical power and which is equipped with pedals, including an electrically-assisted pedal cycle prescribed for the purposes of

the Road Traffic Act 1988 s 189 (see PARA 210 ante) and the Road Traffic Regulation Act 1984 s 140 (as amended) (see PARA 210 ante): Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table.

9 'Solo motor bicycle' means a motor bicycle without a sidecar: *ibid* reg 3(2), Table.

10 'Motor bicycle combination' means a combination of a solo motor bicycle and a sidecar: *ibid* reg 3(2), Table.

11 *Ibid* reg 11(1)(c) (amended by SI 2005/2559). 'Invalid carriage' means a mechanically propelled vehicle constructed or adapted for the carriage of one person, being a person suffering from some physical defect or disability: Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table. As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.

12 *Ibid* reg 11(1)(d). For these purposes, 'traffic sign' has the same meaning as given by the Road Traffic Regulation Act 1984 s 64(1) (see PARA 830 post): Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table (definition amended by SI 1994/2280).

13 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 11(2) (amended by SI 1994/2280).

14 'Direction indicator' means a lamp on a vehicle used to indicate to other road users that the driver intends to change direction to the right or to the left: Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table.

15 *Ibid* reg 11(2)(a).

16 *Ibid* reg 11(2)(b). 'Reversing lamp' means a lamp used to illuminate the road to the rear of a vehicle for the purpose of reversing and to warn other road users that the vehicle is reversing or about to reverse: reg 3(2), Table.

17 *Ibid* reg 11(2)(c). 'Work lamp' means a lamp used to illuminate a working area or the scene of an accident, breakdown or roadworks in the vicinity of the vehicle to which it is fitted: reg 3(2), Table.

18 *Ibid* reg 11(2)(d).

19 *Ibid* reg 11(2)(e).

20 *Ibid* reg 11(2)(f). As to taxis generally see PARA 1431 et seq post.

21 For the meaning of 'bus' see PARA 271 note 6 ante; definition applied by *ibid* reg 3(2), Table.

22 *Ibid* reg 11(2)(g).

23 *Ibid* reg 11(2)(h). As to police vehicles see POLICE vol 36(1) (2007 Reissue) PARA 525.

24 *Ibid* reg 11(2)(i).

25 *Ibid* reg 11(2)(j). As to ambulances see HEALTH SERVICES vol 54 (2008) PARA 12.

26 'Special warning lamp' means a lamp, fitted to the front or rear of a vehicle, capable of emitting a blue flashing light and not any other kind of light: *ibid* reg 3(2), Table.

27 'Emergency vehicle' means a vehicle of any of the following descriptions: (1) a vehicle used for fire and rescue authority, ambulance or police purposes; (2) a vehicle used for Serious Organised Crime Agency purposes; (3) an ambulance, being a vehicle, other than an invalid carriage, which is constructed for the purposes of conveying sick, injured or disabled persons and which is used for such purposes; (4) a vehicle owned by a body formed primarily for the purposes of fire salvage and used for those or similar purposes; (5) a vehicle owned by the Forestry Commission (see FORESTRY vol 52 (2009) PARA 34 et seq) or by a local authority and used from time to time for the purposes of fighting fires; (6) a vehicle owned by the Secretary of State for Defence (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 438 et seq) and used: (a) for the purposes of the disposal of bombs or explosives; (b) for the purposes of any activity which prevents or decreases the exposure of persons to radiation arising from a radiation accident or radiation emergency, or in connection with an event which could lead to a radiation accident or radiation emergency; or (c) by the Royal Air Force Mountain Rescue Service for the purposes of rescue operations or any other emergencies; (7) a vehicle primarily used for the purposes of the Blood Transfusion Service provided under the National Health Service Act 1977 (see HEALTH SERVICES vol 54 (2008) PARA 147); (8) a vehicle used by Her Majesty's Coastguard or Coastguard Auxiliary Service for the purposes of giving aid to persons in danger or vessels in distress on or near the coast; (9) a vehicle used for the purposes of rescue operations at mines (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 832 et seq; MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 517); (10) a vehicle owned by

the Royal National Lifeboat Institution and used for the purposes of launching lifeboats (see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 940); (11) a vehicle primarily used for the purposes of conveying any human tissue for transplanting or similar purposes; and (12) a vehicle under the lawful control of the Commissioners for Her Majesty's Revenue and Customs (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq) and used from time to time for the purposes of the investigation of serious crime (which has the meaning given in the Police Act 1997 s 93(4), save for the omission of the words 'and, where the authorising officer is within subsection (5)(h), it relates to an assigned matter within the meaning of section 1(1) of the Customs and Excise Management Act 1979' (see POLICE vol 36(1) (2007 Reissue) PARA 483)): Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table (definition amended by SI 1994/2567; SI 2005/2559; SI 2006/594; and in relation to England by SI 2004/3168; and in relation to Wales by SI 2005/2929). 'Radiation accident' and 'radiation emergency' have the same meaning as in the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975 (as amended) (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 668): Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table (definitions added by SI 2005/2559).

28 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 11(2)(k).

29 Ibid reg 11(2)(l)(i). 'Road clearance vehicle' means a mechanically propelled vehicle used for dealing with frost, ice or snow on roads: reg 3(2), Table.

30 Ibid reg 11(2)(l)(ii).

31 Ibid reg 11(2)(l)(iii). 'Breakdown vehicle' means a vehicle used to attend an accident or breakdown or to draw a broken-down vehicle: reg 3(2), Table.

32 For the meaning of 'maximum speed' see PARA 278 note 17 ante; definition applied by ibid reg 3(2), Table.

33 'Trailer' means a vehicle constructed or adapted to be drawn by another vehicle: ibid reg 3(2), Table.

34 Ibid reg 11(2)(l)(iv).

35 For the meaning of 'overall width' see PARA 274 ante; definition applied by ibid reg 3(2), Table.

36 Ibid reg 11(2)(l)(v).

37 Ibid reg 11(2)(l)(vi).

38 Ibid reg 11(2)(l)(vii).

39 Ibid reg 11(2)(l)(viii). A vehicle may be authorised by an order under the Road Traffic Act 1988 s 44 (as amended): see PARA 376 ante.

40 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 11(2)(l)(ix) (substituted by SI 2005/2559).

41 As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

42 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 11(2)(l)(x) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

43 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 11(2)(l)(xi).

44 Ibid reg 11(2)(l)(xii).

45 As to the General Medical Council see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 13 et seq.

46 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 11(2)(m). As from a day to be notified in the Gazette, this provision is amended by the Medical Act 1983 (Amendment) and Miscellaneous Amendments Order 2006, SI 2006/1914, so as to substitute for the words 'full, provisional or limited' the words 'full or provisional'. At the date at which this volume states the law no such notification had been given.

47 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 11(2)(n).

48 Ibid reg 11(2)(o).

49 Ibid reg 11(2)(oa) (added by SI 2005/2559).

50 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 11(2)(ob) (added by SI 2005/2559).

51 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 11(2)(p). 'Pedal retro reflector' means a retro reflector attached to or incorporated in the pedals of a pedal cycle or motor bicycle: reg 3(2), Table.

52 Ibid reg 11(2)(q) (amended by SI 2005/2559).

53 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 11(2)(r).

54 Ibid reg 11(2)(s).

55 Ie in accordance with EC Council Regulation 2411/98 (OJ L 299, 10.11.1998, p 1).

56 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 11(2)(sa) (added by SI 2001/560).

57 For these purposes, a rear marking fitted to a vehicle is a prescribed rear marking fitted in the appropriate manner if the rear marking: (1) is a rear marking of a description specified in the entry applicable to that vehicle in the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 18, Sch 19 Pt I para 1 (as substituted) (see PARA 386 post); and (2) complies with Sch 19 Pt I paras 2-7 (as substituted): reg 11(3) (added by SI 1994/2280).

58 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 11(2)(t) (amended by SI 1994/2280). The vehicles are: (1) a motor vehicle having a maximum gross weight exceeding 7,500 kg; (2) a motor vehicle first used before 1 August 1982 having an unladen weight exceeding 3000 kg; (3) a trailer having a maximum gross weight exceeding 3,500 kg; (4) a trailer manufactured before 1 August 1982 having an unladen weight exceeding 1,000 kg; (5) a trailer which forms part of a combination of vehicles one of which is of a type mentioned in a previous item in heads (1)-(4) supra; and (6) a load carried by any vehicle: Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 11(2)(t)(i)-(vi) (as so amended). For the meaning of 'maximum gross weight' see PARA 271 note 27 ante; for the meaning of 'first used' see PARA 267 note 5 ante; and for the meaning of 'unladen weight' see PARA 271 note 21 ante; definitions applied by reg 3(2), Table.

59 Ibid reg 11(2)(u). This provision applies to vehicles carrying a dangerous substance within the meaning of the Dangerous Substances (Conveyance by Road in Road Tankers and Tank Containers) Regulations 1981, SI 1981/1059 (as amended) or the Road Traffic (Carriage of Dangerous Substances in Packages etc) Regulations 1986, SI 1986/1951 (revoked: see now the Carriage of Dangerous Goods (Classification, Packaging and Labelling) and Use of Transportable Pressure Receptacles Regulations 1996, SI 1996/2092 (as amended)): see the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 11(2)(u).

60 'Prescribed sign' means a sign which is of a type shown in ibid reg 3(2), Sch 21A (added by SI 1994/2280) and complies with the requirements of the Road Vehicles Lighting Regulations 1989, SI 1989/1796, Sch 21A (as so added): reg 3(2), Table (definition added by SI 1994/2280).

61 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 11(2)(v) (added by SI 1994/2280).

62 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 11(2)(w) (added by SI 1994/2280). For these purposes, a sign ('the secondary sign') is so fitted to the rear of a bus if: (1) a prescribed sign is also fitted to the rear of a bus; (2) the total area of the retro reflective material incorporated in the secondary sign is no greater than the area of the prescribed sign; and (3) the secondary sign satisfies the requirements specified: (a) in the case of a bus which is owned or hired by a local education authority or any person managing an education establishment attended by children under the age of 16 years, in the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 11(5) (as added) or reg 11(6) (as added); or (b) in any other case, in reg 11(6) (as added): reg 11(4) (added by SI 1994/2280). The requirements specified in the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 11(5) (as added) are that the secondary sign contains no words or other markings apart from words or markings identifying the local education authority or the educational establishment, as the case may be: reg 11(5) (added by SI 1994/2280). The requirements specified in the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 11(6) (as added) are that the secondary sign contains no words or other markings apart from words or other markings which: (i) indicate that children are on board the bus when it is in motion or likely to be on board the bus or in its vicinity when it is stationary; and (ii) are calculated to reduce the risk of road accidents involving such children: reg 11(6) (added by SI 1994/2280).

## UPDATE

### 378-408 Lighting of Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **378 Colour of light shown by lamps and reflectors**

NOTE 46--Notified day is 19 October 2007: London Gazette, 20 July 2007.

TEXT AND NOTES--SI 1989/1796 reg 11(2)(x)-(y) added: SI 2009/3220.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(i) Fitting of Lamps, Reflectors, Rear Markings and Devices/379. Movement of lamps and reflectors.

### **379. Movement of lamps and reflectors.**

No person is to use or cause or permit<sup>1</sup> to be used on a road<sup>2</sup> any vehicle to which, or to any load or equipment of which, there is fitted a lamp, reflector or marking which is capable of being moved by swivelling, deflecting or otherwise while the vehicle is in motion<sup>3</sup>.

The above provisions do not apply in respect of:

- 618 (1) a headlamp<sup>4</sup> which can be dipped only by the movement of the headlamp or its reflector<sup>5</sup>;
- 619 (2) a headlamp which is capable of adjustment so as to compensate for the effect of the load carried by the vehicle<sup>6</sup>;
- 620 (3) a lamp or reflector which can be deflected to the side by the movement of, although not necessarily through the same angle as, the front wheel<sup>7</sup> or wheels of the vehicle when turned for the purpose of steering the vehicle<sup>8</sup>;
- 621 (4) a headlamp or front fog lamp which can be wholly or partially retracted or concealed<sup>9</sup>;
- 622 (5) a direction indicator<sup>10</sup> fitted to a motor vehicle first used<sup>11</sup> before 1 April 1986<sup>12</sup>;
- 623 (6) a work lamp<sup>13</sup>;
- 624 (7) a warning beacon<sup>14</sup>;
- 625 (8) an amber pedal retro reflector<sup>15</sup>;
- 626 (9) retro reflective material or a retro reflector of any colour which is fitted so as to reflect light primarily to one or both sides of the vehicle and is attached to or incorporated in any wheel or tyre of a pedal cycle<sup>16</sup>, a trailer drawn by, or a sidecar attached to, a pedal cycle, a solo motor bicycle<sup>17</sup> or motor bicycle combination<sup>18</sup> or an invalid carriage<sup>19</sup>;
- 627 (10) a lamp which is designed to emit light primarily to one or both sides of the vehicle, and is attached to or incorporated in any wheel or tyre of a pedal cycle or a trailer drawn by, or a sidecar attached to, a pedal cycle<sup>20</sup>; and
- 628 (11) a lamp attached to or incorporated in a pedal of a pedal cycle<sup>21</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 12(1).

- 4 'Headlamp' means a lamp used to illuminate the road in front of a vehicle and which is not a front fog lamp: *ibid* reg 3(2), Table. 'Front fog lamp' means a lamp used to improve the illumination of the road in front of a motor vehicle in conditions of seriously reduced visibility: reg 3(2), Table. For the meaning of 'motor vehicle' see PARA 210 ante.
- 5 *Ibid* reg 12(2)(a).
- 6 *Ibid* reg 12(2)(b).
- 7 For the meaning of 'wheel' see PARA 267 note 2 ante.
- 8 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 12(2)(c).
- 9 *Ibid* reg 12(2)(d).
- 10 For the meaning of 'direction indicator' see PARA 378 note 14 ante.
- 11 For the meaning of 'first used' see PARA 267 note 5 ante.
- 12 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 12(2)(e).
- 13 *Ibid* reg 12(2)(f). For the meaning of 'work lamp' see PARA 378 note 17 ante.
- 14 *Ibid* reg 12(2)(g). For the meaning of 'warning beacon' see PARA 378 note 3 ante.
- 15 *Ibid* reg 12(2)(h). For the meaning of 'pedal retro reflector' see PARA 378 note 51 ante.
- 16 For the meaning of 'pedal cycle' see PARA 378 note 8 ante.
- 17 For the meaning of 'solo motor bicycle' see PARA 378 note 9 ante.
- 18 For the meaning of 'motor bicycle combination' see PARA 378 note 10 ante.
- 19 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 12(2)(i) (amended by SI 2005/2559). For the meaning of 'invalid carriage' see PARA 378 note 11 ante.
- 20 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 12(2)(j) (added by SI 2005/2559).
- 21 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 12(2)(k) (added by SI 2005/2559).

## **UPDATE**

### **378-408 Lighting of Vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(i) Fitting of Lamps, Reflectors, Rear Markings and Devices/380. Lamps to show a steady light.

### **380. Lamps to show a steady light.**

No vehicle is to be fitted with a lamp which automatically emits a flashing light<sup>1</sup>, other than:

- 629 (1) a direction indicator<sup>2</sup>;
- 630 (2) a headlamp<sup>3</sup> fitted to an emergency vehicle<sup>4</sup>;

- 631 (3) a warning beacon<sup>5</sup> or special warning lamp<sup>6</sup>;
- 632 (4) a lamp or illuminated sign fitted to a vehicle used for police purposes<sup>7</sup>;
- 633 (5) a green warning lamp used as an anti-lock brake indicator<sup>8</sup>;
- 634 (6) lamps forming part of a traffic sign<sup>9</sup>;
- 635 (7) a front position lamp<sup>10</sup> capable of emitting a flashing light, whether or not it is also capable of emitting a steady light, which is fitted to a pedal cycle<sup>11</sup> or a trailer drawn by, or a sidecar attached to, a pedal cycle and which, if it is a lamp which is required to be fitted<sup>12</sup> is capable, when emitting a flashing light, of emitting light to the front of the pedal cycle, trailer or sidecar, as the case may be, of an intensity of not less than 4 candelas<sup>13</sup>; or
- 636 (8) a rear position lamp<sup>14</sup> capable of emitting a flashing light, whether or not it is also capable of emitting a steady light, which is fitted to a pedal cycle or a trailer drawn by, or a sidecar attached to, a pedal cycle and which, if it is a lamp which is required to be fitted<sup>15</sup> is capable, when emitting a flashing light, of emitting light to the rear of the pedal cycle, trailer or sidecar, as the case may be, of an intensity of not less than 4 candelas<sup>16</sup>.

1 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 13(1).

2 Ibid reg 13(2)(a). For the meaning of 'direction indicator' see PARA 378 note 14 ante.

3 For the meaning of 'headlamp' see PARA 379 note 4 ante.

4 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 13(2)(b). For the meaning of 'emergency vehicle' see PARA 378 note 27 ante.

5 For the meaning of 'warning beacon' see PARA 378 note 3 ante.

6 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 13(2)(c). For the meaning of 'special warning lamp' see PARA 378 note 26 ante.

7 Ibid reg 13(2)(d). As to police vehicles see POLICE vol 36(1) (2007 Reissue) PARA 525.

8 Ibid reg 13(2)(e).

9 Ibid reg 13(2)(f). For the meaning of 'traffic sign' see PARA 378 note 12 ante.

10 'Front position lamp' means a lamp used to indicate the presence and width of a vehicle when viewed from the front: ibid reg 3(2), Table.

11 For the meaning of 'pedal cycle' see PARA 378 note 8 ante.

12 Ie pursuant to the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 18 (as amended): see PARA 386 post.

13 Ibid reg 13(2)(g) (added by SI 2005/2559).

14 'Rear position lamp' means a lamp used to indicate the presence and width of a vehicle when viewed from the rear: Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table.

15 See note 12 supra.

16 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 13(2)(h) (added by SI 2005/2559).

## UPDATE

### 378-408 Lighting of Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(i) Fitting of Lamps, Reflectors, Rear Markings and Devices/381. Filament lamps.

### **381. Filament lamps.**

Where a motor vehicle<sup>1</sup> first used<sup>2</sup> on or after 1 April 1986 or any trailer<sup>3</sup> manufactured on or after 1 October 1985 is equipped with any lamp of a type that is required to be marked with an approval mark<sup>4</sup>, no filament lamp other than a specified filament lamp<sup>5</sup> is to be fitted to any such lamp<sup>6</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'first used' see PARA 267 note 5 ante.

3 For the meaning of 'trailer' see PARA 378 note 33 ante.

4 I.e. by any of the Schedules to the Road Vehicles Lighting Regulations 1989, SI 1989/1796 (as amended).

5 I.e. other than a filament lamp referred to in the Motor Vehicles (Designation of Approval Marks) Regulations 1979, SI 1979/1088, reg 4, Sch 2 items 2 or 2A, 8, 20, 37 or 37A (as added and amended) or reg 5, Sch 4 item 18.

6 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 14(1).

## **UPDATE**

### **378-408 Lighting of Vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(i) Fitting of Lamps, Reflectors, Rear Markings and Devices/382. General requirements for electrical connections.

### **382. General requirements for electrical connections.**

Every motor vehicle<sup>1</sup> first used<sup>2</sup> on or after 1 April 1991 must be so constructed that every position lamp<sup>3</sup>, side marker lamp<sup>4</sup>, end-outline marker lamp<sup>5</sup> and rear registration plate lamp<sup>6</sup> with which the vehicle is fitted is capable of being switched on and off by the operation of one switch and not otherwise<sup>7</sup>. This requirement does not prevent one<sup>8</sup> or more position lamps from being capable of being switched on and off independently of any other such lamp<sup>9</sup>.



- 1 For the meaning of 'motor vehicle' see PARA 210 ante.
- 2 For the meaning of 'first used' see PARA 267 note 5 ante.
- 3 For the meaning of 'front position lamp' see PARA 380 note 10 ante; and for the meaning of 'rear position lamp' see PARA 380 note 14 ante.
- 4 For the meaning of 'side marker lamp' see PARA 378 note 5 ante.
- 5 'End-outline marker lamp' means a lamp fitted near the outer edge of a vehicle in addition to the front and rear position lamps to indicate the presence of a wide vehicle: Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table.
- 6 'Rear registration plate lamp' means a lamp used to illuminate the rear registration plate: *ibid* reg 3(2), Table.
- 7 *Ibid* reg 15(1).
- 8 A reference to one lamp, except in the case of a dipped-beam headlamp, a main-beam headlamp and a front fog lamp, includes any combination of two or more lamps, whether identical or not, having the same function and emitting light of the same colour, if it comprises devices the aggregate illuminated area of which occupies 60% or more of the area of the smallest rectangle circumscribing those illuminated areas: *ibid* reg 3(4). For the meaning of 'headlamp' see PARA 379 note 4 ante. For the meaning of 'front fog lamp' see PARA 379 note 4 ante. 'Dipped beam' means a beam of light emitted by a lamp which illuminates the road ahead of the vehicle without causing undue dazzle or discomfort to oncoming drivers or other road users: reg 3(2), Table. 'Main beam' means a beam of light emitted by a headlamp which illuminates the road over a long distance ahead of the vehicle: reg 3(2), Table. 'Illuminated area' means: (1) in relation to a headlamp, front fog lamp and reversing lamp, in each case fitted with a reflector, the orthogonal projection of the full aperture of the reflector on a plane (touching the surface of the lamp) at right angles to the longitudinal axis of the vehicle to which the lamp is fitted; if the light-emitting surface extends over only part of the full aperture of the reflector, then the projection of only that part is to be taken into account; in the case of a dipped-beam headlamp, the illuminated area is limited by the apparent trace of the cut-off on the lens; and (2) in relation to any other lamp, means the part of the orthogonal projection of the light-emitting surface on a plane (touching the surface of the lamp) at right angles to the longitudinal axis of the vehicle to which it is fitted, the boundary of which is such that if the straight edge of an opaque screen touches it at any point 98% of the total intensity of the light is shown in the direction parallel to the longitudinal axis of the vehicle; accordingly, for the purposes of determining the lower, upper and lateral edges of the lamp, only a screen placed with its straight edge horizontally or vertically needs to be considered: reg 3(2), Table. For the meaning of 'reversing lamp' see PARA 378 note 16 ante.
- 'Light-emitting surface' means: (a) in relation to a lamp, that part of the exterior surface of the lens through which light is emitted when the lamp is lit; and (b) in relation to a retro reflector that part of the exterior surface of the retro reflector from which light can be reflected: reg 3(2), Table.
- 9 *Ibid* reg 15(2).

## UPDATE

### 378-408 Lighting of Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(i) Fitting of Lamps, Reflectors, Rear Markings and Devices/383. Restrictions on fitting blue warning beacons, special warning lamps and similar devices.

### **383. Restrictions on fitting blue warning beacons, special warning lamps and similar devices.**

No vehicle, other than an emergency vehicle<sup>1</sup>, is to be fitted with a blue warning beacon<sup>2</sup> or special warning lamp<sup>3</sup> or a device which resembles a blue warning beacon or a special warning lamp, whether the same is in working order or not<sup>4</sup>.

1 For the meaning of 'emergency vehicle' see PARA 378 note 27 ante.

2 For the meaning of 'warning beacon' see PARA 378 note 3 ante.

3 For the meaning of 'special warning lamp' see PARA 378 note 26 ante.

4 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 16.

### **UPDATE**

#### **378-408 Lighting of Vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(i) Fitting of Lamps, Reflectors, Rear Markings and Devices/384. Obligatory warning beacons.

### **384. Obligatory warning beacons.**

No person is to use or cause or permit<sup>1</sup> to be used on an unrestricted dual-carriageway road<sup>2</sup> any motor vehicle with four or more wheels<sup>3</sup> having a maximum speed<sup>4</sup> not exceeding 25 miles per hour unless it or any trailer<sup>5</sup> drawn by it is fitted with at least one warning beacon<sup>6</sup> which complies with the provisions relating to obligatory and optional warning beacons<sup>7</sup> and is showing<sup>8</sup> an amber light<sup>9</sup>.

The above provisions do not apply in relation to:

637 (1) any motor vehicle first used<sup>10</sup> before 1 January 1947<sup>11</sup>; and

638 (2) any motor vehicle, or any trailer being drawn by it, to which the above provisions would otherwise apply, when that vehicle or trailer is on any carriageway of an unrestricted dual-carriageway road for the purpose only of crossing that carriageway in the quickest manner practicable in the circumstances<sup>12</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For these purposes, 'unrestricted dual-carriageway road' means a dual carriageway within the meaning given by the Road Traffic Regulation Act 1984 s 86(1), Sch 6 para 2 (see PARA 851 note 12 post) on which a motor vehicle may lawfully be driven at a speed exceeding 50 mph: Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table. For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'wheel' see PARA 267 note 2 ante. A reference to the number of wheels of a vehicle is to be construed in accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3 (as amended) (see PARA 267 note 2 ante): Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(7).

4 For the meaning of 'maximum speed' see PARA 278 note 17 ante.

5 For the meaning of 'trailer' see PARA 378 note 33 ante.

6 For the meaning of 'warning beacon' see PARA 378 note 3 ante.

7 The provisions relating to obligatory and optional warning beacons are contained in the Road Vehicles Lighting Regulations 1989, SI 1989/1796, Sch 16.

8 As to when a light is treated as being shown see PARA 378 note 1 ante.

9 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 17(1).

10 For the meaning of 'first used' see PARA 267 note 5 ante.

11 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 17(2)(a).

12 Ibid reg 17(2)(b).

## UPDATE

### 378-408 Lighting of Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(i) Fitting of Lamps, Reflectors, Rear Markings and Devices/385. Signs on buses carrying children.

### 385. Signs on buses carrying children.

No person is to use or cause or permit<sup>1</sup> to be used on a road<sup>2</sup> a bus<sup>3</sup> when it is carrying a child<sup>4</sup> to or from his school<sup>5</sup>, unless<sup>6</sup>:

639 (1) a prescribed sign<sup>7</sup> is fitted to the front of the bus and is plainly visible to road users ahead of the bus<sup>8</sup>; and

640 (2) a prescribed sign is fitted to the rear of the bus and is plainly visible to road users behind the bus<sup>9</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 Ie other than a bus where it is on a bus service of a description specified in the Fuel Duty Grant (Eligible Bus Services) Regulations 1985, SI 1985/1886, reg 2, Schedule para 2. For the meaning of 'bus' see PARA 271 note 6 ante.

4 For these purposes, a reference to a child is a reference to a child under the age of 16 years: Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 17A(3)(c) (reg 17A added by SI 1994/2280).

5 For these purposes, a reference to a bus carrying a child to or from his school is a reference to a bus carrying a child: (1) to, or to a place within the vicinity of, his school on a day during term time before he has attended the school on that day; or (2) from, or from a place within the vicinity of, his school on a day during term time after he has finished attending the school on that day; and 'school' has the meaning given by the Education Act 1996 s 4 (as amended) (see EDUCATION vol 15(1) (2006 Reissue) PARA 81); Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 17A(3)(a), (b) (as added: see note 4 supra).

6 Ibid reg 17A(1), (2) (as added: see note 4 supra).

7 For the meaning of 'prescribed sign' see PARA 378 note 60 ante.

8 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 17A(1)(a) (as added: see note 4 supra).

9 Ibid reg 17A(1)(b) (as added: see note 4 supra).

## UPDATE

### 378-408 Lighting of Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(i) Fitting of Lamps, Reflectors, Rear Markings and Devices/386. Obligatory lamps, reflectors, rear markings and devices.

### 386. Obligatory lamps, reflectors, rear markings and devices.

Every vehicle of a specified class<sup>1</sup> must be fitted with lamps, reflectors, rear markings and devices which are of a specified type<sup>2</sup> and comply with the relevant installation, alignment and performance requirements<sup>3</sup> that apply to that type<sup>4</sup>.

1 The classes are specified in the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 18, Sch 1 Tables I-VII (amended by SI 1994/2280).

2 Ie of a type specified in the Road Vehicles Lighting Regulations 1989, SI 1989/1796, Sch 1 Tables I-VII col 1 (as amended: see note 1 supra).

3 Ie the relevant requirements set out in the Schedule or part of a Schedule shown against that type in ibid Sch 1 Tables I-VII col 2 (as amended). The Schedules referred to in Sch 1 Tables I-VII (as amended) are Schs 2-21 (as amended): reg 18(4).

4 Ibid reg 18(1) (amended by SI 2005/2559). This is expressed to be subject to the Road Vehicles Lighting Regulations 1989, SI 1989/1796, regs 1-17 (as amended), 18(2), (2A), (2B) (reg 18(2A), (2B) as added). The requirements specified in reg 18(1) (as amended) do not apply in respect of a lamp, reflector, rear marking or device of a type specified in column 1 of one of Sch 1 Tables I-VII in the case of a vehicle shown against it in column 3 of that table: reg 18(2). The requirements specified in Sch 2 para 5(c), (ca) (Sch 2 para 5(c) amended, and Sch 2 para 5(ca) added, by SI 1994/2280; and the Road Vehicles Lighting Regulations 1989, SI 1989/1796, Sch 2 para 5(ca) amended by SI 2005/2559) do not apply in the case of a front position lamp capable of emitting a flashing light which is fitted to a pedal cycle or a trailer drawn by, or a sidecar attached to, a pedal cycle, unless the lamp is also capable of emitting a steady light: Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 18(2A) (added by SI 2005/2559). The requirements specified in the Road Vehicles Lighting Regulations 1989, SI 1989/1796, Sch 2 para 5(d), (e) do not apply in the case of a rear position lamp capable of emitting a flashing light which is fitted to a pedal cycle or a trailer drawn by, or a sidecar attached to, a pedal

cycle, unless the lamp is also capable of emitting a steady light: reg 18(2B) (added by SI 2005/2559). For the meaning of 'pedal cycle' see PARA 378 note 8 ante; and for the meaning of 'trailer' see PARA 378 note 33 ante. For the meaning of 'front position lamp' see PARA 380 note 10 ante; and for the meaning of 'rear position lamp' see PARA 380 note 14 ante.

The requirements specified in the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 18(1) apply without prejudice to any additional requirements specified in reg 20 (see PARA 388 post) and reg 21 (as amended) (see PARA 389 post): reg 18(3).

## **UPDATE**

### **378-408 Lighting of Vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **386 Obligatory lamps, reflectors, rear markings and devices**

NOTE 4--SI 1989/1796 reg 18(1), (3) amended: SI 2009/3220.

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### **387. Restrictions on the obscuration of certain lamps and reflectors.**

Every vehicle is to be so constructed that at least part of the apparent surface<sup>1</sup> of any:

- 641 (1) front and rear position lamp<sup>2</sup>;
- 642 (2) front and rear direction indicator<sup>3</sup>; and
- 643 (3) rear retro reflector<sup>4</sup>,

which is required<sup>5</sup> to be fitted to a vehicle is visible when the vehicle is viewed from any point directly in front of or behind the lamp or reflector, as appropriate, when every door, tailgate, boot lid, engine cover, cab or other movable part of the vehicle is in a fixed open position<sup>6</sup>.

1 'Apparent surface', for any given direction of observation, is the orthogonal projection of a light-emitting surface in a plane perpendicular to the direction of observation and touching that surface: Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table. For the meaning of 'light-emitting surface' see PARA 382 note 8 ante.

2 Ibid reg 19(a). For the meaning of 'front position lamp' see PARA 380 note 10 ante; and for the meaning of 'rear position lamp' see PARA 380 note 14 ante.

3 Ibid reg 19(b). For the meaning of 'direction indicator' see PARA 378 note 14 ante.

4 Ibid reg 19(c). 'Rear retro reflector' means a retro reflector used to indicate the presence and width of a vehicle when viewed from the rear: reg 3(2), Table.

5 Ie by the Road Vehicles Lighting Regulations 1989, SI 1989/1796 (as amended).

6 Ibid reg 19.

## UPDATE

### 378-408 Lighting of Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(i) Fitting of Lamps, Reflectors, Rear Markings and Devices/388. Optional lamps, reflectors, rear markings and devices.

#### 388. Optional lamps, reflectors, rear markings and devices.

Every optional<sup>1</sup> lamp, reflector, rear marking or device fitted to a vehicle, being one of the following types:

- 644 (1) a front position lamp<sup>2</sup>;
- 645 (2) a dim-dip device<sup>3</sup> and running lamp<sup>4</sup>;
- 646 (3) a dipped-beam headlamp<sup>5</sup>;
- 647 (4) a main-beam<sup>6</sup> headlamp<sup>7</sup>;
- 648 (5) a front fog lamp<sup>8</sup>;
- 649 (6) a direction indicator<sup>9</sup>;
- 650 (7) a hazard warning signal device<sup>10</sup>;
- 651 (8) a side marker lamp<sup>11</sup>;
- 652 (9) a rear position lamp<sup>12</sup>;
- 653 (10) a rear fog lamp<sup>13</sup>;
- 654 (11) a stop lamp<sup>14</sup>;
- 655 (12) an end-outline marker lamp<sup>15</sup>;
- 656 (13) a reversing lamp<sup>16</sup>;
- 657 (14) a warning beacon<sup>17</sup>;
- 658 (15) a side retro reflector<sup>18</sup>;
- 659 (16) a rear retro reflector<sup>19</sup>;
- 660 (17) a rear marking<sup>20</sup>;
- 661 (18) a pedal retro reflector<sup>21</sup>; and
- 662 (19) a front retro reflector<sup>22</sup>,

must comply with the relevant statutory provisions<sup>23</sup>.

1 'Optional', in relation to a lamp, reflector, rear marking or device, means a lamp, reflector, rear marking or device with which a vehicle, its load or equipment is not required by the Road Vehicles Lighting Regulations 1989, SI 1989/1796 (as amended) to be fitted: reg 3(2), Table.

2 Ibid reg 20 Table item 1. For the meaning of 'front position lamp' see PARA 380 note 10 ante.

3 'Dim-dip device' means a device which is capable of causing a dipped-beam headlamp to operate at reduced intensity: *ibid* reg 3(2), Table. For the meaning of 'dipped beam' see PARA 382 note 8 ante; and for the meaning of 'headlamp' see PARA 379 note 4 ante.

4 *Ibid* reg 20 Table item 2. 'Running lamp' means a lamp, not being a front position lamp, an end-outline marker lamp, headlamp or front fog lamp, used to make the presence of a moving motor vehicle readily visible from the front: reg 3(2), Table. For the meaning of 'end-outline marker lamp' see PARA 382 note 5 ante; and for the meaning of 'front fog lamp' see PARA 379 note 4 ante.

5 *Ibid* reg 20 Table item 3.

6 For the meaning of 'main-beam' see PARA 382 note 8 ante.

7 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 20, Table item 4.

8 *Ibid* reg 20, Table item 5.

9 *Ibid* reg 20, Table item 7. For the meaning of 'direction indicator' see PARA 378 note 14 ante.

10 *Ibid* reg 20, Table item 8. 'Hazard warning signal device' means a device which is capable of causing all the direction indicators with which a vehicle, or a combination of vehicles, is fitted to operate simultaneously: reg 3(2), Table.

11 *Ibid* reg 20, Table item 9. For the meaning of 'side marker lamp' see PARA 378 note 5 ante.

12 *Ibid* reg 20, Table item 10. For the meaning of 'rear position lamp' see PARA 380 note 14 ante.

13 *Ibid* reg 20, Table item 11. 'Rear fog lamp' means a lamp used to render a vehicle more readily visible from the rear in conditions of seriously reduced visibility: reg 3(2), Table.

14 *Ibid* reg 20, Table item 12. 'Stop lamp' means a lamp used to indicate to road users that the brakes of a vehicle or combination of vehicles are being applied: reg 3(2), Table.

15 *Ibid* reg 20, Table item 13.

16 *Ibid* reg 20, Table item 14. For the meaning of 'reversing lamp' see PARA 378 note 16 ante.

17 *Ibid* reg 20, Table item 15. For the meaning of 'warning beacon' see PARA 378 note 3 ante.

18 *Ibid* reg 20, Table item 16. For the meaning of 'side retro reflector' see PARA 378 note 6 ante.

19 *Ibid* reg 20, Table item 17. For the meaning of 'rear retro reflector' see PARA 387 note 4 ante.

20 *Ibid* reg 20, Table item 18.

21 *Ibid* reg 20, Table item 19. For the meaning of 'pedal retro reflector' see PARA 378 note 51 ante.

22 *Ibid* reg 20, Table item 20.

23 *Ibid* reg 20. The relevant statutory provisions are the applicable provisions of Schs 2-21 (as amended) as detailed in reg 20, Table cols 3, 4.

## UPDATE

### 378-408 Lighting of Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(i) Fitting of Lamps, Reflectors, Rear Markings and Devices/388A. ECE conspicuity requirements.

### **388A. ECE conspicuity requirements.**

A goods vehicle which is a motor vehicle first used on or after 10 July 2011, or a trailer manufactured on or after 10 July 2011, must be fitted with conspicuity markings which comply with the mandatory ECE conspicuity requirements<sup>1</sup>. This does not apply in respect of a goods vehicle which is

- 663 (1) a motor vehicle<sup>2</sup> with a maximum gross weight not exceeding 7500 kg<sup>3</sup>;
- 664 (2) trailer with a maximum gross weight not exceeding 3500 kg<sup>4</sup>;
- 665 (3) an incomplete vehicle proceeding to a works for completion or to a place where it is to be stored or displayed for sale<sup>5</sup>; or
- 666 (4) a motor car or heavy motor car<sup>6</sup> intended to form part of an articulated vehicle<sup>7</sup>.

A vehicle which is not a relevant goods vehicle<sup>8</sup> may be fitted with conspicuity markings which comply with the optional ECE conspicuity requirements<sup>9</sup>.

1 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 20A(1) (reg 20A added by SI 2009/3220). 'Mandatory ECE conspicuity requirements' means the requirements specified in ECE Regulation 48 para 5.15 in respect of a conspicuity marking; and ECE Regulation 48 para 6.21 as relating to vehicles for which the fitting of conspicuity markings is mandatory: Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table (amended by SI 2009/3220). As to the meaning of 'ECE Requirement' see PARA 270 note 2.

If the overall length of a relevant goods vehicle (ie a goods vehicle to which the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 20A(1) applies) does not exceed 6 m, conspicuity markings that comply with the mandatory ECE conspicuity requirements need not be fitted to the side of that vehicle: reg 20A(4) (as added). If the overall width of a relevant goods vehicle does not exceed 2.1 m, conspicuity markings that comply with the mandatory ECE conspicuity requirements need not be fitted to the rear of that vehicle: reg 20A(5) (as added). To the extent that, pursuant to reg 20A(4) or (5), a relevant goods vehicle is not required to be fitted with conspicuity markings to the side or rear that comply with the mandatory ECE conspicuity requirements, conspicuity markings which comply with the optional ECE conspicuity requirements may be fitted to the side or rear (as the case may be): reg 20A(6) (as added).

2 As to the meaning of 'motor car' see PARA 212.

3 Ibid reg 20A(2)(a) (as added).

4 Ibid reg 20A(2)(b) (as added).

5 Ibid reg 20A(2)(c) (as added).

6 As to the meaning of 'heavy motor car' see PARA 213.

7 Ibid reg 20A(2)(d) (as added).



8    Is a goods vehicle to which *ibid* reg 20A(1) applies: reg 20A(3) (as added).

9    *Ibid* reg 20A(7) (as added). This does not apply in respect of a passenger vehicle (other than a bus); or a trailer with a maximum gross weight not exceeding 750 kg: reg 20A(8).

## UPDATE

### 378-408 Lighting of Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(i) Fitting of Lamps, Reflectors, Rear Markings and Devices/389. Projecting trailers and vehicles carrying overhanging or projecting loads or equipment.

### **389. Projecting trailers and vehicles carrying overhanging or projecting loads or equipment.**

No person is to use or cause or permit<sup>1</sup> to be used on a road<sup>2</sup> in certain circumstances<sup>3</sup>: (1) any trailer<sup>4</sup> which forms part of a combination of vehicles which projects laterally beyond any preceding vehicle in the combination<sup>5</sup>; or (2) any vehicle or combination of vehicles which carries a load or equipment<sup>6</sup>, in either case, under the conditions specified in heads (a) to (f) below, unless the vehicle or combination of vehicles complies with the specified requirements<sup>7</sup>. The conditions are:

667 (a)    in the case of a trailer which is not fitted with front position lamps<sup>8</sup> and which projects laterally on any side so that the distance from the outermost part of the projection to the outermost part of the illuminated area<sup>9</sup> of the obligatory<sup>10</sup> front position lamp<sup>11</sup> on that side fitted to any preceding vehicle in the combination exceeds 400 millimetres, a lamp showing white light to the front must be fitted to the trailer so that the outermost part of the illuminated area is not more than 400 millimetres from the outermost projection of the trailer; and the installation and performance requirements<sup>12</sup> relating to front position lamps do not apply to any such lamp<sup>13</sup>;

668 (b)    in the case of a trailer which is not fitted with front position lamps and which carries a load or equipment which projects laterally on any side of the trailer so that the distance from the outermost projection of the load or equipment to the outermost part of the illuminated area of the obligatory front position lamp on that side fitted to any preceding vehicle in the combination exceeds 400 millimetres, a lamp showing white light to the front must be fitted to the trailer or the load or equipment so that the outermost part of the illuminated area is not more than 400 millimetres from the outermost projection of the load or equipment; and the installation and performance requirements relating to front position lamps do not apply to any such lamp<sup>14</sup>;

- 669 (c) in the case of a vehicle which carries a load or equipment which projects laterally on any side of the vehicle so that the distance from the outermost part of the load or equipment to the outermost part of the illuminated area of the obligatory front or rear position lamp<sup>15</sup> on that side exceeds 400 millimetres, either the obligatory front or rear position lamp must be transferred from the vehicle to the load or equipment to which must also be attached a white front or a red rear reflecting device or an additional front or rear position lamp and a white front or a red rear reflecting device must be fitted to the vehicle, load or equipment; and all the installation, performance and maintenance requirements relating to front or rear position lamps must, in either case, be complied with, except that, for the purpose of determining the lateral position of such lamps and reflecting devices, any reference to the vehicle is to be taken to include the load or equipment except special equipment<sup>16</sup> on a vehicle fitted with a movable platform<sup>17</sup> or the jib of any crane<sup>18</sup>;
- 670 (d) in the case of a vehicle which carries a load or equipment which projects beyond the rear of the vehicle or, in the case of a combination of vehicles, beyond the rear of the rearmost vehicle in the combination: (i) more than 2 metres in the case of an agricultural vehicle<sup>19</sup> or a vehicle carrying a fire escape; or (ii) more than 1 metre in the case of any other vehicle, an additional rear lamp capable of showing red light to the rear and a red reflecting device, both of which are visible from a reasonable distance, must be fitted to the vehicle or the load in such a position that the distance between the lamp and the reflecting device, and the rearmost projection of the load or equipment does not exceed 2 metres in the case mentioned in head (i) above or 1 metre in any other case; and the installation and performance requirements relating to rear position lamps and rear retro reflectors<sup>20</sup> do not apply to any such additional lamp and reflecting device<sup>21</sup>;
- 671 (e) in the case of a vehicle which carries a load or equipment which projects beyond the front of the vehicle: (i) more than 2 metres in the case of an agricultural vehicle or a vehicle carrying a fire escape; or (ii) more than 1 metre in the case of any other vehicle, an additional front lamp capable of showing white light to the front and a white reflecting device, both visible from a reasonable distance, must be fitted to the vehicle or the load in such a position that the distance between the lamp and the reflecting device, and the foremost projection of the load or equipment, does not exceed 2 metres in the case mentioned in head (i) above or 1 metre in any other case; and the installation and performance requirements relating to front position lamps and front retro reflectors do not apply to any such additional lamp and reflecting device<sup>22</sup>; and
- 672 (f) in the case of a vehicle which carries a load or equipment which obscures any obligatory lamp, reflector or rear marking, either the obligatory lamp, reflector or rear marking must be transferred to a position on the vehicle, load or equipment where it is not obscured or an additional lamp, reflector or rear marking must be fitted to the vehicle, load or equipment; and all the installation, performance and maintenance requirements relating to obligatory lamps, reflectors or rear markings must, in either case, be complied with<sup>23</sup>.

The circumstances in which the prohibition operates are, as regards head (f) above, in so far as it relates to obligatory stop lamps<sup>24</sup> and direction indicators<sup>25</sup>, all circumstances<sup>26</sup>, and, as regards heads (a) to (e) above and head (f) above, except in so far as it relates to obligatory stop lamps and direction indicators, the time between sunset and sunrise or, except in so far as it relates to obligatory reflectors, when visibility is seriously reduced between sunrise and sunset<sup>27</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

- 2 For the meaning of 'road' see PARA 206 ante.
- 3 In the circumstances mentioned in the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 21(2): see the text and notes 24-27 infra.
- 4 For the meaning of 'trailer' see PARA 378 note 33 ante.
- 5 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 21(1)(a).
- 6 Ibid reg 21(1)(b) (amended by SI 1994/2280).
- 7 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 21(1).
- 8 For the meaning of 'front position lamp' see PARA 380 note 10 ante.
- 9 For the meaning of 'illuminated area' see PARA 382 note 8 ante.
- 10 'Obligatory', in relation to a lamp, reflector, rear marking or device, means a lamp, reflector, rear marking or device with which a vehicle, its load or equipment is required by the Road Vehicles Lighting Regulations 1989, SI 1989/1796 (as amended) to be fitted: reg 3(2), Table.
- 11 For the meaning of 'front position lamp' see PARA 380 note 10 ante.
- 12 'Installation and performance requirements' means, in relation to any lamp, reflector, rear marking or device, the requirements specified in the Road Vehicles Lighting Regulations 1989, SI 1989/1796, Schs 1-23 (as amended) relating to that lamp, reflector, rear marking or device: reg 3(2), Table.
- 13 Ibid reg 21, Table item 1.
- 14 Ibid reg 21, Table item 2.
- 15 For the meaning of 'rear position lamp' see PARA 380 note 14 ante.
- 16 'Special equipment' means a movable platform fitted to a vehicle, the apparatus for moving the platform and any jacks fitted to the vehicle for stabilising it while the movable platform is in use: Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table.
- 17 'Movable platform' means a platform which is attached to, and may be moved by means of, an extendible boom: ibid reg 3(2), Table.
- 18 Ibid reg 21, Table item 3.
- 19 'Agricultural vehicle' means a vehicle constructed or adapted for agriculture, grass cutting, forestry, land levelling, dredging or similar operations and primarily used for one or more of these purposes; and includes any trailer drawn by an agricultural vehicle: ibid reg 3(2), Table.
- 20 For the meaning of 'rear retro reflector' see PARA 387 note 4 ante.
- 21 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 21, Table item 4 (amended by SI 1994/2280).
- 22 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 21, Table item 5.
- 23 Ibid reg 21, Table item 6.
- 24 For the meaning of 'stop lamp' see PARA 388 note 14 ante.
- 25 For the meaning of 'direction indicator' see PARA 378 note 14 ante.
- 26 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 21(2)(a).
- 27 Ibid reg 21(2)(b).

## **UPDATE**

### **378-408 Lighting of Vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(i) Fitting of Lamps, Reflectors, Rear Markings and Devices/390. Additional side marker lamps.

### **390. Additional side marker lamps.**

No person is to use or cause or permit<sup>1</sup> to be used on a road<sup>2</sup> between sunset and sunrise, or in seriously reduced visibility between sunrise and sunset, any vehicle or combination of vehicles of a type specified in heads (1) and (2) below, unless each side of the vehicle or combination of vehicles is fitted with the specified side marker lamps<sup>3</sup> and those lamps are kept lit<sup>4</sup>, that is to say:

- 673 (1) in the case of a vehicle or a combination of vehicles the overall length<sup>5</sup> of which, including any load, exceeds 18.3 metres, there must be fitted one lamp<sup>6</sup> no part of the light-emitting surface<sup>7</sup> of which is more than 9.15 metres from the foremost part of the vehicle or vehicles (in either case, inclusive of any load), one lamp no part of the light-emitting surface of which is more than 3.05 metres from the rearmost part of the vehicle or vehicles (in either case, inclusive of any load), and such other lamps as are required to ensure that not more than 3.05 metres separates any part of the light-emitting surface of one lamp and any part of the light-emitting surface of the next lamp<sup>8</sup>;
- 674 (2) in the case of a combination of vehicles the overall length of which, including any load, exceeds 12.2 metres but does not exceed 18.3 metres and carrying a load supported by any two of the vehicles but not including a load carried by an articulated vehicle<sup>9</sup>, there must be fitted one lamp no part of the light-emitting surface of which is forward of, or more than 1,530 millimetres rearward of, the rearmost part of the drawing vehicle and, if the supported load extends more than 9.15 metres rearward of the rearmost part of the drawing vehicle, one lamp no part of the light-emitting surface of which is forward of, or more than 1,530 millimetres rearward of, the centre of the length of the load<sup>10</sup>.

The requirements specified above do not apply to:

- 675 (a) a combination of vehicles where any vehicle being drawn in that combination has broken down<sup>11</sup>; or
- 676 (b) a vehicle, not being a combination of vehicles, having an appliance or apparatus or carrying a load of a specified kind<sup>12</sup>, if the conditions which provide for the special marking of projections from vehicles<sup>13</sup> are complied with in relation to the special appliance or apparatus or load as if the said conditions had been expressed<sup>14</sup> to apply in the case of every special appliance or apparatus or load of a specified<sup>15</sup> kind<sup>16</sup>.

Every side marker lamp fitted in accordance with the above provisions must comply with the requirements relating to side marker lamps<sup>17</sup>.

- 1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.
- 2 For the meaning of 'road' see PARA 206 ante.
- 3 For the meaning of 'side marker lamp' see PARA 378 note 5 ante.
- 4 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 22(1).
- 5 For the meaning of 'overall length' see PARA 272 ante; definition applied by ibid reg 3(2), Table.
- 6 As to references to one lamp see PARA 382 note 8 ante.
- 7 For the meaning of 'light-emitting surface' see PARA 382 note 8 ante.
- 8 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 22, Table item 1.
- 9 For the meaning of 'articulated vehicle' see PARA 271 note 6 ante; definition applied by ibid reg 3(2), Table.
- 10 Ibid reg 22, Table item 2.
- 11 Ibid reg 22(2)(a).
- 12 I.e. of a kind specified in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 82(7), Table (see PARA 592 post) or in reg 82(8) (see PARA 593 post).
- 13 See ibid Sch 12 paras 3 (as amended), 4; and PARA 593 post.
- 14 I.e. in ibid reg 82 (as amended): see PARA 590 et seq post.
- 15 I.e. of a kind specified in ibid reg 82 (as amended): see PARA 590 et seq post.
- 16 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 22(2).
- 17 Ibid reg 22(3). The requirements relating to side marker lamps are contained in reg 22(2), Sch 9 Pt I.

## **UPDATE**

### **378-408 Lighting of Vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(ii) Maintenance and Use of Lamps, Reflectors, Rear Markings and Devices/391. Maintenance of lamps, reflectors, rear markings and devices.

## **(ii) Maintenance and Use of Lamps, Reflectors, Rear Markings and Devices**

### **391. Maintenance of lamps, reflectors, rear markings and devices.**

No person is to use or cause or permit<sup>1</sup> to be used on a road<sup>2</sup> a vehicle unless each of the following lamps, reflectors, rear markings and devices is in good working order and, in the case of a lamp, clean<sup>3</sup>. This provision applies to:

- 677 (1) every front position lamp<sup>4</sup>, rear position lamp<sup>5</sup>, headlamp<sup>6</sup>, rear registration plate lamp<sup>7</sup>, side marker lamp<sup>8</sup>, end-outline marker lamp<sup>9</sup>, rear fog lamp<sup>10</sup>, retro reflector and specified rear marking<sup>11</sup>, with which the vehicle is required<sup>12</sup> to be fitted<sup>13</sup>; and
- 678 (2) every stop lamp<sup>14</sup>, direction indicator<sup>15</sup>, running lamp<sup>16</sup>, dim-dip device<sup>17</sup>, headlamp levelling device<sup>18</sup> and hazard warning signal device<sup>19</sup>, with which it is fitted<sup>20</sup>.

Heads (1) and (2) above do not apply to:

- 679 (a) a rear fog lamp on a vehicle which is part of a combination of vehicles any part of which is not required<sup>21</sup> to be fitted with a rear fog lamp<sup>22</sup>;
- 680 (b) a rear fog lamp on a motor vehicle drawing a trailer<sup>23</sup>;
- 681 (c) a defective lamp, reflector, dim-dip device or headlamp levelling device on a vehicle in use on a road between sunrise and sunset, if any such lamp, reflector or device became defective during the journey which is in progress or if arrangements have been made to remedy the defect with all reasonable expedition<sup>24</sup>; or
- 682 (d) a lamp, reflector, dim-dip device, headlamp levelling device or rear marking on a combat vehicle<sup>25</sup> in use on a road between sunrise and sunset<sup>26</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 23(1).

4 For the meaning of 'front position lamp' see PARA 380 note 10 ante.

5 For the meaning of 'rear position lamp' see PARA 380 note 14 ante.

6 For the meaning of 'headlamp' see PARA 379 note 4 ante.

7 For the meaning of 'rear registration plate lamp' see PARA 382 note 6 ante.

8 For the meaning of 'side marker lamp' see PARA 378 note 5 ante.

9 For the meaning of 'end-outline marker lamp' see PARA 382 note 5 ante.

10 For the meaning of 'rear fog lamp' see PARA 388 note 13 ante.

11 I.e. rear marking of a type specified in the Road Vehicles Lighting Regulations 1989, SI 1989/1796, Sch 19 Pt I (substituted by SI 1994/2280).

12 I.e. by the Road Vehicles Lighting Regulations 1989, SI 1989/1796 (as amended).

13 Ibid reg 23(2)(a) (amended by SI 1994/2280).

14 For the meaning of 'stop lamp' see PARA 388 note 14 ante.

15 For the meaning of 'direction indicator' see PARA 378 note 14 ante.

16 For the meaning of 'running lamp' see PARA 388 note 4 ante.

17 For the meaning of 'dim-dip device' see PARA 388 note 3 ante.

18 'Headlamp levelling device' means either: (1) an automatic headlamp levelling device by means of which the downward inclination of any dipped-beam headlamp is automatically maintained regardless of the load on

the vehicle; or (2) a manual headlamp levelling device by means of which the downward inclination of any dipped-beam headlamp may be adjusted by a manual control operable from the driving seat of the vehicle: Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table. For the meaning of 'dipped beam' see PARA 382 note 8 ante.

19 For the meaning of 'hazard warning signal device' see PARA 388 note 10 ante.

20 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 23(2)(b).

21 Ie by the Road Vehicles Lighting Regulations 1989, SI 1989/1796 (as amended).

22 Ibid reg 23(3)(a).

23 Ibid reg 23(3)(b). For the meaning of 'trailer' see PARA 378 note 33 ante.

24 Ibid reg 23(3)(c).

25 'Combat vehicle' means a vehicle of a type described in the Motor Vehicles (Authorisation of Special Types) General Order 1979, SI 1979/1198, art 6, Sch 1 (see PARA 625 post): Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table.

26 Ibid reg 23(3)(d).

## UPDATE

### 378-408 Lighting of Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(ii) Maintenance and Use of Lamps, Reflectors, Rear Markings and Devices/392. Use of front and rear position lamps, rear registration plate lamps, side marker lamps and end-outline marker lamps.

### 392. Use of front and rear position lamps, rear registration plate lamps, side marker lamps and end-outline marker lamps.

No person:

683 (1) is to use or cause or permit<sup>1</sup> to be used on a road<sup>2</sup> any vehicle which is in motion between sunset and sunrise or in seriously reduced visibility between sunrise and sunset, or allow to remain at rest, or cause or permit to be allowed to remain at rest, on a road any vehicle between sunset and sunrise, unless every front position lamp<sup>3</sup>, rear position lamp<sup>4</sup>, rear registration plate lamp<sup>5</sup>, side marker lamp<sup>6</sup> and end-outline marker lamp<sup>7</sup> with which the vehicle is required to be fitted<sup>8</sup> is kept lit and unobscured<sup>9</sup>;

684 (2) where a solo motor bicycle<sup>10</sup> is not fitted with a front position lamp, is to use the solo motor bicycle or cause or permit it to be used on a road, other than when it is parked, between sunset and sunrise or in seriously reduced visibility between sunrise and sunset, unless a headlamp<sup>11</sup> is kept lit and unobscured<sup>12</sup>;

685 (3) is to allow to remain parked, or cause or permit to be allowed to remain parked, between sunset and sunrise: (a) a motor bicycle combination<sup>13</sup> which is

- required to be fitted only with a front position lamp on the sidecar<sup>14</sup>; or (b) a trailer<sup>15</sup> to the front of which no other vehicle is attached and which is not required to be fitted with front position lamps<sup>16</sup>, unless a pair<sup>17</sup> of front position lamps is fitted and kept lit and unobscured<sup>18</sup>; or
- 686 (4) is to allow to remain parked, or cause or permit to be allowed to remain parked, between sunset and sunrise a solo motor bicycle which is not required to be fitted with a front position lamp, unless a front position lamp is fitted and kept lit and unobscured<sup>19</sup>.

The provisions of heads (1) to (4) above do not apply in respect of a vehicle of a specified class<sup>20</sup> which is parked on a road on which a speed limit of 30 miles per hour or less is in force if the vehicle is parked<sup>21</sup>:

- 687 (i) in a parking place for which provision is made under the relevant statutory provisions<sup>22</sup> or which is set apart as a parking place under some other enactment or instrument and the vehicle is parked in a manner which does not contravene the provision of any enactment or instrument relating to the parking place<sup>23</sup>;
- 688 (ii) in a lay-by, the limits of which are indicated by a traffic sign<sup>24</sup>, or the surface of which is of a colour or texture which is different from that of the part of the carriageway of the road used primarily by through traffic<sup>25</sup>, or the limits of which are indicated by a continuous strip of surface of a different colour or texture from that of the surface of the remainder of the carriageway of the road<sup>26</sup>; or
- 689 (iii) elsewhere than in such a parking place or lay-by if the vehicle is parked in one of the specified circumstances<sup>27</sup> and no part of the vehicle is less than 10 metres from the junction of any part of the carriageway of any road with the carriageway of the road on which it is parked whether that junction is on the same side of the road as that on which the vehicle is parked or not<sup>28</sup>.

Nor do the provisions of heads (1) to(4) apply in respect of:

- 690 (A) a solo motor bicycle or a pedal cycle being pushed along the left-hand edge of a carriageway<sup>29</sup>;
- 691 (B) a pedal cycle waiting to proceed provided it is kept to the left-hand or near side edge of a carriageway<sup>30</sup>; or
- 692 (C) a vehicle which is parked in an area on part of a highway on which roadworks are being carried out and which is bounded by amber lamps and other traffic signs so as to prevent the presence of the vehicle, its load or equipment being a danger to persons using the road<sup>31</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 For the meaning of 'front position lamp' see PARA 380 note 10 ante.

4 For the meaning of 'rear position lamp' see PARA 380 note 14 ante.

5 For the meaning of 'rear registration plate lamp' see PARA 382 note 6 ante.

6 For the meaning of 'side marker lamp' see PARA 378 note 5 ante.

7 For the meaning of 'end-outline marker lamp' see PARA 382 note 5 ante.

8 le by the Road Vehicles Lighting Regulations 1989, SI 1989/1796 (as amended).

9 Ibid reg 24(1).



- 10 For the meaning of 'solo motor bicycle' see PARA 378 note 9 ante.
- 11 For the meaning of 'headlamp' see PARA 379 note 4 ante.
- 12 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 24(2).
- 13 For the meaning of 'motor bicycle combination' see PARA 378 note 10 ante.
- 14 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 24(3)(a).
- 15 For the meaning of 'trailer' see PARA 378 note 33 ante.
- 16 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 24(3)(b).
- 17 'Pair', in relation to lamps, reflectors or rear markings means a pair of lamps, reflectors or rear markings, including a matched pair, one on each side of the vehicle, in respect of which the following conditions are met: (1) each lamp, reflector or rear marking is at the same height above the ground; and (2) each lamp, reflector or rear marking is at the same distance from the extreme outer edge of the vehicle; and, in the case of an asymmetric vehicle, those conditions are deemed to be met if they are as near as practicable to being met: *ibid* reg 3(2), Table.
- 18 *Ibid* reg 24(3).
- 19 *Ibid* reg 24(4).
- 20 The classes of vehicle so specified are: (1) a motor vehicle being a goods vehicle the unladen weight of which does not exceed 1,525 kg; (2) a passenger vehicle other than a bus; (3) an invalid carriage; and (4) a motor cycle or a pedal cycle in either case with or without a sidecar, not being: (a) a vehicle to which a trailer is attached; (b) a vehicle which is required to be fitted with lamps by *ibid* reg 21 (as amended) (see PARA 389 ante); or (c) a vehicle carrying a load, if the load is required to be fitted with lamps by reg 21 (as amended): reg 24(7). For the meaning of 'motor vehicle' see PARA 210 ante; for the meaning of 'unladen weight' see PARA 271 note 21 ante; for the meaning of 'passenger vehicle' see PARA 287 note 8 ante (definition applied by reg 3(2), Table); for the meaning of 'bus' see PARA 271 note 6 ante (definition applied by reg 3(2), Table); for the meaning of 'invalid carriage' see PARA 378 note 11 ante; for the meaning of 'motor cycle' see PARA 214 ante; and for the meaning of 'pedal cycle' see PARA 378 note 8 ante.
- 21 *Ibid* reg 24(5).
- 22 It is made under the Road Traffic Regulation Act 1984 s 6 (as amended) (see PARA 747 post), or authorised under s 32 (as amended) (see PARA 784 post) or designated under s 45 (as amended) (see PARA 808 post).
- 23 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 24(5)(a).
- 24 It is a traffic sign consisting of the road marking shown in the Traffic Signs Regulations and General Directions 2002, SI 2002/3113, Sch 6: Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 24(5)(b); Interpretation Act 1978 s 17(2). For the meaning of 'traffic sign' see PARA 378 note 12 ante.
- 25 This is to be construed in accordance with the diagram in the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 24(3), Sch 22: reg 24(6).
- 26 *Ibid* reg 24(5)(b).
- 27 The circumstances so specified are that: (1) the vehicle is parked on a road on which the driving of vehicles otherwise than in one direction is prohibited at all times and its left or near side is as close as may be and PARALLEL to the left-hand edge of the carriageway or its right or off side is as close as may be and PARALLEL to the right-hand edge of the carriageway; or (2) the vehicle is parked on a road on which such a prohibition does not exist and its left or near side is as close as may be and PARALLEL to the edge of the carriageway: *ibid* reg 24(8).
- 28 *Ibid* reg 24(5)(c).
- 29 *Ibid* reg 24(9)(a).
- 30 *Ibid* reg 24(9)(b).
- 31 *Ibid* reg 24(9)(c).

**UPDATE****378-408 Lighting of Vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(ii) Maintenance and Use of Lamps, Reflectors, Rear Markings and Devices/393. Use of headlamps and front fog lamps.

**393. Use of headlamps and front fog lamps.**

No person is to use or cause or permit<sup>1</sup> to be used on a road<sup>2</sup> a vehicle which is fitted with obligatory<sup>3</sup> dipped-beam<sup>4</sup> headlamps<sup>5</sup> unless every such lamp is kept lit<sup>6</sup> during the hours of darkness<sup>7</sup>, except on a road which is a restricted road<sup>8</sup> by virtue of a system of street lighting when it is lit, and in seriously reduced visibility<sup>9</sup>.

The above provisions do not apply:

- 693 (1) in the case of a motor vehicle<sup>10</sup> fitted with one<sup>11</sup> obligatory dipped-beam headlamp or a solo motor bicycle<sup>12</sup> or motor bicycle combination<sup>13</sup> fitted with a pair<sup>14</sup> of obligatory dipped-beam headlamps, if a main-beam<sup>15</sup> headlamp or a front fog lamp<sup>16</sup> is kept lit<sup>17</sup>;
- 694 (2) in the case of a motor vehicle, other than a solo motor bicycle or motor bicycle combination, fitted with a pair of obligatory dipped-beam headlamps, if a pair of main-beam headlamps is kept lit or, in seriously reduced visibility, a pair of front fog lamps which is so fitted that the outermost part of the illuminated area<sup>18</sup> of each lamp in the pair is not more than 400 millimetres from the outer edge of the vehicle is kept lit<sup>19</sup>;
- 695 (3) to a vehicle being drawn by another vehicle<sup>20</sup>;
- 696 (4) to a vehicle while being used to propel a snow plough<sup>21</sup>; or
- 697 (5) to a vehicle which is parked<sup>22</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 For the meaning of 'obligatory' see PARA 389 note 10 ante.

4 For the meaning of 'dipped beam' see PARA 382 note 8 ante.

5 For the meaning of 'headlamp' see PARA 379 note 4 ante.

6 For these purposes, a headlamp is not to be regarded as lit if its intensity is reduced by a dim-dip device: Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 25(3). For the meaning of 'dim-dip device' see PARA 388 note 3 ante.

7 'Hours of darkness' means the time between half an hour after sunset and half an hour before sunrise: *ibid* reg 3(2), Table. As to hours of darkness see TIME vol 97 (2010) PARA 314.

- 8 le for the purposes of the Road Traffic Regulation Act 1984 s 81: see PARA 847 post.
- 9 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 25(1).
- 10 For the meaning of 'motor vehicle' see PARA 210 ante.
- 11 As to references to one lamp see PARA 382 note 8 ante.
- 12 For the meaning of 'solo motor bicycle' see PARA 378 note 9 ante.
- 13 For the meaning of 'motor cycle combination' see PARA 378 note 10 ante.
- 14 For the meaning of 'pair' see PARA 392 note 17 ante.
- 15 For the meaning of 'main beam' see PARA 382 note 8 ante.
- 16 For the meaning of 'front fog lamp' see PARA 379 note 4 ante.
- 17 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 25(2)(a).
- 18 For the meaning of 'illuminated area' see PARA 382 note 8 ante.
- 19 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 25(2)(b).
- 20 Ibid reg 25(2)(c).
- 21 Ibid reg 25(2)(d).
- 22 Ibid reg 25(2)(e).

## **UPDATE**

### **378-408 Lighting of Vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(ii) Maintenance and Use of Lamps, Reflectors, Rear Markings and Devices/394. Use of warning beacons.

#### **394. Use of warning beacons.**

No person is to use or cause or permit<sup>1</sup> to be used on an unrestricted dual-carriageway road<sup>2</sup> a vehicle which is required<sup>3</sup> to be fitted with at least one warning beacon unless every such beacon is kept lit<sup>4</sup>.

- 1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.
- 2 For the meaning of 'unrestricted dual-carriageway road' see PARA 384 note 2 ante.
- 3 le required by the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 17: see PARA 384 ante. For the meaning of 'warning beacon' see PARA 378 note 3 ante.
- 4 Ibid reg 26.

## UPDATE

### 378-408 Lighting of Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(ii) Maintenance and Use of Lamps, Reflectors, Rear Markings and Devices/395. Restrictions on the use of certain lamps.

#### 395. Restrictions on the use of certain lamps.

No person is to use or cause or permit<sup>1</sup> to be used on a road<sup>2</sup> any vehicle on which any lamp, hazard warning signal device<sup>3</sup> or warning beacon<sup>4</sup> of a type specified in heads (1) to (11) below is used in a specified prohibited manner<sup>5</sup>, that is to say:

- 698 (1) no headlamp<sup>6</sup> is to be used so as to cause undue dazzle or discomfort to other persons using the road or used so as to be lit when a vehicle is parked<sup>7</sup>;
- 699 (2) no front fog lamp<sup>8</sup> is to be used so as to cause undue dazzle or discomfort to other persons using the road or used so as to be lit at any time other than in conditions of seriously reduced visibility or used so as to be lit when a vehicle is parked<sup>9</sup>;
- 700 (3) no rear fog lamp<sup>10</sup> is to be used so as to cause undue dazzle or discomfort to the driver<sup>11</sup> of a following vehicle or used so as to be lit at any time other than in conditions of seriously reduced visibility or, save in the case of an emergency vehicle, used so as to be lit when a vehicle is parked<sup>12</sup>;
- 701 (4) no reversing lamp<sup>13</sup> is to be used so as to be lit except for the purpose of reversing the vehicle<sup>14</sup>;
- 702 (5) no hazard warning signal device is to be used other than to warn persons using the road of a temporary obstruction when the vehicle is at rest or on a motorway<sup>15</sup> or unrestricted dual-carriageway<sup>16</sup>, to warn following drivers of a need to slow down due to a temporary obstruction ahead or, in the case of a bus<sup>17</sup>, to summon assistance for the driver or any person acting as a conductor or inspector on the vehicle or, in the case of a bus to which prescribed signs<sup>18</sup> are fitted<sup>19</sup>, when the vehicle is stationary and children under the age of 16 years are entering or leaving, or are about to enter or leave, or have just left the vehicle<sup>20</sup>;
- 703 (6) no warning beacon emitting blue light or special warning lamp<sup>21</sup> is to be used so as to be lit except at the scene of an emergency or when it is necessary or desirable either to indicate to persons using the road the urgency of the purpose for which the vehicle is being used, or to warn persons of the presence of the vehicle or a hazard on the road<sup>22</sup>;
- 704 (7) no warning beacon emitting amber light is to be used so as to be lit except:
  - (a) at the scene of an emergency;
  - (b) when it is necessary or desirable to warn persons of the presence of the vehicle;
  - (c) in the case of a breakdown vehicle<sup>23</sup>, while it is being used in connection with, and in the immediate vicinity of, an accident or breakdown, or while it is being used to draw a broken-down vehicle;
  - (d) in the case of an abnormal load escort vehicle<sup>24</sup>, while it is being used in connection

- with the escort of another vehicle which has an overall width<sup>25</sup>, including any load, exceeding 2·9 metres or an overall length<sup>26</sup>, including any load, exceeding 18·65 metres, or has been authorised by the Secretary of State<sup>27</sup>; or (e) in the case of a vehicle used for escort purposes other than an abnormal load escort vehicle, while it is being used in connection with the escort of any vehicle and travelling at a speed not exceeding 25 miles per hour<sup>28</sup>;
- 705 (8) no warning beacon emitting green light is to be used so as to be lit except whilst the vehicle is occupied by a medical practitioner registered by the General Medical Council<sup>29</sup> (whether with full, provisional or limited registration) and is used for the purposes of an emergency<sup>30</sup>;
- 706 (9) no warning beacon emitting yellow light is to be used so as to be lit on a road<sup>31</sup>;
- 707 (10) no work lamp<sup>32</sup> is to be used so as to cause undue dazzle or discomfort to the driver of any vehicle or used so as to be lit except for the purpose of illuminating a working area, accident, breakdown or works in the vicinity of the vehicle<sup>33</sup>; and
- 708 (11) no other lamp is to be used so as to cause undue dazzle or discomfort to other persons using the road<sup>34</sup>.

- 1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.
- 2 For the meaning of 'road' see PARA 206 ante.
- 3 For the meaning of 'hazard warning signal device' see PARA 388 note 10 ante.
- 4 For the meaning of 'warning beacon' see PARA 378 note 3 ante.
- 5 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 27.
- 6 For the meaning of 'headlamp' see PARA 379 note 4 ante.
- 7 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 27, Table item 1.
- 8 For the meaning of 'front fog lamp' see PARA 379 note 4 ante.
- 9 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 27, Table item 2.
- 10 For the meaning of 'rear fog lamp' see PARA 388 note 13 ante.
- 11 For the meaning of 'driver' see PARA 207 ante.
- 12 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 27, Table item 3.
- 13 For the meaning of 'reversing lamp' see PARA 378 note 16 ante.
- 14 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 27, Table item 4.
- 15 For the meaning of 'motorway' see PARA 851 note 11 post; definition applied by ibid reg 3(2), Table.
- 16 For the meaning of 'unrestricted dual-carriageway road' see PARA 384 note 2 ante.
- 17 For the meaning of 'bus' see PARA 271 note 6 ante; definition applied by the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table.
- 18 For the meaning of 'prescribed sign' see PARA 378 note 60 ante.
- 19 As described in the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 17A(1)(a), (b) (as added): see PARA 385 ante.
- 20 Ibid reg 27, Table item 5 (amended by SI 1994/2880).
- 21 For the meaning of 'special warning lamp' see PARA 378 note 26 ante.

- 22 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 27, Table item 6.
- 23 For the meaning of 'breakdown vehicle' see PARA 378 note 31 ante.
- 24 'Abnormal load escort vehicle' means a vehicle which is clearly identifiable to other road users as a vehicle used for the purposes of escorting abnormal loads by having on its front suitable markings and on its sides and rear retro-reflective markings: Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table (definition added by SI 2005/2559).
- 25 For the meaning of 'overall width' see PARA 274 ante; definition applied by the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table.
- 26 For the meaning of 'overall length' see PARA 272 ante; definition applied by ibid reg 3(2), Table.
- 27 ie under the Road Traffic Act 1988 s 44 (as amended): see PARA 376 ante.
- 28 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 27, Table item 7 (amended by SI 2005/2559).
- 29 As to the General Medical Council see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 13 et seq.
- 30 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 27, Table item 8. As from a day to be notified in the Gazette, this provision is amended by the Medical Act 1983 (Amendment) and Miscellaneous Amendments Order 2006, SI 2006/1914, so as to substitute for the words 'full, provisional or limited' the words 'full or provisional'. At the date at which this volume states the law no such notification had been given.
- 31 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 27, Table item 9.
- 32 For the meaning of 'work lamp' see PARA 378 note 17 ante.
- 33 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 27, Table item 10.
- 34 Ibid reg 27, Table item 11.

## **UPDATE**

### **378-408 Lighting of Vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **395 Restrictions on the use of certain lamps**

NOTE 30--Notified day is 19 October 2007: London Gazette, 20 July 2007.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(iii) Exemptions and Modifications/396. Equivalent standards.

## **(iii) Exemptions and Modifications**

### **396. Equivalent standards.**

Nothing in the provisions relating to the lighting of motor vehicles<sup>1</sup> renders unlawful any act or omission which would have been lawful were<sup>2</sup>:

- 709 (1) there to be substituted for any reference to a British Standard in those provisions a reference to a corresponding standard<sup>3</sup>; and  
 710 (2) the requirement as to the marking of a part fitted to a vehicle<sup>4</sup> to apply in relation to that corresponding standard and the markings relating to that corresponding standard as it applies to a British Standard<sup>5</sup>.

1 le the Road Vehicles Lighting Regulations 1989, SI 1989/1796 (as amended): see PARA 378 et seq ante.

2 Ibid reg 3A(1) (reg 3A added by SI 1994/2280).

3 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3A(1)(a) (as added: see note 2 supra). For these purposes, 'corresponding standard', in relation to a relevant British Standard Specification, means: (1) a standard or code of practice of a national standards body or equivalent body of any state within the European Economic Area; (2) any international standard recognised for use as a standard by any state within the European Economic Area; (3) a technical specification or code of practice which, whether mandatory or not, is recognised for use as a standard by a public authority of any state within the European Economic Area, where the standard, code of practice, international standard or technical specification provides, in relation to lamps, retro reflectors and rear markings, a level of safety equivalent to that provided by that British Standard Specification and contains a requirement as respects the marking of such parts equivalent to that provided by that instrument: reg 3A(2) (as so added).

4 le the requirement contained in ibid reg 3(6). Where a part fitted to a vehicle is required by the Road Vehicles Lighting Regulations 1989, SI 1989/1796 (as amended) to be marked with a British Standard mark, the requirement is not to be regarded as met unless, in addition to being marked as required, the part complied with the relevant British Standard at the time when the part was first fitted to the vehicle: reg 3(6).

5 Ibid reg 3A(1)(b) (as added: see note 2 supra).

## UPDATE

### 378-408 Lighting of Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(iii) Exemptions and Modifications/397. General exemptions.

### 397. General exemptions.

Where a provision is applied<sup>1</sup> to a motor vehicle<sup>2</sup> first used<sup>3</sup> on or after a specified date, it does not apply to any vehicle manufactured at least six months before that date<sup>4</sup>.

Where an exemption from, or a relaxation of, a provision is applied<sup>5</sup> to a motor vehicle first used before a specified date, it also applies to a motor vehicle first used on or after that date if it was manufactured at least six months before that date<sup>6</sup>.

Nothing in the provisions relating to lighting of motor vehicles<sup>7</sup> requires any lamp or reflector to be fitted between sunrise and sunset to<sup>8</sup>:

- 711 (1) a vehicle not fitted with any front or rear position lamp<sup>9</sup>;

- 712 (2) an incomplete vehicle proceeding to a works for completion<sup>10</sup>;
- 713 (3) a pedal cycle<sup>11</sup>;
- 714 (4) a pedestrian-controlled vehicle<sup>12</sup>;
- 715 (5) a horse-drawn<sup>13</sup> vehicle<sup>14</sup>;
- 716 (6) a vehicle drawn or propelled by hand<sup>15</sup>; or
- 717 (7) a combat vehicle<sup>16</sup>.

A lamp is not to be treated as being a lamp if it is: (a) so painted over or masked that it is not capable of being immediately used or readily put to use; or (b) an electric lamp which is not provided with any system of wiring by means of which that lamp is, or can readily be, connected with a source of electricity<sup>17</sup>.

1 le by the Road Vehicles Lighting Regulations 1989, SI 1989/1796 (as amended).

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'first used' see PARA 267 note 5 ante; definition applied by the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table.

4 Ibid reg 4(1).

5 See note 1 supra.

6 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 4(2).

7 le the Road Vehicles Lighting Regulations 1989, SI 1989/1796 (as amended): see PARA 378 et seq ante.

8 Ibid reg 4(3).

9 Ibid reg 4(3)(a). For the meaning of 'front position lamp' see PARA 380 note 10 ante; and for the meaning of 'rear position lamp' see PARA 380 note 14 ante.

10 Ibid reg 4(3)(b).

11 Ibid reg 4(3)(c). For the meaning of 'pedal cycle' see PARA 378 note 8 ante.

12 Ibid reg 4(3)(d). For the meaning of 'pedestrian-controlled vehicle' see PARA 290 note 8 ante; definition applied by reg 3(2), Table.

13 'Horse-drawn', in relation to a vehicle, means that the vehicle is drawn by a horse or other animal: ibid reg 3(2), Table.

14 Ibid reg 4(3)(e).

15 Ibid reg 4(3)(f).

16 Ibid reg 4(3)(g). For the meaning of 'combat vehicle' see PARA 391 note 25 ante.

17 Ibid reg 4(4), which is expressed to be without prejudice to reg 16 (see PARA 383 ante).

## UPDATE

### 378-408 Lighting of Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.



Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(iii) Exemptions and Modifications/398. Exemptions for vehicle examiners.

### **398. Exemptions for vehicle examiners.**

The statutory provisions regulating the fitting of lamps, reflectors, rear markings and devices<sup>1</sup>, and the maintenance and use of lamps, reflectors, rear markings and devices<sup>2</sup> do not apply where a vehicle is being used on a road by a vehicle examiner<sup>3</sup> and it is so used in order: (1) to submit the vehicle for an examination<sup>4</sup> for the purpose of ascertaining whether the examination is carried out in accordance with regulations as to vehicle tests<sup>5</sup>; or (2) to remove the vehicle following that examination<sup>6</sup>. This exemption only applies to a vehicle examiner: (a) who has been authorised in writing by the Secretary of State<sup>7</sup> to use a vehicle for the purposes described in heads (1) and (2) above; and (b) who, when using the vehicle for such a purpose, reasonably believes that any defects in that vehicle do not give rise to a danger of injury to any person while being so used<sup>8</sup>.

1    Ie the Road Vehicles Lighting Regulations 1989, SI 1989/1796, Pt II (regs 11-22) (as amended): see PARA 378 et seq ante.

2    Ie ibid Pt III (regs 23-27) (as amended): see PARA 391 et seq ante.

3    'Vehicle examiner' means an examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 post): Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 4A(3) (reg 4A added by SI 2005/3169).

4    Ie under the Road Traffic Act 1988 s 45 (as amended): see PARA 808 post.

5    Ie regulations made under ibid s 45 (as amended).

6    Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 4A(1) (as added: see note 3 supra).

7    As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

8    Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 4A(2) (as added: see note 3 supra).

## **UPDATE**

### **378-408 Lighting of Vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(iii) Exemptions and Modifications/399. Temporarily imported vehicles and vehicles proceeding to a port for export.

### **399. Temporarily imported vehicles and vehicles proceeding to a port for export.**

The provisions regulating the fitting of lamps, reflectors, rear markings and devices<sup>1</sup> do not apply to:

- 718 (1) any vehicle having a base or centre in a country outside Great Britain<sup>2</sup> from which it normally starts its journeys, provided that a period of not more than 12 months has elapsed since the vehicle was last brought into Great Britain<sup>3</sup>;
- 719 (2) a visiting vehicle<sup>4</sup>;
- 720 (3) any combination of two or more vehicles, one of which is drawing the other or others, if the combination includes any vehicle of the type mentioned in head (1) or head (2) above<sup>5</sup>; or
- 721 (4) a vehicle proceeding to a port for export<sup>6</sup>,

if, in each case, the vehicle or combination of vehicles complies in every respect with the requirements about lighting equipment and reflectors relating to it contained in the relevant Conventions<sup>7</sup>.

1 The Road Vehicles Lighting Regulations 1989, SI 1989/1796, Pt II (regs 11-22) (as amended): see PARA 378 et seq ante.

2 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

3 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 5(a).

4 Ibid reg 5(b). For the meaning of 'visiting vehicle' see PARA 577 note 3 post; definition applied by reg 3(2), Table (amended by SI 1994/2280).

5 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 5(c).

6 Ibid reg 5(d).

7 Ibid reg 5. The relevant Conventions are the International Convention on Road Traffic (Geneva, 19 September 1949; TS 49 (1958); Cmd 578) or the International Convention relative to Motor Traffic (Paris, 24 April 1926; TS 11 (1930); Cmd 3510): Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 5.

## UPDATE

### 378-408 Lighting of Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(iii) Exemptions and Modifications/400. Vehicles towing or being towed.

### 400. Vehicles towing or being towed.

No motor vehicle<sup>1</sup> first used<sup>2</sup> before 1 April 1986, and no pedal cycle<sup>3</sup> or trailer<sup>4</sup> manufactured before 1 October 1985, is required<sup>5</sup> to be fitted with any rear position lamp<sup>6</sup>, stop lamp<sup>7</sup>, rear direction indicator<sup>8</sup>, rear fog lamp<sup>9</sup> or rear reflector whilst a trailer fitted with any such lamp or reflector is attached to its rear<sup>10</sup>.

No trailer manufactured before 1 October 1985 is required<sup>11</sup> to be fitted with any front position lamp<sup>12</sup> whilst being drawn by a passenger vehicle<sup>13</sup>.

No trailer is required<sup>14</sup> to be fitted<sup>15</sup> with any stop lamp, rear fog lamps or direction indicators whilst being drawn by a vehicle which is not required<sup>16</sup> to be fitted with any such lamp<sup>17</sup>.

No trailer manufactured before 1 October 1990 is required<sup>18</sup> to be fitted with any stop lamp or direction indicator whilst being drawn by a motor vehicle fitted with one<sup>19</sup> or two<sup>20</sup> stop lamps and two or more direction indicators if the dimensions of the trailer are such that, when the longitudinal axis of the drawing vehicle and the trailer lie in the same vertical plane, such stop lamps and at least one direction indicator on each side of the vehicle are visible to an observer in that vertical plane from a point 6 metres behind the rear of the trailer whether it is loaded or not<sup>21</sup>.

No rear marking is required to be fitted to any vehicle<sup>22</sup> if another vehicle in a combination of which it forms part would obscure any such marking<sup>23</sup>.

Where a broken-down vehicle is being drawn by another vehicle: (1) the provisions relating to obligatory lamps, reflectors, rear markings and devices<sup>24</sup> and the maintenance of lamps, reflectors, rear markings and devices<sup>25</sup> do not apply to the broken-down vehicle between sunrise and sunset<sup>26</sup>; and (2) between sunset and sunrise those provisions apply to the broken-down vehicle only in respect of rear position lamps and reflectors<sup>27</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'first used' see PARA 267 note 5 ante; definition applied by the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table.

3 For the meaning of 'pedal cycle' see PARA 378 note 8 ante.

4 For the meaning of 'trailer' see PARA 378 note 33 ante.

5 le by the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 18 (as amended): see PARA 386 ante.

6 For the meaning of 'rear position lamp' see PARA 380 note 14 ante.

7 For the meaning of 'stop lamp' see PARA 388 note 14 ante.

8 For the meaning of 'direction indicator' see PARA 378 note 14 ante.

9 For the meaning of 'rear fog lamp' see PARA 388 note 13 ante.

10 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 6(1).

11 See note 5 supra.

12 For the meaning of 'front position lamp' see PARA 380 note 10 ante.

13 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 6(2). For the meaning of 'passenger vehicle' see PARA 287 note 8 ante; definition applied by reg 3(2), Table.

14 See note 5 supra.

15 For these purposes, and for the purposes of the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 6(4) (see the text to note 17 infra), the references to a vehicle which is required to be fitted with a lamp are to be construed as if reg 6(1) (see the text to note 10 supra) did not have effect: reg 6(8).

16 See note 5 supra.

17 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 6(3), (4).

18 See note 5 supra.

19 As to references to one lamp see PARA 382 note 8 ante.

20 A reference to two lamps includes: (1) a single illuminated area which: (a) is placed symmetrically in relation to the longitudinal axis of the vehicle; (b) extends on both sides to within 400 mm of the extreme outer edge of the vehicle; (c) is not less than 800 mm long; and (d) is illuminated by not less than two sources of light; and (2) any number of illuminated areas which: (a) are juxtaposed; (b) if on the same transverse plane have illuminated areas which occupy not less than 60% of the area of the smallest rectangle circumscribing their illuminated areas; (c) are placed symmetrically in relation to the median longitudinal plane of the vehicle; (d) extend on both sides to within 400 mm of the extreme outer edge of the vehicle; (e) do not have a total length of less than 800 mm; and (f) are illuminated by not less than two sources of light: Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(5). For the meaning of 'illuminated area' see PARA 382 note 8 ante.

21 Ibid reg 6(5).

22 See note 5 supra.

23 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 6(6).

24 Ie ibid reg 18 (as amended): see PARA 386 ante.

25 Ie ibid reg 23 (as amended): see PARA 391 ante.

26 Ibid reg 6(7)(a).

27 Ibid reg 6(7)(b).

## UPDATE

### 378-408 Lighting of Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(iii) Exemptions and Modifications/401. Military vehicles.

#### 401. Military vehicles.

The provisions relating to obligatory lamps, reflectors, rear markings and devices<sup>1</sup> do not apply to a home forces' vehicle<sup>2</sup> or to a vehicle in the service of a visiting force or of a headquarters<sup>3</sup> whilst being used<sup>4</sup>:

722 (1) in connection with training which is certified in writing for these purposes by a person duly authorised in that behalf to be training on a special occasion and of which not less than 48 hours' notice has been given by that person to the chief officer of police of every police area<sup>5</sup> in which the place selected for the training is wholly or partly situated<sup>6</sup>; or

723 (2) on manoeuvres within such limits and during such period as may from time to time be specified by Order in Council<sup>7</sup>.

Where not less than six nor more than 12 vehicles, being home forces' vehicles or vehicles of a visiting force or of a headquarters, are proceeding together in a convoy on tactical or driving exercises which are authorised in writing by a person duly authorised in that behalf, and of

which not less than 48 hours' notice in writing has been given by that person to the chief officer of police of every police area through which it is intended that the convoy is to pass and the interval between any two vehicles in such convoy does not exceed 20 metres<sup>8</sup>:

- 724 (a) front position lamps<sup>9</sup> are required only on the vehicle leading the convoy<sup>10</sup>; and
- 725 (b) rear position lamps<sup>11</sup> are required only on the rearmost vehicle, provided that every other vehicle in the convoy carries a bright light under the vehicle illuminating either a part of the vehicle or anything attached to the vehicle or the road surface beneath the vehicle, in such a manner that the presence of the vehicle can be detected from the rear<sup>12</sup>.

No lamp is required to be fitted to any home forces' vehicle or any vehicle in the service of a visiting force or of a headquarters if the vehicle is constructed or adapted for combat and is such that compliance with these provisions is impracticable and it is fitted with two<sup>13</sup> red rear position lamps and two red rear retro reflectors<sup>14</sup> when on a road between sunset and sunrise<sup>15</sup>. Such lamps and reflectors need not meet any of the requirements<sup>16</sup> relating to obligatory rear position lamps and optional rear position lamps and obligatory rear retro reflectors and optional rear retro reflectors<sup>17</sup>.

The provisions regulating the fitting of lamps, reflectors, rear markings and devices<sup>18</sup> do not apply to a vehicle in the service of a visiting force or of a headquarters if the vehicle complies in every respect with the requirements as to lighting equipment and reflectors relating to it contained in a relevant Convention<sup>19</sup>.

1 le the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 18 (as amended): see PARA 386 ante.

2 'Home forces' vehicle' means a vehicle owned by, or in the service of, the home forces and used for naval, military or air force purposes: *ibid* reg 3(2), Table. 'Home forces' means the naval, military or air forces of Her Majesty raised in the United Kingdom: reg 3(2), Table. For the meaning of 'United Kingdom' see PARA 224 note 5 ante. As to the naval, military and air forces see ARMED FORCES.

3 For the meaning of 'vehicle in the service of a visiting force or of a headquarters' see PARA 268 note 11 ante; definition applied by *ibid* reg 3(2), Table.

4 *Ibid* reg 7(1).

5 As to police areas see POLICE vol 36(1) (2007 Reissue) PARA 136 et seq.

6 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 7(1)(a).

7 *Ibid* reg 7(1)(b). Such Orders in Council are made under the Manoeuvres Act 1958: see ARMED FORCES vol 2(2) (Reissue) PARA 95 et seq.

8 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 7(2).

9 For the meaning of 'front position lamp' see PARA 380 note 10 ante.

10 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 7(2)(a).

11 For the meaning of 'rear position lamp' see PARA 380 note 14 ante.

12 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 7(2)(b).

13 As to references to two lamps see PARA 400 note 20 ante.

14 For the meaning of 'rear retro reflector' see PARA 387 note 4 ante.

15 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 7(3).

16 le the requirements of *ibid* Sch 10 (as amended) and Sch 18 (as amended).

17 Ibid reg 7(3).

18 Ie ibid Pt II (regs 11-22) (as amended): see PARA 378 et seq ante.

19 Ibid reg 7(4). The relevant Conventions are the International Convention on Road Traffic (Geneva, 19 September 1949; TS 49 (1958); Cmd 578) or the International Convention relative to Motor Traffic (Paris, 24 April 1926; TS 11 (1930); Cmd 3510); Road Vehicles Lighting Regulations 1989, SI 1989/1796, regs 5, 7(4).

## UPDATE

### 378-408 Lighting of Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(iii) Exemptions and Modifications/402. Invalid carriages.

#### 402. Invalid carriages.

An invalid carriage<sup>1</sup> having a maximum speed<sup>2</sup> not exceeding 4 miles per hour is required by the provisions regulating vehicle lighting<sup>3</sup> to be fitted with lamps and reflectors only when it is used on the carriageway of a road<sup>4</sup> between sunset and sunrise otherwise than for the sole purpose of crossing it<sup>5</sup>.

1 For the meaning of 'invalid carriage' see PARA 378 note 11 ante.

2 For the meaning of 'maximum speed' see PARA 278 note 17 ante; definition applied by the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table.

3 Ie by the Road Vehicles Lighting Regulations 1989, SI 1989/1796 (as amended): see PARA 378 et seq ante.

4 For the meaning of 'road' see PARA 206 ante.

5 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 8.

## UPDATE

### 378-408 Lighting of Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-

1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(iii) Exemptions and Modifications/403. Vehicles drawn or propelled by hand.

#### **403. Vehicles drawn or propelled by hand.**

A vehicle drawn or propelled by hand which has an overall width<sup>1</sup>, including any load, not exceeding 800 millimetres is required by the provisions regulating vehicle lighting<sup>2</sup> to be fitted with lamps and reflectors only when it is used on the carriageway of a road<sup>3</sup> between sunset and sunrise other than close to the near side or left-hand edge of the carriageway or to cross the carriageway<sup>4</sup>.

1 For the meaning of 'overall width' see PARA 274 ante; definition applied by the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 3(2), Table.

2 Ie by the Road Vehicles Lighting Regulations 1989, SI 1989/1796 (as amended): see PARA 378 et seq ante.

3 For the meaning of 'road' see PARA 206 ante.

4 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 9.

#### **UPDATE**

#### **378-408 Lighting of Vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(iii) Exemptions and Modifications/404. Tramcars.

#### **404. Tramcars.**

The statutory provisions regulating the fitting of lamps, reflectors, rear markings and devices<sup>1</sup>, the maintenance and use of lamps, reflectors, rear markings and devices<sup>2</sup> and the testing and inspection of lighting equipment and reflectors<sup>3</sup> do not apply to tramcars<sup>4</sup>.

1 Ie the Road Vehicles Lighting Regulations 1989, SI 1989/1796, Pt II (regs 11-22) (as amended): see PARA 378 et seq ante.

2 Ie ibid Pt III (regs 23-27) (as amended): see PARA 391 et seq ante.

3 Ie ibid Pt IV (reg 28): see PARA 407 post.

4 Ibid reg 9A (added by SI 1992/1217). As to tramcars see PARA 1532 et seq post.

#### **UPDATE**

#### **378-408 Lighting of Vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(iii) Exemptions and Modifications/405. Modifications in relation to vehicles approved under the Motor Vehicles (Approval) Regulations 1996.

#### **405. Modifications in relation to vehicles approved under the Motor Vehicles (Approval) Regulations 1996.**

The requirements of the provisions relating to the lighting of vehicles<sup>1</sup>, so far as they require headlamps<sup>2</sup>, including a filament lamp fitted to a headlamp, fitted to a vehicle to bear a particular standard mark<sup>3</sup> or one of two or more standard marks, do not apply to the headlamps fitted to a relevant vehicle<sup>4</sup> if they emit sufficient light to illuminate the road in front of the vehicle on both main beam<sup>5</sup> and dipped beam<sup>6</sup>.

The supplemental requirements of the provisions relating to the lighting of vehicles<sup>7</sup>, so far as they require any lamp, reflector or device to bear a particular standard mark or one of two or more standard marks, do not apply to a lamp, reflector or device if it is fitted to a relevant vehicle and: (1) in the case of a lamp or device, it meets the requirements as to intensity<sup>8</sup>; and (2) in the case of a reflector, it meets the requirements as to coefficient of luminous intensity<sup>9</sup>, of the instrument to which the standard mark, or as the case may be one of those standard marks, relates<sup>10</sup>.

1    Ie the provisions of the Road Vehicles Lighting Regulations 1989, SI 1989/1796: see PARA 378 et seq ante.

2    For the meaning of 'headlamp' see PARA 379 note 4 ante.

3    For these purposes, 'standard mark' means a mark which when applied to a lamp, reflector or device indicates compliance with the requirements of a particular instrument; and a reference to the instrument to which a standard mark relates is to be construed accordingly: Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 9B(1) (reg 9B added by SI 1996/3016).

4    For these purposes, 'relevant vehicle' means a vehicle: (1) in respect of which a passenger vehicle approval certificate containing the letter 'P' has been issued pursuant to the Motor Vehicles (Approval) Regulations 1996, SI 1996/3013, reg 12(2)(b) (see PARA 700 post); or (2) which is a transitional provision vehicle as defined by Sch 6 in respect of which a passenger vehicle approval certificate containing the letter 'A' has been issued pursuant to reg 12(2)(c) (see PARA 700 post): Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 9B(1) (as added: see note 3 supra). 'Passenger vehicle approval certificate' means a Minister's approval certificate in the form prescribed by the Motor Vehicles (Approval) Regulations 1996, SI 1996/3013 (as amended), which appears to have been issued on the basis that the vehicle is a vehicle to which Pt II (regs 3-4) (as amended) applies (see PARA 700 post): Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 9B(1) (as so added).

5    For the meaning of 'main beam' see PARA 382 note 8 ante.

6    Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 9B(3) (as added: see note 3 supra). For the meaning of 'dipped beam' see PARA 382 note 8 ante.

7    Ie the requirements of ibid Schs 1-23 (as amended).

8    Ibid reg 9B(2)(a) (as added: see note 3 supra).



9 Ibid reg 9B(2)(b) (as added: see note 3 supra). For these purposes, 'coefficient of luminous intensity' has the same meaning as in ECE Regulation 3.01; and 'ECE Regulation 3.01' means Regulation 3 (with the amendments in force on 20 March 1982), annexed to the Agreement concerning the adoption of uniform conditions of approval for motor vehicles equipment and parts and reciprocal recognition thereof (Geneva, 20 March 1958; TS 7 (1965); Cmnd 2535): Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 9B(1) (as so added).

10 Ibid reg 9B(2) (as added: see note 3 supra). The provisions of Sch 1 Table I (as amended) apply to a vehicle in respect of which a passenger vehicle approval certificate has been issued as if the entry that relates to dim-dip devices and running lamps were omitted: reg 9B(4) (as so added). The provisions of Sch 7 Pt I para 5 (markings) apply to a vehicle in respect of which a passenger approval certificate has been issued as if the vehicle were of a description falling within Sch 7 Pt I para 5(b): reg 9B(5) (as so added). For the meaning of 'dim-dip device' see PARA 388 note 3 ante. For the meaning of 'running lamp' see PARA 388 note 4 ante.

## **UPDATE**

### **378-408 Lighting of Vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **405 Modifications in relation to vehicles approved under the Motor Vehicles (Approval) Regulations 1996**

NOTE 3--SI 1989/1796 reg 9B(1) amended: SI 2009/3220.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(iii) Exemptions and Modifications/406. Provision as respects the Trade Descriptions Act 1968.

### **406. Provision as respects the Trade Descriptions Act 1968.**

Where any vehicle or any of its parts or equipment is required to be marked<sup>1</sup> with a specification number or a registered certification trade mark of the British Standards Institution<sup>2</sup> or with any approval mark, nothing in the provisions relating to road vehicle lighting<sup>3</sup> is to be taken to authorise any person to apply any such number or mark to the vehicle, part or equipment in contravention of the Trade Descriptions Act 1968<sup>4</sup>.

<sup>1</sup> Ie by any provision in the Road Vehicles Lighting Regulations 1989, SI 1989/1796 (as amended): see PARA 378 et seq ante.

<sup>2</sup> As to the British Standards Institution see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 446.

<sup>3</sup> Ie any provision in the Road Vehicles Lighting Regulations 1989, SI 1989/1796 (as amended).

<sup>4</sup> Ibid reg 10. As to the Trade Descriptions Act 1968 see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 471 et seq.

## **UPDATE**

### **378-408 Lighting of Vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

#### **406 Provision as respects the Trade Descriptions Act 1968**

NOTE 4--SI 1989/1796 reg 10 revoked: SI 2008/1277.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(iv) Testing and Inspection of Lighting Equipment and Reflectors/407. Testing and inspection of lighting equipment and reflectors.

### **(iv) Testing and Inspection of Lighting Equipment and Reflectors**

#### **407. Testing and inspection of lighting equipment and reflectors.**

The general provisions relating to testing and inspecting vehicles<sup>1</sup> apply in respect of lighting equipment and reflectors with which a vehicle is required<sup>2</sup> to be fitted in the same way as they apply in respect of brakes, silencers, steering gear and tyres<sup>3</sup>.

<sup>1</sup> I.e. the provisions of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 74: see PARA 375 ante.

<sup>2</sup> I.e. required by the Road Vehicles Lighting Regulations 1989, SI 1989/1796 (as amended).

<sup>3</sup> Ibid reg 28.

### **UPDATE**

#### **378-408 Lighting of Vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(5) LIGHTING OF VEHICLES/(v) Offences relating to Reflectors and Tail Lamps/408. Offences relating to reflectors and tail lamps.

### **(v) Offences relating to Reflectors and Tail Lamps**

#### **408. Offences relating to reflectors and tail lamps.**

A person who sells, or offers or exposes for sale, any appliance adapted for use as a reflector or tail lamp<sup>1</sup> to be carried on a vehicle in accordance with the provisions of the Road Traffic Act 1988 or of any regulations made under it, not being an appliance which complies with the construction and use requirements<sup>2</sup> applicable to a class of vehicles<sup>3</sup> for which the appliance is adapted, is guilty of an offence<sup>4</sup>.

1 'Tail lamp' means, in relation to a vehicle, any lamp carried attached to the vehicle for the purpose of showing a red light to the rear in accordance with regulations under the Road Traffic Act 1988 s 41 (as amended) (see PARA 260 ante): s 85.

2 For the meaning of 'construction and use requirements' see PARA 261 note 1 ante.

3 As to classes of vehicles see PARA 208 ante.

4 Road Traffic Act 1988 s 83. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

The Road Traffic Act 1988 s 83 does not apply to tramcars: Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 7. As to tramcars see PARA 1532 et seq post.

As to the exemption of invalid carriages from the provisions of the Road Traffic Act 1988 s 83 see the Chronically Sick and Disabled Persons Act 1970 s 20(1)(c); and SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1023 et seq.

## **UPDATE**

### **378-408 Lighting of Vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(6) PEDAL CYCLES/409. Regulation of brakes, bells and other equipment on pedal cycles.

## **(6) PEDAL CYCLES**

### **409. Regulation of brakes, bells and other equipment on pedal cycles.**

The Secretary of State<sup>1</sup> may make regulations as to the use on roads<sup>2</sup> of cycles<sup>3</sup>, their construction and equipment and the conditions under which they may be so used<sup>4</sup>. In particular, but without prejudice to the generality of the above provision, the regulations may make provision as to:

726 (1) the number, nature and efficiency of brakes and their maintenance in proper working order<sup>5</sup>;

727 (2) the appliances to be fitted for signalling approach and their maintenance in proper working order<sup>6</sup>; and

728 (3) the testing and inspection, by persons authorised under the regulations, of any equipment prescribed under these provisions and of lighting equipment and reflectors<sup>7</sup>.

Such regulations may provide for repealing byelaws dealing with the same subject matter as the regulations, and for suspending while the regulations remain in force any power of making such byelaws<sup>8</sup>.

Regulations may be made so as to apply either generally or in such circumstances only as may be specified in the regulations<sup>9</sup>.

Regulations as to the use on roads of cycles may prohibit the sale or supply, or the offer of a sale or supply, of a cycle for delivery in such a condition that the use of it on a road in that condition would be a contravention of the regulations, but no such provision affects the validity of any contract or any rights arising under a contract<sup>10</sup>.

If a person sells or supplies or offers to sell or supply a cycle in contravention of any prohibition imposed by regulations so made, he is guilty of an offence<sup>11</sup>, unless he proves:

- 729 (a) that it was sold, supplied or offered for export from Great Britain<sup>12</sup>; or
- 730 (b) that he had reasonable cause to believe that it would not be used on a road in Great Britain, or would not be so used until it had been put into a condition in which it might lawfully be so used<sup>13</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 'Cycle' means a bicycle, a tricycle, or a cycle having four or more wheels, not being in any case a motor vehicle: Road Traffic Act 1988 s 192(1). For the meaning of 'motor vehicle' see PARA 210 ante.

4 Ibid s 81(1). At the date at which this volume states the law no such regulations had been made but, by virtue of the Road Traffic (Consequential Provisions) Act 1988 s 2(2) and the Interpretation Act 1978 s 17(2)(b), the Pedal Cycles (Construction and Use) Regulations 1983, SI 1983/1176 (as amended) have effect as if so made. As to the making of regulations generally see PARA 243 ante.

5 Road Traffic Act 1988 s 81(2)(a).

6 Ibid s 81(2)(b).

7 Ibid s 81(2)(c).

8 Ibid s 81(3).

9 Ibid s 81(4).

10 Ibid s 81(5).

11 Ibid s 81(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

12 Road Traffic Act 1988 s 81(6)(a).

13 Ibid s 81(6)(b).

## UPDATE

### 409 Regulation of brakes, bells and other equipment on pedal cycles

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/2. CONSTRUCTION OF VEHICLES/(7) HORSE-DRAWN VEHICLES/410. Regulation of brakes on horse-drawn vehicles.

## **(7) HORSE-DRAWN VEHICLES**

### **410. Regulation of brakes on horse-drawn vehicles.**

The Secretary of State<sup>1</sup> may make regulations for regulating the number, nature and use of brakes in the case of vehicles drawn by horses or other animals, or any class<sup>2</sup> of such vehicles, when used on roads<sup>3</sup>.

Such regulations may be made for securing that such brakes are efficient and kept in proper working order, and for empowering persons authorised by or under the regulations to test and inspect any such brakes, whether on a road or elsewhere<sup>4</sup>.

Such regulations may be made so as to apply either generally or in such circumstances only as may be specified in the regulations<sup>5</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 As to classes of vehicles see PARA 208 ante.

3 See the Road Traffic Act 1988 s 82(1). For the meaning of 'road' see PARA 206 ante. At the date at which this volume states the law no such regulations had been made. As to the making of regulations generally see PARA 243 ante.

4 Ibid s 82(2).

5 Ibid s 82(4).

## **UPDATE**

### **410 Regulation of brakes on horse-drawn vehicles**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/(1) LEGISLATION/411. Legislation governing driving instruction.

### 3. DRIVING INSTRUCTION

#### (1) LEGISLATION

##### 411. Legislation governing driving instruction.

The law governing driving instruction is contained in Part V of the Road Traffic Act 1988<sup>1</sup>, which covers the registration of driver instructors<sup>2</sup>, examinations and tests of ability to give driving instruction<sup>3</sup>, licences to give driving instruction<sup>4</sup>, special requirements for disabled instructors<sup>5</sup> and certain general provisions<sup>6</sup>.

1 In the Road Traffic Act 1988 Pt V (ss 123-142) (as amended): see PARA 412 et seq post. The provisions of Pt V (as amended) do not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), (2)(b).

2 See PARAS 413-421 post.

3 See PARAS 422-429 post.

4 See PARAS 430-431 post.

5 See PARAS 432-436 post.

6 See PARAS 437-441 post.

#### UPDATE

##### 411-441 Driving Instruction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

##### 411 Legislation governing driving instruction

TEXT AND NOTES--See Provision of Services Regulations 2009, SI 2009/2999; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 385A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/(1) LEGISLATION/412. Secretary of State's power to make regulations.

##### 412. Secretary of State's power to make regulations.

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> for any purpose for which provision is, by Part V of the Road Traffic Act 1988<sup>3</sup>, authorised to be made by regulations<sup>4</sup>.

In particular, regulations may:

- 731 (1) alter or add to the conditions as to which the Registrar<sup>5</sup> is required by Part V of the Road Traffic Act 1988 to be satisfied for the entry of a name in the register<sup>6</sup>,

the retention of a name in the register, the removal of a name from the register, the grant of a licence and the revocation of a licence, or omit any of those conditions<sup>7</sup>;

- 732 (2) alter the period at the expiration of which a person's name which is entered or retained in the register after the coming into force of the regulation must, unless retained or further retained, be removed from the register<sup>8</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 'Regulations' means regulations made under the Road Traffic Act 1988 s 141: s 141. See the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902 (amended by SI 2005/2716; SI 2006/525; SI 2007/697); and the Motor Cars (Driving Instruction) (Admission of Community Licence Holders) Regulations 1999, SI 1999/357.

3 le the Road Traffic Act 1988 Pt V (ss 123-142) (as amended).

4 Ibid s 141. As from a day to be appointed, s 141 is renumbered as s 141(1) and amended so as to provide also for prescribing anything which may be prescribed under Pt V (as amended); and s 141(2) is added so as to provide that regulations under s 141 (as amended): (1) may be expressed to apply generally or only in particular circumstances; (2) may make different provision in relation to different cases or other circumstances or otherwise for different purposes; and (3) may make incidental, supplementary, consequential or transitional provision or savings: see s 141 (prospectively amended by the Road Safety Act 2006 s 42, Sch 6 paras 1, 24). At the date at which this volume states the law no such day had been appointed.

5 For the meaning of 'the Registrar' see PARA 415 text to note 5 post.

6 For the meaning of 'the register' see PARA 413 text and note 5 post.

7 Road Traffic Act 1988 s 134(a). See the Motor Cars (Driving Instruction) (Admission of Community Licence Holders) Regulations 1999, SI 1999/357; the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902; and the Motor Cars (Driving Instruction) (Amendment) Regulations 2005, SI 2005/2716. See also PARAS 415, 430-431 post. As from a day to be appointed, the Road Traffic Act 1988 s 134 is substituted so as to provide that: (1) regulations may alter: (a) the period at the end of which a person's registration is terminated (unless extended or further extended); (b) the period for which a person's registration may be extended or further extended; and (c) the period before the end of which it may be directed that any application by a person to be registered is not to be entertained; and (2) regulations under s 134 (as substituted) may contain amendments of Pt V (as amended): see s 134(1), (2) (prospectively substituted by the Road Safety Act 2006 Sch 6 para 19). At the date at which this volume states the law no such day had been appointed.

8 Road Traffic Act 1988 s 134(b). See note 7 supra. At the date at which this volume states the law no such regulations had been made.

## UPDATE

### 411-441 Driving Instruction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 412 Secretary of State's power to make regulations

NOTE 2--SI 2005/1902 further amended: SI 2008/419, SI 2009/844.

1663)/3. DRIVING INSTRUCTION/ (2) REGISTRATION OF DRIVING INSTRUCTORS/413.  
Requirement for instructors and instruction businesses to be registered.

## **(2) REGISTRATION OF DRIVING INSTRUCTORS**

### **413. Requirement for instructors and instruction businesses to be registered.**

The following provisions apply until a day to be appointed<sup>1</sup>.

No paid instruction<sup>2</sup> in the driving<sup>3</sup> of a motor car may be given unless<sup>4</sup>: (1) the name of the person giving the instruction is in the register of approved instructors ('the register')<sup>5</sup>; or (2) the person giving the instruction is the holder of a current licence<sup>6</sup> granted under Part V of the Road Traffic Act 1988<sup>7</sup> authorising him to give such instruction<sup>8</sup>. Where instruction is given in contravention of this provision<sup>9</sup> the person by whom it is given is guilty of an offence; and if that person is employed by another to give that instruction, that other is also guilty of an offence<sup>10</sup>.

No paid instruction in the driving of a motor car may be given unless there is fixed to and exhibited on the car in the manner prescribed by regulations<sup>11</sup> either<sup>12</sup>: (a) a certificate<sup>13</sup> in such form as may be so prescribed indicating that the name of the person giving the instruction is in the register<sup>14</sup>; or (b) a current licence granted under Part V of the Road Traffic Act 1988 authorising him to give such instruction<sup>15</sup>.

The above provisions<sup>16</sup> do not apply, however, to the giving of instruction by a police instructor<sup>17</sup> in pursuance of arrangements made by a chief officer of police or, under the authority of a chief officer of police, in pursuance of arrangements made by a local authority<sup>18</sup>, nor do they apply to the giving of instruction by a SOCA instructor<sup>19</sup> in pursuance of arrangements made by the Director General of the Serious Organised Crime Agency<sup>20</sup>.

The following provisions apply as from a day to be appointed<sup>21</sup>.

A person (i) must not give paid driving instruction<sup>22</sup> of any prescribed description<sup>23</sup> unless he is registered<sup>24</sup> in respect of the giving of that description of driving instruction<sup>25</sup>; and (ii) must not carry on business in the provision of paid driving instruction<sup>26</sup> of any prescribed description unless he is registered in respect of the carrying on of business in the provision of that description of driving instruction<sup>27</sup>.

A person (A) must not give paid driving instruction of any prescribed description unless prescribed requirements as to the displaying of evidence that he is registered in respect of the giving of that description of driving instruction are complied with<sup>28</sup>; and (B) must not carry on business in the provision of paid driving instruction of any prescribed description unless prescribed requirements as to the displaying of evidence that he is registered in respect of the carrying on of business in the provision of that description of driving instruction are complied with<sup>29</sup>.

Regulations may prescribe circumstances in which the above provisions<sup>30</sup> are not to apply in relation to driving instruction, or driving instruction of a prescribed description<sup>31</sup>.

1 The Road Traffic Act 1988 ss 123, 124 are substituted by the Road Safety Act 2006 s 42, Sch 6 paras 1-3, as from a day to be appointed under s 61(1). At the date at which this volume states the law no such day had been appointed.

2 For the purposes of the Road Traffic Act 1988 s 123(1), (2), instruction is paid instruction if payment of money or money's worth is, or is to be, made by or in respect of the person to whom the instruction is given for the giving of the instruction; and for the purposes of s 123(3) instruction which is given: (1) free of charge to a person who is not the holder of a current licence to drive a motor vehicle granted under Pt III (ss 87-109C) (as amended) (see PARA 442 et seq post) (other than a provisional licence); (2) by, or in pursuance of arrangements made by, a person carrying on business in the supply of motor cars; and (3) in connection with the supply of a motor car in the course of that business, is deemed to be given for payment of money by the person to whom



the instruction is given: s 123(3). For the purposes of Pt V (ss 123-142) (as amended), 'paid instruction', in relation to instruction in the driving of a motor car, is to be construed in accordance with s 123(3): s 123(8) (substituted by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 s 6).

Any reference in the Road Traffic Act 1988 Pt V (as amended) to a current licence or certificate is a reference to a licence or certificate which has not expired and has not been cancelled, revoked or suspended: s 123(7) (amended by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 s 6, Schedule para 2(2)). As from a day to be appointed, this provision is repealed by the Road Safety Act 2006 s 59, Sch 7. As from a day to be appointed, in the Road Traffic Act 1988 Pt V (as amended), 'current', in relation to a licence or certificate, means one which has not expired and has not been cancelled, revoked or suspended: s 141A(4) (s 141A(4) prospectively added by the Road Safety Act 2006 s 42, Sch 6 paras 1, 25). At the date at which this volume states the law no such day or days had been appointed.

For the meaning of 'motor vehicle' see PARA 210 ante.

Notwithstanding the Road Traffic Act 1988 s 185(1) (see PARA 212 ante), in Pt V (as amended) 'motor car' means a motor vehicle (other than an invalid carriage or motor cycle): (a) which is not constructed or adapted to carry more than nine persons inclusive of the driver; and (b) which has a maximum gross weight not exceeding 3.5 tonnes: s 141A(1) (s 141A added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 29). As from a day to be appointed, the Road Traffic Act 1988 s 141A (as added) is substituted by the Road Safety Act 2006 Sch 6 para 25 and no longer defines 'motor car'. At the date at which this volume states the law no such day had been appointed. For the meaning of 'motor car' generally see PARA 212 ante; for the meaning of 'invalid carriage' see PARA 215 ante; and for the meaning of 'motor cycle' see PARA 214 ante. 'Maximum gross weight', in relation to a motor vehicle or trailer, means the weight of the vehicle laden with the heaviest load which it is constructed or adapted to carry: Road Traffic Act 1988 s 108(1); definition applied by s 141A(2) (as so added). For the meaning of 'trailer' see PARA 210 ante.

For the meaning of 'provisional licence' see PARA 445 note 27 post; definition applied by s 123(8) (as so substituted). As from a day to be appointed, the definition of 'provisional licence' in Pt III (as amended) (see PARA 445 note 27 post) is applied by s 141A(5) (prospectively added by the Road Safety Act 2006 Sch 6 para 25).

3 'Instruction in driving' is not defined for the purposes of the Road Traffic Act 1988. The test of competence to drive prescribed under s 89(3) (as amended) (see PARA 449 post) comprises, in the case of motor cars, a practical test and a theory test: see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864; and PARA 451 et seq post. It appears, however, that instruction for the purposes of enabling a person to pass the theory test is not instruction for the purposes of the Road Traffic Act 1988 Pt V (as amended) unless it is actually undertaken in a motor car: see PARA 451 post. It would be impossible for a person teaching driving theory in a classroom to comply with certain requirements of the Road Traffic Act 1988 (see eg s 123(2); and the text to notes 11-15 infra), and other statutory provisions indicate that classroom instruction is not intended to be caught (see eg s 125(3) (as amended); and PARA 415 post). However, paid instruction given to a person who has passed a test does seem to be caught. As to when a person is driving see PARA 207 ante.

4 Ibid s 123(1).

5 Ibid s 123(1)(a). The register referred to in the text is the register established in pursuance of the Road Traffic Act 1962 s 23 (now repealed): see the Road Traffic Act 1988 s 123(1)(a). As to the register of approved instructors see PARA 415 post.

6 See note 2 supra. For the form of licence currently prescribed see the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 16, Sch 4.

7 Ie the Road Traffic Act 1988 Pt V (as amended). The licence is granted under s 129 (as amended; prospectively repealed): see PARA 430 post.

8 Ibid s 123(1)(b).

9 Ie in contravention of ibid s 123(1): see the text and notes 1-8 supra.

10 Ibid s 123(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post. As to offences by bodies corporate see PARA 439 post.

In proceedings against a person for an offence under the Road Traffic Act 1988 s 123(4) it is a defence for him to prove that he did not know, and had no reasonable cause to believe, that his name or, as the case may be, that of the person employed by him, was not in the register at the material time: s 123(5).

11 For the meaning of 'regulations' see PARA 412 note 2 ante. As to the power to make regulations and as to the regulations made see PARA 412 ante.

The prescribed manner of fixing to and exhibiting on a motor car a certificate or a licence for the purposes of *ibid* s 123(2) is for the certificate or licence to be fixed to and immediately behind the front windscreen of the motor car on its nearside edge, and exhibited so that the particulars on the back of the certificate or licence are clearly visible in daylight from outside the motor car and the particulars on the front of the certificate or licence are clearly visible from the front nearside seat of the vehicle, where fitted: Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 20(1), (2). The prescribed form of certificate for the purposes of the Road Traffic Act 1988 s 123(2) is: (1) in the case of persons whose names are in the register by virtue of s 125(3) (as amended) (see *PARA 415 post*), a certificate in the form set out in the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 18(2), Sch 5 Pt 1; and (2) in the case of persons whose names are in the register by virtue of the Road Traffic Act 1988 s 125A(5) (as added) (see *PARA 417 post*), a certificate in the form set out in the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 18(3), Sch 5 Pt 2: reg 20(3).

12 Road Traffic Act 1988 s 123(2).

13 See notes 2, 11 *supra*.

14 Road Traffic Act 1988 s 123(2)(a).

15 *Ibid* s 123(2)(b). If instruction is given in contravention of s 123(2), the person by whom it is given is guilty of an offence (s 123(6)), and is liable on summary conviction to a fine not exceeding level 3 on the standard scale (Road Traffic Offenders Act 1988 Sch 2 Pt 1).

16 *Ie* the Road Traffic Act 1988 s 123(1), (2): see the text and notes 1-15 *supra*.

17 'Police instructor' means a person who is: (1) a member of a police force whose duties consist of or include, or have consisted of or included, the giving of instruction in the driving of motor cars to persons being members of a police force; or (2) a civilian employed by a police authority for the purpose of giving such instruction to such persons: *ibid* s 124(2).

18 *Ibid* s 124(1). 'Local authority' means the council of a county, metropolitan district or London borough, or the Common Council of the City of London: s 124(2). However, any reference in any relevant legislative provision to an area which is the area of a county council is to be construed, in relation to Wales, as a reference to a new principal area: see the Local Government (Wales) Act 1994 s 17(4)(a). See further *LOCAL GOVERNMENT vol 69 (2009) PARA 579; LONDON GOVERNMENT*.

19 'SOCA instructor' means a member of the staff of the Serious Organised Crime Agency whose duties consist of or include the giving instruction in the driving of motor cars to other members of the Agency's staff: Road Traffic Act 1988 s 124(1A) (added by the Serious Organised Crime and Police Act 2005 s 59, Sch 4, *PARAS 52, 53(1)*).

20 Road Traffic Act 1988 s 124(1A) (as added: see note 19 *supra*).

21 See note 1 *supra*.

22 In the Road Traffic Act 1988 Pt V (as amended), 'driving instruction' means instruction in relation to the driving of a motor vehicle: s 123(3) (as prospectively substituted: see note 21 *supra*). For the purposes of Pt V (as amended), instruction is paid instruction if payment of money or money's worth is, or is to be, made for the instruction by or in respect of the person to whom the instruction is given or provided: s 123(5) (as so prospectively substituted). Regulations may prescribe circumstances in which instruction provided free of charge is to be deemed to be given for payment of money by or in respect of the person to whom the instruction is given or provided: s 123(6) (as so prospectively substituted).

23 Regulations under *ibid* Pt V (as amended) which prescribe a description of driving instruction may do so by reference to: (1) the class of motor vehicle to which the instruction relates; (2) the description of persons to whom the instruction is given or provided; or (3) the nature of the instruction or where or how it is given or provided: s 123(4) (as prospectively substituted: see note 21 *supra*).

24 For the purposes of *ibid* Pt V (as amended), a person is 'registered' if his name is in the register together with: (1) an indication as to whether he is registered in respect of the giving of driving instruction or the carrying on of business in the provision of driving instruction (or both); (2) an indication as to the description of driving instruction in respect of which he is registered; and (3) such other particulars as may be prescribed; and 'registration' is to be construed accordingly: s 123(7) (as prospectively substituted: see note 21 *supra*). 'The register' means the register established for the purposes of Pt V (as amended) under s 125 (as prospectively substituted) (see *PARA 415 post*): s 123(8) (as so prospectively substituted).

25 *Ibid* s 123(1)(a) (as prospectively substituted: see note 21 *supra*). As to contravention of this provision see *PARA 414 post*.

26 For the purposes of *ibid* Pt V (as amended), persons may carry on business in the provision of driving instruction in any way, including in particular: (1) by giving instruction themselves; (2) by arranging for the giving of driving instruction by their employees; or (3) by arranging for the giving of driving instruction by persons who are franchisees under driving instruction franchises under which they are the franchisor: s 141A(1) (as added; prospectively substituted: see note 2 *supra*). 'Driving instruction franchise' means an agreement under which one party (the 'franchisor') grants to another party (a 'franchisee') rights consisting of or including the right to use a particular trading name, style or design in the carrying on of business in the giving of driving instruction: s 141A(2) (as added; prospectively substituted: see note 2 *supra*). In Pt V (as amended), references to 'the franchisor' and 'a franchisee', in relation to a driving instruction franchise, are to be construed accordingly: s 141A(3) (as prospectively substituted: see note 2 *supra*).

27 *Ibid* s 123(1)(b) (as prospectively substituted: see note 21 *supra*). As to contravention of this provision see PARA 414 post.

28 *Ibid* s 123(2)(a) (as prospectively substituted: see note 21 *supra*). As to contravention of this provision see PARA 414 post.

29 *Ibid* s 123(2)(b) (as prospectively substituted: see note 21 *supra*). As to contravention of this provision see PARA 414 post.

30 *Ie* *ibid* s 123 (as prospectively substituted).

31 *Ibid* s 124(1) (as prospectively substituted: see note 21 *supra*). The regulations may, in particular, make provision for s 123(1)(a) (as prospectively substituted) (see head (i) in the text) and s 123(2)(a) (see head (A) in the text) (as prospectively substituted) not to apply in prescribed circumstances for the purpose of enabling persons to acquire experience in giving driving instruction: s 124(2) (as so prospectively substituted).

## UPDATE

### 411-441 Driving Instruction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 413 Requirement for instructors and instruction businesses to be registered

NOTE 6--SI 2005/1902 Sch 4 amended: SI 2008/419.

NOTE 11--SI 2005/1902 reg 20(2) amended: SI 2008/419.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/ (2) REGISTRATION OF DRIVING INSTRUCTORS/414. Offences in connection with paid driving instruction.

### 414. Offences in connection with paid driving instruction.

The following provisions apply as from a day to be appointed<sup>1</sup>.

If paid driving instruction<sup>2</sup> of any prescribed description<sup>3</sup> is given by a person who is not registered<sup>4</sup> in respect of the giving of that description of driving instruction<sup>5</sup>: (1) the person by whom it is given<sup>6</sup>; (2) if that person is employed by another to give that instruction, that other (as well as that person)<sup>7</sup>; and (3) if that person is a franchisee<sup>8</sup> under a driving instruction franchise, the franchisor<sup>9</sup> under the driving instruction franchise (as well as that person)<sup>10</sup>, is guilty of an offence<sup>11</sup>. If a person carries on business in the provision of paid driving instruction<sup>12</sup>

of any prescribed description without being registered in respect of the carrying on of business in the provision of that description of driving instruction<sup>13</sup>, he is guilty of an offence<sup>14</sup>.

In proceedings against a person for either of the above offences, it is a defence for him to prove that he did not know, and had no reasonable cause to believe, that he<sup>15</sup>, or as appropriate, the person employed by him<sup>16</sup> or the person who was the franchisee under the driving instruction franchise<sup>17</sup>, was not at the material time registered in respect of the description of driving instruction in question<sup>18</sup>.

A person who gives paid driving instruction of any prescribed description without displaying the required evidence that he is registered<sup>19</sup>, commits an offence<sup>20</sup>.

1 The Road Traffic Act 1988 s 123A is prospectively added by the Road Safety Act 2006 s 42, Sch 6 paras 1, 2, as from a day to be appointed under s 61(1). At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'paid instruction' see PARA 413 note 22 ante.

3 As to prescribed descriptions of driving instruction see PARA 413 note 23 ante.

4 For the meaning of 'registered' see PARA 413 note 24 ante. As to the register see PARA 415 post.

5 Ie in contravention of the Road Traffic Act 1988 s 123(1)(a) (as prospectively substituted): see PARA 413 head (i) ante.

6 Ibid s 123A(1)(a) (as prospectively added: see note 1 supra).

7 Ibid s 123A(1)(b) (as prospectively added: see note 1 supra).

8 As to the meaning of 'franchisee' see PARA 413 note 26 ante.

9 As to the meaning of 'franchisor' see PARA 413 note 26 ante.

10 Road Traffic Act 1988 s 123A(1)(c) (as prospectively added: see note 1 supra).

11 Ibid s 123A(1) (as prospectively added: see note 1 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry prospectively amended by the Road Safety Act 2006 Sch 6 paras 31, 33(1), (2)). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post. As to offences by bodies corporate see PARA 439 post.

12 As to the meaning of 'carries on business in the provision of paid driving instruction' see PARA 413 note 26 ante.

13 Ie in contravention of the Road Traffic Act 1988 s 123(1)(b) (as prospectively substituted): see PARA 413 head (ii) ante.

14 Ibid s 123A(2) (as prospectively added: see note 1 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I (entry as prospectively amended: see note 11 supra).

15 Ie in a case within the Road Traffic Act 1988 s 123A(1)(a) (as prospectively added) (see the text and notes 2-6 supra) or s 123A(2) (as prospectively added) (see the text and notes 12-14 supra).

16 Ie in a case within ibid s 123A(1)(b) (as prospectively added) (see the text and note 7 supra).

17 Ie in a case within ibid s 123A(1)(c) (as prospectively added) (see the text and notes 8-10 supra).

18 Ibid s 123A(3) (as prospectively added: see note 1 supra).

19 Ie in contravention of the Road Traffic Act 1988 s 123(2) (as prospectively substituted): see PARA 413 heads (A), (B) ante.

20 Ibid s 123A(4) (as prospectively added: see note 1 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I (entry prospectively amended by the Road Safety Act 2006 Sch 6 para 33(3)).

## UPDATE

### 411-441 Driving Instruction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/ (2) REGISTRATION OF DRIVING INSTRUCTORS/415. The register.

#### 415. The register.

The register of approved instructors was established by the Road Traffic Act 1962<sup>1</sup>.

The following provisions have effect until a day to be appointed<sup>2</sup>. The compilation and maintenance of the register is now continued by the Road Traffic Act 1988<sup>3</sup>. An application for the entry of a person's name in the register must be made, in the manner determined by the Secretary of State<sup>4</sup>, accompanied by particulars so determined, to the Registrar (an officer of the Secretary of State) by whom the register is, on behalf of the Secretary of State, compiled and maintained<sup>5</sup>.

Where a person duly applies for the entry of his name in the register, the Registrar must, on payment of the prescribed fee<sup>6</sup>, enter his name in the register if he satisfies the Registrar that the following conditions<sup>7</sup> are fulfilled in his case<sup>8</sup>:

- 733 (1) he has passed such examination of ability to give instruction in the driving of motor cars<sup>9</sup> (consisting of a written examination, a practical test of ability and fitness to drive and a practical test of ability and fitness to instruct) as is prescribed<sup>10</sup>;
- 734 (2) he is the holder of<sup>11</sup>: (a) a current licence<sup>12</sup> to drive a motor car (not being a provisional licence<sup>13</sup>) granted under Part III of the Road Traffic Act 1988<sup>14</sup>; (b) a current licence to drive a motor car (not being a licence corresponding to a provisional licence) granted under the law in force in Northern Ireland<sup>15</sup>; and (c) a Community licence<sup>16</sup> by which he is authorised<sup>17</sup> to drive a motor car in Great Britain<sup>18</sup> and a counterpart<sup>19</sup> of that licence<sup>20</sup>;
- 735 (3) during the period of six years ending with the day on which the application is made, the periods (if any) for which he did not hold one or more of the following licences, that is<sup>21</sup>: (a) a current licence of one of the kinds mentioned in head (2) above<sup>22</sup>; and (b) a current foreign licence, that is to say, a document issued under the law of a country or territory other than an EEA state<sup>23</sup> authorising the holder to drive a motor car in that country or territory<sup>24</sup>, did not amount in aggregate to more than two years<sup>25</sup>;
- 736 (4) he has not, during any part of the period of four years ending with the day on which the application is made, been disqualified under the Road Traffic Offenders Act 1988<sup>26</sup> for holding or obtaining a licence to drive a motor vehicle granted under Part III of the Road Traffic Act 1988<sup>27</sup>; and
- 737 (5) apart from fulfilment of the conditions in heads (1) to (4) above, he is a fit and proper person to have his name entered in the register<sup>28</sup>.

At any time when a person who held a current licence of one of the following kinds, that is either<sup>29</sup>: (i) a provisional licence to drive a motor car granted under Part III of the Road Traffic Act 1988<sup>30</sup>; or (ii) a licence to drive a motor car corresponding to a provisional licence granted under the law in force of Northern Ireland<sup>31</sup>, had passed the test of competence to drive a motor car<sup>32</sup> or the corresponding law in force in Northern Ireland, he must be regarded for the purposes of head (3) above as having held a current licence of one of the kinds mentioned in head (2) above<sup>33</sup>.

If the Secretary of State is satisfied that satisfactory provision is made by the law of Northern Ireland for the establishment of a register containing the names of persons qualified under that law to give instruction in the driving of motor cars, a person who satisfies the Registrar that his name is in the register established under that law, and that he is resident in Great Britain, is exempt from the condition in head (1) above<sup>34</sup>.

The entry of a person's name in the register is subject to the condition that, so long as his name is in the register, he will, if at any time required to do so by the Registrar, submit himself for such test of continued ability and fitness to give instruction in the driving of motor cars<sup>35</sup> (which may consist of practical and other means of assessment) as may be prescribed by regulations<sup>36</sup>.

The Registrar must, on making a decision on an application for the entry of a person's name in the register, give notice<sup>37</sup> in writing of the decision to the applicant which, in the case of a decision to refuse the application, must state the grounds for the refusal<sup>38</sup>.

The following provisions apply as from a day to be appointed<sup>39</sup>.

Regulations are to make provision for the establishment and maintenance of a register for the purposes of Part V<sup>40</sup> of the Road Traffic Act 1988<sup>41</sup>. An application to be registered in respect of any description of driving instruction must be made to the officer of the Secretary of State ('the Registrar') by whom the register is, on behalf of the Secretary of State, compiled and maintained<sup>42</sup>. Such an application must be made in such manner, and be accompanied by such particulars, as the Secretary of State may determine<sup>43</sup>. The Registrar must, on making a decision on such an application, give notice in writing of the decision to the applicant which, in the case of a decision to refuse the application, must state the grounds for the refusal<sup>44</sup>. Regulations may make provision authorising the Secretary of State to make available information about persons registered under these provisions<sup>45</sup>.

1     le under the Road Traffic Act 1962 s 23 (repealed): see PARA 413 note 5 ante. For the meaning of 'the register' see PARA 413 text and note 5 ante.

2     The Road Traffic Act 1988 s 125 (as amended) is prospectively substituted by the Road Safety Act 2006 s 42, Sch 6 paras 1, 4, as from a day to be appointed under s 61(1). At the date at which this volume states the law no such day had been appointed.

3     See the Road Traffic Act 1988 s 125(1).

4     As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5     Road Traffic Act 1988 s 125(2). Section 125(2)-(8) (as amended) does not apply in relation to an application by a person to have his name entered in the register as that of a disabled instructor and to his entry in the register as such: s 125(9) (substituted by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 s 6). As to disabled instructors see PARAS 417, 432 post.

6     For the meaning of 'regulations' see PARA 412 note 2 ante. The prescribed fee is currently £200: see the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 17(1).

7     To the conditions as to which the Registrar must be satisfied before entering the name of a person in the register under the Road Traffic Act 1988 s 125 (as amended) or under s 125A (as added and amended) (see

PARA 417 post), as the case may be, there is added the condition that both the application for entry of the person's name in the register and the prescribed fee have been received by the Registrar not later than the expiration of the period of one year beginning on the date when the person passed that examination: Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 9. As to the examination of ability to give instruction see PARA 424 post.

8 Road Traffic Act 1988 s 125(3).

9 For the meaning of 'motor car' see PARA 413 note 2 ante.

10 Road Traffic Act 1988 s 125(3)(a). As to the prescribed fee see PARA 424 post. Regulations may provide that persons of such class as may be specified are to be exempt from the condition mentioned in head (1) in the text as regards such part of the examination mentioned in that head as may be so specified: s 125(6). At the date at which this volume states the law no such regulations had been made. As to licences to enable a person to acquire practical experience for the purposes of the test of ability to give instruction see PARA 430 post; as to the written examination see PARA 425 post; as to the driving ability and fitness test see PARA 426 post; and as to the instructional ability and fitness test see PARA 427 post.

11 Ibid s 125(3)(b) (substituted by the Motor Cars (Driving Instruction) (Admission of Community Licence Holders) Regulations 1999, SI 1999/357, reg 2).

12 For the meaning of 'current licence' see PARA 413 note 2 ante.

13 For the meaning of 'provisional licence' see PARA 445 note 27 post.

14 Road Traffic Act 1988 s 125(3)(b)(i) (as substituted: see note 11 supra). The text refers to a current licence granted under Pt III (ss 87-109) (as amended): see PARA 442 et seq post.

15 Ibid s 125(3)(b)(ii) (as substituted: see note 11 supra).

16 'Community licence' means a document issued in respect of an EEA state other than the United Kingdom by an authority of that or another EEA state (including the United Kingdom) authorising the holder to drive a motor vehicle, not being: (1) a document containing a statement to the effect that that or a previous document was issued in exchange for a document issued in respect of a state other than an EEA state; or (2) a document in any of the forms for an international driving permit annexed to the International Convention relative to Motor Traffic (Paris, 24 April 1926; TS 11 (1930); Cmd 3510), the Convention on Road Traffic (Geneva, 23 August 1949; Cmd 7997), or the Convention on Road Traffic (Vienna, 8 November 1968; Misc 14 (1969); Cmd 4032); or (3) a document issued for a purpose corresponding to that mentioned in the Road Traffic Act 1988 s 97(2) (see PARA 464 post): s 108(1) (definition amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 19(2)); definition applied by the Road Traffic Act 1988 s 125(10) (added by the Motor Cars (Driving Instruction) (Admission of Community Licence Holders) Regulations 1999, SI 1999/357, reg 2(1), (2)(c)). 'EEA state' means a state which is a contracting party to the EEA Agreement: Road Traffic Act 1988 s 108(1) (definition added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 19(2)). 'EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (Oporto, 2 May 1992; EC 7 (1992); Cm 2073) as adjusted by the Protocol signed at Brussels on 17 March 1993 (Brussels, 17 March 1993; EC 2 (1993); Cmd 2183): Road Traffic Act 1988 s 108(1) (definition added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 19(2)). For the meaning of 'United Kingdom' see PARA 224 note 5 ante. For the meaning of 'motor vehicle' see PARA 210 ante.

As to the definition of 'Community licence' see also note 19 infra.

17 As to when a person is authorised by a Community licence to drive in Great Britain see PARA 473 et seq post. A person is not so authorised if the Community licence is not currently valid, eg because it has expired or been revoked in the member state of issue: see PARA 475 post. Thus the possession of a 'current' Community licence is not made an express requirement of the Road Traffic Act 1988.

18 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

19 'Counterpart' in relation to a Community licence, has the meaning given by the Road Traffic Act 1988 s 99B (as added) (see PARA 474 post): s 108(1) (definition added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 19(2)); definition applied by the Road Traffic Act 1988 s 125(10) (as added: see note 16 supra). As from a day to be appointed, this definition is repealed by the Road Safety Act 2006 ss 10, 59, Sch 3 paras 2, 14, Sch 7. As from a day to be appointed, in the Road Traffic Act 1988 Pt V (ss 123-142) (as amended), 'Community licence' and 'counterpart', in relation to a Community licence have the same meanings as in Pt III (as amended): s 141A(5) (prospectively added by the Road Safety Act 2006 s 42, Sch 6 paras 1, 25). At the date at which this volume states the law no such day had been appointed. The reference to the definition of 'counterpart' in the Road Traffic Act 1988 s 141A(5) (as prospectively added) is

repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 24, Sch 7. At the date at which this volume states the law no such day had been appointed.

20 Road Traffic Act 1988 s 125(3)(b)(iii) (as substituted: see note 11 *supra*).

21 *Ibid* s 125(3)(c).

22 *Ibid* s 125(3)(c)(i).

23 *Ie* within the meaning of *ibid* Pt III (as amended): see note 14 *supra*. See also note 16 *supra*.

24 *Ibid* s 125(3)(c)(i)(ii) (substituted by the Motor Cars (Driving Instruction) (Admission of Community Licence Holders) Regulations 1999, SI 1999/357, reg 2(1), (2)(b)).

25 Road Traffic Act 1988 s 125(3)(c).

26 *Ie* under the Road Traffic Offenders Act 1988 s 34 (as amended) (disqualification for a fixed period) or s 36 (as substituted and amended) (disqualification until test is passed): see PARAS 1061, 1071 *post*.

A recent disqualification under the 'totting-up' provisions of s 35 (as amended) (see PARA 1070 *post*) does not automatically prohibit a person from being registered as an approved driving instructor but the Registrar might on those grounds regard him as not being a fit and proper person to have his name entered in the register: see the text to note 28 *infra*. As to approved driving instructors see PARA 418 note 5 *post*.

27 Road Traffic Act 1988 s 125(3)(d).

28 *Ibid* s 125(3)(e).

29 *Ibid* s 125(4).

30 *Ibid* s 125(4)(a).

31 *Ibid* s 125(4)(b).

32 *Ie* the test prescribed by virtue of *ibid* s 89(3) (as amended): see PARA 449 *post*.

33 *Ibid* s 125(4).

34 *Ibid* s 125(7).

35 As to the test of continued ability and fitness to give instruction see PARA 429 *post*.

36 Road Traffic Act 1988 s 125(5) (amended by the Transport Act 2000 s 260, Sch 29 paras 1, 7).

37 As to service of notices see PARA 440 *post*.

38 Road Traffic Act 1988 s 125(8).

39 See note 2 *supra*.

40 *Ie* the Road Traffic Act 1988 Pt V (as amended).

41 *Ibid* s 125(1) (as prospectively substituted: see note 39 *supra*).

42 *Ibid* s 125(2) (as prospectively substituted: see note 39 *supra*).

43 *Ibid* s 125(3) (as prospectively substituted: see note 39 *supra*).

44 *Ibid* s 125(4) (as prospectively substituted: see note 39 *supra*).

45 *Ibid* s 125(5) (as prospectively substituted: see note 39 *supra*). Section 125(2)-(5) (as prospectively substituted) and s 125ZA (as prospectively added) (conditions of registration: see PARA 416 *post*) do not apply in relation to an application by a person to be registered, or to a person's registration, as a disabled instructor in respect of the giving of instruction in the driving of a motor vehicle in the motor vehicle: s 125(6) (as so prospectively substituted).

## UPDATE



## **411-441 Driving Instruction**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

## **415 The register**

NOTE 6--Prescribed fee now £300: SI 2005/1902 reg 17(1) (amended by SI 2008/419).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/ (2) REGISTRATION OF DRIVING INSTRUCTORS/416. Conditions of registration.

## **416. Conditions of registration.**

The following provisions apply as from a day to be appointed<sup>1</sup>.

Where a person duly applies to be registered in respect of a description of driving instruction<sup>2</sup>, the Registrar<sup>3</sup> must register him in respect of that description of driving instruction if he satisfies the Registrar that prescribed conditions are fulfilled<sup>4</sup>. In the case of applications by persons to be registered in relation to the giving of a description of driving instruction, the conditions may (in particular) include<sup>5</sup>: (1) conditions requiring the persons to have passed such examinations of ability and fitness to give driving instruction of that description as may be prescribed<sup>6</sup>; (2) conditions requiring the persons to hold, or to have held for a prescribed period, such licences to drive motor vehicles of a prescribed description as may be prescribed<sup>7</sup>; and (3) conditions requiring the persons not to have been disqualified during a prescribed period under prescribed provisions for holding or obtaining a licence to drive motor vehicles<sup>8</sup>.

A person may be registered in respect of a description of driving instruction subject to fulfilling the prescribed conditions for so long as he continues to be so registered<sup>9</sup>. In the case of the registration of persons in relation to the giving of a description of driving instruction, the conditions may (in particular) include<sup>10</sup>: (a) conditions requiring the persons, if at any time required to do so by the Registrar, to submit themselves for such examinations of continued ability and fitness to give driving instruction of that description as may be prescribed<sup>11</sup>; (b) conditions requiring the persons to have passed those examinations<sup>12</sup>; (c) conditions within heads (2) and (3) above<sup>13</sup>; and (d) conditions requiring the persons to follow guidance issued by the Registrar as to the giving of driving instruction of that description<sup>14</sup>.

In the case of the registration of persons in relation to the carrying on of business in the provision of a description of driving instruction, the conditions may (in particular) include<sup>15</sup>: (i) conditions requiring the persons to secure that motor vehicles<sup>16</sup> and premises used by them in the carrying on of the business meet prescribed standards throughout the period of registration<sup>17</sup>; (ii) conditions requiring the persons, if at any time required to do so by the Registrar, to allow those motor vehicles and premises to be inspected<sup>18</sup>; and (iii) conditions requiring the persons to follow guidance issued by the Registrar as to the carrying on of business in the provision of driving instruction of that description<sup>19</sup>.

The prescribed conditions may (in particular) include a condition that persons are fit and proper persons to be, or to continue to be, registered<sup>20</sup>.

Regulations<sup>21</sup> may include provision for persons of a prescribed description to be exempt from any condition, to such extent as is prescribed, in prescribed circumstances<sup>22</sup>.

- 1 The Road Traffic Act 1988 s 125ZA is added by the Road Safety Act 2006 s 42, Sch 6 paras 1, 5, as from a day to be appointed under s 61(1). At the date at which this volume states the law no such day had been appointed.
- 2 As to registration see PARA 415 ante.
- 3 For the meaning of 'the Registrar' see PARA 415 text to note 5 ante.
- 4 Road Traffic Act 1988 s 125ZA(1) (as prospectively added: see note 1 supra). At the date at which this volume states the law no conditions had been prescribed.
- 5 Ibid s 125ZA(2) (as prospectively added: see note 1 supra).
- 6 Ibid s 125ZA(2)(a) (as prospectively added: see note 1 supra). Head (1) in the text refers to examinations prescribed under s 132 (as prospectively substituted): see PARA 422 post.
- 7 Ibid s 125ZA(2)(b) (as prospectively added: see note 1 supra).
- 8 Ibid s 125ZA(2)(c) (as prospectively added: see note 1 supra).
- 9 Ibid s 125ZA(3) (as prospectively added: see note 1 supra).
- 10 Ibid s 125ZA(4) (as prospectively added: see note 1 supra).
- 11 Ibid s 125ZA(4)(a) (as prospectively added: see note 1 supra). Head (a) in the text refers to examinations prescribed under s 132 (as prospectively substituted): see PARA 422 post.
- 12 Ibid s 125ZA(4)(b) (as prospectively added: see note 1 supra).
- 13 Ibid s 125ZA(4)(c) (as prospectively added: see note 1 supra).
- 14 Ibid s 125ZA(4)(d) (as prospectively added: see note 1 supra).
- 15 Ibid s 125ZA(5) (as prospectively added: see note 1 supra).
- 16 For the meaning of 'motor vehicle' see PARA 210 ante.
- 17 Road Traffic Act 1988 s 125ZA(5)(a) (as prospectively added: see note 1 supra).
- 18 Ibid s 125ZA(5)(b) (as prospectively added: see note 1 supra).
- 19 Ibid s 125ZA(5)(c) (as prospectively added: see note 1 supra).
- 20 Ibid s 125ZA(6) (as prospectively added: see note 1 supra).
- 21 For the meaning of 'regulations' see PARA 412 note 2 ante.
- 22 Road Traffic Act 1988 s 125ZA(7) (as prospectively added: see note 1 supra).

## **UPDATE**

### **411-441 Driving Instruction**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/ (2) REGISTRATION OF DRIVING INSTRUCTORS/417.  
Application requirements for the registration of disabled persons as instructors.

#### **417. Application requirements for the registration of disabled persons as instructors.**

A person who (1) suffers from a relevant disability<sup>1</sup> or a prospective disability<sup>2</sup>; (2) holds a current disabled person's limited driving licence<sup>3</sup>; and (3) holds a current emergency control certificate<sup>4</sup>, may apply to the Registrar<sup>5</sup> for his name to be entered in the register as that of a disabled instructor<sup>7</sup>. Such an application must be made in such manner, and must be accompanied by such particulars, as the Secretary of State<sup>8</sup> may determine<sup>9</sup>.

If, at the time when he makes such an application, a person is aware<sup>10</sup>: (a) that he is suffering from a relevant or prospective disability which he has not previously disclosed to the Secretary of State in making an application for his current emergency control certificate<sup>11</sup>; or (b) that a relevant or prospective disability from which he has at any time suffered (and which has been previously so disclosed) has become more acute since the granting of his current emergency control certificate<sup>12</sup>, his application must be accompanied by written notification of the nature and extent of his disability<sup>13</sup>. Any person who fails without reasonable excuse to comply with the requirement so imposed is guilty of an offence<sup>14</sup>.

Where a person duly applies for the entry of his name in the register as that of a disabled instructor and satisfies the Registrar that the following conditions are fulfilled in his case, the Registrar must<sup>15</sup>, on payment of the prescribed fee<sup>16</sup>, enter the applicant's name in the register with an indication that he is a disabled person<sup>17</sup>. The conditions are that: (i) the applicant has passed such examination of ability to give instruction in the driving of motor cars (consisting of a written examination, a practical test of ability and fitness to drive and a practical test of ability and fitness to instruct) as prescribed by regulations<sup>18</sup>; (ii) the specified conditions<sup>19</sup> concerning his holding of a driving licence are fulfilled<sup>20</sup>; and (iii) apart from the fulfilment of heads (i) and (ii) above, he is a fit and proper person to have his name entered in the register as that of a disabled instructor<sup>21</sup>.

The Registrar must, on making a decision on such an application, give notice<sup>22</sup> in writing of his decision to the applicant which, in the case of a decision to refuse the application, must state the grounds for the refusal<sup>23</sup>.

1 'Relevant disability', in relation to a person, means any disability which is prescribed in regulations or any other disability likely to cause the driving of a motor car by him to be a source of danger to the public: Road Traffic Act 1988 s 125A(8) (s 125A added by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 s 1). At the date at which this volume states the law no disability had been prescribed. 'Disability' means a want of physical ability affecting the driving of motor cars: Road Traffic Act 1988 s 125A(8) (as so added). For the meaning of 'regulations' see PARA 412 note 2 ante; and for the meaning of 'motor car' see PARA 413 note 2 ante.

As from a day to be appointed, the definition of 'relevant disability' is amended so as to substitute 'a motor vehicle of the description in question' for 'a motor car'; and the definition of 'disability' is amended so as to provide that 'disability', in respect of motor vehicles of any description, means a want of physical ability affecting the driving of motor vehicles of that description: s 125A(8) (as so added; definitions prospectively amended by the Road Safety Act 2006 s 42, Sch 6 paras 1, 6(4)). At the date at which this volume states the law no such day had been appointed.

2 Road Traffic Act 1988 s 125A(1)(a) (as added: see note 1 supra). 'Prospective disability', in relation to a person, means any other disability which, at the material time, is not of such a kind that it is a relevant disability but, by virtue of the intermittent or progressive nature of the disability or otherwise, may become a relevant disability in course of time: s 125A(8) (as so added).

3 Ibid s 125A(1)(b) (as added: see note 1 supra). 'Disabled person's limited driving licence' means a licence of one of the following kinds: (1) a licence, other than a provisional licence, to drive a motor car granted under

Pt III (ss 87-109) (as amended) (see PARA 442 et seq post) which is limited, by virtue of a notice served under s 92(5)(b) (as amended) (see PARA 459 post), to an appropriate motor car; (2) a licence to drive a motor car granted under the law in force in Northern Ireland (not being a licence corresponding to a provisional licence) which is similarly limited by virtue of any corresponding provision of that law; and (3) a Community licence authorising the driving of a motor car, which is similarly limited by virtue of any corresponding provision of the law under which it was issued, and a counterpart of that licence: s 125A(8) (as so added; and amended by the Motor Cars (Driving Instruction) (Admission of Community Licence Holders) Regulations 1999, SI 1999/357, reg 2(1), (3)). As from a day to be appointed, the definition of 'disabled person's limited driving licence' is amended: (a) by the omission of the reference to a counterpart of the licence (Road Traffic Act 1988 s 125A(8) (as so added; prospectively amended by the Road Safety Act 2006 ss 10, 59, Sch 3 paras 2, 23, Sch 7)); and (b) by the substitution of 'vehicle' for 'car' in each place (Road Traffic Act 1988 s 125A(8) (as so added; prospectively amended by the Road Safety Act 2006 Sch 6 para 6(4))). At the date at which this volume states the law no such day had been appointed in respect of either amendment.

For the meaning of 'current licence' see PARA 413 note 2 ante; for the meaning of 'provisional licence' see PARA 445 note 27 post; for the meaning of 'Community licence' see PARA 415 note 16 ante; and for the meaning of 'counterpart' in relation to a Community licence see PARA 415 note 19 ante.

'Appropriate motor car' means, subject to the Road Traffic Act 1988 s 125B(2) (as added), a motor car equipped with automatic transmission: s 125A(8) (as so added). Section 125B(2) (as added) provides that regulations may specify modifications of a motor car as modifications which are to be required for a motor car to be an appropriate motor car for the purposes of Pt V (ss 123-142) (as amended) or as modifications which are not to be required for a motor car to be an appropriate motor car for those purposes: s 125B(2) (s 125B added by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 s 1). For this purpose 'modifications', in relation to a motor car, includes equipment: Road Traffic Act 1988 s 125A(8) (as so added). As from a day to be appointed, these definitions are substituted so as to provide that 'appropriate motor vehicle' means, subject to s 125B(2) (as added and amended), a motor vehicle equipped with automatic transmission (s 125A(8) (as so added; definition prospectively substituted by the Road Safety Act 2006 Sch 6 para 6(4))); and 'modifications', in relation to a motor vehicle, includes equipment (Road Traffic Act 1988 s s 125A(8) (as so added; definition prospectively amended by the Road Safety Act 2006 Sch 6 para 6(4))). The Road Traffic Act 1988 s 125B(2) (as added) is amended so as to refer to a vehicle instead of a car: see s 125B(2) (as so added; prospectively amended by the Road Safety Act 2006 Sch 6 para 7). At the date at which this volume states the law no such day had been appointed.

4 Road Traffic Act 1988 s 125A(1)(c) (as added: see note 1 supra). 'Emergency control certificate' means a certificate under s 133A (as added and amended) (see PARA 433 post): s 125A(8) (as so added). As to emergency control assessments see PARA 432 post.

5 For the meaning of 'the Registrar' see PARA 415 text to note 5 ante.

6 For the meaning of 'the register' see PARA 413 text and note 5 ante.

7 Road Traffic Act 1988 s 125A(1) (as added: see note 1 supra). 'Registered disabled instructor' means a person whose name is in the register with an indication that he is disabled: s 125A(8) (as so added). As to the requirements for disabled instructors generally see PARAS 432-436 post.

As from a day to be appointed, s 125A(1) (as added) is substituted so as to provide that a person may apply to the Registrar to be registered as a disabled instructor in respect of the giving of instruction in the driving of a motor vehicle of a prescribed description in such a motor vehicle if he: (1) suffers from a disability or prospective disability affecting the driving of motor vehicles of that description; (2) holds a current disabled person's limited driving licence relating to motor vehicles of that description; and (3) holds a current emergency control certificate specifying motor vehicles of that description: s 125A(1) (as so added; prospectively substituted by the Road Safety Act 2006 Sch 6 para 6). The definition of 'registered disabled instructor' is amended so as to provide that 'registered disabled instructor' means a person registered as a disabled instructor in respect of instruction in the driving of a motor vehicles of a prescribed description given in a motor vehicle of that description: Road Traffic Act 1988 s 125A(8) (as so added; definition prospectively amended by the Road Safety Act 2006 Sch 6 para 6(4)). At the date at which this volume states the law no such day had been appointed.

8 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

9 Road Traffic Act 1988 s 125A(2) (as added: see note 1 supra).

10 Ibid s 125A(3) (as added: see note 1 supra).

11 Ibid s 125A(3)(a) (as added: see note 1 supra).

12 Ibid s 125A(3)(b) (as added: see note 1 supra).

13 Ibid s 125A(3) (as added: see note 1 supra).

14 Ibid s 125A(4) (as added: see note 1 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry added by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 s 6, Schedule para 11). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

15 le subject to the Road Traffic Act 1988 s 125B(4) (as added and prospectively amended): see PARA 432 post.

16 The prescribed fee is £200: see the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 17(1).

17 Road Traffic Act 1988 s 125A(5) (as added: see note 1 supra).

18 Ibid s 125A(6)(a) (as added: see note 1 supra). Regulations may provide that persons of such class as may be specified in the regulations are exempt from the condition mentioned in s 125A(6)(a) (as added) as regards such part of the examination mentioned in s 125A(6)(a) (as added) as may be so specified: s 125A(7) (as so added). At the date at which this volume states the law no such regulations had been made. As to the examination of ability to give instruction see PARA 424 post; as to licences to enable a person to acquire practical experience for the purposes of the test of ability to give instruction see PARA 430 post; as to the written examination see PARA 425 post; as to the driving ability and fitness test see PARA 426 post; and as to the instructional ability and fitness test see PARA 427 post.

19 le set out in ibid s 125(3)(c), (d) (as amended): see PARA 415 ante.

20 Ibid s 125A(6)(b) (as added: see note 1 supra). For the purposes of s 125A(6)(b) (as added), references in s 125(3)(c), (d) to the making of an application under s 125(2) (see PARA 415 ante) must be read as references to the making of an application under s 125A(1) (as added) (see the text and notes 1-7 supra): s 125A(6) (as so added).

21 Ibid s 125A(6)(c) (as added: see note 1 supra). If the Secretary of State is satisfied that the law of Northern Ireland makes the provision required for the operation of s 125(7) (see PARA 415 ante), and that that law includes satisfactory provision for purposes corresponding to the purposes of s 125A (as added), a person who satisfies the Registrar of the matters mentioned in s 125(7) (see PARA 415 ante) and that his name is in the register maintained under the law of Northern Ireland as that of a disabled instructor is also exempt from the conditions mentioned in s 125A(1)(c), (6)(a) (as added) (see the text to notes 4, 18 supra): s 125B(3) (as added: see note 3 supra). As from a day to be appointed, s 125B(3) (as added) is substituted so as to provide that regulations may make provision for prescribed persons to be exempt from s 125A(1)(c) (as added) in prescribed circumstances: s 125B(3) (as so added; prospectively amended by the Road Safety Act 2006 Sch 6 para 7).

The Road Traffic Act 1988 s 125A(5)-(7) (as added) is prospectively substituted and s 125A(7A)-(7E) added by the Road Safety Act 2006 Sch 6 para 6(3), as from a day to be appointed under s 61(1). At the date at which this volume states the law no such day had been appointed. As from such day, where a person duly applies to be registered as a disabled instructor in respect of the giving of instruction in the driving of a motor vehicle of a prescribed description in such a motor vehicle, the Registrar must (subject to the Road Traffic Act 1988 s 125B(4) (as added and prospectively amended)) so register him if he satisfies the Registrar that the conditions prescribed under this provision are fulfilled: s 125A(5) (as so added and prospectively substituted). Those conditions may (in particular) include: (1) conditions requiring the person to have passed such examinations of ability and fitness to give driving instruction of that description as may be prescribed under s 132 (as prospectively substituted) (see PARA 422 post); (2) conditions requiring the person to hold, or to have held for a prescribed period, such licences to drive motor vehicles of a prescribed description as may be prescribed; and (3) conditions requiring the person not to have been disqualified during a prescribed period under prescribed provisions for holding or obtaining a licence to drive motor vehicles: s 125A(6) (as so added and prospectively substituted). A person may be so registered subject to fulfilling the conditions prescribed under s 125A(7) (as added and prospectively substituted) for so long as he continues to be so registered: s 125A(7) (as so prospectively substituted). Those conditions may (in particular) include: (a) conditions requiring the person, if at any time required to do so by the Registrar, to submit himself for such examinations of continued ability and fitness to give driving instruction of that description as may be prescribed under s 132 (as prospectively substituted); (b) conditions requiring the person to have passed those examinations; (c) conditions requiring the person, if at any time required to do so by the Registrar, to submit himself for a further emergency control assessment on the day (within such period as may be prescribed) and at the place specified by the Registrar; (d) conditions within s 125A(6)(b), (c) (as added and prospectively substituted) (see heads (2), (3) supra); and (e) conditions requiring the person to follow guidance issued by the Registrar as to the giving of instruction in the driving of a motor vehicle of a prescribed description in such a motor vehicle: s 125A(7A) (as so prospectively added). The conditions prescribed under s 125A(5) or (7) (as added and prospectively substituted) may (in particular) include a condition that persons are fit and proper persons to be, or to continue to be,

registered: s 125A(7B) (as so prospectively added). In considering whether to exercise, in respect of any person, his power under s 125A(7A)(c) (as prospectively added) (see head (c) supra), the Registrar must have regard to any recommendation included in the person's current emergency control certificate as to the period after which he should undergo a further emergency control assessment: s 125A(7C) (as so prospectively added). Regulations may include provision for prescribed persons to be exempt from any prescribed condition, to such extent as is prescribed, in prescribed circumstances: s 125A(7D) (as so prospectively added). Regulations may make provision authorising the Secretary of State to make available information about persons registered under s 125A (as added and prospectively amended): s 125A(7E) (as so prospectively added).

22 As to service of notices see PARA 440 post.

23 Road Traffic Act 1988 s 125B(5) (as added: see note 3 supra).

## UPDATE

### 411-441 Driving Instruction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 417 Application requirements for the registration of disabled persons as instructors

NOTE 16--Prescribed fee now £300: SI 2005/1902 reg 17(1) (amended by SI 2008/419).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/ (2) REGISTRATION OF DRIVING INSTRUCTORS/418. Certificate of registration, badges and official title of instructor.

### 418. Certificate of registration, badges and official title of instructor.

The following provisions apply until a day to be appointed<sup>1</sup>.

Regulations<sup>2</sup> have been made which prescribe: (1) the form of certificate for issue to persons whose names are in the register as evidence of their names being there<sup>3</sup>; (2) the form of badge for use by such persons<sup>4</sup>; and (3) the official title for such use<sup>5</sup>.

If a person whose name is not in the register: (a) takes or uses such a prescribed title<sup>6</sup>; or (b) wears or displays such a prescribed badge or certificate<sup>7</sup>; or (c) takes or uses any name, title, addition or description implying that his name is in the register<sup>8</sup>, he is guilty of an offence unless he proves that he did not know, and had no reasonable cause to believe, that his name was not in the register at the material time<sup>9</sup>.

If a person carrying on business in the provision of instruction in the driving of motor vehicles<sup>10</sup>: (i) uses such a prescribed title or description in relation to any person employed by him whose name is not in the register<sup>11</sup>; or (ii) issues any advertisement or invitation calculated to mislead with respect to the extent to which persons whose names are in the register are employed by him<sup>12</sup>, he is guilty of an offence unless he proves that he did not know, and had no reasonable cause to believe, that the name or names in question were not in the register at the material time<sup>13</sup>.

Where the name of a person, to whom a prescribed certificate<sup>14</sup> has been issued, is removed from the register in pursuance of Part V of the Road Traffic Act 1988<sup>15</sup> that person must, if so

required by the Registrar<sup>16</sup> by notice<sup>17</sup> in writing, surrender the certificate<sup>18</sup> to the Registrar within the period of 14 days beginning with that on which the notice is given and, if he fails to do so, he is guilty of an offence<sup>19</sup>.

The following provisions apply as from a day to be appointed<sup>20</sup>.

Regulations may prescribe certificates or other items that may be issued to registered persons to be displayed as evidence of their registration, and a title or other description which may be used as such evidence<sup>21</sup>. If at any time a person who is not registered: (A) displays a certificate or other prescribed item; (B) uses a prescribed title or other description; or (C) uses a title or other description implying that he is registered, he is guilty of an offence unless he proves that he did not know, and did not have reasonable cause to believe, that he was not registered at that time<sup>22</sup>. If a person carrying on business in the provision of driving instruction<sup>23</sup> at any time uses a prescribed title or other description in relation to any relevant person<sup>24</sup> who is not appropriately registered, or issues any advertisement or invitation calculated to mislead with respect to the extent to which relevant persons are appropriately registered, he is guilty of an offence unless he proves that he did not know, and did not have reasonable cause to believe, that the relevant person was, or relevant persons were, not appropriately registered at that time<sup>25</sup>.

Where the registration of a person to whom a certificate or other prescribed item<sup>26</sup> has been issued is terminated, that person must, if so required by the Registrar by notice in writing, surrender the certificate or other item to the Registrar within the period of 14 days beginning with that on which the notice is given and, if he fails to do so, he is guilty of an offence<sup>27</sup>.

1 The Road Traffic Act 1988 s 135 is prospectively substituted, and s 136 is prospectively amended, by the Road Safety Act 2006 s 42, Sch 6 paras 1, 20, 21, as from a day to be appointed under s 61(1). At the date at which this volume states the law no such day had been appointed.

2 See the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902 (as amended); and PARA 412 ante. As to the Secretary of State's power to make regulations see PARA 412 ante.

3 Road Traffic Act 1988 s 135(1)(a). For the meaning of 'the register' see PARA 413 text and note 5 ante. As to the certificate for issue to persons whose names are in the register by virtue of s 125(3) (as amended) (see PARA 415 ante) see the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 18(2), Sch 5 Pt 1. As to the certificate for issue to persons whose names are in the register by virtue of the Road Traffic Act 1988 s 125A(5) (as added) (see PARA 417 ante) see the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 18(3), Sch 5 Pt 2.

4 Road Traffic Act 1988 s 135(1)(b). As to the form of badge see the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 19, Sch 6.

5 Road Traffic Act 1988 s 135(1)(c). The prescribed official title is 'Driving Standards Agency Approved Driving Instructor (Car)': Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 18(1). 'Approved driving instructor' means a person whose name is entered in the register: reg 2(1). Persons whose names are in the register are commonly known as approved driving instructors or 'ADIs'.

6 Road Traffic Act 1988 s 135(2)(a).

7 Ibid s 135(2)(b).

8 Ibid s 135(2)(c).

9 Ibid s 135(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

10 Road Traffic Act 1988 s 135(3). As to paid instruction see PARA 413 note 2 ante. For the meaning of 'motor vehicle' see PARA 210 ante.

11 Ibid s 135(3)(a).

- 12 Ibid s 135(3)(b).
- 13 Ibid s 135(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I.
- 14 Ie prescribed under the Road Traffic Act 1988 s 135: see the text and notes 1-13 supra.
- 15 Ie ibid Pt V (ss 123-142) (as amended).
- 16 For the meaning of 'the Registrar' see PARA 415 text to note 5 ante.
- 17 As to service of notices see PARA 440 post.
- 18 As to production and seizure of certificates where this obligation is not complied with see PARA 438 post.
- 19 Road Traffic Act 1988 s 136. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I.
- 20 See note 1 supra.
- 21 Road Traffic Act 1988 s 135(1) (as prospectively substituted: see note 1 supra).
- 22 Ibid s 135(2) (as prospectively substituted: see note 1 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I (entry prospectively amended by the Road Safety Act 2006 Sch 6 paras 31, 33(1), (6)).
- 23 As to the meaning of 'carries on business in the provision of paid driving instruction' see PARA 413 note 26 ante.
- 24 For the purposes of the Road Traffic Offenders Act 1988 s 135(3) (as prospectively substituted): (1) a relevant person is a person who is employed by the person carrying on business to give driving instruction, or is a franchisee giving driving instruction under a driving instruction franchise under which that person is the franchisor; and (2) a relevant person is appropriately registered if he is registered in respect of the giving of the description of driving instruction which he is employed to give or which is given by him under the driving instruction franchise: s 135(4) (as prospectively substituted: see note 1 supra). For the meaning of 'driving instruction franchise' and as to the meaning of 'franchisor' see PARA 413 note 26 ante.
- 25 Ibid s 135(3) (as prospectively substituted: see note 1 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I (entry prospectively amended by the Road Safety Act 2006 Sch 6 para 33(6)).
- 26 Ie under the Road Traffic Act 1988 s 135(1)(a) (as prospectively substituted): see the text and note 21 supra.
- 27 Ibid s 136 (as prospectively amended: see note 1 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I (entry prospectively amended by the Road Safety Act 2006 Sch 6 para 33(7)).

## **UPDATE**

### **411-441 Driving Instruction**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **418 Certificate of registration, badges and official title of instructor**

NOTE 3--SI 2005/1902 Sch 5 amended: SI 2008/419.



Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/ (2) REGISTRATION OF DRIVING INSTRUCTORS/419. Duration of registration.

#### **419. Duration of registration.**

The following provisions apply until a day to be appointed<sup>1</sup>.

The name of a person must, unless previously removed<sup>2</sup>, be removed from the register<sup>3</sup> at the end of the period of four years beginning with either: (1) the first day of the month next after that in which the entry of his name was made<sup>4</sup>; or (2) where his name has been retained in the register<sup>5</sup>, with the day when the latest period for which his name was so retained began<sup>6</sup>. If an application for the retention of his name in the register is made<sup>7</sup> before the end of that period, the name must not be removed except in pursuance of a decision of the Registrar<sup>8</sup>.

Where a person whose name has been removed from the register under head (1) or head (2) above applies for his name to be entered again in the register<sup>9</sup>, he must again pass the examination of ability to give instruction in the driving of motor cars<sup>10</sup> unless the application is made before the end of the period of one year beginning with the end of the period of four years mentioned in heads (1) and (2) above<sup>11</sup>.

Similarly, where a registered disabled instructor<sup>12</sup> whose name has been removed from the register under head (1) or head (2) above applies for his name to be entered again in the register<sup>13</sup> as that of a disabled instructor, he must again pass the examination of ability to give instruction in the driving of motor cars<sup>14</sup> unless the application is made before the end of the period of one year beginning with the end of the period of four years mentioned in heads (1) and (2) above<sup>15</sup>.

The following provisions apply as from a day to be appointed<sup>16</sup>.

Unless previously terminated<sup>17</sup>, a person's registration in respect of any description of driving instruction is terminated at the end of the period of four years beginning with the day specified below<sup>18</sup>. That day is: (a) the first day of the month next after that in which the person became registered in respect of that description of driving instruction; or (b) where his registration in respect of that description of driving instruction has been extended<sup>19</sup>, the day on which the last further period for which the registration was last extended began<sup>20</sup>. If an application for the extension of a person's registration in respect of any description of driving instruction is made, the registration is not terminated under these provisions<sup>21</sup>.

Where a person whose registration in respect of any description of driving instruction has been terminated applies<sup>22</sup> to be registered again in respect of that description of driving instruction, he is required again to fulfil such of the conditions<sup>23</sup> as may be prescribed<sup>24</sup>.

1 The Road Traffic Act 1988 s 126 is prospectively substituted by the Road Safety Act 2006 s 42, Sch 6 paras 1, 8, as from a day to be appointed under s 61(1). At the date at which this volume states the law no such day had been appointed.

2 *Ie* under any provision of the Road Traffic Act 1988 ss 127-142 (as amended): see PARAS 420-441 post.

3 *Ie* subject to *ibid* s 126(2): see the text to notes 7-8 *infra*. For the meaning of 'the register' see PARA 413 text and note 5 *ante*. As to the retention of a name in the register see PARA 420 post.

4 *Ibid* s 126(1)(a).

5 *Ie* under *ibid* s 127 (as amended): see PARA 420 post.

6 *Ibid* s 126(1)(b).

- 7 See note 5 supra.
- 8 Road Traffic Act 1988 s 126(2). The decision of the Registrar has effect under s 127 (as amended) (see PARA 420 post): s 126(2). For the meaning of 'the Registrar' see PARA 415 text to note 5 ante.
- 9 Ie under ibid s 125(2): see PARA 415 ante.
- 10 Ie under ibid s 125(3)(a): see PARA 415 ante. For the meaning of 'motor car' see PARA 413 note 2 ante. As to the examination of ability to give instruction see PARA 424 post.
- 11 Ibid s 126(3).
- 12 For the meaning of 'registered disabled instructor' see PARA 417 note 7 ante. As to the registration of disabled instructors see PARA 417 ante.
- 13 Ie under the Road Traffic Act 1988 s 125A(1) (as added): see PARA 417 ante.
- 14 Ie under ibid s 125A(6)(a) (as added): see PARA 417 ante.
- 15 Ibid s 126(4) (added by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 s 6).
- 16 See note 1 supra.
- 17 Ie under the Road Traffic Act 1988 ss 127-142 (as amended).
- 18 Ibid s 126(1) (as prospectively substituted: see note 1 supra).
- 19 Ie under ibid s 127 (as amended): see PARA 420 post.
- 20 Ibid s 126(2) (as prospectively substituted: see note 1 supra).
- 21 Ibid s 126(3) (as prospectively substituted: see note 1 supra).
- 22 Ie under ibid s 125 (as prospectively substituted): see PARA 415 ante.
- 23 Ie prescribed under ibid s 125ZA(1) (as prospectively added): see PARA 416 ante. If the person was a registered disabled instructor he is instead required again to fulfil such of the conditions prescribed under s 125A(5) (as added and prospectively substituted) as may be prescribed (see PARA 417 ante): s 126(5) (as prospectively substituted: see note 1 supra).
- 24 Ibid s 126(4) (as prospectively substituted: see note 1 supra).

## **UPDATE**

### **411-441 Driving Instruction**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/ (2) REGISTRATION OF DRIVING INSTRUCTORS/420.  
Retention of name in the register.

### **420. Retention of name in the register.**

A person may, before the time when his name is required to be removed from the register<sup>1</sup>, apply to the Registrar<sup>2</sup>, in manner determined by the Secretary of State<sup>3</sup>, accompanied by

particulars so determined, for the retention of his name in the register for a further period of four years<sup>4</sup>. On such an application, he is entitled, on payment of the prescribed fee<sup>5</sup>, if any, to have his name retained in the register for that further period, if he satisfies the Registrar that the relevant conditions<sup>6</sup> are fulfilled in his case<sup>7</sup>.

Before refusing such an application the Registrar must give to the applicant written notice<sup>8</sup> stating that he is considering the refusal of the application and giving particulars of the grounds on which he is considering it<sup>9</sup>. Where the Registrar gives such a notice the applicant may, within the period of 28 days beginning with the day on which the notice is given, make representations with respect to the proposed refusal<sup>10</sup>. The Registrar may not decide to refuse the application until after the expiration of that period<sup>11</sup>. Before deciding whether or not to refuse the application, the Registrar must take into consideration any such representations made by the applicant within that period<sup>12</sup>.

On deciding to grant or refuse an application the Registrar must give notice in writing of the decision to the person concerned<sup>13</sup>. A decision to refuse an application takes effect at the end of the period of 14 days beginning with the day on which notice of the decision is given (or, if any appeal brought against the decision<sup>14</sup> is previously withdrawn or dismissed, when the appeal is withdrawn or dismissed)<sup>15</sup>. However, the Registrar may, when giving notice of his decision to refuse the application, direct that the decision is instead to take effect<sup>16</sup>: (1) where no appeal is brought<sup>17</sup> against the decision within the time limited for the appeal, on the expiration of that time<sup>18</sup>; (2) where such an appeal is brought and is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of the appeal<sup>19</sup>; (3) where such an appeal is brought and not withdrawn or struck out for want of prosecution, if and when the appeal is dismissed, and not otherwise<sup>20</sup>.

1     le under the Road Traffic Act 1988 s 126(1): see PARA 419 ante. For the meaning of 'the register' see PARA 413 text and note 5 ante.

2     For the meaning of 'the Registrar' see PARA 415 text to note 5 ante.

3     As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4     Road Traffic Act 1988 s 127(1). If the application is successful, the retention of a person's name under s 127 (as amended) remains subject: (1) in the case of its retention by virtue of s 127(3) (see note 6 infra), to the condition that he will, when required, undergo the test of continued ability and fitness to give instruction in the driving of motor cars (see s 125(5); and PARA 415 ante); and (2) in the case of its retention by virtue of s 127(3A) (as added) (see note 6 infra), to the condition that he will, when required, undergo a further emergency control assessment, or undergo the test of continued ability and fitness to give instruction in the driving of appropriate motor cars (see s 125B(6) (as added); and PARA 432 post): s 127(4) (substituted by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 s 6, Schedule para 5(5)). For the meaning of 'motor car' see PARA 413 note 2 ante; for the meaning of 'emergency control assessment' see PARA 432 note 5 post; and for the meaning of 'appropriate motor car' see PARA 417 note 3 ante. As to the test of continued ability and fitness to give instruction see PARA 429 post.

5     The prescribed fee is £200: see the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 17(1).

6     Except in the case of a registered disabled instructor (Road Traffic Act 1988 s 127(3) (amended by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 Schedule para 5(3))), the relevant conditions are:

44     (1)   that he has not refused to undergo the test of continued ability and fitness to give instruction in the driving of motor cars as is mentioned in the Road Traffic Act 1988 s 125(5) (see PARAS 415 ante, 424 post) which he has been required to undergo during the period of four years ending with the time when his name is required under s 126(1) (see PARA 419 ante) to be removed from the register (s 127(3)(a));

45     (2)   that his ability and fitness to give instruction in the driving of motor cars continue, having regard to any such test or tests which he has undergone during that period, to be of a satisfactory standard (s 127(3)(b));

- 46 (3) that he is the holder of a current licence of one of the kinds mentioned in s 125(3)(b) (as substituted) (see PARA 415 ante) (s 127(3)(c));
- 47 (4) that he has not during any part of that period been disqualified under the Road Traffic Offenders Act 1988 s 34 (as amended) (disqualification for a fixed period) or s 36 (as substituted and amended) (disqualification until test is passed) (see PARAS 415 note 26 ante, 1061, 1071 post) for holding or obtaining a licence to drive a motor vehicle granted under the Road Traffic Act 1988 Pt III (ss 87-109) (as amended) (see PARA 442 et seq post) (s 127(3)(d)); and
- 48 (5) that, apart from fulfilment of the conditions in heads (1)-(4) supra, he continues to be a fit and proper person to have his name entered in the register (s 127(3)(e)).

For the meaning of 'registered disabled instructor' see PARA 417 note 7 ante. As to the registration of disabled instructors see PARA 417 ante. For the meaning of 'current licence' see PARA 413 note 2 ante; and for the meaning of 'motor vehicle' see PARA 210 ante.

In the case of a registered disabled instructor (see s 127(3A) (added by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 Schedule para 5(4))), the relevant conditions are:

- 49 (a) that he holds a current emergency control certificate (Road Traffic Act 1988 s 127(3A)(a) (as so added));
- 50 (b) that he has not refused to undergo a further emergency control assessment as is mentioned in s 125B(6)(a) (as added) (see PARA 432 post), or a test of continued ability and fitness to give instruction in the driving of appropriate motor cars as is mentioned in s 125B(6)(b) (as added) (see PARA 432 post), which he has been required to undergo during the period of four years ending with the time when his name is required under s 126(1) (see PARA 419 ante) to be removed from the register (s 127(3A)(b) (as so added));
- 51 (c) that his ability and fitness to give instruction in the driving of motor cars continue, having regard to any such test or tests of continued ability and fitness to give instruction in the driving of appropriate motor cars as is mentioned in s 125B(6)(b) (as added), which he has undergone during that period, to be of a satisfactory standard (s 127(3A)(c) (as so added));
- 52 (d) that he is the holder of a current disabled person's limited driving licence (s 127(3A)(d) (as so added));
- 53 (e) that he has not during any part of that period been disqualified under the Road Traffic Offenders Act 1988 s 34 (as amended) or s 36 (as substituted and amended) for holding or obtaining a licence to drive a motor vehicle granted under the Road Traffic Act 1988 Pt III (as amended) (s 127(3A)(e) (as so added)); and
- 54 (f) that, apart from fulfilment of the conditions in heads (a)-(e) supra, he continues to be a fit and proper person to have his name entered in the register as that of a disabled instructor (s 127(3A)(f) (as so added)).

For the meaning of 'emergency control certificate' see PARA 417 note 4 ante; and for the meaning of 'disabled person's limited driving licence' see PARA 417 note 3 ante.

In addition, in the case of all driving instructors, there are the further conditions that the applicant: (i) has passed the test specified in the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 6(2)(a) as part of the driving ability and fitness test; (ii) has passed the test of continued ability and fitness specified in reg 12(2)(b); or (iii) has satisfied the Registrar, whether by virtue of his performance in a test equivalent to those tests or other form of assessment, where such test or assessment was conducted by any person for the Secretary of State, that he has the necessary ability to perceive hazards on the road: reg 11 (amended by SI 2005/2716).

7 Road Traffic Act 1988 s 127(2) (amended by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 Schedule para 5(2)).

The Road Traffic Act 1988 s 127(1)-(4) (as amended) is prospectively substituted by the Road Safety Act 2006 s 42, Sch 6 paras 1, 9(1), (2), as from a day to be appointed under s 61(1). At the date at which this volume states the law no such day had been appointed. From the appointed day, a person may, no later than such time before his registration in respect of any description of driving instruction is terminated under the Road Traffic Act 1988 s 126(1) (as prospectively substituted) (see PARA 419 text to notes 17-18 ante) as is prescribed, apply to the Registrar for the extension of that registration for a further period of four years: s 127(1) (as so prospectively substituted). Such an application must be made in such manner, and be accompanied by such particulars, as the Secretary of State may determine: s 127(2) (as so prospectively substituted). On such an application, the applicant is entitled to have the registration extended for the further period of four years if he

satisfies the Registrar that the prescribed requirements are fulfilled: s 127(3) (as so prospectively substituted). The continued registration of a person by virtue of an extension under these provisions may be made subject to: (1) in the case of a registered disabled instructor, the conditions prescribed under s 125A(7) (as added and prospectively substituted) (see PARA 417 ante); and (2) in any other case, the conditions prescribed under s 125ZA(3) (as prospectively added) (see PARA 416 ante): s 127(4) (as so prospectively substituted).

8 As to service of notices see PARA 440 post.

9 Road Traffic Act 1988 s 127(5).

10 Ibid s 127(6)(a).

11 Ibid s 127(6)(b).

12 Ibid s 127(6)(c).

13 Ibid s 127(7) (prospectively amended by the Road Safety Act 2006 Sch 6 para 9(3)).

14 Ie under the Road Traffic Act 1988 ss 128-142 (as amended).

15 Ibid s 127(7A) (added by the Transport Act 2000 s 259(1)). As from a day to be appointed, this provision is amended so that, instead of referring to a decision to refuse an application, it refers to the termination of a person's registration on a decision to refuse an application: Road Traffic Act 1988 s 127(7A) (as so added; prospectively amended by the Road Safety Act 2006 Sch 6 para 9(5)). At the date at which this volume states the law no such day had been appointed.

16 Road Traffic Act 1988 s 127(8) (amended by the Transport Act 2000 s 259(1)). As from a day to be appointed, this provision is further amended so as to refer to the termination of registration instead of referring to the decision: Road Traffic Offenders Act 1988 s 127(8) (as so added; prospectively amended by the Road Safety Act 2006 Sch 6 para 9(4)). At the date at which this volume states the law no such day had been appointed.

17 Ie under the Road Traffic Act 1988 s 131 (as amended): see PARA 437 post.

18 Ibid s 127(8)(a).

19 Ibid s 127(8)(b).

20 Ibid s 127(8)(c).

## UPDATE

### 411-441 Driving Instruction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 420 Retention of name in the register

NOTE 5--Prescribed fee now £300: SI 2005/1902 reg 17(1) (amended by SI 2008/419).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/ (2) REGISTRATION OF DRIVING INSTRUCTORS/421. Removal of name from the register.

### 421. Removal of name from the register.

The following provisions apply until a day to be appointed<sup>1</sup>.

The Registrar<sup>2</sup> may remove the name of a person from the register<sup>3</sup> if he is satisfied that: (1) in a case where his name has not been retained in the register<sup>4</sup>, at any time since the entry of his name was made<sup>5</sup>; and (2) in a case where his name has been so retained, at any time since it was last retained<sup>6</sup>, any of the relevant conditions<sup>7</sup> were fulfilled in his case<sup>8</sup>.

The Registrar may remove the name of a person from the register if the entry of his name or its retention was made by mistake or procured by fraud<sup>9</sup>. Before removing the name of a person from the register, the Registrar must give the person written notice<sup>10</sup> stating that he is considering the removal and giving particulars of the grounds on which he is considering it<sup>11</sup>.

Where the Registrar gives such notice the person to whom it is given may, within the period of 28 days beginning with the day on which the notice is given, make representations with respect to the proposed removal<sup>12</sup>. The Registrar may not decide to remove his name from the register until after the expiration of that period<sup>13</sup>. Before deciding whether or not to remove his name from the register, the Registrar must take into consideration any such representations made by him within that period<sup>14</sup>. The Registrar must, on making a decision to remove a name from the register, give notice in writing of the decision to the person concerned<sup>15</sup>.

A decision to remove a name from the register takes effect at the end of the period of 14 days beginning with the day on which notice of the decision is given (or, if any appeal brought against the decision<sup>16</sup> is previously withdrawn or dismissed, when the appeal is withdrawn or dismissed)<sup>17</sup>. But the Registrar may, when giving notice of his decision to remove the name from the register, direct that the decision is instead to take effect<sup>18</sup>: (a) where no appeal is brought<sup>19</sup> against the decision within the time limited for the appeal, on the expiration of that time<sup>20</sup>; (b) where such an appeal is brought and is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of the appeal<sup>21</sup>; (c) where such an appeal is brought and not withdrawn or struck out for want of prosecution, if and when the appeal is dismissed, and not otherwise<sup>22</sup>.

Where a person whose name has been removed from the register<sup>23</sup> applies<sup>24</sup> for his name to be entered again in the register and either<sup>25</sup> the application is made after the end of the period of one year beginning with the date on which his name was removed<sup>26</sup> or his name was removed on the grounds that he has failed to pass a test of continued ability and fitness to give instruction in the driving of motor cars<sup>27</sup>, the Registrar must not regard the requirement that he pass the examination of ability to give instruction in the driving of motor cars<sup>28</sup> as fulfilled unless he is satisfied that that person has, since the date on which his name was removed from the register, passed that examination again<sup>29</sup>.

Where a person whose name was entered in the register as that of a disabled instructor and whose name has been removed from the register<sup>30</sup> applies<sup>31</sup> for his name to be entered again in the register as that of a disabled instructor and either<sup>32</sup> the application is made after the end of the period of one year beginning with the date on which his name was removed<sup>33</sup> or his name was removed on the ground that he has failed to pass a test of continued ability and fitness to give instruction in the driving of appropriate motor cars<sup>34</sup>, the Registrar must not regard the condition that he has passed the examination of ability to give instruction in the driving of motor cars<sup>35</sup> as fulfilled unless he is satisfied that that person has passed that examination again since the date on which his name was removed from the register<sup>36</sup>.

The following provisions apply as from a day to be appointed<sup>37</sup>.

The Registrar may terminate a person's registration in respect of any description of driving instruction if he is satisfied that any relevant prescribed condition<sup>38</sup> has not been complied with in the case of the person: (i) in a case where his registration has not been extended<sup>39</sup>, at any time since he became registered; or (ii) in a case where his registration has been so extended, at any time since it was last extended<sup>40</sup>. The Registrar may also terminate a person's registration in respect of a description of driving instruction if the person's registration, or (if

the person's registration has been extended) the last extension of his registration, was made by mistake or procured by fraud<sup>41</sup>.

Before terminating a person's registration in respect of any description of driving instruction, the Registrar must give him written notice stating that he is considering terminating the registration and giving particulars of the grounds on which he is considering it<sup>42</sup>. Where the Registrar gives such notice to a person: (A) that person may, within the period of 28 days beginning with the day on which the notice is given, make representations with respect to the proposed termination; (B) the Registrar must not decide to terminate the registration until after the end of that period; and (C) before deciding whether or not to terminate the registration, the Registrar must take into consideration any such representations made by him within that period<sup>43</sup>. The Registrar must, on making a decision to terminate a person's registration in respect of any description of driving instruction, give notice in writing of the decision to the person<sup>44</sup>. A decision to terminate a person's registration in respect of any description of driving instruction takes effect at the end of the period of 14 days beginning with the day on which notice of the decision is given (or, if any appeal brought against the decision<sup>45</sup> is previously withdrawn or dismissed, when the appeal is withdrawn or dismissed)<sup>46</sup>. However, the Registrar may, when giving notice of his decision to terminate a person's registration in respect of any description of driving instruction, direct that the decision is to instead take effect: (aa) where no appeal is brought against the decision within the time limited for the appeal, at the end of that time; (bb) where such an appeal is brought and is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of the appeal; or (cc) where such an appeal is brought and not withdrawn or struck out for want of prosecution, if and when the appeal is dismissed, and not otherwise<sup>47</sup>.

The following provisions apply when the Registrar decides to refuse to register a person, to refuse an application for the extension of a person's registration, or to terminate a person's registration, in respect of any description of driving instruction<sup>48</sup>. The Registrar may direct that any application by that person to be registered in respect of that description of driving instruction is not to be entertained before the end of such period, not exceeding four years beginning with the day on which the decision takes effect, as may be specified in the direction<sup>49</sup>. Notice of any such direction must be included in the notice of the decision in connection with which it is given<sup>50</sup>.

1 The Road Traffic Act 1988 s 128 is prospectively substituted, and s 128A is prospectively added, by the Road Safety Act 2006 s 42, Sch 6 paras 1, 10, 11, as from a day to be appointed under s 61(1). At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'the Registrar' see PARA 415 text to note 5 ante.

3 For the meaning of 'the register' see PARA 413 text and note 5 ante.

4 Ie pursuant to an application under the Road Traffic Act 1988 s 127(1): see PARA 420 ante.

5 Ibid s 128(1)(a).

6 Ibid s 128(1)(b). The text refers to any time other than at the time of the first application for registration under s 125(2) (see PARA 415 ante) or s 125A(1) (as added) (see PARA 417 ante), or at the time of an application for retention pursuant to s 127 (as amended) (see PARA 420 ante).

7 Except in the case of a registered disabled instructor (see *ibid* s 128(2) (amended by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 s 6, Schedule para 6(3))), the relevant conditions are:

55 (1) that he held none of the kinds of current licence mentioned in the Road Traffic Act 1988 s 125(3)(b) (as substituted) (see PARA 415 ante) (s 128(2)(a) (amended by the Motor Cars (Driving Instruction) (Admission of Community Licence Holders) Regulations 1999, SI 1999/357, reg 2(4));

56 (2) that he was disqualified under the Road Traffic Offenders Act 1988 s 34 (as amended) (disqualification for a fixed period) or s 36 (as substituted and amended) (disqualification until

test is passed) (see PARAS 415 note 26 ante, 1061, 1071 post) for holding or obtaining a licence to drive a motor vehicle under the Road Traffic Act 1988 Pt III (ss 87-109) (as amended) (s 128(2)(b));

- 57 (3) that he refused to undergo a test of continued ability and fitness to give instruction in the driving of motor cars as is mentioned in s 125(5) (see PARA 415 ante) (s 128(2)(c));
- 58 (4) that he failed to pass such a test (s 128(2)(d));
- 59 (5) that he ceased, apart from fulfilment of any of heads (1)-(4) supra, to be a fit and proper person to have his name included in the register (s 128(2)(e)).

For the meaning of 'registered disabled instructor' see PARA 417 note 7 ante. As to the registration of disabled instructors see PARA 417 ante. For the meaning of 'current licence' see PARA 413 note 2 ante. For the meaning of 'motor vehicle' see PARA 210 ante; and for the meaning of 'motor car' see PARA 413 note 2 ante.

A recent disqualification under the 'totting-up' provisions of the Road Traffic Offenders Act 1988 s 35 (as amended) (see PARA 1070 post) does not automatically require a person's name to be removed from the register but the Registrar might on those grounds regard him as not being a fit and proper person to be registered: see head (5) in the text.

In the case of a registered disabled instructor (see the Road Traffic Act 1988 s 128(2A) (added by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 Schedule para 6(4))) the relevant conditions are:

- 60 (a) that he did not hold a current emergency control certificate (Road Traffic Act 1988 s 128(2A)(a) (as so added));
- 61 (b) that he did not hold a current disabled person's limited driving licence (s 128(2A)(b) (as so added));
- 62 (c) that he was disqualified under the Road Traffic Offenders Act 1988 s 34 (as amended) or s 36 (as substituted and amended) for holding or obtaining a licence to drive a motor vehicle under the Road Traffic Act 1988 Pt III (as amended) (s 128(2A)(c) (as so added));
- 63 (d) that he refused to undergo a further emergency control assessment as is mentioned s 125B(6)(a) (as added) (see PARA 432 post) (s 128(2A)(d) (as so added));
- 64 (e) that he refused to undergo, or failed to pass, a test of continued ability and fitness to give instruction in the driving of appropriate motor cars as is mentioned in s 125B(6)(b) (as added) (see PARA 432 post) (s 128(2A)(e) (as so added));
- 65 (f) that he ceased, apart from fulfilment of heads (a)-(e) supra, to be a fit and proper person to have his name included in the register as that of a disabled instructor (s 128(2A)(f) (as so added)).

For the meaning of 'emergency control certificate' see PARA 417 note 4 ante; for the meaning of 'disabled person's limited driving licence' see PARA 417 note 3 ante; for the meaning of 'appropriate motor car' see PARA 417 note 3 ante; and for the meaning of 'emergency control assessment' see PARA 432 note 5 post. As to the test of continued ability and fitness to give instruction see PARA 429 post.

In addition, in the case of all driving instructors, there is the further condition that the applicant has failed: (i) to pass the test specified in the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 6(2)(a) as part of the driving ability and fitness test; (ii) to pass the test of continued ability and fitness specified in reg 12(2)(b); or (iii) to satisfy the Registrar, whether by virtue of his performance in a test equivalent to those tests or other form of assessment, where such test or assessment was conducted by any person for the Secretary of State, that he has the necessary ability to perceive hazards on the road: reg 10 (amended by SI 2005/2716).

8 Road Traffic Act 1988 s 128(1) (amended by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 Schedule para 6(2)).

9 Road Traffic Act 1988 s 128(3). As to mistake see generally MISTAKE; and as to fraud see CRIMINAL LAW, EVIDENCE AND PROCEDURE; MISREPRESENTATION AND FRAUD.

10 As to service of notices see PARA 440 post.

11 Road Traffic Act 1988 s 128(4).

12 Ibid s 128(5)(a).

13 Ibid s 128(5)(b).



- 14 Ibid s 128(5)(c).
- 15 Ibid s 128(6).
- 16 Ie under ibid ss 129-142 (as amended).
- 17 Ibid s 128(6A) (added by the Transport Act 2000 s 259(2)).
- 18 Road Traffic Act 1988 s 128(7) (amended by the Transport Act 2000 s 259(2)).
- 19 Ie under the Road Traffic Act 1988s 131 (as amended): see PARA 437 post.
- 20 Ibid s 128(7)(a).
- 21 Ibid s 128(7)(b).
- 22 Ibid s 128(7)(c). As to appeals see PARA 437 post.
- 23 Ie under ibid s 128 (as amended).
- 24 Ie under ibid s 125(2): see PARA 415 ante.
- 25 Ibid s 128(8) (added by the Motor Cars (Driving Instruction) (Amendment) Regulations 1991, SI 1991/1129, reg 2).
- 26 Road Traffic Act 1988 s 128(8)(a) (as added: see note 25 supra).
- 27 Ibid s 128(8)(b) (as added: see note 25 supra). The text refers to the test mentioned in s 125(5): see PARA 415 ante.
- 28 Ie the requirement contained in ibid s 125(3)(a): see PARA 415 ante. As to the examination of ability to give instruction see PARA 424 post.
- 29 Ibid s 128(8) (as added: see note 25 supra).
- 30 Ie under ibid s 128 (as amended).
- 31 Ie under ibid s 125A(1) (as added): see PARA 417 ante.
- 32 Ibid s 128(9) (added by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 Schedule para 6(5)).
- 33 Road Traffic Act 1988 s 128(9)(a) (as added: see note 32 supra).
- 34 Ibid s 128(9)(b) (as added: see note 32 supra). The text refers to the test mentioned in s 125B(6)(b) (as added): see PARA 432 post.
- 35 Ie the condition mentioned in ibid s 125A(6)(a) (as added): see PARA 417 ante.
- 36 Ibid s 128(9) (as added: see note 32 supra).
- 37 See note 1 supra.
- 38 For these purposes, 'relevant prescribed condition' means: (1) in the case of a registered disabled instructor, a condition prescribed under the Road Traffic Act 1988 s 125A(7) (as added and prospectively substituted) (see PARA 417 ante); and (2) in any other case, a condition prescribed under s 125ZA(3) (as prospectively added) (see PARA 416 ante): s 128(2) (as prospectively substituted: see note 1 supra).
- 39 Ie under ibid s 127 (as amended): see PARA 420 ante.
- 40 Ibid s 128(1) (as prospectively substituted: see note 1 supra).
- 41 Ibid s 128(3) (as prospectively substituted: see note 1 supra).
- 42 Ibid s 128(4) (as prospectively substituted: see note 1 supra).
- 43 Ibid s 128(5) (as prospectively substituted: see note 1 supra).

- 44 Ibid s 128(6) (as prospectively substituted: see note 1 supra).
- 45 As to appeals see ibid s 131 (as amended); and PARA 437 post.
- 46 Ibid s 128(7) (as prospectively substituted: see note 1 supra).
- 47 Ibid s 128(8) (as prospectively substituted: see note 1 supra).
- 48 Ibid s 128A(1) (as prospectively added: see note 1 supra).
- 49 Ibid s 128A(2) (as prospectively added: see note 1 supra).
- 50 Ibid s 128A(3) (as prospectively added: see note 1 supra).

## **UPDATE**

### **411-441 Driving Instruction**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/(3) EXAMINATIONS AND TESTS OF ABILITY TO GIVE DRIVING INSTRUCTION/422. Power to make provision for examinations and tests of ability to give driving instruction.

## **(3) EXAMINATIONS AND TESTS OF ABILITY TO GIVE DRIVING INSTRUCTION**

### **422. Power to make provision for examinations and tests of ability to give driving instruction.**

The following provisions apply until a day to be appointed<sup>1</sup>.

Regulations<sup>2</sup> may make provision with respect to: (1) the nature of examinations of the ability of persons to give instruction in the driving of motor cars and tests of continued ability and fitness to give instruction in the driving of motor cars (or appropriate motor cars)<sup>3</sup>; and (2) evidence of the results of such tests and examinations<sup>4</sup>; and generally with respect to such tests and examinations<sup>5</sup>. In particular, the regulations may make provision<sup>6</sup>: (a) for requiring a person submitting himself for any part of such an examination which consists of a practical test, or to any part of such a test of continued ability and fitness which consists of practical assessment, to provide a vehicle for the purposes of the practical test or assessment, being a vehicle in respect of which such conditions as may be specified in regulations are complied with<sup>7</sup>; (b) for requiring a person applying to submit himself for any part of such an examination, or required to submit himself for such a test, to pay to the Registrar<sup>8</sup> such fee as may be specified in the regulations in relation to that part or such tests<sup>9</sup>; and (c) for requiring a person who desires to submit himself for any part of such an examination, or is required to submit himself for such a test, to supply the Registrar with such particulars as the Secretary of State<sup>10</sup> may determine<sup>11</sup>.

The following provisions apply as from a day to be appointed<sup>12</sup>.

Regulations may make provision with respect to: (i) the nature of examinations of the ability and fitness (or continued ability and fitness) to give driving instruction (which may consist of practical tests and other tests and means of assessment) and the administrative arrangements for submitting for such examinations<sup>13</sup>; (ii) the qualification, selection and appointment of persons by whom they may be conducted, conditions which must be satisfied during the currency of an appointment, the charging of reasonable fees in respect of applications for appointment or appointments or in connection with any examination or assessment which may be required before appointment or during the currency of any appointment and the revocation of any appointment<sup>14</sup>; (iii) evidence of the results of such examinations<sup>15</sup>; and (iv) the making available of information about the results of such examinations<sup>16</sup>; and generally with respect to such examinations<sup>17</sup>. In particular, the regulations may make provision<sup>18</sup>: (A) for requiring a person submitting himself for any part of an examination which consists of practical tests, to provide a safe and suitable vehicle for the purposes of the practical tests and for requiring that, if the vehicle is a vehicle of a prescribed description, the vehicle has been certified in the prescribed manner after a prescribed inspection as satisfying such requirements as may be prescribed<sup>19</sup>; (B) for the charging (whether on the making by a person of arrangements to submit himself for any part of an examination or otherwise) of reasonable fees for or in connection with the examination, or any part of it, and any inspection and certification of a vehicle required by regulations under head (A) above in relation to any part of the examination<sup>20</sup>; (C) for requiring a person who desires to submit himself, or is required to submit himself, for an examination, or any part of it, to supply the Registrar with such particulars as the Secretary of State may determine<sup>21</sup>; and (D) for ensuring that a person submitting himself for an examination, or any part of it, and failing to pass it is not eligible to submit himself for another examination, or any part of it, by the same or any other person before the end of a prescribed period, except under an order made<sup>22</sup> by a court under the provisions as to review of examinations<sup>23</sup>.

1 The Road Traffic Act 1988 s 132 is prospectively substituted by the Road Safety Act 2006 s 42, Sch 6 paras 1, 14, as from a day to be appointed under s 61(1). At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'regulations' see PARA 412 note 2 ante. In exercise of this power the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902 (as amended) have been made: see PARAS 424-429 post.

3 Road Traffic Act 1988 s 132(1)(a) (amended by the Transport Act 2000 s 260, Sch 29 paras 1, 9(1), (2)). As to the examination of ability to give instruction see PARA 424 post. As to the test of continued ability and fitness to give instruction see PARA 429 post. For the meaning of 'motor car' see PARA 413 note 2 ante.

4 Road Traffic Act 1988 s 132(1)(b).

5 Ibid s 132(1).

6 Ibid s 132(2), which is expressed to be without prejudice to the generality of s 132(1) (see the text to notes 2-5 supra).

7 Ibid s 132(2)(a) (amended by the Transport Act 2000 Sch 29 para 9(3)(a)). As to the provision of a motor car see PARA 428 post.

8 For the meaning of 'the Registrar' see PARA 415 text to note 5 ante.

9 Road Traffic Act 1988 s 132(2)(b) (amended by the Transport Act 2000 Sch 29 para 9(3)(b)).

10 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

11 Road Traffic Act 1988 s 132(2)(c) (amended by the Transport Act 2000 Sch 29 para 9(3)(c)).

12 See note 1 supra.

13 Road Traffic Act 1988 s 132(1)(a) (as prospectively substituted: see note 1 supra).

- 14 Ibid s 132(1)(b) (as prospectively substituted: see note 1 supra).
- 15 Ibid s 132(1)(c) (as prospectively substituted: see note 1 supra).
- 16 Ibid s 132(1)(d) (as prospectively substituted: see note 1 supra).
- 17 Ibid s 132(1) (as prospectively substituted: see note 1 supra).
- 18 Ibid s 132(2) (as prospectively substituted: see note 1 supra).
- 19 Ibid s 132(2)(a) (as prospectively substituted: see note 1 supra).
- 20 Ibid s 132(2)(b) (as prospectively substituted: see note 1 supra).
- 21 Ibid s 132(2)(c) (as prospectively substituted: see note 1 supra).
- 22 Ie under the power conferred by ibid s 133 (as prospectively substituted): see PARA 437 post.
- 23 Ibid s 132(2)(d) (as prospectively substituted: see note 1 supra).

## UPDATE

### 411-441 Driving Instruction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/(3) EXAMINATIONS AND TESTS OF ABILITY TO GIVE DRIVING INSTRUCTION/423. Training for driving instructors.

### 423. Training for driving instructors.

The following provisions apply as from a day to be appointed<sup>1</sup>.

Regulations<sup>2</sup> may provide that a person:

- 738 (1) is not to be permitted to take any part of a relevant instructor examination<sup>3</sup>;
- 739 (2) is not to be registered<sup>4</sup>; or
- 740 (3) is not to have his registration extended<sup>5</sup>,

unless he has successfully completed training in accordance with the regulations<sup>6</sup>.

Regulations may include provision exempting persons from any requirement imposed by virtue of the provisions above<sup>7</sup>; and regulations including such provision may (in particular): (a) limit an exemption to persons in prescribed circumstances<sup>8</sup>; (b) attach conditions to an exemption<sup>9</sup>; (c) regulate applications for an exemption<sup>10</sup>; and (d) include provision for the evidencing by a person of his being within an exemption<sup>11</sup>.

Regulations may make provision in relation to training<sup>12</sup>: (i) by means of courses provided in accordance with the regulations<sup>13</sup>; (ii) by means of study conducted in accordance with the regulations<sup>14</sup>; and (iii) by any other prescribed means<sup>15</sup>.

Regulations may provide that training is not to be taken into account for the purposes of the regulations if it was completed before such time as is prescribed<sup>16</sup>.

Regulations may, in particular, include<sup>17</sup>:

- 741 (A) provision about the nature of training<sup>18</sup>;
- 742 (B) provision for the approval by the Secretary of State<sup>19</sup> of persons providing training or giving instruction as part of training and the withdrawal of approval (including provision for appeals to the Transport Tribunal<sup>20</sup> against refusal and withdrawal of approval) and provision for exemptions from any requirement of approval<sup>21</sup>;
- 743 (C) provision for the training or assessment, or the supervision of training or assessment, of persons providing training or giving instruction as part of training<sup>22</sup>;
- 744 (D) provision setting the maximum amount of any charges payable by persons undergoing training<sup>23</sup>;
- 745 (E) provision for the evidencing of the successful completion of training<sup>24</sup>; and
- 746 (F) provision authorising the Secretary of State to make available information about persons providing training or giving instruction as part of training<sup>25</sup>.

Regulations under these provisions may include provision for the charging of reasonable fees in respect of the exercise of any function conferred or imposed on the Secretary of State by the regulations<sup>26</sup>.

1 The Road Traffic Act 1988 s 133ZA is prospectively added by the Road Safety Act 2006 s 42, Sch 6 paras 1, 14, as from a day to be appointed under s 61(1). At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'regulations' see PARA 412 note 2 ante.

3 Road Traffic Act 1988 s 133ZA(1)(a) (as prospectively added: see note 1 supra). For the meaning of 'relevant instructor examination' see PARA 437 note 27 ante.

4 Ibid s 133ZA(1)(b) (as prospectively added: see note 1 supra). For the meaning of 'registered' see PARA 413 note 24 ante.

5 Ibid s 133ZA(1)(c) (as prospectively added: see note 1 supra). As to extending registration see PARA 420 ante.

6 Ibid s 133ZA(1) (as prospectively added: see note 1 supra).

7 Ibid s 133ZA(3) (as prospectively added: see note 1 supra).

8 Ibid s 133ZA(3)(a) (as prospectively added: see note 1 supra).

9 Ibid s 133ZA(3)(b) (as prospectively added: see note 1 supra).

10 Ibid s 133ZA(3)(c) (as prospectively added: see note 1 supra).

11 Ibid s 133ZA(3)(d) (as prospectively added: see note 1 supra).

12 Ibid s 133ZA(2) (as prospectively added: see note 1 supra).

13 Ibid s 133ZA(2)(a) (as prospectively added: see note 1 supra).

14 Ibid s 133ZA(2)(b) (as prospectively added: see note 1 supra).

15 Ibid s 133ZA(2)(c) (as prospectively added: see note 1 supra).

16 Ibid s 133ZA(4) (as prospectively added: see note 1 supra).

17 Ibid s 133ZA(5) (as prospectively added: see note 1 supra).

18 Ibid s 133ZA(5)(a) (as prospectively added: see note 1 supra).

19 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

20 As to the Transport Tribunal see PARA 253 et seq ante.

21 Road Traffic Act 1988 s 133ZA(5)(b) (as prospectively added: see note 1 supra).

22 Ibid s 133ZA(5)(c) (as prospectively added: see note 1 supra).

23 Ibid s 133ZA(5)(d) (as prospectively added: see note 1 supra).

24 Ibid s 133ZA(5)(e) (as prospectively added: see note 1 supra).

25 Ibid s 133ZA(5)(f) (as prospectively added: see note 1 supra).

26 Ibid s 133ZA(6) (as prospectively added: see note 1 supra).

## UPDATE

### 411-441 Driving Instruction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 423 Training for driving instructors

TEXT AND NOTE 20--Refers now to First-tier Tribunal: Road Traffic Act 1988 s 133ZA(5)(b) (amended by SI 2009/1885).

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### 424. Examination of ability to give instruction.

A person who desires to submit himself for any part of the examination of ability to give instruction<sup>1</sup> must supply the Registrar<sup>2</sup> with such particulars as the Secretary of State may determine<sup>3</sup>. A person is deemed to have made an application on the date that his application and the prescribed fee<sup>4</sup> are received by the Registrar<sup>5</sup>.

The examination consists of: (1) a written examination<sup>6</sup>; (2) a driving ability and fitness test<sup>7</sup>; and (3) an instructional ability and fitness test<sup>8</sup>. Before submitting himself to any part of the examination, a candidate must produce to the examiner evidence of identity and entitlement to drive<sup>9</sup>.

Where a person has passed the written examination<sup>10</sup>, he is not eligible to take it again during the following two years<sup>11</sup>.

A person may be regarded as having passed the examination only if the following conditions are fulfilled in his case<sup>12</sup>: (a) he has on the same day passed both the written examination and the element of the driving ability and fitness test that tests hazard perception<sup>13</sup>; (b) he has

passed the remaining elements of the driving ability and fitness test on his first, second or third attempt after he had passed the written examination and the element of the driving ability and fitness test that tests hazard perception<sup>14</sup>; (c) within two years after passing the written examination and having passed all of the elements of the driving ability and fitness test he made an application to take the instructional ability and fitness test<sup>15</sup>; and (d) he has passed the instructional ability and fitness test on his first, second or third attempt after he had passed the written examination and on a date appointed by the Registrar in respect of an application made in accordance with head (c) above<sup>16</sup>.

Where a person has: (i) passed the written examination before 14 November 2002; (ii) passed the elements of the driving ability and fitness test, other than the test of hazard perception, on his first, second or third attempt after he had passed the written examination; and (iii) fulfilled the conditions specified in heads (c), (d) above, he is to be regarded as having passed the examination<sup>17</sup>.

1 For the purposes of the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902 (as amended), 'examination' means the examination of ability to give instruction in the driving of motor cars referred to in the Road Traffic Act 1988 s 125(3)(a) (see PARA 415 ante) and s 125A(6)(a) (as added) (see PARA 417 ante); Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 2(1). For the meaning of 'motor car' see PARA 413 note 2 ante. A reference to a part of the examination is a reference to one of the three parts of the examination set out in reg 3(2) (see the text to note 8 infra): reg 2(2).

2 For the purposes of the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902 (as amended), 'the Registrar' means the officer of the Secretary of State by whom the register is, on behalf of the Secretary of State, compiled and maintained: reg 2(1). For the meaning of 'the register' see PARA 413 text and note 5 ante; definition applied by reg 2(1). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 Ibid reg 3(1).

4 The prescribed fee is, for submission to the written examination, £75; for submission to the driving ability and fitness test, £85; and for submission to the instructional ability and fitness test, £85: see ibid reg 17(1) (amended by SI 2007/697).

5 Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 3(7).

6 For the purposes of the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902 (as amended), 'written examination' means the written examination referred to in the Road Traffic Act 1988 s 125(3)(a) (see PARA 415 ante) and s 125A(6)(a) (as added) (see PARA 417 ante) and the nature of which is prescribed in the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 6 (see PARA 426 post): reg 2(1). As to the written examination see PARA 425 post.

7 For the purposes of the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902 (as amended), 'driving ability and fitness test' means the practical test of ability and fitness to drive referred to in the Road Traffic Act 1988 s 125(3)(a) (see PARA 415 ante) and s 125A(6)(a) (as added) (see PARA 417 ante) and the nature of which is prescribed in the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 6 (see PARA 426 post): reg 2(1) (definition amended by SI 1996/1983). As to the driving ability and fitness test see PARA 426 post.

8 Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 3(2). For the purposes of the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902 (as amended), 'instructional ability and fitness test' means the practical test of ability and fitness to give instruction in the driving of motor cars referred to in the Road Traffic Act 1988 s 125(3)(a) (see PARA 415 ante) and s 125A(6)(a) (as added) (see PARA 417 ante) and the nature of which is prescribed in the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 7 (see PARA 427 post): reg 2(1). As to the instructional ability and fitness test see PARA 427 post.

9 See ibid reg 4 (amended by SI 2006/525).

10 This applies whether he passed the examination before or after 6 July 2005 (ie the date the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, were made): see reg 3(3).

11 Ibid reg 3(3).

12 Ibid reg 3(4), which is expressed to be subject to the other provisions of reg 3 (as amended).

13 Ibid reg 3(4)(a).

14 Ibid reg 3(4)(b).

15 Ibid reg 3(4)(c). For the purposes of regs 3, 13 (see PARA 430 post): (1) where a person has commenced the driving ability and fitness test or the instructional ability and fitness test and does not complete the test, the person must be treated as having failed the test in question unless the Registrar is satisfied that the person had a reasonable excuse for not completing that test (reg 3(6)(a)); (2) a reference to the passing of the written examination or the driving ability and fitness test (including reg 3(4)(a) (see the text to note 13 supra)) must, in relation to a person who has passed that examination or test (as the case may be) on more than one occasion, be read as a reference to the last of those occasions (reg 3(6)(b)); and (3) if a person takes the written examination on an occasion when he is not eligible to take it he must not in any circumstances be regarded as having passed on that occasion (reg 3(6)(c)).

16 Ibid reg 3(4)(d).

17 Ibid reg 3(5).

## **UPDATE**

### **411-441 Driving Instruction**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **424 Examination of ability to give instruction**

NOTE 4--Prescribed fee for submission to written examination now £90; for submission to the driving ability and fitness test, £111; and for submission to the instructional ability and fitness test, £111: SI 2005/1902 reg 17(1) (further amended by SI 2009/844).

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### **425. Written examination.**

The written examination<sup>1</sup> consists of a theoretical examination, in which the candidate is required to answer from his own knowledge, on all or any of the following subjects<sup>2</sup>:

747 (1) the principles of road safety generally and their application in particular circumstances<sup>3</sup>;

748 (2) the techniques of driving a motor car<sup>4</sup> correctly, courteously and safely, including control of the vehicle, road procedure, recognising hazards, taking proper action with respect to hazards, dealing properly with pedestrians and other road users and the use of safety equipment<sup>5</sup>;

749 (3) the tuition required to instruct a pupil on the matters set out in head (2) above, the correction of the pupil's errors, the manner of the instructor, the



- relationship between instructor and pupil and simple vehicle adaptation for disabled drivers<sup>6</sup>;
- 750 (4) the theory of learning and the theory and practice of teaching and assessment<sup>7</sup>;
- 751 (5) the Highway Code and other matters in the booklet in which it is published<sup>8</sup>;
- 752 (6) the edition of the publication entitled 'The Official Guide to Learning to Drive' for the time being issued by the Department for Transport and published by the Stationery Office<sup>9</sup>;
- 753 (7) the explanation and interpretation of: (a) reasons for the failure of the theory test or the practical test appended to a statement of failure to pass that test prescribed by the Motor Vehicles (Driving Licences) Regulations 1999<sup>10</sup>; and (b) weaknesses in the understanding of driving theory or in driving technique which are apparent from the documentation appended to a theory test or practical test pass certificate so issued<sup>11</sup>;
- 754 (8) knowledge, adequate to the needs of driving instruction, of the mechanism and design of a motor car<sup>12</sup>; and
- 755 (9) the book 'Driving - the essential skills', issued by the Department for Transport and published by the Stationery Office<sup>13</sup>.

1 For the meaning of 'written examination' see PARA 424 note 6 ante.

2 Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 5.

3 Ibid reg 5(a).

4 For the meaning of 'motor car' see PARA 413 note 2 ante.

5 Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 5(b).

6 Ibid reg 5(c).

7 Ibid reg 5(d).

8 Ibid reg 5(e).

9 Ibid reg 5(f).

10 I.e. the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 47(2) or, as the case may be, reg 48(1).

11 Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 5(g).

12 Ibid reg 5(h).

13 Ibid reg 5(j).

## UPDATE

### 411-441 Driving Instruction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1663)/3. DRIVING INSTRUCTION/(3) EXAMINATIONS AND TESTS OF ABILITY TO GIVE DRIVING INSTRUCTION/426. Driving ability and fitness test.

#### **426. Driving ability and fitness test.**

The driving ability and fitness test<sup>1</sup> consists of tests of hazard perception, eyesight and driving technique<sup>2</sup>. The candidate must: (1) take the test of hazard perception immediately after he has completed the written examination<sup>3</sup>; (2) reach the qualifying standard in respect of the test of hazard perception before he may take the remaining elements of the driving ability and fitness test; and (3) reach the qualifying standard in the test of eyesight and driving technique on the same occasion<sup>4</sup>.

The test of hazard perception must: (a) be conducted by means of the exhibition of film clips<sup>5</sup> that take the perspective of the driver of a motor vehicle<sup>6</sup> and show, at some point during each clip, one or more hazards to traffic occurring on or near the road<sup>7</sup>; and (b) require the candidate (using electronic equipment provided for the purpose and capable of recording the exact moment of each response) to indicate during each film clip the moment he observes a hazard relating to traffic on the road<sup>8</sup>. A candidate taking the test of hazard perception must satisfy the examiner that his performance in the test of hazard perception demonstrates an ability to perceive hazards on the road<sup>9</sup>.

The test of eyesight is the test of the candidate's ability to read in good daylight (with aid of glasses or contact lenses if worn) a motor vehicle registration mark containing letters and figures: (i) 79 millimetres in height and 50 millimetres wide at a distance of 27 metres; or (ii) 79 millimetres in height and 57 millimetres wide at a distance of 27.5 metres<sup>10</sup>.

A candidate taking the test of driving technique must satisfy the examiner<sup>11</sup> on: (A) his expert handling of the controls<sup>12</sup>; (B) his use of correct road procedure<sup>13</sup>; (C) his anticipation of the actions of other road users and taking of appropriate action<sup>14</sup>; (D) his sound judgment of distance, speed and timing<sup>15</sup>; and (E) his consideration for the convenience and safety of other road users<sup>16</sup>. A candidate taking the test of driving technique must satisfy the person conducting the test of his ability to meet the specified requirements<sup>17</sup> for the test<sup>18</sup>.

Where a candidate has passed the written examination before 14 November 2002, and has passed the elements of the driving ability and fitness test, other than the test of hazard perception, on his first, second or third attempt after he had passed the written examination, and has fulfilled specified conditions<sup>19</sup>, the driving ability and fitness test consists only of tests of eyesight and driving technique<sup>20</sup>.

1 For the meaning of 'driving ability and fitness test' see PARA 424 note 7 ante.

2 Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 6(1).

3 As to the written examination see PARA 425 ante.

4 Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 6(2).

5 For these purposes, 'film clip' means a sequence of visual images displayed electronically: *ibid* reg 6(3).

6 For the meaning of 'motor vehicle' see PARA 210 ante.

7 For the meaning of 'road' see PARA 206 ante.

8 Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 6(3)(a)-(c).

9 *Ibid* reg 6(4).

10 *Ibid* reg 6(5).

- 11 Ibid reg 6(6). 'Examiner', in relation to part of the examination or the continued ability and fitness test, means an officer of the Secretary of State appointed to conduct that part of the examination or that test: reg 2(1). For the meaning of 'examination' see PARA 424 note 1 ante; and for the meaning of 'part of the examination' see PARA 424 note 1 ante. For the purposes of the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902 (as amended), 'continued ability and fitness test' means the test of continued ability and fitness to give instruction in the driving of motor cars or appropriate motor cars referred to respectively in the Road Traffic Act 1988 s 125(5) (see PARA 415 ante) and s 125B(6)(b) (as added) (see PARA 432 post) and the nature and content of which is prescribed in the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 12 (see PARA 429 post): reg 2(1). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. For the meaning of 'motor car' see PARA 413 note 2 ante; and for the meaning of 'appropriate motor car' see PARA 417 note 3 ante.
- 12 Ibid reg 6(6)(a).
- 13 Ibid reg 6(6)(b).
- 14 Ibid reg 6(6)(c).
- 15 Ibid reg 6(6)(d).
- 16 Ibid reg 6(6)(e).
- 17 Ie the requirements of ibid Sch 1.
- 18 Ibid reg 6(7).
- 19 Ie the conditions specified in ibid reg 3(4)(c), (d) (see PARA 424 heads (c), (d) ante).
- 20 Ibid reg 6(8). Regulation 6(2)(a), (b) (see heads (1), (2) in the text) and reg 6(3), (4) (see the text to notes 5-9 supra) do not apply to him: reg 6(8).

## UPDATE

### 411-441 Driving Instruction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/(3) EXAMINATIONS AND TESTS OF ABILITY TO GIVE DRIVING INSTRUCTION/427. Instructional ability and fitness test.

### 427. Instructional ability and fitness test.

The instructional ability and fitness test<sup>1</sup> is a test in which the candidate is required to demonstrate his knowledge and ability by giving practical driving instruction to an examiner<sup>2</sup> as if the examiner were: (1) a novice or partly trained pupil; (2) a pupil who is at about driving test standard; or (3) a qualified driver undertaking driver development training; and the examiner may at his discretion choose two of these roles that he will play when conducting the test<sup>3</sup>.

The candidate must, in respect of one or both of those roles as the examiner specifies, instruct him in such of the following subjects as the examiner specifies as the basis of the instruction<sup>4</sup>: (a) explaining the controls of the vehicle<sup>5</sup>; (b) moving off<sup>6</sup>; (c) making normal stops<sup>7</sup>; (d) reversing, and while doing so entering limited openings to the right or to the left<sup>8</sup>; (e) turning to

face the opposite direction, using forward and reverse gears<sup>9</sup>; (f) parking close to the kerb, using forward and reverse gears<sup>10</sup>; (g) using mirrors and explaining how to make an emergency stop<sup>11</sup>; (h) approaching and turning corners<sup>12</sup>; (i) judging speed, and making normal progress<sup>13</sup>; (j) road positioning<sup>14</sup>; (k) dealing with road junctions<sup>15</sup>; (l) dealing with cross roads<sup>16</sup>; (m) dealing with pedestrian crossings<sup>17</sup>; (n) meeting, crossing the path of, overtaking and allowing adequate clearance for, other vehicles and other road users<sup>18</sup>; and (o) giving correct signals<sup>19</sup>.

The candidate's knowledge and ability is assessed on: (i) the method, clarity, adequacy and correctness of his instruction<sup>20</sup>; (ii) the observation and correction of the examiner's driving errors<sup>21</sup>; and (iii) his manner generally<sup>22</sup>.

1 For the meaning of 'instructional ability and fitness test' see PARA 424 note 8 ante.

2 For the meaning of 'examiner' see PARA 426 note 11 ante.

3 Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 7(1). As to driving tests see PARA 449 et seq post.

4 Ibid reg 7(2).

5 Ibid reg 7(2)(a).

6 Ibid reg 7(2)(b).

7 Ibid reg 7(2)(c).

8 Ibid reg 7(2)(d).

9 Ibid reg 7(2)(e).

10 Ibid reg 7(2)(f).

11 Ibid reg 7(2)(g).

12 Ibid reg 7(2)(h).

13 Ibid reg 7(2)(i).

14 Ibid reg 7(2)(j). For the meaning of 'road' see PARA 206 ante.

15 Ibid reg 7(2)(k).

16 Ibid reg 7(2)(l).

17 Ibid reg 7(2)(m). As to pedestrian crossings see PARA 776 et seq post.

18 Ibid reg 7(2)(n).

19 Ibid reg 7(2)(o).

20 Ibid reg 7(3)(a).

21 Ibid reg 7(3)(b).

22 Ibid reg 7(3)(c).

## **UPDATE**

### **411-441 Driving Instruction**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/(3) EXAMINATIONS AND TESTS OF ABILITY TO GIVE DRIVING INSTRUCTION/428. Motor car to be provided for practical part of examination.

#### **428. Motor car to be provided for practical part of examination.**

A candidate for the driving ability and fitness test<sup>1</sup> or the instructional ability and fitness test<sup>2</sup> must provide, at his own expense, a motor car<sup>3</sup> for the purposes of that test, in respect of which the following conditions are satisfied<sup>4</sup>:

- 756 (1) the vehicle must<sup>5</sup>: (a) have four wheels and be constructed solely for the carriage of passengers and their effects and be fitted with a rigid roof, with or without a sliding panel<sup>6</sup>; (b) have a readily adjustable driving seat and a seat for a forward-facing front passenger<sup>7</sup>; (c) have a steering wheel on its off-side<sup>8</sup>; (d) be provided with a means whereby the driver<sup>9</sup> may, independently of the use of the accelerator or the brakes, gradually vary the proportion of the power being produced by the engine which is transmitted to the road wheels<sup>10</sup>; and (e) be otherwise suitable for the purposes of the test<sup>11</sup>;
- 757 (2) in the case of a vehicle provided for the purposes of a driving ability and fitness test, the vehicle must<sup>12</sup>: (a) have fitted to the front passenger seat a head restraint and seat belt<sup>13</sup>; (b) have a rear view mirror for use by the occupant of the front passenger seat, in addition to the rear view mirror provided for use by the driver of the vehicle<sup>14</sup>; and (c) not, during the conduct of the test, carry the prescribed distinguishing mark<sup>15</sup>;
- 758 (3) in the case of a vehicle provided for the purpose of an instructional ability and fitness test, the vehicle must<sup>16</sup>: (a) be capable of being driven by the examiner<sup>17</sup>; (b) have fitted to the driver's seat a seat belt and head restraint<sup>18</sup>; (c) have a rear view mirror for use by the driver of the vehicle<sup>19</sup>; and (d) have in force in relation to it an insurance policy that meets the specified conditions<sup>20</sup>; and, when the examiner is playing the role of a novice or partly trained pupil, or a pupil who is at about driving test standard<sup>21</sup>, there must be displayed in a conspicuous manner on the front and on the back of the vehicle distinguishing marks in the prescribed form<sup>22</sup>.

A candidate for the driving ability and fitness test or the instructional ability and fitness test must, during the test, allow to travel in the motor car provided for the test any person authorised by the Secretary of State for the purpose of supervising the test or otherwise<sup>23</sup>.

1 As to the driving ability and fitness test see PARA 426 ante.

2 As to the instructional ability and fitness test see PARA 427 ante.

3 For the meaning of 'motor car' see PARA 413 note 2 ante.

4 Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 8(1). As to further conditions which may be applicable for the continued ability and fitness test see PARA 429 note 12 post.

5 Ibid reg 8(2).

6 Ibid reg 8(2)(a).

7 Ibid reg 8(2)(b).

8 Ibid reg 8(2)(c).

9 For the meaning of 'driver' see PARA 207 ante.

10 Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 8(2)(d). In the case of a vehicle provided by a candidate who suffers from a relevant disability or a prospective disability and who holds a current disabled person's limited driving licence (ie fulfils the conditions mentioned in the Road Traffic Act 1988 s 125A(1)(a), (b) (as added): see PARA 417 ante), this condition does not apply: Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 8(3). For the meaning of 'relevant disability' see PARA 417 note 1 ante; for the meaning of 'prospective disability' see PARA 417 note 2 ante; for the meaning of 'disabled person's limited driving licence' see PARA 417 note 3 ante; and for the meaning of 'current licence' see PARA 413 note 2 ante.

11 Ibid reg 8(2)(e).

12 Ibid reg 8(4).

13 Ibid reg 8(4)(a).

14 Ibid reg 8(4)(b).

15 Ibid reg 8(4)(c). The distinguishing mark is that prescribed by the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 16(2): Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 8(4)(c).

16 Ibid reg 8(5).

17 Ibid reg 8(5)(a). For the meaning of 'examiner' see PARA 426 note 11 ante.

18 Ibid reg 8(5)(b).

19 Ibid reg 8(5)(c).

20 Ibid reg 8(5)(d). The policy of insurance must: (1) comply with the requirements of the Road Traffic Act 1988 s 145 (as amended) in respect of policies of insurance in relation to the candidate as driver of the vehicle; (b) comply with such requirements in relation to the examiner as the driver of the vehicle as if s 145 (as amended) applied to persons in the public service of the Crown; and (c) insure the examiner as driver of the vehicle in respect of liability for damage to the vehicle during the test: Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 8(6).

21 Ie the role referred to in ibid reg 7(1)(a) or (b): see PARA 427 heads (1), (2) ante.

22 Ibid reg 8(5) (amended by SI 2005/2716). The distinguishing marks are those in the form prescribed by the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 16(2): Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 8(5).

23 Ibid reg 8A (added by SI 2006/525). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

## UPDATE

### 411-441 Driving Instruction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/(3) EXAMINATIONS AND TESTS OF ABILITY TO GIVE DRIVING INSTRUCTION/429. Continued ability and fitness test.

#### **429. Continued ability and fitness test.**

The continued ability and fitness test<sup>1</sup> consists, at the discretion of the examiner<sup>2</sup>, of either<sup>3</sup>:

- 759 (1) a practical test which, at the discretion of the examiner, will consist of either:  
25
62. (a) a test in which the person undergoing the test ('the candidate') is required to demonstrate his knowledge and ability by giving practical driving instruction to an examiner as if the examiner were: (i) a novice or partly trained pupil; (ii) a pupil who is at about driving test standard; or (iii) a full driving licence holder with at least a year's experience since passing the driving test<sup>4</sup>; or
63. (b) a test carried out on a road<sup>5</sup> in a motor car<sup>6</sup> in which the examiner is present and the candidate is giving instruction to a pupil, for the purpose of enabling the examiner to make an assessment of the candidate's instructional ability with particular regard to specified qualities<sup>7</sup>; or
- 26
- 760 (2) where a person has not satisfied any of the additional requirements for the retention of names on the register<sup>8</sup>, a test of hazard perception<sup>9</sup> which must: (i) be conducted by means of the exhibition of film clips<sup>10</sup> that take the perspective of the driver of a motor vehicle and show, at some point during each film clip, one or more hazards to traffic occurring on or near the road; and (ii) require the candidate (using electronic equipment provided for the purpose and capable of recording the exact moment of each response) to indicate during each film clip the moment he observes a hazard relating to traffic on the road<sup>11</sup>.

Where the examiner elects to conduct the test by the method described in head (1)(a) above the candidate must provide at his own expense a motor car in respect of which the specified conditions<sup>12</sup> are satisfied save that where the test is conducted in accordance with head (1)(a) (iii) above the requirement<sup>13</sup> to display prescribed distinguishing marks is to be disregarded<sup>14</sup>. Where the examiner elects to conduct the test by the method described in head (1)(b) above, the candidate must, at his own expense, provide or procure the provision of a motor vehicle that has a seat belt fitted to the rear seat of the vehicle and is otherwise suitable for the conduct of such a test<sup>15</sup>.

Before undergoing the continued ability and fitness test a person must produce to the person conducting the test the certificate of registration<sup>16</sup> issued to him<sup>17</sup>. A candidate for the practical test in head (1) above must, during the test, allow to travel in the motor car provided for the test any person authorised by the Secretary of State for the purpose of supervising the test or otherwise<sup>18</sup>.

1 For the meaning of 'continued ability and fitness test' see PARA 426 note 11 ante.

2 For the meaning of 'examiner' see PARA 426 note 11 ante.

3 Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 12(1), (2).

4 Ibid reg 12(2)(a)(i), (3). Where the examiner elects to conduct the test by the method described in head (1)(a) in the text he may at his discretion choose which one or more of the roles described therein he will play but he must not choose the role referred to in head (1)(a)(iii) in the text unless he is satisfied that it is

reasonable to do so having regard to the nature of the driving instruction given or likely to be given by the candidate in the course of his business: reg 12(4).

5 For the meaning of 'road' see PARA 206 ante.

6 For the meaning of 'motor car' see PARA 413 note 2 ante. As to the provision of a motor car see PARA 428 ante.

7 Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 12(2)(a)(ii), (5). The specified qualities are: (1) the candidate's method, clarity, adequacy and correctness of instruction; (2) his observation and proper correction of the pupil's errors; (3) his manner, patience and tact in dealing with the pupil; and (4) his ability to inspire confidence: reg 12(5), (6).

8 le the requirements specified in ibid reg 11(2)(a)-(c) (as amended): see PARA 420 note 6 ante.

9 Ibid reg 12(2)(b). A candidate taking the hazard perception test must satisfy the examiner that his performance in the test demonstrates the necessary ability to perceive hazards on the road: reg 12(10). The fee payable by a person required to undergo the continued ability and fitness test specified in reg 12(2)(b) is nil for the first time that the person takes the test and £20.50 in all other cases: reg 17(2). The fee is payable at the time that the person makes an appointment to undergo the test: reg 17(3).

10 For these purposes, 'film clip' means a sequence of visual images displayed electronically: ibid reg 12(9).

11 Ibid reg 12(9)(a), (b).

12 le the conditions specified in ibid reg 8(2), reg 8(3) (where applicable), reg 8(5) and reg 8(6): see PARA 428 ante.

13 le contained in ibid reg 8(5): see PARA 428 text and note 22 ante.

14 Ibid reg 12(7).

15 Ibid reg 12(8).

16 le the certificate issued to him under ibid reg 18: see PARA 418 ante.

17 Ibid reg 12(11).

18 Ibid reg 12A (added by SI 2006/525). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

## UPDATE

### 411-441 Driving Instruction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/(4) LICENCES TO GIVE DRIVING INSTRUCTION/430. Licences for giving driving instruction so as to obtain practical experience.

## (4) LICENCES TO GIVE DRIVING INSTRUCTION

### 430. Licences for giving driving instruction so as to obtain practical experience.



A licence for giving instruction<sup>1</sup> may be granted to a person for the purpose of enabling that person to acquire practical experience in giving instruction in driving motor cars<sup>2</sup> with a view to undergoing either<sup>3</sup>: (1) the part of the examination of ability to give instruction in the driving of motor cars<sup>4</sup>; or (2) the part of the examination of ability to give instruction in the driving of motor cars for disabled instructors<sup>5</sup>, as consists of a practical test of ability and fitness to instruct<sup>6</sup>.

Where a person applies to the Registrar<sup>7</sup> in the manner determined by the Secretary of State<sup>8</sup>, accompanied by particulars so determined, and the Registrar is satisfied either<sup>9</sup>: (a) that the applicant has passed the other parts of the examination referred to in head (1) above and that the specified conditions<sup>10</sup> are fulfilled in his case<sup>11</sup>; or (b) that the applicant has passed the other parts of the examination referred to in head (2) above and that he holds a current disabled person's limited driving licence<sup>12</sup> and a current emergency control certificate<sup>13</sup>, and that the specified conditions<sup>14</sup> are fulfilled in his case<sup>15</sup>, the Registrar must, on payment of the prescribed fee<sup>16</sup>, grant to the applicant a licence to give paid instruction<sup>17</sup> in the driving of a motor car<sup>18</sup>. The Registrar must, on making a decision on such an application, give notice<sup>19</sup> in writing of the decision to the applicant which, in the case of a decision to refuse the application, must state the grounds of the refusal<sup>20</sup>. The Registrar may refuse to grant a licence to an applicant to whom such a licence has previously been issued<sup>21</sup>.

A licence must be in such form<sup>22</sup>, must be in force for such period<sup>23</sup>, and must be granted subject to such conditions<sup>24</sup>, as may be prescribed by regulations<sup>25</sup>.

Notwithstanding any provision of regulations<sup>26</sup> prescribing the period for which a licence is to be in force, where a person applies for a new licence in substitution for a licence held by him and current at the date of the application, the previous licence does not expire<sup>27</sup>: (i) until the commencement of the new licence<sup>28</sup>; or (ii) if the Registrar decides to refuse the application, until the time limited for an appeal<sup>29</sup> against the decision has expired and, if such an appeal is duly brought, it is finally disposed of<sup>30</sup>.

Before deciding to refuse an application for a new licence in substitution for a licence current at the date of the application, the Registrar must give to the applicant written notice<sup>31</sup> stating that he is considering the refusal and giving particulars of the grounds on which he is considering it<sup>32</sup>. Where the Registrar gives such notice the applicant may, within the period of 14 days beginning with the day on which the notice is given, make representations with respect to the proposed refusal<sup>33</sup>. The Registrar may not decide to refuse the application until after the expiration of that period<sup>34</sup>. Before deciding whether or not to refuse the application, the Registrar must take into consideration any such representations made within that period<sup>35</sup>.

Where a licence granted under Part V of the Road Traffic Act 1988<sup>36</sup> to a person expires or is revoked, that person must, if so required by the Registrar by notice in writing, surrender the licence<sup>37</sup> to the Registrar within the period of 14 days beginning with that on which the notice is given and, if he fails to do so, he is guilty of an offence<sup>38</sup>.

1     le under the Road Traffic Act 1988 s 129 (as amended): see the text and notes 2-35 infra. It is not a requirement of the Road Traffic Act 1988 that a prospective applicant for registration must obtain a licence between passing the second and third parts of the examination of ability: see PARA 424 ante. A prospective applicant has the option of taking the whole examination at once or obtaining a licence to gain practical experience first.

2     For the meaning of 'motor car' see PARA 413 note 2 ante.

3     Road Traffic Act 1988 s 129(1) (amended by the Road Traffic (Driving by Disabled Persons) Act 1993 s 2(1)).

4     Road Traffic Act 1988 s 129(1)(a) (as amended: see note 3 supra). The text refers to the examination of ability referred to in s 125(3)(a): see PARA 415 ante. As to the examination of ability to give instruction see PARA 424 ante.

5 Ibid s 129(1)(b) (as amended: see note 3 supra). The text refers to the examination of ability prescribed for the purposes of s 125A(6)(a) (as added): see PARA 417 ante.

6 Ibid s 129(1). As to the instructional ability and fitness test see PARA 427 ante. Section 129 is prospectively repealed by the Road Safety Act 2006 ss 42, 59, Sch 6 paras 1, 12, Sch 7, as from a day to be appointed under s 61(1). At the date at which this volume states the law no such day had been appointed.

7 For the meaning of 'the Registrar' see PARA 415 text to note 5 ante.

8 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

9 Road Traffic Act 1988 s 129(2) (substituted by the Road Traffic (Driving by Disabled Persons) Act 1993 s 2(2)).

10 le the conditions set out in the Road Traffic Act 1988 s 125(3)(b)-(e) (as amended): see PARA 415 ante. To the conditions as to which the Registrar is required to be satisfied for the grant of a licence under s 129 (as amended), there are added the following conditions which have effect subject to the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 13(3) (requirements as to training) and reg 3(6) (see PARA 424 ante) (reg 13(1)):

- 66 (1) that the person has passed the driving ability and fitness test after passing the written examination (reg 13(2)(a));
- 67 (2) that he passed the driving ability and fitness test on his first, second or third attempt after he had passed the written examination (reg 13(2)(b));
- 68 (3) that he has made the application within two years after passing the written examination (reg 13(2)(c));
- 69 (4) that he has not failed the instructional ability and fitness test more than twice since he passed the written examination (reg 13(2)(d));
- 70 (5) except in the case of an application for a substitute licence, that he has received within the period of six months ending on the date of his application for a licence not less than 40 hours' training given by an approved driving instructor, which includes training in all the matters specified in Sch 2 Pt 1, and is training of which at least 10 hours is conducted in a motor car where the approved driving instructor and the person being trained are accompanied, if at all, by no more than one other person who is receiving training of the same nature (reg 13(2)(e), (3));
- 71 (6) in the case of an application to which head (5) supra applies, that he delivers with his application evidence, in the form specified in Sch 2 Pt 2 (as substituted), that he has received the training specified in head (5) supra (reg 13(2)(f));
- 72 (7) that he submits with his application for a licence: (a) the name, address and registration number of the approved driving instructor who has consented to take responsibility either for his supervision in accordance with reg 15(2) (see note 24 infra) or, as the case may be, the provision of supplementary training in accordance with reg 15(3)-(5) (see note 24 infra) (and the counter-signature of the application by that approved driving instructor must be taken as sufficient evidence of such consent); and (b) the address from which he will be providing paid driving instruction if different from the address of the approved driving instructor referred to in head (a) supra (reg 13(2)(g));
- 73 (8) that the Registrar is satisfied that the approved driving instructor referred to in head (7)(a) supra is fit and able to undertake responsibility for the supervision or, as the case may be, the training of that person in accordance with reg 15 (see note 24 infra) (and in determining whether or not he is able to undertake that responsibility the Registrar must have regard to the number of licence holders in respect of whom he has already consented to undertake similar responsibility) (reg 13(2)(h)).

For the meaning of 'approved driving instructor' see PARA 418 note 5 ante. As to the register of approved instructors see PARA 415 ante.

A person is deemed to have made an application on the date that his application and the fee prescribed by the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902 (as amended) are received by the Registrar: reg 13(4). 'Substitute licence' means a licence granted pursuant to an application made in accordance with the Road Traffic Act 1988 s 129(6) (see the text and notes 27-30 infra) (so as to come into effect immediately upon the expiry of a previous licence): Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 13(5).

11 Road Traffic Act 1988 s 129(2)(a) (as substituted: see note 9 supra).

12 For the meaning of 'disabled person's limited driving licence' see PARA 417 note 3 ante; and for the meaning of 'current licence' see PARA 413 note 2 ante.

13 For the meaning of 'emergency control certificate' see PARA 417 note 4 ante. As to disabled instructors emergency control assessments see PARA 433 post.

14 In the conditions referred to in the Road Traffic Act 1988 s 125A(6)(b) (as added) and the condition set out in s 125A(6)(c) (as added): see PARA 417 ante. A licence granted by virtue of head (b) in the text is granted subject to the further condition that the person to whom it is granted must not give paid instruction in the driving of a motor car unless he holds a current emergency control certificate and the car is an authorised motor car: s 129(5A) (s 129(5A), (5B) added by the Road Traffic (Driving by Disabled Persons) Act 1993 s 2(4)). 'Authorised motor car', in relation to any person, means a motor car which falls within the class of motor car specified in his current emergency control certificate and, where modifications are specified in that certificate, is modified in accordance with the specification: Road Traffic Act 1988 s 129(5B) (as so added). Any reference, in relation to a person, to the class of motor car covered by his disabled person's limited driving licence is a reference to the class of motor car specified in the notice served on him under s 92(5)(b) (as amended) (see PARA 459 post) but disregarding any modifications specified in the notice: s 125A(8) (definition added by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 s 1). As to the further conditions which need to be fulfilled see note 10 supra. As from a day to be appointed, the Road Traffic Act 1988 s 125A(8) (as added and amended) is further amended so as to refer to motor vehicles instead of motor cars: s 125A(8) (as so added; prospectively amended by the Road Safety Act 2006 s 42, Sch 6 paras 1, 6(1), (4)). At the date at which this volume states the law no such day had been appointed.

15 Road Traffic Act 1988 s 129(2)(b) (as substituted: see note 9 supra).

16 The prescribed fee is £125: see the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 17(1).

17 For the meaning of 'paid instruction' see PARA 413 note 2 ante.

18 Road Traffic Act 1988 s 129(2) (as substituted: see note 9 supra).

19 As to service of notices see PARA 440 post.

20 Road Traffic Act 1988 s 129(4).

21 Ibid s 129(3). The issue of second and subsequent licences is thus discretionary.

22 Ibid s 129(5). For the form of licence currently prescribed see the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 16, Sch 4.

23 A licence remains in force until: (1) the expiration of a period of six months commencing on the date of the grant; or (2) the day immediately following the day on which the holder of the licence failed the instructional ability and fitness test at the third attempt, whichever first occurs: *ibid* reg 14.

24 In subject to the Road Traffic Act 1988 s 129(5A) (as added): see note 14 supra. A licence is granted subject to such of the conditions specified in the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 15(2)-(5) as apply to it: reg 15(1)). Unless it is a licence to which the conditions specified in reg 11(3) (see PARA 420 ante) apply, a licence which is not a substitute licence is subject to the following conditions, namely that the licence holder must: (1) for one-fifth of the total time he spends giving paid instruction in the driving of a motor car, receive direct supervision from an approved driving instructor present with him in the car; (2) maintain, for each working day while the licence is in force, a record in the form specified in Sch 2 of the time he spends giving such instruction; (3) sign the record at the end of every working day and, if he has received supervision from an approved driving instructor on any day, procure that the instructor also signs it; (4) produce on request, for examination by a person authorised by the Registrar in that behalf, all the records maintained under head (2) supra during the period ending on the day before the date of the request and further, if required to do so, deliver those records to such a person for retention by him; (5) not later than seven days after the expiry of the licence, deliver to a person authorised by the Registrar in that behalf all the records maintained under head (2) supra during the period when the licence was in force, other than such records as have been delivered under head (4) supra and not returned to him: reg 15(2). 'Working day' means any day during which the licence holder gives paid instruction in the driving of a motor car: reg 15(6). As to the record of instruction given by the licence holder see reg 15(2), Sch 2.

If a person elects in writing at the date of his application for a licence to undertake supplementary training, the conditions specified in heads (1)-(5) supra do not apply to the licence which must instead be subject to the following conditions, namely that the licence holder must: (a) undertake during the period expiring on the first relevant date not less than 20 hours' supplementary training; (b) not later than the day immediately following

the first relevant date deliver to a person authorised by the Registrar in that behalf evidence, in the form specified in Sch 2 Pt 2, that he has received that supplementary training; and (c) if he has not passed the instructional ability and fitness test on the first occasion on which he took that test, or (if earlier) by the expiration of a period of three months beginning on the date when the licence was granted, undertake during the period expiring on the second relevant date not less than five hours' further supplementary training, and not later than the day immediately following the second relevant date deliver to a person authorised by the Registrar in that behalf evidence, in the form specified in Sch 2 Pt 2, that he has received that further supplementary training: reg 15(3). 'Supplementary training' means training in the giving of practical driving instruction, including training in all the matters specified in Sch 2 Pt 1, given by an approved driving instructor of which at least one quarter is training in a motor car where the licence holder and instructor, if accompanied at all, are accompanied by no more than one other licence holder who is receiving training at the same time: reg 15(6). 'First relevant date' means the last day of the period of three months beginning on the date when the licence is granted, or the day on which the licence holder first applies to take the instructional ability and fitness test, whichever first occurs: reg 15(6). 'Second relevant date' means: (i) the last day of the period of three months beginning on the first relevant date if that date is the expiration of the period of three months referred to above, or in any other case, on the day on which the licence holder first failed the instructional ability and fitness test; or (ii) the first day after the first relevant date on which he applies to take the instructional ability and fitness test, whichever first occurs: reg 15(6).

A substitute licence coming into force immediately upon the expiry of a previous licence which, by virtue of an election made by the holder upon his application for it, was subject to the conditions specified in heads (a)-(c) supra is subject to the following conditions, namely that the licence holder must: (A) undertake during the period expiring on the third relevant date not less than five hours' further supplementary training; and (B) not later than the day immediately following the third relevant date deliver to a person authorised by the Registrar in that behalf evidence, in the form specified in Sch 2 Pt 2, that he has received that further supplementary training: reg 15(4). 'Third relevant date' means the last day of the period of three months beginning on the date when the licence is granted, or the first day after the date on which the licence is granted on which he applies to take the instructional ability and fitness test, whichever first occurs: reg 15(6).

Every licence is subject to the condition that, in the event of the licence holder arranging to have the supervision or supplementary training referred to above, or any part thereof, undertaken by a different approved driving instructor from the person named in his application, he must submit to the Registrar full details of any consequential changes to the particulars submitted under reg 13(2)(g) (see note 10 supra) resulting from the new arrangement together with the consent (in any form permitted under reg 13(2)(g)) of the new approved driving instructor to that arrangement: reg 15(5).

25 Road Traffic Act 1988 s 129(5) (amended by the Road Traffic (Driving by Disabled Persons) Act 1993 s 2(3)). See the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, Pt 5 (regs 3-16), Schs 2-4.

26 Ie made by virtue of the Road Traffic Act 1988 s 129(5) (as amended): see the text to note 25 supra.

27 Ibid s 129(6).

28 Ibid s 129(6)(a).

29 Ie under ibid s 131 (as amended): see PARA 437 post.

30 Ibid s 129(6)(b).

31 As to service of notices see PARA 440 post.

32 Road Traffic Act 1988 s 129(7).

33 Ibid s 129(8)(a).

34 Ibid s 129(8)(b).

35 Ibid s 129(8)(c).

36 The text refers to ibid Pt V (ss 123-142) (as amended).

37 As to production and seizure of licences where this obligation is not complied with see PARA 438 post.

38 Road Traffic Act 1988 s 136. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## UPDATE

## **411-441 Driving Instruction**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **430 Licences for giving driving instruction so as to obtain practical experience**

NOTE 16--Prescribed fee now £140: SI 2005/1902 reg 17(1) (amended by SI 2009/844).

NOTE 22--SI 2005/1902 Sch 4 amended: SI 2008/419.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/(4) LICENCES TO GIVE DRIVING INSTRUCTION/431. Revocation of licences.

### **431. Revocation of licences.**

The Registrar<sup>1</sup> may revoke a licence<sup>2</sup>: (1) if the person to whom the licence was granted fails to comply with any of the conditions subject to which it was granted<sup>3</sup>; or (2) if the Registrar is satisfied that, at any time since the licence was granted, any of the relevant conditions<sup>4</sup> were fulfilled in his case<sup>5</sup>; or (3) if the licence was granted by mistake or procured by fraud<sup>6</sup>. Before revoking a licence granted to a person the Registrar must give him written notice<sup>7</sup> stating that he is considering the revocation and giving particulars of the grounds on which he is considering it<sup>8</sup>.

Where the Registrar gives such notice to a person that person may, within the period of 14 days beginning with the day on which the notice is given, make representation with respect to the proposed revocation<sup>9</sup>. The Registrar may not decide to revoke the licence until after the expiration of that period<sup>10</sup>. Before deciding whether or not to revoke the licence, the Registrar must take into consideration all such representations made within that period<sup>11</sup>. The Registrar must, on making a decision to revoke a licence, give notice in writing of the decision to the person concerned<sup>12</sup>.

A decision to revoke a licence takes effect at the end of the period of 14 days beginning with the day on which notice of the decision is given (or, if any appeal brought against the decision<sup>13</sup> is previously withdrawn or dismissed, when the appeal is withdrawn or dismissed)<sup>14</sup>; but the Registrar may, when giving notice of his decision to revoke a licence, direct that (if an appeal is brought against the decision) it takes effect instead: (a) if the appeal is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of the appeal; or (b) if and when the appeal is dismissed, and not otherwise<sup>15</sup>.

1 For the meaning of 'the Registrar' see PARA 415 text to note 5 ante.

2 Road Traffic Act 1988 s 130(1). The text refers to a licence granted under s 129 (as amended): see PARA 430 ante.

3 Ibid s 130(1)(a). As to the conditions subject to which a licence is granted see PARA 430 ante.

4 Except in the case of a licence granted by virtue of *ibid* s 129(2)(b) (as substituted) (see *PARA 430 ante*), the relevant conditions are: (1) that he held none of the kinds of current licence mentioned in s 125(3)(b) (as substituted) (see *PARA 415 ante*); or (2) that he was disqualified under the Road Traffic Offenders Act 1988 s 34 (as amended) (disqualification for a fixed period) or s 36 (as substituted and amended) (disqualification until test is passed) (see *PARAS 415 note 26 ante*, 1061, 1071 *post*) for holding or obtaining a licence to drive a motor vehicle under the Road Traffic Act 1988 Pt III (ss 87-109) (as amended) (see *PARA 442 et seq post*); or (3) that he ceased, apart from fulfilment of either of head (1) or head (2) *supra*, to be a fit and proper person to have his name in the register: s 130(2) (amended by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 s 6, Schedule para 7(3); and the Motor Cars (Driving Instruction) (Admission of Community Licence Holders) Regulations 1999, SI 1999/357, reg 2). For the meaning of 'current licence' see *PARA 413 note 2 ante*; for the meaning of 'the register' see *PARA 413 text and note 5 ante*; and for the meaning of 'motor vehicle' see *PARA 210 ante*.

In the case of a licence granted by virtue of the Road Traffic Act 1988 s 129(2)(b) (see *PARA 430 ante*), the relevant conditions are: (a) that he did not hold a current emergency control certificate; or (b) that he did not hold a current disabled person's limited driving licence; or (c) that he was disqualified under the Road Traffic Offenders Act 1988 s 34 (as amended) or s 36 (as substituted and amended) for holding or obtaining a licence to drive a motor vehicle under the Road Traffic Act 1988 Pt III (as amended); or (d) that he ceased, apart from fulfilment of head (a), (b) or (c) *supra*, to be a fit and proper person to have his name in the register as that of a disabled instructor: s 130(2A) (added by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 Schedule para 7(4)). For the meaning of 'emergency control certificate' see *PARA 417 note 4 ante*; and for the meaning of 'disabled person's limited driving licence' see *PARA 417 note 3 ante*.

5 Road Traffic Act 1988 s 130(1)(b) (amended by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 Schedule para 7(2)).

6 Road Traffic Act 1988 s 130(1)(c). Section 130 is prospectively repealed by the Road Safety Act 2006 ss 42, 59, Sch 6 paras 1, 12, Sch 7, as from a day to be appointed under s 61(1). At the date at which this volume states the law no such day had been appointed.

7 As to service of notices see *PARA 440 post*.

8 Road Traffic Act 1988 s 130(3) (amended by the Transport Act 2000 s 274, Sch 31 Pt V(1)).

9 Road Traffic Act 1988 s 130(4)(a).

10 *Ibid* s 130(4)(b).

11 *Ibid* s 130(4)(c).

12 *Ibid* s 130(5) (amended by the Transport Act 2000 Sch 31 Pt V(1)).

13 *Ie* under the Road Traffic Act 1988 ss 131-142 (as amended): see *PARA 437 post*.

14 *Ibid* s 130(5A) (added by the Transport Act 2000 s 259(3)).

15 Road Traffic Act 1988 s 130(6) (substituted by the Transport Act 2000 s 259(3)).

## UPDATE

### 411-441 Driving Instruction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see *ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A*.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/(5) REQUIREMENTS FOR DISABLED INSTRUCTORS/432.  
Emergency control requirements for the registration of disabled persons.

## (5) REQUIREMENTS FOR DISABLED INSTRUCTORS

### 432. Emergency control requirements for the registration of disabled persons.

A person who fulfils the conditions of suffering from a relevant disability<sup>1</sup> or a prospective disability<sup>2</sup> and of holding a current disabled person's limited driving licence<sup>3</sup> may, for the purpose of obtaining an emergency control certificate<sup>4</sup>, apply to undergo an emergency control assessment<sup>5</sup>. The Registrar<sup>6</sup> may refuse to enter the name of a person in the register<sup>7</sup> as that of a disabled instructor if he is satisfied that that person has at any time refused to comply with the requirement<sup>8</sup> to submit himself for a further emergency control assessment<sup>9</sup>.

The entry of a person's name in the register as that of a disabled instructor is subject to the condition that, so long as he is a registered disabled instructor<sup>10</sup>, he will, if at any time required to do so by the Registrar<sup>11</sup>: (1) submit himself for a further emergency control assessment on the day (within such period as may be prescribed by regulations<sup>12</sup>) and at the place specified by the Registrar<sup>13</sup>; or (2) submit himself for such test of continued ability and fitness to give instruction in the driving of appropriate motor cars<sup>14</sup> (which may consist of practical and other means of assessment) as may be prescribed by regulations<sup>15</sup>.

1 For the meaning of 'relevant disability' see PARA 417 note 1 ante; and for the meaning of 'disability' see PARA 417 note 1 ante.

2 Ie the Road Traffic Act 1988 s 125A(1)(a) (as added): see PARA 417 text to note 2 ante. For the meaning of 'prospective disability' see PARA 417 note 2 ante.

3 Ie ibid s 125A(1)(b) (as added): see PARA 417 text to note 3 ante. For the meaning of 'disabled person's limited driving licence' see PARA 417 note 3 ante; and for the meaning of 'current licence' see PARA 413 note 2 ante.

4 For the meaning of 'emergency control certificate' see PARA 417 note 4 ante.

5 Road Traffic Act 1988 s 125B(1) (ss 125A, 125B added by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 s 1). 'Emergency control assessment' means an assessment under the Road Traffic Act 1988 s 133A (as added and amended) (see PARA 433 post): s 125A(8) (as so added). As to the conduct of such assessments and the issue of emergency control certificates see PARA 433 post.

6 For the meaning of 'the Registrar' see PARA 415 text to note 5 ante.

7 Ie under the Road Traffic Act 1988 s 125A (as added): see PARA 417 ante. For the meaning of 'the register' see PARA 413 text and note 5 ante.

8 Ie imposed under ibid s 133B(2) (as added): see PARA 434 post.

9 Ibid s 125B(4) (as added: see note 5 supra). As from a day to be appointed, for the reference to entering the name of a person in the register there is substituted a reference to registering a person under s 125A (as added and prospectively amended): s 125B(4) (prospectively amended by the Road Safety Act 2006 s 42, Sch 6 paras 1, 7(1), (4)). At the date at which this volume states the law no such day had been appointed.

10 For the meaning of 'registered disabled instructor' see PARA 417 note 7 ante. As to the registration of disabled instructors see PARA 417 ante.

11 Road Traffic Act 1988 s 125B(6) (as added: see note 5 supra). As from a day to be appointed, this provision is repealed by the Road Safety Act 2006 ss 42, 59, Sch 6 para 7(5), Sch 7. At the date at which this volume states the law no such day had been appointed.

12 The period prescribed is four months beginning with the date on which written notice is given to a person of the Registrar's decision to require him to submit himself for a further emergency control assessment: Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 21. For the meaning of 'regulations' see PARA 412 note 2 ante.

13 Road Traffic Act 1988 s 125B(6)(a) (as added: see note 5 supra). As to the prospective repeal of this provision see note 11 supra.

In considering whether to exercise, in respect of any person, his power under s 125B(6)(a) (as added), the Registrar must have regard to any recommendation included in that person's current emergency control certificate as to the period after the end of which he should undergo a further emergency control assessment: s 125B(7) (as so added). As from a day to be appointed, this provision is repealed by the Road Safety Act 2006 Sch 6 para 7(5), Sch 7. At the date at which this volume states the law no such day had been appointed.

14 For the meaning of 'appropriate motor car' see PARA 417 note 3 ante; and for the meaning of 'motor car' see PARA 413 note 2 ante.

15 Road Traffic Act 1988 s 125B(6)(b) (as added (see note 5 supra); and amended by the Transport Act 2000 s 260, Sch 29 paras 1, 8). As to the prospective repeal of this provision see note 11 supra. See the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 12. As to the test of continued ability and fitness to give instruction see PARA 429 ante.

## **UPDATE**

### **411-441 Driving Instruction**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/(5) REQUIREMENTS FOR DISABLED INSTRUCTORS/433. Nature and conduct of emergency control assessments for disabled driving instructors.

### **433. Nature and conduct of emergency control assessments for disabled driving instructors.**

Where any person, by virtue of Part V of the Road Traffic Act 1988<sup>1</sup>, is authorised to apply to undergo an emergency control assessment<sup>2</sup>, or is required by the Registrar<sup>3</sup> to submit himself for an emergency control assessment, the following provisions apply<sup>4</sup>.

An emergency control assessment is an assessment of whether the person being assessed would be able either<sup>5</sup>: (1) to take control of a motor car<sup>6</sup> of a class covered by his disabled person's limited driving licence<sup>7</sup> without any modifications<sup>8</sup>; or (2) to take control of a motor car of a class covered by his disabled person's limited driving licence only with appropriate modifications of such a motor car<sup>9</sup>, if an emergency arose while he was giving, in such a motor car, instruction in the driving of an appropriate motor car<sup>10</sup>.

An application for an emergency control assessment must be made to the Secretary of State<sup>11</sup> and must include<sup>12</sup> a declaration by the person making the application, in such form as the Secretary of State may require, stating every relevant disability<sup>13</sup> or prospective disability<sup>14</sup> from which the person is suffering or has at any time (or, if a period is prescribed by regulations<sup>15</sup>, has during that period) suffered<sup>16</sup>, and such other particulars as the Secretary of State may require<sup>17</sup>. Where a person is required to submit himself for an emergency control assessment he must furnish to the Secretary of State such particulars as the Secretary of State may require<sup>18</sup>.

An emergency control assessment must be conducted by a person appointed by the Secretary of State ('the assessor'), and must consist of such practical tests and other means of assessment as the Secretary of State may determine<sup>19</sup>.



On completing an emergency control assessment of a person, the assessor must grant him an emergency control certificate<sup>20</sup> if he is satisfied either<sup>21</sup>: (a) that, in the circumstances mentioned in head (1) or head (2) above, that person would be able to take control of a motor car of a class covered by his disabled person's limited driving licence without any modifications<sup>22</sup>; or (b) that, in those circumstances, that person would be able to take control of a motor car of a class covered by his disabled person's limited driving licence only with appropriate modifications of such a motor car<sup>23</sup>. If the assessor is not so satisfied, he must refuse to grant a certificate to that person<sup>24</sup>.

An emergency control certificate granted to any person<sup>25</sup>: (i) must specify the class of motor car covered by his disabled person's limited driving licence in relation to which the assessor is satisfied as mentioned in head (a) or head (b) above, and must, in a case falling within head (b) above, specify the modifications that are appropriate<sup>26</sup>; and (ii) may include a recommendation that that person should undergo a further emergency control assessment after the end of such period as it specifies, and must otherwise be in such form as the Secretary of State may determine<sup>27</sup>.

If the assessor grants an emergency control certificate, he must give or send the certificate to that person, and send a copy of the certificate to the Registrar<sup>28</sup>. If he refuses to grant such a certificate, he must give notice<sup>29</sup> in writing to that person of his decision and of the reasons for it, and send a copy of the notice to the Registrar<sup>30</sup>.

1 le under the Road Traffic Act 1988 Pt V (ss 123-142) (as amended).

2 As to a person authorised to apply to undergo an emergency control assessment see *ibid* s 125B(1) (as added); and PARA 432 ante. For the meaning of 'emergency control assessment' see PARA 432 note 5 ante.

3 For the meaning of 'the Registrar' see PARA 415 text to note 5 ante.

4 Road Traffic Act 1988 s 133A(1) (s 133A added by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 s 3).

5 Road Traffic Act 1988 s 133A(2) (as added: see note 4 *supra*).

6 For the meaning of 'motor car' see PARA 413 note 2 ante. The provisions of *ibid* s 133A (as added) are prospectively amended so as to refer to motor vehicles instead of motor cars, by the Road Safety Act 2006 s 42, Sch 6 paras 1, 15, as from a day to be appointed under s 61(1). At the date at which this volume states the law no such day had been appointed.

7 As to the class of motor car covered by a disabled person's limited driving licence see PARA 430 note 14 ante. For the meaning of 'disabled person's limited driving licence' see PARA 417 note 3 ante.

8 Road Traffic Act 1988 s 133A(2)(a) (as added: see note 4 *supra*). For the meaning of 'modifications' see PARA 417 note 3 ante.

9 *Ibid* s 133A(2)(b) (as added: see note 4 *supra*).

10 *Ibid* s 133A(2) (as added: see note 4 *supra*). For the meaning of 'appropriate motor car' see PARA 417 note 3 ante.

11 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

12 Road Traffic Act 1988 s 133A(3) (as added: see note 4 *supra*).

13 For the meaning of 'relevant disability' see PARA 417 note 1 ante; and for the meaning of 'disability' see PARA 417 note 1 ante.

14 For the meaning of 'prospective disability' see PARA 417 note 2 ante.

15 For the meaning of 'regulations' see PARA 412 note 2 ante. At the date at which this volume states the law no such period had been prescribed.

- 16 Road Traffic Act 1988 s 133A(3)(a) (as added: see note 4 supra).
- 17 Ibid s 133A(3)(b) (as added: see note 4 supra).
- 18 Ibid s 133A(4) (as added: see note 4 supra). Regulations may require a person who applies to undergo an emergency control assessment (or a part of such an assessment), or is required to submit himself for such an assessment, to pay a fee to the Secretary of State: s 133A(4A) (added by the Transport Act 2000 s 269, Sch 29 paras 1, 10).
- 19 Road Traffic Act 1988 s 133A(5) (as added: see note 4 supra).
- 20 For the meaning of 'emergency control certificate' see PARA 417 note 4 ante.
- 21 Road Traffic Act 1988 s 133A(6) (as added: see note 4 supra).
- 22 Ibid s 133A(6)(a) (as added: see note 4 supra).
- 23 Ibid s 133A(6)(b) (as added: see note 4 supra).
- 24 Ibid s 133A(6) (as added: see note 4 supra).
- 25 Ibid s 133A(7) (as added: see note 4 supra).
- 26 Ibid s 133A(7)(a) (as added: see note 4 supra). Different modifications for different classes of motor car may be specified under s 133A(7)(a) (as added): s 133A(8) (as so added).
- 27 Ibid s 133A(7)(b) (as added: see note 4 supra).
- 28 Ibid s 133A(9)(a) (as added: see note 4 supra).
- 29 As to service of notices see PARA 440 post.
- 30 Road Traffic Act 1988 s 133A(9)(b) (as added: see note 4 supra).

## **UPDATE**

### **411-441 Driving Instruction**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/(5) REQUIREMENTS FOR DISABLED INSTRUCTORS/434. Further assessments for disabled driving instructors.

#### **434. Further assessments for disabled driving instructors.**

A person who has undergone an emergency control assessment<sup>1</sup> may not apply to undergo a further assessment until after the end of the period of six months beginning with the date of his most recent previous assessment, or such other period as may be prescribed by regulations<sup>2</sup>, unless he is required<sup>3</sup> by the Registrar<sup>4</sup> to submit himself for a further assessment<sup>5</sup>. A person whose name is not on the register<sup>6</sup> but who holds a current emergency control certificate<sup>7</sup> must, if at any time required to do so by the Registrar, submit himself for a further emergency control assessment (within the prescribed period<sup>8</sup>) and at the place specified by the Registrar<sup>9</sup>. In considering whether to exercise, in respect of any person, his power<sup>10</sup>, the Registrar must

have regard to any recommendation included in that person's current emergency control certificate as to the period after the end of which he should undergo a further emergency control assessment<sup>11</sup>.

A person who already holds a current emergency control certificate, but wishes to undergo a further emergency control assessment with a view to establishing his ability to control any class of motor car<sup>12</sup> not specified in his current certificate, may, with the consent of the Registrar<sup>13</sup> apply to undergo a further assessment; but a person applying to undergo such a further assessment is not required to make a declaration stating every relevant or prospective disability<sup>14</sup> from which he is suffering or has at any time suffered<sup>15</sup>. Such an application for the consent of the Registrar must be made in such manner and be accompanied by such particulars as the Registrar may require<sup>16</sup>.

If, as a result of undergoing a further emergency control assessment, a person is granted a fresh emergency control certificate the grant of that certificate has the effect of revoking the previous certificate with effect from the date on which it is notified as taking effect<sup>17</sup>. However, if, in the case of an emergency control assessment conducted in respect of a person who holds a current emergency control certificate, the assessor<sup>18</sup> is not satisfied that if an emergency arose while he was giving instruction he would be able to take control of a motor car of a class covered by his disabled person's limited driving licence either without any modifications or only with appropriate modifications<sup>19</sup>, he must revoke the certificate<sup>20</sup>. Where a person's emergency control certificate is so revoked the assessor must serve notice<sup>21</sup> in writing on him specifying the grounds for the revocation, and the date, not being earlier than the date of service of the notice, on which the revocation is to take effect, and send a copy of the notice to the Registrar<sup>22</sup>.

1 For the meaning of 'emergency control assessment' see PARA 432 note 5 ante.

2 For the meaning of 'regulations' see PARA 412 note 2 ante. At the date at which this volume states the law no such regulations had been made.

3 Ie by virtue of the Road Traffic Act 1988 s 125B(6)(a) (as added) (see PARA 432 ante) or s 133B(2) (as added) (see the text to notes 6-9 infra). Section 133B (as added) is prospectively amended to substitute a reference to s 125A(7A)(c) (as prospectively added) (see PARA 417 note 21 head (c) ante) for the reference to s 125B(6)(a) (as added), by the Road Safety Act 2006 s 42, Sch 6 paras 1, 16(1), (2), as from a day to be appointed under s 61(1). At the date at which this volume states the law no such day had been appointed.

4 For the meaning of 'the Registrar' see PARA 415 text to note 5 ante.

5 Road Traffic Act 1988 s 133B(1) (s 133B added by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 s 3).

6 For the meaning of 'the register' see PARA 413 text and note 5 ante.

7 For the meaning of 'emergency control certificate' see PARA 417 note 4 ante; and for the meaning of 'current certificate' see PARA 413 note 2 ante.

8 The period prescribed is the period of four months beginning with the date on which written notice is given to a person of the Registrar's decision to require him to submit himself for a further emergency control assessment: Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 21.

9 Road Traffic Act 1988 s 133B(2) (as added: see note 5 supra). Section 133B(2) (as added) is prospectively amended by the Road Safety Act 2006 Sch 6 para 16(3), as from a day to be appointed under s 61(1), so as to refer to a person who is not registered instead of a person whose name is not on the register. At the date at which this volume states the law no such day had been appointed.

10 Ie under ibid s 133B(2) (as added): see the text to note 9 supra.

11 Ibid s 133B(3) (as added: see note 5 supra).

12 As to the class of motor car covered by a disabled person's limited driving licence see PARA 430 note 14 ante. For the meaning of 'motor car' see PARA 413 note 2 ante; and for the meaning of 'disabled person's limited

driving licence' see PARA 417 note 3 ante. The Road Traffic Act 1988 s 133B(4)(b) (as added) is prospectively amended by the Road Safety Act 2006 Sch 6 para 16(4), as from a day to be appointed under s 61(1), so as to refer to a vehicle instead of a car. At the date at which this volume states the law no such day had been appointed.

13 This provision is also subject to the Road Traffic Act 1988 s 133B(1) (as added): see note 5 supra.

14 For the meaning of 'relevant disability' see PARA 417 note 1 ante; for the meaning of 'disability' see PARA 417 note 1 ante; and for the meaning of 'prospective disability' see PARA 417 note 2 ante.

15 Road Traffic Act 1988 s 133B(4) (as added: see note 5 supra). The declaration referred to is that required by s 133A(3)(a) (as added and amended): see PARA 433 text to note 16 ante.

16 Ibid s 133B(5) (as added: see note 5 supra).

17 Ibid s 133B(6) (as added: see note 5 supra).

18 For the meaning of 'the assessor' see PARA 433 text to note 19 ante; definition applied by ibid s 133B(9) (as added: see note 5 supra).

19 If the assessor is not satisfied as to either of the matters specified in ibid s 133A(6)(a), (b) (as added): see PARA 433 ante. For the meaning of 'modifications' see PARA 417 note 3 ante.

20 Ibid s 133B(7) (as added: see note 5 supra).

21 As to service of notices see PARA 440 post.

22 Road Traffic Act 1988 s 133B(8) (as added: see note 5 supra).

## UPDATE

### 411-441 Driving Instruction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/(5) REQUIREMENTS FOR DISABLED INSTRUCTORS/435. Duty to disclose further disabilities for disabled driving instructors.

### 435. Duty to disclose further disabilities for disabled driving instructors.

If at any time a registered disabled instructor<sup>1</sup>, or a person who holds a licence for giving instruction so as to obtain practical experience<sup>2</sup> becomes aware<sup>3</sup>: (1) that he is suffering from a relevant<sup>4</sup> or prospective disability<sup>5</sup> which he has not previously disclosed to the Secretary of State<sup>6</sup>; or (2) that a relevant or prospective disability from which he has at any time suffered (and which has been previously so disclosed) has become more acute since his current emergency control certificate<sup>7</sup> was granted<sup>8</sup>, he must forthwith notify the Registrar<sup>9</sup> in writing of the nature and extent of his disability<sup>10</sup>. A person who fails without reasonable excuse to so notify the Registrar is guilty of an offence<sup>11</sup>. However, such a person is not required to notify the Registrar if<sup>12</sup>: (a) the disability is one from which he has not previously suffered<sup>13</sup>; and (b) he has reasonable grounds for believing that the duration of the disability will not extend beyond the period of three months beginning with the date on which he first becomes aware that he suffers from it<sup>14</sup>.

1 For the meaning of 'registered disabled instructor' see PARA 417 note 7 ante. As to the registration of disabled instructors see PARA 417 ante.

2 le under the Road Traffic Act 1988 s 129 (as amended) granted by virtue of s 129(2)(b) (as substituted): see PARA 430 ante.

3 Ibid s 133C(1), (2) (s 133C added by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 s 4). The Road Traffic Act 1988 s 133C(1) (as added) is prospectively repealed, and s 133C(2) amended, by the Road Safety Act 2006 ss 42, 59, Sch 6 paras 1, 17, Sch 7, as from a day to be appointed under s 61(1), with the effect that the words 'or a person who holds a licence for giving instruction so as to obtain practical experience' are removed. At the date at which this volume states the law no such day had been appointed.

4 For the meaning of 'relevant disability' see PARA 417 note 1 ante. For the meaning of 'disability' see PARA 417 note 1 ante.

5 For the meaning of 'prospective disability' see PARA 417 note 2 ante.

6 Road Traffic Act 1988 s 133C(2)(a) (as added: see note 3 supra). The text refers to disclosure under s 125A(3) (as added) or s 133A(3) or (4) (as added): see PARAS 417, 433 ante. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 For the meaning of 'emergency control certificate' see PARA 417 note 4 ante; and for the meaning of 'current certificate' see PARA 413 note 2 ante.

8 Road Traffic Act 1988 s 133C(2)(b) (as added: see note 3 supra).

9 For the meaning of 'the Registrar' see PARA 415 text to note 5 ante.

10 Road Traffic Act 1988 s 133C(2) (as added: see note 3 supra).

11 Ibid s 133C(4) (as added: see note 3 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry prospectively amended by the Road Safety Act 2006 ss 42, 59, Sch 6 paras 31, 33, Sch 7). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

12 Road Traffic Act 1988 s 133C(3) (as added: see note 3 supra).

13 Ibid s 133C(3)(a) (as added: see note 3 supra).

14 Ibid s 133C(3)(b) (as added: see note 3 supra).

## UPDATE

### 411-441 Driving Instruction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/(5) REQUIREMENTS FOR DISABLED INSTRUCTORS/436. Offences relating to driving instruction for disabled driving instructors.

### 436. Offences relating to driving instruction for disabled driving instructors.

No registered disabled instructor<sup>1</sup>, or person who holds a licence for giving instruction so as to obtain practical experience<sup>2</sup> may give paid instruction<sup>3</sup> in the driving of a motor car<sup>4</sup> unless he is the holder of a current emergency control certificate<sup>5</sup>. No such person may give, in any unauthorised motor car<sup>6</sup>, paid instruction in the driving of a motor car<sup>7</sup>. Where instruction is given in contravention of this provision the person by whom it is given is guilty of an offence and, if that person is employed by another to give that instruction, that other is also guilty of an offence<sup>8</sup>.

1 For the meaning of 'registered disabled instructor' see PARA 417 note 7 ante. As to the registration of disabled instructors see PARA 417 ante.

2 I.e. a licence under the Road Traffic Act 1988 s 129 (as amended) granted by virtue of s 129(2)(b) (as substituted): see PARA 430 ante.

3 For the meaning of 'paid instruction' see PARA 413 note 2 ante.

4 For the meaning of 'motor car' see PARA 413 note 2 ante.

5 Road Traffic Act 1988 s 133D(1), (2) (s 133D added by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 s 5). For the meaning of 'emergency control certificate' see PARA 417 note 4 ante; and for the meaning of 'current certificate' see PARA 413 note 2 ante. The Road Traffic Act 1988 s 133D(1) (as added) is prospectively repealed, and s 133D(2) amended, by the Road Safety Act 2006 ss 42, 59, Sch 6 paras 1, 18(1)-(4), Sch 7, as from a day to be appointed under s 61(1), with the effect that the words 'or person who holds a licence for giving instruction so as to obtain practical experience' are removed and 'vehicle' is substituted for 'car'. At the date at which this volume states the law no such day had been appointed.

6 'Unauthorised motor car', in relation to any person, means a motor car other than one which falls within the class of motor car specified in his current emergency control certificate and, where modifications are specified in that certificate, is modified in accordance with the specification: Road Traffic Act 1988 s 133D(5) (as added: see note 5 supra). As to classes of vehicle see PARA 208 ante. For the meaning of 'modifications' see PARA 417 note 3 ante.

7 Ibid s 133D(3) (as added: see note 5 supra). Section 133D(3) (as added) is prospectively amended by the Road Safety Act 2006 Sch 6 para 18(3), (4), as from a day to be appointed under s 61(1), so as to provide that no registered disabled instructor may give, in any unauthorised motor vehicle, paid instruction in the driving of a motor vehicle. At the date at which this volume states the law no such day had been appointed.

8 Ibid s 133D(4) (as added: see note 5 supra). Section 133D(4) (as added) is prospectively substituted by the Road Safety Act 2006 Sch 6 para 18(5), as from a day to be appointed under s 61(1), so as to provide that where a registered disabled instructor gives instruction in contravention of the Road Traffic Act 1988 s 133D (as added and prospectively amended): (1) the instructor; (2) if the instructor is employed by another person to give that instruction, that other person (as well as the instructor); and (3) if the instructor is a franchisee under a driving instruction franchise, the franchisor (as well as the instructor), is guilty of an offence. For the meaning of 'driving instruction franchise' and as to the meanings of 'franchisee' and 'franchisor' see PARA 413 note 26 ante.

A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry prospectively amended by the Road Safety Act 2006 ss 42, 59, Sch 6 paras 31, 33(1), (5), Sch 7). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## UPDATE

### 411-441 Driving Instruction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/(6) GENERAL PROVISIONS/437. Appeals and reviews of examinations.

## **(6) GENERAL PROVISIONS**

### **437. Appeals and reviews of examinations.**

A person who is aggrieved<sup>1</sup> by a decision of the Registrar<sup>2</sup>: (1) to refuse an application for the entry of his name in the register<sup>3</sup>; (2) to refuse an application for the retention of his name in the register<sup>4</sup>; or (3) to remove his name from the register<sup>5</sup>, may by notice<sup>6</sup> in writing appeal<sup>7</sup> to the Transport Tribunal<sup>8</sup> within the period of 28 days beginning with the day on which notice of the decision was given in accordance with Part V of the Road Traffic Act 1988<sup>9</sup>.

A person who is aggrieved by a decision of the Registrar to refuse an application for the grant of a licence under Part V of the Road Traffic Act 1988, or to revoke such a licence, may by notice in writing appeal to the Transport Tribunal within the period of 14 days beginning with the day on which notice of the decision was given in accordance with Part V of the Act<sup>10</sup>.

On the appeal the Transport Tribunal may make such order for the grant or refusal of the application, or for the removal or the retention of the name in the register, or the revocation or continuation of the licence (as the case may be), as it thinks fit<sup>11</sup>. An order for such refusal, removal or revocation may direct that an application by the appellant for the grant of a licence under Part V of the Act, or for his name to be entered in the register, must not be entertained before the expiration of such period, not exceeding four years beginning with the day on which the order is made, as may be specified in the order<sup>12</sup>. If the Transport Tribunal considers that any evidence adduced on an appeal had not been adduced to the Registrar before he gave the decision to which the appeal relates, it may instead of making such an order remit the matter to the Registrar for him to reconsider the decision<sup>13</sup>.

A person who is aggrieved by a decision of the Registrar not to give a specified direction<sup>14</sup> may by notice in writing appeal to the Transport Tribunal within the period of ten days beginning with the day on which notice of the decision is given<sup>15</sup>. The Transport Tribunal must determine the appeal by either: (a) giving the direction concerned; or (b) dismissing the appeal, within the period of 14 days beginning with the day on which notice of the decision is given<sup>16</sup>.

Where the Registrar has decided to refuse an application for the retention of a name in the register, to remove a name from the register or to revoke a licence<sup>17</sup> but either: (i) he gave a direction<sup>18</sup>; or (ii) the Transport Tribunal has given such a direction on appeal, he may by notice in writing apply to the Transport Tribunal for an order that the decision is to take effect immediately<sup>19</sup>. The Transport Tribunal must determine the Registrar's application by either granting or refusing the application, within the period of 14 days beginning with the day on which it is made<sup>20</sup>. The Transport Tribunal may only grant the application if it considers that a failure to do so might prejudicially affect the well-being of any person to whom the person concerned may give instruction in the driving of a motor car, or the safety of road users<sup>21</sup>. On an appeal, the Registrar is the respondent<sup>22</sup>.

No appeal lies<sup>23</sup> in respect of any matter for which an application may be made to a magistrates' court regarding the conduct of an examination of ability to give instruction in the driving of motor cars<sup>24</sup>.

On the application of a person who undergone a relevant examination<sup>25</sup>, or a part of such an examination, a magistrates' court may determine whether the examination or part was properly conducted<sup>25</sup>. If it appears to the court that that the examination or part was not

properly conducted, it may order that any fee payable by the applicant in respect of the examination or part need not be paid or, if it has been paid, must be repaid<sup>27</sup>.

1 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARAS 656, 664.

2 For the meaning of 'the Registrar' see PARA 415 text to note 5 ante.

3 Road Traffic Act 1988 s 131(1)(a). For the meaning of 'the register' see PARA 413 text and note 5 ante.

4 Ibid s 131(1)(b).

5 Ibid s 131(1)(c).

6 As to service of notices see PARA 440 post.

7 See the text to notes 14-16 infra.

8 As to the Transport Tribunal see PARA 253 et seq ante.

9 Road Traffic Act 1988 s 131(1) (amended by the Transport Act 2000 s 258(1), (2)). The text refers to the Road Traffic Act 1988 Pt V (ss 123-142) (as amended). The Registrar gives such notice under s 125(8), s 127(5) or s 128(4): see PARAS 415, 420-421 ante.

Section 131(1)(a)-(c) is prospectively substituted by the Road Safety Act 2006 s 42, Sch 6 paras 1, 13(1), (2), as from a day to be appointed under s 61(1), with the effect that for heads (1)-(3) in the text there are substituted the following heads: (1) to refuse an application for his registration or for the extension of his registration; (2) to terminate his registration; (3) to give a direction as to further applications: Road Traffic Act 1988 s 131(1)(a)-(c) (as so prospectively substituted). A direction as to further applications is given under s 128A (as prospectively added): see PARA 421 ante. At the date at which this volume states the law no such day had been appointed.

10 Ibid s 131(2) (amended by the Transport Act 2000 s 258(2)). The decision of the Registrar must be notified in writing under the Road Traffic Act 1988 s 129(4) (see PARA 430 ante) or, if the Registrar is considering revocation, this must be notified in writing under s 130(3) (see PARA 431 ante). Section 131(2) (as amended) is prospectively repealed, as from a day to be appointed, by the Road Safety Act 2006 ss 42, 59, Sch 6 para 13(3), Sch 7. At the date at which this volume states the law no such day had been appointed.

11 Road Traffic Act 1988 s 131(3) (amended by the Transport Act 2000 s 258(3)). The Road Traffic Act 1988 s 131(3) (as amended) is further amended by the Road Safety Act 2006 Sch 6 para 13(4), as from a day to be appointed, with the effect that the Transport Tribunal may make such order for the grant or refusal of the application, for the continuation or termination of the registration, or for the revocation or confirmation of the direction or the alteration of the period specified in the direction (as the case may be), as it thinks fit. At the date at which this volume states the law no such day had been appointed.

12 Road Traffic Act 1988 s 131(4). Section 131(4) is prospectively amended by the Road Safety Act 2006 Sch 6 para 13(5), as from a day to be appointed, with the effect that an order for refusal or termination under the Road Traffic Act 1988 s 131(3)(a) or (b) (as prospectively amended) may direct that an application by the appellant to be registered must not be entertained before the expiration of the period specified in the order. At the date at which this volume states the law no such day had been appointed.

13 Ibid s 131(4A) (added by the Transport Act 2000 s 258(4)).

14 I.e. under the Road Traffic Act 1988 s 127(8) (as amended) (extension of duration of registration: see PARA 420 ante), s 128(7) (as amended) (removal of names from the register: see PARA 421 ante) or s 130(6) (as substituted) (revocation of licences: see PARA 431 ante).

15 Ibid s 131(4B) (s 131(4B)-(4F) added by the Transport Act 2000 s 259(4)). The Road Traffic Act 1988 s 131(4B) (as added) is prospectively amended by the Road Safety Act 2006 Sch 6 para 13(6), as from a day to be appointed, so as to substitute for the references to the Road Traffic Act 1988 s 128(7) or s 130(6) (see note 14 supra) a reference to s 128(8) (as prospectively substituted) (see PARA 421 ante). At the date at which this volume states the law no such day had been appointed.

16 Ibid s 131(4C) (as added: see note 15 supra).

17 I.e. a licence granted under ibid s 129 (as amended): see PARA 430 ante.

18 See note 14 supra.



19 Road Traffic Act 1988 s 131(4D) (as added: see note 15 supra). Section 131(4D) (as added) is prospectively amended by the Road Safety Act 2006 Sch 6 para 13(7), as from a day to be appointed, so as to apply instead where the Registrar has decided to refuse an application for the extension of a person's registration or to terminate a person's registration; and the direction referred to is one given under the Road Traffic Act 1988 s 127(8) (as prospectively amended) or s 128(8) (as prospectively substituted). At the date at which this volume states the law no such day had been appointed.

20 Ibid s 131(4E) (as added: see note 15 supra).

21 Ibid s 131(4F) (as added: see note 15 supra). Section 131(4F) (as added) is prospectively amended by the Road Safety Act 2006 Sch 6 para 13(8), as from a day to be appointed, by substituting 'driving instruction' for 'instruction in the driving of a motor car'. At the date at which this volume states the law no such day had been appointed.

22 Ibid s 131(4G) (added by the Transport Act 2000 s 260, Sch 29 paras 1, 12).

23 Ie under the Road Traffic Act 1988 s 131: see the text and notes 1-12 supra.

24 Ibid s 133(3). The application referred to in the text is made under s 133(1): see the text to note 26 infra. For the meaning of 'motor car' see PARA 413 note 2 ante. As to the examination of ability to give instruction see PARA 424 ante.

25 'Relevant examination' means: (1) an examination of ability to give instruction in the driving of motor cars; (2) a test of continued ability and fitness to give instruction in the driving of motor cars (or appropriate motor cars); or (3) an emergency control assessment: ibid s 133(4) (added by the Transport Act 2000 Sch 29, PARA 11(1), (4)). For the meaning of 'emergency control assessment' see PARA 432 note 5 ante.

26 Road Traffic Act 1988 s 133(1) (amended by the Transport Act 2000 Sch 29 para 11(2); and the Courts Act 2003 s 109(1), Sch 8 para 309). For the meaning of 'regulations' see PARA 412 note 2 ante. As to the regulations governing examinations of ability to give instruction see PARA 424 ante.

27 Road Traffic Act 1988 s 133(2) (amended by the Transport Act 2000 Sch 29 para 11(3)).

The Road Traffic Act 1988 s 133 (as amended) is prospectively substituted by the Road Safety Act 2006 s 42, Sch 6 paras 1, 14, as from a day to be appointed under s 61(1). At the date at which this volume states the law no such day had been appointed. As from such a day, the following provisions apply. On the application of a person who has undergone a relevant instructor examination, or a part of a relevant instructor examination, a magistrates' court may determine whether the examination, or the part of the examination, was properly conducted: Road Traffic Act 1988 s 133(1) (as so prospectively substituted). If it appears to the court that the examination was not properly conducted, the court may: (1) (except in the case of an emergency control assessment) order that the applicant is eligible to submit himself for another examination before the end of the period prescribed in s 132(2)(d) (as prospectively substituted) (see PARA 422 head (d) ante); and (2) (in any case) order that any fee payable by the applicant in respect of the examination is not to be paid or, if it has been paid, is to be repaid: s 133(3) (as so prospectively substituted). No appeal lies in respect of any matter in respect of which an application may be made to a magistrates' court under s 131(1) (as prospectively substituted) (see note 9 supra): s 133(4) (as so prospectively substituted).

In Pt V (as amended), 'relevant instructor examination' means: (a) an examination of ability and fitness referred to in s 125ZA(2)(a) (as prospectively added) (see PARA 416 head (1) ante) or s 125A(6)(a) (as prospectively substituted) (see PARA 417 note 21 head (1) ante); (b) an examination of continued ability and fitness referred to in s 125ZA(4)(a) (as prospectively added) (see PARA 416 head (a) ante) or s 125A(7A)(a) (as prospectively added) (see PARA 417 note 21 head (a) ante); or (c) an emergency control assessment under s 133A (as added and amended) (see PARA 433 post): s 132(2) (as so prospectively substituted).

## UPDATE

### 411-441 Driving Instruction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 437 Appeals and reviews of examinations

TEXT AND NOTES--References to the Transport Tribunal are now to the First-tier Tribunal: Road Traffic Act 1988 s 131 (amended by SI 2009/1885).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/(6) GENERAL PROVISIONS/438. Production of certificates and licences to constables and authorised persons.

#### **438. Production of certificates and licences to constables and authorised persons.**

A person to whom a certificate of registration<sup>1</sup> is issued, or to whom a licence under Part V of the Road Traffic Act 1988<sup>2</sup> is granted, must, on being so required by a constable<sup>3</sup> or a person authorised in writing by the Secretary of State<sup>4</sup> in that behalf, produce the certificate or licence for examination<sup>5</sup>.

Where the name of a person is removed from the register<sup>6</sup>, or a licence expires or is revoked, then, if that person fails to satisfy an obligation to surrender it<sup>7</sup>, a constable or a person authorised in writing by the Secretary of State in that behalf may require him to produce the certificate or the licence, and upon its being produced may seize it and deliver it to the Registrar<sup>8</sup>.

A person who is so required<sup>9</sup> to produce a document and fails to do so is guilty of an offence<sup>10</sup>. However, in proceedings against any person for such an offence<sup>11</sup>, it is a defence for him to show that<sup>12</sup>:

- 761 (1) within seven days beginning with the day following that on which the production of the document was so required, it was produced<sup>13</sup>:
- 27
- 64. (a) where the requirement was made by a constable, at a police station specified at the time the production was required by the person required to produce the document<sup>14</sup>;
- 65. (b) where the requirement was made by a person other than a constable, at a place specified at that time by that person<sup>15</sup>; or
- 28
- 762 (2) the document was produced at that police station or, as the case may be, place as soon as was reasonably practicable<sup>16</sup>; or
- 763 (3) it was not reasonably practicable for it to be produced at that police station or, as the case may be, place before the day on which the proceedings were commenced<sup>17</sup>.

1    Ie a certificate of registration prescribed under the Road Traffic Act 1988 s 135: see PARA 418 ante.

2    Ie under *ibid* Pt V (ss 123-142) (as amended). The licence is granted under s 129 (as amended): see PARA 430 ante.

3    As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

4    As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5    Road Traffic Act 1988 s 137(1). Section 137(1) is prospectively amended by the Road Safety Act 2006 ss 42, 59, Sch 6 paras 1, 22(1), (2), Sch 7, as from a day to be appointed under s 61(1), so as to provide that a person to whom a certificate or other item prescribed under the Road Traffic Act 1988 s 135 (as prospectively substituted) is issued must, on being so required by a constable or any person authorised in writing by the

Secretary of State in that behalf, produce the certificate or other item for examination. At the date at which this volume states the law no such day had been appointed.

6 For the meaning of 'the register' see PARA 413 text and note 5 ante.

7 Ie the obligation imposed by the Road Traffic Act 1988 s 136: see PARA 418 ante.

8 Ibid s 137(2). For the meaning of 'the Registrar' see PARA 415 text to note 5 ante. Section 137(2) is prospectively amended by the Road Safety Act 2006 Sch 6 para 22(3), (4), as from a day to be appointed, so as to provide that where a person's registration is terminated and he fails to satisfy an obligation imposed on him by the Road Traffic Act 1988 s 136 (as prospectively amended), a constable or a person authorised in writing by the Secretary of State in that behalf may require him to produce any such certificate or other item issued to him, and upon its being produced may seize it and deliver it to the Registrar. At the date at which this volume states the law no such day had been appointed.

9 Ie under ibid s 137(1) or s 137(2): see the text and notes 1-8 supra.

10 Ibid s 137(3), which is expressed to be subject to s 137(4) (see the text and notes 11-17 infra). Section 137(3) is prospectively amended by the Road Safety Act 2006 Sch 6 para 22(5), as from a day to be appointed, so as to refer to a certificate or other item instead of referring to a document. At the date at which this volume states the law no such day had been appointed. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry prospectively amended by the Road Safety Act 2006 Sch 6 paras 31, 33(7)). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

11 Ie under the Road Traffic Act 1988 s 137(3): see the text to note 10 supra.

12 Ibid s 137(4). Section 137(4) is prospectively amended by the Road Safety Act 2006 Sch 6 para 22(6), as from a day to be appointed, so as to refer to a certificate or other item instead of referring to a document. At the date at which this volume states the law no such day had been appointed.

13 Road Traffic Act 1988 s 137(4)(a) (as prospectively amended: see note 12 supra).

14 Ibid s 137(4)(a)(i) (as prospectively amended: see note 12 supra).

15 Ibid s 137(4)(a)(ii).

16 Ibid s 137(4)(b) (as prospectively amended: see note 12 supra).

17 Ibid s 137(4)(c). The laying of the information is treated as the commencement of the proceedings: s 137(4).

## UPDATE

### 411-441 Driving Instruction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/(6) GENERAL PROVISIONS/439. Offences by corporations.

### 439. Offences by corporations.

Where a body corporate is guilty of an offence under Part V of the Road Traffic Act 1988<sup>1</sup> and the offence is proved to have been committed with the consent or connivance of, or to be

attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly<sup>2</sup>.

1    le the Road Traffic Act 1988 Pt V (ss 123-142) (as amended).

2    Ibid s 138.

## **UPDATE**

### **411-441 Driving Instruction**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/(6) GENERAL PROVISIONS/440. Service of notices.

### **440. Service of notices.**

A notice authorised or required to be given by Part V of the Road Traffic Act 1988<sup>1</sup> to a person may be given by delivering it to him, or by leaving it at his proper address<sup>2</sup>, or by sending it to him by post<sup>3</sup>.

1    le the Road Traffic Act 1988 Pt V (ss 123-142) (as amended).

2    For the purposes of ibid s 139, and the Interpretation Act 1978 s 7 (see STATUTES vol 44(1) (Reissue) PARA 1388) in its application to the Road Traffic Act 1988 s 139, the proper address of a person is, in the case of a person whose name is included in the register, his address on the register, and in any other case, his usual or last known address: s 139(2). For the meaning of 'the register' see PARA 413 text and note 5 ante.

3    Ibid s 139(1).

## **UPDATE**

### **411-441 Driving Instruction**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/3. DRIVING INSTRUCTION/(6) GENERAL PROVISIONS/441. Fees.

#### **441. Fees.**

Any sums received on account of fees<sup>1</sup> payable by virtue of any provision of Part V of the Road Traffic Act 1988<sup>2</sup> must be paid into the Consolidated Fund<sup>3</sup>.

1 As to the current prescribed fees see the Motor Cars (Driving Instruction) Regulations 2005, SI 2005/1902, reg 17 (as amended); and PARAS 415 note 6, 417 note 16, 420 note 5, 424 note 4, 430 note 16 ante.

2 Ie under the Road Traffic Act 1988 Pt V (ss 123-142) (as amended).

3 Ibid s 140. This has effect subject to the Government Trading Funds Act 1973 s 3 (as amended) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 748) by virtue of the Driving Standards Agency Trading Fund Order 1997, SI 1997/873. As to government trading funds see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 743 et seq. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

The Road Traffic Act 1988 s 140 is prospectively amended by the Road Safety Act 2006 s 42, Sch 6 paras 1, 23, as from a day to be appointed under s 61(1). As from the appointed day, the Road Traffic Act 1988 s 140 is renumbered as s 140(3) and new provisions s 140(1), (2) are added so as to provide that regulations may make provision for the payment of such fees (if any) as may be prescribed in connection with registration or extension of registration (s 140(1) (as so prospectively added)) and that regulations may make provision for the repayment (in whole or in part) of any fee payable by virtue of any provision of Pt V (as amended) in such circumstances as may be prescribed (s 140(2) (as so prospectively added)). For the meaning of 'regulations' see PARA 412 note 2 ante. As to the meaning of 'registration' see PARA 413 note 24 ante. At the date at which this volume states the law no such day had been appointed.

#### **UPDATE**

#### **411-441 Driving Instruction**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(i) Legislation/442. The legislation.

### **4. DRIVER LICENSING**

#### **(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY**

##### **(i) Legislation**

#### **442. The legislation.**

Part III of the Road Traffic Act 1988<sup>1</sup> makes provision as to the licensing of drivers of vehicles and deals with: (1) the requirement to hold a licence<sup>2</sup>; (2) driving tests<sup>3</sup>; (3) physical fitness of drivers<sup>4</sup>; (4) the granting of licences, their form and duration<sup>5</sup>; (5) appeals<sup>6</sup>; (6) disqualification, otherwise than on conviction<sup>7</sup>; (7) the effects of disqualification<sup>8</sup>; and (8) certain other miscellaneous matters<sup>9</sup>.

Information held in any form by the Secretary of State<sup>10</sup> under Part III of the Road Traffic Act 1988 may be made available to the National Policing Improvement Agency<sup>11</sup> for use by constables<sup>12</sup> and members of the staff of the Serious Organised Crime Agency<sup>13</sup>, and may also be disclosed for the purposes of the Schengen information system<sup>14</sup>.

1    le the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended).

2    See *ibid* ss 87, 88 (both as amended); and PARAS 444, 446-458 post.

3    See *ibid* s 89 (as amended), s 89A (as added and amended), s 90, s 91; and PARAS 445, 449-453 post.

4    See *ibid* s 92 (as amended), s 93 (as amended), s 94 (as amended), s 94A (as added), s 95, s 96; and PARAS 455-461, 463 post.

5    See *ibid* s 97 (as amended), s 98 (as amended), s 99 (as amended), ss 99ZA-99ZC (as added), ss 99A-99E (as added); and PARAS 458, 462-476, 485-486 post.

6    See *ibid* s 100 (as amended); and PARA 477 post.

7    See *ibid* s 101 (as amended), s 102; and PARAS 478-480 post.

8    See *ibid* s 103 (as substituted and amended); and PARA 481 post.

9    See *ibid* s 104, s 105 (as amended), s 106, ss 107-109 (all as amended); and PARAS 462, 482-484 post.

10   As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

11   As to the National Policing Improvement Agency see POLICE vol 36(1) (2007 Reissue) PARA 222 et seq.

12   As to the meaning of 'constables' for these purposes see the Criminal Justice and Court Services Act 2000 s 71(4) (definition added by the Serious Organised Crime and Police Act 2005 s 123(1)).

13   Criminal Justice and Court Services Act 2000 s 71(1) (amended by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 para 161; and the Police and Justice Act 2006 s 1(3), Sch 1 Pt 7 para 75). As to the Serious Organised Crime Agency see POLICE vol 36(1) (2007 Reissue) PARA 430 et seq.

In respect of any information made available to the National Policing Improvement Agency under the Criminal Justice and Court Services Act 2000 s 71(1) (as amended), the Secretary of State may by regulations: (1) determine the purposes for which constables and members of the staff of the Serious Organised Crime Agency may be given access to the information; (2) determine the circumstances in which any of the information to which they have been given access may be further disclosed by them: s 71(2) (amended by the Serious Organised Crime and Police Act 2005 Sch 4 para 161; and the Police and Justice Act 2006 Sch 1 Pt 7 para 75). Before making any regulations applying in respect of constables in police forces in Scotland, the Secretary of State must, to the extent to which the regulations will so apply, consult the Scottish Ministers: Criminal Justice and Court Services Act 2000 s 71(3). As to the regulations that have been made see the Motor Vehicles (Access to Driver Licensing Records) Regulations 2001, SI 2001/3343.

14   Crime (International Co-operation) Act 2003 s 82. Similar provision is made in relation to Northern Ireland. 'The Schengen information system' means the information system established under Title IV of the Convention implementing the Schengen Agreement of 14 June 1985, or any system established in its place in pursuance of any Community obligation: Data Protection Act 1998 s 54A(7) (added by the Crime (International Co-operation) Act 2003 s 81).

## **UPDATE**

### **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

## 442 The legislation

NOTE 13--SI 2001/3343 amended: SI 2008/1965.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(i) Legislation/443. Power of the Secretary of State to make regulations.

### 443. Power of the Secretary of State to make regulations.

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> for any purpose for which regulations may be made under Part III of the Road Traffic Act 1988 and under certain provisions of the Road Traffic Offenders Act 1988<sup>3</sup> and for prescribing<sup>4</sup> anything which may be prescribed under any of those provisions, and otherwise for the purpose of carrying any of those provisions into effect<sup>5</sup>. In particular, the regulations may make provision with respect to:

- 764 (1) licences<sup>6</sup>, Northern Ireland licences<sup>7</sup>, Community licences<sup>8</sup> and counterparts<sup>9</sup> of such licences<sup>10</sup>;
- 765 (2) making any particulars with respect to any persons who are disqualified<sup>11</sup>, whose licences are suspended, or whose counterparts of licences<sup>12</sup> or of Northern Ireland or of Community licences (as the case may be) are endorsed, available for use by the police<sup>13</sup>;
- 766 (3) preventing a person holding more than one licence<sup>14</sup>;
- 767 (4) facilitating identification of holders of licences<sup>15</sup>;
- 768 (5) providing for the issue of licences and counterparts of licences in the place of licences or counterparts of licences lost or defaced on payment of such fee, and compliance with such requirements, as may be prescribed<sup>16</sup>;
- 769 (6) providing for the issue of new counterparts of Northern Ireland licences or of Community licences in the place of counterparts of Northern Ireland licences or (as the case may be) of Community licences that are lost or defaced<sup>17</sup>;
- 770 (7) the correspondence of one class<sup>18</sup> of motor vehicle<sup>19</sup> with another class of motor vehicle or of one test of competence to drive<sup>20</sup> with another (whatever the law under which the classification is made or the test conducted)<sup>21</sup>;
- 771 (8) the effect of a change in the classification of motor vehicles on licences then in force or issued, or on the right to or the subsequent granting of licences, or on Northern Ireland licences or Community licences then in force<sup>22</sup>; and
- 772 (9) enabling a person whose entitlement to the grant of a licence to drive a class of motor vehicle is preserved by regulations made by virtue of head (8) above, and who satisfies such conditions as may be prescribed, to drive (and be employed in driving) that class of motor vehicle while he applies for the licence to be granted to him<sup>23</sup>,

and different regulations may be made as respects different classes of vehicles or as respects the same class of vehicles in different circumstances<sup>24</sup>.

The regulations may make different provision for different circumstances, provide for exemptions from any provision of the regulations, and contain such incidental and supplemental provisions as the Secretary of State considers expedient for the purposes of the regulations<sup>25</sup>. Any fee prescribed<sup>26</sup> must be of an amount approved by the Treasury<sup>27</sup>, and

different fees may be prescribed for different circumstances and in relation to licences in different forms<sup>28</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For regulations made under the Road Traffic Act 1988 s 105 (as amended) see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864 (as amended). For regulations having effect as if made under the Road Traffic Act 1988 s 105 by virtue of the Road Traffic (Consequential Provisions) Act 1988 s 2(2) see the Goods Vehicles (Ascertainment of Maximum Gross Weights) Regulations 1976, SI 1976/555.

3 Ie under the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended) and the Road Traffic Offenders Act 1988 s 2 (as amended) (see PARA 1028 post), s 7 (as amended) (see PARA 1032 post), s 8 (as amended) (see PARA 1033 post), ss 23-26 (s 25 as amended; and ss 24, 26 as substituted and amended) (see PARAS 1044-1046 post), s 27 (as amended) (see PARA 1047 post), s 31 (as amended) (see PARA 1054 post), ss 34-48 (s 41A as added; ss 42, 44, 45, 46, 47 as amended; and s 48 as substituted) (see PARA 1058 et seq post), ss 91ZA-91B (as added) (see PARAS 1024-1025, 1084 post): Road Traffic Act 1988 s 105(5) (amended by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 17, 23(b); the Road Safety Act 2006 s 58(2); and the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 17(3)). As from a day to be appointed, the Road Traffic Act 1988 s 105(5) (as amended) is further amended by the Road Safety Act 2006 s 10, Sch 3 paras 2, 13(1), (3) so as to substitute for the reference to s 91ZA-91B (as added) a reference to s 91ZA (as added) and s 91A (as added). At the date at which this volume states the law no such day had been appointed.

4 'Prescribed' means prescribed by regulations: Road Traffic Act 1988 s 108(1). 'Regulations' means regulations made under s 105: s 108(1).

5 Ibid s 105(1). The power is very broad. The powers in respect of specific matters in s 105(2) (as amended) are expressed to be without prejudice to the generality of the provisions of s 105(1): see s 105(2) (as amended); and the text and notes 9-23 infra.

6 Ie licences under ibid Pt III (as amended). 'Licence' (except where the context otherwise requires) means a licence to drive a motor vehicle granted under the Road Traffic Act 1988 Pt III (as amended) (see PARAS 444-484 post): s 108(1) (definition amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 15). The expression 'licence' as used in the Road Traffic Act 1988 normally, though not always, refers to the document itself rather than the authority to drive which it confers.

7 'Northern Ireland driving licence' or 'Northern Ireland licence' means a licence to drive a motor vehicle granted under the law of Northern Ireland: Road Traffic Act 1988 s 108(1) (definition added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 15).

8 For the meaning of 'Community licence' see PARA 415 note 16 ante.

9 For the meaning of 'counterpart' see PARA 415 note 19 ante.

10 Road Traffic Act 1988 s 105(2)(a) (substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 17(a)). As from a day to be appointed, the Road Traffic Act 1988 s 105(2)(a) (as substituted) is amended by the Road Safety Act 2006 s 10(12), Sch 3 paras 2, 13(1), (2)(a), so that head (1) in the text will refer only to licences, Northern Ireland licences and Community licences. At the date at which this volume states the law no such day had been appointed.

11 'Disqualified' means disqualified for holding or obtaining a licence (or, in cases where the disqualification is limited, a licence to drive motor vehicles of the class to which the disqualification relates); and 'disqualification' is to be interpreted accordingly: Road Traffic Act 1988 s 108(1) (definition amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 15).

12 Ie under the Road Traffic Act 1988 Pt III (as amended).

13 Ibid s 105(2)(b) (substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 17(a); and amended by the Crime (International Co-operation) Act 2003 Sch 5 para 23(a) (i), (ii)). As from a day to be appointed, the Road Traffic Act 1988 s 105(2)(b) (as substituted and amended) is further amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 para 13(2)(b), Sch 7 so as to remove the reference to counterparts. At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed, the Road Traffic Act 1988 s 105(2)(b) (as substituted and amended) is repealed by the Criminal Justice and Court Services Act 2000 ss 71(5), 75, Sch 8. At the date at which this volume states the law no such day had been appointed.



14 Road Traffic Act 1988 s 105(2)(c).

15 Ibid s 105(2)(d).

16 Ibid s 105(2)(e) (amended by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, regs 10(2), 17, Schedule). As from a day to be appointed, the Road Traffic Act 1988 s 105(2)(e) (as amended) is further amended by the Road Safety Act 2006 Sch 3 para 13(2)(c), Sch 7 so as to remove the references to counterparts. At the date at which this volume states the law no such day had been appointed.

17 Road Traffic Act 1988 s 105(2)(ea) (added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 17(b); and amended by the Crime (International Co-operation) Act 2003 Sch 5 para 23(a)(iii)). As from a day to be appointed, the Road Traffic Act 1988 s 105(2)(ea) (as added and amended) is repealed by the Road Safety Act 2006 Sch 3 para 13(2)(d), Sch 7. At the date at which this volume states the law no such day had been appointed.

18 As to classes of vehicles see PARA 208 ante.

19 For the meaning of 'motor vehicle' see PARA 210 ante.

20 'Test of competence to drive' means such a test conducted under the Road Traffic Act 1988 s 89: s 108(1). As to tests of competence see PARA 451 post.

21 Ibid s 105(2)(ee) (added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 14; and amended by the Road Traffic Act 1991 s 83, Sch 8).

22 Road Traffic Act 1988 s 105(2)(f) (amended by the Crime (International Co-operation) Act 2003 Sch 5 para 23(a)(iv); the Road Traffic Act 1991 s 83, Sch 8; and the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 17(c)).

23 Road Traffic Act 1988 s 105(2)(g).

24 Ibid s 105(2).

25 Ibid s 105(3). Nothing in the other provisions of Pt III (as amended) is to be construed as prejudicing the generality of s 105(3)(a)-(c): s 105(3).

26 Ie prescribed under ibid Pt III (as amended).

27 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

28 Road Traffic Act 1988 s 105(4) (amended by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 10(3)).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(ii) Requirement to hold a Driving Licence/444. Drivers of motor vehicles to hold driving licences.

## (ii) Requirement to hold a Driving Licence

### 444. Drivers of motor vehicles to hold driving licences.

It is an offence for a person to drive<sup>1</sup> on a road<sup>2</sup> a motor vehicle<sup>3</sup> of any class<sup>4</sup> otherwise than in accordance with a licence<sup>5</sup> authorising him to drive a motor vehicle of that class<sup>6</sup>. It is also an offence for a person to cause or permit another person to drive on a road a motor vehicle of any class otherwise than in accordance with a licence authorising that other person to drive a motor vehicle of that class<sup>7</sup>.

1 For the meaning of 'drive' see PARA 207 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 For the meaning of 'motor vehicle' see PARA 210 ante.

4 As to classes of vehicles see PARA 208 ante.

5 For the meaning of 'licence' see PARA 443 note 6 ante.

6 Road Traffic Act 1988 s 87(1) (s 87 amended by the Road Traffic Act 1991 s 17). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale; disqualification is discretionary in a case where the offender's driving would not have been in accordance with any licence that could have been granted to him; endorsement is obligatory in a case where the offender's driving would not have been in accordance with any licence that could have been granted to him; and 3-6 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 26, Sch 2). An offence under the Road Traffic Act 1988 s 87(1) (as amended) of driving a vehicle otherwise in accordance with the requisite licence is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3 (entry amended by the Road Traffic Act 1991 s 48, Sch 4 para 112(4)). As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; and as to legal proceedings generally see PARA 1023 et seq post.

A person may be convicted of driving otherwise than in accordance with a licence if, for example, he drives while holding no licence, while not holding a licence for that class of vehicle, while under age, or while in breach of provisional licence conditions: see PARA 462 et seq post.

The Road Traffic Act 1988 s 87 (as amended) applies to tramcars with certain modifications: see the Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 8. For the meanings of 'tramcar' and 'trolley vehicle' see PARA 219 ante. As to tramcars and trolley vehicles see PARA 1532 et seq post.

The Secretary of State may make payments to police authorities in relation to the prevention, detection and enforcement of offences under the Road Traffic Act 1988 s 87(1): see the Serious Organised Crime and Police Act 2005 s 155.

7 Road Traffic Act 1988 s 87(2) (as amended: see note 6 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (amended by the Road Traffic Act 1991 Sch 2). As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

## **UPDATE**

### **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(ii) Requirement to hold a Driving Licence/445. Requirements for the grant of driving licences.

#### 445. Requirements for the grant of driving licences.

A licence<sup>1</sup> authorising the driving<sup>2</sup> of motor vehicles<sup>3</sup> of any class<sup>4</sup> cannot be granted to any person unless he meets the relevant residence requirement<sup>5</sup> and satisfies the Secretary of State that he meets any one of the following seven requirements<sup>6</sup>, namely that<sup>7</sup>:

- 773 (1) at some time during the period of two years ending with the date the application is made but not earlier than the appointed day<sup>8</sup> he has passed<sup>9</sup>:
- 29
66. (a) the prescribed<sup>10</sup> test of competence to drive<sup>11</sup>;
67. (b) a Northern Ireland test of competence to drive which corresponds to such a test<sup>12</sup>; or
68. (c) a test of competence which is a sufficient test<sup>13</sup>; or
- 30
- 774 (2) at some time not earlier than the appointed day he has held<sup>14</sup>:
- 31
69. (a) a full licence<sup>15</sup> authorising the driving of vehicles of that class<sup>16</sup>; or
70. (b) a full Northern Ireland licence<sup>17</sup> authorising the driving of vehicles of that or a corresponding class<sup>18</sup>;
- 32
- 775 or, if it is available to him, he satisfies the relevant alternative requirement<sup>19</sup>; or
- 776 (3) at some time during the period of two years ending with the date the application is made he has passed a test of competence to drive vehicles of that or a corresponding class or for the purpose of obtaining a British Forces licence<sup>20</sup>; or
- 777 (4) at some time not earlier than the appointed day he has held a full British external licence<sup>21</sup>, or a full British Forces licence to drive vehicles of that or a corresponding class<sup>22</sup>; or
- 778 (5) at some time during the period of two years ending with the date the application is made he has passed a test of competence to drive vehicles of that or a corresponding class conducted under the law of Gibraltar<sup>23</sup>; or
- 779 (6) either at the time of the application for the licence he holds a Community licence<sup>24</sup> authorising the driving of vehicles of that or a corresponding class or at some time he has held such a Community licence<sup>25</sup>; or
- 780 (7) that, at the time of the application for the licence, he holds an exchangeable licence<sup>26</sup> authorising the driving of vehicles of that or a corresponding class<sup>27</sup>.

1 For the meaning of 'licence' see PARA 443 note 6 ante.

2 For the meaning of 'drive' see PARA 207 ante.

3 For the meaning of 'motor vehicle' see PARA 210 ante.

4 As to classes of vehicles see PARA 208 ante.

5 An applicant meets the relevant residence requirement referred to in the Road Traffic Act 1988 s 89(1) (as amended) if on the date the application for the licence is made:

74 (1) in a case where he satisfies the Secretary of State in respect of s 89(1)(ea) (as added), he is normally resident in the United Kingdom or has been attending a course of study in the United Kingdom during the period of six months ending on that date (s 89(1A)(a) (s 89(1A) added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 2(3));

75 (2) in a case where he satisfies the Secretary of State in respect of the Road Traffic Act 1988 s 89(1)(f) (as substituted) (see head (7) in the text), he is normally resident in Great Britain but has not been so resident for more than the prescribed period (s 89(1A)(b) (as so added)); and

76 (3) in any other case, he is normally resident in Great Britain (s 89(1A)(c) (as so added)).

As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. For the meaning of 'United Kingdom' see PARA 224 note 5 ante. For the meaning of 'Great Britain' see PARA 205 note 3 ante. For the meaning of 'prescribed' see PARA 443 note 4 ante.

The expression 'normally resident' is not defined or explained in the Road Traffic Act 1988. It is submitted that it must be construed in accordance with EC Council Directive 91/439 (OJ L237, 24.8.91, p 1) on driving licences, art 9 as the amendment inserting the requirement that an applicant be normally resident in Great Britain was by virtue of regulations expressed to be made for the purpose of implementing that Directive.

6 le the requirements set out in the Road Traffic Act 1988 s 89(1) (as amended): see heads (1)-(7) in the text.

7 See ibid s 89(1) (amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1, PARA 2(2)). For the purposes of the Road Traffic Act 1988 s 89(1) (as amended):

77 (1) a licence which has been revoked under s 99(3) (as amended) (see PARA 472 post) or under any corresponding provision of the law of Northern Ireland, the relevant external law, or the law of an EEA state other than the United Kingdom, as a licence granted in error must be disregarded for the purposes of s 89(1)(b) (as substituted), s 89(1)(d) (as substituted), or s 89(1)(ea) (as added) (as the case may be) (s 89(2)(a) (s 89(2) substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 4(3); and the Road Traffic Act 1988 s 89(2)(a) further substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 2(4));

78 (2) a British external licence to drive any class of goods vehicle or any class of passenger-carrying vehicle is to be disregarded for the purposes of the Road Traffic Act 1988 s 89(1)(d) (as substituted) unless the Secretary of State, by order made by statutory instrument, designates the relevant external law under which it is granted as one which makes satisfactory provision for the granting of such licences (s 89(2)(c) (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 4(3))).

'Relevant external law' means the law for the time being in force in the Isle of Man or any of the Channel Islands which corresponds to the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended): s 88(8) (added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 3). For the meaning of 'EEA state' see PARA 415 note 16 ante.

The Driving Licences (Designation of Relevant External Law) Order 1996, SI 1996/3206, and the Driving Licences (Designation of Relevant External Law) Order 2002, SI 2002/2590, have been made under the Road Traffic Act 1988: see s 88(8) (as so added), s 89(2)(c) (as so substituted).

8 For the purposes of ibid s 89 (as amended), s 89A (as added and amended), 'the appointed day' means the day appointed for the coming into force of the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 1, that is 1 April 1991: see the Road Traffic Act 1988 s 89(11) (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 8(e); and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 2(10)).

9 Road Traffic Act 1988 s 89(1)(a) (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 4(2); and amended by the Road Safety Act 2006 s 59, Sch 7). As from a day to be appointed, the Road Traffic Act 1988 s 89(1)(a) (as substituted and amended) is further amended by the Road Safety Act 2006 s 38(1)(a), so that the requirement will be that he has, at such time or within such period as is prescribed, passed a test of competence to drive as described in the text.

10 le prescribed by virtue of the Road Traffic Act 1988 s 89(3) (as amended): see PARA 449 notes 2-6 post.

11 Ibid s 89(1)(a)(i) (as substituted: see note 9 supra). For the meaning of 'test of competence to drive' see PARA 443 note 20 ante.

12 Ibid s 89(1)(a)(ii) (as substituted: see note 9 supra). A test of competence falling within head (1)(b), head (3) or head (5) in the text is to be treated as sufficient for the granting of a licence authorising the driving of:

79 (1) vehicles of all classes designated by regulations as a group for the purposes of head (1) in the text, if (unless the regulations otherwise provide) at the time the test was passed it authorised the granting of a licence to drive vehicles of any class included in the group, or of any

class corresponding to a class included in the group (s 89(9)(a) (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 8(e); and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 2(8)); and

- 80 (2) vehicles of all classes included in another such group, if a person passing a test of competence authorising the granting of a licence to drive vehicles of a class included in the group mentioned in head (1) *supra* is treated by virtue of regulations as competent also to drive vehicles of a class included in that other group (Road Traffic Act 1988 s 89(9)(b) (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 8(e))).

As to groupings of vehicles for the purposes of the Road Traffic Act 1988 s 89 (as amended) see PARA 454 post.

13 *Ibid* s 89(1)(a)(iii) (as substituted: see note 9 *supra*). The text refers to a test of competence which under s 89(6) (as amended) is a sufficient test: see s 89(1)(a)(iii) (as so substituted). Section 89(6) (amended by the Road Safety Act 2006 s 59, Sch 7) provides that for these purposes a test of competence is to be sufficient for the granting of a licence authorising the driving of:

- 81 (1) vehicles of any class, if at the time the test was passed it authorised the granting of a licence to drive vehicles of that class (Road Traffic Act 1988 s 89(6)(a) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 3 para 8(b)));
- 82 (2) vehicles of all classes which are designated by regulations as a group for the purposes of the Road Traffic Act 1988 s 89(1)(a) (as substituted), if at the time the test was passed it authorised the granting of a licence to drive vehicles of any class included in the group (s 89(6) (b) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 3 para 8(b))); and
- 83 (3) vehicles of all classes included in another such group, if a person passing the test is treated by virtue of regulations made for these purposes as competent also to drive vehicles of a class included in that other group (Road Traffic Act 1988 s 89(6)(c)) (added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 3 para 8(b))).

The Road Traffic Act 1988 s 89(6) is amended by the Transport Act 2000 s 260, Sch 29 paras 1, 2 as from a day to be appointed, making it subject to regulations under the Road Traffic Act 1988 s 99ZA (as added) (see PARA 485 post). At the date at which this volume states the law no such day had been appointed.

It is difficult to see how a test could ever be 'sufficient' for the purposes of s 89(1) (as amended) by applying the test laid down in s 89(6) (as amended) and yet not also fall within s 89(1)(a)(i) (as substituted) as a test prescribed by virtue of s 89(3) (as amended) (see PARA 449 post) which provides, *inter alia*, that regulations may make provision generally with respect to tests of competence including presumably provision as to the nature of the entitlement gained upon passing the test. It appears that this is a vestige of earlier legislation which was not removed in the course of the 1988 consolidation and which was designed to preserve the rights of persons who had passed a test conducted under legislation in force prior to that. Whatever the position, the regulations do treat certain tests of competence as sufficient for authorising the grant of a licence to drive a different class of vehicle from the one in which the test was passed: see PARAS 451, 454 post.

14 *Ibid* s 89(1)(b) (s 89(1)(b) substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 4(2)).

15 'Full licence' means a licence other than a provisional licence: Road Traffic Act 1988 s 108(1) (definition added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 15).

16 Road Traffic Act 1988 s 89(1)(b)(i) (as substituted: see note 14 *supra*). If vehicles of any classes are designated by regulations as a group for the purposes of s 89(1)(b) (as substituted), a licence authorising the driving of vehicles of a class included in the group is to be deemed for the purposes of s 89(1)(b)(i) (as substituted) or s 89A(4)(a) (as added) (the alternative requirement) to authorise: (1) the driving of vehicles of all classes included in the group unless the regulations otherwise provide; and (2) vehicles of all classes included in another such group if the licence holder is treated by virtue of regulations as competent also to drive vehicles of a class included in that other group: s 89(7) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 3 para 8(c), (d); and the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 2(6)). The reference in the Road Traffic Act 1988 s 89(7) (as amended) to a licence does not include a licence which has been revoked in pursuance of s 99(3) (as amended) (see PARA 472 note 1 post): s 89(7) (as so amended).

As to groupings of vehicles for the purposes of s 89 (as amended) see PARA 454 post.

17 For the meaning of 'Northern Ireland licence' see PARA 443 note 7 *ante*.

18 Road Traffic Act 1988 s 89(1)(b)(ii) (as substituted: see note 14 supra). A full Northern Ireland licence, a full British external licence, a full British Forces licence, a Community licence or an exchangeable licence are treated for the purposes of s 89(1)(b)(ii) (as substituted), s 89(1)(d) (as substituted and amended), s 89(1)(ea) (as added) or s 89(1)(f) (as substituted), as the case may be, as authorising the driving of: (1) vehicles of all classes designated by regulations as a group for the purposes of s 89(1)(b) (as substituted), unless the regulations otherwise provide, if the licence authorises the driving of vehicles of any class included in the group, or any class corresponding to a class included in the group; and (2) vehicles of all classes included in another such group, if by virtue of regulations a person holding a licence authorising him to drive vehicles of any class included in the group so mentioned is treated as competent also to drive vehicles of a class included in that other group: see s 89(10) (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 3 para 8(e); and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 2(9)).

19 Road Traffic Act 1988 s 89(1)(b) (as substituted: see note 14 supra). The relevant alternative requirement is that specified in s 89A (as added): see s 89(1)(b) (as so substituted). The requirement which is alternative to that specified in head (2) in the text on an application by a person for a licence authorising the driving of motor vehicles of any class other than a prescribed class of goods or passenger-carrying vehicle prescribed for the purposes of s 89A(5) (as added) is that at some time before the appointed day (see note 8 supra) but not earlier than 1 January 1976 he has held a full licence authorising the driving of vehicles of a class corresponding to the class of motor vehicle to which his application relates (s 89A(4)(a) (s 89A added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 4(4))), or a full Northern Ireland licence authorising the driving of vehicles of a class corresponding to the class of motor vehicle to which his application relates (Road Traffic Act 1988 s 89A(4)(b) (as so added)).

For the meaning of 'goods vehicle' see PARA 220 ante. For the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 post; definition applied by s 108(1) (definition added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 15).

For the purposes of the Road Traffic Act 1988 s 89A (as added and amended), 'heavy goods vehicle' and 'public service vehicle' have the same meanings as they had for the purposes of Pt IV (ss 110-122) (as substituted and amended) or the Public Passenger Vehicles Act 1981 s 22 before their repeal by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 1: Road Traffic Act 1988 s 89A(7) (as so added). For the meaning of 'prescribed' see PARA 443 note 4 ante. For the prescribed classes of goods and passenger-carrying vehicle see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 49.

There is no longer an alternative requirement available to a person on an application for a licence authorising the driving of a prescribed class of goods or passenger-carrying vehicle, the relevant provision having expired on 31 March 1996.

20 Road Traffic Act 1988 s 89(1)(c) (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 4(2); and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 2(2)). As from a day to be appointed, the Road Traffic Act 1988 s 89(1)(c) (as substituted and amended) is further amended by the Road Safety Act 2006 s 38(1)(b), so that the requirement will be that he has, at such time or within such period as is prescribed, passed a test of competence to drive as described in the text. 'British Forces licence' means a licence granted in the Federal Republic of Germany by the British authorities to members of the British Forces or of the civilian components of those forces or their dependants: Road Traffic Act 1988 s 88(8) (as added: see note 7 supra).

21 'British external licence' means a licence granted in the Isle of Man or any of the Channel Islands under the relevant external law: *ibid* s 88(8) (as added: see note 7 supra).

22 *Ibid* s 89(1)(d) (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 4(2); and amended by the Road Safety Act 2006 s 59, Sch 7).

23 Road Safety Act 2006 s 89(1)(e) (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 4(2); and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 2(2)). As from a day to be appointed, the Road Traffic Act 1988 s 89(1)(e) (as substituted and amended) is further amended by the Road Safety Act 2006 s 38(1)(b), so that the requirement will be that he has, at such time or within such period as is prescribed, passed a test of competence to drive as described in the text.

24 For the meaning of 'Community licence' see PARA 415 note 16 ante.

25 Road Traffic Act 1988 s 89(1)(ea) (added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 2(2)).

26 'Exchangeable licence' means a document authorising a person to drive a motor vehicle (not being a document mentioned in head (2) of the definition of 'Community licence') which is: (1) issued in respect of Gibraltar by an authority of Gibraltar; (2) issued in respect of a country or territory which is designed without

restriction by an order under the Road Traffic Act 1988 s 108(2)(a) (as substituted) by an authority of that country or territory; or (3) issued in respect of a country or territory which is designated by a restricted order under s 108(2)(b) (as substituted) by an authority of that country or territory, being a document which is a licence of a description specified in that order, and a licence of a description so specified as to which provision is made as mentioned in s 108(2B) (as added) is only an exchangeable licence to the extent that it authorises its holder to drive vehicles of a class specified in the order: s 108(1) (definition substituted by the Deregulation (Exchangeable Driving Licences) Regulations 1998, SI 1998/1917, reg 2(2)). For the purposes of the Road Traffic Act 1988 s 89 (as amended) and s 88(1) (as amended) (see PARA 446 post), an exchangeable licence issued in respect of a country or territory is not to be treated as authorising a person to drive a vehicle of any class if the licence is not for the time being valid for that purpose, or it was issued in respect of that class for a purpose corresponding to that mentioned in s 97(2) (provisional licences): s 89(8) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 3 para 8(c), (d); and the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 2(7)).

27 Road Traffic Act 1988 s 89(1)(f) (substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 2(2)).

The Road Traffic Act 1988 s 89(1) (as amended) is subject to the provisions of Pt III (ss 87-109C) (as amended) as to provisional licences and to the provisions of any regulations made by virtue of s 105(2)(f) (as amended) (see PARA 443 note 22 ante): s 89(1). 'Provisional licence' means a licence granted by virtue of s 97(2) (see PARA 464 note 4 post): s 108(1). For the meaning of 'regulations' see PARA 443 note 4 ante.

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(iii) Exceptions to the Requirement to hold a Driving Licence/446. Qualifying applicants and persons temporarily without a valid licence.

### (iii) Exceptions to the Requirement to hold a Driving Licence

#### 446. Qualifying applicants and persons temporarily without a valid licence.

Notwithstanding that he does not hold a licence<sup>1</sup> authorising him to do so, a person may drive<sup>2</sup>, or cause or permit<sup>3</sup> another person to drive, a vehicle of any class at any time<sup>4</sup>:

781 (1) if the person driving it has held<sup>5</sup>:

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- 71. (a) a licence<sup>6</sup> to drive vehicles of that or a corresponding class<sup>7</sup>;
- 72. (b) a Community licence<sup>8</sup> to drive vehicles of that or a corresponding class<sup>9</sup>;
- 73. (c) a Northern Ireland licence<sup>10</sup> to drive vehicles of that or a corresponding class<sup>11</sup>;
- 74. (d) a British external licence<sup>12</sup> or British Forces licence<sup>13</sup> to drive vehicles of that or a corresponding class<sup>14</sup>;
- 75. (e) an exchangeable licence<sup>15</sup> to drive vehicles of that or a corresponding class<sup>16</sup>; and

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782 (2) either of the following applies<sup>17</sup>:

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76. (a) a qualifying application<sup>18</sup> made by him for the grant of a licence to drive vehicles of that class for a period which includes that time has been received by the Secretary of State<sup>19</sup>; or

77. (b) a licence to drive vehicles of that class granted to him has been revoked or surrendered<sup>20</sup> otherwise than by reason of a current disqualification or of its having been granted in error and he has complied with the relevant requirements<sup>21</sup>; and

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783 (3) any conditions which apply<sup>22</sup> to the driving under the authority of the licence of vehicles of that class are complied with<sup>23</sup>.

The benefit of the exemption described at heads (1), (2) and (3) above does not extend:

784 (i) beyond the date when a licence is granted in pursuance of the qualifying application<sup>24</sup> or (as the case may be) in consequence of the revocation or surrender<sup>25</sup> mentioned in head (2) above<sup>26</sup>; or

785 (ii) in a case where a licence is not in fact so granted, beyond the expiration of the period of one year or such shorter time as may be prescribed, beginning on the date of the qualifying application or (as the case may be) the revocation or surrender mentioned in head (2) above<sup>27</sup>; or

786 (iii) in a case where a licence is refused<sup>28</sup>, beyond the day on which the applicant receives notice of the refusal<sup>29</sup>.

As from a day to be appointed, the benefit of the exemption described at heads (1), (2) and (3) above does not apply by virtue of an application mentioned in head (2) above having been received by the Secretary of State if:

787 (A) the application was made as a result of, or in anticipation of, the expiry of a disqualification relevant to the licence applied for;

788 (B) either the nature of the disqualification or its imposition within a particular period after an earlier disqualification amounted to circumstances prescribed in relation to disqualification for high risk offenders<sup>30</sup>; and

789 (C) the Secretary of State has notified the applicant that, because of that, he will be subject to a requirement<sup>31</sup> to authorise the release of medical information or to submit to a medical examination<sup>32</sup>.

1 For the meaning of 'licence' see PARA 443 note 6 ante.

2 For the meaning of 'drive' see PARA 207 ante.

3 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

4 Road Traffic Act 1988 s 88(1) (amended by the Road Safety Act 2006 s 58(1)). This is notwithstanding the requirement to hold a licence: see the Road Traffic Act 1988 s 88(1) (as so amended). Such a licence is granted under Pt III (ss 87-109C) (as amended): see PARA 462 et seq post. As to the entitlement to drive of a person holding a Community licence by virtue of s 99A (as added and amended) see PARA 473 post. As to the entitlement to drive of a person holding a Northern Ireland licence by virtue of s 109 (as amended) see PARA 484 post. As to classes of vehicles see PARA 208 ante.

5 Ibid s 88(1)(a) (s 88(1)(a) substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 3).

6 Ie under the Road Traffic Act 1988 Pt III (as amended).

7 Ibid s 88(1)(a)(i) (as substituted: see note 5 supra).

8 For the meaning of 'Community licence' see PARA 415 note 16 ante.



9 Road Traffic Act 1988 s 88(1)(a)(ia) (s 88(1)(a) as substituted (see note 5 supra); and s 88(1)(a)(ia) added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 1).

10 For the meaning of 'Northern Ireland licence' see PARA 443 note 7 ante.

11 Road Traffic Act 1988 s 88(1)(a)(ii) (as substituted: see note 5 supra).

12 For the meaning of 'British external licence' see PARA 445 note 21 ante.

13 For the meaning of 'British Forces licence' see PARA 445 note 20 ante.

14 Road Traffic Act 1988 s 88(1)(a)(iii) (as substituted: see note 5 supra).

15 For the meaning of 'exchangeable licence' see PARA 445 note 26 ante.

The Secretary of State may by order made by statutory instrument designate a country or territory which neither is nor forms part of an EEA state for the purposes of the definition of 'exchangeable licence':

84 (1) as respects all licences authorising the driving of motor vehicles granted under the law of that country or territory, where the Secretary of State is satisfied that satisfactory provision is made by that law for the granting of licences to drive motor vehicles (ibid s 108(2)(a) (s 108(2) substituted by the Deregulation (Exchangeable Driving Licences) Regulations 1998, SI 1998/1917, reg 2(3)); or

85 (2) as respects only licences authorising the driving of motor vehicles granted under the law of that country or territory of a description specified in the order, where the Secretary of State is satisfied that satisfactory provision is made by that law for the granting of licences of that description (Road Traffic Act 1988 s 108(2)(b) (as so substituted)).

For the meaning of 'EEA state' see PARA 415 note 16 ante.

An order under head (2) supra may specify a description of licence by reference to any feature of the licences concerned (including in particular the circumstances in which they are granted, any conditions to which they are subject or the classes of vehicle which they authorise the holders to drive): s 108(2A) (added by the Deregulation (Exchangeable Driving Licences) Regulations 1998, SI 1998/1917, reg 2(3)). Such an order may also provide that a licence of a specified description is only to be treated as an exchangeable licence in so far as it authorises its holder to drive vehicles of a class specified in the order: Road Traffic Act 1988 s 108(2B) (added by the Deregulation (Exchangeable Driving Licences) Regulations 1998, SI 1998/1917, reg 2(3)). Before making any order under the Road Traffic Act 1988 s 108(2) (as substituted), the Secretary of State must consult with such representative organisations as he thinks fit: s 108(3). The Driving Licences (Exchangeable Licences) Order 1999, SI 1999/1641, the Driving Licences (Exchangeable Licences) Order 2002, SI 2002/2379, the Driving Licences (Exchangeable Licences) Order 2004, SI 2004/301, the Driving Licences (Exchangeable Licences) Order 2007, SI 2007/95, and the Driving Licences (Exchangeable Licences) (Amendment) Order 2007, SI 2007/96, have been made under the Road Traffic Act 1988 s 108(2) (as substituted), and (by virtue of the Road Traffic (Consequential Provisions) Act 1988 s 2(2) and the Interpretation Act 1978 s 17(2)(b)) the Driving Licences (Exchangeable Licences) Order 1984, SI 1984/672 (amended by SI 2002/1593) has effect as if made under it.

As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

16 Road Traffic Act 1988 s 88(1)(a)(iv) (as substituted: see note 5 supra).

17 Ibid s 88(1)(b).

18 An application for the grant of a licence to drive vehicles of any class is a qualifying application for the purposes of ibid s 88(1)(b)(i) if:

86 (1) the requirements of s 97(1)(a), s 97(1)(b) so far it relates to initial evidence, and s 97(1)(c) (see PARA 462 post) have been satisfied (s 88(1A)(a) (s 88(1A) added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 3));

87 (2) the applicant:

1. (a) is not subject to a current disqualification which is relevant to the licence he applies for (Road Traffic Act 1988 s 88(1A)(b)(i) (as so added)); and

2. (b) is not prevented from obtaining it by s 89 (see PARAS 445 ante, 449, 451 post), or by the Road Traffic (New Drivers) Act 1995 s 4, Sch 1 paras 6 or 9 (see PARA 517 post) (Road Traffic Act 1988 s 88(1A)(b)(ii) (as so added; and amended by the Road Traffic (New Drivers) Act 1995 s 10(4), Sch 2 paras 1, 2(1), (2) (a); and by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 17, 18(a)); and<sup>2</sup>

88 (3) the declaration made in pursuance of the Road Traffic Act 1988 s 92(1) (see PARA 455 post) indicates that he is not suffering from a relevant disability (s 88(1A)(c) (as so added)).

A disqualification is relevant to the licence for which a person makes an application if:

- 89 (i) in the case of any application made by virtue of s 88(1)(a) (as substituted) (see head (1)(a) in the text), the disqualification subsists under or by virtue of any provision of the Road Traffic Acts and relates to vehicles of the class to which his application relates (s 88(1B)(a) (s 88(1B) added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 3));
- 90 (ii) in the case of an application made by virtue of the Road Traffic Act 1988 s 88(1)(a)(ia) (as added) (see head (1)(b) in the text), the disqualification subsists under or by virtue of any provision of the law of an EEA state (other than the United Kingdom) and relates to vehicles of the class, or of a class corresponding to the class, to which his application relates (s 88(1B)(aa) (added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 1));
- 91 (iii) in the case of an application made by virtue of the Road Traffic Act 1988 s 88(1)(a)(ii) (as substituted) (see head (1)(c) in the text), the disqualification subsists under or by virtue of any provision of the law of Northern Ireland and relates to vehicles of the class, or of a class corresponding to the class, to which his application relates (s 88(1B)(b) (added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 3));
- 92 (iv) in the case of an application made by virtue of the Road Traffic Act 1988 s 88(1)(a)(iii) (as substituted) (see head (1)(d) in the text), the disqualification subsists under or by virtue of any provision of the relevant external law or, as the case may be, is a disqualification for holding or obtaining a British Forces licence and relates to vehicles of the class, or of a class corresponding to the class, to which his application relates (s 88(1B)(c) (added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 3)); and
- 93 (v) in the case of an application made by virtue of the Road Traffic Act 1988 s 88(1)(a)(iv) (as substituted) (see head (1)(e) in the text), the disqualification subsists under or by virtue of any provision of the law of the country or territory under which the licence which he held was granted and relates to vehicles of the class, or of a class corresponding to the class, to which his application relates (s 88(1B)(d) (added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 3; and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 1)).

As from a day to be appointed, the Road Traffic Act 1988 s 88(1B)(a) (as added) (see head (i) supra) is amended by the Crime (International Co-operation) Act 2003 Sch 5 para 18(b), so as to add a reference to disqualification under or by virtue of the Crime (International Co-operation) Act 2003 Pt 3 Ch 1 (ss 54-75) (as amended). At the date at which this volume states the law no such day had been appointed.

A disqualification which does not prevent the person disqualified from obtaining a provisional licence or, as the case may be, a licence corresponding to a provisional licence is relevant to a full licence but not to a provisional licence: Road Traffic Act 1988 s 88(1B) (added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 3).

For the meaning of 'disqualified' see PARA 443 note 11 ante. 'Disability' includes disease and the persistent misuse of drugs or alcohol, whether or not such misuse amounts to dependency: Road Traffic Act 1988 s 92(2) (definition amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 3(2)). 'Relevant disability' in relation to any person means: (A) any prescribed disability; and (B) any other disability likely to cause the driving of a vehicle by him in pursuance of a licence to be a source of danger to the public: Road Traffic Act 1988 s 92(2). For the disabilities which are prescribed for this purpose see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, regs 70, 71(1), 72(1), 73(1)-(7), (11) (regs 72, 73 amended by SI 2003/166). The Driver and Vehicle Licensing Agency ('DVLA') issues guidance to the medical profession from time to time on how it interprets the relevant provisions of the Road Traffic Act 1988. As to the DVLA see PARA 236 ante. For the meaning of 'the Road Traffic Acts' see PARA 202 note 1 ante. For the meaning of 'provisional licence' see PARA 445 note 27 ante. For the meaning of 'full licence' see PARA 445 note 15 ante. For the meaning of 'prescribed' see PARA 443 note 4 ante. For the meaning of 'regulations' see PARA 443 note 4 ante. As to regulations made under the Road Traffic Act 1988 s 105 (as amended) see PARA 443 ante.

19 Ibid s 88(1)(b)(i) (s 88(1)(b) substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 3).

20    Ie in pursuance of the Road Traffic Act 1988 s 99(2A) (as added), s 99(3) (as amended), or s 99(4) (as amended): see PARA 472 post.

21    Ibid s 88(1)(b)(ii) (as substituted: see note 19 supra). The relevant requirements are those imposed under s 99(7B) (as added): see PARA 472 note 16 post.

22    Ie which apply by virtue of ibid s 97(3) (as amended) or s 98(2) (as amended): see PARAS 464, 466 post.

23    Ibid s 88(1)(c). The Secretary of State may by regulations provide that s 88(1) (as amended) is also to apply (where its requirements are otherwise met) in the case of a person who has not previously held a licence to drive vehicles of the relevant class but any such regulations must, if not previously revoked, expire at the end of the period of one year beginning with the day on which they came into operation: see s 88(3), (4). At the date at which this volume states the law no such regulations had been made.

24    Ie an application under ibid s 88(1)(b) (as substituted): see the text and notes 17-21 supra.

25    The licence would be granted in pursuance of ibid s 99(7) (as substituted and amended) or s 99(7A) (as added): see PARA 472 post.

26    Ibid s 88(2)(a) (amended by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 3).

27    Road Traffic Act 1988 s 88(2)(b).

28    Ie refused under ibid s 92(3): see PARA 455 post.

29    Ibid s 88(2)(c) (added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 3).

30    Ie under the Road Traffic Act 1988 s 94(4) (as amended): see PARA 472 post.

31    Ie under ibid s 94(5)(a) or (b): see PARA 458 post.

32    Ibid s 88(2A). This provision is added, as from a day to be appointed, by the Road Safety Act 2006 s 13(1). At the date at which this volume states the law no such day had been appointed. The amendment made by s 13(1) does not apply where the conviction in respect of which the disqualification was ordered was imposed before the coming into force of s 13(1): s 13(2).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(iii) Exceptions to the Requirement to hold a Driving Licence/447. Persons who become resident in Great Britain.

#### 447. Persons who become resident in Great Britain.

Regulations may provide that a person who becomes resident in Great Britain<sup>1</sup> may, during the prescribed period after he becomes so resident, be treated<sup>2</sup> as the holder of a licence<sup>3</sup> authorising him to drive<sup>4</sup> motor vehicles<sup>5</sup> of the prescribed classes if he satisfies the prescribed

conditions, and if he is the holder of a permit of the prescribed description authorising him to drive vehicles under the law of a country outside the United Kingdom<sup>6</sup>.

There are two classes of person who become resident in Great Britain and who are treated<sup>7</sup> as licence holders<sup>8</sup>. A person who is the holder of a relevant permit<sup>9</sup>, and who is not disqualified for holding or obtaining a licence in Great Britain, is, during the period of one year after he becomes so resident, treated as the holder of a licence authorising him to drive all classes of small vehicle<sup>10</sup>, motor bicycle<sup>11</sup> or moped<sup>12</sup> which he is authorised to drive by that permit<sup>13</sup>. A person who is: (1) the holder of a British external licence<sup>14</sup> granted in the Isle of Man or Jersey authorising the driving of large goods vehicles<sup>15</sup> or passenger-carrying vehicles<sup>16</sup> of any class<sup>17</sup>; and (2) not disqualified for holding or obtaining a licence in Great Britain<sup>18</sup> is, during the period of one year after he becomes so resident, treated<sup>19</sup> as the holder of a licence authorising him to drive such vehicles of all classes which he is authorised to drive by that licence<sup>20</sup>.

Such regulations<sup>21</sup> may provide for the application of any enactment relating to licences, counterparts<sup>22</sup> of licences or licence holders, with or without modifications, in relation to any such permit and its holder respectively<sup>23</sup>.

1 It is a question of fact and degree as to whether a person is resident and not merely 'temporarily in Great Britain' and therefore subject to the provisions of the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208 (as amended): *Flores v Scott* [1984] 1 WLR 690, [1984] RTR 363, DC. For the meaning of 'Great Britain' see PARA 205 note 3 ante.

2 le for the purposes of the Road Traffic Act 1988 s 87 (as amended): see PARA 444 ante.

3 For the meaning of 'licence' see PARA 443 note 6 ante.

4 For the meaning of 'drive' see PARA 207 ante.

5 For the meaning of 'motor vehicle' see PARA 210 ante.

6 Road Traffic Act 1988 s 88(5). For regulations made under s 88(5) see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864 (as amended). For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

7 le by virtue of regulations made under the Road Traffic Act 1988 s 88(5). See the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864 (as amended); and the text and notes 8-20 infra.

8 See *ibid* reg 80.

9 'Relevant permit' means: (1) a domestic driving permit; (2) a Convention driving permit; or (3) a British Forces (BFG) driving licence, within the meaning of the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(7) (substituted by SI 1989/993; and amended by SI 1996/1929; SI 1996/1974; SI 2004/1992; and prospectively amended by SI 1989/993), which is: (a) for the time being valid for the purposes for which it was issued; and (b) is not a domestic driving permit or a British Forces (BFG) driving licence in respect of which any order made, or having effect as if made, by the Secretary of State is for the time being in force under the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(6) (as substituted): Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 80(6). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

10 'Small vehicle' means a motor vehicle (other than an invalid carriage, moped or motor bicycle) which is not constructed or adapted to carry more than nine persons inclusive of the driver and which has a maximum gross weight not exceeding 3.5 tonnes; and includes a combination of such a motor vehicle and a trailer: Road Traffic Act 1988 s 108(1) (definition substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 19(2)). For the meaning of 'maximum gross weight' see PARA 413 note 1 ante.

11 'Motor bicycle' means a motor vehicle which has two wheels, and has a maximum design speed exceeding 45 kmph per hour and, if powered by an internal combustion engine, has a cylinder capacity exceeding 50 cubic centimetres, and includes a combination of such a motor vehicle and a side-car: Road Traffic Act 1988 s 108(1) (definition added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 19(2); and amended by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 11).

- 12 'Moped' means a motor vehicle which has fewer than four wheels and:
  - 94 (1) in the case of a vehicle the first use (as defined in regulations made for the purpose of the Road Traffic Act 1988 s 97(3)(d) (as substituted): see PARA 464 post) of which occurred before 1 August 1977, has a cylinder capacity not exceeding 50 cubic centimetres and is equipped with pedals by means of which the vehicle is capable of being propelled (s 108(1) (definition added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 19(2))); and
  - 95 (2) in any other case, has a maximum design speed not exceeding 50 kilometres per hour and, if propelled by an internal combustion engine, has a cylinder capacity not exceeding 50 cubic centimetres (Road Traffic Act 1988 s 108(1) (definition as so added)).
- 13 Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 80(1).
- 14 For the meaning of 'British external licence' see PARA 445 note 21 ante.
- 15 As to large goods vehicles see PARA 487 et seq post.
- 16 'Passenger-carrying vehicle recovery vehicle' means a vehicle (other than an articulated goods vehicle combination as defined in the Road Traffic Act 1988 s 108(1): see PARA 478 note 16 post) which: (1) has an unladen weight not exceeding 10.2 tonnes; (2) is being operated by the holder of a PSV operator's licence; and (3) is being used for the purpose of proceeding to, or returning from, a place where assistance is to be, or has been, given to a damaged or disabled passenger-carrying vehicle, or giving assistance to or moving a disabled passenger-carrying vehicle or moving a damaged vehicle: Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 3.
- 17 See *ibid* reg 80(2)(a), (3)(a) (amended by SI 2003/166).
- 18 See the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 80(2)(b), (3)(b) (amended by SI 2003/166).
- 19 *Ie* treated for the purposes of the Road Traffic Act 1988 s 87 (as amended): see PARA 444 ante.
- 20 See the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 80(2), (3) (amended by SI 2003/166).
- 21 *Ie* regulations made by virtue of the Road Traffic Act 1988 s 88(5) (see note 6 *supra*).
- 22 For the meaning of 'counterpart' para 203 note 19 ante.
- 23 Road Traffic Act 1988 s 88(6). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 2, 3, Sch 7 so as to remove the reference to counterparts. At the date at which this volume states the law no such day had been appointed.

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(iii) Exceptions to the Requirement to hold a Driving Licence/448. Steersmen of slow-moving vehicles.

**448. Steersmen of slow-moving vehicles.**

A person who is not the holder of a licence<sup>1</sup> may act as steersman of a motor vehicle<sup>2</sup>, being a vehicle on which a speed limit of 5 miles per hour or less is imposed<sup>3</sup>, under the orders of another person engaged in the driving of the vehicle who is licensed in that behalf in accordance with the requirements<sup>4</sup> or who is authorised<sup>5</sup> to drive in Great Britain<sup>6</sup> such a motor vehicle, and a person may cause or permit another person who is not the holder of a licence so to act<sup>7</sup>.

1    Ie a licence granted under the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended).

2    For the meaning of 'motor vehicle' see PARA 210 ante. 'Steersman' is not defined in the legislation beyond the definition given here.

3    Ie imposed by or under the Road Traffic Regulation Act 1984 s 86 (as amended): see PARA 850 post.

4    Ie the requirements of the Road Traffic Act 1988 Pt III (as amended) and Pt IV (ss 110-122) (as substituted and amended).

5    Ie authorised by virtue of *ibid* s 99A(1) (as added): see PARA 473 post.

6    For the meaning of 'Great Britain' see PARA 205 note 3 ante.

7    Road Traffic Act 1988 s 88(7) (amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 1). This is notwithstanding the requirement for drivers of motor vehicles to have driving licences: see the Road Traffic Act 1988 s 88(7) (as so amended).

**UPDATE****442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(iv) Driving Tests/449. Regulations making provision with respect to tests of competence to drive.

**(iv) Driving Tests****449. Regulations making provision with respect to tests of competence to drive.**

Regulations<sup>1</sup> may make provision with respect to:

- 790 (1)    the nature of tests of competence to drive, and the administrative arrangements for submitting for such tests<sup>2</sup>;
- 791 (2)    the qualifications, selection and appointment of persons by whom the tests may be conducted, conditions which must be satisfied during the currency of an appointment, the charging of reasonable fees in respect of applications for appointment or appointments or in connection with any examination or assessment

- which may be required before appointment or during the currency of any appointment and the revocation of any appointment<sup>3</sup>;
- 792 (3) the duty of a person submitting himself for a test to produce, and in prescribed circumstances surrender, any licence previously granted to him<sup>4</sup>;
- 793 (4) evidence of the results of such tests<sup>5</sup>,

and generally with respect to such tests<sup>6</sup>.

Regulations under head (1) above<sup>7</sup> may in particular provide:

- 794 (a) for requiring a person submitting himself for a test to provide a safe and suitable vehicle for the purposes of the test and for requiring that, if the vehicle is a vehicle of a prescribed description, it has been certified in the prescribed manner after a prescribed inspection as satisfying such requirements as may be prescribed<sup>8</sup>;
- 795 (b) for requiring a person submitting himself for a test to have been normally resident in Great Britain<sup>9</sup> or the United Kingdom<sup>10</sup> for such period ending on the date of his appointment for the test as may be prescribed<sup>11</sup>;
- 796 (c) for the charging (whether on the making of an appointment for a test or otherwise) of reasonable fees for or in connection with the test and any inspection of a vehicle required by regulations under head (a) above in relation to the test<sup>12</sup>;
- 797 (d) for ensuring that a person submitting himself for a test and failing to pass that test is eligible to submit himself for another test by the same or any other person before the expiration of a period specified in the regulations, except under an order made by a court<sup>13</sup>,

and different regulations may be made with respect to tests of competence to drive different classes of vehicles<sup>14</sup>.

If regulations<sup>15</sup> make provision for a test of competence to drive to consist of separate parts, they may make for each part any provision that could be made for a test not consisting of separate parts<sup>16</sup>.

Regulations under head (2) above may in particular provide<sup>17</sup>:

- 798 (i) for the supply by the Secretary of State<sup>18</sup> to persons by whom tests of competence to drive, or parts of such tests, may be conducted of forms for certificates evidencing the results of such tests or parts of such tests<sup>19</sup>; and
- 799 (ii) for the charging of reasonable fees in respect of the exercise of any function conferred or imposed on the Secretary of State by the regulations<sup>20</sup>.

1 For regulations made under the relevant powers see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864 (amended by SI 2000/2766; SI 2000/3157; SI 2001/53; SI 2001/236; SI 2001/937; SI 2002/2641; SI 2003/166; SI 2003/222; SI 2003/636; SI 2003/2003; SI 2003/3313; SI 2004/265; SI 2004/696; SI 2004/1519; SI 2004/3028; SI 2004/3168; SI 2005/1975; SI 2005/2717; SI 2005/2929; SI 2006/524; SI 2007/698). For the meaning of 'regulations' see PARA 443 note 4 ante.

2 Road Traffic Act 1988 s 89(3)(a) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 63; and the Road Safety Act 2006 s 36(1), (2)(a)). Such regulations may be made for the purposes of the Road Traffic Act 1988 s 89 (as amended) and the Road Traffic Offenders Act 1988 s 36 (as substituted and amended): see PARAS 445 ante, 451, 1071 post. As to tests of competence to drive see PARA 443 note 20 ante. For the meaning of 'drive' see PARA 207 ante.

3 Road Traffic Act 1988 s 89(3)(b) (amended by the Road Safety Act 2006 s 36(2)(b)).

4 Road Traffic Act 1988 s 89(3)(ba) (added by the Road Safety Act 2006 s 36(2)(c)).

5 Road Traffic Act 1988 s 89(3)(c).

- 6 Ibid s 89(3).
- 7 See note 1 supra.
- 8 Road Traffic Act 1988 s 89(4)(a) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 8(a); and the Road Safety Act 2006 s 36(3)(b), (c)).
- 9 For the meaning of 'Great Britain' see PARA 205 note 3 ante.
- 10 For the meaning of 'United Kingdom' see PARA 224 note 5 ante.
- 11 Road Traffic Act 1988 s 89(4)(aa) (added by the Driving Licences (Community Driving Licences) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 2(5)).
- 12 Road Traffic Act 1988 s 89(4)(b) (substituted by the Road Safety Act 2006 s 36(3)(d)). As to fees see PARA 452 post.
- 13 Road Traffic Act 1988 s 89(4)(c). The text refers to a court order made under the power conferred by s 90: see PARA 453 post.
- 14 Ibid s 89(4) (amended by the Road Safety Act 2006 s 36(3)(a)). As to classes of vehicle see PARA 208 et seq ante.
- 15 See note 1 supra.
- 16 Road Traffic Act 1988 s 89(5) (amended by the Road Safety Act 2006 ss 36(4), 59, Sch 7).
- 17 Road Traffic Act 1988 s 89(5ZA) (added by the Road Safety Act 2006 s 36(5)).
- 18 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 19 Road Traffic Act 1988 s 89(5ZA)(a) (as added: see note 17 supra).
- 20 Ibid s 89(5ZA)(b) (as added: see note 17 supra).

## **UPDATE**

### **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **449 Regulations making provision with respect to tests of competence to drive**

NOTE 1--SI 1999/2864 further amended: SI 2008/508, SI 2008/1435, SI 2008/2508, SI 2009/788, SI 2009/2362.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(iv) Driving Tests/450. Approved test assistants.

### **450. Approved test assistants.**



The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> permitting any person wishing to be accompanied at a relevant test<sup>3</sup> by another person (a 'test assistant') to be so accompanied if: (1) he submits himself for the relevant test in any circumstances in which the Secretary of State considers it appropriate that he should be entitled to be so accompanied; and (2) the test assistant is approved in accordance with regulations to accompany people at relevant tests in such circumstances in order to assist them in undergoing the relevant tests<sup>4</sup>.

The circumstances in which the Secretary of State considers it appropriate that a person should be entitled to be accompanied by a test assistant at a relevant test may include, for example, circumstances in which he is likely to have difficulty in hearing, understanding or responding to instructions or questions in the course of the relevant test without assistance<sup>5</sup>.

The regulations may make provision in relation to the approval of test assistants and may, in particular, include provision:

- 800 (a) in relation to the making of applications for approval;
- 801 (b) for the payment in respect of applications for approval or of approvals (or both) of fees of such amounts as are prescribed;
- 802 (c) in relation to the period for which an approval is to have effect and withdrawing approval;
- 803 (d) authorising the imposition of conditions on an approval;
- 804 (e) for an appeal to lie to the Transport Tribunal against a refusal of an application for approval, the imposition of conditions on an approval or the withdrawal of approval;
- 805 (f) prescribing circumstances in which an approved test assistant may not act as such;
- 806 (g) as to the evidencing by persons of their status as approved test assistants; and
- 807 (h) authorising the Secretary of State to make available (with or without charge) information about approved test assistants<sup>6</sup>.

The regulations may make different provision in relation to different cases<sup>7</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'regulations' see PARA 443 note 4 ante.

3 The following are relevant tests: (1) tests of competence to drive a motor vehicle prescribed by virtue of the Road Traffic Act 1988 s 89(3) (as amended) (see PARA 449 ante) or the Road Traffic Offenders Act 1988 s 36(5) (as substituted) (see PARA 1071 post); (2) examinations of ability and fitness (or continued ability and fitness) to give driving instruction for which provision is made by virtue of the Road Traffic Act 1988 s 132 (as amended) (see PARA 422 ante); and (3) emergency control assessments under s 133A (as added) (see PARA 433 ante); s 162A(5) (added by the Road Safety Act 2006 s 43).

4 See the Road Traffic Act 1988 s 162A(1) (as added: see note 3 supra).

5 See *ibid* s 162A(2) (as added: see note 3 supra).

6 *Ibid* s 162A(3) (as added: see note 3 supra). As to the constitution, powers and proceedings of the Transport Tribunal see PARAS 253-258 ante.

7 *Ibid* s 162A(4) (as added: see note 3 supra).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

#### **450 Approved test assistants**

TEXT AND NOTE 6--Head (e), reference to Transport Tribunal is now to First-tier Tribunal: Road Traffic Act 1988 s 162A(3) (amended by SI 2009/1885).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(iv) Driving Tests/451. Tests of competence to drive.

#### **451. Tests of competence to drive.**

Regulations<sup>1</sup> make provision about the nature and conduct of driving tests. Subject to specified provisions of the regulations<sup>2</sup>, the test for a licence<sup>3</sup> authorising the driving of a motor vehicle<sup>4</sup> of a class<sup>5</sup> included in the principal categories A, B, C, D, or P<sup>6</sup> is to be conducted in two parts, namely a test of driving theory and hazard perception, and a practical test of driving skills and behaviour, and a person taking such a test must pass both parts<sup>7</sup>. Where a test is required to be conducted in two parts, a person taking the test must pass the theory test before he takes the practical test<sup>8</sup>. Such a person is also not entitled to apply for an appointment (or, as the case may be, to be nominated<sup>9</sup>) for a practical test in respect of a motor vehicle of a class included in any category until he has been furnished with: (1) a valid theory test pass certificate<sup>10</sup> stating that he has passed the theory test prescribed in respect of that category; or (2) a certificate corresponding to such a certificate furnished under the law of Northern Ireland stating that he has during the relevant period passed the theory test in respect of the same category<sup>11</sup>.

A person is treated as having passed the theory test if he satisfies the person conducting it, in respect of the test of driving theory, of his knowledge and understanding of the specific matters and, in respect of the hazard perception test, that his performance demonstrates an ability to perceive hazards on the road<sup>12</sup>; and he is treated as having passed the practical test if he satisfies the person conducting it of his ability to drive safely and to comply with the specified requirements<sup>13</sup>.

No person<sup>14</sup> submitting himself for a test of competence to drive a motor bicycle<sup>15</sup> is permitted to take the test unless he furnishes the prescribed certificate of completion<sup>16</sup> by him of an approved training course for motor cyclists<sup>17</sup> either with his application for an appointment for a test or to the person who is to conduct the test<sup>18</sup>.

1    le regulations made under the Road Traffic Act 1988 s 89(3) (as amended), s 89(4) (as amended), and s 89(5): see PARA 449 ante. Such regulations are made for the purposes of the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended). For the meaning of 'regulations' see PARA 443 note 4 ante.

2    le the provisions of the Motor Vehicle (Driving Licences) Regulations 1999, SI 1999/2864, reg 40 (as amended) (nature of tests) and reg 42 (as amended) (exemption from theory test). As to the test for a licence authorising the driving of vehicles in categories B and E, C and E, and D and E see reg 40(3). The test for a licence authorising the driving of a motor vehicle of a class included in category F, G, H or K is a one part test called a unitary test and a person taking such a test is treated as having passed it if he satisfies the person conducting it that he is: (1) generally competent to drive a vehicle of that class without danger to, and with due consideration for, other road users; (2) fully conversant with the Highway Code; and (3) able to comply with the

specified requirements: reg 40(6). 'Unitary test' means a test which, by virtue of the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864 (as amended), consists of a single test of both practical driving skills and behaviour and knowledge of the Highway Code and other matters and includes such a test conducted as an extended driving test: reg 3(1). As to the nature of extended driving tests see reg 41. As to the Highway Code see PARA 221 ante.

3 For the meaning of 'licence' see PARA 443 note 6 ante.

4 For the meaning of 'motor vehicle' see PARA 210 ante.

5 As to classes of motor vehicles see PARA 208 ante.

6 As to these and other categories see PARA 454 post.

7 Motor Vehicle (Driving Licences) Regulations 1999, SI 1999/2864, reg 40(2) (amended by SI 2002/2641).

8 Motor Vehicle (Driving Licences) Regulations 1999, SI 1999/2864, reg 40(4)(a).

9 le to be nominated by an instructor pursuant to ibid reg 32(4) or reg 33(4).

10 See ibid reg 3(1).

11 Ibid reg 40(4)(b).

12 Ibid reg 40(5)(a) (substituted by SI 2002/2641). The theory test must be conducted in two parts, one part being the test of driving theory described in the Motor Vehicle (Driving Licences) Regulations 1999, SI 1999/2864, reg 40(8A) (as added) and the other being the hazard perception test described in reg 40(8B) (as added): reg 40(8) (substituted by SI 2002/2641). The test of driving theory must:

- 96 (1) be conducted as an approved form of examination consisting of 35 questions, the questions being in either a multiple choice or multiple response form and testing a candidate on the specified matters in accordance with the Motor Vehicle (Driving Licences) Regulations 1999, SI 1999/2864, Sch 7 (substituted by virtue of SI 2003/636) (Motor Vehicle (Driving Licences) Regulations 1999, SI 1999/2864, reg 40(8A)(a) (reg 40(8A) added by SI 2002/2641)); and
- 97 (2) have a duration of 40 minutes or, where the candidate requires the assistance of a suitably qualified person at the test by virtue of having reading difficulties, 80 minutes (Motor Vehicle (Driving Licences) Regulations 1999, SI 1999/2864, reg 40(8A)(b) (as so added), reg 40(9)).

The hazard perception test must:

- 98 (a) be conducted by means of the exhibition of film clips that take the perspective of the driver of a motor vehicle and show, at some point during each film clip, one or more hazards to traffic occurring on or near the road (reg 40(8B)(a) (reg 40(8B) added by SI 2002/2641)); and
- 99 (b) require the candidate (using electronic equipment provided for the purpose and capable of recording the exact moment of each response) to indicate during each film clip the moment he observes a hazard relating to traffic on the road (Motor Vehicle (Driving Licences) Regulations 1999, SI 1999/2864, reg 40(8B)(b) (as so added)).

'An approved form of examination' means a form of examination which is conducted in writing or by means of data recorded on equipment operating in response to instructions given by the candidate: reg 40(8C) (added by SI 2002/2641). 'Film clip' means a sequence of visual images displayed electronically: Motor Vehicle (Driving Licences) Regulations 1999, SI 1999/2864, reg 40(8C) (as so added).

13 Ibid reg 40(5)(b). For the specified requirements see Sch 8 (substituted by SI 2003/2003; and amended by SI 2003/3313). The practical test and the unitary test must each be conducted so that:

- 100 (1) the person taking the test drives, wherever possible, both on roads outside built-up areas and on urban roads (Motor Vehicle (Driving Licences) Regulations 1999, SI 1999/2864, reg 40(7)(a)); and
- 101 (2) the time during which that person is required to drive on roads is: (a) in the case of a test for a licence authorising the driving of a class of vehicle included in category B and E, C, C and E, D, or D and E, not less than 50 minutes; and (b) in the case of any other test, not less than 30 minutes (reg 40(7)(b)).

Where a person is disqualified by order of a court under the Road Traffic Offenders Act 1988 s 36 (as substituted and amended) (see PARA 1071 post) until he passes an extended driving test, the time during which

he is required to drive on roads is not less than 60 minutes: see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 41(1).

14 Ie except as provided under the Road Traffic Act 1988 s 89(5A) (as added). Regulations may prescribe cases in which persons are exempt from the requirement imposed by s 89(2A) (as added), and the regulations may limit the exemption to persons in prescribed circumstances, limit the exemption to a prescribed period, attach conditions to the exemption, and regulate applications for, and the issue and form of, certificates evidencing a person's exemption from that requirement: s 89(5A) (added by Road Traffic (Driver Licensing and Information Systems) Act 1989 s 6(1)). As to exemptions from the requirement imposed by the Road Traffic Act 1988 s 89(2A) (as added) see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 69(3). As from a day to be appointed, the Road Traffic Act 1988 s 89(5A) is repealed by the Transport Act 2000 s 274, Sch 31 Pt V. At the date at which this volume states the law no such day had been appointed.

15 For the meaning of 'motor bicycle' see PARA 447 note 11 ante.

16 'Prescribed certificate of completion' means the certificate of completion prescribed in regulations under the Road Traffic Act 1988 s 97(3A) (as added and amended) (see PARA 465 post): s 108(1) (definition added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 15). For the forms prescribed see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 68, Sch 13. As from a day to be appointed, the definition of 'prescribed certificate of completion' is repealed by the Transport Act 2000 s 274, Sch 31 Pt V. At the date at which this volume states the law no such day had been appointed.

17 'Approved training course for motor cyclists' means any course of training approved under regulations under the Road Traffic Act 1988 s 97(3A) (as added and amended) (see PARA 465 post): s 108(1) (definition added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 15). For the purposes of the Road Traffic Act 1988 s 97(3)(e) (as added and amended; prospectively repealed) (see PARA 464 post), an approved training course is a course for riders of motor bicycles or mopeds both complying with and conducted in accordance with the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, Pt V (regs 58-69) and approved by the Secretary of State: reg 58(1). As to the provision of approved training courses for riders of motor bicycles and mopeds see reg 58. As from a day to be appointed, the definition of 'approved training course for motor cyclists' is repealed by the Transport Act 2000 s 274, Sch 31 Pt V. At the date at which this volume states the law no such day had been appointed.

18 Road Traffic Act 1988 s 89(2A) (added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 6(1)). Regulations may prescribe cases in which persons are exempt from the requirement imposed by the Road Traffic Act 1988 s 89(2A) (as added): s 89(5A) (added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 6(1)). The regulations may:

- 102 (1) limit the exemption to persons in prescribed circumstances (Road Traffic Act 1988 s 89(5A) (a) (as so added));
- 103 (2) limit the exemption to a prescribed period (s 89(5A)(b) (as so added));
- 104 (3) attach conditions to the exemption (s 89(5A)(c) (as so added));
- 105 (4) regulate applications for, and the issue and form of, certificates evidencing a person's exemption from that requirement (s 89(5A)(d) (as so added)).

As from a day to be appointed, the provisions of the Road Traffic Act 1988 s 89(2A), (5A) are repealed by the Transport Act 2000 Sch 31 Pt V. At the date at which this volume states the law no such day had been appointed.

## **UPDATE**

### **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **451 Tests of competence to drive**

TEXT AND NOTES--See also SI 1999/2864 regs 47A, 47B, Schs 10A-10C (added by SI 2008/1435 and reg 47B amended by SI 2009/788), 10D (added by SI 2009/788).

TEXT AND NOTES 1-13--As to the nature of tests other than extended tests, the content of the tests and passing the test, see SI 1999/2864 regs 40 (substituted by SI 2008/1435 and amended by SI 2009/788), 40A-40C (added by SI 2008/1435 and amended by SI 2009/788, SI 2009/2362), Sch 8A (added by SI 2009/788).

NOTES 2, 13--SI 1999/2864 reg 41 amended: SI 2008/1435.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(iv) Driving Tests/452. Test fees.

## **452. Test fees.**

Fees for tests of competence to drive<sup>1</sup> are prescribed by regulations<sup>2</sup>. The whole or any part of a fee paid in pursuance of such regulations on application for an appointment for a test may be repaid only in the following cases and not otherwise<sup>3</sup>:

- 808 (1) if no appointment is made, or an appointment made is subsequently cancelled by or on behalf of the Secretary of State<sup>4</sup>;
- 809 (2) if the person for whom the appointment is made gives the prescribed notice<sup>5</sup> cancelling the appointment<sup>6</sup>;
- 810 (3) if the person for whom the appointment is made keeps the appointment, but the test does not take place, or is not completed, for reasons attributable neither to him nor to any vehicle provided by him for the purposes of the test<sup>7</sup>; or
- 811 (4) if an order for the repayment of the fee is made by the court pursuant to a finding that the test was not properly conducted in accordance with the regulations<sup>8</sup>.

Fees must be paid to such person as may be prescribed by the regulations, and any such fees received by a person so prescribed (other than any as to which the regulations provide that they are to be paid to the person conducting the test and retained by him as remuneration) must be paid into the Consolidated Fund<sup>9</sup>.

1 For the meaning of 'test of competence to drive' see PARA 443 note 20 ante.

2 The regulations made by virtue of the Road Traffic Act 1988 s 89(4) (as amended): see PARA 449 ante. As to theory tests see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 30 (substituted by SI 2007/698). As to practical and unitary tests see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 35 (amended by SI 2003/2003; SI 2005/1975; SI 2006/524; SI 2007/698); and the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, Sch 5 (substituted by SI 2005/1975; and amended by SI 2007/698).

3 Road Traffic Act 1988 s 91 (amended by the Road Safety Act 2006 s 36(1), (6)).

4 Road Traffic Act 1988 s 91(a). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 The prescribed period is three clear working days before the date of the appointment: see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 36 (amended by SI 2005/2717).

6 Road Traffic Act 1988 s 91(b).

7 Ibid s 91(c).

8 Ibid s 91(d).

9 Ibid s 106(2). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 452 Test fees

NOTE 2--SI 1999/2864 reg 30 amended, reg 35 further amended: SI 2008/508, SI 2008/1435, SI 2009/788. SI 1999/2864 Sch 5 substituted; Sch 5A added: SI 2009/788.

NOTE 5--SI 1999/2864 reg 36 further amended: SI 2009/788.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(iv) Driving Tests/453. Review of conduct of test.

### 453. Review of conduct of test.

On the application<sup>1</sup> of a person who has submitted himself for a test of competence to drive<sup>2</sup>, a magistrates' court may determine whether the test was properly conducted<sup>3</sup>. If it appears that the test was not so conducted, the court may order that the applicant is eligible to submit himself for another test before the expiration of the specified period<sup>4</sup>, and order that any fee payable by the applicant in respect of the test is not to be paid or, if it has been paid, must be repaid<sup>5</sup>.

1 The application is by way of complaint. A magistrates' court may not hear a complaint unless it is made within six months from the time when the matter of complaint arose: see the Magistrates Courts Act 1980 s 127(1); and MAGISTRATES volume 29(2) (Reissue) PARA 589. As to the conduct of proceedings on behalf of the Secretary of State under the Road Traffic Act 1988 s 90 see PARA 453 post. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'test of competence to drive' see PARA 443 note 20 ante.

3 Road Traffic Act 1988 s 90(1) (amended by the Courts Act 2003 s 109(1), (3), Sch 8 para 306, Sch 10). The test must be properly conducted in accordance with regulations: Road Traffic Act 1988 s 90(1) (as so amended). For the meaning of 'regulations' see PARA 443 note 4 ante. For regulations relating to tests of competence to drive see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, regs 22-48 (as amended).

4 Ie specified for the purposes of the Road Traffic Act 1988 s 89(4)(c): see PARA 449 ante.

<sup>5</sup> Ibid s 90(2). Where regulations make provision for a test of competence to drive to consist of separate parts, s 90 (as amended) applies in relation to each part as well as in relation to the whole of the test: s 90(3).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(v) Licensing Categories/454. Driver licensing categories.

## (v) Licensing Categories

### 454. Driver licensing categories.

The Secretary of State<sup>1</sup> must grant licences<sup>2</sup> authorising the driving<sup>3</sup> of motor vehicles<sup>4</sup> in accordance with the categories and sub-categories<sup>5</sup> specified in the relevant regulations<sup>6</sup>. Those categories and sub-categories are designated as groups that include specified classes of vehicles for the purposes of the Road Traffic Act 1988<sup>7</sup>. The licensing categories and sub-categories are divided into two principal parts<sup>8</sup>.

Those in Part 1 are set out in heads (1) to (18) below<sup>9</sup>:

- 812 (1) A: motor bicycles<sup>10</sup>;
- 813 (2) A1: a sub-category of category A comprising learner motor bicycles;
- 814 (3) B: motor vehicles, other than vehicles included in category A, F, K or P, having a maximum authorised mass<sup>11</sup> not exceeding 3.5 tonnes and not more than eight seats in addition to the driver's seat, including a combination of any such vehicle and a trailer where the trailer has a maximum authorised mass not exceeding 750 kilograms, and a combination of any such vehicle and a trailer where the maximum authorised mass of the combination does not exceed 3.5 tonnes and the maximum authorised mass of the trailer does not exceed the unladen weight<sup>12</sup> of the tractor vehicle;
- 815 (4) B1: a sub-category of category B comprising motor vehicles having three or four wheels and an unladen weight not exceeding 550 kilograms;
- 816 (5) B and E: combinations of a motor vehicle and trailer where the tractor vehicle is in category B but the combination does not fall within that category;
- 817 (6) C: motor vehicles having a maximum authorised mass exceeding 3.5 tonnes, other than vehicles falling within category D, F, G or H, including any such vehicle drawing a trailer having a maximum authorised mass not exceeding 750 kilograms;
- 818 (7) C1: a sub-category of category C comprising motor vehicles having a maximum authorised mass exceeding 3.5 tonnes but not exceeding 7.5 tonnes, including any such vehicle drawing a trailer having a maximum authorised mass not exceeding 750 kilograms;
- 819 (8) D: motor vehicles constructed or adapted for the carriage of passengers having more than eight seats in addition to the driver's seat, including any such

- vehicle drawing a trailer having a maximum authorised mass not exceeding 750 kilograms;
- 820 (9) D1: a sub-category of category D comprising motor vehicles having more than eight but not more than 16 seats in addition to the driver's seat and including any such vehicle drawing a trailer with a maximum authorised mass not exceeding 750 kilograms;
- 821 (10) C and E: combinations of a motor vehicle and trailer where the tractor vehicle is in category C but the combination does not fall within that category;
- 822 (11) C1 and E: a sub-category of category C and E comprising combinations of a motor vehicle and trailer where the tractor vehicle is in sub-category C1, the maximum authorised mass of the trailer exceeds 750 kilograms but not the unladen weight of the tractor vehicle, and the maximum authorised mass of the combination does not exceed 12 tonnes;
- 823 (12) D and E: combinations of a motor vehicle and trailer where the tractor vehicle is in category D but the combination does not fall within that category;
- 824 (13) D1 and E: a sub-category of category D and E comprising combinations of a motor vehicle and trailer where the tractor vehicle is in sub-category D1, the maximum authorised mass of the trailer exceeds 750 kilograms but not the unladen weight of the tractor vehicle, the maximum authorised mass of the combination does not exceed 12 tonnes, and the trailer is not used for the carriage of passengers;
- 825 (14) F: agricultural or forestry tractors, including any such vehicle drawing a trailer but excluding any motor vehicle included in category H;
- 826 (15) G: road rollers;
- 827 (16) H: track-laying vehicles steered by their tracks;
- 828 (17) K: mowing machines which do not fall within category A and vehicles controlled by a pedestrian;
- 829 (18) P: mopeds<sup>13</sup>.

A licence authorising the driving of motor vehicles of a class<sup>14</sup> included in a category or sub-category shown in heads (1) to (18) above may be granted to a person who is entitled by virtue of: (a) holding or having held a full licence<sup>15</sup>, a full Northern Ireland licence<sup>16</sup>, a full British external licence<sup>17</sup>, a full British Forces licence<sup>18</sup>, an exchangeable licence<sup>19</sup> or a Community licence<sup>20</sup> authorising the driving of vehicles of that class<sup>21</sup>; or (b) having passed a test for a licence authorising the driving of motor vehicles of that class or a Northern Ireland or Gibraltar test corresponding to such a test<sup>22</sup>.

The categories and sub-categories in Part 2 are set out in heads (i) to (iv) below<sup>23</sup>:

- 830 (i) C1 and E (8.25 tonnes): a sub-category of category C and E comprising combinations of a motor vehicle and trailer in sub-category C1 and E where the maximum authorised mass of the trailer exceeds 750 kilograms and may exceed the unladen weight of the tractor vehicle and where the maximum authorised mass of the combination does not exceed 8.25 tonnes;
- 831 (ii) D1 (not for hire or reward): a sub-category of category D comprising motor vehicles in sub-category D1 driven otherwise than for hire or reward;
- 832 (iii) D1 and E (not for hire or reward): a sub-category of category D and E comprising motor vehicles in sub-category D1 and E where the motor vehicles are driven otherwise than for hire or reward and where the maximum authorised mass of the trailer exceeds 750 kilograms and may exceed the unladen weight of the tractor vehicle;
- 833 (iv) L: motor vehicles propelled by electrical power.



A licence authorising the driving of motor vehicles of a class included in any category or sub-category shown in heads (i) to (iv) above may not be granted to a person applying for a full licence unless, at a time before 1 January 1997<sup>24</sup>: (A) he held a full licence authorising the driving of motor vehicles of that class or a class which corresponds to a class included in that category or sub-category<sup>25</sup>; or (B) he passed a test which at the time it was passed authorised the driving of motor vehicles of such a class or a Northern Ireland test corresponding to such a test<sup>26</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'licence' see PARA 443 note 6 ante.

3 For the meaning of 'drive' see PARA 207 ante.

4 For the meaning of 'motor vehicle' see PARA 210 ante.

5 In the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864 (as amended), expressions relating to vehicle categories have the following meanings:

106 (1) any reference to a category or sub-category identified by letter, number or word or by any combination of letters, numbers and words is a reference to the category or sub-category defined in Sch 2 column (2) opposite that letter or combination in Sch 2 column (1) (reg 4(2)(a));

107 (2) 'sub-category' means, in relation to category A, B, C, C and E, D, or D and E, a class of vehicles comprising part of the category and identified as a sub-category in Schedule 2 column (2) (reg 4(2)(b)); and

108 (3) unless the context otherwise requires, a reference to a category includes a reference to sub-categories of that category (reg 4(2)(c)).

6 See *ibid* regs 4, 5, 6, 43 (as amended), Sch 2 (as amended). This is subject to reg 5 and reg 78.

7 *Ie* for the purposes of the Road Traffic Act 1988 s 89(1)(b) (as substituted): see PARA 445 ante.

8 See the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, Sch 2 Pt 1 and Sch 2 Pt 2 (as amended). Licences could also be granted in sub-category B1 (invalid carriages) to persons who needed them before 12 December 1999 but this sub-category is obsolescent as the vehicles are being withdrawn from use.

9 See *ibid* Sch 2 Pt 1.

10 For the meaning of 'motor bicycle' see PARA 447 note 11 ante.

11 'Maximum authorised mass': (1) in relation to a goods vehicle, has the same meaning as 'permissible maximum weight' in the Road Traffic Act 1988 s 108(1) (see PARA 478 note 16 ante); (2) in relation to an incomplete large vehicle, means its working weight; and (3) in relation to any other motor vehicle or trailer, has the same meaning as 'maximum gross weight' in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2) (definition as added and amended) (see PARA 271 note 27 ante): Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 3(1).

12 For the meaning of 'unladen weight' see PARA 271 note 21 ante; definition applied by *ibid* reg 3(1). However, in the case of a road roller, 'unladen weight' includes the weight of any object for the time being attached to the vehicle, being an object specially designed to be attached for the purpose of temporarily increasing the vehicle's weight: reg 3(1).

13 For the meaning of 'moped' see PARA 447 note 12 ante.

14 As to classes of vehicles see PARA 208 ante.

15 For the meaning of 'full licence' see PARA 445 note 15 ante.

16 For the meaning of 'Northern Ireland licence' see PARA 443 note 7 ante.

17 For the meaning of 'British external licence' see PARA 445 note 21 ante.

- 18 For the meaning of 'British Forces licence' see PARA 445 note 20 ante.
- 19 For the meaning of 'exchangeable licence' see PARA 445 note 26 ante.
- 20 For the meaning of 'Community licence' see PARA 415 note 16 ante.
- 21 See the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 5(1)(a).
- 22 Ibid reg 5(1)(b).
- 23 See ibid Sch 2 Pt 2 (amended by SI 2005/2717).
- 24 Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 5(2).
- 25 Ibid reg 5(2)(a)(i).
- 26 Ibid reg 5(2)(a)(ii).

## **UPDATE**

### **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(vi) Medical Fitness of Drivers/455. Requirements as to medical fitness of drivers.

## **(vi) Medical Fitness of Drivers**

### **455. Requirements as to medical fitness of drivers.**

An application for the grant of a licence<sup>1</sup> must include a declaration by the applicant, in such form as the Secretary of State<sup>2</sup> may require, stating whether he is suffering or has at any time suffered<sup>3</sup> from any relevant disability<sup>4</sup> or any prospective disability<sup>5</sup>. If it appears from the applicant's declaration, or if on inquiry the Secretary of State is satisfied from other information, that the applicant is suffering from a relevant disability, the Secretary of State must, subject to certain exceptions<sup>6</sup>, refuse to grant the licence<sup>7</sup>.

However, the Secretary of State must not<sup>8</sup> refuse to grant a licence:

- 834 (1) on account of any relevant disability<sup>9</sup>, if the applicant has at any time passed a relevant test<sup>10</sup> and it does not appear to the Secretary of State that the disability has arisen or become more acute since that time or was, for whatever reason, not disclosed to the Secretary of State at that time<sup>11</sup>;
- 835 (2) on account of any relevant disability<sup>12</sup>, if the applicant satisfies such conditions as may be prescribed with a view to authorising the grant of a licence to a person in whose case the disability is appropriately controlled<sup>13</sup>;
- 836 (3) on account of any relevant disability which is prescribed<sup>14</sup>, if the application is for a provisional licence<sup>15</sup>.

A person who holds a licence authorising him to drive a motor vehicle of any class and who drives a motor vehicle of that class on a road<sup>16</sup> is guilty of an offence if the declaration<sup>17</sup> included in the application on which the licence was granted was one which he knew to be false<sup>18</sup>.

1 For the meaning of 'licence' see PARA 443 note 6 ante.

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 If a period is prescribed for that purpose the applicant need only disclose disabilities from which he suffered during that period, but at the date at which this volume states the law no period had been prescribed. For the meaning of 'prescribed' see PARA 443 note 4 ante.

4 For the meanings of 'disability' and 'relevant disability' see PARA 446 note 18 ante.

Driving licences are to be issued only to applicants who meet the medical standards specified in EC Council Directive 91/439 (OJ L237, 24.8.91, p 1) Annex III: art 7(1). The standards are not always specified with great particularity but it seems to follow that any person who is not able to meet the relevant standards is suffering from a relevant disability on the grounds that the driving of a vehicle by such a person would constitute a source of danger to the public: see Annex III.

5 Road Traffic Act 1988 s 92(1). 'Prospective disability' in relation to any person means any other disability which at the time of the application for the grant of a licence or, as the case may be, the material time for the purposes of the provision in which the expression is used, is not of such a kind that it is a relevant disability, but by virtue of the intermittent or progressive nature of the disability or otherwise, may become a relevant disability in course of time: s 92(2).

6 See the text to notes 9-15 infra.

7 Road Traffic Act 1988 s 92(3).

8 Ie by virtue of ibid s 92(3).

9 Ie prescribed for the purposes of ibid s 92(4)(a).

10 'Relevant test', in relation to an application for a licence, means any such test of competence as is mentioned in ibid s 89 (as amended) (see PARAS 445, 449, 451 ante) or a test as to fitness or ability in pursuance of the Road Traffic Act 1960 s 100 as originally enacted (now repealed), being a test authorising the grant of a licence in respect of vehicles of the classes to which the application relates: Road Traffic Act 1988 s 92(8). As to classes of vehicles see PARA 208 ante.

Without prejudice to s 92(8), for the purposes of s 92(4)(a):

109 (1) an applicant is treated as having passed a relevant test if, and on the day on which, he passed a test of competence to drive which:

3. (a) under a provision of the law of Northern Ireland or a relevant external law corresponding to s 89(3) (as amended), s 89(4) (as amended) or s 89(6) (as amended) (see PARAS 445, 449 ante), either is prescribed in relation to vehicles of classes corresponding to the classes to which the application relates or is sufficient under that law for the granting of a licence authorising the driving of vehicles of those classes (s 92(9)(a)(i) (s 92(9) amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 ss 5(5), 16, Sch 6)); or

3

4. (b) is sufficient for the granting of a British Forces licence authorising the driving of vehicles of those classes (Road Traffic Act 1988 s 92(9)(a)(ii) (as so amended)); and

4

110 (2) in the case of an applicant who is treated as having passed a relevant test by virtue of s 92(9)(a) (as amended) disclosure to his licensing authority is to be treated as disclosure to the Secretary of State (s 92(9)(b) (as so amended)).

For the meaning of 'test of competence to drive' see PARA 443 note 20 ante. For the meaning of 'drive' see PARA 207 ante. For the meaning of 'relevant external law' see PARA 445 note 7 ante. For the meaning of 'British Forces licence' see PARA 445 note 20 ante.

11 Ibid s 92(4)(a). For the disabilities prescribed for this purpose see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 71(3), (4).

12 Ie prescribed for the purposes of the Road Traffic Act 1988 s 92(4)(b).

13 Ibid s 92(4)(b). For the disabilities prescribed for this purpose see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, regs 71(2), 73(8)-(10) (reg 73(9) substituted, and reg 73(10) amended, by SI 2001/937).

14 Ie prescribed for the purposes of the Road Traffic Act 1988 s 92(4)(c).

15 Ibid s 92(4)(c). For the disabilities prescribed for this purpose see the Motor Vehicles (Driving Licences) Regulations 1999, reg 71(3), (4). For the meaning of 'provisional licence' see PARA 445 note 27 ante.

16 For the meaning of 'road' see PARA 206 ante.

17 Ie in accordance with the Road Traffic Act 1988 s 92(1): see the text and notes 1-5 supra.

18 Ibid s 92(10) (added by the Road Traffic Act 1991 s 18(1)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale; disqualification is discretionary; endorsement is obligatory; and 3-6 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry added by the Road Traffic Act 1991 s 26, Sch 2 paras 1, 2). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; and as to legal proceedings generally see PARA 1023 et seq post.

## UPDATE

### 442-517 Driver Licensing

Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(vi) Medical Fitness of Drivers/456. Revocation of licence because of disability or prospective disability.

#### 456. Revocation of licence because of disability or prospective disability.

If the Secretary of State<sup>1</sup> is at any time satisfied on inquiry that a licence<sup>2</sup> holder is suffering from a relevant disability<sup>3</sup>, and he would be required<sup>4</sup> to refuse an application for the licence made by him at that time, then he may serve notice in writing on the licence holder revoking the licence with effect from such date as may be specified in the notice, not being earlier than the date of service of the notice<sup>5</sup>.

If the Secretary of State is at any time satisfied on inquiry that a licence holder is suffering from a prospective disability<sup>6</sup>, he may serve notice in writing on the licence holder revoking the licence with effect from such date as may be specified in the notice, not being earlier than the date of service of the notice<sup>7</sup>. A person whose licence is so revoked must deliver up the licence and its counterpart to the Secretary of State immediately after the revocation and a person who, without reasonable excuse, fails to do so is guilty of an offence<sup>9</sup>. On receipt of the revoked licence and its counterpart<sup>8</sup> and of an application made for these purposes, the Secretary of State may grant to the licence holder, free of charge, a new licence<sup>10</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'licence' see PARA 443 note 6 ante.

3 For the meaning of 'relevant disability' see PARA 446 note 18 ante.

4 le required by virtue of the Road Traffic Act 1988 s 92(3): see PARA 455 ante.

5 Ibid s 93(1) (amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 4).

6 For the meaning of 'prospective disability' see PARA 455 note 5 ante.

7 Road Traffic Act 1988 s 93(2)(a).

8 For the meaning of 'counterpart' see PARA 415 note 19 ante.

9 Road Traffic Act 1988 s 93(3) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 5(6); and the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 1 para 2(b)). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 2, 5(1), (2), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 28; and prospectively amended by the Road Safety Act 2006 Sch 3 paras 30, 63(1), (2)(b), Sch 7). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post. Where a person whose licence is revoked under the Road Traffic Act 1988 s 93(1) (as amended) or s 93(2) (as amended): (1) is not in possession of his licence or its counterpart in consequence of the fact that he has surrendered them to a constable or authorised person, within the meaning of the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended), on receiving a fixed penalty notice under s 54 (as amended) (see PARA 1097 post); but (2) delivers them to the Secretary of State immediately on their return, he is not in breach of the duty under the Road Traffic Act 1988 s 93(3) (as amended): s 93(4) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 1 para 2(c)). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 Sch 3 para 5(3), (4), Sch 7 so as to remove the references to the counterpart. At the date at which this volume states the law no such day had been appointed. As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

10 Road Traffic Act 1988 s 93(2)(b) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, reg 2(1), Sch 1 para 2(a)). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 Sch 3 para 5(2), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed. The new licence will be granted for a period determined by the Secretary of State under the Road Traffic Act 1988 s 99(1)(b) (as amended) (see PARA 468 post): s 93(2)(b) (as so amended). The Secretary of State may require a person to provide evidence of his name, address, sex, and date and place of birth, and a photograph which is a current likeness of him, before granting a licence to him on an application made for the above purposes or for the purposes of s 93(6) (as added): s 93(2A) (added by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 5; and amended by the Crime (International Co-operation) Act 2003 s 79(1), (3)(a)).

Where the Secretary of State is at any time sent by the licensing authority in Northern Ireland a licence under a provision of Northern Ireland law corresponding to the Road Traffic Act 1988 s 109B (as added) (see PARA 484 post), and by virtue of the reasons given by that authority for sending the licence is at that time satisfied as mentioned in s 93(1) (see the text and notes 1-5 supra) or that the licence holder is suffering from a prospective disability, the Secretary of State may, on an application made for these purposes, grant to the holder, free of charge, a new licence for a period determined by the Secretary of State under the Road Traffic Act 1988 s 99(1)(b) (as amended) (see PARA 468 post): s 93(6) (as so added).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(vi) Medical Fitness of Drivers/457. Provision of information relating to disabilities.

#### **457. Provision of information relating to disabilities.**

If at any time during the period for which his licence<sup>1</sup> remains in force, a licence holder becomes aware that he is suffering from a relevant<sup>2</sup> or prospective disability<sup>3</sup> which he has not previously disclosed to the Secretary of State<sup>4</sup>, or that a relevant or prospective disability from which he has at any time suffered (and which has been previously so disclosed) has become more acute since the licence was granted, the licence holder must immediately notify the Secretary of State in writing of the nature and extent of his disability<sup>5</sup>. A licence holder is not, however, required to notify the Secretary of State if the disability is one from which he has not previously suffered, and he has reasonable grounds for believing that the duration of the disability will not extend beyond the period of three months beginning with the date on which he first becomes aware that he suffers from it<sup>6</sup>.

A person who fails without reasonable excuse to notify the Secretary of State as required<sup>7</sup> is guilty of an offence<sup>8</sup>. A person who holds a licence authorising him to drive a motor vehicle<sup>9</sup> of any class<sup>10</sup> and who drives<sup>11</sup> a motor vehicle of that class on a road<sup>12</sup> is guilty of an offence if at any earlier time while the licence was in force he was so required to notify the Secretary of State but has failed without reasonable excuse to do so<sup>13</sup>.

1 For the meaning of 'licence' see PARA 443 note 6 ante.

2 For the meaning of 'relevant disability' see PARA 446 note 18 ante.

3 For the meaning of 'prospective disability' see PARA 455 note 5 ante.

4 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 Road Traffic Act 1988 s 94(1). For the meaning of 'disability' see PARA 446 note 18 ante.

6 Ibid s 94(2).

7 Ie by ibid s 94(1): see the text and notes 1-5 supra.

8 Ibid s 94(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

9 For the meaning of 'motor vehicle' see PARA 210 ante.

10 As to classes of vehicle see PARA 208 ante.

11 For the meaning of 'drive' see PARA 207 ante.

12 For the meaning of 'road' see PARA 206 ante.

13 Road Traffic Act 1988 s 94(3A) (added by the Road Traffic Act 1991 s 18(2)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale; disqualification is discretionary; endorsement is obligatory; and 3-6 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry added by the Road Traffic Act 1991 s 26, Sch 2; and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 3, Sch 2 para 8(b)). As to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; and as to legal proceedings generally see PARA 1023 et seq post.

## UPDATE

### 442-517 Driver Licensing

Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(vi) Medical Fitness of Drivers/458. Investigation of disabilities.

### 458. Investigation of disabilities.

If the prescribed circumstances<sup>1</sup> obtain in relation to a person who is an applicant for, or the holder of, a licence<sup>2</sup>, or if the Secretary of State<sup>3</sup> has reasonable grounds for believing that a person who is an applicant for, or the holder of, a licence may be suffering from a relevant<sup>4</sup> or prospective disability<sup>5</sup>, there are specific provisions<sup>6</sup> that apply for the purpose of enabling the Secretary of State to satisfy himself whether or not that person may be suffering from that or any other relevant or prospective disability<sup>7</sup>.

The Secretary of State may by notice in writing served on the applicant or holder:

- 837 (1) require him to provide the Secretary of State, within such reasonable time as may be specified in the notice, with an authorisation addressed to a medical practitioner in the specified form<sup>8</sup>;
- 838 (2) require him, as soon as practicable, to arrange to submit himself for examination<sup>9</sup>:
- 37
- 78. (a) by a registered medical practitioner or practitioners nominated by the Secretary of State<sup>10</sup>; or
- 79. (b) with respect to a disability of a prescribed description<sup>11</sup>, by such officer of the Secretary of State as may be so nominated<sup>12</sup>,
- 38
- 839 for the purpose of determining whether or not he suffers or has at any time suffered from a relevant or prospective disability<sup>13</sup>; or
- 840 (3) except where the application is for, or the licence held is, a provisional licence<sup>14</sup>, the Secretary of State may require him to submit himself for such a test of competence to drive<sup>15</sup> as he directs in the notice<sup>16</sup>.

If he considers it appropriate to do so in the case of any applicant or licence holder, the Secretary of State may include in a single notice<sup>17</sup> more than one of the requirements

prescribed in heads (1), (2) and (3) above, and may at any time after the service of such a notice serve a further notice or notices<sup>18</sup>.

Except in the prescribed circumstances<sup>19</sup>, it is for the Secretary of State, and not for any other person, to defray any fees or other reasonable expenses of a registered medical practitioner in connection with the provision of information in pursuance of an authorisation required to be provided under head (1) above<sup>20</sup>, or any examination which a person is required to undergo as mentioned in head (2) above<sup>21</sup>.

These provisions<sup>22</sup> also apply in a modified form to Community licence<sup>23</sup> holders who are normally resident in Great Britain<sup>24</sup>.

1 For the prescribed circumstances see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 74 ('high risk offenders' who have been disqualified by reason of being convicted of specified offences).

2 For the meaning of 'licence' see PARA 443 note 6 ante.

3 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 For the meaning of 'relevant disability' see PARA 446 note 18 ante.

5 For the meaning of 'prospective disability' see PARA 455 note 5 ante.

6 I.e. the Road Traffic Act 1988 s 94(5) (as amended): see the text and notes 8-16 infra.

7 Ibid s 94(4) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 5(7)).

8 See the Road Traffic Act 1988 s 94(5)(a). The authorisation referred to in the text:

111 (1) must be in such form and contain such particulars as may be specified in the notice by which it is required to be provided (s 94(6)(a)); and

112 (2) must authorise any registered medical practitioner who may at any time have given medical advice or attention to the applicant or licence holder concerned to release to the Secretary of State any information which he may have, or which may be available to him, with respect to the question whether, and if so to what extent, the applicant or licence holder concerned may be suffering, or may at any time have suffered, from a relevant or prospective disability (s 94(6)(b)).

9 Ibid s 94(5)(b).

10 Ibid s 94(5)(b)(i).

11 For disabilities prescribed for this purpose see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 75.

12 Road Traffic Act 1988 s 94(5)(b)(ii).

13 Ibid s 94(5)(b).

14 For the meaning of 'provisional licence' see PARA 445 note 27 ante.

15 The meaning of 'test of competence to drive' for the purposes of the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended) is normally that stated in PARA 443 note 20 ante. However, in the case of s 94 (as amended) it appears that the Secretary of State may specify that the person should undertake the whole of the prescribed test or such part of it as he deems necessary for the purposes of this provision: see s 94(5)(c).

16 Ibid s 94(5)(c) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 5(8)). If any person on whom a notice is served under the Road Traffic Act 1988 s 94(5) (as amended) fails without reasonable excuse to comply with a requirement contained in the notice, or fails any test of competence which he is required to take as mentioned in s 94(5)(c) (as amended), the Secretary of State may exercise his powers under s 92 (as amended) (see PARA 455 ante) and s 93 (as amended) (see PARA 456 ante) as if he were satisfied that the applicant or licence holder concerned is suffering from a relevant disability which is not prescribed for



any of the purposes of s 92(4) (see PARA 455 ante) or, if the Secretary of State so determines, as if he were satisfied that the applicant or licence holder concerned is suffering from a prospective disability: s 94(8).

17 le the notice under ibid s 94(5) (as amended): see the text and notes 8-16 supra.

18 Ibid s 94(7).

19 le the circumstances prescribed for the purposes of ibid s 94(5) (as amended): see note 1 supra.

20 Ibid s 94(9)(a) (s 94(9) amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 5(9)).

21 Road Traffic Act 1988 s 94(9)(b) (as amended: see note 20 supra).

22 le the provisions of the Road Traffic Act 1988 s 94 (as amended).

23 For the meaning of 'Community licence' see PARA 415 note 16 ante.

24 See the Road Traffic Act 1988 s 99D (added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 12). For the meaning of 'Great Britain' see PARA 205 note 3 ante.

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(vi) Medical Fitness of Drivers/459. Grant of licence to persons suffering from a disability.

#### 459. Grant of licence to persons suffering from a disability.

Where as a result of a test of competence to drive<sup>1</sup> or of information obtained under the relevant powers<sup>2</sup> the Secretary of State<sup>3</sup> is satisfied that the person who took the test, or in relation to whom the information was obtained, is suffering from a disability<sup>4</sup> such that there is likely to be a danger to the public if<sup>5</sup>: (1) he drives any vehicle<sup>6</sup>; (2) he drives a vehicle other than a vehicle of a particular class<sup>7</sup>; or (3) he drives a vehicle except in accordance with particular conditions<sup>8</sup>, the Secretary of State must serve notice in writing to that effect on that person and must include in the notice a description of the disability<sup>9</sup>.

Where a notice is served in pursuance of head (1) above, then if the disability is not already prescribed as a relevant disability<sup>10</sup> it is deemed to be so prescribed in relation to the person who took the test<sup>11</sup>, and if the disability is prescribed for the purposes of permitting an application for a provisional licence<sup>12</sup> it is deemed not to be so prescribed in relation to him<sup>13</sup>.

Where a notice is served in pursuance of head (2) above, the Secretary of State may, if the person on whom the notice is served is an applicant for a licence, grant him a licence limited to vehicles of the particular class specified in the notice or, if he held a licence which is revoked by the Secretary of State and he complies with the relevant requirements<sup>14</sup>, grant him a licence limited to vehicles of that class<sup>15</sup>.

Where a notice is served in pursuance of head (3) above, the Secretary of State may: (a) if the person on whom the notice is served is an applicant for a licence, grant him a licence authorising him to drive vehicles subject to the particular conditions specified in the notice<sup>16</sup>; or (b) if he held a licence which is revoked by the Secretary of State and he complies with the relevant requirements<sup>17</sup>, grant him a licence authorising him to drive vehicles subject to those conditions<sup>18</sup>, and, if the Secretary of State so directs in the notice, any entitlement which the person has to drive other vehicles<sup>19</sup> is subject to conditions as specified in the notice<sup>20</sup>.

1 For the meaning of 'test of competence to drive' see PARA 443 note 20 ante.

2 In this context, the references to a test of competence to drive and to information obtained under the relevant powers are references respectively to a test of competence prescribed for the purposes of the Road Traffic Act 1988 s 89 (as amended) (see PARAS 445, 449, 451 ante) or to so much of such a test as is required to be taken in pursuance of s 94(5)(c) (as amended) (see PARA 458 ante) and to information obtained in pursuance of s 94(5)(a) or s 94(5)(b) (see PARA 458 ante): s 92(7B) (added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 5(4)). In the Road Traffic Act 1988 s 92(7B) (as added) the references to s 94 (as amended) include references to s 94 (as amended) as applied by s 99D (as added) (see PARA 458 ante) or s 109C (as added) (see PARA 484 post): s 92(7D) (added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 3; and amended by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 17, 19).

3 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 For the meaning of 'disability' see PARA 446 note 18 ante.

5 Road Traffic Act 1988 s 92(5) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 5(2)).

6 Road Traffic Act 1988 s 92(5)(a) (amended by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 17, Schedule). See note 9 infra.

7 Road Traffic Act 1988 s 92(5)(b) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 5(2)). See note 9 infra. As to classes of vehicles see PARA 208 ante.

8 Road Traffic Act 1988 s 92(5)(c) (added by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 4).

9 Road Traffic Act 1988 s 92(5) (as amended: see note 5 supra). If he considers it appropriate to do so, the Secretary of State may, after serving a notice in pursuance of s 92(5)(a) (as amended), serve a notice in pursuance of s 92(5)(b) (as amended) or, after serving a notice in pursuance of s 92(5)(b) (as amended), serve a notice in pursuance of s 92(5)(a) or a further notice in pursuance of s 92(5)(b); and on his serving a further notice under any of those provisions the notice previously served ceases to have effect and any limited licence previously granted is revoked by the later notice: s 92(7A) (added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 5(4)). A person whose licence is revoked by virtue of the Road Traffic Act 1988 s 92(7A) (as added) must deliver the licence and its counterpart to the Secretary of State immediately after the revocation and a person who, without reasonable excuse, fails to do so is guilty of an offence: s 92(7C) (added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 5(4); and amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, reg 2(3), Sch 3 para 1(a)). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 2, 4, Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 28; and prospectively amended by the Road Safety Act 2006 Sch 3 paras 30, 63(1), (2)(a), Sch 7). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post. For the meaning of 'licence' see PARA 443 note 6 ante; and for the meaning of 'counterpart' see PARA 415 note 19 ante.

10 Ie prescribed under the Road Traffic Act 1988 s 92(2) as a relevant disability. For the meaning of 'relevant disability' see PARA 446 note 18 ante.

11 Ibid s 92(6)(a) (amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 3(3)).

12 le prescribed for the purposes of the Road Traffic Act 1988 s 92(4)(c): see PARA 455 ante. The Secretary of State may, notwithstanding s 92(4)(c), refuse to grant the applicant a licence: see s 92(6)(b).

13 Ibid s 92(6)(b).

14 le the requirements of ibid s 92(7ZB) (added by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 4(3)). A person complies with the Road Traffic Act 1988 s 92(7ZB) (as added) if he surrenders the existing licence and its counterpart, and, where the Secretary of State so requires, he provides evidence of his name, address, sex, and date and place of birth and a photograph which is a current likeness of him : s 92(7ZB)(a), (b) (as so added). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 Sch 3 paras 2, 4, Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

15 Road Traffic Act 1988 s 92(7) (substituted by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 4(3)). If the Secretary of State so directs in the notice, his entitlement to drive other classes of vehicle by virtue of the Road Traffic Act 1988 s 98(2) (as amended) will also be limited as specified in the notice: s 92(7) (as so substituted).

16 Ibid s 92(7ZA)(a) (s 92(7ZA) added by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 4(3)).

17 le the requirements of the Road Traffic Act 1988 s 92(7ZB) (as added): see note 14 supra.

18 Ibid s 92(7ZA)(b) (as added: see note 16 supra).

19 le by virtue of ibid s 98(2) (as amended): see PARA 466 post.

20 Ibid s 92(7ZA) (as added: see note 16 supra).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(vi) Medical Fitness of Drivers/460. Notification of refusal of insurance on grounds of health.

### 460. Notification of refusal of insurance on grounds of health.

If an authorised insurer<sup>1</sup> refuses to issue to any person a policy of insurance<sup>2</sup> on the ground that the state of health of that person is not satisfactory, or on grounds which include that ground, the insurer must as soon as practicable notify the Secretary of State<sup>3</sup> of that refusal and of the full name, address, sex and date of birth of that person as disclosed by him to the insurer<sup>4</sup>.

1 'Authorised insurer' means an insurer who is a member of the Motor Insurers Bureau (a company limited by guarantee and incorporated under the Companies Act 1929 on 14 June 1946): Road Traffic Act 1988 s 95(2) (s 95(2)-(5) (substituted by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 312). 'Insurer' means a person who has permission under the Financial Services and Markets Act 2000 Pt 4 (ss 40-55) to effect or carry out relevant contracts of insurance, or an EEA firm of the kind mentioned in Sch 3 para 5(d) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 492), which has permission under Sch 3 para 15 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 315) (as a result of qualifying for authorisation under Sch 3 para 12: see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008)

PARA 315) to effect or carry out relevant contracts of insurance: Road Traffic Act 1988 s 95(3) (as so substituted). A contract is a relevant contract of insurance if the risk insured against relates to: (1) the insured sustaining accidental injury or death as a result of travelling as a passenger; (2) land vehicles; (3) goods in transit; or (4) motor vehicle liability: s 95(4) (as so substituted). Section 95 (as amended) is to be read with: (a) the Financial Services and Markets Act 2000 s 22 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 84); (b) any order for the time being in force under s 22; and (c) Sch 2 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 84): Road Traffic Act 1988 s 95(5) (as so substituted).

2     le a policy of insurance that complies with the requirements of *ibid* Pt VI (ss 143-162) (as amended).

3     As to the Secretary of State see PARA 236 *ante*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 *ante*.

4     Road Traffic Act 1988 s 95(1).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(vi) Medical Fitness of Drivers/461. Driving with uncorrected defective eyesight.

#### 461. Driving with uncorrected defective eyesight.

If a person drives<sup>1</sup> a motor vehicle<sup>2</sup> on a road<sup>3</sup> while his eyesight is such (whether through a defect which cannot be sufficiently corrected or one which is not for the time being sufficiently corrected) that he cannot comply with any requirement as to eyesight prescribed<sup>4</sup> for the purposes of tests of competence to drive<sup>5</sup>, he is guilty of an offence<sup>6</sup>. A constable having reason to suspect<sup>7</sup> that a person driving a motor vehicle may be guilty of such an offence may require him to submit to a test for the purpose of ascertaining whether, using no other means of correction than he used at the time of driving, he can comply with the requirement concerned<sup>8</sup>. If that person refuses to submit to the test he is guilty of an offence<sup>9</sup>.

1     For the meaning of 'drive' see PARA 207 *ante*.

2     For the meaning of 'motor vehicle' see PARA 210 *ante*.

3     For the meaning of 'road' see PARA 206 *ante*.

4     le prescribed under the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended). For the meaning of 'prescribed' see PARA 443 note 4 *ante*. The relevant requirements are prescribed by the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, regs 72(1), (1A), 73(1) (regs 72(1), 73(1) substituted, and reg 72(1A) added, by SI 2003/166).

5     For the meaning of 'test of competence to drive' see PARA 443 note 20 *ante*.

6     Road Traffic Act 1988 s 96(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale; disqualification is discretionary; endorsement is obligatory; and 3 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 *post*), s 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 26, Sch 2 paras 1, 2). As to the standard

scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; as to fixed penalties see PARA 1089 et seq post; and as to legal proceedings generally see PARA 1023 et seq post.

7 As to when a constable may have reason to suspect an offence has been committed see *Nakkuda Ali v MF De S Jayaratne* [1951] AC 66, PC; *R v IRC, ex p Rossminster Ltd* [1980] AC 952, HL. As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

8 Road Traffic Act 1988 s 96(2).

9 Ibid s 96(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale; disqualification is discretionary; endorsement is obligatory; and 3 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 26, Sch 2 paras 1, 2).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(vii) Granting of Licences/462. Grant of driving licences.

## (vii) Granting of Licences

### 462. Grant of driving licences.

Subject to the relevant statutory provisions<sup>1</sup>, the Secretary of State<sup>2</sup> must grant a licence to a person who<sup>3</sup>:

- 841 (1) makes an application for it in such manner and containing such particulars as the Secretary of State may specify and pays the fee (if any) which is prescribed<sup>4</sup>;
- 842 (2) provides the Secretary of State with such evidence or further evidence in support of the application as the Secretary of State may require<sup>5</sup>;
- 843 (3) surrenders to the Secretary of State any previous licence granted to him after 1 January 1976 and its counterpart<sup>6</sup>, any Northern Ireland licence<sup>7</sup> held by him together with its Northern Ireland counterpart and its counterpart (if any) issued to him under the Road Traffic Act 1988, any Community licence<sup>8</sup> and its counterpart (if any) issued to him, and any British external licence<sup>9</sup> or British Forces licence<sup>10</sup> or exchangeable licence<sup>11</sup> held by him, or provides the Secretary of State with an explanation for not surrendering them which the Secretary of State considers adequate<sup>12</sup>; and
- 844 (4) is not subject to a current disqualification which is relevant to the licence he applies for<sup>13</sup> and is not prevented from obtaining it by the specified provisions<sup>14</sup>.

As from a day to be appointed, regulations may provide that in prescribed circumstances a licence granted by the Secretary of State may be granted subject to prescribed conditions having effect: (a) for a prescribed period; or (b) until the happening of a prescribed event<sup>15</sup>.

1 The relevant statutory provisions are the Road Traffic Act 1988 s 97(2)-(6) (as amended) (see PARA 464 post), s 92 (as amended) (see PARA 455 ante), and, in the case of licences to drive large goods vehicles or passenger-carrying vehicles, Pt IV (ss 110-121) (as substituted and amended): see s 97(1) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 ss 6(2)(a), 7, Sch 3 para 9). For the meaning of 'licence' see PARA 443 note 6 ante. For the meaning of 'drive' see PARA 207 ante. 'Large goods vehicle' is not defined for the purposes of the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended) but in this instance it must presumably bear its meaning in Pt IV (as substituted and amended): see PARA 489 note 5 post. For the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 post; definition applied by s 108(1) (definition added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 15). As to restrictions on the grant of licences to drive large goods and passenger-carrying vehicles see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 12 (amended by SI 2003/636). As to the abolition of special licences for driving heavy goods vehicles and public service vehicles, and for special provisions relating to the licensing of drivers of large goods vehicles and passenger-carrying vehicles see the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 1 (amended by the Statute Law Reform Act 2004).

As from a day to be appointed, the relevant statutory provisions are the Road Traffic Act 1988 s 97(2), s 92 (as amended), regulations under s 99ZA (as added) (see PARA 485 post) and Pt IV: s 97(1) (prospectively amended by the Transport Act 2000 s 260, Sch 29 paras 1, 3). At the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 Road Traffic Act 1988 s 97(1) (amended by the Road Traffic (Driver and Licensing Information Systems) Act 1989 ss 6(2), 7, 16, Sch 3 para 9, Sch 6).

4 Road Traffic Act 1988 s 97(1)(a) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 3 para 9). A licence may normally be granted to a person if he qualifies for the grant of that licence (see PARA 445 ante), is medically fit to hold that licence (see PARA 455 ante), has attained the minimum age for the grant of that licence (see PARA 478 post), and is not otherwise disqualified for holding or obtaining that licence (see note 12 infra).

For the prescribed fees see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 14, Sch 3 (Sch 3 substituted by SI 2004/265; and amended by SI 2007/698). All fees received by the Secretary of State for licences under the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended) must be paid into the Consolidated Fund: Road Traffic Act 1988 s 106(1). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq. As to the costs recoverable by the Secretary of State when fixing the fee under the Road Traffic Act 1988 s 97(1)(a) (as amended) see the Department for Transport (Driver Licensing and Vehicle Registration Fees) Order 2003, SI 2003/2994.

5 Road Traffic Act 1988 s 97(1)(b). Where any licence to be granted to an applicant would be in the form of a photocard, the Secretary of State may under s 97(1)(a), (b) (s 97(1)(a) as amended) require him to provide a photograph which is a current likeness of him: see s 97(1A) (added by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, regs 2, 6(2)). For the evidence required on applications for licences see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 10.

6 For the meaning of 'counterpart' see PARA 415 note 19 ante.

7 For the meaning of 'Northern Ireland licence' see PARA 443 note 7 ante. Where a licence under the Road Traffic Act 1988 Pt III (as amended) is granted to a person who surrenders under s 97(1)(c) (as amended) his Northern Ireland licence together with its counterparts to the Secretary of State, then: (1) that person ceases to be authorised by virtue of s 109(1) (as amended) (see PARA 484 post) to drive in Great Britain a motor vehicle of any class; and (2) the Secretary of State must send the Northern Ireland licence and its Northern Ireland counterpart to the licensing authority in Northern Ireland together with particulars of the class of motor vehicles to which the licence granted under Pt III (as amended) relates: s 97(1AA) (added by the Crime (International Co-operation) Act 2003 s 78(1), (2)(b)). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 2, 6(1), (3)(a), Sch 7 so as to remove the references to counterparts. At the date at which this volume states the law no such day had been appointed.

8 For the meaning of 'Community licence' see PARA 415 note 16 ante.

9 For the meaning of 'British external licence' see PARA 445 note 21 ante.

10 For the meaning of 'British forces licence' see PARA 445 note 20 ante.

11 For the meaning of 'exchangeable licence' see PARA 445 note 26 ante.

12 Road Traffic Act 1988 s 97(1)(c) (substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 6(2); and amended by the Crime (International Co-operation) Act 2003 s 78(2)(a)). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 Sch 3 para 6(2), Sch 7 so as to remove the references to counterparts. At the date at which this volume states the law no such day had been appointed.

13 If he is not subject to a disqualification which is relevant in accordance with the Road Traffic Act 1988 s 88(1B) (as added): see PARA 446 ante. For the meaning of 'disqualification' see PARA 443 note 11 ante.

14 Ibid s 97(1)(d) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 ss 6(2), 7, Sch 3 para 9; and the Road Traffic (New Drivers) Act 1995 s 10(4), Sch 2 paras 1, 2). The specified provisions are the Road Traffic Act 1988 s 89 (as amended) (see PARAS 445, 449, 451 ante) or the Road Traffic (New Drivers) Act 1995 s 4, Sch 1 paras 6, 9 (see PARA 517 post): Road Traffic Act 1988 s 97(1)(d) (amended by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 17, 21).

15 Road Traffic Act 1988 s 97(1ZA) (prospectively added by the Road Safety Act 2006 s 38(2)). At the date at which this volume states the law no day had been appointed for the commencement of this provision.

## UPDATE

### 442-517 Driver Licensing

Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 462 Grant of driving licences

NOTE 4--SI 1999/2864 Sch 3 further amended: SI 2008/508, SI 2009/788. SI 2003/2994 amended: SI 2008/908.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(vii) Granting of Licences/463. Driving after refusal or revocation of licence.

### 463. Driving after refusal or revocation of licence.

A person who drives<sup>1</sup> a motor vehicle<sup>2</sup> of any class<sup>3</sup> on a road<sup>4</sup> otherwise than in accordance with a licence<sup>5</sup> authorising him to drive a motor vehicle of that class is guilty of an offence if<sup>6</sup>:

845 (1) at any earlier time the Secretary of State<sup>7</sup> has refused to grant such a licence<sup>8</sup>, has revoked such a licence<sup>9</sup>, or has served notice on that person<sup>10</sup> requiring him to deliver to the Secretary of State a Community licence<sup>11</sup> or Northern Ireland licence<sup>12</sup> authorising him to drive a motor vehicle of that or a corresponding class<sup>13</sup>; and

846 (2) since that earlier time he has not been granted a licence<sup>14</sup>, or a Community licence or Northern Ireland licence, authorising him to drive a motor vehicle of that or a corresponding class<sup>15</sup>.

- 1 For the meaning of 'drive' see PARA 207 ante.
- 2 For the meaning of 'motor vehicle' see PARA 210 ante.
- 3 As to classes of vehicles see PARA 208 ante.
- 4 For the meaning of 'road' see PARA 206 ante.
- 5 For the meaning of 'licence' see PARA 443 note 6 ante.
- 6 Road Traffic Act 1988 s 94A (added by the Road Traffic Act 1991 s 18(3)). A person guilty of such an offence is liable on summary conviction to six months imprisonment or to a fine not exceeding level 5 on the standard scale or to both; disqualification is discretionary; endorsement is obligatory; and 3-6 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry added by the Road Traffic Act 1991 s 26, Sch 2 paras 1, 2; and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 3, Sch 4 para 7(c)). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; as to fixed penalties see PARA 1089 et seq post; and as to legal proceedings generally see PARA 1023 et seq post.
- 7 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 8 Ie in accordance with the Road Traffic Act 1988 s 92(3): see PARA 455 ante.
- 9 Ie under ibid s 93 (as amended): see PARA 456 ante.
- 10 Ie in pursuance of ibid s 99C(1) (as added), s 99C(2) (as added) or s 109B (as added): see PARAS 475, 484 post.
- 11 For the meaning of 'Community licence' see PARA 415 note 16 ante.
- 12 For the meaning of 'Northern Ireland licence' see PARA 443 note 7 ante.
- 13 Road Traffic Act 1988 s 94A(1)(a) (s 94A as added (see note 6 supra); and s 94A(1) substituted by the Driving Licences (Community Driving Licences) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 5; and amended by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 17, 20).
- 14 Ie under the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended).
- 15 Ibid s 94A(1)(b) (as added, substituted and amended: see notes 6, 13 supra). The Road Traffic Act 1988 s 88 (as amended) (see PARAS 446-448 ante) applies in relation to s 94A(1) (as added, substituted and amended)) as it applies in relation to s 87 (as amended) (see PARA 444 ante): s 94A(2) (as added: see note 6 supra).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(vii) Granting of Licences/464. Provisional licences.

### 464. Provisional licences.



If the application<sup>1</sup> for the licence states that it is made for the purpose of enabling the applicant to drive a motor vehicle<sup>2</sup> with a view to passing a test of competence to drive<sup>3</sup>, any licence granted in pursuance of the application is a provisional licence for that purpose<sup>4</sup>.

A provisional licence:

- 847 (1) must be granted subject to prescribed conditions<sup>5</sup>;
- 848 (2) must, in the prescribed cases, be restricted so as to authorise only the driving of vehicles of the prescribed classes<sup>6</sup>;
- 849 (3) may, in the case of a person appearing to the Secretary of State to be suffering from a relevant disability<sup>7</sup> or a prospective disability<sup>8</sup>, be restricted so as to authorise only the driving of vehicles of a particular construction or design specified in the licence<sup>9</sup>;
- 850 (4) does not authorise a person under the age of 21 years, before he has passed a test of competence to drive a motor bicycle<sup>10</sup>, to drive<sup>11</sup> a motor bicycle without a side-car unless it is either a learner motor bicycle<sup>12</sup> or its first use<sup>13</sup> occurred before 1 January 1982 and the cylinder capacity of its engine does not exceed the stated amount<sup>14</sup>, and does not authorise such a person to drive a motor bicycle with a side-car unless its power to weight ratio<sup>15</sup> is less than or equal to the stated amount<sup>16</sup>; and
- 851 (5) does not authorise a person<sup>17</sup>, before he has passed a test of competence to drive, to drive on a road<sup>18</sup> a motor bicycle or moped<sup>19</sup> except where he has successfully completed an approved training course for motor cyclists<sup>20</sup> or is undergoing training on such a course and is driving the motor bicycle or moped on the road as part of the training<sup>21</sup>.

Regulations may authorise or require the Secretary of State to refuse a provisional licence authorising the driving of a motor bicycle or moped of a prescribed class if the applicant has held such a provisional licence and the licence applied for would come into force within the prescribed period beginning at the end of the period for which the previous licence authorised (or would, if not surrendered or revoked, have authorised) the driving of such a motor bicycle or moped<sup>22</sup>, or beginning at such other time as may be prescribed<sup>23</sup>.

1 As to eligibility to apply for provisional licences see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 11.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'test of competence to drive' see PARA 443 note 20 ante.

4 Road Traffic Act 1988 s 97(2). Nothing in s 89 (as amended) (see PARAS 445, 449, 451 ante) applies to such a licence: s 97(2). For regulations relating to provisional licences see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 15 (amended by SI 2001/53); the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 16 (amended by SI 2000/3157; SI 2001/53; SI 2003/222); the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 17 (amended by SI 2005/2717; SI 2006/524); and the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, regs 18, 19.

5 Road Traffic Act 1988 s 97(3)(a). For the prescribed conditions applicable to a particular licence see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, regs 16, 17 (both as amended: see note 4 supra). As to the distinguishing marks to be displayed on a motor vehicle being driven under a provisional licence see reg 16(2), (4), Sch 4.

6 Road Traffic Act 1988 s 97(3)(b). As to classes of vehicle see PARA 208 ante.

7 For the meaning of 'relevant disability' see PARA 446 note 18 ante.

8 For the meaning of 'prospective disability' see PARA 455 note 5 ante.

9 Road Traffic Act 1988 s 97(3)(c) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 16, Sch 6).

10 For the meaning of 'motor bicycle' see PARA 447 note 11 ante. The Road Traffic Act 1988 s 97(3) (as amended), in so far as it prevents such a licence as is there mentioned from authorising a person to drive certain motor cycles, does not apply in the case of motor cycles in the service of a visiting force: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(4).

11 For the meaning of 'drive' see PARA 207 ante.

12 A learner motor bicycle is a motor bicycle which either is propelled by electric power or has the following characteristics:

113 (1) the cylinder capacity of its engine does not exceed 125 cubic centimetres (Road Traffic Act 1988 s 97(5)(a) (amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 6(6)));

114 (2) the maximum net power output of its engine does not exceed 11 kw (Road Traffic Act 1988 s 97(5)(b) (substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 6(6))).

'Maximum net power output', in relation to an engine, means the maximum net power output measured under full engine load: Road Traffic Act 1988 s 97(6) (substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 6(7)).

13 le 'first use' as defined in the regulations. As to the first use of a motor bicycle see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 3(5).

14 le 125 cubic centimetres: see note 16 infra.

15 'Power to weight ratio', in relation to a motor bicycle with a side-car, means the ratio of the maximum net power output of the engine of the motor bicycle to the weight of the combination with a full supply of fuel in the tank, an adequate supply of other liquids needed for its propulsion, and no load other than its normal equipment, including loose tools: Road Traffic Act 1988 s 97(6) (substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 6(7)).

16 Road Traffic Act 1988 s 97(3)(d) (substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 6(3)). The power to weight ratio of such a motor bicycle with a side-car must be less than or equal to 0.16 kilowatts per kilogram: Road Traffic Act 1988 s 97(3)(d) (as so substituted).

17 le except where he has been exempted by virtue of ibid s 97(3B) (as added): see PARA 465 post.

18 For the meaning of 'road' see PARA 206 ante.

19 For the meaning of 'moped' see PARA 447 note 12 ante.

20 For the meaning of 'approved training course for motor cyclists' see PARA 451 note 17 ante. As to such courses see PARA 465 post.

21 Road Traffic Act 1988 s 97(3)(e) (added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 6(2); and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 6(3); and the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 6(3)). As from a day to be appointed, the Road Traffic Act 1988 s 97(3)(e) (as added and amended) is repealed by the Transport Act 2000 s 274, Sch 31 Pt V. At the date at which this volume states the law no such day had been appointed.

22 Road Traffic Act 1988 s 97(4)(a) (amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 6(5); and the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 6(5)).

23 Road Traffic Act 1988 s 97(4)(b).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(vii) Granting of Licences/465. Mandatory training courses for riders of motor bicycles and mopeds.

#### **465. Mandatory training courses for riders of motor bicycles and mopeds.**

Regulations<sup>1</sup> may make provision as respects the training in the driving of motor bicycles<sup>2</sup> and mopeds<sup>3</sup> of persons wishing to obtain licences authorising the driving of such vehicles by means of courses of training<sup>4</sup>. In particular the regulations may make provision with respect to:

- 852 (1) the nature of the courses of training<sup>5</sup>;
- 853 (2) the approval by the Secretary of State<sup>6</sup> of the persons providing the courses and the withdrawal of his approval<sup>7</sup>;
- 854 (3) the maximum amount of the charges payable by persons undergoing the training<sup>8</sup>;
- 855 (4) certificates evidencing the successful completion by persons of a course of training and the supply by the Secretary of State of the forms which are to be used for such certificates<sup>9</sup>; and
- 856 (5) the making, in connection with the supply of forms of certificates, of reasonable charges for the discharge of the functions of the Secretary of State under the regulations<sup>10</sup>,

and different provision may be made for training in different classes of motor bicycles and mopeds<sup>11</sup>.

Regulations may also prescribe cases in which persons holding a provisional licence are exempt from the restriction imposed<sup>12</sup>. The regulations may:

- 857 (a) limit the exemption to persons in prescribed circumstances<sup>13</sup>;
- 858 (b) limit the exemption to a prescribed period or in respect of driving in a prescribed area<sup>14</sup>;
- 859 (c) attach conditions to the exemption<sup>15</sup>; and
- 860 (d) regulate applications for, and the issue and form of, certificates evidencing the holder's exemption from the restriction<sup>16</sup>.

1 The regulations made for the purposes of Road Traffic Act 1988 s 97(3)(e) (as added and amended) (see PARA 464 ante). For the meaning of 'regulations' see PARA 443 note 4 ante. For the relevant regulations see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, Pt V (regs 58-69) (as amended).

2 For the meaning of 'motor bicycle' see PARA 447 note 11 ante.

3 For the meaning of 'moped' see PARA 447 note 12 ante.

4 Road Traffic Act 1988 s 97(3A) (s 97(3A) added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 6(2)(c); and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 6; and the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, regs 2, 6). As from a day to be appointed, the Road Traffic Act 1988 s 97(3A) (as added

and amended) is repealed by the Transport Act 2000 s 274, Sch 31 Pt V. At the date at which this volume states the law no such day had been appointed. As to driver training see PARAS 485-486 post.

5 Road Traffic Act 1988 s 97(3A)(a) (as added; prospectively repealed: see note 4 supra). As to the nature of training courses see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 59, Sch 12 (amended by SI 2001/53; SI 2003/166); and as to the ratio of trainees to instructors see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 67.

6 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 Road Traffic Act 1988 s 97(3A)(b) (as added; prospectively repealed: see note 4 supra). As to approved training bodies see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 58; as to certified instructors see reg 60; as to assistant instructors see reg 61; as to withdrawal of approval to provide courses or to act as an instructor see reg 62; as to approved training courses conducted on large motor bicycles see reg 64; as to certified direct access instructors see reg 65 (amended by SI 2000/2766); and as to forms of certificate to be carried by instructors see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, Sch 13 (amended by SI 2001/53).

8 Road Traffic Act 1988 s 97(3A)(c) (as added; prospectively repealed: see note 4 supra). As to charges for the issue of duplicate certificates see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 68(4).

9 Road Traffic Act 1988 s 97(3A)(d) (as added; prospectively repealed: see note 4 supra). As to certificates of completion of approved motor bicycle training courses see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 68(1), Sch 13 Pt 3 (substituted by SI 2001/53).

10 Road Traffic Act 1988 s 97(3A)(e) (as added; prospectively repealed: see note 4 supra). As to the charge per form see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 68(3).

11 Road Traffic Act 1988 s 97(3A) (as added and amended; prospectively repealed: see note 4 supra).

12 Ibid s 97(3B) (s 97(3B) added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 6(2)(c)). As from a day to be appointed, the Road Traffic Act 1988 s 97(3B) (as added) is repealed by the Transport Act 2000 Sch 31 Pt V. At the date at which this volume states the law no such day had been appointed. For regulations made under the Road Traffic Act 1988 s 97(3B) (as added; prospectively repealed) see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864 (as amended).

13 Road Traffic Act 1988 s 97(3B)(a) (as added; prospectively repealed: see note 12 supra).

14 Ibid s 97(3B)(b) (as added; prospectively repealed: see note 12 supra).

15 Ibid s 97(3B)(c) (as added; prospectively repealed: see note 12 supra).

16 Ibid s 97(3B)(d) (as added; prospectively repealed: see note 12 supra).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(vii) Granting of Licences/466. Form, content and effect of licences.

### 466. Form, content and effect of licences.

A licence<sup>1</sup> must be either in the form of a photocard of a description specified by the Secretary of State<sup>2</sup> or in such other form as he may specify<sup>3</sup> and:

- 861 (1) the licence must state whether it authorises its holder to drive<sup>4</sup> motor vehicles<sup>5</sup> of all classes<sup>6</sup> or of certain classes only and, in the latter case, must specify those classes<sup>7</sup>;
- 862 (2) the licence must specify, in such manner as the Secretary of State may determine: (a) the restrictions on the driving of vehicles of any class in pursuance of the licence to which its holder is subject<sup>8</sup>; and (b) any conditions on the driving of vehicles of any class in pursuance of the licence to which its holder is subject<sup>9</sup>; and
- 863 (3) in the case of a provisional licence<sup>10</sup>, the licence or its counterpart<sup>11</sup> must specify, in such manner as the Secretary of State may determine, the conditions subject to which it is granted<sup>12</sup>.

Subject to heads (i), (ii) and (iii) below, a person who holds a licence which authorises its holder to drive motor vehicles of certain classes only and which is not a provisional licence or any other prescribed description of licence<sup>13</sup> may drive motor vehicles of all other classes subject to the same conditions as if he were authorised by a provisional licence to drive motor vehicles of those other classes<sup>14</sup>. However, this does not authorise a person to drive<sup>15</sup>:

- 864 (i) a vehicle of a class for the driving of which he could not lawfully hold a licence<sup>16</sup>;
- 865 (ii) unless he has either passed a test of competence to drive<sup>17</sup> a motor bicycle<sup>18</sup> or attained the age of 21 years, a motor bicycle which a provisional licence would not authorise him to drive<sup>19</sup> before he had passed that test or attained that age (as the case may be)<sup>20</sup>; or
- 866 (iii) unless he has passed a test of competence to drive, a motor bicycle or moped<sup>21</sup> on a road<sup>22</sup> in circumstances in which a provisional licence would not authorise him to drive it<sup>23</sup> before he had passed that test<sup>24</sup>.

1 For the meaning of 'licence' see PARA 443 note 6 ante.

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. The Secretary of State may specify different descriptions of photocards, and different forms of licences not in the form of a photocard, for different cases and may determine the form of licence to be granted in any case: Road Traffic Act s 98(1A) (added by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 7(2)).

3 Road Traffic Act 1988 s 98(1) (s 98(1) substituted by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, regs 2, 7). The Secretary of State's discretion to specify the form and description of licences is restricted by EC Council Directive 91/439 (OJ L237, 24.8.91, p 1) on driving licences (as amended), which provides that member states must introduce from 31 July 1996 a national driving licence based on the model described in Annex I (a form of paper licence) or Annex Ia (a licence in the form of a photocard): see art 1(1), Annexes I, Ia (amended by EC Council Directive 96/47 (OJ L235, 17.9.96, p 1) art 1).

As to signatures on licences see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 20. As to defaced licences see reg 21.

4 Ie apart from classes of vehicles which he is authorised to drive by virtue of the Road Traffic Act 1988 s 98(2): see s 98(1)(a) (as substituted: see note 3 supra). For the meaning of 'drive' see PARA 207 ante.

5 For the meaning of 'motor vehicle' see PARA 210 ante.

6 As to classes of vehicles see PARA 208 ante.

7 Road Traffic Act 1988 s 98(1)(a) (as substituted: see note 3 supra).

8 le by virtue of his age under *ibid* s 101 (as amended): see PARA 478 post.

9 *Ibid* s 98(1)(b) (as substituted: see note 3 *supra*). The holder may be subject to such a licence by virtue of a disability under s 92(7ZA) (as added): see PARA 459 ante.

10 For the meaning of 'provisional licence' see PARA 445 note 27 ante.

11 For the meaning of 'counterpart' see PARA 415 note 19 ante.

12 Road Traffic Act 1988 s 98(1)(c) (as substituted: see note 3 *supra*). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 2, 7, Sch 7 so as to remove the reference to the counterpart; and by ss 38(3), 59, Sch 7 so as to repeal the words 'in the case of a provisional licence' and to substitute the words 'any conditions' for the words 'the conditions'. At the date at which this volume states the law no such day had been appointed. As to the conditions to which provisional licences may be subject see PARA 464 ante.

13 For regulations made under the Road Traffic Act 1988 s 98(2)(b) (as amended) see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864 (as amended). For the meaning of 'prescribed' see PARA 443 note 4 ante.

14 Road Traffic Act 1988 s 98(2) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 ss 5(10)(a), 7, Sch 3 para 11(b); and the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, reg 2(1), Sch 1 para 4(b)). In such cases or as respects such classes of vehicles as the Secretary of State may prescribe, the provisions of the Road Traffic Act 1988 s 98(2) (as amended) either do not apply or apply subject to such limitations as he may prescribe: s 98(4). The application of s 98(2) (as amended) is significantly limited by regulations under s 98(4) (as amended): see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 19.

15 Road Traffic Act 1988 s 98(3) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 1 para 4(c)). In such cases or as respects such classes of vehicles as the Secretary of State may prescribe, the provisions of the Road Traffic Act 1988 s 98(3) (as amended) either do not apply or apply subject to such limitations as he may prescribe: s 98(4). At the date at which this volume states the law no such limitations had been prescribed. As from a day to be appointed, s 98(3) is further amended by the Transport Act 2000 s 260, Sch 29 paras 1, 4 so as to make it subject to regulations under the Road Traffic Act 1988 s 99ZA (as added) (see PARA 485 post). At the date at which this volume states the law no such day had been appointed.

Section 98(3) (as amended), in so far as it prevents such a licence as is there mentioned from authorising a person to drive certain motor cycles, does not apply in the case of motor cycles in the service of a visiting force: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(4).

Moreover, the Road Traffic Act 1988 s 98(2) (as amended) (see the text and note 14 *supra*) does not authorise a person on whom a notice under s 92(5)(b) (as amended) (see PARA 459 ante) has been served to drive motor vehicles otherwise than in accordance with the limits specified in the notice: s 98(4A) (added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 5(10)(b); and amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, reg 2(3), Sch 3 para 1(b)).

16 Road Traffic Act 1988 s 98(3)(a). Such a licence might not lawfully be held by reason of the provisions of s 101 (as amended) (see PARAS 478-479 post): see s 98(3)(a). See also note 15 *supra*.

17 For the meaning of 'test of competence to drive' see PARA 443 note 20 ante.

18 For the meaning of 'motor bicycle' see PARA 447 note 11 ante.

19 le by virtue of the Road Traffic Act 1988 s 97(3)(d) (as substituted): see PARA 464 ante.

20 *Ibid* s 98(3)(b) (amended by Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2(1), Sch 1 para 7(3)).

As to a person's entitlement to drive a motor bicycle upon passing a test see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 44. See also note 15 *supra*.

21 For the meaning of 'moped' see PARA 447 note 12 ante.

22 For the meaning of 'road' see PARA 206 ante.

23 le by virtue of the Road Traffic Act 1988 s 97(3)(e) (as substituted): see PARA 464 ante.

24 Ibid s 98(3)(c) (added by the Road Traffic (Driver Licensing and Information Systems) Act 1989, Sch 3 para 11(c); and amended by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 7(3)). See also note 15 supra. As from a day to be appointed, the Road Traffic Act 1988 s 98(3)(c) is repealed by the Transport Act 2000 s 274, Sch 31 Pt V. At the date at which this volume states the law no such day had been appointed.

As to a person's entitlement to drive a moped on passing a test see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 44A (added by SI 2001/53).

## **UPDATE**

### **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **466 Form, content and effect of licences**

NOTE 20--SI 1999/2864 reg 44 amended: SI 2009/788.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(vii) Granting of Licences/467. Compulsory surrender of old-form licences.

### **467. Compulsory surrender of old-form licences.**

As from a day to be appointed, the Secretary of State<sup>1</sup> may by order require the holders of licences<sup>2</sup> of a specified description, or any specified description of the holders of such licences, to surrender the licences and their counterparts<sup>3</sup> to the Secretary of State<sup>4</sup>. Before making such an order the Secretary of State must consult with such representative organisations as he thinks fit<sup>5</sup>. Such an order may specify as the description of licences to be surrendered: (1) licences which are not in the form of a photocard; or (2) licences in the form of a photocard of a description no longer specified by the Secretary of State as a form in which licences are granted<sup>6</sup>. An order must specify the date by which the licences to which it relates (and their counterparts) are to be surrendered; and may specify different dates in relation to different descriptions of licence holders<sup>7</sup>.

An order must include provision for the grant of a new licence to every holder of a licence surrendered (with its counterpart) in pursuance of the order who: (a) pays such fee (if any) as is specified by the order; and (b) provides the Secretary of State with such evidence or further evidence as the Secretary of State may require (which may include a photograph which is a current likeness of him)<sup>8</sup>. A replacement licence granted pursuant to such provision expires on the date on which the surrendered licence would have expired had it not been surrendered<sup>9</sup>; but where the period for which the surrendered licence was granted was based on an error with respect to the licence holder's date of birth such that (if the error had not been made) that licence would have been expressed to expire on a different date, the replacement licence expires on that different date<sup>10</sup>.

A person who, without reasonable excuse, fails to comply with any requirement to surrender a licence and its counterpart imposed by an order made by the Secretary of State is guilty of an offence<sup>11</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'licence' see PARA 443 note 6 ante.

3 For the meaning of 'counterpart' see PARA 415 note 19 ante.

4 Road Traffic Act 1988 s 98A(1). Section 98A is added, as from a day to be appointed, by the Road Safety Act 2006 s 39(1). At the date at which this volume states the law no such day had been appointed. As from a day to be appointed, the Road Traffic Act 1988 s 98A(1) (as added) is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 2, 8(1), (2), Sch 7 so as to remove the reference to the counterparts. At the date at which this volume states the law no such day had been appointed.

An order under the Road Traffic Act 1988 s 98A (as added) may: (1) make different provision for different cases; and (2) contain such incidental and supplementary provisions as the Secretary of State considers appropriate: s 98A(8) (as so added). The power to make an order under s 98A (as added) is exercisable by statutory instrument (s 98A(9) (as so added)), and a statutory instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament (s 98A(11) (as so added)).

5 Ibid s 98A(10) (as added: see note 4 supra).

6 Ibid s 98A(2) (as added: see note 4 supra).

7 Ibid s 98A(3) (as added: see note 4 supra). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 Sch 3 para 8(3), Sch 7 so as to remove the reference to the counterparts. At the date at which this volume states the law no such day had been appointed.

8 Road Traffic Act 1988 s 98A(4) (as added: see note 4 supra). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 Sch 3 para 8(4), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

9 Road Traffic Act 1988 s 98A(5) (as added: see note 4 supra).

10 Ibid s 98A(6) (as added: see note 4 supra).

11 Ibid s 98A(7) (as added: see note 4 supra). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 Sch 3 para 8(5), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, s 33(1), Sch 2 Pt I (entry added by the Road Safety Act 2006 s 39(3); and prospectively amended by Sch 3 paras 30, 63(1), (2)(c), Sch 7). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(viii) Duration of Licences/468. Vehicles other than prescribed classes of goods and passenger-carrying vehicles.

## (viii) Duration of Licences



#### **468. Vehicles other than prescribed classes of goods and passenger-carrying vehicles.**

In so far as a licence<sup>1</sup> authorises its holder to drive<sup>2</sup> motor vehicles<sup>3</sup> of classes<sup>4</sup> other than any prescribed<sup>5</sup> class of goods vehicle<sup>6</sup> or any prescribed class of passenger-carrying vehicle<sup>7</sup>, unless previously revoked or surrendered<sup>8</sup> and subject to the provisions set out below, it remains in force<sup>9</sup>:

- 867 (1) except in a case falling within head (2) or head (3) below, for the period ending on the seventieth anniversary of the applicant's date of birth or for a period of three years, whichever is the longer<sup>10</sup>;
- 868 (2) except in a case falling within head (3) below, if the Secretary of State<sup>11</sup> so determines in the case of a licence to be granted to a person appearing to him to be suffering from a relevant or prospective disability, for such period of not more than three years and not less than one year as the Secretary of State may determine<sup>12</sup>; and
- 869 (3) in the case of a licence granted in exchange for a subsisting licence and in pursuance of an application requesting a licence for the period authorised by this provision, for a period equal to the remainder of that for which the subsisting licence was granted<sup>13</sup>,

and any such period begins with the date on which the licence in question is expressed to come into force<sup>14</sup>.

1 For the meaning of 'licence' see PARA 443 note 6 ante.

2 For the meaning of 'drive' see PARA 207 ante.

3 For the meaning of 'motor vehicle' see PARA 210 ante.

4 As to classes of vehicles see PARA 208 ante.

5 For the prescribed classes of goods and passenger-carrying vehicles see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 49.

6 For the meaning of 'goods vehicle' see PARA 220 ante.

7 For the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 post; definition applied by the Road Traffic Act 1988 s 108(1) (definition added by Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 15).

8 Driving licences may be revoked for the following reasons:

115 (1) on the grounds that the holder is suffering from a relevant or prospective disability (see the Road Traffic Act 1988 s 93(1), (2) (as amended); and PARA 456 ante);

116 (2) by reason of error (see s 99(3) (as amended); and PARA 472 post);

117 (3) upon the holder being disqualified by order of a court when it is treated as being revoked (see the Road Traffic Offenders Act 1988 s 37(1); and PARA 1072 post); or

118 (4) by virtue of the holder falling within the provisions of the Road Traffic (New Drivers) Act 1995 s 3(1), Sch 1 para 8(1) (see PARA 517 post).

For the meaning of 'relevant disability' see PARA 446 note 18 ante. For the meaning of 'prospective disability' see PARA 455 note 5 ante.

Licences may be surrendered voluntarily, either temporarily or permanently, or surrender may be required by virtue of the Road Traffic Act 1988 s 99(4) (as amended): see PARA 472 post.

9 Ibid s 99(1) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 3 para 12(a)).

10 Road Traffic Act 1988 s 99(1)(a) (as amended: see note 9 supra).

11 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

12 Road Traffic Act 1988 s 99(1)(b) (as amended: see note 9 supra).

13 Ibid s 99(1)(c) (as amended: see note 9 supra).

14 Ibid s 99(1) (as amended: see note 9 supra).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(viii) Duration of Licences/469. Prescribed classes of goods vehicles and passenger-carrying vehicles.

### 469. Prescribed classes of goods vehicles and passenger-carrying vehicles.

In so far as a licence<sup>1</sup> authorises its holder to drive any prescribed class of goods vehicle<sup>2</sup> or passenger-carrying vehicle<sup>3</sup>, unless previously revoked, suspended or surrendered<sup>4</sup>, it remains in force<sup>5</sup>:

870 (1) except in a case falling within head (3) or head (4) below<sup>6</sup>:  
39

80. (a) for the period ending on the forty-fifth anniversary of the applicant's date of birth or for a period of five years, whichever is the longer<sup>7</sup>; or

81. (b) where the applicant's age at the date on which the licence is to come into force will exceed 45 but not 65 years, for the period ending on the sixty-sixth anniversary of the applicant's date of birth or for a period of five years, whichever is the shorter<sup>8</sup>;

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871 (2) except in a case falling within head (4) below, where the applicant's age at that date will exceed 65 years, for a period of one year<sup>9</sup>;

872 (3) except in a case falling within head (2) above or head (4) below, if the Secretary of State<sup>10</sup> so determines in the case of a licence to be granted to a person appearing to him to be suffering from a relevant or prospective disability, for such period of not more than three years and not less than one year as the Secretary of State may determine<sup>11</sup>; and

873 (4) in the case of a licence granted in exchange for a subsisting licence and in pursuance of an application requesting a licence for the period authorised<sup>12</sup>, for a period equal to the remainder of that for which the subsisting licence was granted<sup>13</sup>,

and any such period begins with the date on which the licence in question is expressed to come into force<sup>14</sup>.

- 1 For the meaning of 'licence' see PARA 443 note 6 ante.
- 2 For the meaning of 'goods vehicle' see PARA 220 ante. For the prescribed classes of goods and passenger-carrying vehicles see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 49.
- 3 For the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 ante.
- 4 As to the revocation and suspension of driving licences see PARA 468 note 8 ante.
- 5 Road Traffic Act 1988 s 99(1A) (s 99(1A) added by the Road Traffic (Driver Licensing and Information Systems) Act s 2(2)).
- 6 Road Traffic Act 1988 s 99(1A)(a) (as added: see note 5 supra).
- 7 Ibid s 99(1A)(a)(i) (as added: see note 5 supra).
- 8 Ibid s 99(1A)(a)(ii) (as added: see note 5 supra).
- 9 Ibid s 99(1A)(b) (as added: see note 5 supra).
- 10 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 11 Road Traffic Act 1988 s 99(1A)(c) (as added: see note 5 supra).
- 12 Ie for the period authorised by ibid s 99(1A)(d) (as added): see the text to note 13 infra.
- 13 Ibid s 99(1A)(d) (as added: see note 5 supra).
- 14 Ibid s 99(1A) (as added: see note 5 supra).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(viii) Duration of Licences/470. Duration of provisional licences.

#### 470. Duration of provisional licences.

To the extent that a provisional licence<sup>1</sup> authorises the driving of a motor bicycle<sup>2</sup> or moped<sup>3</sup> of a prescribed class<sup>4</sup> it will, unless previously surrendered or revoked<sup>5</sup>, remain in force<sup>6</sup>:

874 (1) for such period as may be prescribed<sup>7</sup>; or

875 (2) if the licence is granted to the holder of a previous licence which was surrendered, revoked or treated as being revoked<sup>8</sup>:

41

82. (a) for the remainder of the period for which the previous licence would have authorised the driving of such a motor cycle or moped<sup>9</sup>; or

83. (b) in such circumstances as may be prescribed<sup>10</sup>, for a period equal to that remainder at the time of surrender or revocation<sup>11</sup>.

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1 For the meaning of 'provisional licence' see PARA 445 note 27 ante.

2 For the meaning of 'motor bicycle' see PARA 447 note 11 ante.

3 For the meaning of 'moped' see PARA 447 note 12 ante.

4 As to classes of vehicles see PARA 208 ante.

5 As to the revocation of driving licences see PARA 468 note 6 ante. As to the surrender of driving licences see PARA 472 post.

6 Road Traffic Act 1988 s 99(2) (amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 8; and the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 8(2)).

7 Road Traffic Act 1988 s 99(2)(a) (as amended: see note 6 supra). The prescribed period is the same period as is provided by s 99(1) (see PARA 468 ante) in relation to a licence to which s 99(1) (as amended) applies: see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 15(1) (amended by SI 2001/53).

8 Road Traffic Act 1988 s 99(2)(b).

9 Ibid s 99(2)(b)(i) (amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 8; and the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 8(2)).

10 As to the circumstances prescribed for the purposes of the Road Traffic Act 1988 s 99(2)(b)(ii) see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 15(2).

11 Road Traffic Act 1988 s 99(2)(b)(ii).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(viii) Duration of Licences/471. Special provisions applying to photocard licences.

#### 471. Special provisions applying to photocard licences.

Where a licence<sup>1</sup> in the form of a photocard remains in force for a period of more than ten years<sup>2</sup>, the holder of the licence must surrender it and its counterpart<sup>3</sup> to the Secretary of State<sup>4</sup>

not later than the end of the period of ten years beginning with the date shown on the licence as the date of its issue<sup>5</sup> or, if the licence was granted by way of renewal or replacement of a licence bearing the same photograph, the date shown on the earliest licence bearing that photograph as the date of issue of that licence<sup>6</sup>. A person who, without reasonable excuse, fails to comply with this requirement is guilty of an offence<sup>7</sup>. Where a person who has a duty to surrender his licence and its counterpart is not in possession of them in consequence of the fact that he has surrendered them to a constable or authorised person<sup>8</sup> on receiving a fixed penalty notice<sup>9</sup>, he does not fail to comply with the duty if he surrenders the licence and its counterpart to the Secretary of State immediately on their return<sup>10</sup>. On the surrender of a licence and its counterpart by such a person<sup>11</sup> the Secretary of State must grant a new licence to that person<sup>12</sup>. The Secretary of State is not required to grant a new licence on the surrender of a licence and its counterpart by a person in pursuance of the above provisions unless the person has paid the fee (if any) which is prescribed<sup>13</sup>.

1 For the meaning of 'licence' see PARA 443 note 6 ante.

2 In accordance with the Road Traffic Act 1988 s 99(1) (as amended), s 99(1A) (as added), s 99(2) (as amended): see PARAS 468-470 ante.

3 For the meaning of 'counterpart' see PARA 415 note 19 ante.

4 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 Road Traffic Act 1988 s 99(2A)(a) (s 99(2A) added by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 8(3)). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 2, 9(1), (2), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

6 Road Traffic Act 1988 s 99(2A)(b) (as added: see note 5 supra).

7 Ibid s 99(5) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 12(c); and the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 8(5)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 28; and the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 16(3); and prospectively amended by the Road Safety Act 2006 Sch 3 paras 30, 63(1), (2)(d), Sch 7). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

8 In an authorised person within the meaning of the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended). For the meaning of 'authorised person' see PARA 1097 note 15 post.

9 In a notice given to him under ibid s 54 (as amended): see PARA 1097 post.

10 Road Traffic Act 1988 s 99(6) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 1 para 5(c)). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 Sch 3 para 9(5), Sch 7 so as to remove references to the counterpart. At the date at which this volume states the law no such day had been appointed.

11 In pursuance of the Road Traffic Act 1988 s 99(2A) (as added), s 99(3) (as amended) or s 99(4) (as amended): see PARA 472 post.

12 Ibid s 99(7) (substituted by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 8(6); and amended by the Road Safety Act 2006 ss 40(1)(a), 59, Sch 7).

13 Road Traffic Act 1988 s 99(7ZA) (added by the Road Safety Act 2006 s 40(1)(b)). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 Sch 3 para 9(7), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(viii) Duration of Licences/472. Compulsory surrender and revocation of licences.

#### **472. Compulsory surrender and revocation of licences.**

Where it appears to the Secretary of State<sup>1</sup>:

- 876 (1) that a licence granted by him to any person was granted in error or with an error or omission in the particulars specified in the licence<sup>2</sup>; or
- 877 (2) that the counterpart<sup>3</sup> of a licence granted by him to any person is required to be endorsed in pursuance of any enactment or was issued with an error or omission in the particulars specified in the counterpart or required to be so endorsed on it<sup>4</sup>; or
- 878 (3) that the particulars specified in a licence granted by him to any person or in its counterpart do not comply with a requirement imposed since the licence was granted by any provision made by or having effect under any enactment<sup>5</sup>,

the Secretary of State may serve notice in writing on that person revoking the licence and requiring him to surrender the licence and its counterpart immediately to the Secretary of State and it is the duty of that person to comply with the requirement<sup>6</sup>.

Where the name or address of the licence holder as specified in a licence ceases to be correct, its holder must immediately surrender the licence and its counterpart to the Secretary of State<sup>7</sup>.

A person who without reasonable excuse fails to comply with these duties<sup>8</sup> is guilty of an offence<sup>9</sup>. Where a person who has a duty to surrender his licence and its counterpart is not in possession of them in consequence of the fact that he has surrendered them to a constable or authorised person<sup>10</sup> on receiving a fixed penalty notice<sup>11</sup>, he does not fail to comply with the duty if he surrenders the licence and its counterpart to the Secretary of State immediately on their return<sup>12</sup>.

On the surrender of a licence and its counterpart by such a person<sup>13</sup> the Secretary of State must grant a new licence to that person<sup>14</sup>. However, where the surrendered licence was revoked because it was granted in error or in consequence of an error or omission appearing to the Secretary of State to be attributable to the fault of the licence holder or in consequence of a current disqualification<sup>15</sup>, the Secretary of State may, if the person is not currently disqualified, grant a new licence to that person on payment of the prescribed fee<sup>16</sup>. A replacement licence so granted<sup>17</sup> expires on the date on which the surrendered licence would have expired had it not been surrendered except that, where the period for which the surrendered licence was granted was based on an error with respect to the licence holder's date of birth such that (if that error had not been made) that licence would have been expressed to expire on a different date, the replacement licence will expire on that different date<sup>18</sup>.

1 Road Traffic Act 1988 s 99(3). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Ibid s 99(3)(a) (substituted by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, reg 2(1), Sch 1 para 5(a)).

3 For the meaning of 'counterpart' see PARA 415 note 19 ante.

4 Road Traffic Act 1988 s 99(3)(aa) (added by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 1 para 5(a)). As from a day to be appointed, this provision is repealed by the Road Safety Act 2006 s 10(12), 59, Sch 3 paras 2, 9(1), (3)(a), Sch 7. At the date at which this volume states the law no such day had been appointed.

5 Road Traffic Act 1988 s 99(3)(b) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 1 para 5(a)). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 Sch 3 para 9(3)(b), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

6 Road Traffic Act 1988 s 99(3) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 12(b); and the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 1 para 5(a)). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 Sch 3 para 9(3)(c), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

Where: (1) the Secretary of State is sent under a provision of Northern Ireland law corresponding to the Road Traffic Act 1988 s 97(1AA) (as added) (see PARA 462 note 7 ante) a licence granted under Pt III (ss 87-109C) (as amended) to a person to drive a motor vehicle of any class; and (2) the Secretary of State is satisfied that a Northern Ireland licence to drive a motor vehicle of that or a corresponding class has been granted to that person, the Secretary of State must serve notice in writing on that person revoking the licence granted under Pt III (as amended): s 99(3A) (added by the Crime (International Co-operation) Act 2003 s 78(1), (3)).

7 Road Traffic Act 1988 s 99(4) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 1 para 5(b); and the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 8(4)). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 Sch 3 para 9(4), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

8 I.e. the requirements under the Road Traffic Act 1988 s 99(3) (as amended), or s 99(4) (as amended): see the text and notes 1-7 supra.

9 Ibid s 99(5) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 12(c); and the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 8(5)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 28; and the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 16(3)). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

10 I.e. an authorised person within the meaning of the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended). For the meaning of 'authorised person' see PARA 1097 note 15 post.

11 I.e. a notice given to him under ibid s 54 (as amended): see PARA 1097 post.

12 Road Traffic Act 1988 s 99(6) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 1 para 5(c)). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 Sch 3 para 9(5), Sch 7 so as to remove the references to the counterpart. At the date at which this volume states the law no such day had been appointed.

13 I.e. in pursuance of the Road Traffic Act 1988 s 99(3) (as amended) or s 99(4) (as amended): see the text and notes 1-7 supra.

14 Ibid s 99(7) (substituted by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 8(6); and amended by the Road Safety Act 2006 ss 40(1)(a), 59, Sch 7). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 Sch 3 para 9(6), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

Such a licence is to be granted free of charge: Road Traffic Act 1988 s 99(7ZA) (added by the Road Safety Act 2006 s 40(1)(b)). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 Sch 3 para 9(7), Sch 7 so as to remove the reference to the counterpart.

15 The Road Traffic Act 1988 s 99(7) (as substituted and amended) does not apply in this situation: see s 99(7A) (as added); and the text and note 17 infra. For the meaning of 'disqualification' see PARA 443 note 11 ante.

16 Ibid s 99(7A) (added by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 8(6)). The Secretary of State may require a person to provide evidence of his name, address, sex, and date and place of birth, and a photograph which is a current likeness of him, before so granting a new licence to him under the Road Traffic Act 1988 s 99(7) (as substituted and amended) or s 99(7A) (as added): s 99(7B) (added by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 8(6)). For the prescribed fee see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 14, Sch 3 (substituted by SI 2004/265).

17 Ibid under the Road Traffic Act 1988 s 99(7) (as substituted and amended), or s 99(7A) (as added).

18 Ibid s 99(8) (substituted by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 8(6)).

## **UPDATE**

### **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **472 Compulsory surrender and revocation of licences**

NOTE 16--SI 1999/2864 Sch 3 amended: SI 2007/698, SI 2008/508, SI 2009/788.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/ (ix) Community Licence Holders/473. Authorisation to drive in Great Britain.

## **(ix) Community Licence Holders**

### **473. Authorisation to drive in Great Britain.**

A Community licence<sup>1</sup> holder may drive<sup>2</sup>, and a person may cause or permit a Community licence holder to drive, in Great Britain<sup>3</sup> a motor vehicle<sup>4</sup> of any class<sup>5</sup> which he is authorised by his Community licence to drive, and he is not disqualified<sup>6</sup> for holding or obtaining a licence to drive<sup>7</sup> notwithstanding that he is not the holder of an appropriate licence<sup>8</sup>.

In relation to a Community licence holder who is normally resident<sup>9</sup> in Great Britain<sup>10</sup> the following provisions apply. In a case where the Community licence holder is authorised by his Community licence to drive motor vehicles of classes other than any prescribed<sup>11</sup> class of goods or passenger-carrying vehicle<sup>12</sup>, he ceases to be authorised<sup>13</sup> to drive in Great Britain any such classes of motor vehicle from the date on which he attains the age of 70 years, or the expiry of the period of three years beginning with the relevant date<sup>14</sup>, whichever is the later<sup>15</sup>. In a case where the Community licence holder is authorised by his Community licence to drive any



prescribed class of goods or passenger-carrying vehicle, he ceases to be authorised to drive in Great Britain any such class of vehicle<sup>16</sup>:

- 879 (1) except in a case falling within head (2) or head (3) below, from the date on which he attains the age of 45 years, or the expiry of the period of five years beginning with the relevant date, whichever is the later<sup>17</sup>;
- 880 (2) where his age at the relevant date exceeds 45 but not 65 years, from the date on which he attains the age of 66 years, or the expiry of the period of five years beginning with the relevant date, whichever is the earlier<sup>18</sup>; and
- 881 (3) where his age at the relevant date exceeds 65 years, from the expiry of the period of one year beginning with that date<sup>19</sup>.

A Community licence holder to whom a counterpart<sup>20</sup> of his Community licence is issued<sup>21</sup>, and who is authorised<sup>22</sup> to drive in Great Britain motor vehicles of certain classes only, may drive in Great Britain motor vehicles of all other classes subject to the same conditions as if he were authorised by a provisional licence<sup>23</sup> to drive motor vehicles of those other classes<sup>24</sup>.

A Community licence is not to be treated as authorising a person to drive a vehicle of any class if it is not for the time being valid<sup>25</sup> for that purpose in the EEA state<sup>26</sup> in respect of which it was issued<sup>27</sup>.

1 For the meaning of 'Community licence' see PARA 415 note 16 ante.

2 For the meaning of 'drive' see PARA 207 ante.

3 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

4 For the meaning of 'motor vehicle' see PARA 210 ante.

5 As to classes of vehicles see PARA 208 ante.

6 For the meaning of 'disqualified' see PARA 443 note 11 ante.

7 I.e. a licence under the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended).

8 Ibid s 99A(1) (s 99A added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 9). An appropriate licence is one under the Road Traffic Act 1988 Pt III (as amended): see s 99A (as so added).

9 As to the meaning of 'normally resident' see PARA 445 note 5 ante.

10 Road Traffic Act 1988 s 99A(2) (as added: see note 8 supra). The provisions which apply are those of s 99A(3), (4) (as added): see s 99A(2) (as so added).

11 For the prescribed classes of vehicles see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 49(4). As to categories of motor vehicle see PARA 454 ante.

12 For the meaning of 'goods vehicle' see PARA 220 ante. For the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 post.

13 I.e. authorised by virtue of the Road Traffic Act 1988 s 99A(1) (as added): see the text and notes 1-8 supra.

14 For the purposes of ibid s 99A (as added), 'relevant date', in relation to a Community licence holder who is normally resident in Great Britain, means the date on which he first became so resident: s 99A(8)(b) (as added: see note 8 supra). Section 99A(8) (as added) also contains transitional provisions which are now spent: see s 99A(8)(a) (as so added). As to the relevant residence requirements see PARA 445 note 5 ante.

15 Ibid s 99A(3) (as added: see note 8 supra).

16 Ibid s 99A(4) (as added: see note 8 supra).

- 17 Ibid s 99A(4)(a) (as added (see note 8 supra); and substituted by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, regs 2, 9).
- 18 Road Traffic Act 1988 s 99A(4)(b) (as added: see note 8 supra).
- 19 Ibid s 99A(4)(c) (as added: see note 8 supra).
- 20 For the meaning of 'counterpart' see PARA 415 note 19 ante.
- 21 Issued under the Road Traffic Act 1988 s 99B (as added): see PARA 474 post.
- 22 Issued by virtue of ibid s 99A(1) (as added): see note 8 supra.
- 23 For the meaning of 'provisional licence' see PARA 445 note 27 ante.
- 24 Road Traffic Act 1988 s 99A(5) (as added: see note 8 supra). The provisions of s 98(3), (4) (as amended) (see PARA 466 ante) apply in relation to s 99A(5) (as added) as they apply in relation to s 98(2) (as amended) (see PARA 466 ante): s 99A(6) (as so added). The operation of s 99A(5) (as added) is thereby limited. As to the limitations placed upon the right of Community licence holders to drive other classes of vehicle under provisional licence conditions see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 19(7)-(11). The provisions of the Road Traffic Act 1988 s 99A(5), (6) (as added) are repealed, as from a day to be appointed, by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 2, 10, Sch 7. At the date at which this volume states the law no such day had been appointed.
- 25 'Valid' is not defined in the legislation. A licence would presumably not be valid if, for example, it had expired in the state of issue.
- 26 For the meaning of 'EEA state' see PARA 415 note 16 ante.
- 27 Road Traffic Act 1988 s 99A(7) (as added: see note 8 supra). Section 99A(7) (as added) applies for the purposes of Pt III (ss 87-109C) (as amended) and Pt IV (ss 110-122) (as substituted and amended).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 473 Authorisation to drive in Great Britain

NOTE 8--It is contrary to principle of mutual recognition of a driving licence to demand that holder of a licence issued in one member state apply for recognition of that licence in another member state: Joined Cases C-329/06 and C-343/06 *Wiedemann v Land Baden-Württemberg* [2008] 3 CMLR 531, [2008] All ER (D) 373 (Jul), ECJ. See also Case C-321/07 *Staatsanwaltschaft Mannheim v Schwarz* [2009] RTR 281, [2009] All ER (D) 227 (Feb), ECJ.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/ (ix) Community Licence Holders/474. Provision of information and issue of counterpart licences.

### 474. Provision of information and issue of counterpart licences.

A Community licence<sup>1</sup> holder who is normally resident<sup>2</sup> in Great Britain<sup>3</sup>, and is authorised by his Community licence to drive medium-sized or large goods vehicles<sup>4</sup> or passenger-carrying vehicles<sup>5</sup> of any class<sup>6</sup>, must, on or before the expiry of the period of 12 months beginning with the relevant date<sup>7</sup>, deliver his Community licence to the Secretary of State<sup>8</sup> and provide him with the information specified in heads (1) to (6) below<sup>9</sup>. That requirement does not, however, apply to a Community licence holder from whom the Secretary of State has received a qualifying application<sup>10</sup> for the grant of a licence<sup>11</sup>.

The Secretary of State may issue to any Community licence holder who is normally resident in Great Britain, and has delivered his Community licence to the Secretary of State, and provided him with the information specified in heads (1) to (6) below<sup>12</sup>, a document<sup>13</sup> in such form and containing such information as the Secretary of State may determine but designed for the endorsement of particulars relating to the Community licence<sup>14</sup>.

The information specified<sup>15</sup> is:

- 882 (1) the name and address in Great Britain of the Community licence holder<sup>16</sup>;
- 883 (2) his date of birth<sup>17</sup>;
- 884 (3) the classes of vehicle which he is authorised by his Community licence to drive<sup>18</sup>;
- 885 (4) the period of validity of the Community licence in the EEA state<sup>19</sup> in respect of which it was issued<sup>20</sup>;
- 886 (5) whether the licence was granted in exchange for a licence issued by a state other than an EEA state<sup>21</sup>; and
- 887 (6) such other information as the Secretary of State may require for the purposes of the proper exercise of any of his relevant functions<sup>22</sup>.

The Secretary of State may endorse a Community licence delivered to him<sup>23</sup> in such manner as he may determine with any part of the specified or required information<sup>24</sup>, or with information providing a means of ascertaining that information or any part of it<sup>25</sup>, and must return the Community licence to the holder<sup>26</sup>. Where it appears to the Secretary of State that a counterpart of a Community licence:

- 888 (a) is required to be endorsed in pursuance of any enactment or was issued with an error or omission in the information contained in it or in the particulars required to be endorsed on it<sup>27</sup>; or
- 889 (b) does not comply with any requirement imposed since it was issued by any provision made by, or having effect under, any enactment<sup>28</sup>,

the Secretary of State may serve notice in writing on the Community licence holder requiring him to surrender the counterpart immediately to the Secretary of State, and it is the duty of the Community licence holder to comply with any such requirement<sup>29</sup>. Where the name or address of a Community licence holder as specified in the counterpart of his Community licence<sup>30</sup> ceases to be correct, the Community licence holder must surrender the counterpart and, in the case of a change of name, deliver his Community licence, immediately to the Secretary of State and provide him with particulars of the alterations falling to be made in the name or address<sup>31</sup>. On the surrender of a counterpart of a Community licence by any person<sup>32</sup> the Secretary of State must issue to that person a new counterpart of the Community licence<sup>33</sup>. On the delivery of a Community licence by any person<sup>34</sup> the Secretary of State may endorse the Community licence with the correct name and must return the Community licence to that person<sup>35</sup>. Where a Community licence holder who is required<sup>36</sup> to surrender the counterpart of his Community licence or to deliver his Community licence is not in possession of it in consequence of the fact that he has surrendered it to a constable or authorised person<sup>37</sup> on

receiving a fixed penalty notice<sup>38</sup>, he does not fail to comply with that requirement if he surrenders the counterpart or delivers the Community licence immediately on its return<sup>39</sup>.

1 For the meaning of 'Community licence' see PARA 415 note 16 ante.

2 As to the relevant residence requirements see PARA 445 note 5 ante.

3 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

4 'Medium-sized goods vehicle' means a motor vehicle which is constructed or adapted to carry or to haul goods, which is not adapted to carry more than nine persons inclusive of the driver, and the permissible maximum weight of which exceeds 3.5 but not 7.5 tonnes, and includes a combination of such a motor vehicle and a trailer where the relevant maximum weight of the trailer does not exceed 750 kg: Road Traffic Act 1988 s 108(1) (definition substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 19(2)). For the meaning of 'goods vehicle' see PARA 220 ante. As to large goods vehicles see PARA 487 et seq post.

5 For the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 post.

6 As to classes of vehicles see PARA 208 ante.

7 For the meaning of 'relevant date' see PARA 473 note 14 ante; definition applied by the Road Traffic Act 1988 s 99B(14) (s 99B added by the Driving Licences (Community Driving Licences) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 10).

8 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

9 Road Traffic Act 1988 s 99B(1) (as added: see note 7 supra). Where a Community licence holder has not complied with the Road Traffic Act 1988 s 99B(1) (as added), the Secretary of State may serve notice in writing on the holder requiring him to deliver his Community licence to the Secretary of State and to provide him with the information specified in, or required under s 99B(4) (as added) within such period (not being less than 28 days from the date of service of the notice) as is specified in the notice: s 99B(10) (as so added). A person who drives a motor vehicle on a road is guilty of an offence if he fails without reasonable excuse to comply with a requirement contained in a notice served on him in pursuance of s 99B(10) (as added): s 99B(11)(a) (as so added). For the meaning of 'motor vehicle' see PARA 210 ante; and for the meaning of 'road' see PARA 206 ante. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry amended by the Driving Licences (Community Driving Licences) Regulations 1996, SI 1996/1974, reg 3, Sch 2 para 8(d)). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post. In England and Wales, proceedings for an offence by virtue of the Road Traffic Act 1988 s 99B(11)(a) (as added) must not be instituted except by the Secretary of State or by a constable acting with the approval of the Secretary of State: s 99B(13) (as so added). As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

10 I.e. within the meaning of ibid s 88(1A) (as added): see PARA 446 ante.

11 Ibid s 99B(2) (as added: see note 7 supra). The licence referred to in the text is one granted under Pt III (ss 87-109C) (as amended): s 99B(2) (as so added).

12 I.e. the information specified or required under ibid s 99B(4) (as added): see notes 16-22 infra. This applies whether or not the information is provided in pursuance of s 99B (as added): see s 99B(3) (as added; prospectively repealed: see note 14 infra). A counterpart may therefore be issued to a person holding a Community licence not authorising the driving of a medium-sized or large goods vehicle or a passenger-carrying vehicle if he voluntarily provides the specified information. The advantage of doing so is to enable the Community licence holder to produce the counterpart to a constable or the fixed penalty clerk and take advantage of the lower penalties under the fixed penalty regime set out in the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended).

13 I.e. a document which is referred to in the Road Traffic Act 1988 Pt III (as amended) in relation to a Community licence as a 'counterpart'. For the meaning of 'counterpart' see PARA 415 note 19 ante.

14 Ibid s 99B(3) (as added: see note 7 supra). As from a day to be appointed, this provision is repealed by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 2, 11(1), (2), Sch 7. At the date at which this volume states the law no such day had been appointed.

15    Ie the information referred to in the Road Traffic Act 1988 s 99B(1), (3) (s 99B as added; s 99B(3) prospectively repealed) (see the text and notes 1-9, 12-14 supra): s 99B(4) (as added: see note 7 supra). As from a day to be appointed, s 99B(4) (as added) is amended by the Road Safety Act 2006 Sch 3 para 11(3) so as to refer to the information referred to in the Road Traffic Act 1988 s 99B(1) (as added) only. At the date at which this volume states the law no such day had been appointed.

16    Ibid s 99B(4)(a) (as added: see note 7 supra). See note 15 supra.

17    Ibid s 99B(4)(b) (as added: see note 7 supra). See note 15 supra.

18    Ibid s 99B(4)(c) (as added: see note 7 supra). See note 15 supra.

19    For the meaning of 'EEA state' see PARA 415 note 16 ante.

20    Road Traffic Act 1988 s 99B(4)(d) (as added: see note 7 supra). See note 15 supra.

21    Ibid s 99B(4)(e) (as added: see note 7 supra). See note 15 supra.

22    Ibid s 99B(4)(f) (as added: see note 7 supra). See note 15 supra. The relevant functions are those under Pt III (ss 87-109C) (as amended) and Pt IV (ss 110-122) (as substituted and amended): s 99B(4)(f) (as so added).

23    Ie whether or not this is done in pursuance of ibid s 99B(1) (as added): see the text and notes 1-9 supra.

24    Ie the information specified in, or required under ibid s 99B(4) (as added): see the text and notes 16-22 supra.

25    Ibid s 99B(5)(a) (as added: see note 7 supra). As from a day to be appointed, s 99B(5)(a) (as added) is amended by the Road Safety Act 2006 Sch 3 para 11(4) so that the Secretary of State may endorse the driving record (not the licence) of a person who delivers a Community licence to him. At the date at which this volume states the law no such day had been appointed. For the meaning of 'driving record' see PARA 1024 note 11 post.

26    Road Traffic Act 1988 s 99B(5)(b) (as added: see note 7 supra).

27    Ibid s 99B(6)(a) (as added: see note 7 supra).

28    Ibid s 99B(6)(b) (as added: see note 7 supra).

29    Ibid s 99B(6) (as added: see note 7 supra). A person who drives a motor vehicle on a road is guilty of an offence if he fails without reasonable excuse to comply with a requirement imposed under s 99B(6) (as added): s 99B(11)(b) (as so added). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry amended by the Driving Licences (Community Driving Licences) Regulations 1996, SI 1996/1974, Sch 2 para 8(d)).

As from a day to be appointed, the Road Traffic Act 1988 s 99B(6) (as added) is repealed, and s 99B(11)(b) (as added) is amended so as to remove the reference therein to s 99B(6) (as added), by the Road Safety Act 2006 Sch 3 para 11(5), (9), Sch 7. At the date at which this volume states the law no such day had been appointed.

30    Ie the Community licence issued under the Road Traffic Act 1988 s 99B (as added).

31    Ibid s 99B(7) (as added: see note 7 supra). As from a day to be appointed, s 99B(7) (as added) is substituted so as to provide that, where the name of a Community licence holder as specified in his Community licence ceases to be correct, he must deliver his Community licence immediately to the Secretary of State and provide him with particulars of the alterations falling to be made in the name on it: see s 99B(7) (as so added; prospectively substituted by the Road Safety Act 2006 Sch 3 para 11(6)). At the date at which this volume states the law no such day had been appointed.

A person who drives a motor vehicle on a road is guilty of an offence if he fails without reasonable excuse to comply with a requirement imposed under the Road Traffic Act 1988 s 99B(7) (as added; prospectively substituted): s 99B(11)(b) (as so added). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry amended by the Driving Licences (Community Driving Licences) Regulations 1996, SI 1996/1974, Sch 2 para 8(d)).

32    Ie in pursuance of the Road Traffic Act 1988 s 99B(6) (as added) or s 99B(7) (as added; prospectively substituted): see the text and notes 27-31 supra.

33    Ibid s 99B(8) (as added: see note 7 supra). As from a day to be appointed, this provision is repealed by the Road Safety Act 2006 Sch 3 para 11(7), Sch 7. At the date at which this volume states the law no such day had been appointed.

34 le in pursuance of the Road Traffic Act 1988 s 99B(7) (as added; prospectively substituted): see the text and note 31 supra.

35 Ibid s 99B(9) (as added: see note 7 supra). As from a day to be appointed, s 99B(9) (as added) is amended by the Road Safety Act 2006 Sch 3 para 11(8) so as to provide that the Secretary of State may also endorse the person's driving record. At the date at which this volume states the law no such day had been appointed. For the meaning of 'driving record' see PARA 1024 note 11 post.

36 le required under the Road Traffic Act 1988 s 99B(6) (as added) or s 99B(7) (as added; prospectively substituted): see the text and notes 27-31 supra.

37 le a constable or authorised person within the meaning of the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended). For the meaning of 'authorised person' see PARA 1097 note 15 post.

38 le a fixed penalty notice under ibid s 54 (as amended): see PARA 1097 post.

39 Road Traffic Act 1988 s 99B(12) (as added: see note 7 supra). As from a day to be appointed, this provision is repealed by the Road Safety Act 2006 Sch 3 para 11(10), Sch 7. At the date at which this volume states the law no such day had been appointed.

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/ (ix) Community Licence Holders/475. Revocation of authorisation to drive because of disability or prospective disability.

### **475. Revocation of authorisation to drive because of disability or prospective disability.**

If the Secretary of State<sup>1</sup> is at any time satisfied on inquiry:

- 890 (1) that a Community licence<sup>2</sup> holder who is normally resident<sup>3</sup> in Great Britain<sup>4</sup> at that time is suffering from a relevant disability<sup>5</sup>; and
- 891 (2) that the Secretary of State would be required<sup>6</sup> to refuse an application made by him at that time for a licence<sup>7</sup> authorising him to drive<sup>8</sup> a vehicle of the class<sup>9</sup> in respect of which his Community licence was issued or a class corresponding to that class<sup>10</sup>,

the Secretary of State may serve notice in writing requiring the Community licence holder to deliver the Community licence and its counterpart<sup>11</sup> (if any) immediately to the Secretary of State<sup>12</sup>.

If the Secretary of State is at any time satisfied on inquiry that a Community licence holder who is normally resident in Great Britain at that time is suffering from a prospective disability<sup>13</sup>, he may serve notice in writing requiring the Community licence holder to deliver the Community licence and its counterpart (if any) immediately to the Secretary of State<sup>14</sup>, and on receipt of

the Community licence and its counterpart (if any) grant to the Community licence holder, free of charge, a licence for a period determined by the Secretary of State<sup>15</sup>.

Where, in relation to a Community licence holder who is normally resident in Great Britain, the Secretary of State is at any time under a duty to serve notice on him<sup>16</sup>, the Secretary of State may include in that notice a requirement that the Community licence holder deliver the Community licence and its counterpart (if any) immediately to the Secretary of State<sup>17</sup>.

A person who is required<sup>18</sup> to deliver his Community licence and its counterpart (if any) to the Secretary of State, but without reasonable excuse fails to do so, is guilty of an offence<sup>19</sup>. Where a Community licence holder to whom a counterpart of his Community licence is issued<sup>20</sup> is required<sup>21</sup> to deliver his Community licence and its counterpart to the Secretary of State, and is not in possession of them in consequence of the fact that he has surrendered them to a constable or authorised person<sup>22</sup> on receiving a fixed penalty notice<sup>23</sup>, he does not fail to comply with any such requirement if he delivers the Community licence and its counterpart to the Secretary of State immediately on their return<sup>24</sup>.

Where a Community licence holder is served with the relevant notice<sup>25</sup> he ceases to be authorised<sup>26</sup> to drive in Great Britain a motor vehicle<sup>27</sup> of any class from such date as may be specified in the notice, not being earlier than the date of service of the notice<sup>28</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'Community licence' see PARA 415 note 16 ante.

3 As to the relevant residence requirements see PARA 445 note 5 ante.

4 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

5 Road Traffic Act 1988 s 99C(1)(a) (s 99C added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 11). For the meaning of 'relevant disability' see PARA 446 note 18 ante.

6 He is required by virtue of the Road Traffic Act 1988 s 92(3): see PARA 455 ante.

7 For the meaning of 'licence' see PARA 443 note 6 ante.

8 For the meaning of 'drive' see PARA 207 ante.

9 As to classes of vehicles see PARA 208 ante.

10 Road Traffic Act 1988 s 99C(1)(b) (as added: see note 5 supra).

11 For the meaning of 'counterpart' see PARA 415 note 19 ante.

12 Road Traffic Act 1988 s 99C(1) (as added: see note 5 supra). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 2, 12(1), (2), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

13 For the meaning of 'prospective disability' see PARA 455 note 5 ante.

14 Road Traffic Act 1988 s 99C(2)(a) (as added: see note 5 supra). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 Sch 3 para 12(2), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

15 Road Traffic Act 1988 s 99C(2)(b) (as added: see note 5 supra). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 Sch 3 para 12(2), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed. The Secretary of State determines the period of the licence under the Road Traffic Act 1988 s 99(1)(b): see PARA 468 ante.

16 He is in pursuance of ibid s 92(5) (as amended): see PARA 459 ante.

17 Ibid s 99C(3) (as added: see note 5 supra). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 Sch 3 para 12(2), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

18 Ie under the Road Traffic Act 1988 s 99C(1) (as added), s 99C(2) (as added) or s 99C(3) (as added): see the text and notes 1-17 supra.

19 Ibid s 99C(4) (as added: see note 5 supra). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 Sch 3 para 12(2), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

20 Ie under the Road Traffic Act 1988 s 99B (as added; prospectively amended): see PARA 474 ante.

21 Ie under, or by virtue of, any of the provisions of ibid s 99C(1)-(3) (as added; prospectively amended): see the text and notes 1-17 supra.

22 Ie a constable or authorised person within the meaning of the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended). For the meaning of 'authorised person' see PARA 1097 note 15 post. As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

23 Ie given to him under ibid s 54 (as amended): see PARA 1097 post.

24 Road Traffic Act 1988 s 99C(5) (as added: see note 5 supra). As from a day to be appointed, this provision is repealed by the Road Safety Act 2006 Sch 3 para 12(3), Sch 7. At the date at which this volume states the law no such day had been appointed.

25 Ie a notice in pursuance of the Road Traffic Act 1988 s 99C(1), (2), or (3) (as added; prospectively amended): see the text and notes 1-17 supra.

26 Ie authorised by virtue of ibid s 99A(1) (as added): see PARA 473 ante.

27 For the meaning of 'motor vehicle' see PARA 210 ante.

28 Road Traffic Act 1988 s 99C(6) (as added: see note 5 supra).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/ (ix) Community Licence Holders/476. Return of Community licences delivered to Secretary of State.

#### 476. Return of Community licences delivered to Secretary of State.

Where a Community licence<sup>1</sup> is delivered to the Secretary of State<sup>2</sup>, then the Secretary of State must, on or after the expiry of the relevant period<sup>3</sup>, forward the Community licence to the licensing authority in the EEA state<sup>4</sup> in respect of which it was issued and explain to it his reasons for so doing<sup>5</sup>. Where, however, the Secretary of State is satisfied that the Community licence holder has ceased to be normally resident<sup>6</sup> in Great Britain before the expiry of the relevant period, the Secretary of State must return the Community licence to the holder<sup>7</sup>.



1 For the meaning of 'Community licence' see PARA 415 note 16 ante.

2 le in pursuance of the Road Traffic Act 1988 s 99C (as added; prospectively amended) or s 115A (as added): see PARAS 475 ante, 497 post. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 For the purposes of *ibid* s 99E (as added), 'relevant period' means: (1) in a case where the Community licence holder appeals under s 100 (as amended) (see PARA 477 post) or s 119 (as amended) (see PARA 501 post) against the requirement to surrender his Community licence, the period ending on the date on which the appeal is finally determined or abandoned (s 99E(4)(a) (s 99E added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 13)); and (2) in any other case, the period of seven months beginning with the date on which the Secretary of State received the Community licence (Road Traffic Act 1988 s 99E(4)(b) (as so added)).

4 For the meaning of 'EEA state' see PARA 415 note 16 ante.

5 Road Traffic Act 1988 s 99E(2) (as added: see note 3 *supra*).

6 As to the relevant residence requirements see PARA 445 note 5 ante.

7 Road Traffic Act 1988 s 99E(3) (as added: see note 3 *supra*).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(x) Appeals/477. Medical appeals relating to licences.

## (x) Appeals

### 477. Medical appeals relating to licences.

A person who is aggrieved<sup>1</sup> by the Secretary of State's<sup>2</sup> refusal (on grounds of medical fitness) to grant or to revoke a licence<sup>3</sup>, or by a determination<sup>4</sup> to grant a licence for three years or less, or by a notice served on him<sup>5</sup> may, after giving to the Secretary of State notice of his intention to do so, appeal to a magistrates' court<sup>6</sup>. On any such appeal the court may make such order as it thinks fit<sup>7</sup> and the order is binding on the Secretary of State<sup>8</sup>.

1 Where the applicant declares in his application for a licence that he has a relevant disability as a result of which the licensing authority is obliged to refuse to grant him a licence he cannot be a 'person aggrieved' and the court has no jurisdiction to hear his appeal: *R v Cumberland Justices, ex p Hepworth* [1931] All ER Rep 717, 146 LT 5, CA which was decided under the provisions of the Road Traffic Act 1930; applied in respect of different legislation in *R v Ipswich Justices, ex p Robson* [1971] 2 QB 340, [1971] 2 All ER 1395, DC. However, where the licensing authority refuses to grant the licence on the ground that the authority is satisfied from other information that the applicant is suffering from such a disability the court may inquire into the matter: *R v Cardiff Justices, ex p Cardiff Corp'n*, [1962] 2 QB 436, sub nom *R v City of Cardiff Justices, ex p Cardiff City Council* [1962] 1 All ER 751, DC. As to refusal of a licence under the Road Traffic Act 1988 s 92(3) and the

gathering of information about an applicant's health see PARA 455 et seq ante. For the meaning of 'licence' see PARA 443 note 6 ante.

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 le in pursuance of the Road Traffic Act 1988 s 92 (as amended), s 93 (as amended), s 99(3) (as amended) or s 99(3A) (as added): see PARAS 455-456, 472 ante.

4 le a determination made under ibid s 99(1)(b) (as amended): see PARA 468 ante.

5 le in pursuance of ibid s 92(5) (as amended) or s 99C (as added): see PARAS 459, 475 ante.

6 Ibid s 100(1) (amended by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 17, 22; the Courts Act 2003 s 109(1), (3), Sch 8 para 307, Sch 10; and the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 14). As to magistrates' courts generally see MAGISTRATES.

7 Without prejudice to the Road Traffic Act 1988 s 90 (as amended) (see PARA 453 ante), in any proceedings under s 100 (as amended) the court is not entitled to entertain any question as to whether the appellant passed a test of competence to drive if he was declared by the person who conducted it to have failed it: s 100(3).

8 Ibid s 100(2).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(xi) Disqualification/478. Disqualification of persons under age.

## (xi) Disqualification

### 478. Disqualification of persons under age.

A person is disqualified for holding or obtaining a licence<sup>1</sup> to drive<sup>2</sup> a motor vehicle<sup>3</sup> of a specified class<sup>4</sup> if he is under the age specified in relation to that class<sup>5</sup>. A person may not hold or obtain a licence to drive:

- 892 (1) an invalid carriage<sup>6</sup>, if he is under 16 years of age<sup>7</sup>;
- 893 (2) a moped<sup>8</sup>, if he is under 16 years of age<sup>9</sup>;
- 894 (3) a motor bicycle<sup>10</sup>, if he is under 17 years of age<sup>11</sup>;
- 895 (4) an agricultural or forestry tractor<sup>12</sup>, if he is under 17 years of age<sup>13</sup>;
- 896 (5) a small vehicle<sup>14</sup>, if he is under 17 years of age<sup>15</sup>;
- 897 (6) a medium-sized goods vehicle<sup>16</sup>, if he is under 18 years of age<sup>17</sup>; or
- 898 (7) any other motor vehicle<sup>18</sup>, if he is under 21 years of age<sup>19</sup>.

1 For the meaning of 'licence' see PARA 443 note 6 ante.

2 For the meaning of 'drive' see PARA 207 ante.

3 For the meaning of 'motor vehicle' see PARA 210 ante.

4 As to classes of vehicles see PARA 208 ante. The relevant classes of motor vehicles are specified in the Road Traffic Act 1988 s 101(1), Table column 1 (Table substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 15).

5 Road Traffic Act 1988 s 101(1). Subject to any regulations made under s 101(2) (see PARA 479 post), s 101 (as amended) (in so far as it prohibits persons under 21 from holding or obtaining a licence to drive motor vehicles or persons under 18 from holding or obtaining a licence to drive medium-sized goods vehicles) does not apply in the case of vehicles in the service of a visiting force: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(5).

6 For the meaning of 'invalid carriage' see PARA 215 ante.

7 Road Traffic Act 1988 s 101(1), Table item 1 (as substituted: see note 4 supra).

8 For the meaning of 'moped' see PARA 447 note 12 ante.

9 Road Traffic Act 1988 s 101(1), Table item 2 (as substituted: see note 4 supra).

10 For the meaning of 'motor bicycle' see PARA 447 note 11 ante.

11 Road Traffic Act 1988 s 101(1), Table item 3 (as substituted: see note 4 supra).

12 'Agricultural or forestry tractor' means a motor vehicle which has two or more axles, is constructed for use as a tractor for work off the road in connection with agriculture or forestry, and is primarily used as such: *ibid* s 108(1) (definition substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 19(2)). For the meaning of 'road' see PARA 206 ante.

13 Road Traffic Act 1988 s 101(1), Table item 4 (as substituted: see note 4 supra).

14 For the meaning of 'small vehicle' see PARA 447 note 10 ante.

15 Road Traffic Act 1988 s 101(1), Table item 5 (as substituted: see note 4 supra).

16 For the meaning of 'medium-sized goods vehicle' see PARA 474 note 4 ante.

'Permissible maximum weight', in relation to a goods vehicle (of whatever description), means:

119 (1) in the case of a motor vehicle which neither is an articulated goods vehicle nor is drawing a trailer, the relevant maximum weight of the vehicle (*ibid* s 108(1));

120 (2) in the case of an articulated goods vehicle:

5. (a) when drawing only a semi-trailer, the relevant maximum train weight of the articulated goods vehicle combination (s 108(1));

5

6. (b) when drawing a trailer as well as a semi-trailer, the aggregate of the relevant maximum train weight of the articulated goods vehicle combination and the relevant maximum weight of the trailer (s 108(1));

6

7. (c) when drawing a trailer but not a semi-trailer, the aggregate of the relevant maximum weight of the articulated goods vehicle and the relevant maximum weight of the trailer (s 108(1));

7

8. (d) when drawing neither a semi-trailer nor a trailer, the relevant maximum weight of the vehicle (s 108(1));

8

121 (3) in the case of a motor vehicle (not being an articulated goods vehicle) which is drawing a trailer, the aggregate of the relevant maximum weight of the motor vehicle and the relevant maximum weight of the trailer (s 108(1)).

In relation to the definition of 'permissible maximum weight', in head (1) supra, 'trailer' means something 'trailed' behind another vehicle: *Pritchard v DPP* [2003] EWHC 1851 (Admin), [2004] RTR 355 (vehicle towing movable engineering plant).

'Relevant maximum weight', in relation to a motor vehicle or trailer, means:

- 122 (i) in the case of a vehicle to which regulations under the Road Traffic Act 1988 s 49 (as amended) (see PARA 679 post) apply which is required by regulations under s 41 (as amended) (see PARA 260 ante) to have a maximum gross weight for the vehicle marked on a plate issued by the Secretary of State under regulations under s 41 (as amended), the maximum gross weight so marked on the vehicle (s 108(1));
- 123 (ii) in the case of a vehicle which is required by regulations under s 41 (as amended) to have a maximum gross weight for the vehicle marked on the vehicle and does not also have a maximum gross weight marked on such a plate, the maximum gross weight marked on the vehicle (s 108(1));
- 124 (iii) in the case of a vehicle on which a maximum gross weight is marked by the same means as would be required by regulations under s 41 (as amended) if those regulations applied to the vehicle, the maximum gross weight so marked on the vehicle (s 108(1));
- 125 (iv) in the case of a vehicle on which a maximum gross weight is not marked as mentioned in head (i), head (ii) or head (iii) supra, the notional maximum gross weight of the vehicle, that is to say, such weight as is produced by multiplying the unladen weight of the vehicle by the number prescribed by the Secretary of State for the class of vehicle into which that vehicle falls (s 108(1)).

For the prescribed multiplier see the Goods Vehicles (Ascertainment of Maximum Gross Weights) Regulations 1976, SI 1976/555, which have effect as if made under the Road Traffic Act 1988 s 108(1) by virtue of the Road Traffic (Consequential Provisions) Act 1988 s 2(2).

'Articulated goods vehicle' means a motor vehicle which is so constructed that a trailer designed to carry goods may by partial superimposition be attached to it in such manner as to cause a substantial part of the weight of the trailer to be borne by the motor vehicle (ie it is the tractor vehicle of an articulated goods vehicle combination); 'semi-trailer', in relation to an articulated goods vehicle, means a trailer attached to it in the manner described; and 'articulated goods vehicle combination' means an articulated goods vehicle with a semi-trailer attached: Road Traffic Act 1988 s 108(1).

'Relevant maximum train weight', in relation to an articulated goods vehicle combination, means:

- 126 (A) in the case of an articulated goods vehicle to which regulations under s 49 (as amended) apply which is required by regulations under s 41 (as amended) to have a maximum train weight for the combination marked on a plate issued by the Secretary of State under regulations under s 41 (as amended), the maximum train weight so marked on the motor vehicle (s 108(1));
- 127 (B) in the case of an articulated goods vehicle which is required by regulations under s 41 to have a maximum train weight for the combination marked on the vehicle and does not also have a maximum train weight marked on it as mentioned in head (A) supra, the maximum train weight marked on the motor vehicle (s 108(1));
- 128 (C) in the case of an articulated goods vehicle on which a maximum train weight is marked by the same means as would be required by regulations under s 41 if those regulations applied to the vehicle, the maximum train weight so marked on the motor vehicle (s 108(1));
- 129 (D) in the case of an articulated goods vehicle on which a maximum train weight is not marked as mentioned in head (A), head (B) or head (C) supra, the notional maximum gross weight of the combination, that is to say, such weight as is produced by multiplying the sum of the unladen weights of the motor vehicle and the semi-trailer by the number prescribed by the Secretary of State for the class of articulated goods vehicle combination into which that combination falls (s 108(1)).

'Maximum train weight' in relation to an articulated goods vehicle combination, means the weight of the combination laden with the heaviest load which it is constructed or adapted to carry: s 108(1).

As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

17 Ibid s 101(1), Table item 6 (as substituted: see note 4 supra).

18 The 'other motor vehicles' referred to in the text are primarily large goods and passenger-carrying vehicles but also vehicles such as road rollers. As to large goods vehicles see PARA 487 post; and for the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 post.

19 Road Traffic Act 1988 s 101(1), Table item 7 (as substituted: see note 4 supra).

**UPDATE****442-517 Driver Licensing**

Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(xi) Disqualification/479. Exceptions to the rule of disqualification of under age persons.

**479. Exceptions to the rule of disqualification of under age persons.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> provide that the provisions<sup>3</sup> disqualifying under age persons from holding or obtaining a licence<sup>4</sup> to drive<sup>5</sup> a motor vehicle<sup>6</sup> of a specified class<sup>7</sup> are to have effect as if for the classes of vehicles and the ages specified<sup>8</sup> there were substituted different classes of vehicles and ages, or different classes of vehicles, or different ages<sup>9</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 The regulations may in particular:

130 (1) apply to persons of a class specified in or under the regulations (Road Traffic Act 1988 s 101(3)(a));

131 (2) apply in circumstances so specified (s 101(3)(b));

132 (3) impose conditions or create exemptions or provide for the imposition of conditions or the creation of exemptions (s 101(3)(c));

133 (4) contain such transitional and supplemental provisions (including provisions amending s 108 (interpretation)) as the Secretary of State considers necessary or expedient (s 101(3)(d)).

There are a number of exceptions to the general rule, although except for large motor bicycles, trainee drivers of large goods vehicles, and passenger-carrying vehicles these exceptions are of limited application: see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 9(2)-(13) (amended by SI 2003/166; SI 2004/696; SI 2007/605).

3 I.e. the Road Traffic Act 1988 s 101(1) (as amended): see PARA 478 ante.

4 For the meaning of 'licence' see PARA 443 note 6 ante.

5 For the meaning of 'drive' see PARA 207 ante.

6 For the meaning of 'motor vehicle' see PARA 210 ante.

7 As to classes of vehicles see PARA 208 ante.

8 I.e. the classes of vehicles and the ages specified in the Road Traffic Act 1988 s 101, Table (as substituted): see PARA 478 ante.

9 Ibid s 101(2). The Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605 (see PARA 503 et seq post) have been made under the Road Traffic Act 1988 s 101(2). For the purpose of defining the class of persons to whom, the class of vehicles to which, the circumstances in which, or the conditions subject to which regulations made by virtue of s 102(2) are to apply where an approved training

scheme for drivers is in force, it is sufficient for the regulations to refer to a document which embodies the terms (or any of the terms) of the scheme or to a document which is in force in pursuance of the scheme: s 101(4). 'Approved' means approved for the time being by the Secretary of State for the purpose of the regulations: s 101(5). 'Training scheme for drivers' means a scheme for training persons to drive vehicles of a class in relation to which the age which is in force under s 101 (as amended) (but apart from any such scheme) is 21 years: s 101(5). However, no approved training scheme for drivers may be amended without the approval of the Secretary of State: s 101(5).

## **UPDATE**

### **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(xi) Disqualification/480. Disqualification to prevent duplication of licences.

#### **480. Disqualification to prevent duplication of licences.**

A person is disqualified for obtaining<sup>1</sup> a licence<sup>2</sup> authorising him to drive<sup>3</sup> a motor vehicle<sup>4</sup> of any class<sup>5</sup> so long as he is the holder of another licence authorising him to drive a motor vehicle of that class, whether the licence is suspended or not<sup>6</sup>.

A person is disqualified for holding or obtaining a licence authorising him to drive a motor vehicle of any class so long as he is authorised as the holder of a Northern Ireland driving licence<sup>7</sup> to drive a motor vehicle of that or a corresponding class<sup>8</sup>.

A person is disqualified for holding or obtaining a licence to drive a motor vehicle of any class so long as he is subject to a relevant disqualification imposed outside Great Britain<sup>9</sup>.

1 Any offence committed will be one of obtaining rather than holding a licence. Compare the meaning of 'disqualified' for the purposes of the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended) in general: see PARAS 443 note 11 ante, 481 post.

2 For the meaning of 'licence' see PARA 443 note 6 ante.

3 For the meaning of 'drive' see PARA 207 ante.

4 For the meaning of 'motor vehicle' see PARA 210 ante.

5 As to classes of vehicles see PARA 208 ante.

6 Road Traffic Act 1988 s 102(1) (renumbered by virtue of the Crime (International Co-operation) Act 2003 s 78(1), (4)).

7 I.e. by virtue of the Road Traffic Act 1988 s 109(1) (as amended): see PARA 484 post. For the meaning of 'Northern Ireland driving licence' see PARA 443 note 7 ante.

8 Ibid s 102(2) (added by the Crime (International Co-operation) Act 2003 s 78(4)).

9 Road Traffic Act 1988 s 102A(1) (s 102A added by the Crime (International Co-operation) Act 2003 s 76). For the meaning of 'Great Britain' see PARA 205 note 3 ante. For these purposes, a person is subject to a relevant disqualification imposed outside Great Britain if, in respect of any offence: (1) a court in Northern

Ireland disqualifies him for holding or obtaining a Northern Ireland licence; (2) a court in the Isle of Man or any of the Channel Islands disqualifies him for holding or obtaining a British external licence; or (3) a court in Gibraltar disqualifies him for holding or obtaining a licence to drive a motor vehicle granted under the law of Gibraltar: Road Traffic Act 1988 s 102A(2) (as so added). For the meaning of 'British external licence' see PARA 445 note 21 ante. A certificate signed by the Secretary of State which states, in respect of a person, any matter relating to the question whether he is subject to a relevant disqualification imposed outside Great Britain is to be evidence of the matter so stated: s 102A(3) (as so added). A certificate stating that matter and purporting to be so signed is to be deemed to be so signed unless the contrary is proved: s 102A(4) (as so added).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(xi) Disqualification/481. Obtaining licence, or driving, while disqualified.

#### 481. Obtaining licence, or driving, while disqualified.

A person is guilty of an offence if, while disqualified<sup>1</sup> for holding or obtaining a licence<sup>2</sup>, he obtains a licence<sup>3</sup>, or drives<sup>4</sup> a motor vehicle<sup>5</sup> on a road<sup>6</sup>. A licence obtained by a person who is disqualified is of no effect (or, where the disqualification relates only to vehicles of a particular class<sup>7</sup>, is of no effect in relation to vehicles of that class)<sup>8</sup>.

1 For the meaning of 'disqualified' see PARA 443 note 11 ante.

2 For the meaning of 'licence' see PARA 443 note 6 ante.

3 Road Traffic Act 1988 s 103(1)(a) (s 103 substituted by the Road Traffic Act 1991 s 19). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

This offence and the offence in the Road Traffic Act 1988 s 103(1)(b) (as substituted) (see the text and note 6 infra) are absolute and therefore a driver's state of mind as to the existence or otherwise of a disqualification affecting him is irrelevant: *Taylor v Kenyon* [1952] 2 All ER 726, DC (defendant did not attend court and claimed no knowledge of the order of disqualification). *Taylor v Kenyon* supra was applied in *R v Lynn* [1971] RTR 369, CA (on similar facts and notwithstanding that the disqualification in question was later removed on appeal). See also *R v Bowsher* [1973] RTR 202, CA (two disqualifications ordered at different times, to run consecutively; defendant and licensing authority under common misapprehension about this; driving licence returned in error by licensing authority prior to expiry of second disqualification).

4 For the meaning of 'drive' see PARA 207 ante.

5 For the meaning of 'motor vehicle' see PARA 210 ante.

6 Road Traffic Act 1988 s 103(1)(b) (as substituted: see note 3 supra). A person guilty of such an offence is liable on summary conviction to six months imprisonment or to a fine not exceeding level 5 on the standard scale; disqualification is discretionary; endorsement is obligatory; and 6 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 26, Sch 2 paras 1, 2). As to penalty points see PARA 1048 et seq post. For the meaning of 'road' see PARA 206 ante.

Despite the offence generally being an absolute one (see note 3 supra; and *R v Miller* [1975] 2 All ER 974, [1975] RTR 479, CA, where the defendant believed he was not driving on a road), in extreme cases the defence of necessity arising from duress of circumstances may be available: see *R v Martin* [1989] 1 All ER 652, [1989] RTR 63, CA (defendant drove because of fear that wife would commit suicide if he did not; court held that threat of death, however arising, could establish such a defence).

The offence of driving while disqualified requires the prosecution to prove that the defendant was both driving and disqualified: see the Road Traffic Act 1988 s 103(1)(b) (as so substituted). The question of what evidence is necessary to prove disqualification was considered in *R v Derwentside Justices, ex p Heaviside* [1996] RTR 384, DC, where the court held that proof was required in one of three ways, namely: (1) by formal admission under the Criminal Justice Act 1967 s 10 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1538); (2) by fingerprint evidence under the Criminal Justice Act 1948 s 39 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1460); or (3) by evidence given in court by a person who was present at the time of the conviction (defendant convicted on the basis of evidence that a police officer, not present in court, who knew him to be disqualified had seen him driving plus production of an entry in the court register showing person of same name and date of birth disqualified for three years; held insufficient to prove disqualification). It has since been held by the Court of Appeal, however, that these methods of proof are not exhaustive: *DPP v Mooney* [1997] RTR 434, CA (certificate of conviction of person of same name as defendant produced in accordance with the Police and Criminal Evidence Act 1984 s 73(1) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1347, 1500); defendant had admitted disqualification to arresting officer though not a formal admission under the Criminal Justice Act 1967; held that the evidence that the defendant was the person disqualified was sufficiently cogent to convict him). See also *DPP v Mansfield* [1997] RTR 96, DC; *R v Derwentside Justices, ex p Swift* [1997] RTR 89, DC (production of certificate of conviction of a named person plus sufficient proof of identity of the defendant from other evidence before justices). The legal position of a defendant charged under the Road Traffic Act 1988 s 103 (as amended) may also have been materially affected by the Criminal Justice and Public Order Act 1994 s 35 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1555) as a result of which inferences may be drawn from a defendant's refusal, without good cause, to give evidence or answer questions at trial: see *Olakunori v DPP* (8 July 1998) Lexis, DC.

The provisions of the Road Traffic Act 1988 s 103(1) (as substituted) do not apply in relation to disqualification by virtue of age under s 101 (as amended) (see PARAS 478-479 ante); s 103(4) (as so substituted; and amended by the Police Reform Act 2002 ss 107(1), 108(10)(b), Sch 7 paras 11(1), (3)). The effect of the Road Traffic Act 1988 s 103(4) (as substituted and amended) is that driving a motor vehicle while under age is treated as a less serious offence under the Road Traffic Act 1988. Under-age driving is not specifically made an offence but falls within the offence of driving otherwise than in accordance with a licence under s 87(1) (as substituted) (see PARA 444 ante).

The provisions of s 103(1)(b) (as substituted) do not apply in relation to disqualification by virtue of s 102 (as amended) (see PARA 480 ante); s 103(5) (as so substituted; and amended by the Police Reform Act 2002 ss 107(1), 108(10)(b), Sch 7 para 11(4)).

In the application of the Road Traffic Act 1988 s 103(1) (as substituted) to a person whose disqualification is limited to the driving of motor vehicles of a particular class by virtue of s 102 (as amended) (see PARA 480 ante), s 117 (as substituted and amended) (see PARA 498 post), s 117A (as added and amended) (see PARA 499 post), or the Road Traffic Offenders Act 1988 s 36(9) (as substituted) (see PARA 1071 post), the references to disqualification for holding or obtaining a licence and driving motor vehicles are references to disqualification for holding or obtaining a licence to drive and driving motor vehicles of that class: Road Traffic Act 1988 s 103(6) (as so substituted; and amended by the Police Reform Act 2002 ss 107(1), 108(10)(b), Sch 7 para 11(5); and the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 16).

7 As to classes of vehicle see PARA 208 ante. As to disqualifications relating to vehicles of a particular class see the Road Traffic Act 1988 s 117 (as substituted and amended) (see PARA 498 post); s 117A (as added and amended) (see PARA 499 post); and the Road Traffic Offenders Act 1988 s 36(9) (as substituted) (see PARA 1071 post).

8 Road Traffic Act 1988 s 103(2) (as substituted: see note 3 supra).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.



Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(xii) Court Proceedings/482. Conduct of proceedings in certain courts by or against the Secretary of State.

## **(xii) Court Proceedings**

### **482. Conduct of proceedings in certain courts by or against the Secretary of State.**

Any proceedings by or against the Secretary of State<sup>1</sup> in a magistrates' court<sup>2</sup> or before the district judge of a county court<sup>3</sup> may be conducted on behalf of the Secretary of State by a person authorised by him for the purpose<sup>4</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 As to magistrates' courts generally see MAGISTRATES.

3 Ie under the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended) or the Road Traffic Offenders Act 1988 Pt II (ss 27-49) (as amended).

4 Road Traffic Act 1988 s 104(1); Courts and Legal Services Act 1990 s 74.

## **UPDATE**

### **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(xiii) Service of Notices/483. Service of notices.

## **(xiii) Service of Notices**

### **483. Service of notices.**

A notice authorised to be served on any person<sup>1</sup> or a Community licence<sup>2</sup> required to be returned to its holder<sup>3</sup> may be served on or returned to him by delivering it to him or by leaving it at his proper address or by sending it to him by post<sup>4</sup>.

1 Ie under the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended) and Pt IV (as substituted and amended).

2 For the meaning of 'Community licence' see PARA 415 note 16 ante.

3 le by the Road Traffic Act 1988 s 99B (as added), s 99E (as added) or s 109A (as added): see PARAS 474, 476 ante, 484 post.

4 Ibid s 107 (amended by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 17, 24; and the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 18). For the purposes of the Road Traffic Act 1988 s 107 (as amended), and of the Interpretation Act 1978 s 7 in its application to the Road Traffic Act 1988 s 107 (as amended), the proper address of any person is his latest address as known to the person serving the notice: s 107.

## **UPDATE**

### **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(xiv) Northern Ireland Drivers' Licences/484. Provisions as to Northern Ireland drivers' licences.

### **(xiv) Northern Ireland Drivers' Licences**

#### **484. Provisions as to Northern Ireland drivers' licences.**

The holder of a Northern Ireland driving licence<sup>1</sup> may drive<sup>2</sup>, and a person may cause or permit the holder of such a licence to drive, in Great Britain<sup>3</sup>, in accordance with that licence, a motor vehicle<sup>4</sup> of any class<sup>5</sup> which he is authorised by that licence to drive, and which he is not disqualified<sup>6</sup> from driving, notwithstanding that he is not the holder of a licence under Part III of the Road Traffic Act 1988<sup>7</sup>.

Any driver holding a Northern Ireland driving licence is under the same obligation to produce his licence and its counterpart<sup>8</sup> as if they had respectively been a licence granted under Part III of the Road Traffic Act 1988<sup>9</sup> and the counterpart to such a licence<sup>10</sup>.

The Secretary of State<sup>11</sup> may issue a document (a 'counterpart') to any Northern Ireland licence holder who: (1) has delivered his Northern Ireland licence to the Secretary of State; and (2) has provided him with specified or required information<sup>12</sup> (whether or not in pursuance of these provisions)<sup>13</sup>. The counterpart must be in such form and contain such information designed for the endorsement of particulars relating to the Northern Ireland licence as the Secretary of State may determine<sup>14</sup>. The Secretary of State may endorse a Northern Ireland licence delivered to him (whether or not in pursuance of these provisions) in such manner as he may determine: (a) with any part of the specified or required information; or (b) with information providing a means of ascertaining that information or any part of it; and he must return the Northern Ireland licence to the holder<sup>15</sup>.

If the Secretary of State is at any time satisfied on inquiry that a Northern Ireland licence holder is suffering from a relevant disability<sup>16</sup>, and that he would be required<sup>17</sup> to refuse an application made by the holder at that time for a licence authorising him to drive a vehicle of the class in respect of which his Northern Ireland licence was issued or a class corresponding to that class, then he may serve notice in writing requiring the licence holder to deliver immediately to the Secretary of State his Northern Ireland licence together with its Northern Ireland counterpart and its counterpart (if any) issued to him under Part III of the Road Traffic Act 1988<sup>18</sup>. If the

Secretary of State is satisfied on inquiry that a Northern Ireland licence holder is suffering from a prospective disability<sup>19</sup>, he may serve notice in writing on the Northern Ireland licence holder requiring him to deliver immediately to the Secretary of State his Northern Ireland licence together with the relevant counterparts and, on receipt of the Northern Ireland licence and those counterparts and of an application made for these purposes<sup>20</sup>, grant to the Northern Ireland licence holder, free of charge, a licence for a period determined<sup>21</sup> by the Secretary of State<sup>22</sup>. The Secretary of State may require a person to provide evidence of his name, address, sex and date and place of birth, and a photograph which is a current likeness of him before granting a licence to him on an application for these purposes<sup>23</sup>.

A person who is required<sup>24</sup> to deliver to the Secretary of State his Northern Ireland licence and the relevant counterparts is guilty of an offence if he fails without reasonable excuse to do so<sup>25</sup>. Where a Northern Ireland licence holder to whom a counterpart is issued<sup>26</sup> is required<sup>27</sup> to deliver his Northern Ireland licence and that counterpart to the Secretary of State, and is not in possession of them in consequence of the fact that he has surrendered them to a constable or an authorised person<sup>28</sup> on receiving a fixed penalty notice<sup>29</sup>, he does not fail to comply with any such requirement if he delivers them to the Secretary of State immediately on their return<sup>30</sup>. Where a Northern Ireland licence holder is served with a notice<sup>31</sup>, he ceases to be authorised<sup>32</sup> to drive in Great Britain a motor vehicle of any class from such date as may be specified in the notice, not being earlier than the date of service of the notice<sup>33</sup>. Where a Northern Ireland licence is delivered to the Secretary of State in pursuance of these provisions, he must send the licence and its Northern Ireland counterpart to the licensing authority in Northern Ireland, and explain to it his reasons for so doing<sup>34</sup>.

1 For the meaning of 'Northern Ireland driving licence' see PARA 443 note 7 ante.

2 For the meaning of 'drive' see PARA 207 ante.

3 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

4 For the meaning of 'motor vehicle' see PARA 210 ante.

5 As to classes of vehicles see PARA 208 ante.

6 Ie disqualified under the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended) or Pt IV (ss 110-122) (as substituted and amended). For the meaning of 'disqualified' see PARA 443 note 11 ante.

7 Road Traffic Act 1988 s 109(1) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 16(a); and the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 17, 26(a)). The legislation does not make it clear what entitlement to drive, if any, is conferred on a holder of a provisional Northern Ireland licence. The assumption must be that none is conferred since conditions imposed under the Road Traffic Act 1988 s 89(3) (as amended) (see PARA 449 ante) do not apply to them, and Northern Ireland law does not apply in England and Wales. It would be extraordinary if the holder of a provisional Northern Ireland licence were entitled to drive in England and Wales subject neither to the conditions imposed under s 89(3) (as amended) nor to those imposed under Northern Irish legislation. In the present context, therefore, it is submitted that the expression 'Northern Ireland driving licence' may be taken to include a full licence only but it has to be admitted that s 109(1) is not clear in that respect.

8 For the purposes of *ibid* Pt III (as amended), 'Northern Ireland counterpart' means the document issued with the Northern Ireland licence as a counterpart under the law of Northern Ireland: s 108(1) (definition added by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 17, 25(b)). See text to notes 12-13 *infra*. As to counterparts of licences see PARA 415 note 19 ante.

9 Ie the Road Traffic Act 1988 Pt III (as amended).

10 *Ibid* s 109(2) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 3 para 16(b); and the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(1), 3, Sch 1 para 8(a)). The provisions of the Road Traffic Act 1988 as to the production of licences and counterparts of licences granted under Pt III (as amended) apply accordingly: s 109(2) (amended by the Crime (International Co-operation) Act 2003 s 91, Sch 5 para 26(b), Sch 6).

As from a day to be appointed, the Road Traffic Act 1988 s 109(2) (as amended) is substituted so as to provide that any driver holding a Northern Ireland licence is under the same obligation to produce such a licence as if it had been a licence granted under the Road Traffic Act 1988 Pt III (as amended), and the provisions of that Act as to the production of licences granted under Pt III (as amended) apply accordingly: s 109(2) (prospectively substituted by the Road Safety Act 2006 s 10(12), Sch 3 paras 2, 15). At the date at which this volume states the law no such day had been appointed.

11 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

12 Ie specified in, or required under, the Road Traffic Act 1988 s 109A(3) (as added). The information referred to is: (1) the name and address (whether in Great Britain or Northern Ireland) of the Northern Ireland licence holder; (2) his date of birth; (3) the classes of vehicle which he is authorised by his Northern Ireland licence to drive; (4) the period of validity of the licence; (5) whether it was granted in exchange for a licence issued by a state other than an EEA state; and (6) such other information as the Secretary of State may require for the purposes of the proper exercise of any of his functions under Pt III (as amended) or Pt IV (ss 110-122) (as amended): s 109A(3) (s 109A added by the Crime (International Co-operation) Act 2003 s 77(1)).

13 Road Traffic Act 1988 s 109A(1) (as added: see note 12 supra). The provisions of s 99B(6)-(9), (11)(b), (12) (see PARA 474 ante) apply for the purposes of s 109A (as added) as if the references to a community licence were references to a Northern Ireland licence: s 109A(5) (as so added). As to the prospective substitution of s 109A(5) (as added) see note 15 infra.

As from a day to be appointed, s 109A(1) (as added) is substituted so as to provide that the Secretary of State may endorse the driving record of a Northern Ireland licence holder who delivers to him a Northern Ireland licence together with the information specified in, or required under, the Road Traffic Act 1988 s 109A(3) (as added) (see note 12 supra) with any part of that information: s 109A(1) (s 109A(1), (2) prospectively substituted by the Road Safety Act 2006 Sch 3 paras 2, 16(1), (2)). At the date at which this volume states the law no such day had been appointed. For the meaning of 'driving record' see PARA 1024 note 11 post.

14 Road Traffic Act 1988 s 109A(2) (as added (see note 12 supra); and prospectively substituted: see note 13 supra).

15 Ibid s 109A(4) (as added: see note 12 supra). As from a day to be appointed, s 109A(4) (as added) is prospectively substituted so as to provide that where the name of a Northern Ireland licence holder as specified in his Northern Ireland licence ceases to be correct, he may deliver his Northern Ireland licence immediately to the Secretary of State and provide him with particulars of the alterations falling to be made in the name on it: s 109A(4) (s 109A(4), (5) prospectively substituted by the Road Safety Act 2006 Sch 3 para 16(3)). On the delivery of a Northern Ireland licence by any person in pursuance of the Road Traffic Act 1988 s 109A(4) (as added; prospectively substituted), the Secretary of State may endorse the Northern Ireland licence and that person's driving record with the correct name and must return the Northern Ireland licence to that person: s 109A(5) (as so added and prospectively substituted). At the date at which this volume states the law no such day had been appointed.

16 For the meanings of 'disability' and 'relevant disability' see PARA 446 note 18 ante.

17 Ie by virtue of the Road Traffic Act 1988 s 92(3): see PARA 455 ante.

18 Ibid s 109B(1) (s 109B added by the Crime (International Co-operation) Act 2003 s 79(1), (2)). The Road Traffic Act 1988 s 94 (as amended) (information relating to disabilities) (see PARAS 457-458 ante) applies, subject to specified modifications, to a Northern Ireland licence holder who is normally resident in Great Britain: see s 109C (added by the Crime (International Co-operation) Act 2003 s 79(2)).

The Road Traffic Act 1988 s 109B(1) (as added) is prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 2, 17(1), (2), Sch 7 so as to remove the reference to the Northern Ireland counterpart and the counterpart (if any) issued under the Road Traffic Act 1988 Pt III (as amended). At the date at which this volume states the law no such day had been appointed.

19 For the meaning of 'prospective disability' see PARA 455 note 5 ante.

20 Ie for the purposes of the Road Traffic Act 1988 s 109B(2) (as added; prospectively amended).

21 Ie under ibid s 99(1)(b): see PARA 468 ante.

22 Ibid s 109B(2) (as added: see note 18 supra). As from a day to be appointed, this provision is prospectively amended by the Road Safety Act 2006 Sch 3 para 17(3), Sch 7 so as to remove the references to counterparts. At the date at which this volume states the law no such day had been appointed.

23 Road Traffic Act 1988 s 109B(3) (as added: see note 18 supra).

24 le under, or by virtue of, *ibid* s 109B (as added; prospectively amended).

25 *Ibid* s 109B(4) (as added: see note 18 *supra*). As from a day to be appointed, this provision is prospectively amended by the Road Safety Act 2006 Sch 3 para 17(4), Sch 7 so as to remove the reference to the relevant counterparts. At the date at which this volume states the law no such day had been appointed.

A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry added by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 32, 37(f)). As to the standard scale see PARA 230 note 3 *ante*. As to the prosecution of offences see PARA 1027 *post*; and as to legal proceedings generally see PARA 1023 *et seq post*.

26 le under the Road Traffic Act 1988 s 109A (as added; prospectively amended).

27 le under, or by virtue of, *ibid* s 109B (as added; prospectively amended).

28 le an authorised person within the meaning of the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended). See PARA 1097 note 15 *post*.

29 le given to him under *ibid* s 54 (as amended): see PARA 1097 *post*.

30 Road Traffic Act 1988 s 109B(5) (as added: see note 18 *supra*). As from a day to be appointed, this provision is prospectively repealed by the Road Safety Act 2006 Sch 3 para 17(5), Sch 7. At the date at which this volume states the law no such day had been appointed.

31 le in pursuance of the Road Traffic Act 1988 s 109B (as added; prospectively amended).

32 le by virtue of *ibid* s 109(1) (as amended): see the text and notes 1-7 *supra*.

33 *Ibid* s 109B(6) (as added: see note 18 *supra*).

34 *Ibid* s 109B(7) (as added: see note 18 *supra*).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(xv) Driver Training/485. Compulsory driver training courses.

## (xv) Driver Training

### 485. Compulsory driver training courses.

Provision is made for the training of drivers who have not passed a driving test<sup>1</sup> on a particular class<sup>2</sup> of vehicle. Regulations may make provision about training in the driving of motor vehicles<sup>3</sup> by means of courses provided in accordance with the regulations ('driver training courses')<sup>4</sup>.

Such regulations may provide that persons who have not successfully completed a driver training course: (1) may not take a test of competence to drive motor vehicles of a prescribed

class (or a prescribed part of such a test); (2) are not authorised to drive motor vehicles of a prescribed class (before having passed a test of competence to drive them) by a provisional licence<sup>5</sup>; (3) are not to be granted a licence authorising the driving of motor vehicles of a prescribed class<sup>6</sup>; or (4) are not authorised to drive motor vehicles of a prescribed class in prescribed circumstances (despite having passed a test of competence to drive them)<sup>7</sup>. A person is, however, exempt from provision made by virtue of head (2), (3) or (4) above if he is undergoing training on a driver training course and is driving a motor vehicle as part of the training<sup>8</sup>. Regulations<sup>9</sup> may also include provision exempting persons from any provision<sup>10</sup> in other circumstances; and regulations including such provision may (in particular): (a) limit an exemption to persons in prescribed circumstances; (b) limit an exemption to a prescribed period or in respect of driving in a prescribed area; (c) attach conditions to an exemption; and (d) regulate applications for an exemption<sup>11</sup>. Regulations may provide that a driver training course is not to be taken into account for the purposes of the regulations if it was completed before such time as is prescribed<sup>12</sup>.

1 As to driving tests see PARA 449 et seq ante.

2 As to classes of vehicle see PARA 208 ante.

3 For the meaning of 'motor vehicle' see PARA 210 ante.

4 Road Traffic Act 1988 s 99ZA (added by the Transport Act 2000 s 257). See further PARA 486 post.

5 Or by ibid s 98(2) (as amended) (see PARA 466 ante) or s 99A(5) (as added) (see PARA 473 ante).

6 Ie by virtue of regulations under ibid s 89(6)(b) (as amended) or s 89(6)(c) (as added): see PARA 445 ante. For the meaning of 'provisional licence' see PARA 490 note 8 ante.

7 Ibid s 99ZB(1) (s 99ZB added by the Transport Act 2000 s 257).

8 Road Traffic Act 1988 s 99ZB(2) (as added: see note 7 supra). See further note 9 infra.

9 Ie under ibid s 99ZA (as added): see the text and notes 1-4 supra.

10 Ie made by virtue of ibid s 99ZB(1) (as added): see the text and notes 5-7 supra.

11 Ibid s 99ZB(3) (s 99ZB as added: see note 7 supra). Regulations under s 99ZA (as added) (see the text and notes 1-4 supra) may include provision for the evidencing by a person of his being within: (1) the exemption specified in s 99ZB(2) (as added) (see the text and note 8 supra); or (2) any exemption provided by virtue of s 99ZB(3) (as added): s 99ZB(4) (as so added).

12 Ibid s 99ZB(5) (as added: see note 7 supra).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(1) LICENSING OF DRIVERS OF VEHICLES GENERALLY/(xv) Driver Training/486. Further provision which may be made by regulations.

#### **486. Further provision which may be made by regulations.**

Regulations<sup>1</sup> may include<sup>2</sup>: (1) provision about the nature of driver training courses<sup>3</sup>; (2) provision for the approval by the Secretary of State<sup>4</sup> of persons providing such courses or giving instruction on such courses and the withdrawal of approvals (including provision for appeals against refusal and withdrawal of approvals) and provision for exemptions from any requirement of approval<sup>5</sup>; (3) provision for the training or assessment, or the supervision of the training or assessment, of persons providing driver training courses or giving instruction on such courses<sup>6</sup>; (4) provision setting the maximum amount of any charges payable by persons undergoing such courses<sup>7</sup>; (5) provision for the evidencing of the successful completion of such courses<sup>8</sup>; and (6) provision authorising the Secretary of State to make available information about persons providing driver training courses or giving instruction on such courses<sup>9</sup>. Such regulations may include provision for the charging of reasonable fees in respect of the exercise of any function conferred or imposed on the Secretary of State by such regulations<sup>10</sup>. Such regulations may make different provision: (a) for different classes of motor vehicles; (b) for different descriptions of persons; or (c) otherwise for different circumstances<sup>11</sup>.

1    le under the Road Traffic Act 1988 s 99ZA (as added): see PARA 485 ante.

2    Road Traffic Act 1988 s 99ZC(1) (s 99ZC added by the Transport Act 2000 s 257).

3    Road Traffic Act 1988 s 99ZC(1)(a) (as added: see note 2 supra). As to the meaning of 'driver training courses' see PARA 485 ante.

4    As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5    Road Traffic Act 1988 s 99ZC(1)(b) (as added (see note 2 supra); and amended by the Road Safety Act 2006 s 41(1), (2)).

6    Road Traffic Act 1988 s 99ZC(1)(c) (as added (see note 2 supra); and amended by the Road Safety Act 2006 s 41(2)).

7    Road Traffic Act 1988 s 99ZC(1)(d) (as added: see note 2 supra).

8    Ibid s 99ZC(1)(e) (as added: see note 2 supra).

9    Ibid s 99ZC(1)(f) (added by the Road Safety Act 2006 s 41(3)).

10   Road Traffic Act 1988 s 99ZC(2) (as added: see note 2 supra).

11   Ibid s 99ZC(3) (as added: see note 2 supra).

#### **UPDATE**

#### **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(i) Legislation/487. The legislation.

## **(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES**

### **(i) Legislation**

#### **487. The legislation.**

The licensing of drivers of large goods vehicles and passenger-carrying vehicles is governed by the provisions of Part IV of the Road Traffic Act 1988<sup>1</sup>. The grant, revocation and suspension of such licences is covered<sup>2</sup>, and so are appeals from decisions relating to licences<sup>3</sup>. There is specific provision in relation to Northern Ireland<sup>4</sup>.

1     In the Road Traffic Act 1988 Pt IV (ss 110-122) (as substituted and amended): see PARA 488 et seq post. Part IV (as originally enacted) was repealed by the Road Traffic (Driver Licensing and Information Systems) Act 1989 ss 1, 16, Sch 6, and a new Road Traffic Act 1988 Pt IV was substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 2, Sch 2.

2     See PARAS 489-500 post.

3     See PARA 501 post.

4     See PARA 502 post.

### **UPDATE**

#### **442-517 Driver Licensing**

Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(i) Legislation/488. Power of the Secretary of State to make regulations.

#### **488. Power of the Secretary of State to make regulations.**

The Secretary of State<sup>1</sup> may make regulations for any purpose for which regulations may be made under Part IV of the Road Traffic Act 1988<sup>2</sup>, for prescribing anything which may be prescribed under Part IV, and generally for the purpose of carrying the provisions of Part IV into effect<sup>3</sup>. The Secretary of State may by regulations provide that Part IV is not to apply to large goods vehicles or passenger-carrying vehicles of such classes as may be prescribed either generally or in such circumstances as may be prescribed<sup>4</sup>. Regulations may: (1) make different provision as respects different classes of vehicles or as respects the same class of vehicles in different circumstances<sup>5</sup>; and (2) provide that a person who contravenes or fails to comply with any specified provision of the regulations is guilty of an offence<sup>6</sup>.



1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Ie the Road Traffic Act 1988 Pt IV (ss 110-122) (as substituted and amended): see PARA 489 et seq post.

3 Ibid s 120(1) (s 120 substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 2, Sch 2). 'Prescribed' means, unless the context requires otherwise, prescribed by regulations under the Road Traffic Act 1988 s 120 (as substituted): s 121(1) (s 121 substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 2). For regulations made under the Road Traffic Act 1988 s 120 (as substituted) see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864 (as amended).

4 Road Traffic Act 1988 s 120(6) (as substituted: see note 3 supra). As to classes of vehicles see PARA 208 ante.

5 Ibid s 120(4) (as substituted: see note 3 supra).

6 Ibid s 120(5) (as substituted: see note 3 supra). A person guilty of such an offence under s 120(5) (as substituted) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 28; and the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 3, Sch 2 para (g)). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## UPDATE

### 442-517 Driver Licensing

Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(ii) Grant of Licences/489. Licensing of drivers of large goods vehicles and passenger-carrying vehicles.

## (ii) Grant of Licences

### 489. Licensing of drivers of large goods vehicles and passenger-carrying vehicles.

Licences<sup>1</sup> to drive<sup>2</sup> motor vehicles<sup>3</sup> of classes<sup>4</sup> which include large goods vehicles<sup>5</sup> or passenger-carrying vehicles<sup>6</sup> (or large goods vehicles or passenger-carrying vehicles of any class) must be granted by the Secretary of State<sup>7</sup>.

1 Ie licences under the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended). For the meaning of 'licence' see PARA 443 note 6 ante.

2 For the meaning of 'drive' see PARA 207 ante.

3 For the meaning of 'motor vehicle' see PARA 210 ante.

4 As to classes of vehicle see PARA 208 ante.

5 'Large goods vehicle' means a motor vehicle (not being a medium-sized goods vehicle within the meaning of the Road Traffic Act 1988 Pt III (as amended)) which is constructed or adapted to carry or to haul goods and the permissible maximum weight of which exceeds 7.5 tonnes: s 121(1) (s 121 substituted by the Road Traffic

(Driver Licensing and Information Systems) Act 1989 s 2, Sch 2; definition further substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 28(2)). For the meaning of 'medium-sized goods vehicle' see PARA 474 note 4 ante. For the meaning of 'permissible maximum weight' see PARA 478 note 16 ante; definition applied by the Road Traffic Act 1988 s 121(1) (as so substituted; definition added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 28(2)).

6 'Passenger-carrying vehicle' means either: (1) a large passenger-carrying vehicle, ie a vehicle used for carrying passengers which is constructed or adapted to carry more than 16 passengers; or (2) a small passenger-carrying vehicle, ie a vehicle used for carrying passengers for hire or reward which is constructed or adapted to carry more than eight but not more than 16 passengers and includes a combination of such a motor vehicle and trailer: Road Traffic Act 1988 s 121(1) (s 121 as substituted (see note 5 supra); and definition amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 28(2)). For the meaning of 'trailer' see PARA 210 ante. 'Hire or reward' is not defined for the purposes of the Road Traffic Act 1988 Pt IV (ss 110-122) (as substituted and amended). However, for certain purposes of the Public Passenger Vehicles Act 1981 s 1(1) (as amended) (see PARA 1136 post), a vehicle is treated as carrying passengers for hire or reward if payment is made for, or for matters which include, the carrying of passengers: see s 1(5)(a) (as amended); and PARA 1136 post. It is submitted that for the purposes of the Road Traffic Act 1988 Pt IV (as substituted and amended) the definition of 'hire and reward' should be treated as bearing the same meaning.

7 Ibid s 110(1) (as substituted: see note 5 supra). The Secretary of State grants such licences in accordance with Pt IV (as substituted and amended): s 110(1) (as so substituted). In so far as they authorise the driving of large goods vehicles or passenger-carrying vehicles, such licences are otherwise subject to Pt IV (as substituted and amended) in addition to Pt III (as amended): s 110(1) (as so substituted). For the regulations relating to goods and passenger-carrying vehicles see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, regs 49-57 (as amended). The Road Traffic Act 1988 Pt IV (as substituted and amended) does not apply to any vehicles in categories F, G or H or in sub-category C1 and E (8.25 tonnes), or to the other classes of goods and military vehicles specifically thereby exempted: see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, regs 50, 51 (reg 51 amended by SI 2003/166). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. As to categories of vehicles see PARA 208 ante.

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(ii) Grant of Licences/490. Persons below the normal minimum age for driving large goods and passenger-carrying vehicles.

### 490. Persons below the normal minimum age for driving large goods and passenger-carrying vehicles.

Regulations<sup>1</sup> require applicants for tests of competence<sup>2</sup> to drive<sup>3</sup> large goods vehicles<sup>4</sup> or passenger-carrying vehicles<sup>5</sup> or for large goods vehicle driver's licences<sup>6</sup> or passenger-carrying vehicle driver's licences<sup>7</sup> (whether full<sup>8</sup> or provisional) to have the prescribed qualifications, experience and knowledge where they are to be authorised to drive large goods vehicles or passenger-carrying vehicles of any class at an age below the normal minimum age for driving<sup>9</sup> such vehicles<sup>10</sup>. In particular, where they are to be authorised to drive large goods vehicles or passenger-carrying vehicles of any class at an age below the normal minimum age for driving

vehicles of that class, they must fulfil such requirements with respect to participation in an approved training scheme for drivers<sup>11</sup> as may be prescribed<sup>12</sup>.

- 1 The regulations made under the Road Traffic Act 1988 Pt IV (ss 110-122) (as substituted and amended).
- 2 The under *ibid* Pt III (ss 87-109C) (as amended).
- 3 For the meaning of 'drive' see PARA 207 ante.
- 4 For the meaning of 'large goods vehicle' see PARA 489 note 5 ante.
- 5 For the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 ante.
- 6 'Large goods vehicle driver's licence' means a licence under the Road Traffic Act 1988 Pt III (as amended) in so far as it authorises a person to drive large goods vehicles of any class: s 110(2) (s 110 substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 2, Sch 2).
- 7 'Passenger-carrying vehicle driver's licence' means a licence under the Road Traffic Act 1988 Pt III (as amended) in so far as it authorises a person to drive passenger-carrying vehicles of any class: s 110(2) (as substituted: see note 6 supra). As to classes of vehicles see PARA 208 ante.
- 8 'Full licence' means a large goods vehicle or passenger-carrying vehicle driver's licence other than a provisional licence: *ibid* s 121(1) (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 2). 'Provisional licence' means a licence granted by virtue of the Road Traffic Act 1988 s 97(2): s 121(1) (as so substituted).
- 9 'Normal minimum age for driving', in relation to the driving of vehicles of any class, means the age which would apply by virtue of *ibid* s 101 (as amended) (see PARAS 478-479 post) (but apart from any approved training scheme for drivers) in relation to that class of vehicle: s 120(3) (s 120 substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 2).
- 10 Road Traffic Act 1988 s 120(2) (as substituted: see note 9 supra).
- 11 'Approved training scheme for drivers' means a training scheme for drivers (as defined in *ibid* s 101(5): see PARA 479 ante) approved for the time being by the Secretary of State for the purposes of regulations under s 101 (as amended) (see PARAS 478-479 post): s 120(3) (as substituted: see note 9 supra). The approved scheme is the Young LGV Driver Training Scheme which was established by Skills for Logistics and approved by the Secretary of State on 24 February 2004 for training young drivers of large goods vehicles: see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 54 (substituted by SI 2003/636; and amended by SI 2004/1519). By virtue of EC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1) a person may not drive a vehicle having a permissible maximum weight exceeding 7.5 tonnes unless he holds a certificate of professional competence, confirming that he has completed a training course for drivers of vehicles intended for the carriage of goods by road, in conformity with Community rules: see art 5. A certificate is issued in conjunction with the approved scheme. An applicant for a large goods vehicle driver's licence who is under the age of 21 must satisfy the Secretary of State that he holds such a certificate: see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 12(3) (amended by SI 2003/636).
- 12 Road Traffic Act 1988 s 120(2) (as substituted: see note 9 supra).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(ii) Grant of Licences/491. Conditions attached to the grant of certain licences.

**491. Conditions attached to the grant of certain licences.**

The following licences, that is to say:

- 899 (1) a large goods vehicle or passenger-carrying vehicle driver's licence<sup>1</sup> issued as a provisional licence<sup>2</sup>;
- 900 (2) a full large goods vehicle or passenger-carrying vehicle driver's licence<sup>3</sup> granted to a person under the age of 21<sup>4</sup>; and
- 901 (3) an LGV Community licence<sup>5</sup> held by a person under the age of 21 who is normally resident in Great Britain<sup>6</sup>,

are subject to the prescribed conditions relating to them<sup>7</sup>, and if the holder of the licence fails, without reasonable excuse, to comply with any of the conditions he is guilty of an offence<sup>8</sup>.

It is an offence for a person knowingly to cause or permit another person who is under the age of 21 to drive<sup>9</sup> a large goods vehicle of any class or a passenger-carrying vehicle of any class in contravention of the prescribed conditions to which that other person's licence is subject<sup>10</sup>.

1 For the meaning of 'large goods vehicle' see PARA 489 note 5 ante. For the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 ante. For the meaning of 'large goods vehicle driver's licence' see PARA 490 note 6 ante. For the meaning of 'passenger-carrying vehicle driver's licence' see PARA 490 note 7 ante.

2 Road Traffic Act 1988 s 114(1) (s 114 substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 2, Sch 2; and the Road Traffic Act 1988 s 114(1) amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 22)). For the meaning of 'provisional licence' see PARA 490 note 8 ante.

3 For the meaning of 'full licence' see PARA 490 note 8 ante.

4 Road Traffic Act 1988 s 114(1) (as substituted and amended: see note 2 supra).

5 'LGV Community licence' means a Community licence in so far as it authorises a person to drive large goods vehicles of any class: ibid s 110(2) (s 110 substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 2; and definition added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 20). For the meaning of 'Community licence' see PARA 415 note 16 ante; definition applied by the Road Traffic Act 1988 s 110(2) (s 110 as so substituted; and definition added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 20).

6 Road Traffic Act 1988 s 114(1) (as substituted and amended: see note 2 supra). For the meaning of 'Great Britain' see PARA 205 note 3 ante.

7 For the meaning of 'prescribed' see PARA 488 note 3 ante. As to the conditions prescribed in relation to licences issued to persons under 21 see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 54 (substituted by SI 2003/636; and amended by SI 2004/1519).

8 Road Traffic Act 1988 s 114(1) (as substituted and amended: see note 2 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 28; and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 3, Sch 2 para 8(c)). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

9 For the meaning of 'drive' see PARA 207 ante.

10 Road Traffic Act 1988 s 114(2) (as substituted: see note 2 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 3 para 28; and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 2 para 8(c)).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(ii) Grant of Licences/492. Fitness as regards conduct.

#### 492. Fitness as regards conduct.

The Secretary of State<sup>1</sup> must not grant to an applicant a large goods vehicle driver's licence<sup>2</sup> or a passenger-carrying vehicle driver's licence<sup>3</sup> unless he is satisfied, having regard to his conduct<sup>4</sup>, that he is a fit person to hold the licence applied for<sup>5</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'large goods vehicle' see PARA 489 note 5 ante. For the meaning of 'large goods vehicle driver's licence' see PARA 490 note 6 ante.

3 For the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 ante. For the meaning of 'passenger-carrying vehicle driver's licence' see PARA 490 note 7 ante.

4 'Conduct' means:

134 (1) in relation to an applicant for or the holder of a large goods vehicle driver's licence or the holder of an LGV Community licence, his conduct as a driver of a motor vehicle (Road Traffic Act 1988 s 121(1) (s 121 substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 2, Sch 2; and definition further substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 28(2)); and

135 (2) in relation to an applicant for or the holder of a passenger-carrying vehicle driver's licence or the holder of a PCV Community licence, his conduct both as a driver of a motor vehicle and in any other respect relevant to his holding a passenger-carrying vehicle driver's licence or (as the case may be) his authorisation by virtue of the Road Traffic Act 1988 s 99A(1) (as added) (see PARA 473 ante) to drive in Great Britain a passenger-carrying vehicle of any class (s 121(1) (as so substituted)),

including, in either case, such conduct in Northern Ireland (s 121(1) (as so substituted)).

In relation to head (2) supra see *Secretary of State for Transport, Local Government and the Regions v Snowdon* [2002] EWHC 2394 (Admin), [2003] RTR 216 (applicant's registration on sex offenders register not incompatible with holding passenger-carrying vehicle's licence).

For the meaning of 'LGV Community Licence' see PARA 491 note 5 ante. For the meaning of 'motor vehicle' see PARA 210 ante. 'PCV Community licence' means a Community licence in so far as it authorises a person to drive

passenger-carrying vehicles of any class: Road Traffic Act 1988 s 110(2) (s 110 substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 2; definition added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 20). For the meaning of 'Community licence' see PARA 415 note 16 ante; definition applied by virtue of the Road Traffic Act 1988 s 110(2) (s 110 as so substituted; definition as so added). As to classes of vehicles see PARA 208 ante. For the meaning of 'Great Britain' see PARA 205 note 3 ante.

5 Ibid s 112 (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 2).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(ii) Grant of Licences/493. Functions of traffic commissioners.

#### 493. Functions of traffic commissioners.

The traffic commissioner<sup>1</sup> for any area constituted for the purposes of the Public Passenger Vehicles Act 1981<sup>2</sup> exercises the functions<sup>3</sup> relating to the conduct<sup>4</sup> of applicants for and holders of large goods vehicle driver's licences and passenger-carrying vehicle driver's licences<sup>5</sup>, and holders of LGV Community licences and PCV Community licences<sup>6</sup>. Traffic commissioners must, in the exercise of those functions, act in accordance with directions given by the Secretary of State<sup>7</sup>, but such directions must be general directions not relating to the exercise of functions in a particular case<sup>8</sup>.

1 As to the traffic commissioners see PARA 1139 post.

2 See PARA 1138 post.

3 I.e. the functions conferred by the Road Traffic Act 1988 s 112 (as substituted), s 113 (as substituted), s 114 (as substituted and amended), s 115 (as substituted and amended), s 115A (as added and amended), s 116 (as substituted and amended), s 117 (as substituted and amended), s 117A (as added and amended), s 118 (as substituted and amended), s 122 (as substituted and amended): see PARAS 492 ante, 494 et seq post.

4 For the meaning of 'conduct' see PARA 492 note 4 ante.

5 For the meaning of 'large goods vehicle' see PARA 489 note 5 ante. For the meaning of 'large goods vehicle driver's licence' see PARA 490 note 6 ante. For the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 ante. For the meaning of 'passenger-carrying vehicle driver's licence' see PARA 490 note 7 ante.

6 Road Traffic Act 1988 s 111(1) (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 2, Sch 2; and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 21).

7 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

8 Road Traffic Act 1988 s 111(2) (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 2).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(ii) Grant of Licences/494. Referral of matters of conduct to traffic commissioners.

#### 494. Referral of matters of conduct to traffic commissioners.

Any question arising<sup>1</sup> relating to the conduct<sup>2</sup> of an applicant for a licence may be referred by the Secretary of State<sup>3</sup> to the traffic commissioner<sup>4</sup> for the area in which the applicant resides<sup>5</sup>. On any such reference, the traffic commissioner must determine whether the applicant for the licence is or is not, having regard to his conduct, a fit person to hold a licence to drive<sup>6</sup> large goods vehicles<sup>7</sup> or passenger-carrying vehicles<sup>8</sup>, as the case may be<sup>9</sup>.

A traffic commissioner to whom such a reference has been made may require the applicant for the licence to furnish him with such information as he may require and may, by notice<sup>10</sup>, require him to attend at a specified time and place to furnish that information and to answer such questions relating to his application as the commissioner may put to him<sup>11</sup>. If the applicant fails without reasonable excuse to furnish information to or attend before or answer questions properly put by a commissioner when required to do so, the commissioner may decline to proceed further with the application<sup>12</sup>. If he does so, the commissioner must notify the Secretary of State of that fact and the Secretary of State must then refuse to grant the licence<sup>13</sup>. Except in a case where he has declined to proceed further with the application, the traffic commissioner to whom a reference has been made must notify the Secretary of State and the applicant of his determination in the matter and the decision of the commissioner is binding on the Secretary of State<sup>14</sup>.

1 le under the Road Traffic Act 1988 s 112 (as substituted): see PARA 492 ante.

2 For the meaning of 'conduct' see PARA 492 note 4 ante.

3 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 As to the traffic commissioners see PARA 1139 post.

5 Road Traffic Act 1988 s 113(1) (s 113 substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 2, Sch 2). The traffic commissioner for the South Eastern and Metropolitan Traffic Areas is prescribed as competent to discharge this function in relation to military, naval and air force personnel: see s 183(6) (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 23; and prospectively amended by the Armed Forces Act 2006 s 378(1), Sch 16 para 116); and the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 81.

6 For the meaning of 'drive' see PARA 207 ante.

7 For the meaning of 'large goods vehicle' see PARA 489 note 5 ante; and for the meaning of 'large goods vehicle driver's licence' see PARA 490 note 6 ante.

8 For the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 ante; and for the meaning of 'passenger-carrying vehicle driver's licence' see PARA 490 note 7 ante.

9 Road Traffic Act 1988 s 113(2) (as substituted: see note 5 supra).

10 'Notice' means notice in writing; and 'notify' is to be construed accordingly: *ibid* s 121(1) (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 2).

11 Road Traffic Act 1988 s 113(3) (as substituted: see note 5 supra).

12 *Ibid* s 113(4) (as substituted: see note 5 supra).

13 *Ibid* s 113(4) (as substituted: see note 5 supra).

14 *Ibid* s 113(5) (as substituted: see note 5 supra).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(iii) Revocation and Suspension of Licences/495. Revocation or suspension of licences.

### (iii) Revocation and Suspension of Licences

#### 495. Revocation or suspension of licences.

A large goods vehicle driver's licence<sup>1</sup> or passenger-carrying vehicle driver's licence<sup>2</sup>:

902 (1) must be revoked if there come into existence, in relation to its holder, such circumstances relating to his conduct as may be prescribed<sup>3</sup>;

903 (2) must be revoked or suspended if the holder's conduct is such as to make him unfit to hold such a licence<sup>4</sup>,

and where the licence is suspended under head (2) above it is during the time of suspension of no effect<sup>5</sup>.

Where it appears that the conduct of a licence holder falls within both heads (1) and (2) above, proceedings must be taken or, if already commenced, continued under head (1) above and not under head (2) above so that the power to suspend the licence, rather than revoke it, is not available<sup>6</sup>.



1 For the meaning of 'large goods vehicle driver's licence' see PARA 490 note 6 ante. For the meaning of 'large goods vehicle' see PARA 489 note 5 ante.

2 For the meaning of 'passenger-carrying vehicle driver's licence' see PARA 490 note 7 ante. For the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 ante.

3 Road Traffic Act 1988 s 115(1)(a) (s 115 substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 2, Sch 2). For the meaning of 'prescribed' see PARA 488 note 3 ante. For the meaning of 'conduct' see PARA 492 note 4 ante. Regulations made for the purposes of the Road Traffic Act 1988 s 115 (as substituted), s 115A (as added) (see PARA 497 post), s 117 (as substituted) (see PARA 498 post) or s 117A (as added) (see PARA 499 post) may make different provision for large goods vehicles and for passenger-carrying vehicles and for different descriptions of persons: s 115(3) (as so substituted). As to the prescribed circumstances see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 55(1).

4 Road Traffic Act 1988 s 115(1)(b) (as substituted: see note 3 supra).

5 Ibid s 115(1) (as substituted: see note 3 supra).

6 Ibid s 115(2) (as substituted: see note 3 supra).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(iii) Revocation and Suspension of Licences/496. Referral of matters of conduct to traffic commissioners.

### 496. Referral of matters of conduct to traffic commissioners.

Any question arising<sup>1</sup>:

904 (1) as to whether a person is or is not, by reason of his conduct<sup>2</sup>, fit to hold a large goods vehicle driver's licence<sup>3</sup> or passenger-carrying vehicle driver's licence<sup>4</sup>, as the case may be<sup>5</sup>; or

905 (2) as to whether the holder of an LGV Community licence<sup>6</sup> or PCV Community licence<sup>7</sup> is or is not, by reason of his conduct, fit to be authorised<sup>8</sup> to drive in Great Britain<sup>9</sup> a large goods vehicle or passenger-carrying vehicle, as the case may be<sup>10</sup>,

may be referred by the Secretary of State<sup>11</sup> to the traffic commissioner for the area in which the holder of the licence resides<sup>12</sup>.

Where, on any reference under head (1) above, the traffic commissioner determines that the holder of the licence is not fit to hold a large goods vehicle driver's licence or passenger-carrying vehicle driver's licence (as the case may be), he is also obliged to determine whether the conduct of the licence holder is such as to require the revocation of his licence or only its suspension, and, if the former, whether he should be disqualified<sup>13</sup>.

Where, on any reference under head (2) above, the traffic commissioner determines that a Community licence<sup>14</sup> holder is not fit to be authorised<sup>15</sup> to drive in Great Britain a large goods vehicle or passenger-carrying vehicle (as the case may be), he must also determine whether the Community licence holder should be disqualified<sup>16</sup>, or should be granted, free of charge, a large goods vehicle driver's licence or passenger-carrying vehicle driver's licence, and, if so, from what date it is to take effect<sup>17</sup>.

A traffic commissioner to whom such a reference has been made may require the holder of the licence to furnish him with such information as he may require and may, by notice<sup>18</sup> to the holder, require him to attend before the commissioner at the time and place specified by the commissioner to furnish the information and to answer such questions (if any) relating to the subject matter of the reference as the commissioner may put to him<sup>19</sup>. If the holder of the licence fails without reasonable excuse to furnish information or to attend before or answer questions properly put by a commissioner when required so to do, the commissioner may notify the failure to the Secretary of State and, if the commissioner does so, in a case where the licence in question is an LGV Community licence or a PCV Community licence, the holder ceases to be authorised<sup>20</sup> to drive in Great Britain a large goods or passenger-carrying vehicle (as the case may be) from such date as is specified in a notice served on the holder by the Secretary of State<sup>21</sup>; and in any other case, the Secretary of State must revoke the licence or suspend it for such period as he thinks fit<sup>22</sup>.

Except where he has given such a notification as is mentioned above<sup>23</sup>, the traffic commissioner to whom such a reference has been made must notify his determination in the matter to the Secretary of State and the holder of the licence and the decision of the traffic commissioner is binding on the Secretary of State<sup>24</sup>. Where the Secretary of State, without making such a reference, determines to revoke or suspend a person's licence<sup>25</sup> he must notify his determination in the matter to the holder of the licence and, where he suspends it, to the traffic commissioner for the area in which the holder of the licence resides<sup>26</sup>.

1    le arising under the Road Traffic Act 1988 Pt IV (ss 110-122) (as substituted and amended).

2    For the meaning of 'conduct' see PARA 492 note 4 ante.

3    For the meaning of 'large goods vehicle' see PARA 489 note 5 ante; and for the meaning of 'large goods vehicle driver's licence' see PARA 490 note 6 ante.

4    For the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 ante; and for the meaning of 'passenger-carrying vehicle driver's licence' see PARA 490 note 7 ante.

5    Road Traffic Act 1988 s 116(1)(a) (s 116 substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 2, Sch 2; and the Road Traffic Act 1988 s 116(1) further substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 25)).

6    For the meaning of 'LGV Community licence' see PARA 491 note 5 ante.

7    For the meaning of 'PCV Community licence' see PARA 492 note 4 ante.

8    le authorised by virtue of the Road Traffic Act 1988 s 99A(1) (as added): see PARA 473 ante.

9    For the meaning of 'Great Britain' see PARA 205 note 3 ante.

10   Road Traffic Act 1988 s 116(1)(b) (as substituted: see note 5 supra).

11   As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

12   Road Traffic Act 1988 s 116(1)(b) (as substituted: see note 5 supra). In the case of licence holders who are members of the armed forces, questions must be referred to the traffic commissioner for the South Eastern and Metropolitan Areas: see s 183(6) (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 23; and prospectively amended by the Armed Forces Act 2006 s 378(1), Sch 16 para 116); and the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2624, reg 81.

13 Road Traffic Act 1988 s 116(2) (as substituted (see note 5 supra); and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 25). The holder of the licence may be disqualified under the Road Traffic Act 1988 s 117(2)(a) or (b) (as substituted) (see PARA 498 post): s 116(2) (as so substituted and amended).

14 For the meaning of 'Community licence' see PARA 415 note 16 ante.

15 Ie under the Road Traffic Act 1988 s 99A(1) (as added): see PARA 473 ante.

16 Ie under ibid s 117(2)(a) or (b) (as substituted): see PARA 498 post.

17 Ibid s 116(2A) (added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 25). The Road Traffic Act 1988 s 116(2A) (as added) and s 117A(2) (as added) (see PARA 499 post) enable the traffic commissioner to determine that a Community licence holder's right to drive large goods or passenger-carrying vehicles should be suspended for a short period at the end of which an appropriate licence under Pt III (ss 87-109C) (as amended) may be granted.

18 For the meaning of 'notice' see PARA 494 note 10 ante.

19 Road Traffic Act 1988 s 116(3) (as substituted: see note 5 supra). At the date at which this volume states the law there are no regulations or rules of procedure governing such an interrogation.

20 See note 15 supra.

21 Road Traffic Act 1988 s 116(4)(a) (as substituted (see note 5 supra); and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 25).

22 Road Traffic Act 1988 s 116(4)(b) (as substituted (see note 5 supra); and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 25).

23 Ie in the Road Traffic Act 1988 s 116(4) (as substituted and amended): see the text to notes 21-22 supra.

24 Ibid s 116(5) (as substituted: see note 5 supra).

25 Ie under ibid s 115(1) (as substituted): see PARA 495 ante.

26 Ibid s 116(6) (as substituted: see note 5 supra).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 496 Referral of matters of conduct to traffic commissioners

NOTE 12--Account should be taken of good post-offence conduct both in determining fitness to hold a licence and the appropriate penalty: *Meredith v Traffic Commissioner for the Western Traffic Area* [2009] EWHC 2975 (Admin), [2009] All ER (D) 71 (Dec).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(iii) Revocation and Suspension of Licences/497. Cessation of authorisation with respect to Community licence holders.

#### **497. Cessation of authorisation with respect to Community licence holders.**

Where, in relation to a holder of an LGV Community licence<sup>1</sup> or PCV Community licence<sup>2</sup> who is normally resident<sup>3</sup> in Great Britain<sup>4</sup>:

- 906 (1) there exist immediately before the relevant date<sup>5</sup>, or there come into existence on or after that date, the prescribed circumstances<sup>6</sup> relating to his conduct<sup>7</sup>; or
- 907 (2) his conduct is such as to make him unfit to be authorised<sup>8</sup> to drive<sup>9</sup> in Great Britain a large goods vehicle<sup>10</sup> or passenger-carrying vehicle<sup>11</sup> (as the case may be)<sup>12</sup>,

the Secretary of State<sup>13</sup> must serve notice<sup>14</sup> on the holder requiring him to deliver the Community licence and its counterpart<sup>15</sup> (if any) immediately to the Secretary of State and it is the duty of the holder to comply with that requirement<sup>16</sup>.

Where a notice is served in pursuance of head (1) or head (2) above on the holder of an LGV Community licence or a PCV Community licence, he ceases to be authorised<sup>17</sup> to drive in Great Britain a large goods vehicle or passenger-carrying vehicle (as the case may be) from such date as is specified in the notice, not being earlier than the date of service of the notice<sup>18</sup>.

Where it appears to the Secretary of State that the conduct of a Community licence holder falls within both heads (1) and (2) above, the Secretary of State must serve notice on the holder in pursuance of head (1) only<sup>19</sup>.

A Community licence holder who fails without reasonable excuse to comply with this duty<sup>20</sup> is guilty of an offence<sup>21</sup>.

1 For the meaning of 'LGV Community licence' see PARA 491 note 5 ante.

2 For the meaning of 'PCV Community licence' see PARA 492 note 4 ante.

3 'Normally resident' is not defined in the Road Traffic Act 1988. However, it is submitted that the meaning of the expression must be determined by reference to EC Council Directive 91/439 (OJ L237, 24.8.91, p 1) art 9: see PARA 445 note 5 ante.

4 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

5 For the meaning of 'relevant date', in relation to a Community licence holder who is normally resident in Great Britain, see PARA 473 note 14 ante; definition applied by the Road Traffic Act 1988 115A(5) (s 115A added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 24). For the meaning of 'Community licence' see PARA 415 note 16 ante; definition applied by the Road Traffic Act 1988 s 110(2) (s 110 substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 2, Sch 2; definition added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 20).

6 For the meaning of 'prescribed' see PARA 488 note 3 ante. As to the prescribed circumstances see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 55(2).

7 Road Traffic Act 1988 s 115A(1)(a) (as added: see note 5 supra). For the meaning of 'conduct' see PARA 492 note 4 ante. For the power to make regulations for the purpose of s 115A (as added) see PARA 495 note 3 ante.

8 He authorised by virtue of ibid s 99A(1) (as added): see PARA 473 ante.

9 For the meaning of 'drive' see PARA 207 ante.

10 For the meaning of 'large goods vehicle' see PARA 489 note 5 ante.

11 For the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 ante.

12 Road Traffic Act 1988 s 115A(1)(b) (as added: see note 5 supra).

13 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

14 For the meaning of 'notice' see PARA 494 note 10 ante.

15 For the meaning of 'counterpart', in relation to a licence to drive under the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended) or a Community licence see PARA 415 note 19 ante; definition applied by s 121(1) (s 121 substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 2, Sch 2; definition added by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, reg 2(3), Sch 3 para 2(3); and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 28(2)). This definition is prospectively repealed, as from a day to be appointed, by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 2, 21, Sch 7. At the date at which this volume states the law no such day had been appointed.

16 Road Traffic Act 1988 s 115A(1) (as added: see note 5 supra). This provision is prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 18, Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

17 Ie authorised by virtue of the Road Traffic Act 1988 s 99A(1) (as added): see PARA 473 ante.

18 Ibid s 115A(2) (as added: see note 5 supra).

19 Ibid s 115A(3) (as added: see note 5 supra).

20 Ie the duty under ibid s 115A(1) (as added): see the text to notes 1-16 supra.

21 Ibid s 115A(4) (as added: see note 5 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 28; and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 3, Sch 2 para 8(d)). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(iii) Revocation and Suspension of Licences/498. Disqualification on revocation of licence granted under the Road Traffic Act 1988.

### 498. Disqualification on revocation of licence granted under the Road Traffic Act 1988.

Where the Secretary of State<sup>1</sup> revokes a person's large goods vehicle driver's licence<sup>2</sup> or passenger-carrying vehicle driver's licence<sup>3</sup> because there has come into existence, in relation to the holder, such circumstances relating to his conduct as may be prescribed<sup>4</sup>, the Secretary of State must<sup>5</sup> order that person to be disqualified<sup>6</sup> either indefinitely or for the period determined in accordance with the regulations<sup>7</sup>.

In other cases, where the holder's licence is revoked or suspended due to the fact that his conduct is such as to make him unfit to hold a large goods vehicle driver's licence or passenger-carrying vehicle driver's licence<sup>8</sup>, the Secretary of State may:

- 908 (1) order the holder to be disqualified indefinitely or for such period as the Secretary of State thinks fit<sup>9</sup>; or
- 909 (2) except where the licence is a provisional licence<sup>10</sup>, if it appears to the Secretary of State that, owing to the conduct of the holder of the licence, it is expedient to require him to comply with the prescribed conditions applicable to provisional licences<sup>11</sup> until he passes the prescribed test of competence to drive large goods vehicles or passenger-carrying vehicles of any class<sup>12</sup>, order him to be disqualified for holding or obtaining a full licence<sup>13</sup> until he passes such a test<sup>14</sup>.

Where a person's large goods vehicle driver's licence or passenger-carrying vehicle driver's licence is treated as revoked by virtue of his having been disqualified by a court<sup>15</sup>, the application of the provisions mentioned above<sup>16</sup> is modified by regulations according to the circumstances of the case<sup>17</sup>.

If, while the holder of a large goods vehicle driver's licence or passenger-carrying vehicle driver's licence is so disqualified, the prescribed circumstances<sup>18</sup> cease to exist in his case, the Secretary of State must, on an application made to him for that purpose, remove the disqualification<sup>19</sup>. So long as the disqualification of the holder of a large goods vehicle driver's licence or passenger-carrying vehicle driver's licence continues in force<sup>20</sup>, a large goods vehicle driver's licence or passenger-carrying vehicle driver's licence cannot be granted to him and any such licence obtained by him is of no effect<sup>21</sup>.

Where the holder of a full licence is disqualified under head (2) above, the Secretary of State may not afterwards grant him a full licence to drive a large goods vehicle or passenger-carrying vehicle of any class unless satisfied that he has since the disqualification passed the prescribed test of competence to drive vehicles of that class, and until he passes that test any full licence obtained by him is of no effect<sup>22</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'large goods vehicle' see PARA 489 note 5 ante; and for the meaning of 'large goods vehicle driver's licence' see PARA 490 note 6 ante.

3 Ie in pursuance of the Road Traffic Act 1988 s 115(1)(a) (as substituted). For the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 ante; and for the meaning of 'passenger-carrying vehicle driver's licence' see PARA 490 note 7 ante.

4 See *ibid* s 115(1)(a) (as substituted); and PARA 495 ante.

5 Ie in accordance with the regulations made in pursuance of the Road Traffic Act 1988 s 115(3) (as substituted and amended): see PARA 495 ante.

6 For the purposes of *ibid* s 117 (as substituted and amended), 'disqualified':

136 (1) in a case of revocation on the ground of the conduct of the holder of the licence as a driver, means disqualified for holding or obtaining a licence under Pt III (ss 87-109C) (as amended) to drive large goods vehicles of the prescribed classes and passenger-carrying vehicles of the prescribed classes (s 117(7)(a) (s 117 substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 2, Sch 2)); and

137 (2) in a case of revocation of a passenger-carrying vehicle driver's licence on the ground of the conduct of the holder otherwise than as a driver, means disqualified for holding or obtaining a licence under the Road Traffic Act 1988 Pt III (as amended) to drive passenger-carrying vehicles of the prescribed classes (s 117(7)(b) (as so substituted)).

For the meaning of 'conduct' see PARA 492 note 4 ante. As to classes of vehicles see PARA 208 ante. As to the prescribed classes of vehicle see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 50(4).

7 Road Traffic Act 1988 s 117(1) (as substituted (see note 6 supra); and amended by the Road Traffic Act 1991 s 48, Sch 4 para 65). See the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 55(3), (4).

8 le in pursuance of the Road Traffic Act 1988 s 115(1)(b) (as substituted): see PARA 495 ante.

9 Ibid s 117(2)(a) (as substituted: see note 6 supra). Where the holder of a large goods vehicle driver's licence or passenger-carrying vehicle driver's licence is disqualified under s 117(2)(a) (as substituted), the Secretary of State may, in such circumstances as may be prescribed, remove the disqualification: s 117(4) (as so substituted). The circumstances are prescribed by the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 57.

10 For the meaning of 'provisional licence' see PARA 490 note 8 ante.

11 le under the Road Traffic Act 1988 Pt III (as amended).

12 For tests prescribed for classes of large goods and passenger-carrying vehicle see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 40 (amended by SI 2002/2641; SI 2007/698); the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, Sch 7 (substituted by SI 2003/636); and the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, Sch 8 (substituted by SI 2003/2003; and amended by SI 2002/3313).

13 For the meaning of 'full licence' see PARA 490 note 8 ante.

14 Road Traffic Act 1988 s 117(2)(b) (as substituted: see note 6 supra).

15 le by virtue of the Road Traffic Offenders Act 1988 s 37(1) (effect of disqualification by order of a court): see PARA 1072 post.

16 le the Road Traffic Act 1988 s 117(1), (2) (as substituted): see the text and notes 1-14 supra.

17 See ibid s 117(2A) (added by the Road Traffic Act 1991 s 48, Sch 4 para 65). The application of the Road Traffic Act 1988 s 117(1), (2) (as substituted) is modified by the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864 (as amended): see reg 56.

18 le prescribed for the purposes of the Road Traffic Act 1988 s 115(1)(a) (as substituted): see PARA 495 ante. For the regulations prescribing the relevant circumstances see PARA 495 note 3 ante.

19 Ibid s 117(3) (as substituted: see note 6 supra).

20 le under ibid s 117(1) (as substituted) or s 117(2)(a) (as substituted): see the text and notes 1-9 supra.

21 Ibid s 117(6) (as substituted: see note 6 supra).

22 Ibid s 117(5) (as substituted: see note 6 supra).

## **UPDATE**

### **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **498 Disqualification on revocation of licence granted under the Road Traffic Act 1988**

NOTE 12--SI 1999/2864 reg 40 substituted by SI 2008/1435 and amended by SI 2009/788. SI 1999/2864 Sch 7 amended by SI 2008/1435. SI 1999/2864 Sch 8 further amended by SI 2008/508, SI 2009/788.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(iii) Revocation and Suspension of Licences/499. Disqualification of Community licence holders.

#### **499. Disqualification of Community licence holders.**

Where a notice<sup>1</sup> is served on a Community licence<sup>2</sup> holder in the prescribed circumstances<sup>3</sup>, the Secretary of State<sup>4</sup> must order<sup>5</sup> that person to be disqualified<sup>6</sup> indefinitely or for the period determined in accordance with the regulations<sup>7</sup>.

Where a notice is served on a Community licence holder in other cases<sup>8</sup>, the Secretary of State may:

- 910 (1) order that person to be disqualified indefinitely or for such period as the Secretary of State thinks fit<sup>9</sup>;
- 911 (2) if it appears to the Secretary of State that, owing to the conduct of the Community licence holder, it is expedient to require him to comply with the prescribed conditions applicable to provisional licences<sup>10</sup> until he passes the prescribed test of competence to drive large goods vehicles or passenger-carrying vehicles of any class<sup>11</sup>, order him to be disqualified for holding or obtaining a full licence<sup>12</sup> until he passes such a test<sup>13</sup>; or
- 912 (3) on receipt of the Community licence and its counterpart<sup>14</sup> (if any), grant to the Community licence holder, on payment of such fee (if any) as may be prescribed, a large goods vehicle driver's licence<sup>15</sup> or passenger-carrying vehicle driver's licence<sup>16</sup> which takes effect from such date as the Secretary of State may determine<sup>17</sup>.

Where the Secretary of State orders<sup>18</sup> a Community licence holder to be disqualified, the Secretary of State must, on receipt of the Community licence and its counterpart (if any), grant to the Community licence holder, on payment of such fee (if any) as may be prescribed, a licence authorising the driving of the classes of vehicle which are unaffected by the disqualification<sup>19</sup>.

If, while the holder of an LGV Community licence<sup>20</sup> or a PCV Community licence<sup>21</sup> is disqualified<sup>22</sup>, the prescribed circumstances<sup>23</sup> cease to exist in his case, the Secretary of State must, on an application made to him for the purpose, remove the disqualification<sup>24</sup>. Where the holder of an LGV Community licence or a PCV Community licence is disqualified under head (1) above, the Secretary of State may, in the prescribed circumstances, remove the disqualification<sup>25</sup>.

1 For the meaning of 'notice' see PARA 494 note 10 ante.

2 For the meaning of 'Community licence' see PARA 415 note 16 ante.

3 In circumstances prescribed pursuant to the Road Traffic Act 1988 s 115A(1)(a) (as added): see PARA 497 ante. For the prescribed circumstances see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 55(2).



4 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 The order must be in accordance with regulations made under the Road Traffic Act 1988 s 115(3) (as substituted) (see PARA 495 ante): see s 117A(1) (s 117A added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 26).

6 For these purposes, 'disqualified':

138 (1) in a case where notice is served in pursuance of the Road Traffic Act 1988 s 115A(1) (as added) (see PARA 497 ante) on a Community licence holder on the ground of his conduct as a driver, means disqualified for holding or obtaining a licence under Pt III (ss 87-109C) (as amended) to drive large goods vehicles of the prescribed classes and passenger-carrying vehicles of the prescribed classes (s 117A(6)(a) (as added: see note 5 supra)); and

139 (2) in a case where notice is served in pursuance of s 115A(1) (as added) (see PARA 497 ante) on a holder of a PCV Community licence on the ground of his conduct otherwise than as a driver, means disqualified for holding or obtaining a licence under Pt III (as amended) to drive passenger-carrying vehicles of the prescribed classes (s 117A(6)(b) (as so added)).

For the meaning of 'conduct' see PARA 492 note 4 ante. For the meaning of 'large goods vehicle' see PARA 489 note 5 ante. As to classes of vehicles see PARA 208 ante. For the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 ante. For the meaning of 'PCV Community licence' see PARA 492 note 4 ante. As to the prescribed classes see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 50(4).

7 Road Traffic Act 1988 s 117A(1) (as added: see note 5 supra). See also the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 55(3), (4).

8 Ie in pursuance of the Road Traffic Act 1988 s 115A(1)(b) (as added): see PARA 497 ante.

9 Ibid s 117A(2)(a) (as added: see note 5 supra).

10 Ie under ibid Pt III (as amended).

11 As to tests prescribed for classes of large goods and passenger-carrying vehicle see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 40 (amended by SI 2002/2641; SI 2007/698); the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, Sch 7 (substituted by SI 2003/636); and the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, Sch 8 (substituted by SI 2003/2003; and amended by SI 2002/3313).

12 For the meaning of 'full licence' see PARA 490 note 8 ante.

13 Road Traffic Act 1988 s 117A(2)(b) (as added: see note 5 supra).

14 For the meaning of 'counterpart' see PARA 415 note 19 ante.

15 For the meaning of 'large goods vehicle driver's licence' see PARA 490 note 6 ante.

16 For the meaning of 'passenger-carrying vehicle driver's licence' see PARA 490 note 7 ante.

17 Road Traffic Act 1988 s 117A(2)(c) (as added (see note 5 supra); and amended by the Road Safety Act 2006 s 40(2)). This provision is prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 2, 19, Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

18 Ie in pursuance of the Road Traffic Act 1988 s 117A(1), (2) (as added): see the text and notes 1-7 supra.

19 Ibid s 117A(3) (as added (see note 5 supra); substituted by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, regs 2, 12; and amended by the Road Safety Act 2006 s 40(2)). This provision is prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 19, Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

The Secretary of State may require a person to provide evidence of his name, address, sex, date and place of birth, and a photograph which is a current likeness of him, before so issuing a licence to him: Road Traffic Act 1988 s 117A(3A) (s 117A as added (see note 6 supra); s 117A(3A) added by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, regs 2, 12).

20 For the meaning of 'LGV Community licence' see PARA 491 note 5 ante.

21 For the meaning of 'PCV Community licence' see PARA 492 note 4 ante.

22 le under the Road Traffic Act 1988 s 117A(1) (as added): see the text and notes 1-7 supra. See also note 6 supra.

23 le prescribed for the purposes of ibid s 115(1)(a) (as substituted): see PARA 495 ante.

24 Ibid s 117A(4) (as added: see note 5 supra).

25 Ibid s 117A(5) (as added: see note 5 supra). At the date at which this volume states the law no circumstances had been prescribed for the purposes of s 117A(5) (as added).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 499 Disqualification of Community licence holders

NOTE 11--SI 1999/2864 reg 40 substituted by SI 2008/1435 and amended by SI 2009/788. SI 1999/2864 Sch 7 amended by SI 2008/1435. SI 1999/2864 Sch 8 further amended by SI 2008/508, SI 2009/788.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(iii) Revocation and Suspension of Licences/500. Surrender, return and endorsement of licences.

### 500. Surrender, return and endorsement of licences.

Where the Secretary of State<sup>1</sup> revokes a licence<sup>2</sup>, he must serve notice<sup>3</sup> on the holder of the licence requiring him to deliver the licence and its counterpart<sup>4</sup> immediately to the Secretary of State, and it is the duty of the holder of the licence to comply<sup>5</sup>.

Where the Secretary of State suspends a licence<sup>6</sup>, then:

- 913 (1) where he does so without making any reference<sup>7</sup> to a traffic commissioner<sup>8</sup>, he must serve notice on the holder of the licence requiring him to deliver the licence and its counterpart immediately to the traffic commissioner for the area in which the holder of the licence resides<sup>9</sup>;
- 914 (2) where he does so in pursuance of a determination of a traffic commissioner on such a reference, the traffic commissioner must, if the licence and its counterpart have not previously been delivered to him, serve notice on the holder of the licence requiring him to deliver them immediately to the traffic commissioner<sup>10</sup>,

and it is the duty of the holder of the licence to comply with the requirement<sup>11</sup>.

A licence holder who fails without reasonable excuse to comply with such a duty is guilty of an offence<sup>12</sup>.

On the delivery of a licence and its counterpart by a person to the Secretary of State<sup>13</sup>, the Secretary of State must issue to him, on payment of the prescribed fee<sup>14</sup>, a licence authorising the driving of the classes<sup>15</sup> of vehicles which are unaffected by the revocation<sup>16</sup>. On the delivery of a suspended licence and its counterpart to a traffic commissioner, the traffic commissioner must endorse the counterpart of the licence with particulars of the suspension and return the licence and its counterpart to the holder<sup>17</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 le in pursuance of the Road Traffic Act 1988 s 115(1) (as substituted): see PARA 495 ante.

3 For the meaning of 'notice' see PARA 494 note 10 ante.

4 For the meaning of 'counterpart' see PARA 415 note 19 ante.

5 Road Traffic Act 1988 s 118(1) (s 118 substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 2, Sch 2; and the Road Traffic Act 1988 s 118(1) amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, reg 2(3), Sch 3 para 2(2)). This provision is prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 2, 20(1), (2), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

6 le in pursuance of the Road Traffic Act 1988 s 115 (as substituted and amended): see PARA 495 ante.

7 le under ibid s 116 (as substituted): see PARA 496 ante.

8 As to the traffic commissioners see PARA 1139 post.

9 Road Traffic Act 1988 s 118(2)(a) (s 118 as substituted (see note 5 supra); and s 118(2) amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 3 para 2(2)).

10 Road Traffic Act 1988 s 118(2)(b) (as substituted (see note 5 supra) and amended (see note 9 supra)).

11 Ibid s 118(2) (as substituted (see note 5 supra); and amended (see note 9 supra)). As from a day to be appointed, s 118(2) (as substituted and amended) is further substituted so as to provide that where, in pursuance of s 115 (as substituted and amended) (see PARA 495 ante), the Secretary of State suspends a licence, he must (unless the holder of the licence has already delivered his licence to a traffic commissioner on a reference under s 116 (as substituted) (see PARA 496 ante)) serve notice on the holder of the licence requiring him to deliver the licence forthwith to the Secretary of State at the address specified in the notice, and it is the duty of the holder of the licence to comply with the requirement: s 118(2) (prospectively substituted by the Road Safety Act 2006 Sch 3 para 20(3)). On the delivery of the licence or, where the licence has already been delivered to a traffic commissioner, on suspending the licence, the Secretary of State must endorse the particulars of the suspension on the licence holder's driving record: Road Traffic Act 1988 s 118(2A) (s 118(2A), (2B) prospectively added by the Road Safety Act 2006 Sch 3 para 20(3)). The Secretary of State or, as the case may be, the traffic commissioner, must then return the licence to the holder: Road Traffic Act 1988 s 118(2B) (as so prospectively added). At the date at which this volume states the law no such day had been appointed. For the meaning of 'driving record' see PARA 1024 note 11 post.

12 Ibid s 118(3) (as substituted: see note 5 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 28; and prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 paras 30, 63(1), (2)(e), Sch 7). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

13 le pursuant to the Road Traffic Act 1988 s 118(1) (as substituted and amended): see the text and notes 1-5 supra.

14 For the meaning of 'prescribed' see PARA 488 note 3 ante. The fee payable is £19.00: see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 14, Sch 3 Pt 1 (substituted by SI 2004/265).

15 As to classes of vehicles see PARA 208 ante.

16 Road Traffic Act 1988 s 118(4) (as substituted (see note 5 supra); and amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 3 para 2(2)). This provision is prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 20(4), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

The Secretary of State may require a person to provide evidence of his name, address, sex, date and place of birth, and a photograph which is a current likeness of him, before issuing a licence to him: Road Traffic Act 1988 s 118(4A) (added by the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 13).

17 Road Traffic Act 1988 s 118(5) (s 118 as substituted (see note 5 supra); s 118(5) further substituted by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 3 para 2(2)). This provision is prospectively repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 20(5), Sch 7. At the date at which this volume states the law no such day had been appointed.

## **UPDATE**

### **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **500 Surrender, return and endorsement of licences**

NOTE 14--SI 1999/2864 Sch 3 Pt 1 substituted by SI 2008/508 and amended by SI 2008/1312, SI 2009/788.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(iv) Appeals/501. Appeals to magistrates' court.

## **(iv) Appeals**

### **501. Appeals to magistrates' court.**

A person who is the holder of, or an applicant for, a large goods vehicle driver's licence<sup>1</sup> or a passenger-carrying vehicle driver's licence<sup>2</sup> or the holder of an LGV Community licence<sup>3</sup> or a PCV Community licence<sup>4</sup>, and is aggrieved<sup>5</sup> by the Secretary of State<sup>6</sup>:

- 915 (1) refusing or failing to grant such a licence<sup>7</sup>;
- 916 (2) suspending or revoking such a licence<sup>8</sup>; or
- 917 (3) ordering his disqualification<sup>9</sup>,

or by a notice<sup>10</sup> served on him<sup>11</sup> may (after giving to the Secretary of State and any traffic commissioner<sup>12</sup> to whom the matter was referred notice of his intention to do so) appeal to a magistrates' court<sup>13</sup>.

On any such appeal the court may make such order as it thinks fit and the order is binding on the Secretary of State<sup>14</sup>.

1 For the meaning of 'large goods vehicle' see PARA 489 note 5 ante; and for the meaning of 'large goods vehicle driver's licence' see PARA 490 note 6 ante.

2 For the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 ante; and for the meaning of 'passenger-carrying vehicle driver's licence' see PARA 490 note 7 ante.

3 For the meaning of 'LGV Community licence' see PARA 491 note 5 ante.

4 For the meaning of 'PCV Community licence' see PARA 492 note 4 ante.

5 Where a person is refused a licence which the Secretary of State has no power to grant, the applicant for the licence is not a 'person aggrieved' and the magistrates' court has no power to hear the appeal: *R v Ipswich Justices, ex p Robson* [1971] 2 QB 340, [1971] 2 All ER 1395 (decided under earlier legislation relating to heavy goods vehicle drivers' licences). *R v Ipswich Justices, ex p Robson* supra was applied in a case where the Secretary of State was obliged to revoke a large goods vehicle driver's licence under the Road Traffic Act 1988 s 115(1)(a) (as substituted) (see PARA 495 ante), the magistrates' court having no power to hear an appeal under s 119(1)(b) (as substituted): see *Secretary of State for the Environment, Transport and the Regions v Elsy* [2000] RTR 29, where the court hinted that magistrates might have power to consider whether the statutory conditions for revocation were fulfilled.

6 Road Traffic Act 1988 s 119(1) (s 119 substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 2, Sch 2; and the Road Traffic Act 1988 s 119(1) amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 27). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 Road Traffic Act 1988 s 119(1)(a) (as substituted: see note 6 supra). The Secretary of State may refuse or fail to grant such a licence in pursuance of s 112 (as substituted) (see PARA 492 ante) or s 113(4) (as substituted) (see PARA 494 ante): see s 119(1)(a) (as so substituted).

8 Ibid s 119(1)(b) (as substituted: see note 6 supra). The Secretary of State may suspend or revoke such a licence in pursuance of s 115 (as substituted and amended) (see PARA 495 ante) or s 116(4) (as substituted) (see PARA 496 ante): see s 119(1)(b) (as so substituted).

9 Ibid s 119(1)(c) (as substituted and amended: see note 6 supra). The Secretary of State may order the disqualification of the holder of such a licence under s 117(2) (as substituted) (see PARA 498 ante) or s 117A(2) (as added and amended) (see PARA 499 ante).

10 For the meaning of 'notice' see PARA 494 note 10 ante.

11 Ie in pursuance of the Road Traffic Act 1988 s 115A(1) (as added) (see PARA 497 ante) or s 116(4) (as substituted) (see PARA 496 ante).

12 As to the traffic commissioners see PARA 1139 post.

13 Road Traffic Act 1988 s 119(1) (as substituted and amended (see note 6 supra); and further amended by the Courts Act 2003 s 109(1), (3), Sch 8 para 308, Sch 10). On an appeal under the Road Traffic Act 1988 s 119(1) (as substituted and amended) (except under head (3) in the text) the Secretary of State and, if the matter was referred to a traffic commissioner, the commissioner will be the respondent: s 119(2) (as so substituted; and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 27(3)). See further MAGISTRATES.

14 Road Traffic Act 1988 s 119(3) (as substituted: see note 6 supra).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(v) Northern Ireland/502. Provisions as to Northern Ireland licences.

## **(v) Northern Ireland**

### **502. Provisions as to Northern Ireland licences.**

The Secretary of State<sup>1</sup> may exercise as respects Great Britain<sup>2</sup> the same power of revoking or suspending any Northern Ireland driving licence<sup>3</sup> and of making an order<sup>4</sup> as is conferred on him<sup>5</sup> in relation to a large goods vehicle driver's licence<sup>6</sup> or a passenger-carrying vehicle driver's licence<sup>7</sup>. Where a revoked Northern Ireland driving licence and its counterpart<sup>8</sup> are surrendered to the Secretary of State<sup>9</sup>, the Secretary of State must send them to the licensing authority in Northern Ireland together with particulars of the revocation<sup>10</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

3 For the meaning of 'Northern Ireland driving licence' see PARA 443 note 7 ante; definition applied by the Road Traffic Act 1988 s 122(1) (s 122 substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 2, Sch 2).

4 Ie under the Road Traffic Act 1988 s 117(2) (as substituted): see PARA 498 ante.

5 Ie by ibid s 115(1)(b) (as substituted) and s 117(2) (as substituted): see PARAS 495, 498 ante.

6 For the meaning of 'large goods vehicle' see PARA 489 note 5 ante; and for the meaning of 'large goods vehicle driver's licence' see PARA 490 note 6 ante.

7 Road Traffic Act 1988 s 122(2) (as substituted: see note 3 supra). For the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 ante; and for the meaning of 'passenger-carrying vehicle driver's licence' see PARA 490 note 7 ante. The provisions of s 115(1) (as substituted) (see PARA 495 ante), s 116 (as substituted and amended) (see PARA 496 ante), s 117 (as substituted and amended) (see PARA 498 ante) and s 118 (as substituted and amended) (with the exception of s 118(3) (as substituted)) (see PARA 500 ante) have effect accordingly subject to the modification that references to the traffic commissioner for the area in which the holder of the licence resides must be construed as references to the prescribed traffic commissioner: s 122(2) (as so substituted). For the meaning of 'prescribed' see PARA 488 note 3 ante. The traffic commissioner for the North Western Traffic Area is prescribed for the purposes of this provision: see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 82(1). As to the traffic commissioners see PARA 1139 post.

8 For the meaning of 'counterpart' see PARA 415 note 19 ante.

9 Ie in pursuance of the Road Traffic Act 1988 s 118 (as substituted and amended): see PARA 500 ante.

10 Ibid s 122(3) (as substituted (see note 3 supra); and amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, reg 2(3), Sch 3 para 2). This provision is prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 s 10(12), Sch 3 paras 2, 22 so as to remove references to the counterpart. at the date at which this volume states the law no such day had been appointed.

A holder of a Northern Ireland driving licence who is aggrieved by the revocation or suspension of the licence or the ordering of disqualification by virtue of the Road Traffic Act 1988 s 122(2) (as substituted) (see the text and

notes 1-7 supra) has the same right of appeal as is conferred by s 119 (as substituted) (see PARA 501 ante) except that an appeal brought by virtue of s 122(4) (as substituted) lies, if the appellant is not resident in Great Britain, to a prescribed magistrates' court: s 122(4) (as so substituted). As to the prescribed court see the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 82(2).

## **UPDATE**

### **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(vi) Certificates of Professional Competence/503. Applicability of requirements as to certificates of professional competence.

## **(vi) Certificates of Professional Competence**

### **503. Applicability of requirements as to certificates of professional competence.**

To implement the relevant Community provisions<sup>1</sup>, regulations have been made<sup>2</sup> which require drivers of certain vehicles for the carriage of goods or passengers to take an initial practical and theoretical driving test and periodic training thereafter. The regulations apply to any person who drives a relevant vehicle<sup>3</sup>, other than a vehicle to which the exceptions below apply, on a road<sup>4</sup> and who is either a national of a member state<sup>5</sup> or a national of a third country<sup>6</sup> employed or used by an undertaking established in a member state<sup>7</sup>.

The following vehicles are excepted<sup>8</sup>:

918 (1) a vehicle which it is an offence<sup>9</sup> for that person to drive on any road at a speed greater than 45 kilometres per hour<sup>10</sup>;

919 (2) a vehicle which is being used by, or is under the control of any of the following<sup>11</sup>:

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84. (a) the armed forces<sup>12</sup>;

85. (b) a police force<sup>13</sup>;

86. (c) a local authority in the discharge of any function conferred on or exercisable<sup>14</sup> by that authority<sup>15</sup>; or

87. (d) a fire and rescue authority<sup>16</sup>;

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920 (3) a vehicle which is undergoing road tests for technical development, repair or maintenance purposes, or that is a new or rebuilt vehicle which has not yet been put into service<sup>17</sup>;

921 (4) a vehicle which is being used in a state of emergency or is assigned to a rescue mission<sup>18</sup>;

922 (5) a vehicle which is being used in the course of a driving lesson or driving test<sup>19</sup> for the purpose of enabling that person to obtain a driving licence<sup>20</sup> or a CPC<sup>21</sup>;

923 (6) a vehicle which is being used for the non-commercial carriage of passengers or goods for personal use<sup>22</sup>;

924 (7) a vehicle which is carrying material or equipment to be used by that person in the course of his work, provided that driving that vehicle is not his principal activity<sup>23</sup>.

1     Ie EC Parliament and Council Directive 2003/59 (OJ L226, 10.9.2003, p 4) on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers.

2     See the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605; the text and notes 3-23 infra; and PARAS 504-512 post.

3     'Relevant vehicle' means a vehicle for which is required a driving licence of category C, C and E, D, or D and E, as defined in the Driving Licences Directive art 3(1), or a driving licence recognised as equivalent: Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 2(1). 'The Driving Licences Directive' means EEC Council Directive 91/439 (OJ L237, 24.8.91, p 1) on driving licences: Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 2(1). A reference in those regulations to a category of relevant vehicle includes references to its sub-categories as defined in the Driving Licences Directive art 3(2): Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 2(b).

4     'Road' means any road open to the public: *ibid* reg 2(1). For the meaning of 'road' generally see PARA 206 ante.

5     In the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, a reference to a member state includes a reference to an EEA state: reg 2(2)(a). For the meaning of 'EEA state' see PARA 415 note 16 ante.

6     'Third country' means a country which is not a member state: *ibid* reg 2(1).

7     *Ibid* reg 3(1).

8     *Ibid* reg 3(2).

9     Ie under the Road Traffic Regulation Act 1984 s 89 (see PARA 856 post).

10    Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 3(2)(a).

11    *Ibid* reg 3(2)(b).

12    *Ibid* reg 3(2)(b)(i). 'Armed forces' means the naval, military or air forces of the Crown and includes the reserve forces; and 'reserve forces' has the same meaning as in the Reserve Forces Act 1996 s 1 (see ARMED FORCES vol 2(2) (Reissue) PARA 223): Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 2(1).

13    *Ibid* reg 3(2)(b)(ii).

14    Ie under an order made under the Civil Contingencies Act 2004 s 5 (see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 564) or regulations made under s 20 (LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 11).

15    Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 3(2)(b)(iii).

16    *Ibid* reg 3(2)(b)(iv). 'Fire and rescue authority' has the same meaning as in the Fire and Rescue Services Act 2004 s 1 (see FIRE SERVICES): Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 2(1).

17    *Ibid* reg 3(2)(c).

18    *Ibid* reg 3(2)(d).

19    'Driving test' means a test of competence prescribed under the Road Traffic Act 1988 s 89(3) (as amended) (see PARA 449 ante): Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 2(1).

20    'Driving licence' means, except in *ibid* reg 4(8)(b), (c) (see PARA 504 post), a full licence within the meaning of the Road Traffic Act 1988 s 108(1) (as amended) (see PARA 445 note 15 ante): Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 2(1).



21 Ibid reg 3(2)(e). 'CPC' has the meaning given by EC Parliament and Council Directive 2003/59 (OJ L226, 10.9.2003, p 4) seventh recital: Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 2(1).

22 Ibid reg 3(2)(f).

23 Ibid reg 3(2)(g).

## **UPDATE**

### **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(vi) Certificates of Professional Competence/504. Persons who must take initial CPC test.

#### **504. Persons who must take initial CPC test.**

Except as provided below<sup>1</sup>, a person to whom the regulations as to certificates of professional competence apply<sup>2</sup> is not permitted to drive a relevant vehicle<sup>3</sup> on a road<sup>4</sup> on or after the date specified below unless he has successfully completed the appropriate initial CPC test<sup>5</sup>. The specified date is 10 September 2008 in respect of vehicles in licence category D or D and E, and 10 September 2009 in respect of vehicles in licence category C or C and E<sup>6</sup>. A person may take the initial CPC test whether or not he has been granted a driving licence<sup>7</sup> for a relevant vehicle<sup>8</sup>.

A person is excepted from this requirement where<sup>9</sup>:

- 925 (1) a person is undergoing a vocational training course leading to a professional qualification relevant to the carriage by road of passengers or goods (or both) and which is approved by the competent authority<sup>10</sup> as a course to which this head applies<sup>11</sup>;
- 926 (2) that course lasts at least six months<sup>12</sup>;
- 927 (3) that person has produced to the competent authority's satisfaction such evidence as that authority may reasonably require that he is undergoing such a course<sup>13</sup>;
- 928 (4) the competent authority has issued that person with a document authorising him to drive that relevant vehicle for a specified period of up to 12 months while undertaking such a course<sup>14</sup>; and
- 929 (5) that person is driving within the United Kingdom<sup>15</sup>.

A person is not required to take an initial CPC test relating to vehicles of the category into which that particular relevant vehicle falls if he holds a document described below: (a) on 10 September 2008, if that vehicle falls into category D or D and E; (b) on 10 September 2009, if that vehicle falls into category C or C and E<sup>16</sup>. That document may be: (i) a current driving

licence; (ii) a current driving licence issued by a member state<sup>17</sup> other than the United Kingdom; (iii) a current driving licence recognised as equivalent to a document described in head (i) or head (ii) above; or (iv) a current test pass certificate<sup>18</sup> entitling its holder to a driving licence authorising the driving of any relevant vehicle<sup>19</sup>.

There is also an exemption for a person who holds a CPC certifying an initial qualification<sup>20</sup>.

A person who has passed the initial CPC test in respect of a vehicle which falls within: (A) category C or C and E; or (B) category D or D and E, need not take another initial CPC test to drive any relevant vehicle that falls within the other category referred to in the same head<sup>21</sup>.

A person who does not comply with the requirement not to drive a relevant vehicle on a road on or after the specified date without successfully completing an initial CPC test is guilty of an offence<sup>22</sup>, and a person who causes or permits another person to drive a relevant vehicle on a road in breach of that requirement is also guilty of an offence<sup>23</sup>.

1     Ie where the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 4(5) (see the text and notes 9-15 *infra*) or reg 4(9) (see the text and note 20 *infra*) applies and subject to reg 4(7) (see the text and note 16 *infra*).

2     As to persons to whom the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, apply see PARA 503 *ante*.

3     For the meaning of 'relevant vehicle' see PARA 503 note 3 *ante*.

4     For the meaning of 'road' see PARA 503 note 4 *ante*.

5     Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 4(1). As to the meaning of 'CPC' see PARA 503 note 21 *ante*. 'Initial CPC test' means the tests for initial qualification referred to in EC Parliament and Council Directive 2003/59 (OJ L226, 10.9.2003, p 4) art 3(1)(a)(ii): Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 2(1). For the purposes of the reg 4(1), the appropriate initial CPC test is the test relating to vehicles of the category into which that particular relevant vehicle falls; (2) where EC Parliament and Council Directive 2003/59 (OJ L226, 10.9.2003, p 4) art 5(5) applies, the appropriate initial CPC test must comply with the last paragraph of Annex I Section 2.2: Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 4(2).

6     Ibid reg 4(3). As to references to categories of vehicles see PARA 503 note 3 *ante*.

7     For the meaning of 'driving licence' see PARA 503 note 20 *ante*.

8     Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 4(4).

9     Ibid reg 4(5).

10    'Competent authority' means, in relation to Great Britain, the Secretary of State: *ibid* reg 2(1). For the meaning of 'Great Britain' see PARA 205 note 3 *ante*. As to the Secretary of State see PARA 236 *ante*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 *ante*.

11    Ibid reg 4(5)(a).

12    Ibid reg 4(5)(b).

13    Ibid reg 4(5)(c).

14    Ibid reg 4(5)(d). The competent authority may authorise a person under reg 4(5)(d) in respect of only one specified period: reg 4(6).

15    Ibid reg 4(5)(e). For the meaning of 'United Kingdom' see PARA 224 note 5 *ante*.

16    Ibid reg 4(7).

17    As to the meaning of 'member state' see PARA 503 note 5 *ante*.

18 'Test pass certificate' in relation to Great Britain, has the same meaning as in the Motor Vehicle (Driving Licences) Regulations 1999, SI 1999/2864, reg 3(1) (ie a certificate in the form specified in reg 48(1)(a)): Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 2(1).

19 Ibid reg 4(8).

20 Ibid reg 4(9). The text refers to an initial qualification within the meaning of EC Parliament and Council Directive 2003/59 (OJ L226, 10.9.2003, p 4) art 6(1)(a) (CPC awarded on the basis of course attendance and a test).

21 Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 4(10).

22 Ibid reg 10(1). A person guilty of an offence under reg 10 is liable upon summary conviction to a fine not exceeding level 3 on the standard scale: reg 10(3). As to the standard scale see PARA 230 note 3 ante.

23 Ibid reg 10(2). As to the penalty see note 22 supra.

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(vi) Certificates of Professional Competence/505. Initial CPC test.

#### 505. Initial CPC test.

The initial CPC test<sup>1</sup> may be organised by the competent authority<sup>2</sup> or by a person approved by it<sup>3</sup>. The competent authority may grant approval subject to such conditions as it thinks fit and provided it is satisfied that the person will: (1) make proper arrangements for the conduct of tests; (2) keep proper records of such tests and their results; and (3) notify the competent authority of those results as required by that authority<sup>4</sup>. The competent authority may withdraw approval given by it to a person by notice in writing to that person from a date specified in the notice<sup>5</sup>.

A person to whom these provisions<sup>6</sup> apply may take the initial CPC test if that person<sup>7</sup>:

930 (a) is a national of a member state<sup>8</sup> and normally resident in the United Kingdom<sup>9</sup>; or

931 (b) is a national of a third country<sup>10</sup>, and: (i) employed or used by an undertaking established in the United Kingdom; or (ii) has been issued with a work permit<sup>11</sup> in the United Kingdom<sup>12</sup>.

The competent authority or person who organises the initial CPC test may make arrangements that all or part of that test is taken at the same time as all or part of a driving test<sup>13</sup>.

An applicant for the initial CPC test must pay to the competent authority the specified fee<sup>14</sup> for each part of the test which he takes<sup>15</sup>. That sum is payable in addition to any fee that is payable in respect of a driving test all or part of which is taken at the same time as the initial CPC test<sup>16</sup>.

1 For the meaning of 'initial CPC test' see PARA 504 note 5 ante.

2 For the meaning of 'competent authority' see PARA 504 note 10 ante.

3 Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 5(1).

4 Ibid reg 5(2).

5 Ibid reg 5(3).

6 As to persons to whom the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, apply see PARA 503 ante.

7 Ibid reg 5(4).

8 As to the meaning of 'member state' see PARA 503 note 5 ante.

9 Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 5(4)(a). For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

10 As to the meaning of 'third country' see PARA 503 note 6 ante.

11 'Work permit' has the same meaning as in the Immigration Act 1971 s 33 (as amended) (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 109): Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 2(1).

12 Ibid reg 5(4)(b).

13 Ibid reg 5(5). For the meaning of 'driving test' see PARA 503 note 19 ante.

14 The fees specified are: (1) for the theoretical test, £30; and (2) for the practical test, £41: ibid reg 5, Table.

15 Ibid reg 5(6).

16 Ibid reg 5(7).

## **UPDATE**

### **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(vi) Certificates of Professional Competence/506. Periodic training courses.

### **506. Periodic training courses.**

A person who wishes to provide periodic training courses<sup>1</sup> must make a written application to the competent authority<sup>2</sup> and pay to it a fee<sup>3</sup>. Such application must be accompanied by specified documents<sup>4</sup> and such other documents as the competent authority may reasonably require<sup>5</sup>. The competent authority may approve in writing<sup>6</sup>:

- 932 (1) that person to provide periodic training courses subject to specified<sup>7</sup> conditions<sup>8</sup>; and
- 933 (2) each periodic training course which that person wishes to provide<sup>9</sup>.

The competent authority's approval is valid for five years under head (1) above, and one year under head (2) above<sup>10</sup>.

If it appears to the competent authority that any of the conditions of the approval of a person are not being complied with, the competent authority may send notice to that person that it is minded to withdraw or suspend its approval under head (1) above<sup>11</sup>. Upon receiving such a notice, that person may make representations to the competent authority within 28 days<sup>12</sup>. The competent authority must take those representations into account and send notice to the person informing him whether or not its approval is withdrawn or suspended<sup>13</sup>.

A person approved under head (1) above who wishes to provide a training course which has not been approved by the competent authority may at any time request that authority's approval for that course and must pay to that authority a fee<sup>14</sup>. If the competent authority gives approval in response to such a request, that approval is valid for one year<sup>15</sup>.

A person to whom the regulations as to certificates of professional competence apply<sup>16</sup> may take a periodic training course approved under these provisions if that person is<sup>17</sup>:

- 934 (a) a national of a member state<sup>18</sup> and normally resident in the United Kingdom<sup>19</sup>;  
or
- 935 (b) a national of a third country<sup>20</sup> and authorised to work in the United Kingdom<sup>21</sup>.

A person approved by the competent authority<sup>22</sup> must notify that authority each time a person to whom he has provided training has completed a periodic training course and pay to the authority a fee upon each notification<sup>23</sup>. The competent authority may waive in whole or in part such fee<sup>24</sup>. The competent authority must maintain a record of the periodic training notified to it<sup>25</sup>.

1 'Periodic training course' means a course of at least seven hours of periodic training within the meaning of EC Parliament and Council Directive 2003/59 (OJ L226, 10.9.2003, p 4) Annex I Section 4; and 'periodic training' means the training referred to in art 3(1)(b): Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 2(1).

2 For the meaning of 'competent authority' see PARA 504 note 10 ante.

3 Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, art 6(1). The fee is £1,500, and £250 for each proposed course: reg 6(1).

4 Ie the documents specified in EC Parliament and Council Directive 2003/59 (OJ L226, 10.9.2003, p 4) Annex I Section 5.1.

5 Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 6(2).

6 Ibid reg 6(3).

7 Ie specified in EC Parliament and Council Directive 2003/59 (OJ L226, 10.9.2003, p 4) Annex I.

8 Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 6(3)(a).

9 Ibid reg 6(3)(b).

- 10 Ibid reg 6(4).
- 11 Ibid reg 6(5).
- 12 Ibid reg 6(6).
- 13 Ibid reg 6(7).
- 14 Ibid reg 6(8). The fee is £250: reg 6(8).
- 15 Ibid reg 6(9).
- 16 Ibid reg 6(10).
- 17 As to persons to whom the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, apply see PARA 503 ante.
- 18 As to the meaning of 'member state' see PARA 503 note 5 ante.
- 19 Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 6(10)(a). For the meaning of 'United Kingdom' see PARA 224 note 5 ante.
- 20 As to the meaning of 'third country' see PARA 503 note 6 ante.
- 21 Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 6(10)(b).
- 22 Ie under ibid reg 6(3)(a): see head (1) in the text.
- 23 Ibid reg 7(1). The fee is £5: reg 7(1)(a).
- 24 Ibid reg 7(2).
- 25 Ibid reg 7(3).

## **UPDATE**

### **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **506 Periodic training courses**

NOTE 3--SI 2007/605 reg 6(1) amended, reg 6(1A) added: SI 2008/506.

NOTE 14--SI 2007/605 reg 6(8) amended: SI 2008/506.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(vi) Certificates of Professional Competence/507. Driver qualification cards.

### **507. Driver qualification cards.**

Where a person has passed the initial CPC test<sup>1</sup>, or has completed 35 hours of periodic training<sup>2</sup> entitling him to a periodic CPC<sup>3</sup> and provided by a person approved by the competent authority<sup>4</sup>, he must apply to the competent authority for a driver qualification card<sup>5</sup>. He must send to the competent authority the specified fee<sup>6</sup> and, if the competent authority so requests, a photograph of himself in such form as it may require<sup>7</sup>. Upon receipt of such items, the competent authority must issue that person with a driver qualification card if it is satisfied that the person has passed the initial CPC test or completed the periodic training entitling him to a periodic CPC, as the case may be<sup>8</sup>.

If a driver qualification card has been damaged, lost or stolen, the competent authority must send that person a replacement card upon payment to it of the specified fee<sup>9</sup>.

1 Ibid reg 8(1). 'Initial CPC test' is the initial CPC test organised under the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 5(1): see PARA 505 ante. For the meaning of 'initial CPC test' see PARA 504 note 5 ante.

2 For the meaning of 'periodic training' see PARA 506 note 1 ante.

3 As to the meaning of 'CPC' see PARA 503 note 21 ante.

4 Ibid reg 8(1). 'Approved' under the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 6(3)(a): see PARA 506 head (1) ante. For the meaning of 'competent authority' see PARA 504 note 10 ante.

5 Ibid reg 8(1). 'Driver qualification card' has the meaning given by EC Parliament and Council Directive 2003/59 (OJ L226, 10.9.2003, p 4) art 10(1): Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 2(1).

6 The fee is £25: ibid reg 8(5). The competent authority may waive the fee in whole or in part if it thinks fit: reg 8(7).

7 Ibid reg 8(2).

8 Ibid reg 8(3). In respect of persons who make an application under reg 8, the driver qualification card issued under reg 8(3) is the CPC for the purposes of the EC Parliament and Council Directive 2003/59 (OJ L226, 10.9.2003, p 4) art 6(1)(b) (CPC awarded on the basis of tests) or art 8(1) (CPC certifying periodic training), as the case may be: Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 8(4).

9 Ibid reg 8(6). As to the specified fee see note 6 supra.

## UPDATE

### 442-517 Driver Licensing

Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(vi) Certificates of Professional Competence/508. Time limits for obtaining a CPC.

### 508. Time limits for obtaining a CPC.

Subject to the exceptions stated below, a person to whom the regulations as to certificates of professional competence apply<sup>1</sup> is not permitted to drive a relevant vehicle<sup>2</sup> on a road<sup>3</sup> unless no more than five years have elapsed since he obtained a CPC<sup>4</sup> relating to motor vehicles of the category<sup>5</sup> into which that particular relevant vehicle falls<sup>6</sup>.

A person who holds a specified document<sup>7</sup> is not required to hold an initial CPC<sup>8</sup> relating to motor vehicles of the category into which that particular relevant vehicle falls, or a periodic CPC<sup>9</sup> before either 10 September 2013<sup>10</sup> or 10 September 2014<sup>11</sup>, as appropriate<sup>12</sup>.

A person undergoing specified vocational training<sup>13</sup> is not required to hold a CPC<sup>14</sup>.

The requirement to obtain a periodic CPC does not apply to a person who holds an initial CPC granted to him<sup>15</sup> by a member state<sup>16</sup> other than the United Kingdom<sup>17</sup> if the validity of that CPC has not expired<sup>18</sup>.

A person who holds a periodic CPC<sup>19</sup> is not required to complete any further periodic training before the expiry<sup>20</sup> of that CPC in respect of any category of relevant vehicle to which that CPC does not relate<sup>21</sup>.

A person who does not comply with the requirement to hold a periodic CPC is guilty of an offence<sup>22</sup>, and a person who causes or permits another person to drive a relevant vehicle on a road in breach of that requirement is also guilty of an offence<sup>23</sup>.

1 As to persons to whom the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, apply see PARA 503 ante.

2 For the meaning of 'relevant vehicle' see PARA 503 note 3 ante.

3 For the meaning of 'road' see PARA 503 note 4 ante.

4 As to references to categories of vehicles see PARA 503 note 3 ante.

5 As to the meaning of 'CPC' see PARA 503 note 21 ante.

6 Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 9(1).

7 I.e a person to whom *ibid* reg 4(7) applies: see PARA 504 text to note 16 ante.

8 'Initial CPC' means a CPC within the meaning of EC Parliament and Council Directive 2003/59 (OJ L226, 10.9.2003, p 4) art 6 (CPC certifying the initial qualification): Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 2(1).

9 'Periodic CPC' means a CPC within the meaning of EC Parliament and Council Directive 2003/59 (OJ L226, 10.9.2003, p 4) art 8 (CPC certifying periodic training): Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 2(1).

10 I.e where *ibid* reg 4(7) applies to him by virtue of reg 4(7)(a): see PARA 504 head (a) ante.

11 I.e where *ibid* reg 4(7) applies to him by virtue of reg 4(7)(b): see PARA 504 head (b) ante.

12 *Ibid* reg 9(2).

13 I.e a person to whom *ibid* reg 4(5) applies: see PARA 504 text to notes 9-15 ante.

14 *Ibid* reg 9(3).

15 I.e in accordance with EC Parliament and Council Directive 2003/59 (OJ L226, 10.9.2003, p 4) art 8(2), last para.

16 As to the meaning of 'member state' see PARA 503 note 5 ante.

17 For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

18 Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 9(4).



19 le as described in *ibid* reg 9(1): see the text and notes 1-6 *supra*.

20 *Ibid* reg 9(6) provides that, in reg 9(5), 'expiry date' means the date five years after a person obtains a periodic CPC; the text of reg 9(5), however, refers only to 'expiry' and not to 'expiry date'.

21 *Ibid* reg 9(5).

22 *Ibid* reg 10(1). A person guilty of an offence under reg 10 is liable upon summary conviction to a fine not exceeding level 3 on the standard scale: reg 10(3). As to the standard scale see PARA 230 note 3 *ante*.

23 *Ibid* reg 10(2). As to the penalty see note 22 *supra*.

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(vi) Certificates of Professional Competence/509. Requirement to carry and produce evidence of CPC or of training exemption in vehicle.

#### **509. Requirement to carry and produce evidence of CPC or of training exemption in vehicle.**

A person who is required to hold a CPC<sup>1</sup> and who does not carry with him in the vehicle which he is driving evidence of that CPC as specified below is guilty of an offence<sup>2</sup>. That evidence may be any of the following documents<sup>3</sup>:

- 936 (1) a driver qualification card<sup>4</sup>;
- 937 (2) a Community licence<sup>5</sup> with the Community code<sup>6</sup>;
- 938 (3) a driver's certificate granted to him<sup>7</sup> by a member state<sup>8</sup> other than the United Kingdom<sup>9</sup>; or
- 939 (4) any other document issued to the driver by a member state other than the United Kingdom certifying an initial CPC<sup>10</sup> or a periodic CPC<sup>11</sup>.

A person who holds a CPC certifying an initial qualification<sup>12</sup> or who holds an initial CPC granted to him by a member state other than the United Kingdom<sup>13</sup> who does not carry with him in the vehicle he is driving evidence as specified above of the initial CPC he holds is guilty of an offence<sup>14</sup>. A person who is undergoing a specified vocational training course<sup>15</sup> who does not carry with him in the vehicle he is driving a document authorising him to drive that relevant vehicle while undertaking such a course<sup>16</sup> is guilty of an offence<sup>17</sup>.

A police constable<sup>18</sup> or vehicle examiner<sup>19</sup> may at any time require a person to whom the above provisions apply to produce to him the relevant evidence or document, as the case may be<sup>20</sup>. If a person fails to produce that evidence or document, as the case may be, when so required, he is guilty of an offence<sup>21</sup>.

1 le by virtue of the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 9(1): see PARA 508 ante. As to the meaning of 'CPC' see PARA 503 note 21 ante.

2 Ibid reg 11(1). A person guilty of an offence under reg 11 is liable upon summary conviction to a fine not exceeding level 3 on the standard scale: reg 11(8). As to the standard scale see PARA 230 note 3 ante.

Regulation 11(1) does not apply to a person who has made an application to the competent authority for a driver qualification card under reg 8(1) (see PARA 507 ante) and not yet received that card: reg 11(4). As to the meaning of 'driver qualification card' see PARA 507 note 5 ante.

3 Ibid reg 11(2).

4 Ibid reg 11(2)(a).

5 'Community licence', in relation to Great Britain, has the same meaning as in the Road Traffic Act 1988 s 108(1) (as amended) (see PARA 415 note 16 ante): Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 2(1). For the meaning of 'Great Britain' see PARA 205 note 3 ante.

6 Ibid reg 11(2)(b). 'Community code' has the meaning given by EC Parliament and Council Directive 2003/59 (OJ L226, 10.9.2003, p 4) art 10(2): Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 2(1).

7 le as mentioned in EC Parliament and Council Directive 2003/59 (OJ L226, 10.9.2003, p 4) art 10(3)(a).

8 As to the meaning of 'member state' see PARA 503 note 5 ante.

9 Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 11(2)(c). For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

10 For the meaning of 'initial CPC' see PARA 508 note 8 ante.

11 Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 11(2)(d). For the meaning of 'periodic CPC' see PARA 508 note 9 ante.

12 le a person to whom ibid reg 4(9) applies: see PARA 504 text to note 20 ante.

13 le a person to whom ibid reg 9(4) applies: see PARA 508 text to notes 15-18 ante.

14 Ibid reg 11(3).

15 le a person to whom ibid reg 4(5) applies: see PARA 504 text to notes 9-15 ante.

16 le a document described in ibid reg 4(5)(d): see PARA 504 text to note 14 ante.

17 Ibid reg 11(5).

18 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

19 'Vehicle examiner' means an examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 post): Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 2(1).

20 Ibid reg 11(6).

21 Ibid reg 11(7).

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(vi) Certificates of Professional Competence/510. Errors relating to documents.

### **510. Errors relating to documents.**

Where it appears to the competent authority<sup>1</sup> that: (1) the authorisation document issued by it<sup>2</sup>; or (2) the driver qualification card<sup>3</sup> issued by it<sup>4</sup>, was granted in error, or with an error or omission in the particulars specified in that card or document, it may serve notice in writing on that person revoking that card or document, as the case may be, and requiring him to surrender it forthwith to that authority<sup>5</sup>. It is the duty of that person to comply with that requirement<sup>6</sup>. On surrender of a driver qualification card under this provision, the competent authority may issue a new driver qualification card to that person free of charge<sup>7</sup>.

Where the name of the holder of the driver qualification card as specified on that card ceases to be correct, its holder must as soon as reasonably practicable surrender the driver qualification card to the competent authority<sup>8</sup>. On surrender of a driver qualification card under this provision and payment to it of a fee, the competent authority must issue a new driver qualification card to that person<sup>9</sup>.

The competent authority may require a person to provide evidence of his name, sex, and place and date of birth before issuing him with a new driver qualification card under these provisions<sup>10</sup>.

A person who fails to comply with the duty to surrender a card or document<sup>11</sup> without reasonable excuse is guilty of an offence<sup>12</sup>.

1 For the meaning of 'competent authority' see PARA 504 note 10 ante.

2 Ie under the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 4(5)(d): see PARA 504 text to note 14 ante.

3 As to the meaning of 'driver qualification card' see PARA 507 note 5 ante.

4 Ie under the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 8(3): see PARA 507 text to note 8 ante.

5 Ibid reg 12(1).

6 Ibid reg 12(2).

7 Ibid reg 12(4). However, where it appears to the competent authority that the driver qualification card surrendered to it under reg 12(2) was granted in consequence of an error, omission or other act attributable to the fault of the holder of that card, it may issue a new card upon payment of a fee of £25: reg 12(6).

8 Ibid reg 12(3).

9 Ibid reg 12(5). The fee is £25: see reg 12(5).

10 Ibid reg 12(7).

11 Ie the duty in ibid reg 12(2) (see the text and note 6 supra) or reg 12(3) (see the text and note 8 supra).

12 Ibid reg 12(8). A person guilty of an offence under reg 12 is liable upon summary conviction to a fine not exceeding level 3 on the standard scale: reg 11(8). As to the standard scale see PARA 230 note 3 ante.

**UPDATE****442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(vi) Certificates of Professional Competence/511. Forgery and false statements.

**511. Forgery and false statements.**

A person is guilty of an offence if, with intent to deceive, he: (1) forges<sup>1</sup>, alters or uses any document authorising him to drive a vehicle while undertaking a vocational training course<sup>2</sup> or any document providing evidence of a CPC<sup>3</sup>; (2) lends to, or allows to be used by, any other person such a document; or (3) makes or has in his possession any document so closely resembling such a document as to be calculated to deceive<sup>4</sup>.

A person who knowingly makes a false statement for the purpose of obtaining the issue of a driver qualification card<sup>5</sup> is guilty of an offence<sup>6</sup>. Summary proceedings for an offence under these provisions may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge<sup>7</sup>. No such proceedings may be brought more than three years after the commission of the offence<sup>8</sup>.

1 For these purposes, 'forges' means makes a false document in order that it may be used as genuine: Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 13(2).

2 Ie any document referred to in ibid reg 4(5)(d): see PARA 504 text to note 14 ante.

3 Ie any document referred to in ibid reg 11(2): see PARA 509 heads (1)-(4) ante. As to the meaning of 'CPC' see PARA 503 note 21 ante.

4 Ibid reg 13(1). A person guilty of an offence under reg 13(1) or reg 13(3) (see the text to notes 5-6 infra) is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum or both, or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both: reg 13(4). As to the statutory maximum see PARA 359 note 11 ante.

5 Ie under ibid reg 8(3): see PARA 507 text to note 8 ante. As to the meaning of 'driver qualification card' see PARA 507 note 5 ante.

6 Ibid reg 13(3). As to the penalty see note 4 supra.

7 Ibid reg 13(5). For the purposes of reg 13, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge is conclusive evidence of that fact: reg 13(7). A certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved: reg 13(8).

8 Ibid reg 13(6).

**UPDATE**

## **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(2) LICENSING AND TRAINING OF DRIVERS OF LARGE GOODS VEHICLES AND PASSENGER-CARRYING VEHICLES/(vi) Certificates of Professional Competence/512. Power to seize document in respect of which offences may have been committed.

### **512. Power to seize document in respect of which offences may have been committed.**

If a constable<sup>1</sup> or a vehicle examiner<sup>2</sup> has reasonable cause to believe that a document carried in a motor vehicle or by the driver of the vehicle is a document in relation to which an offence has been committed<sup>3</sup>, he may seize it<sup>4</sup>. When a document is seized under this power and the document is detained and neither the driver nor owner<sup>5</sup> of the vehicle has previously been charged with an offence in relation to the document, the driver or the owner of the vehicle must be summoned before a magistrates' court to account for his possession of the document<sup>6</sup>. The court must make such order respecting the disposal of the document and award such costs as the justice of the case may require<sup>7</sup>.

1 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

2 For the meaning of 'vehicle examiner' see PARA 509 note 19 ante.

3 Ie under the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, SI 2007/605, reg 13: see PARA 511 ante.

4 Ibid reg 14(1).

5 For these purposes, 'owner', in relation to a vehicle which is the subject of a hiring or hire-purchase agreement, means the person in possession of the vehicle under that agreement: ibid reg 14(5).

6 Ibid reg 14(2), (3).

7 Ibid reg 14(4).

## **UPDATE**

## **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(3) NEWLY-QUALIFIED DRIVERS/513. Probationary period for newly qualified drivers.

### **(3) NEWLY-QUALIFIED DRIVERS**

#### **513. Probationary period for newly qualified drivers.**

For the purposes of the Road Traffic (New Drivers) Act 1995<sup>1</sup>, a person's 'probationary period' is, subject to early termination<sup>2</sup>, the period of two years beginning with the day on which he becomes a qualified driver<sup>3</sup>.

A person becomes a qualified driver on the first occasion on which he passes any of certain tests of competence to drive<sup>4</sup> under the Road Traffic Act 1988<sup>5</sup>, or any test of competence to drive conducted under the law of another EEA state<sup>6</sup>, the Isle of Man, any of the Channel Islands, or Gibraltar<sup>7</sup>.

1 The Road Traffic (New Drivers) Act 1995 applies to persons in the public service of the Crown (s 8), but does not extend to Northern Ireland (s 10(5)). The provisions of the Road Traffic (New Drivers) Act 1995 were to come into force on such day as the Secretary of State might by order made by statutory instrument appoint and different days could be so appointed for different provisions: s 10(2). All provisions were in force by 1 June 1997: see the Road Traffic (New Drivers) Act 1995 (Commencement) Order 1997, SI 1997/267. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. Nothing in any provision of the Road Traffic (New Drivers) Act 1995 applies to a person who became a qualified driver before the day on which the provision came into force: s 10(3).

2 le subject to *ibid* s 7: see PARA 517 post.

3 *Ibid* s 1(1).

4 For the meaning of 'test of competence to drive' see PARA 443 note 20 ante; definition applied by *ibid* s 9(1).

5 See the Road Traffic Act 1988 s 89(1)(a) (as substituted), or s 89(1)(c) (as substituted and amended); and PARA 445 ante.

6 'EEA state' means a state which is a contracting party to the EEA Agreement: see the Road Traffic (New Drivers) Act 1995 s 1(3). 'EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (OJ L1, 3.1.94, p 1) as adjusted by the Protocol signed at Brussels on 17 March 1993 (OJ L1, 3.1.94, p 571): Road Traffic (New Drivers) Act 1995 s 1(4).

7 *Ibid* s 1(2) (amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 5, Sch 4 para 5(1), (2)).

### **UPDATE**

#### **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(3) NEWLY-QUALIFIED DRIVERS/514. Surrender and revocation of licences for drivers in probationary period.

#### **514. Surrender and revocation of licences for drivers in probationary period.**

Where (1) a person is the holder of a licence<sup>1</sup>; (2) he is convicted of an offence involving obligatory endorsement<sup>2</sup>; (3) the penalty points<sup>3</sup> to be taken into account<sup>4</sup> on that occasion number six or more<sup>5</sup>; (4) the court makes an order as to the particulars of the offence, and the penalty points to be endorsed on the counterpart<sup>6</sup> of any licence held<sup>7</sup>, in respect of the offence<sup>8</sup>; (5) the person's licence shows the date on which he became a qualified driver<sup>9</sup>, or that date has been shown by other evidence in the proceedings<sup>10</sup>; and (6) it appears to the court, in the light of the order and the date so shown, that the offence was committed during the person's probationary period<sup>11</sup>, the court must send to the Secretary of State<sup>12</sup>: (a) a notice containing the particulars required to be endorsed on the counterpart of the person's licence in accordance with the order referred to in head (4) above<sup>13</sup>; and (b) on their production to the court, the person's licence and its counterpart<sup>14</sup>.

Where (i) a person's licence and its counterpart have been sent to the fixed penalty clerk<sup>15</sup> or delivered to the fixed penalty clerk in response to a conditional offer<sup>16</sup>; (ii) the offence to which the fixed penalty notice<sup>17</sup> or the conditional offer relates is one involving obligatory endorsement<sup>18</sup>; (iii) the fixed penalty clerk endorses the number of penalty points to be attributed to the offence on the counterpart of the licence<sup>19</sup>; (iv) the penalty points to be taken into account by the fixed penalty clerk in respect of the offence number six or more<sup>20</sup>; (v) the licence shows the date on which the person became a qualified driver<sup>21</sup>; and (vi) it appears to the fixed penalty clerk, in the light of the particulars of the offence endorsed on the counterpart of the licence and the date so shown, that the offence was committed during the person's probationary period<sup>22</sup>, the fixed penalty clerk may not return the licence and its counterpart<sup>23</sup>, but must send them to the Secretary of State<sup>24</sup>. For the purposes of head (iv) above, the penalty points to be taken into account by the fixed penalty clerk in respect of the offence are the penalty points which would have been taken into account on conviction under the Road Traffic Offenders Act 1988<sup>25</sup> if the person in question had been convicted of the offence, and the number of penalty points to be attributed to the offence on that occasion had been determined in accordance with the Road Traffic Offenders Act 1988<sup>26</sup>.

Where the Secretary of State receives a notice, sent to him under head (a) above, of particulars required to be endorsed on the counterpart of a person's licence<sup>27</sup>, or a person's licence and its counterpart sent to him<sup>28</sup>, the Secretary of State must by notice served on that person revoke the licence<sup>29</sup>. Such a revocation has effect from a date specified in the notice of revocation which may not be earlier than the date of service of that notice<sup>30</sup>.

1 Road Traffic (New Drivers) Act 1995 s 2(1)(a). The provisions of the Road Traffic (New Drivers) Act 1995 are adapted so as to apply to a driver who has passed a test of competence to drive but has not yet exchanged his pass certificate and provisional licence for a full licence: see s 6, Sch 1 (Sch 1 amended by the Access to Justice Act 1999 s 90(1), Sch 13 para 173; the Courts Act 2003 s 109(1), Sch 8 para 365; and the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 45, 52-60). The Road Traffic (New Drivers) Act 1995 Sch 1 (as amended) is further amended, as from a day to be appointed, by the Road Safety Act 2006 s 5, Sch 1 paras 24, 27 and by ss 10(12), 59, Sch 3 paras 66, 70. At the date at which this volume states the law no such day or days had been appointed.

For these purposes, 'licence' includes a Northern Ireland licence: Road Traffic (New Drivers) Act 1995 s 2(6) (added by the Crime (International Co-operation) Act 2003 Sch 5 para 46). For the meaning of 'licence' generally see PARA 443 note 6 ante; definition applied by the Road Traffic (New Drivers) Act 1995 s 9(1).

2 Ibid s 2(1)(b). For the meaning of an 'offence involving obligatory endorsement' see PARA 1080 post; definition applied by s 9(2).

3 As to the award of penalty points see PARA 1089 et seq post.

4 le under the Road Traffic Offenders Act 1988 s 29 (as substituted): see PARA 1050 post.

5 Road Traffic (New Drivers) Act 1995 s 2(1)(c).

6 For the meaning of 'counterpart', in relation to a licence, see PARA 415 note 19 ante; definition applied by *ibid* s 9(1).

7 le under the Road Traffic Offenders Act 1988 s 44(1)(b): see PARA 1081 post.

8 Road Traffic (New Drivers) Act 1995 s 2(1)(d).

9 For the meaning of 'qualified driver' see PARA 513 ante.

10 Road Traffic (New Drivers) Act 1995 s 2(1)(e). For the meaning of 'proceedings' see PARA 1094 note 4 post; definition applied by s 9(2).

11 *Ibid* s 2(1)(f). For the meaning of 'probationary period' see PARA 513 ante.

12 *Ibid* s 2(2). As from a day to be appointed, s 2(2) is substituted so as to provide that where s 2(2) (as substituted) applies, the court must, together with the notice of the order referred to in s 2(1)(d) (see head (4) in the text) required to be sent to the Secretary of State under the Road Traffic Offenders Act 1988 s 44A (as prospectively added) (see PARA 1082 post), send the person's licence on its production to the court: see the Road Traffic (New Drivers) Act 1995 s 2(2) (prospectively substituted by the Road Safety Act 2006 s 10(12), Sch 3 paras 66, 67). At the date at which this volume states the law no such day had been appointed.

Any requirement under any provision of the Road Traffic (New Drivers) Act 1995, that a licence and its counterpart, a test certificate or a notice must be sent to the Secretary of State is a requirement that the licence and its counterpart, the test certificate or the notice must be sent to the Secretary of State at such address as the Secretary of State may determine: s 9(5). This provision is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 69, Sch 7 so as to remove the references to the counterpart. At the date at which this volume states the law no such day had been appointed.

'Notice' means notice in writing: Road Traffic (New Drivers) Act 1995 s 9(3).

As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

13 *Ibid* s 2(2)(a).

14 *Ibid* s 2(2)(b).

15 le under the Road Traffic Offenders Act 1988 s 54(7) (as amended): see PARA 1097 post. For the meaning of 'fixed penalty clerk' see PARA 1112 note 4 post; definition applied by the Road Traffic (New Drivers) Act 1995 s 9(2).

16 *Ibid* s 2(3)(a). The text refers to a conditional offer issued under the Road Traffic Offenders Act 1988 s 75 (as substituted; prospectively amended): see PARA 1117 post. As from a day to be appointed, the Road Traffic (New Drivers) Act 1995 s 2(3)(a) is amended so that head (i) in the text will read 'a person's licence and its counterpart have been sent to the fixed penalty clerk, retained by a vehicle examiner or delivered to the appropriate person in response to a conditional offer': see s 2(3)(a) (prospectively amended by the Road Safety Act 2006 s 5, Sch 1 paras 24, 25(1), (2)(a)). The Road Traffic (New Drivers) Act 1995 s 2(3)(a) is prospectively further amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 67(3)(a) so as to remove the reference to the counterpart. 'The appropriate person', in relation to a fixed penalty notice, means: (1) if it was given by a constable or an authorised person, the fixed penalty clerk; and (2) if it was given by a vehicle examiner or the Secretary of State, the Secretary of State; and 'the appropriate person', in relation to a conditional offer, means: (a) where the conditional offer was issued under the Road Traffic Offenders Act 1988 s 75(1), (2) or (3) (as substituted) (see PARA 1117 post) the fixed penalty clerk; and (b) where it was issued under s 75(1A) or (3B) (as added), the Secretary of State: Road Traffic (New Drivers) Act 1995 s 2(7) (prospectively added by the Road Safety Act 2006 Sch 1 para 25(5)). At the date at which this volume states the law no such day or days had been appointed.

17 For the meaning of 'fixed penalty notice' see PARA 1094 post; definition applied by the Road Traffic (New Drivers) Act 1995 s 9(2).

18 *Ibid* s 2(3)(b).



19 Ibid s 2(3)(c). Section 2(3)(c) is prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 25(2)(b) so as to refer to the appropriate person instead of the fixed penalty clerk. The Road Traffic (New Drivers) Act 1995 s 2(3)(c) is prospectively further amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 67(3)(b) so as to refer to endorsement on the person's driving record instead of the counterpart. At the date at which this volume states the law no such day had been appointed. For the meaning of 'driving record' see PARA 1024 note 11 post.

20 Road Traffic (New Drivers) Act 1995 s 2(3)(d). This provision is prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 25(2)(b) so as to refer to the appropriate person instead of the fixed penalty clerk. At the date at which this volume states the law no such day had been appointed.

21 Road Traffic (New Drivers) Act 1995 s 2(3)(e).

22 Ibid s 2(3)(f). This provision is prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 25(2)(b) so as to refer to the appropriate person instead of the fixed penalty clerk. The Road Traffic (New Drivers) Act 1995 s 2(3)(f) is prospectively further amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 67(3)(c) so as to refer to endorsement on the person's driving record instead of the counterpart. At the date at which this volume states the law no such day or days had been appointed.

23 Road Traffic (New Drivers) Act 1995 s 2(4)(a). The text refers to the return of the licence under the Road Traffic Offenders Act 1988 s 57(3) or (4) (as amended) (see PARA 1100 post) or s 77(1) (as substituted) (see PARA 1119 post). The Road Traffic (New Drivers) Act 1995 s 2(4)(a) is prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 25(3)(b) so as to refer to the appropriate person instead of the fixed penalty clerk. The Road Traffic (New Drivers) Act 1995 s 2(4)(a) is prospectively further amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 67(4)(a) so as to remove the reference to the counterpart and so as to substitute for the reference to the Road Traffic Offenders Act 1988 s 57(3) or (4) (as amended) or s 77(1) (as substituted) a reference to s 57A(3) or (4) (as added) (see PARA 1101 post) or s 77A(2) (as added) (see PARA 1119 post). As from a day to be appointed, where the Road Traffic (New Drivers) Act 1995 s 2(4)(a) applies but the appropriate person is the Secretary of State, the Secretary of State must by notice served on the person to whom the fixed penalty notice or conditional offer was given or issued, revoke that person's licence: s 3(1ZA) (prospectively added by the Road Safety Act 2006 Sch 1 para 26(3)). At the date at which this volume states the law no such day or days had been appointed.

24 Road Traffic (New Drivers) Act 1995 s 2(4)(b). Section 2(4)(b) is prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 25(3)(c) so as to provide that they must be sent to the Secretary of State unless the appropriate person is the Secretary of State. The Road Traffic (New Drivers) Act 1995 s 2(4)(b) is prospectively further amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 67(4)(b) so as to refer to sending them together with the notice he is required to send under the Road Traffic Offenders Act 1988 s 57A (as prospectively added) (see PARA 1101 post) or s 77A (as prospectively added) (see PARA 1119 post) of the particulars to be endorsed on the person's driving record. At the date at which this volume states the law no such day or days had been appointed.

25 Ie under the Road Traffic Offenders Act 1988 s 29 (as substituted): see PARA 1050 post.

26 Road Traffic (New Drivers) Act 1995 s 2(5). The text refers to penalty points determined in accordance with the Road Traffic Offenders Act 1988 s 28(3) (as substituted): see PARA 1049 post. The Road Traffic (New Drivers) Act 1995 s 2(5) is prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 25(4), Sch 7 so as to remove the reference to the fixed penalty clerk. At the date at which this volume states the law no such day had been appointed.

27 Road Traffic (New Drivers) Act 1995 s 3(1)(a).

28 Ibid s 3(1)(b). The text refers to a person's licence and its counterpart sent to him in accordance with head (b) in the text, or in accordance with s 2(4) (see the text and notes 23-24 supra). Section 3(1)(b) is prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 26(1), (2) so as to replace the reference to the Road Traffic (New Drivers) Act 1995 s 2(4) with a reference to s 2(4)(b) (see the text and note 24 supra). At the date at which this volume states the law no such day had been appointed.

29 Ibid s 3(1). As from a day to be appointed, this provision s 3(1) is substituted so as to provide that where the Secretary of State receives: (1) a notice sent to him under the Road Traffic Offenders Act 1988 s 44A, s 57A or s 77A (all as prospectively added) (see PARAS 1082, 1101, 1119 post) of particulars required to be endorsed on a person's driving record; and (2) a person's licence sent to him in accordance with the Road Traffic (New Drivers) Act 1995 s 2(2) or s 2(4)(b) (see notes 13, 14 and 24 supra), the Secretary of State must by notice served on that person revoke the licence: s 3(1) (prospectively substituted by the Road Safety Act 2006 Sch 3 para 68). At the date at which this volume states the law no such day had been appointed.

The Road Traffic Act 1988 s 107 (as amended) (service of notices) (see PARA 483 ante) applies to a notice served under the Road Traffic (New Drivers) Act 1995 s 3 or Sch 1 para 5 (as amended) or Sch 1 para 8 (as

amended) as it applies to a notice served under the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended), or Pt IV (ss 110-122) (as substituted and amended): Road Traffic (New Drivers) Act 1995 s 9(4) (amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 5, Sch 4 para 5(1), (3)).

Where the Secretary of State serves on the holder of a Northern Ireland licence a notice under the Road Traffic (New Drivers) Act 1995 s 3(1), the Secretary of State must send to the licensing authority in Northern Ireland particulars of the notice and the Northern Ireland licence: s 3(1A) (ss 3(1A), (1B) added by the Crime (International Co-operation) Act 2003 Sch 5 para 47(a)). Where the Secretary of State is sent by that licensing authority particulars of a notice served on the holder of a licence under a provision of Northern Ireland law corresponding to the Road Traffic (New Drivers) Act 1995 s 3(1), he must by notice served on the holder revoke the licence: s 3(1B) (as so added). The provisions of s 3(1A), (1B) (as added) are prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 26(4) so as to include a notice served under the Road Traffic (New Drivers) Act 1995 s 3(1ZA) (as prospectively added) (see note 23 supra). At the date at which this volume states the law no such day had been appointed.

In s 3 (as amended), references to the revocation of a person's Northern Ireland licence are references to its revocation as respects Great Britain; the person therefore ceases to be authorised by virtue of the Road Traffic Act 1998 s 109(1) (as amended) (see PARA 484 ante) to drive in Great Britain a motor vehicle of any class: Road Traffic (New Drivers) Act 1995 s 3(3) (added by the Crime (International Co-operation) Act 2003 Sch 5 para 47(c)).

30 Road Traffic (New Drivers) Act 1995 s 3(2). This also applies in the case of a revocation under s 3(1B) (as added) (see note 29 supra): s 3(2) (amended by the Crime (International Co-operation) Act 2003 Sch 5 para 47(b)). The Road Traffic (New Drivers) Act 1995 s 3(2) (as amended) is prospectively further amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 26(5) so as to substitute for the reference to revocation under the Road Traffic (New Drivers) Act 1995 s 3(1) or s 3(1B) (as added) a reference to revocation under s 3 (as amended). At the date at which this volume states the law no such day had been appointed.

## **UPDATE**

### **442-517 Driver Licensing**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **514 Surrender and revocation of licences for drivers in probationary period**

NOTES--Day appointed in relation to Road Safety Act 2006 s 5, Sch 1 is 31 March 2009: SI 2008/3164.

NOTE 26--Amendment made by Road Safety Act 2006 Sch 1 para 25(4), Sch 7 in force 31 March 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(3) NEWLY-QUALIFIED DRIVERS/515. Re-testing.

### **515. Re-testing.**

The Secretary of State<sup>1</sup> may not under Part III of the Road Traffic Act 1988<sup>2</sup>, grant a person whose licence<sup>3</sup> has been revoked<sup>4</sup> a full licence<sup>5</sup> or a full Northern Ireland licence<sup>6</sup> to drive<sup>7</sup> any class<sup>8</sup> of vehicles in relation to which the revoked licence was issued as a full licence unless he satisfies the Secretary of State that within the relevant period<sup>9</sup> he has passed a relevant driving test<sup>10</sup>. If the Secretary of State grants a full licence to a person who is required to pass a relevant driving test in order to be granted that licence, the licence granted must<sup>11</sup> be one

authorising that person to drive all the classes of vehicles in relation to which the revoked licence was issued as a full licence or a full Northern Ireland licence<sup>12</sup>.

The above provision<sup>13</sup> does not apply to a person whose licence has been revoked<sup>14</sup> if, before he passes a relevant driving test, an order is made in relation to him, concerning disqualification until a test is passed, under the Road Traffic Offenders Act 1988<sup>15</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Ie the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended).

3 For the meaning of 'licence' see PARA 443 note 6 ante; definition applied by the Road Traffic (New Drivers) Act 1995 s 9(1).

4 Ie under ibid s 3 (as amended): see PARA 514 ante.

5 For the meaning of 'full licence' see PARA 445 note 15 ante; definition applied by ibid s 9(1).

6 'Full Northern Ireland licence' means a Northern Ireland licence other than a Northern Ireland provisional licence; and 'Northern Ireland provisional licence' means a Northern Ireland licence which corresponds to a provisional licence: ibid s 9(2A) (added by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 para 51).

7 For the meaning of 'drive' see PARA 207 ante; definition applied by the Road Traffic (New Drivers) Act 1995 s 4(4).

8 As to classes of vehicles see PARA 208 ante.

9 'Relevant period' means the period beginning after the date of the revocation of the licence, and not more than two years before the date on which the application for the full licence is made: Road Traffic (New Drivers) Act 1995 s 4(4).

10 Ibid s 4(1) (amended by the Crime (International Co-operation) Act 2003 Sch 5 para 48(a)). This is expressed to be subject to the Road Traffic (New Drivers) Act 1995 s 4(5) (see the text to note 13 infra) and s 5 (see PARA 516 post). 'Relevant driving test' means, in relation to a person whose licence has been revoked, any test which falls within s 1(2)(a) or s 1(2)(b) (as amended) (see PARA 513 ante) and is a test of competence to drive any vehicle included in any class of vehicles in relation to which the revoked licence was issued as a full licence or a full Northern Ireland licence: s 4(2) (amended by the Crime (International Co-operation) Act 2003 Sch 5 para 48(c)). For the meaning of 'test of competence to drive' see PARA 443 note 20 ante; definition applied by the Road Traffic (New Drivers) Act 1995 s 9(1). Subject to s 4(5) (as amended) (see the text and note 15 infra), the Secretary of State may not under the Road Traffic Act 1988 Pt III (as amended) grant a person whose Northern Ireland licence has been revoked under a provision of Northern Ireland law corresponding to the Road Traffic (New Drivers) Act 1995 s 3(1) a full licence to drive any class of vehicles in relation to which the revoked licence was issued as a full Northern Ireland licence unless he satisfies the Secretary of State as mentioned in s 3(1) (see PARA 514 ante): s 4(1A) (added by the Crime (International Co-operation) Act 2003 Sch 5 para 48(b)).

11 Ie subject to the Road Traffic Act 1988 s 92 (as amended) (see PARA 455 ante) and Pt IV (ss 110-122) (as substituted and amended).

12 Road Traffic (New Drivers) Act 1995 s 4(3) (amended by the Crime (International Co-operation) Act 2003 Sch 5 para 48(c)).

13 Ie the Road Traffic (New Drivers) Act 1995 s 4(1) (as amended), s 4(1A) (as added): see the text and notes 1-10 supra.

14 Ie under ibid s 3 (as amended) or whose Northern Ireland licence has been revoked under a provision of Northern Ireland law corresponding to s 3(1): see PARA 514 ante.

15 Ibid s 4(5) (amended by the Crime (International Co-operation) Act 2003 Sch 5 para 48(d)). The text refers to an order made under the Road Traffic Offenders Act 1988 s 36 (as substituted and amended): see PARA 1071 post.

## UPDATE

## 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(3) NEWLY-QUALIFIED DRIVERS/516. Restoration of licence without re-testing in certain cases.

### 516. Restoration of licence without re-testing in certain cases.

If the Secretary of State<sup>1</sup> receives notice<sup>2</sup> that a person whose licence<sup>3</sup> has been revoked<sup>4</sup> is appealing against a conviction or endorsement which was the basis or formed part of the basis for the revocation, he must grant that person free of charge a full licence<sup>5</sup> for a period prescribed<sup>6</sup> by regulations<sup>7</sup>. Such regulations may, in particular, prescribe: (1) a period expiring when the appeal is finally determined or abandoned; or (2) a period expiring on the date on which the revoked licence would have expired if it had not been revoked<sup>8</sup>. If the regulations prescribe a period other than that mentioned in head (1) above, a licence granted under the above provisions is treated as revoked if, following the appeal, the penalty points<sup>9</sup> taken into account for the purposes of the surrender of licences<sup>10</sup> are not reduced to a number smaller than six, or the appeal is abandoned<sup>11</sup>.

If, in the case of a person whose licence has been revoked<sup>12</sup>, the Secretary of State receives notice that a court: (a) has quashed a conviction which was the basis or formed part of the basis for the revocation of the licence<sup>13</sup>; (b) has quashed an endorsement which was the basis or formed part of the basis for the revocation of the licence and has not on doing so ordered him to be disqualified<sup>14</sup>; or (c) has made an order which has the effect of reducing the penalty points taken into account, for the purposes of the surrender of licences<sup>15</sup>, to a number smaller than six<sup>16</sup>, then the Secretary of State must grant that person free of charge a full licence for a period expiring on the date on which the revoked licence would have expired if it had not been revoked<sup>17</sup>. This does not require the Secretary of State to grant a licence to a person who has been granted a previous licence which has not been surrendered unless that person provides the Secretary of State with an explanation for not surrendering the previous licence that the Secretary of State considers adequate<sup>18</sup>.

If, in accordance with the above provisions, the Secretary of State grants a full licence to a person whose licence has been revoked<sup>19</sup>, the licence granted must be one authorising that person to drive all the classes of vehicles<sup>20</sup> in relation to which the revoked licence was issued as a full licence<sup>21</sup>. Any such licence granted has effect for the purposes of the Road Traffic Acts<sup>22</sup> as if it were a licence granted under Part III of the Road Traffic Act 1988<sup>23</sup>.

Regulations may make provision for requiring such courts as may be prescribed to give notice to the Secretary of State that a person whose licence has been or is due to be revoked<sup>24</sup> is appealing against a conviction or endorsement which is the basis or forms part of the basis for the revocation, that such an appeal has been abandoned<sup>25</sup>. Such regulations may include such incidental or supplementary provision as appears to the Secretary of State to be expedient and may make different provision for different cases<sup>26</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'notice' see PARA 514 note 12 ante.

3 For the meaning of 'licence' see PARA 443 note 6 ante; definition applied by the Road Traffic (New Drivers) Act 1995 s 9(1).

4 le under ibid s 3 (as amended): see PARA 514 ante.

5 For the meaning of 'full licence' see PARA 445 note 15 ante; definition applied by ibid s 9(1).

6 For the meaning of 'prescribed' see PARA 443 note 4 ante; definition applied by ibid s 9(1).

7 Ibid s 5(1) (amended by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 para 49(a)). Any regulations made under the Road Traffic (New Drivers) Act 1995 s 5 (as amended) must be made by the Secretary of State by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 5(10). For the meaning of 'regulations' see PARA 443 note 4 ante; definition applied by s 9(1). See the New Drivers (Appeals Procedure) Regulations 1997, SI 1997/1098.

Nothing in the Road Traffic (New Drivers) Act 1995 s 5 (as amended) applies in relation to a person whose Northern Ireland licence has been revoked under s 3(1) (see PARA 514 ante); s 5(11) (added by the Crime (International Co-operation) Act 2003 Sch 5 para 49(c)).

8 Road Traffic (New Drivers) Act 1995 s 5(2).

9 As to the award of penalty points see PARA 1089 et seq post.

10 le for the purposes of the Road Traffic (New Drivers) Act 1995 s 2 (as amended) or the provision of Northern Ireland law corresponding to s 2: see PARA 514 ante.

11 Ibid s 5(3) (amended by the Crime (International Co-operation) Act 2003 Sch 5 para 49(b)).

12 le under the Road Traffic (New Drivers) Act 1995 s 3 (as amended): see PARA 514 ante.

13 Ibid s 5(4)(a).

14 Ibid s 5(4)(b). For the meaning of 'disqualified' see PARA 443 note 11 ante; definition applied by s 9(1).

15 le for the purposes of ibid s 2 (as amended) or of the provision of Northern Ireland law corresponding to s 2: see PARA 514 ante.

16 Ibid s 5(4)(c) (amended by the Crime (International Co-operation) Act 2003 Sch 5 para 49(b)).

17 Road Traffic (New Drivers) Act 1995 s 5(4) (amended by the Crime (International Co-operation) Act 2003 Sch 5 para 49(a)). This is expressed to be subject to the Road Traffic (New Drivers) Act 1995 s 5(5) (see the text to note 18 infra).

18 Ibid s 5(5).

19 le under ibid s 3 (as amended): see PARA 514 ante.

20 As to classes of vehicles see PARA 208 ante.

21 Road Traffic (New Drivers) Act 1995 s 5(6) (amended by the Crime (International Co-operation) Act 2003 Sch 5 para 49(a)).

22 For the meaning of 'the Road Traffic Acts' see PARA 202 note 1 ante; definition applied by the Road Traffic (New Drivers) Act 1995 s 9(1).

23 Ibid s 5(7). The text refers to the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended).

24 le under the Road Traffic (New Drivers) Act 1995 s 3 (as amended): see PARA 514 ante. As to notice required to be given to the Secretary of State see PARA 514 note 12 ante.

25 Ibid s 5(8).

26 Ibid s 5(9).

## UPDATE

## 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/4. DRIVER LICENSING/(3) NEWLY-QUALIFIED DRIVERS/517. Early termination of probationary period.

### 517. Early termination of probationary period.

For the purposes of the Road Traffic (New Drivers) Act 1995 a person's probationary period<sup>1</sup> comes to an end if: (1) an order that a person be disqualified until he passes the appropriate driving test is made in relation to him under the Road Traffic Offenders Act 1988<sup>2</sup>; (2) after his licence<sup>3</sup> is revoked<sup>4</sup> he is granted a full licence<sup>5</sup> following the passing of a test which is a relevant driving test<sup>6</sup>; or (3) after his test certificate is revoked<sup>7</sup>, or his licence and test certificate are revoked<sup>8</sup>, he is granted a full licence following the passing of a test which is a relevant driving test<sup>9</sup>.

1 For the meaning of 'probationary period' see PARA 513 ante.

2 Road Traffic (New Drivers) Act 1995 s 7(a). The text refers to an order made under the Road Traffic Offenders Act 1988 s 36 (as substituted and amended): see PARA 1071 post.

3 For the meaning of 'licence' see PARA 443 note 6 ante; definition applied by the Road Traffic (New Drivers) Act 1995 s 9(1).

4 *Ie* under *ibid* s 3 (as amended): see PARA 514 ante.

5 For the meaning of 'full licence' see PARA 445 note 15 ante; definition applied by *ibid* s 9(1).

6 *Ibid* s 7(b) (amended by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 para 50(a)). The text refers to a relevant driving test for the purposes of the Road Traffic (New Drivers) Act 1995 s 4 (as amended): see PARA 515 ante. For the meaning of 'relevant driving test' see PARA 515 note 10 ante.

7 *Ie* under *ibid* s 6, Sch 1 para 5 (as amended).

8 *Ie* under *ibid* Sch 1 para 8 (as amended).

9 *Ibid* s 7(c) (amended by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 para 50(b)). The text refers to a relevant driving test for the purposes of the Road Traffic (New Drivers) Act 1995 Sch 1 para 6 (as amended) or Sch 1 para 9 (as amended). For the purposes of Sch 1 para 6 (as amended), 'relevant driving test' means in relation to a person whose test certificate has been revoked, any test which falls within s 1(2)(a) or (b) (as amended) (see PARA 513 ante), and is a test of competence to drive any vehicle included in any class of vehicles that, immediately before his test certificate was revoked, he was permitted to drive without observing prescribed conditions: Sch 1 para 6(2). For the purposes of Sch 1 para 9 (as amended), 'relevant driving test' means any test which falls within s 1(2)(a) or (b) (as amended), and is a test of competence to drive any vehicle included in any class of vehicles (Sch 1 para 9(2)) in relation to which the revoked licence was issued as a full licence, and any class of vehicles that he was treated under the Road Traffic Act 1988 s 98(2) (as amended) (see PARA 466 ante), or under a corresponding provision of Northern Ireland law, as authorised to drive under a provisional licence, or in relation to which the revoked licence was issued as a provisional licence, and that, immediately before the test certificate was revoked, he was permitted to drive without observing prescribed conditions (Road Traffic (New Drivers) Act 1995 Sch 1 para 9(4) (amended by the Crime (International Co-operation) Act 2003 Sch 5 paras 52, 58(b)). For the meaning of 'test of competence to drive'

see PARA 443 note 20 ante; definition applied by the Road Traffic (New Drivers) Act 1995 s 9(1). As to classes of vehicles see PARA 208 ante.

## UPDATE

### 442-517 Driver Licensing

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/5. VEHICLE REGISTRATION/(1) LEGISLATION/518. Legislation governing vehicle registration.

## 5. VEHICLE REGISTRATION

### (1) LEGISLATION

#### 518. Legislation governing vehicle registration.

The legislation governing vehicle registration is contained in Part II of the Vehicle Excise and Registration Act 1994<sup>1</sup> which governs the registration of vehicles generally<sup>2</sup> and registration marks<sup>3</sup>, while registration plate suppliers are regulated under Part 2 of the Vehicles (Crime) Act 2001<sup>4</sup>. Further provision is made by subordinate legislation in relation to off-road notification<sup>5</sup>, registration books and licences<sup>6</sup>, exhibition of licences<sup>7</sup>, exemptions from licence duty<sup>8</sup>, trade licences<sup>9</sup>, seating capacity of buses<sup>10</sup>, cylinder capacity<sup>11</sup>, the sale of information<sup>12</sup> and visiting vehicles<sup>13</sup>. Vehicle excise duty is covered elsewhere in this work<sup>14</sup>.

1    Ie the Vehicle Excise and Registration Act 1994 Pt II (ss 21-28) (as amended): see PARA 519 et seq post.

2    See PARAS 519-523 post.

3    See PARAS 563-569 post.

4    Ie the Vehicles (Crime) Act 2001 Pt 2 (ss 17-31) (as amended): see PARA 522 post.

5    See PARAS 524-528 post.

6    See PARAS 529-541 post.

7    See PARA 545 post.

8    See PARAS 546-550 post.

9    See PARAS 551-559 post.

10   See PARA 560 post.

11   See PARA 561 post.

12   See PARA 544 post.

13   See PARAS 577-582 post.

14 See CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 717 et seq. As to reduced pollution certificates see the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 5, Sch 2 (amended by SI 2004/1872; SI 2006/2320; SI 2007/498; SI 2007/2553); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 725.

## UPDATE

### 518 Legislation governing vehicle registration

NOTE 14--SI 2002/2742 Sch 2 further amended: SI 2008/1444, SI 2009/880, SI 2009/3103.

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### 519. Registration of vehicles.

On the issue by the Secretary of State<sup>1</sup> for a vehicle<sup>2</sup> which is not registered under the provision relating to the registration of vehicles<sup>3</sup> of either a vehicle licence<sup>4</sup>, or a nil licence<sup>5</sup>, the Secretary of State must register the vehicle in such manner as he thinks fit without any further application by the person to whom the licence is issued<sup>6</sup>. Where particulars in respect of a vehicle are furnished to the Secretary of State in accordance with regulations<sup>7</sup> before he first issues a vehicle licence for the vehicle, he must so register the vehicle on receiving the particulars<sup>8</sup>. The Secretary of State may by regulations provide that in such circumstances as may be prescribed by the regulations a vehicle must not be registered<sup>9</sup> until a fee of such amount as may be so prescribed is paid<sup>10</sup>. The Secretary of State may by regulations make provision about repayment of any sum paid by way of such a fee<sup>11</sup>, and the regulations may in particular include provision<sup>12</sup>:

- 940 (1) that repayment must be made only if a specified<sup>13</sup> person is satisfied that specified conditions are met or in other specified circumstances<sup>14</sup>;
- 941 (2) that repayment must be made in part only<sup>15</sup>;
- 942 (3) that, in the case of partial repayment, the amount repaid must be a specified sum or determined in a specified manner<sup>16</sup>; and
- 943 (4) for repayment of different amounts in different circumstances<sup>17</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 'Vehicle' means a mechanically propelled vehicle or any thing (whether or not it is a vehicle) that has been, but has ceased to be, a mechanically propelled vehicle: Vehicle Excise and Registration Act 1994 ss 1(1B), 62(1) (s 1(1B) added, and s 62(1) amended, by the Finance Act 2002 s 19(1), Sch 5 paras 1, 2, 17).

3 Ie the Vehicle Excise and Registration Act 1994 s 21 (as amended): see the text and notes 6-17 infra.

4 A licence taken out for a vehicle is in the Vehicle Excise and Registration Act 1994 referred to as a 'vehicle licence': s 1(2).

5 'Nil licence' means a document which is in the form of a vehicle licence and is issued by the Secretary of State in pursuance of regulations under the Vehicle Excise and Registration Act 1994 in respect of a vehicle which is an exempt vehicle: s 62(1) (definition added by the Finance Act 1995 s 18, Sch 3 para 7(3)). 'Exempt vehicle' means a vehicle in respect of which vehicle excise duty is not chargeable: Vehicle Excise and Registration Act 1994 s 62(1). A duty of excise ('vehicle excise duty') is to be charged in respect of every mechanically propelled vehicle (except exempt vehicles: see ss 5, 62(1), Sch 2 (as amended); and CUSTOMS AND



EXCISE vol 12(3) (2007 Reissue) PARA 741 et seq), and every thing (whether or not it is a vehicle) that has been, but has ceased to be, a mechanically propelled vehicle, which is registered under the Vehicle Excise and Registration Act 1994 (see s 21 (as amended); and the text and notes 6-17 infra) or is not so registered but is used, or kept, on a public road in the United Kingdom: ss 1(1), (1A), 62(1) (s 1(1) substituted, and s 1(1A) added, by the Finance Act 2002 Sch 5 para 2). The excise duty must be paid on a licence to be taken out: (1) in respect of a vehicle or former vehicle which is registered, by the person in whose name it is registered or, if that person is not the person keeping it, by either of those persons; or (2) in respect of a vehicle or former vehicle used or kept on a public road, by the person keeping it: Vehicle Excise and Registration Act 1994 s 1(1C), (1D) (added by the Finance Act 2002 Sch 5 para 2). As to vehicle excise duty see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARAS 717-801. 'Public road' means a road which is repairable at the public expense: Vehicle Excise and Registration Act 1994 s 62(1). For the purposes of the Vehicle Excise and Registration Act 1994 and any other enactment relating to the keeping of vehicles on public roads, a person keeps a vehicle on a public road if he causes it to be on such a road for any period, however short, when it is not in use there: s 62(2).

6 Ibid s 21(1) (substituted by the Finance Act 1997 Sch 3 para 2). The Vehicle Excise and Registration Act 1994 s 21(1) (as substituted) is subject to s 21(3) (as added) (see the text to note 10 infra): s 21(1) (as so substituted). As to registration documents see PARA 531 post; and as to the power of constables and authorised persons to require production of registration documents see PARA 520 post.

7 The regulations as to the assignment of registration marks by motor dealers under ibid s 24: see PARA 564 post.

8 Ibid s 21(2) (amended by the Finance Act 1995 s 19, Sch 4 para 33). The Vehicle Excise and Registration Act 1994 s 21(2) (as amended) is subject to s 21(3) (as added): see the text to note 10 infra.

9 The registered under ibid s 21 (as amended): see notes 6-8 supra, 10-12 infra.

10 Ibid s 21(3) (added by the Finance Act 1995 Sch 4 para 33). In exercise of the power so conferred the Secretary of State has made the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742 (as amended), whereby a vehicle may not be registered under the Vehicle Excise and Registration Act 1994 s 21 (as amended) unless a fee of £50 has been paid to the Secretary of State: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 10(1) (amended by SI 2007/1018). The Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 10(1) (as amended) does not apply to a vehicle which is an exempt vehicle by virtue of the Vehicle Excise and Registration Act 1994 Sch 2 para 18 or Sch 2 para 19 (as amended) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 750 et seq): Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 10(2).

11 The such a prescribed fee as is mentioned in the Vehicle Excise and Registration Act 1994 s 21(3) (as added) (see the text and note 10 supra): s 21(4) (added by the Finance Act 1995 Sch 4 para 33).

12 Vehicle Excise and Registration Act 1994 s 21(4) (as added: see note 11 supra).

13 'Specified' here means specified in the regulations: ibid s 21(4) (as added: see note 11 supra).

14 Ibid s 21(4)(a) (as added: see note 11 supra).

15 Ibid s 21(4)(b) (as added: see note 11 supra).

16 Ibid s 21(4)(c) (as added: see note 11 supra).

17 Ibid s 21(4)(d) (as added: see note 11 supra).

## UPDATE

### 519 Registration of vehicles

NOTE 10--SI 2002/2742 reg 10(1) further amended: SI 2008/642.

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## 520. Power of constables to require production of registration documents.

A person using a vehicle<sup>1</sup> in respect of which a registration document<sup>2</sup> has been issued must produce the document for inspection on being so required by a constable or a person authorised by the Secretary of State for these purposes (an 'authorised person')<sup>3</sup>. A person is guilty of an offence if he fails to comply with the above requirement<sup>4</sup>, unless one of the following conditions is satisfied<sup>5</sup>. The first condition is that the person produces the registration document, in person, at a police station specified by him at the time of the request, and he does so within seven days after the date on which the request was made or as soon as is reasonably practicable<sup>6</sup>. The second condition is that: (1) the vehicle is subject to a lease or hire agreement; (2) the vehicle is not registered in the name of the lessee or hirer under that agreement and is not required to be so registered; (3) the person produces appropriate evidence<sup>7</sup> of the agreement to the constable or authorised person at the time of the request or he produces such evidence in person, at a police station specified by him at the time of the request: (a) within seven days after the date of the request; or (b) as soon as is reasonably practicable; and (4) the person has reasonable grounds for believing, or it is reasonable for him to expect, that the person from whom the vehicle has been leased or hired is able to produce, or require the production of, the registration document<sup>8</sup>. The third condition is that any exception prescribed in regulations under this provision is met<sup>9</sup>.

A person accused of the above offence is not entitled to the benefit of an exception conferred by or under this provision unless evidence is adduced that is sufficient to raise an issue with respect to that exception, but where evidence is so adduced it is for the prosecution to prove beyond reasonable doubt that the exception does not apply<sup>10</sup>.

A person guilty of such an offence is liable on summary conviction to a fine<sup>11</sup>.

1 For the meaning of 'vehicle' see PARA 519 note 2 ante.

2 'Registration document' means a registration document issued in accordance with regulations under the Vehicle Excise and Registration Act 1994 s 22(1)(e) (see PARA 521 post): s 28A(13) (s 28A added by the Serious Organised Crime and Police Act 2005 s 151).

3 Vehicle Excise and Registration Act 1994 s 28A(1) (as added: see note 2 supra). An authorised person exercising the power conferred by s 28A(1) (as added) must, if so requested, produce evidence of his authority to exercise the power: s 28A(2) (as so added).

4 Ibid s 28A(3) (as added: see note 2 supra).

5 Ibid s 28A(4) (as added: see note 2 supra).

6 Ibid s 28A(5) (as added: see note 2 supra). Where a requirement is imposed under s 28A(1) (as added) by an authorised person, a testing station provided under the Road Traffic Act 1988 s 52(2) may be specified under s 28A(5) (as added) or s 28A(6) (as added) (see the text and note 8 infra) instead of a police station: s 28A(9) (as so added).

7 'Appropriate evidence' means a copy of the agreement, or such other documentary evidence of the agreement as is prescribed in regulations under this provision: ibid s 28A(7) (as added: see note 2 supra). The Secretary of State may make regulations prescribing descriptions of evidence for the purposes of s 28A(7) (as added): s 28A(12)(a) (as so added).

8 Ibid s 28A(6) (as added: see note 2 supra).

9 Ibid s 28A(8) (as added: see note 2 supra). The Secretary of State may make regulations prescribing, varying or revoking exceptions for the purposes of s 28A(8) (as added): s 28A(12)(b) (as so added).

10 Ibid s 28A(10) (as added: see note 2 supra).

11 Ibid s 28A(11) (as added: see note 2 supra). The fine must not exceed level 2 on the standard scale: see s 28A(aa) (as so added). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## UPDATE

### **520-521 Power of constables to require production of registration documents, Secretary of State's power to make registration regulations**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/5. VEHICLE REGISTRATION/(1) LEGISLATION/521. Secretary of State's power to make registration regulations.

### **521. Secretary of State's power to make registration regulations.**

The Secretary of State<sup>1</sup> may by regulations:

- 944 (1) make provision with respect to the registration of vehicles<sup>2</sup> (including, in particular, the form of and the particulars to be included in the register of trade licences)<sup>3</sup>;
- 945 (2) require the Secretary of State to make with respect to registered vehicles the returns prescribed by the regulations<sup>4</sup>;
- 946 (3) provide for making any particulars contained in the register available for use by the persons prescribed by the regulations on payment, in cases so prescribed, of a fee of such amount as appears to the Secretary of State reasonable in the circumstances of the case<sup>5</sup>;
- 947 (4) require a person by, through or to whom any vehicle is sold or disposed of to furnish the particulars prescribed by the regulations in the manner so prescribed<sup>6</sup>;
- 948 (5) require a person by or through whom any vehicle is sold or disposed of to furnish the person to whom it is sold or disposed of with such document relating to the vehicle's registration as may be prescribed by the regulations, and to do so at such time as may be so prescribed<sup>7</sup>;
- 949 (6) provide for the issue of registration documents in respect of the registration of a vehicle<sup>8</sup>;
- 950 (7) provide for the transfer, surrender and production of registration documents<sup>9</sup>;
- 951 (8) provide for the inspection of registration documents by the persons prescribed by the regulations<sup>10</sup>;
- 952 (9) provide for the issue of new registration documents in place of registration documents which are or may be lost, stolen, surrendered, destroyed or damaged or which contain any particulars which have become illegible or inaccurate<sup>11</sup>; and
- 953 (10) provide for a fee of such amount as appears to the Secretary of State to be reasonable to be paid on the issue of new registration documents in any of the circumstances mentioned in head (9) above<sup>12</sup>.

The Secretary of State may also by regulations require a person: (a) who surrenders a vehicle licence<sup>13</sup>; (b) who does not renew a vehicle licence for a vehicle registered in his name<sup>14</sup>; (c)

who does not renew a vehicle licence for a vehicle kept by him<sup>15</sup>; or (d) who keeps an unlicensed vehicle at any place in the United Kingdom<sup>16</sup>, to furnish such particulars and make such declarations as may be prescribed by the regulations, and to do so at such times and in such manner as may be so prescribed<sup>17</sup>.

A person who contravenes or fails to comply with any regulations made under the above provisions is guilty of an offence<sup>18</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. As to the power of the Secretary of State to make regulations under the Vehicle Excise and Registration Act 1994 see s 57 (as amended); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 801.

2 For the meaning of 'vehicle' see PARA 519 note 2 ante.

3 Vehicle Excise and Registration Act 1994 s 22(1)(a). 'Trade licence' is to be construed in accordance with s 11 (as amended) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 766): s 62(1). Regulations make no provision as to the register of trade licences, nor is such a register referred to elsewhere in the Vehicle Excise and Registration Act 1994.

4 Ibid s 22(1)(b).

5 Ibid s 22(1)(c).

6 Ibid s 22(1)(d) (amended by the Finance Act 1996 ss 23, 205, Sch 2 para 4(2), Sch 41 Pt II para (6)). Without prejudice to the generality of the Vehicle Excise and Registration Act 1994 s 22(1)(d) (as amended) regulations under that provision may require:

140 (1) any person there mentioned to furnish particulars to another person there mentioned or to the Secretary of State or to another such person and to the Secretary of State (s 22(1B)(a) (s 22(1B) added by the Finance Act 1995 s 19, Sch 4 para 34(3); and amended by the Finance Act 1996 Sch 2 para 5, Sch 41 Pt II para (6));

141 (2) any person there mentioned who is furnished with particulars in pursuance of the regulations to furnish them to the Secretary of State (Vehicle Excise and Registration Act 1994 s 22(1B)(b) (as so added and amended)).

7 Ibid s 22(1)(dd) (added by the Finance Act 1995 Sch 4 para 34(2); and amended by the Finance Act 1996 Sch 2 para 4(3)). Notification of a disposal must be made as soon as reasonably possible: *A & C McLennan (Blairgowrie) Ltd v Macmillan* 1964 SLT 2. Failing to notify is not a continuing offence; and an offence is not purged by subsequent notification: *A & C McLennan (Blairgowrie) Ltd v Macmillan* supra.

8 Vehicle Excise and Registration Act 1994 s 22(1)(e). Regulations under s 22(1)(e) may, in particular, provide that registration documents need not be issued in respect of the registration of a vehicle until the vehicle has been inspected by a person specified by the Secretary of State: s 22(1C) (added by the Finance Act 1996 s 23, Sch 2 paras 6, 7).

9 Vehicle Excise and Registration Act 1994 s 22(1)(f).

10 Ibid s 22(1)(g) (amended by the Finance Act 1996 Sch 2 para 4(2), Sch 41 Pt II para (6)).

11 Vehicle Excise and Registration Act 1994 s 22(1)(h) (amended by the Finance Act 1996 Sch 2 para 4(2), Sch 41 Pt II para (6); and the Vehicles (Crime) Act 2001 s 33(1)). Regulations under the Vehicle Excise and Registration Act 1994 s 22(1)(h) (as amended) which confer a power on the Secretary of State to refuse to issue a new registration document in respect of a registered vehicle if he is not satisfied that the vehicle for which the document is being sought is the registered vehicle may, in particular, provide for: (1) the examination (whether by the Secretary of State or by persons authorised by him) of all vehicles for which new registration documents are being sought, or such vehicles of a particular description, for the purpose of ascertaining whether they are the registered vehicles concerned; (2) the provision of other evidence in relation to all vehicles for which new registration documents are being sought, or such vehicles of a particular description, for the purpose of ascertaining whether they are the registered vehicles concerned: s 22A(1), (2) (s 22A added by the Vehicles (Crime) Act 2001 s 33(2)). Such regulations may, in particular, provide for: (a) notification of examinations (including their purpose), the issue of certificates as to the outcome of examinations and the keeping of records in relation to examinations and certificates; (b) the issue of duplicates or copies of certificates and the fees to be paid on applications for such duplicates or copies; (c) the correction of errors in certificates; (d) the payment of fees for examinations, and for re-examinations resulting from appeals and the repayment of the whole or

part of the fee paid for such a re-examination where it appears to the Secretary of State that there were substantial grounds for contesting the whole or part of the decision appealed against; (e) the making of appeals against the outcome of examinations; (f) the carrying out of examinations in the absence of the keepers or owners of the vehicles concerned; (g) courses of instruction in connection with the carrying out of examinations and the charging of fees in respect of attendance on such courses; (h) the authorisation of examiners, the imposition of conditions to be complied with by authorised examiners (including the payment of fees to the Secretary of State) and the withdrawal of authorisations; (i) the manner in which, conditions under which and apparatus with which examinations are carried out by authorised examiners, and the inspection of premises at which and apparatus with which such examinations are being, or are to be, carried out; (j) the charges to be paid by authorised examiners to the Secretary of State in connection with the issue of certificates, the issue of duplicates or copies of certificates, and the correction of errors in certificates: Vehicle Excise and Registration Act 1994 s 22A(3) (as so added).

The Secretary of State may use information contained in relevant records to check the accuracy of information which has been obtained under regulations made by virtue of heads (1) and (2) *supra*, and where appropriate, to amend or supplement any such information (s 22A(4) (as so added)); and may use information which has been so obtained to check the accuracy of relevant records, and where appropriate, to amend or supplement information contained in those records (s 22A(5) (as so added)). 'Relevant records' means: (i) records maintained by the Secretary of State in connection with any functions exercisable by him under or by virtue of the Vehicle Excise and Registration Act 1994; (ii) records maintained by the Secretary of State (or caused by him to be maintained) under the Road Traffic Act 1988 s 45(6B) (as added) (see PARA 660 post): Vehicle Excise and Registration Act 1994 s 22A(6) (as so added). The provisions of s 22A(4)-(6) (as added) do not limit any powers of the Secretary of State apart from those provisions: s 22A(7) (as so added).

Section 22A (as added) is without prejudice to the generality of the powers conferred by s 22 (as amended): s 22A(8) (as so added).

A person is guilty of an offence if, with intent to deceive, he falsely represents himself to be a person entitled under regulations made by virtue of s 22A(2) (as added) to carry out examinations of vehicles in accordance with regulations so made: s 43B(1) (s 43B added by the Vehicles (Crime) Act 2001 s 43, Schedule para 5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Vehicle Excise and Registration Act 1994 s 43B(2) (as so added). As to the standard scale see PARA 230 note 3 *ante*.

12 Ibid s 22(1)(i) (amended by the Finance Act 1996 Sch 2 para 4(2), Sch 41 Pt II para (6)).

13 Vehicle Excise and Registration Act 1994 s 22(1D)(a) (s 22(1D) added by the Finance Act 1996 s 23, Sch 2 paras 6, 7). Such a vehicle licence must be surrendered under the Vehicle Excise and Registration Act 1994 s 10(2): see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 765. For the meaning of 'vehicle licence' see PARA 519 note 4 *ante*.

14 Ibid s 22(1D)(aa) (s 22(1D) as added (see note 13 *supra*); and s 22(1D)(aa) added by the Finance Act 2002 s 19(1), Sch 5 paras 1, 6(1)). For the purposes of the Vehicle Excise and Registration Act 1994 s 22(1D) (aa) (as added) a person is to be regarded as not renewing a vehicle licence for a vehicle registered in his name if: (1) a vehicle for which a vehicle licence is in force is registered in his name; and (2) he does not, at such time as may be prescribed by the regulations or within such period as may be so prescribed, take out a vehicle licence to have effect from the expiry of the vehicle licence mentioned in head (1) *supra*: s 22(1DA) (added by the Finance Act 2002 Sch 5 para 6(2)).

15 Vehicle Excise and Registration Act 1994 s 22(1D)(b) (as added: see note 13 *supra*). For the purposes of s 22(1D)(b) (as added) a person is to be regarded as not renewing a vehicle licence for a vehicle kept by him if: (1) he keeps a vehicle for which a vehicle licence is in force; and (2) he does not, at such time as may be prescribed by the regulations or within such period as may be so prescribed, take out a vehicle licence to have effect from the expiry of the vehicle licence mentioned in head (1) *supra*: s 22(1E) (added by the Finance Act 1996 Sch 2 paras 6, 7). As to regulations made under the Vehicle Excise and Registration Act 1994 s 22(1D), (1E) (as added) see notes 17, 18 *infra*.

16 Ibid s 22(1D)(c) (as added: see note 13 *supra*). For the meaning of 'United Kingdom' see PARA 224 note 5 *ante*. For the purposes of s 22(1D)(c) (as added), a vehicle is unlicensed if no vehicle licence is in force for the vehicle: s 22(1F) (added by the Finance Act 1996 Sch 2 paras 6, 7).

17 Vehicle Excise and Registration Act 1994 s 22(1D) (as added: see note 13 *supra*). Regulations under s 22(1D) (as added) may make such transitional provision as appears to the Secretary of State to be appropriate: s 22(1G) (added by the Finance Act 1996 Sch 2 paras 6, 7). In exercise of the powers conferred by the Vehicle Excise and Registration Act 1994 s 22(1D), (1E), (1G) (as added) and s 22(2), the Secretary of State has made the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 26, Sch 4 (as amended): see PARAS 524-528 post.

18 Vehicle Excise and Registration Act 1994 s 59(1), which does not apply to regulations under ss 24, 26-28 (see PARAS 564, 566-569 post). A person guilty of an offence under this provision is liable on summary conviction to a fine not exceeding, in the case of regulations prescribed by regulations made by the Secretary of State as regulations to which the relevant provision applies, level 3 on the standard scale and, in any other case, level 2 on the standard scale: s 59(2)(a), (b). The prescribing of regulations as regulations to which s 59(2)(a) applies does not affect the punishment for a contravention of, or failure to comply with, the regulations before they were so prescribed. The Secretary of State may, if he sees fit, compound any proceedings for an offence under the relevant provisions: s 59(6)(a) (added by the Finance Act 1996 Sch 2 para 15). As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## **UPDATE**

### **520-521 Power of constables to require production of registration documents, Secretary of State's power to make registration regulations**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **521 Secretary of State's power to make registration regulations**

NOTE 11--See the Department for Transport (Fees) Order 2009, SI 2009/711 (amended by SI 2009/1885), which specifies for the purposes of the Finance (No 2) Act 1987 s 102(3) the functions to be taken into account in the determination of the fees to be fixed by the Secretary of State.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/5. VEHICLE REGISTRATION/(1) LEGISLATION/522. Regulation of registration plate suppliers.

### **522. Regulation of registration plate suppliers.**

The Secretary of State<sup>1</sup> must establish and maintain a register of registration plate<sup>2</sup> suppliers<sup>3</sup> containing prescribed particulars<sup>4</sup>. The Secretary of State may disclose information from the register and may charge a fee for such disclosure<sup>5</sup>. Applications for registration must be made to the Secretary of State in accordance with the prescribed requirements and accompanied by the prescribed fee<sup>6</sup>. Any person, who is not an exempt person, who carries on a business as a registration plate supplier in England or Wales without being registered by the Secretary of State is guilty of an offence<sup>7</sup>.

A person's registration may be removed or suspended by a court in certain circumstances<sup>8</sup>; and registration may be cancelled where the Secretary of State is satisfied that a registered person has not been carrying on business as a registration plate supplier for at least 28 days<sup>9</sup>.

Regulations provide for the keeping of records by registration plate suppliers<sup>10</sup>. A failure to keep such records is an offence, subject to a due diligence defence<sup>11</sup>. Registration plate suppliers must obtain prescribed information from prospective purchasers and a failure to obtain such information before completing a sale is an offence, subject to a due diligence defence<sup>12</sup>.

A police officer or a person authorised by a local authority has the right to enter and inspect the premises of a registered business; and a police officer or a person appointed by a local authority may enter other premises where he suspects that there is an unregistered business,

provided that a justice of the peace has issued a warrant<sup>13</sup>. A registered person must notify within 28 days any changes to details held on the register or the cessation of business as a registration plate supplier and a failure to do so is an offence, subject to a due diligence defence<sup>14</sup>. It is an offence knowingly or recklessly to sell as a registration plate a device which is not a registration plate or knowingly to supply components to a person who is in the business of selling counterfeit registration plates for the purposes of that business<sup>15</sup>. In certain circumstances, it is an offence to supply a plate to an unregistered person, other than an exempt person, who is carrying on business as a registration plate supplier<sup>16</sup>.

Proceedings for an offence may not be instituted except by the Secretary of State, a local authority or a constable, or, in any other case, with the consent of the Attorney General<sup>17</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 'Registration plate' means a plate or other device which: (1) displays (whether alone or in conjunction with other information) a registration mark; (2) complies with requirements imposed by regulations made under the Vehicle Excise and Registration Act 1994 s 27A(1)(a) (as added) (see PARA 568 post); and (3) is designed to be fixed to a vehicle or trailer in accordance with regulations made under s 22(2) (see PARA 523 post) or s 23(3) (see PARA 563 post): Vehicles (Crime) Act 2001 s 31(1). The definition of 'registration plate' in s 31(1) is amended, as from a day to be appointed, by the Road Safety Act 2006 s 45(1), (2) so that head (1) supra refers to displaying (whether alone or in conjunction with other information) in accordance with regulations under the Vehicle Excise and Registration Act 1994 s 23(4)(b) (see PARA 563 post) a registration mark which complies with regulations under s 23(4)(a) (see PARA 563 post). At the date at which this volume states the law no such day had been appointed.

'Registration mark' has the meaning given by the Vehicle Excise and Registration Act 1994 s 23(1) (see PARA 563 post); and includes a mark indicating the registered number of a vehicle or trailer and assigned to that vehicle or trailer by virtue of regulations under s 22(2): Vehicles (Crime) Act 2001 s 31(1).

3 For these purposes, a person carries on business as a registration plate supplier if he: (1) carries on a business which consists wholly or partly in selling registration plates; and (2) is not an exempt person: *ibid* s 17(2). 'Exempt person' means any person who is an exempt person by virtue of regulations made under s 17(3) (b): s 31(1). The Secretary of State may by regulations provide for: (a) activities of a prescribed description to be treated for the purposes of Pt 2 (ss 17-31) (as amended) as not being activities which consist in selling registration plates; (b) persons of a prescribed description to be exempt persons for the purposes of Pt 2 (as amended): s 17(3).

4 *Ibid* s 18(1). Each person's entry in the register must contain the prescribed particulars: s 18(2); Vehicles Crime (Registration of Registration Plate Suppliers) (England and Wales) Regulations 2002, SI 2002/2977, reg 4.

5 Vehicles (Crime) Act 2001 s 18(3)-(5). The Secretary of State may by regulations specify: (1) descriptions of persons who are not entitled to be supplied with information under s 18(3); and (2) descriptions of information which are not to be supplied under s 18(3): s 18(6). The Secretary of State may make all of the information contained in the register or information so contained of a particular description available to the National Policing Improvement Agency for use by constables for the purpose of investigating offences under Pt II (as amended): s 18(7) (amended by the Police and Justice Act 2006 s 1(3), Sch 1 Pt 7 paras 76, 77). The Secretary of State may by regulations determine the circumstances in which any of the information to which constables have been given access under the Vehicles (Crime) Act 2001 s 18(7) (as amended) may be further disclosed by them: s 18(8). As to the meaning of 'constable' see s 18(9) (added by the Serious Organised Crime and Police Act 2005 s 123(2)). As to the National Policing Improvement Agency see POLICE vol 36(1) (2007 Reissue) PARA 222 et seq.

6 Vehicles (Crime) Act 2001 s 19(1), (2); Vehicles Crime (Registration of Registration Plate Suppliers) (England and Wales) Regulations 2002, SI 2002/2977, reg 5. On receipt of the application, the Secretary of State must register the applicant: Vehicles (Crime) Act 2001 s 19(7). The making of a false statement in applying for registration is an offence subject to a maximum penalty of level 3 on the standard scale; and the making of such an application by a person whose registration is suspended or who has been prohibited from making such an application are offences subject to a maximum penalty of level 5 on the standard scale: s 19(3)-(6). As to the standard scale see PARA 230 note 3 ante.

7 *Ibid* s 17(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 17(1). 'Registered' means registered in accordance with the provisions of Pt 2 (as amended) in a register established and maintained by the Secretary of State under s 18 (as amended); and cognate expressions are to be construed accordingly: s 17(4). As to the standard scale see PARA 230 note 3

ante. See also the Vehicles Crime (Registration of Registration Plate Suppliers) (England and Wales) Regulations 2002, SI 2002/2977 reg 3 (substituted by SI 2005/2981) (exempted activity). As from a day to be appointed, the Vehicles (Crime) Act 2001 s 17(1) is amended by the Road Safety Act 2006 ss 46(1), (3), 59, Sch 7 so as to remove the reference to England and Wales.

8 Vehicles (Crime) Act 2001 s 20.

9 Ibid s 21. An intention to cancel must be notified and the supplier must be given a reasonable opportunity to make representations about the proposal: s 22. There is a right of appeal, exercisable within 21 days, against cancellation: s 23. As from a day to be appointed, s 23 is substituted by the Road Safety Act 2006 s 46(6), but at the date at which this volume states the law no such day had been appointed.

10 Vehicles (Crime) Act 2001 s 24(1)-(3); Vehicles Crime (Registration of Registration Plate Suppliers) (England and Wales) Regulations 2002, SI 2002/2977, reg 7 (amended by SI 2003/228; SI 2005/2981).

11 Vehicles (Crime) Act 2001 s 24(4), (5).

12 Ibid s 25; Vehicles Crime (Registration of Registration Plate Suppliers) (England and Wales) Regulations 2002, SI 2002/2977 reg 6, Schedule (reg 6, Schedule amended by SI 2005/2981).

13 Vehicles (Crime) Act 2001 s 26(1)-(4), (6), (8) (s 26(8) amended by the Road Safety Act 2006 s 44(1), (2)). Reasonable force may be used in pursuance of the warrant (Vehicles (Crime) Act 2001 s 26(5)), and the obstruction of an authorised person in the exercise of his powers is an offence punishable on summary conviction by a fine not exceeding level 2 on the standard scale (s 26(7)).

14 Ibid s 27(1)-(3). A person guilty of any such offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 27(4).

15 Ibid s 28(1), (2). As from a day to be appointed, a person who sells a plate or other device which is not a registration plate only because the registration mark displayed by it does not comply with regulations under the Vehicle Excise and Registration Act 1994 s 23(4)(a) or is displayed otherwise than in accordance with regulations under s 23(4)(b) (or both), is guilty of an offence: Vehicles (Crime) Act 2001 s 28(1A) (s 28(1A), (1B) prospectively added by the Road Safety Act 2006 s 45(3), (4)). The Secretary of State may by regulations provide that the offence under the Vehicles (Crime) Act 2001 s 28(1A) (as prospectively added) is not committed in circumstances prescribed by the regulations: s 28(1B) (as so prospectively added). Section 28(2) is prospectively amended by the Road Safety Act 2006 s 45(5) so as to refer also to the Vehicles (Crime) Act 2001 s 28(1A) (as prospectively added). At the date at which this volume states the law no such day had been appointed.

A person guilty of any such offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 28(3). This provision is amended, as from a day to be appointed, by the Road Safety Act 2006 s 45(6) so as to refer to offences under the Vehicles (Crime) Act 2001 s 28 (as prospectively amended). At the date at which this volume states the law no such day had been appointed.

16 Ibid s 29(1). A person guilty of any such offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 29(2).

17 Ibid s 30 (amended by the Road Safety Act 2006 s 44(1), (3)).

## UPDATE

### 522 Regulation of registration plate suppliers

TEXT AND NOTES--SI 2002/2977 (as amended) replaced by Vehicles Crime (Registration of Registration Plate Suppliers) Regulations 2008, SI 2008/1715.

NOTES 2, 15--Day appointed in relation to Road Safety Act 2006 s 45 is 30 July 2008: SI 2008/1862.

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### 523. Extension of the registration provisions.

Regulations made by the Secretary of State<sup>1</sup> may extend any of the provisions as to registration<sup>2</sup> (and provisions incidental to any of those provisions) to, and provide for the identification of, any exempt vehicles<sup>3</sup>, any vehicles belonging to the Crown or any trailers<sup>4</sup>. Regulations under the above provision<sup>5</sup> may, in particular:

- 954 (1) require a person applying for a nil licence<sup>6</sup> to make any such declaration, and to furnish any such particulars and any such documentary or other evidence (whether or not with respect to the vehicle for which the licence is to be taken out) as may be prescribed by the regulations<sup>7</sup>;
- 955 (2) provide for any requirement to make such a declaration not to apply in such circumstances as may be so prescribed<sup>8</sup>;
- 956 (3) make provision (including provision requiring the payment of a fee) for cases where a nil licence is or may be lost, stolen, destroyed or damaged or contains particulars which have become illegible or inaccurate<sup>9</sup>;
- 957 (4) require a person issued with a nil licence which ceases to be in force in circumstances prescribed by the regulations to furnish to the Secretary of State any such particulars and any such documentary or other evidence and make any such declarations as may be so prescribed, and to do so at such times and in such manner as may be so prescribed<sup>10</sup>.

Regulations made by the Secretary of State may make provision for the return of any nil licence to the Secretary of State in such circumstances as may be prescribed by the regulations<sup>11</sup>.

A person who contravenes or fails to comply with any regulations made under the above provisions is guilty of an offence<sup>12</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. The Secretary of State may also make regulations providing for the payment of compensation to or in respect of persons who are or were, or but for any national service of theirs would be or would have been, the holders of any such place, situation or employment as may be prescribed and who suffer or have suffered loss of employment or loss or diminution of emoluments which is attributable to the provisions of the Vehicle and Driving Licences Act 1969 s 1 (repealed); and any such regulations may include provisions for the determination of questions arising under the regulations: see s 2(3); and the Vehicle and Driving Licences (Compensation to Officers) Regulations 1977, SI 1977/1316 (as amended). For these purposes, 'national service' means any such service in any of Her Majesty's forces or other employment (whether or not in the service of Her Majesty) as may be prescribed: Vehicle and Driving Licences Act 1969 s 2(3).

2 As to the registration regulations see PARA 521 ante.

3 For the meaning of 'exempt vehicle' see PARA 519 note 5 ante. For the meaning of 'vehicle' see PARA 519 note 2 ante.

4 Vehicle Excise and Registration Act 1994 s 22(2). Any such trailers must come within the meaning of s 2, Sch 1 Pt VIII: see s 22(2). In Sch 1 Pt VIII, 'trailer' does not include an appliance constructed and used solely for the purpose of distributing on the road loose gritting material, or a snow plough: see Sch 1 para 17(1) (as amended); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 732. As to regulations made under s 22(2) see note 5 infra.

5 Ie under *ibid* s 22(2). Certain regulations have effect as if they had partly been made under the provisions relating to registration regulations. See the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742 (as amended); and PARAS 529-541 post. By virtue of the Vehicle Excise and Registration Act 1994 s 64, Sch 4 para 2 (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 717), the Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610 (as amended) have effect as if they had partly been made under the Vehicle Excise and Registration Act 1994 s 22.

6 For the meaning of 'nil licence' see PARA 519 note 5 ante.

7 Vehicle Excise and Registration Act 1994 s 22(2A)(a) (s 22(2A)(a), (b) added by the Finance (No 2) Act 1997 s 22(3); and the Vehicle Excise and Registration Act 1994 s 22(2A)(a) amended by the Finance Act 1998 s 165, Sch 27 Pt I para (4); and the Vehicles (Crime) Act 2001 s 32(2)).

8 Vehicle Excise and Registration Act 1994 s 22(2A)(b) (as added: see note 7 supra). The circumstances which may be prescribed by the regulations by virtue of s 22(2A)(b) (as added) include where a person applying for a nil licence agrees to comply with such conditions as may be specified in relation to him by the Secretary of State: s 22(2B) (added by the Finance (No 2) Act 1997 s 22(3)). The conditions which may be specified by virtue of the Vehicle Excise and Registration Act 1994 s 22(2B) (as added) include: (1) a condition that particulars for the time being prescribed by the regulations by virtue of s 22(2A)(a) (as added) are furnished by being transmitted to the Secretary of State by such electronic means as he may specify (s 22(2C)(a) (s 22(2C) added by the Finance (No 2) Act 1997 s 22(3))); and (2) a condition such as is mentioned in the Vehicle Excise and Registration Act 1994 s 7(3B)(b) (as added and amended) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 761) (treating the references to s 7(3B)(a) (as added and amended) as references to s 22(2C)(a) (as added)) (s 22(2C)(b) (as so added)).

9 Ibid s 22(2A)(c) (s 22(2A)(c), (d) added by the Finance Act 1998 s 18).

10 Vehicle Excise and Registration Act 1994 s 22(2A)(d) (as added (see note 9 supra); and amended by the Vehicles (Crime) Act 2001 s 43, Schedule para 4).

11 Vehicle Excise and Registration Act 1994 s 22(4) (added by the Finance Act 1997 s 18, Sch 3 para 3).

12 Vehicle Excise and Registration Act 1994 s 59(1). A person guilty of an offence under this provision is liable on summary conviction to a fine not exceeding, in the case of regulations prescribed by regulations made by the Secretary of State as regulations to which the relevant provision applies, level 3 on the standard scale and, in any other case, level 2 on the standard scale: s 59(2)(a), (b). As to the standard scale see PARA 230 note 3 ante. The prescribing of regulations as regulations to which s 59(2)(a) applies does not affect the punishment for a contravention of, or failure to comply with, the regulations before they were so prescribed: s 59(3). The Secretary of State may, if he sees fit, compound any proceedings for an offence under the relevant provisions: s 59(6)(a) (added by the Finance Act 1996 s 23, Sch 2 para 15). As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

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## **(2) OFF-ROAD NOTIFICATION**

### **524. Application of the off-road notification provisions.**

Certain provisions of the Road Vehicles (Registration and Licensing) Regulations 2002<sup>1</sup> relating to the statutory off-road notification have effect for the purpose of prescribing the particulars to be furnished and the declarations to be made, and the times at which and the manner in which they are to be furnished or made, by a person: (1) who surrenders a vehicle licence<sup>2</sup>; (2) who does not renew a vehicle licence on its expiration; or (3) who keeps an unlicensed<sup>3</sup> vehicle<sup>4</sup>.

A person who contravenes or fails to comply with these provisions is guilty of an offence<sup>5</sup>.

1 Ie the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 26, Sch 4.

2 For the meaning of 'vehicle licence' see PARA 519 note 4 ante.

3 'Unlicensed vehicle' means a relevant vehicle for which no vehicle licence is for the time being in force and 'unlicensed' is to be construed accordingly; and 'relevant vehicle' means a vehicle which is either a relevant GB vehicle or a relevant NI vehicle: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg

26, Sch 4 para 1(1). A 'relevant GB vehicle' means a vehicle which is registered in the GB records and kept in Great Britain, but does not include a vehicle in relation to which each of the following conditions is satisfied: (1) neither a vehicle licence nor a nil licence was in force for the vehicle on 31 January 1998; (2) such a licence has not been taken out for the vehicle for a period starting after that date; and (3) the vehicle has not been used or kept on a public road on or after that date: Sch 4 para 1(2)(a). A 'relevant NI vehicle' means a vehicle which is registered in the NI records and kept in Northern Ireland, but does not include a vehicle in relation to which each of the following conditions is satisfied: (a) neither a vehicle licence nor a nil licence was in force for the vehicle on 30 November 2002; (b) such a licence has not been taken out for the vehicle for a period starting after that date; and (c) the vehicle has not been used or kept on a public road on or after that date: Sch 4 para 1(2)(b). A vehicle which is an exempt vehicle falling within a description specified in the Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 2, 2A, 3, 23 or 24 (Sch 2 para 2A as added; and Sch 2 para 23 as amended) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 740 et seq) is neither a relevant GB nor a relevant NI vehicle: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 4 para 1(3). For the meaning of 'nil licence' see PARA 519 note 5 ante; for the meaning of 'public road' see PARA 519 note 5 ante; and for the meaning of 'exempt vehicle' see PARA 519 note 5 ante. 'GB records' means the part of the register which is maintained on behalf of the Secretary of State by the Driver and Vehicle Licensing Agency; 'NI records' means the part of the register which is maintained by Driver and Vehicle Licensing Northern Ireland; and 'register' means the record kept by or on behalf of the Secretary of State of the vehicles registered by him under the Vehicle Excise and Registration Act 1994 s 21 (as amended): see the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 3(1). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. As to the Driver and Vehicle Licensing Agency ('DVLA') see PARA 236 ante.

4 Ibid reg 26.

5 Vehicle Excise and Registration Act 1994 s 59(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 59(2)(a); Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 47, Sch 8 (reg 47 amended by SI 2003/2154). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

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## **525. Required declaration and particulars.**

For the purposes of the off-road notification provisions<sup>1</sup>, the required declaration<sup>2</sup> may be made and the required particulars<sup>3</sup> furnished in such way as the Secretary of State may accept<sup>4</sup> including: (1) in writing on a form specified by the Secretary of State; (2) orally by telephone to a person authorised by the Secretary of State; or (3) by electronic means in a form specified by the Secretary of State<sup>5</sup>.

A person furnishing the required particulars need not provide particulars of the address at which the vehicle is kept unless required to do so: (a) in a case falling within head (1) or head (3) above, by the form on which those particulars are furnished; or (b) in a case falling within head (2) above, by the person to whom they are furnished<sup>6</sup>.

1 Ie the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 26, Sch 4.

2 'The required declaration' means a declaration made to the Secretary of State by a person surrendering a vehicle licence or the keeper of a relevant vehicle to the effect that (except for use under a trade licence) he does not for the time being intend to use or keep the vehicle on a public road and will not use or keep the vehicle on a public road without first taking out a vehicle licence (or if appropriate a nil licence) for the vehicle: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 4 para 1(1). For the meaning of 'relevant vehicle' see PARA 524 note 3 ante; for the meaning of 'trade licence' see PARA 521 note 3 ante; for the meaning of 'public road' see PARA 519 note 5 ante; and for the meaning of 'nil licence' see PARA 519 note 5 ante. 'Keeper' in relation to a vehicle means the person by whom that vehicle is kept: reg 3 (1). As to the Secretary of

State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 'The required particulars' in relation to a relevant vehicle are particulars of: (1) the registration mark of the vehicle; (2) the make and model of the vehicle; and (3) the address of the premises at which the vehicle is kept: *ibid* Sch 4 para 1(1).

4 *Ibid* Sch 4 para 2(1).

5 *Ibid* Sch 4 para 2(1)(a)-(c).

6 *Ibid* Sch 4 para 2(2).

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## **526. Surrender of vehicle licence.**

When the holder of a vehicle licence<sup>1</sup> for a relevant GB vehicle<sup>2</sup> surrenders it<sup>3</sup>, he must deliver to the Secretary of State the required declaration<sup>4</sup> and the required particulars<sup>5</sup> in relation to that vehicle<sup>6</sup>. However, this requirement does not apply where a relevant GB vehicle is no longer kept by the holder of the licence or the holder is a relevant vehicle trader<sup>7</sup> in relation to that vehicle<sup>8</sup>.

When after 30 November 2002 the holder of a vehicle licence for a relevant NI vehicle<sup>9</sup> surrenders it<sup>10</sup>, he must deliver to the Secretary of State the required declaration and the required particulars in relation to that vehicle<sup>11</sup>. However, this requirement does not apply where a relevant NI vehicle is no longer kept by the holder of the licence or the holder is a relevant trader in relation to that vehicle<sup>12</sup>.

A person who contravenes or fails to comply with the above provisions is guilty of an offence<sup>13</sup>.

1 For the meaning of 'vehicle licence' see PARA 519 note 4 ante.

2 For the meaning of 'relevant GB vehicle' see PARA 524 note 3 ante.

3 *Ie* under the Vehicle Excise and Registration Act 1994 s 10(2): see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 765.

4 For the meaning of 'required declaration' see PARA 525 note 2 ante.

5 For the meaning of 'required particulars' see PARA 525 note 3 ante.

6 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 26, Sch 4 para 3(1). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 For the purposes of *ibid* Sch 4, a person is a 'relevant vehicle trader' in relation to a vehicle if he falls within a description mentioned in Sch 4 para 1(4) Table col (2) and the vehicle falls within a description in Sch 4 para 1(4) Table col (3): reg 3(2), Sch 4 para 1(4). The descriptions of persons and vehicles are as follows:

142 (1) the holder of a trade licence, in relation to a vehicle temporarily in his possession in the course of the business by virtue of which he is a person eligible to hold such a licence (Sch 4 para 1(4), Table item 1);

143 (2) an auctioneer of vehicles, in relation to a vehicle temporarily in his possession in the course of his business as such an auctioneer (Sch 4 para 1(4), Table item 2);

- 144 (3) a motor dealer, in relation to a vehicle temporarily in his possession in the course of his business as a motor dealer (Sch 4 para 1(4), Table item 3);
- 145 (4) a person who carries on business as a dismantler of vehicles, in relation to a vehicle temporarily in his possession in the course of that business (Sch 4 para 1(4), Table item 4);
- 146 (5) an authorised insurer, in relation to a vehicle temporarily in his possession in consequence of settling a claim under a policy of insurance relating to the vehicle (Sch 4 para 1(4), Table item 5);
- 147 (6) the holder of a licence under the Consumer Credit Act 1974 Pt III (ss 21-41), in relation to a vehicle temporarily in his possession under an order for the repossession of the vehicle made in pursuance of a personal credit agreement relating to the vehicle (Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 4 para 1(4), Table item 6).

For the meaning of 'authorised insurer' see PARAS 460 note 1 ante, 945 note 4 post; definition applied by reg 3(1). For these purposes, 'personal credit agreement' has the meaning given in the Consumer Credit Act 1974 s 8(1) (see CONSUMER CREDIT vol 9(1) (Reissue) PARA 80): Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 4 para 1(1).

8 Ibid Sch 4 para 3(2).

9 For the meaning of 'relevant NI vehicle' see PARA 524 note 3 ante.

10 See note 3 supra.

11 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 4 para 7(1).

12 Ibid Sch 4 para 7(2).

13 Vehicle Excise and Registration Act 1994 s 59(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 59(2)(a); Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 47, Sch 8 (reg 47 amended by SI 2003/2154). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

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## **527. Expiry of vehicle licence or nil licence.**

Where a vehicle licence<sup>1</sup> or nil licence<sup>2</sup> ceases to be in force for a relevant GB vehicle<sup>3</sup> by reason of the expiration of the period for which the licence was granted and a vehicle licence or nil licence for the vehicle is not taken out so as to run from the expiration of that period, the keeper<sup>4</sup> of the vehicle must deliver to the Secretary of State the required declaration<sup>5</sup> and the required particulars<sup>6</sup> in relation to the vehicle: (1) if he is a relevant vehicle trader<sup>7</sup>, not later than the end of the period of three months starting with the day following the expired period; or (2) in any other case, not later than that day<sup>8</sup>.

Where, on or after 30 November 2002, a vehicle licence or nil licence ceases to be in force for a relevant NI vehicle<sup>9</sup> by reason of the expiration of the period for which the licence was granted and a vehicle licence or nil licence for the vehicle is not taken out so as to run from the expiration of that period, the keeper of the vehicle must deliver to the Secretary of State the required declaration and the required particulars in relation to the vehicle: (a) if he is a relevant vehicle trader, not later than the end of the period of three months starting with the day following the expired period; or (b) in any other case, not later than that day<sup>10</sup>.

A person who contravenes or fails to comply with the above provisions is guilty of an offence<sup>11</sup>.

- 1 For the meaning of 'vehicle licence' see PARA 519 note 4 ante.
- 2 For the meaning of 'nil licence' see PARA 519 note 5 ante.
- 3 For the meaning of 'relevant GB vehicle' see PARA 524 note 3 ante.
- 4 For the meaning of 'keeper' see PARA 525 note 2 ante.
- 5 For the meaning of 'required declaration' see PARA 525 note 2 ante.
- 6 For the meaning of 'required particulars' see PARA 525 note 3 ante.
- 7 For the meaning of 'relevant vehicle trader' see PARA 526 note 7 ante.
- 8 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 26, Sch 4 para 4. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 9 For the meaning of 'relevant NI vehicle' see PARA 524 note 3 ante.
- 10 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 4 para 8.
- 11 Vehicle Excise and Registration Act 1994 s 59(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 59(2)(a); Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 47, Sch 8 (reg 47 amended by SI 2003/2154). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

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## **528. Person keeping an unlicensed vehicle.**

Where a person is the keeper<sup>1</sup> of a relevant GB vehicle<sup>2</sup> which is unlicensed<sup>3</sup> and as respects which there has elapsed a period of 12 months ('the unlicensed period'):

- 958 (1) throughout which the vehicle has been kept in Great Britain<sup>4</sup> unlicensed<sup>5</sup>; and
- 959 (2) within which neither the required declaration<sup>6</sup> nor the required particulars<sup>7</sup> have been delivered to the Secretary of State in relation to the vehicle,

that person must, unless a vehicle licence<sup>8</sup> or a nil licence<sup>9</sup> has been taken out so as to run from the end of the unlicensed period, deliver the required declaration and the required particulars to the Secretary of State in relation to the relevant GB vehicle not later than the day following the end of that period<sup>10</sup>.

On a change in the keeper of a relevant GB vehicle which is unlicensed, unless a vehicle licence or nil licence is taken out for the vehicle, the new keeper must deliver to the Secretary of State the required declaration and the required particulars in relation to the vehicle:

- 960 (a) if he is a relevant vehicle trader<sup>11</sup>, not later than the end of the period of three months beginning with the day following the day on which the change of keeper occurs; or
- 961 (b) in any other case, not later than the day following the day on which the change of keeper occurs<sup>12</sup>.

Where, at any time after 30 November 2003, a person is the keeper of a relevant NI vehicle<sup>13</sup> which is unlicensed and as respects which there has elapsed a period of 12 months ('the unlicensed period'):

- 962 (i) throughout which the vehicle has been kept in Northern Ireland unlicensed<sup>14</sup>; and
- 963 (ii) within which neither the required declaration nor the required particulars have been delivered to the Secretary of State in relation to the vehicle,

that person must, unless a vehicle licence or a nil licence has been taken out so as to run from the end of the unlicensed period, deliver the required declaration and the required particulars to the Secretary of State in relation to the relevant NI vehicle not later than the day following the end of that period<sup>15</sup>.

On a change occurring after 30 November 2002 in the keeper of a relevant NI vehicle which is unlicensed, unless a vehicle licence or nil licence is taken out for the vehicle, the new keeper must deliver to the Secretary of State the required declaration and the required particulars in relation to the vehicle:

- 964 (A) if he is a relevant vehicle trader, not later than the end of the period of three months beginning with the day following the day on which the change of keeper occurs; or
- 965 (B) in any other case, not later than the day following the day on which the change of keeper occurs<sup>16</sup>.

A person who contravenes or fails to comply with the above provisions is guilty of an offence<sup>17</sup>.

1 For the meaning of 'keeper' see PARA 525 note 2 ante.

2 For the meaning of 'relevant GB vehicle' see PARA 524 note 3 ante.

3 As to the meaning of 'unlicensed' see PARA 524 note 3 ante.

4 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

5 For the purposes of head (1) in the text, where a vehicle licence has been surrendered under the Vehicle Excise and Registration Act 1994 s 10(2) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 765), the vehicle to which it relates is to be taken to be unlicensed from the first day of the month in which the licence was surrendered: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 26, Sch 4 para 5(2).

6 For the meaning of 'required declaration' see PARA 525 note 2 ante.

7 For the meaning of 'required particulars' see PARA 525 note 3 ante.

8 For the meaning of 'vehicle licence' see PARA 519 note 4 ante.

9 For the meaning of 'nil licence' see PARA 519 note 5 ante.

10 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 4 para 5(1), (3). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

11 For the meaning of 'relevant vehicle trader' see PARA 526 note 7 ante.

12 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 4 para 6.

13 For the meaning of 'relevant NI vehicle' see PARA 524 note 3 ante.

14 For the purposes of head (i) in the text, where a vehicle licence has been surrendered under the Vehicle Excise and Registration Act 1994 s 10(2), the vehicle to which it relates is to be taken to be unlicensed from the first day of the month in which the licence was surrendered: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 4 para 9(2).

15 Ibid Sch 4 para 9(1), (3).

16 Ibid Sch 4 para 10.

17 Vehicle Excise and Registration Act 1994 s 59(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 59(2)(a); Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 47, Sch 8 (reg 47 amended by SI 2003/2154). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

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### **(3) LICENSING AND REGISTRATION**

#### **529. Surrender of licences.**

The holder of a vehicle licence<sup>1</sup> or trade licence<sup>2</sup> who wishes to surrender his licence and claim a rebate in respect of the unexpired term of the licence<sup>3</sup> must make an application in writing, signed by the applicant, to the Secretary of State<sup>4</sup>, accompanied by the licence and, in the case of a trade licence, any trade plates<sup>5</sup> held by him in connection with the licence<sup>6</sup>.

1 For the meaning of 'vehicle licence' see PARA 519 note 4 ante.

2 For the meaning of 'trade licence' see PARA 521 note 3 ante.

3 To claim a rebate in accordance with the provisions of the Vehicle Excise and Registration Act 1994 s 19(1) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 765 et seq): Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 9(1).

4 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 As to trade plates see PARA 554 post.

6 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 9.

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#### **530. Application for duplicate licence.**

Where a vehicle licence<sup>1</sup>, trade licence<sup>2</sup> or nil licence<sup>3</sup> has been, or may have been, lost, stolen, destroyed or damaged, or contains any particulars which have become illegible, the holder of the licence must apply to the Secretary of State<sup>4</sup> for the issue of a duplicate<sup>5</sup>. The application must be accompanied by: (1) the registration document issued in respect of the vehicle or, if



the applicant is unable to comply with this requirement, by an application to the Secretary of State for the issue of a replacement registration document<sup>6</sup>; (2) a fee<sup>7</sup>, if the licence to be replaced is a vehicle or trade licence; and (3) the licence to be replaced, if the reason for replacement is that it has been damaged or contains any particulars which have become illegible<sup>8</sup>.

On receiving such an application made in accordance with these provisions, the Secretary of State must issue a replacement licence if he is satisfied that the licence has been, or may have been, lost, stolen, destroyed or damaged<sup>9</sup>. If a replacement licence has been issued on the ground that the original has been, or may have been, lost, stolen or destroyed, and the original licence is subsequently found or recovered, the keeper of the vehicle must: (a) if the original is in his possession, forthwith return it to the Secretary of State; or (b) if it is not in his possession but he becomes aware that it is found or recovered, take all reasonable steps to obtain possession of it and return it to the Secretary of State<sup>10</sup>.

1 For the meaning of 'vehicle licence' see PARA 519 note 4 ante.

2 For the meaning of 'trade licence' see PARA 521 note 3 ante.

3 For the meaning of 'nil licence' see PARA 519 note 5 ante.

4 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 8(1).

6 Ie in accordance with ibid reg 13: see PARA 532 post.

7 Ie a fee of £7: see ibid reg 8(2)(b). No fee is payable under reg 8(2)(b) if the Secretary of State is satisfied that the loss of the licence occurred in the course of the transmission of the licence by the office issuing it to the keeper of the vehicle: reg 8(3). For the meaning of 'keeper' see PARA 525 note 2 ante.

8 Ibid reg 8(2).

9 Ibid reg 8(4).

10 Ibid reg 8(5).

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### 531. Registration documents.

The Secretary of State<sup>1</sup> may register a vehicle in either the GB records<sup>2</sup> or the NI records<sup>3</sup> as he considers appropriate and may, if he thinks fit, remove the particulars of a vehicle included in one of those parts of the register<sup>4</sup> and include them in the other<sup>5</sup>. On registering a vehicle the Secretary of State must issue a registration document<sup>6</sup> to the keeper of the vehicle<sup>7</sup>.

The Secretary of State must issue the registration document forthwith, except where the vehicle is registered in consequence of an application for a vehicle licence<sup>8</sup> by a person who agrees to comply with such conditions as may be specified in relation to him by the Secretary of State<sup>9</sup>, in which case the registration document must be issued when that person asks for it to be issued<sup>10</sup>. However, before issuing a registration document to the keeper of a vehicle, the Secretary of State may require him to produce the vehicle for inspection or to produce other evidence that the vehicle accords with the particulars furnished when a vehicle or nil licence<sup>11</sup>

was applied for in respect of it<sup>12</sup>, and the Secretary of State may refuse to issue a registration document or replacement registration document for a vehicle if he is not satisfied that the vehicle accords with those particulars<sup>13</sup>.

The keeper of a vehicle in respect of which a registration document has been issued must produce it for inspection if he is at any reasonable time required to do so by a constable or by a person acting on behalf of the Secretary of State<sup>14</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'GB records' see PARA 524 note 3 ante.

3 For the meaning of 'NI records' see PARA 524 note 3 ante.

4 For the meaning of 'register' see PARA 524 note 3 ante.

5 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 10(3). As to the power to register see PARA 519 ante.

6 In respect of vehicles falling within the definition of 'vehicle' in EEC Council Directive 70/156 (OJ L42, 23.2.1970, p 1) on the approximation of the laws of the member states relating to the type approval of motor vehicles and their trailers, art 2 and in EEC Council Directive 92/61 (OJ L225, 10.8.1992, p 72) relating to the type-approval of two or three-wheeled motor vehicles, art 2, the Secretary of State must not issue a new registration document on or after 31 January 2004 unless it complies with EC Council Directive 1999/37 (OJ L138, 1.6.1999, p 57) on the registration documents for vehicles, Annex I as regards: (1) dimensions; (2) composition; and (3) information contained within it, except that, in relation to a new registration document, the information contained may be limited to that available to the Secretary of State: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 10A(1), (2) (reg 10A added by SI 2003/3073; and the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 10A(1), (2) amended by SI 2004/3298). However, notwithstanding any other provision of the Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742 (as amended), the Secretary of State may, without charge and on surrender by the registered keeper of a registration document issued before 31 January 2004, issue to the registered keeper a registration document which is in a form provided for by EC Council Directive 1999/37 (OJ L138, 1.6.1999, p 57) (as amended) in respect of the same vehicle if it appears proper and reasonable to him to do so: Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 10A(1A), (3A) (reg 10A as so added; and reg 10A(1A), (3A) added by SI 2004/3298). 'Registered keeper' in relation to a vehicle means the person for the time being shown in the register as the keeper of that vehicle: Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 3(1). For the meaning of 'keeper' see PARA 525 note 2 ante. Any registration document which does not comply with EC Council Directive 1999/37 (OJ L138, 1.6.1999, p 57) (as amended) ceases to have effect on the earlier of the date on which the Secretary of State issues a new registration document under the Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742 (as amended), or 1 July 2005: reg 10A(3) (as so added; and amended by SI 2004/3298). As to registration of vehicles which have been registered in another member state or Gibraltar see the Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 10A(4), (5) (as so added; and reg 10A(4) amended by SI 2004/3298).

7 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 10(4).

8 For the meaning of 'vehicle licence' see PARA 519 note 4 ante.

9 As mentioned in the Vehicle Excise and Registration Act 1994 s 7(3A) (as added) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 761).

10 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 10(5). This is also subject to reg 11: see PARA 533 post.

11 For the meaning of 'nil licence' see PARA 519 note 5 ante.

12 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 10(6).

13 Ibid reg 10(7). As to replacement registration documents see PARA 532 post.

14 Ibid reg 12.

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### **532. Replacement, correction of and issue of new registration documents.**

Where a registration document<sup>1</sup> has been, or may have been, lost, stolen, destroyed or damaged, or it contains any particulars that have become illegible, the registered keeper<sup>2</sup> must apply to the Secretary of State<sup>3</sup> for the issue of a replacement document<sup>4</sup>. In a case where the registration document has been damaged or contains any particulars which have become illegible, an application must be accompanied by the document and, in any other case, the Secretary of State may, if he thinks fit, accept an application made orally by telephone<sup>5</sup>. A fee is payable on the application, unless the registration document fee exemption<sup>6</sup> applies<sup>7</sup>. If the Secretary of State receives an application made in accordance with these provisions and he is satisfied that a registration document has been, or may have been, lost, stolen, destroyed or damaged, or that it contains any particulars that have become illegible, he must<sup>8</sup> issue a replacement registration document to the registered keeper<sup>9</sup>. If a replacement registration document has been issued on the ground that the original has been, or may have been, lost, stolen or destroyed, and the original is subsequently found or recovered, the keeper of the vehicle must, if the original is in his possession, forthwith return it to the Secretary of State or, if it is not in his possession but he becomes aware that it is found or recovered, must take all reasonable steps to obtain possession of it and return it to the Secretary of State<sup>10</sup>.

Where the keeper<sup>11</sup> of a vehicle<sup>12</sup> believes that the particulars in the registration document issued in respect of that vehicle are, or have become, inaccurate, he must forthwith notify the Secretary of State of the inaccuracy<sup>13</sup>. Such notification must be accompanied by the registration document, unless it has been, or may have been, lost stolen or destroyed<sup>14</sup>. Where the Secretary of State believes that the particulars in the registration document issued in respect of a vehicle are inaccurate: (1) if the document has not been sent to him, he may require the registered keeper of the vehicle to send it to him; (2) whether or not he has received the document, he may correct the particulars in the register<sup>15</sup>; and (3) after correcting the particulars in the register, he must, provided that the statutory requirements<sup>16</sup> have been complied with, issue a new registration document containing the correct particulars to the registered keeper<sup>17</sup>.

Before issuing a new registration document in respect of a vehicle<sup>18</sup>, the Secretary of State may require the keeper of the vehicle to satisfy him by the production of the vehicle or other sufficient evidence that the vehicle accords with the particulars furnished when a vehicle licence<sup>19</sup> or nil licence<sup>20</sup> was last applied for in respect of it, or is the registered vehicle<sup>21</sup>. Before issuing a new registration document the Secretary of State may take actions to satisfy himself that the identity and address of the person seeking to be the registered keeper accords with the information given to him<sup>22</sup>. The Secretary of State may refuse to issue a new registration document in respect of a vehicle if he is not satisfied as to the requirements mentioned above<sup>23</sup>. Special provisions<sup>24</sup> have effect in relation to the issue of a new registration document in respect of a vehicle ('the relevant vehicle') where: (a) the relevant vehicle falls within a specified category<sup>25</sup>; and (b) either an insurer has informed the Secretary of State that it has decided to pay the value of the relevant vehicle to the owner in preference to paying for the cost of repairing it or the registration document has been surrendered<sup>26</sup> to the Secretary of State on a change of keeper<sup>27</sup>.

1 As to registration documents see PARA 531 ante.

2 For the meaning of 'registered keeper' see PARA 531 note 6 ante.

- 3 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 4 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 13(1).
- 5 Ibid reg 13(2).
- 6 For the purposes of the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742 (as amended), 'the registration document fee exemption' applies in relation to the issue of a new registration document for a vehicle if the following conditions are satisfied: (1) the vehicle has sustained damage to its bodywork; (2) the insurer of the vehicle has notified the Secretary of State that the vehicle was capable of being repaired but that the cost to the insurer of having it repaired would exceed the value of the vehicle in the condition in which it was immediately before it sustained the damage; and (3) the last registration document to be issued for the vehicle was destroyed by the insurer in accordance with reg 20(5) (see PARA 535 post): reg 3(1A) (added by SI 2004/1773). 'Insurer' means an authorised insurer as defined by the Road Traffic Act 1988 s 145 (as amended) (see PARAS 460 note 1 ante, 945 note 4 post); definition applied by the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 3(1).
- 7 Ibid reg 13(2A) (added by SI 2004/238; and amended by SI 2004/1773). The fee is £25: see the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 13(2A) (as so added; and amended by SI 2007/1018).
- 8 Ie subject to the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 15 (as amended) (see the text and notes 18-27 infra).
- 9 Ibid reg 13(3).
- 10 Ibid reg 13(4).
- 11 For the meaning of 'keeper' see PARA 525 note 2 ante.
- 12 For the meaning of 'vehicle' see PARA 519 note 2 ante.
- 13 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 14(1).
- 14 Ibid reg 14(2). Where the registration document has been, or may have been, lost, stolen or destroyed, notification under reg 14(1) must be accompanied by an application for the issue of a new registration document and, except where the registration document fee exemption applies, by a fee of £25: reg 14(2A) (added by SI 2004/238; and amended by SI 2007/1018).
- 15 For the meaning of 'register' see PARA 524 note 3 ante.
- 16 Ie the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 14(2) or reg 14(2A) (as added: see the text and note 14 supra), and subject to reg 15 (as amended) (see the text and notes 18-27 infra).
- 17 Ibid reg 14(3) (amended by SI 2004/238).
- 18 Ie under any provision of the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742 (as amended).
- 19 For the meaning of 'vehicle licence' see PARA 519 note 4 ante.
- 20 For the meaning of 'nil licence' see PARA 519 note 5 ante.
- 21 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 15(1).
- 22 Ie as mentioned in ibid reg 15(1), (1A) (as added): reg 15(1A) (added by SI 2003/3073).
- 23 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 15(2) (amended by SI 2003/3073).
- 24 See the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 15(3), Sch 3 (amended by SI 2005/2344).
- 25 Ie EEC Council Directive 70/156 (OJ L42, 23.2.1970, p 1) Annex II category M1.

26 le under the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 20(5): see PARA 535 post.

27 Ibid reg 15(3). For the purposes of reg 15(3) and Sch 3 (as amended), the return of a registration document for a vehicle registered in the NI records in accordance with reg 18(2)(b) (as substituted) (see PARA 539 post) is to be taken to be the issue of a new registration document: reg 15(4). For the meaning of 'NI records' see PARA 524 note 3 ante.

## **UPDATE**

### **532 Replacement, correction of and issue of new registration documents**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 24--SI 2002/2742 Sch 3 further amended: SI 2009/880.

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### **533. Production of vehicle for inspection before assignment of registration mark.**

Where at the request of the keeper<sup>1</sup> of a vehicle<sup>2</sup> a particular registration mark is to be assigned to it<sup>3</sup>, having previously been assigned to another vehicle, that other vehicle must be made available for inspection by the Secretary of State<sup>4</sup> at a place designated by him, and the keeper of the first mentioned vehicle must, before the registration mark is so assigned, pay to the Secretary of State a charge for the assignment<sup>5</sup>.

1 For the meaning of 'keeper' see PARA 525 note 2 ante.

2 For the meaning of 'vehicle' see PARA 519 note 2 ante.

3 The registration mark is assigned to a vehicle in accordance with the Vehicle Excise and Registration Act 1994 s 21 (as amended), s 23(1)-(3) (see PARAS 519 ante, 563 post).

4 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 11. The charge is £80: see reg 11.

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### **534. Notification of alteration to vehicles.**

Where any alteration is made to a vehicle<sup>1</sup> so as to make any of the particulars set out in the registration document<sup>2</sup> incorrect, the registered keeper<sup>3</sup> must deliver to the Secretary of State<sup>4</sup> notification of the alteration and, except where the registration document has been, or may have been, lost, stolen or destroyed, the registration document<sup>5</sup>. If the alteration makes any of the particulars shown on the vehicle licence<sup>6</sup> or nil licence<sup>7</sup> incorrect, the registered keeper must also deliver to the Secretary of State the appropriate licence, unless it is lost, stolen or destroyed<sup>8</sup>. The Secretary of State may require the registered keeper to furnish such evidence as he may reasonably require to show that the alteration has taken place<sup>9</sup>.

On receiving notification of an alteration the Secretary of State must<sup>10</sup>, if he is satisfied that the vehicle has been altered in the way notified to him: (1) record the alteration in the register<sup>11</sup>; (2) send to the registered keeper a new registration document showing the correct particulars; and (3) in a case falling where the alteration makes any of the particulars shown on the vehicle licence or nil licence incorrect, issue to the registered keeper a new vehicle licence or nil licence showing the correct particulars<sup>12</sup>.

A person who contravenes or fails to comply with the requirement to notify alterations is guilty of an offence<sup>13</sup>.

1 For the meaning of 'vehicle' see PARA 519 note 2 ante.

2 As to registration documents see PARA 531 ante.

3 For the meaning of 'registered keeper' see PARA 531 note 6 ante.

4 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 16(1) (amended by SI 2004/238). Where the registration document has been, or may have been, lost, stolen or destroyed, the notification must be accompanied by an application for the issue of a new registration document and, except where the registration document fee exemption applies, by a fee of £25: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 16(1A) (added by SI 2004/238; and amended by SI 2007/1018). As to applications for the issue of a new registration document see PARA 532 ante. As to the meaning of 'the registration document fee exemption' see PARA 532 note 6 ante.

6 For the meaning of 'vehicle licence' see PARA 519 note 4 ante.

7 For the meaning of 'nil licence' see PARA 519 note 5 ante.

8 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 16(2).

9 Ibid reg 16(3).

10 Subject to ibid reg 15 (as amended): see PARA 532 ante.

11 For the meaning of 'register' see PARA 524 note 3 ante.

12 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 16(4) (amended by SI 2004/238).

13 Vehicle Excise and Registration Act 1994 s 59(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 59(2)(a); Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 47, Sch 8 (reg 47 amended by SI 2003/2154). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

1663)/5. VEHICLE REGISTRATION/(3) LICENSING AND REGISTRATION/535. Change of keeper: general provisions.

### **535. Change of keeper: general provisions.**

On a change in the keeper<sup>1</sup> of a vehicle<sup>2</sup>, any current vehicle licence<sup>3</sup> for the vehicle may be delivered to the new keeper<sup>4</sup>. Specific statutory provisions as to change of keeper<sup>5</sup> apply, except where a vehicle has sustained damage to its bodywork such that the cost of commercial repair would exceed the value of the vehicle when repaired and either the keeper of the vehicle does not have the benefit of a policy of insurance or cover note which covers the damage or the keeper is an insurer, in which case applies the keeper must forthwith surrender the registration document to the Secretary of State<sup>6</sup> or, if an insurer<sup>7</sup>, destroy it<sup>8</sup>.

1 For the meaning of 'keeper' see PARA 525 note 2 ante.

2 For the meaning of 'vehicle' see PARA 519 note 2 ante.

3 For the meaning of 'vehicle licence' see PARA 519 note 4 ante.

4 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 20(2).

5 *le ibid* regs 22-24 (as amended) (see PARA 536 et seq post), which have effect subject to the provisions of reg 20 (reg 20(1)) and, so far as they provide for the issue of a new registration document, reg 15 (as amended) (see PARA 532 ante) (reg 20(3)). As to registration documents see PARA 531 ante.

6 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 For the meaning of 'insurer' see PARA 532 note 6 ante.

8 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 20(4), (5).

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### **536. Change of keeper where new keeper is not a vehicle trader.**

Where (1) there is a change in the keeper<sup>1</sup> of a vehicle<sup>2</sup>; (2) a vehicle registration document has been issued in respect of the vehicle<sup>3</sup>; and (3) the new keeper is not a vehicle trader<sup>4</sup>, the registered keeper<sup>5</sup> of the vehicle must<sup>6</sup>:

966 (a) if the registration document issued in respect of the vehicle is in his possession, deliver to the new keeper that part of the document marked as the part which is to be given to the new keeper; and

967 (b) forthwith deliver to the Secretary of State<sup>7</sup> on the remainder of the registration document, or otherwise in writing, the following information:

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88. (i) the name and address of the new keeper;

89. (ii) the date on which the vehicle was sold or transferred to the new keeper;

90. (iii) a declaration signed by the registered keeper that the details given in accordance with head (i) above are correct to the best of his knowledge and that the details given in accordance with head (ii) above are correct; and

91. (iv) a declaration signed by the new keeper that the details given in accordance with heads (i) and (ii) above are correct<sup>8</sup>.
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Where all parts of the registration document have been, or may have been, lost, stolen or destroyed, the new keeper must submit an application to the Secretary of State for the issue of a new registration document and, except where the registration document fee exemption<sup>9</sup> applies, that application must be accompanied by a fee<sup>10</sup>. Where the new keeper can produce to the Secretary of State that part of the document marked as the part which is to be given to the new keeper, the new keeper may submit an application to the Secretary of State for the issue of a new registration document accompanied by that part<sup>11</sup>.

On receiving notification of a change in keeper in accordance with the above provisions, the Secretary of State must<sup>12</sup> record the change in the register<sup>13</sup> and issue to the new registered keeper a new registration document<sup>14</sup>.

A person who contravenes or fails to comply with the requirement to notify a change of keeper is guilty of an offence<sup>15</sup>.

1 For the meaning of 'keeper' see PARA 525 note 2 ante.

2 For the meaning of 'vehicle' see PARA 519 note 2 ante.

3 As to the issue of vehicle registration documents see PARA 531 ante.

4 In the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, regs 22-24 (as amended), 'vehicle trader' means any person who: (1) is the holder of a trade licence; (2) carries on business as a dealer in motor vehicles; (3) carries on business as an auctioneer of motor vehicles; (4) carries on business as a dismantler of motor vehicles; or (5) in relation to a particular vehicle, is: (a) a finance company which has acquired that vehicle under an order for repossession; or (b) an insurer which has acquired that vehicle in satisfaction of a total loss claim: regs 3(2), 20(6). For the meaning of 'trade licence' see PARA 521 note 3 ante; and for the meaning of 'insurer' see PARA 532 note 6 ante.

5 For the meaning of 'registered keeper' see PARA 531 note 6 ante.

6 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 22(1), (2) (reg 22(1) amended by SI 2003/3073).

7 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

8 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 22(2)(a), (b) (amended by SI 2003/2154).

9 As to the meaning of 'the registration document fee exemption' see PARA 532 note 6 ante.

10 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 22(3) (added by SI 2004/238; and amended by SI 2007/1018). The fee is £25: see the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 22(3) (as so added and amended).

11 Ibid reg 22(4) (added by SI 2004/238).

12 Ie subject to the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 15 (as amended): see PARA 532 ante.

13 For the meaning of 'register' see PARA 524 note 3 ante.

14 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 22(5) (added by SI 2004/238).

15 Vehicle Excise and Registration Act 1994 s 59(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 59(2)(a); Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 47, Sch 8 (reg 47 amended by SI 2003/2154). As to the



standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

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### **537. Change of keeper where new keeper is a vehicle trader.**

Where (1) there is a change in the keeper<sup>1</sup> of a vehicle<sup>2</sup>; (2) the person disposing of the vehicle is the registered keeper<sup>3</sup>; (3) a vehicle registration document<sup>4</sup> has been issued in respect of the vehicle; and (4) the new keeper is a vehicle trader<sup>5</sup>, the registered keeper must forthwith notify the Secretary of State<sup>6</sup>, on that part of the registration document which relates to the transfer to a vehicle trader, or otherwise in writing, of the following<sup>7</sup>:

- 968 (a) the name and address of the vehicle trader;
- 969 (b) the date on which the vehicle was transferred to the vehicle trader;
- 970 (c) a declaration signed by the registered keeper that he transferred the vehicle to the vehicle trader on the date specified in accordance with head (b) above; and
- 971 (d) a declaration signed by the vehicle trader that the vehicle was transferred to him on the date specified in accordance with head (b) above<sup>8</sup>.

If the registration document issued in respect of the vehicle is in his possession, the registered keeper must deliver to the vehicle trader those parts of it not required to be sent to the Secretary of State under the above provisions<sup>9</sup>.

A person who contravenes or fails to comply with the above notification requirements is guilty of an offence<sup>10</sup>.

1 For the meaning of 'keeper' see PARA 525 note 2 ante.

2 For the meaning of 'vehicle' see PARA 519 note 2 ante.

3 For the meaning of 'registered keeper' see PARA 531 note 6 ante.

4 As to the issue of vehicle registration documents see PARA 531 ante.

5 For the meaning of 'vehicle trader' see PARA 536 note 4 ante.

6 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 23(1), (2) (reg 23(1) amended by SI 2003/3073).

8 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 23(2)(a)-(d). As to the obligations of the vehicle trader on change of keeper see PARA 538 post.

9 Ibid reg 23(3).

10 Vehicle Excise and Registration Act 1994 s 59(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 59(2)(a); Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 47, Sch 8 (reg 47 amended by SI 2003/2154). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

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### **538. Obligations of vehicle traders on change of keeper.**

Where a vehicle trader<sup>1</sup> becomes the keeper<sup>2</sup> of a vehicle<sup>3</sup> in respect of which a vehicle registration document has been issued<sup>4</sup>, the vehicle trader must, on or before the appropriate date<sup>5</sup> and on that part of the registration document which relates to a change of keeper, notify the Secretary of State<sup>6</sup> as to the transfer of the vehicle to him and the date on which he became the keeper of the vehicle<sup>7</sup>. Where the registration document has been, or may have been, lost, stolen or destroyed, notification must be effected by an application to the Secretary of State for the issue of a new registration document and, except where the registration document fee exemption<sup>8</sup> applies, that application must be accompanied by a fee<sup>9</sup>.

Where vehicle trader becomes the keeper of a vehicle in respect of which a vehicle registration document has been issued and the vehicle trader transfers the vehicle to another vehicle trader before the expiration of the three months period of grace<sup>10</sup>, he must give to the new keeper any part of the registration document in his possession<sup>11</sup>. In any other case, where the vehicle trader transfers the vehicle to another person, he must:

972 (1) forthwith deliver to the Secretary of State, on that part of the registration document which relates to the change of keeper or otherwise in writing, the following:

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- 92. (a) the name and address of the new keeper;
- 93. (b) the date on which the vehicle was transferred to the new keeper;
- 94. (c) a declaration signed by the vehicle trader that the details given in accordance with head (a) above are correct to the best of his knowledge and that the details given in accordance with head (b) above are correct; and
- 95. (d) a declaration signed by the new keeper that the details given in accordance with heads (a) and (b) above are correct; and

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973 (2) if the registration document issued in respect of the vehicle is in his possession, deliver to the new keeper those parts of it not required to be sent to the Secretary of State under head (1) above<sup>12</sup>.

Where all parts of the registration document have been, or may have been, lost, stolen or destroyed, the new keeper must submit an application to the Secretary of State for the issue of a new registration document and, except where the registration document fee exemption applies, that application must be accompanied by a fee<sup>13</sup>. Where the new keeper can produce to the Secretary of State that part of the document marked as the part which is to be given to the new keeper, the new keeper may submit an application to the Secretary of State for the issue of a new registration document accompanied by that part<sup>14</sup>.

On receiving notification of a change in keeper in accordance with the above provisions<sup>15</sup>, the Secretary of State must<sup>16</sup> record the change in the register<sup>17</sup> and issue to the new registered keeper a new registration document<sup>18</sup>.

A person who contravenes or fails to comply with the above notification requirement is guilty of an offence<sup>19</sup>.

- 1 For the meaning of 'vehicle trader' see PARA 536 note 4 ante.
- 2 For the meaning of 'keeper' see PARA 525 note 2 ante.
- 3 For the meaning of 'vehicle' see PARA 519 note 2 ante.
- 4 As to the issue of vehicle registration documents see PARA 531 ante.
- 5 For these purposes, the appropriate date is whichever is the earliest of: (1) the day on which the vehicle trader first uses, or permits the use of, the vehicle on a public road otherwise than under a trade licence; (2) the day on which he first keeps the vehicle on such a road; (3) the day immediately following the expiration of the period of three months ('the three months period of grace') beginning with the day after the date on which the vehicle was last kept by a person who was not a vehicle trader: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 24(3). For the meaning of 'public road' see PARA 519 note 5 ante.
- 6 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 7 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 24(1) (amended by SI 2003/3073); Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 24(2) (amended by SI 2004/238).
- 8 As to the meaning of 'the registration document fee exemption' see PARA 532 note 6 ante.
- 9 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 24(2A) (added by SI 2004/238; and amended by SI 2007/1018). The fee is £25: see the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 24(2A) (as so added and amended).
- 10 See note 5 head (3) supra.
- 11 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 24(4).
- 12 Ibid reg 24(5) (amended by SI 2003/2154).
- 13 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 24(6) (added by SI 2004/238; and amended by SI 2007/1018). The fee is £25: see the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 24(6) (as so added and amended).
- 14 Ibid reg 24(7) (added by SI 2004/238). As to applications for new registration documents see PARA 532 ante.
- 15 I.e. the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 24(2), (2A), (5), (6) or (7) (reg 24(2), (5) as amended; reg 24(2A), (6) as added and amended; and reg 24(7) as added).
- 16 I.e. subject to ibid reg 15 (as amended): see PARA 532 ante.
- 17 For the meaning of 'register' see PARA 524 note 3 ante.
- 18 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 24(8) (added by SI 2004/238).
- 19 Vehicle Excise and Registration Act 1994 s 59(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 59(2)(a); Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 47, Sch 8 (reg 47 amended by SI 2003/2154). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

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### **539. Notification of change of address of keeper.**

If the registered keeper<sup>1</sup> of a vehicle<sup>2</sup> changes his name or his address, he must forthwith notify the new name or address to the Secretary of State<sup>3</sup> and, except where the registration document<sup>4</sup> has been, or may have been, lost, stolen or destroyed, must deliver the registration document to him<sup>5</sup>. On receiving notification in accordance with these provisions the Secretary of State must<sup>6</sup> record the alteration in the register<sup>7</sup> and send to the registered keeper a new registration document showing the new name or address<sup>8</sup>.

A person who contravenes or fails to comply with the above notification requirement is guilty of an offence<sup>9</sup>.

1 For the meaning of 'registered keeper' see PARA 531 note 6 ante.

2 For the meaning of 'vehicle' see PARA 519 note 2 ante.

3 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 As to registration documents see PARA 531 ante.

5 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 18(1) (amended by SI 2004/238). Where the registration document has been, or may have been, lost, stolen or destroyed, the notification must be accompanied by an application for the issue of a new registration document and, except where the registration document fee exemption applies, by a fee of £25: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 18(1A) (added by SI 2004/238; and amended by SI 2007/1018). As to applications for the issue of a new registration document see PARA 532 ante. As to the meaning of 'the registration document fee exemption' see PARA 532 note 6 ante. As to the application of the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 18 (as amended) to vehicles belonging to the Crown see PARA 546 post.

6 See subject to ibid reg 15 (as amended): see PARA 532 ante.

7 For the meaning of 'register' see PARA 524 note 3 ante.

8 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 18(2) (amended by SI 2003/3073; SI 2004/238).

9 Vehicle Excise and Registration Act 1994 s 59(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 59(2)(a); Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 47, Sch 8 (reg 47 amended by SI 2003/2154). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

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#### **540. Notification of permanent export.**

Where a vehicle<sup>1</sup> is sent permanently out of Great Britain<sup>2</sup> or Northern Ireland, the registered keeper<sup>3</sup> must immediately notify the Secretary of State<sup>4</sup> of the fact<sup>5</sup>.

A person who contravenes or fails to comply with the above requirement is guilty of an offence<sup>6</sup>.

1 For the meaning of 'vehicle' see PARA 519 note 2 ante.

2 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

3 For the meaning of 'registered keeper' see PARA 531 note 6 ante.

4 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 17 (amended by SI 2003/2635; SI 2004/3298).

6 Vehicle Excise and Registration Act 1994 s 59(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 59(2)(a); Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 47, Sch 8 (reg 47 amended by SI 2003/2154). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

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#### **541. Disclosure of registration and licensing particulars and exchange of information.**

The Secretary of State<sup>1</sup> may make any particulars contained in the register<sup>2</sup> available for use:

- 974 (1) by a local authority<sup>3</sup> for any purpose connected with the investigation of an offence or of a decriminalised parking contravention<sup>4</sup>;
- 975 (2) by a chief officer of police<sup>5</sup>;
- 976 (3) by a member of the Police Service of Northern Ireland<sup>6</sup>;
- 977 (4) by an officer of Revenue and Customs<sup>7</sup>; or
- 978 (5) on payment of a fee of such amount as the Secretary of State considers to be reasonable in the circumstances of the case, by any person who can show to the satisfaction of the Secretary of State that he has reasonable cause for wanting the particulars to be made available to him<sup>8</sup>.

The Secretary of State may disclose such information, contained in the register, that he is required to disclose to comply with the relevant European legislation<sup>9</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'register' see PARA 524 note 3 ante.

3 For the purposes of the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742 (as amended), 'local authority' means, in relation to England, a county council, district council, London borough council, the Council of the Isles of Scilly, or the Common Council of the City of London; and, in relation to Wales, a county council or county borough council: reg 3(1). As to local authorities in England see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

4 Ibid reg 27(1)(a). For the purposes of reg 27, 'a decriminalised parking contravention' means any act or omission which would have been an offence but for any of the following provisions (all repealed in relation to England as from 31 March 2008: see the Traffic Management Act 2004 s 98, Sch 12 Pt 1; and the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053, arts 1, 3): (1) the Road Traffic Act 1991 s 65 (contravention of certain orders relating to parking places in London not to be a criminal offence); (2) the Road Traffic Act 1991 s 76(3) (as amended) (see PARA 822 post) (provisions creating certain stationary vehicle offences to cease to apply in special parking areas in London); (3)

the Road Traffic Act 1991 s 26, Sch 3 para 1(4) (as amended) (see PARA 820 post) (contravention of certain orders relating to parking places outside London not to be a criminal offence); and (4) the Road Traffic Act 1991 Sch 3 para 2(4) (as amended) (see PARA 821 post) (provisions creating certain stationary vehicle offences to cease to apply in special parking areas outside London): Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 27(3)(a).

5 Ibid reg 27(1)(b). As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

6 Ibid reg 27(1)(c).

7 Ibid reg 27(1)(d) (amended by SI 2003/2154). As to officers of Revenue and Customs see the Customs and Excise Management Act 1979 ss 1(1), 8(2); and the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 27(3)(b) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2), (7)). See further CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 903.

8 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 27(1)(e), (2).

9 Ibid reg 27A (added by SI 2003/3073; and amended by SI 2004/3298). The relevant European legislation is EC Council Directive 1999/37 (OJ L138, 1.6.1999, p 57) art 9: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 3(1) (amended by SI 2004/3298); Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 27A (as so added and amended).

## UPDATE

### **541 Disclosure of registration and licensing particulars and exchange of information**

TEXT AND NOTES 3, 4--SI 2002/2742 reg 27(1)(a) substituted, reg 27(3)(a) amended: SI 2008/2849.

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### **542. Vehicles to which the End-of-Life Vehicles Directive applies.**

Where a vehicle<sup>1</sup> to which these provisions apply<sup>2</sup> is transferred to an authorised treatment facility<sup>3</sup>:

- 979 (1) if that facility is in the United Kingdom<sup>4</sup>, the owner or operator thereof must notify the Secretary of State<sup>5</sup> of the issue of a certificate of destruction<sup>6</sup> and at the same time must surrender the registration document<sup>7</sup> to him, except where the registration document has been lost, stolen or destroyed; and
- 980 (2) if that facility is in an EEA state<sup>8</sup> other than the United Kingdom, the registered keeper<sup>9</sup> of the vehicle must notify the Secretary of State of the issue in that other EEA state of a certificate of destruction and at the same time the registered keeper must surrender the registration document to him except where the registration document has been lost, stolen or destroyed<sup>10</sup>.

Where the Secretary of State has been notified of the issue of a certificate of destruction he must not as respects the vehicle to which it relates: (a) record in the GB records or, in the case of a vehicle registered in Northern Ireland, in the NI records any further change of keeper; or (b) accept the required declaration<sup>11</sup> as to keeping a vehicle off-road<sup>12</sup>.

A person who contravenes or fails to comply with the above requirements to notify the Secretary of State of the issue of a certificate of destruction is guilty of an offence<sup>13</sup>.

1 For the meaning of 'vehicle' see PARA 519 note 2 ante.

2 The Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 17A (as added) applies to a vehicle to which European Parliament and Council Directive 2000/53 (OJ L 269, 21.10.2000, p 34) on end-of-life vehicles applies and which is: (1) registered in the GB or NI records; or (2) designed or adapted for use on a road and would be registered but for the fact that it falls within the exemption in the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 29(2) (Crown vehicles: see PARA 546 post): reg 17A(1) (reg 17A added by SI 2003/2635). For the meanings of 'GB records' and 'NI records' see PARA 524 note 3 ante. As to regulations on end-of-life vehicles see PARAS 359-362 ante.

3 For the meaning of 'authorised treatment facility' see PARA 360 note 14 ante; definition applied by the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 17A(4) (as added: see note 2 supra).

4 For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

5 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 Pursuant to the End-of-Life Vehicles Regulations 2003, SI 2003/2635, reg 27: see PARA 361 ante. As to the meaning of 'certificate of destruction' see PARA 361 note 4 ante; definition applied by the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 17A(4) (as added: see note 2 supra).

7 As to registration documents see PARA 531 ante.

8 For the meaning of 'EEA state' see PARA 361 note 10 ante; definition applied by the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 17A(4) (as added: see note 2 supra).

9 For the meaning of 'registered keeper' see PARA 531 note 6 ante.

10 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 17A(2) (as added: see note 2 supra).

11 For the meaning of 'required declaration' see PARA 525 note 2 ante.

12 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 17A(3) (as added: see note 2 supra).

13 Vehicle Excise and Registration Act 1994 s 59(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 59(2)(a); Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 47, Sch 8 (reg 47 amended by SI 2003/2154). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

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### **543. Offence of using an incorrectly registered vehicle.**

A person is guilty of an offence if, on a public road<sup>1</sup> or in a public place, he uses a vehicle<sup>2</sup> to which the following provisions apply and in respect of which<sup>3</sup>: (1) the name and address of the keeper<sup>4</sup> are not recorded in the register<sup>5</sup>; or (2) any of the particulars recorded in the register are incorrect<sup>6</sup>. These provisions apply to a vehicle<sup>7</sup> if: (a) vehicle excise duty is chargeable in respect of it<sup>8</sup>; or (b) it is an exempt vehicle<sup>9</sup> in respect of which regulations<sup>10</sup> require a nil licence<sup>11</sup> to be in force<sup>12</sup>.

It is a defence for a person charged with such an offence to show (as the case may be)<sup>13</sup>: (i) that there was no reasonable opportunity, before the material time, to furnish the name and address of the keeper of the vehicle<sup>14</sup>; or (ii) that there was no reasonable opportunity, before the material time, to furnish particulars correcting the incorrect particulars<sup>15</sup>. It is also a defence for a person charged with such an offence to show<sup>16</sup>: (A) that he had reasonable grounds for believing, or that it was reasonable for him to expect, that the name and address of the keeper or the other particulars of registration (as the case may be) were correctly recorded in the register<sup>17</sup>; or (B) that any exception prescribed in regulations is met<sup>18</sup>.

1 For the meaning of 'public road' see PARA 519 note 5 ante.

2 For the meaning of 'vehicle' see PARA 519 note 2 ante.

3 Vehicle Excise and Registration Act 1994 s 43C(1) (s 43C added by the Serious Organised Crime and Police Act 2005 s 150(1)).

4 For these purposes, 'keeper', in relation to a vehicle, means the person by whom it is kept at the material time: Vehicle Excise and Registration Act 1994 s 43C(7) (as added: see note 3 supra).

5 Ibid s 43C(1)(a) (as added: see note 3 supra). 'The register' means the register kept by the Secretary of State under Pt II (ss 21-28) (as amended): s 43C(7) (as so added). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 Ibid s 43C(1)(b) (as added: see note 3 supra). A person guilty of an offence under s 43C (as added) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 43C(5) (as so added). As to the standard scale see PARA 230 note 3 ante. An offence under s 43C (as added) is a fixed penalty offence: see PARA 1093 post. As to fixed penalties see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

7 Ibid s 43C(2) (as added: see note 3 supra).

8 Ibid s 43C(2)(a) (as added: see note 3 supra). As to the charging of excise duty see PARA 519 ante.

9 For the meaning of 'exempt vehicle' see PARA 519 note 5 ante.

10 Ie regulations under the Vehicle Excise and Registration Act 1994.

11 For the meaning of 'nil licence' see PARA 519 note 5 ante.

12 Vehicle Excise and Registration Act 1994 s 43C(2)(b) (as added: see note 3 supra).

13 Ibid s 43C(3) (as added: see note 3 supra).

14 Ibid s 43C(3)(a) (as added: see note 3 supra).

15 Ibid s 43C(3)(b) (as added: see note 3 supra).

16 Ibid s 43C(4) (as added: see note 3 supra).

17 Ibid s 43C(4)(a) (as added: see note 3 supra).

18 Ibid s 43C(4)(b) (as added: see note 3 supra). The Secretary of State may make regulations prescribing, varying or revoking exceptions for the purposes of s 43C(4)(b) (as added): s 43C(6) (as so added). At the date at which this volume states the law no such regulations had been made.

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#### **544. Sale of information derived from particulars contained in the register.**

The Secretary of State<sup>1</sup> may make regulations providing for the sale of information derived from particulars contained in the register<sup>2</sup> to such persons as the Secretary of State thinks fit and for such price and on such other terms, and subject to such restrictions, as he thinks fit, if the information does not identify any person or contain anything enabling any person to be identified<sup>3</sup>.

A person who contravenes or fails to comply with any such regulations is guilty of an offence<sup>4</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'register' see PARA 524 note 3 ante.

3 Vehicle Excise and Registration Act 1994 s 22(1A) (added by the Finance Act 1995 s 19, Sch 4 para 34(3)). In exercise of this power, the Secretary of State has made the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 28.

4 Vehicle Excise and Registration Act 1994 s 59(1). A person guilty of an offence under this provision is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 59(2). As to the standard scale see PARA 230 note 3 ante. The Secretary of State may, if he sees fit, compound any proceedings for an offence under the relevant provisions: s 59(6)(b) (added by the Finance Act 1996 s 23, Sch 2 para 15).

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### **(4) EXHIBITION OF LICENCES**

#### **545. Exhibition of vehicle and nil licences.**

It is a statutory requirement that a vehicle licence<sup>1</sup> or nil licence<sup>2</sup> which is for the time being in force should be fixed to and exhibited on a vehicle<sup>3</sup> used or kept on a public road<sup>4</sup> in the manner prescribed by regulations made by the Secretary of State<sup>5</sup>. However, when a vehicle licence or nil licence has been delivered to the Secretary of State with an application for a replacement licence<sup>6</sup>, no licence need be fixed to and exhibited on the vehicle to which the licence relates until the replacement licence is obtained<sup>7</sup>. In all other cases, a vehicle licence or nil licence in force for a vehicle is to be fixed to and exhibited on the vehicle in accordance with the following provisions<sup>8</sup>.

Each such licence must be fixed to the vehicle in a holder sufficient to protect the licence from any effects of the weather to which it would otherwise be exposed<sup>9</sup>. The licence must be exhibited on the vehicle:

- 981 (1) in the case of an invalid vehicle<sup>10</sup>, tricycle<sup>11</sup> or bicycle<sup>12</sup>, other than a case specified in head (2) or head (3) below, on the near side of the vehicle so that all the particulars on it are clearly visible in daylight from the near side of the road<sup>13</sup>;
- 982 (2) in the case of a bicycle drawing a side-car or to which a side-car is attached, on the near side of the handlebars of the bicycle or on the near side of the side-car so that all the particulars on it are clearly visible in daylight from the near side of the road<sup>14</sup>;

- 983 (3) in the case of any vehicle fitted with a glass windscreen in front of the driver extending across the vehicle to its near side, on or adjacent to the near side of the windscreen, so that all particulars on it are clearly visible in daylight from the near side of the road<sup>15</sup>;
- 984 (4) in the case of any other vehicle, if the vehicle is fitted with a driver's cab containing a near side window, on that window, or on the near side of the vehicle in front of the driver's seat and at the specified distance above the surface of the road<sup>16</sup>, so that in each case all the particulars are clearly visible in daylight from the near side of the road<sup>17</sup>.

No person may exhibit on a vehicle which is kept or used on a public road anything which is intended to be, or which could reasonably be, mistaken for a vehicle licence, a nil licence or a trade licence<sup>18</sup> which is for the time being in force for, or in respect of, the vehicle<sup>19</sup>.

1 For the meaning of 'vehicle licence' see PARA 519 note 4 ante.

2 For the meaning of 'nil licence' see PARA 519 note 5 ante.

3 For the meaning of 'vehicle' see PARA 519 note 2 ante.

4 For the meaning of 'public road' see PARA 519 note 5 ante.

5 See the Vehicle Excise and Registration Act 1994 s 33 (as amended); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 781. As to the manner in which any vehicle licence or nil licence in force for a vehicle is to be fixed to and exhibited on the vehicle in accordance with the provisions of s 33(1) or s 33(1A) (as added), when it is used or kept on a public road, see the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 6. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 See PARA 530 ante.

7 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 6(1).

8 See *ibid* reg 6(2).

9 *Ibid* reg 6(3).

10 'Invalid vehicle' means a vehicle (including a cycle with an attachment for propelling it by mechanical power) which does not exceed 508 kg in weight unladen and is adapted and used or kept on a public road for an invalid: reg 3(1).

11 'Tricycle' means a mechanically propelled tricycle (including a motor scooter and a tricycle with an attachment for propelling it by mechanical power) not exceeding 450 kg in weight unladen and not being a pedestrian controlled vehicle as defined by *ibid* reg 4(3)(b): reg 3(1). 'Pedestrian controlled vehicle' means a vehicle with three or more wheels which does not exceed 450 kg in weight unladen and which is neither constructed nor adapted for use nor used for the carriage of a driver or passenger: reg 4(3)(b).

12 'Bicycle' means a mechanically propelled bicycle (including a motor scooter, a bicycle with an attachment for propelling it by mechanical power and a mechanically propelled bicycle used for drawing a trailer or sidecar) not exceeding 450 kg in weight unladen: *ibid* reg 3(1).

13 *Ibid* reg 6(4)(a), (5).

14 *Ibid* reg 6(4)(a), (5).

15 *Ibid* reg 6(4)(a), (5).

16 ie not less than 760 mm and not more than 1.8 metres above the surface of the road: *ibid* reg 6(4)(d)(ii).

17 *Ibid* reg 6(4)(d), (5).

18 For the meaning of 'trade licence' see PARA 521 note 3 ante.

19 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 7.

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## **(5) VEHICLES EXEMPT FROM LICENCE DUTY**

### **(i) Vehicles belonging to the Crown**

#### **546. Application of registration and licensing provisions to the Crown.**

Nothing in the provisions relating to vehicle registration and licensing<sup>1</sup> applies to a vehicle<sup>2</sup> kept by the Crown which is used or appropriated for use for naval, military or air force purposes<sup>3</sup>, and only specified provisions apply to other Crown vehicles<sup>4</sup>.

Where a government department is the registered keeper<sup>5</sup> of a vehicle, the following provisions apply<sup>6</sup>:

- 985 (1) the provisions as to: (a) issue of a replacement registration document<sup>7</sup>; (b) correction of a registration document<sup>8</sup>; (c) issue of a new registration document<sup>9</sup>; (d) notification of an alteration to a vehicle<sup>10</sup>; and (e) notification of a change of the keeper's name or address<sup>11</sup>;
- 986 (2) on a change in the keeper of a vehicle, the provisions as to: (a) change of keeper generally<sup>12</sup>; (b) change of keeper where the registration document is issued in Great Britain on or after 24 March 1997 where the new keeper is not a vehicle trader<sup>13</sup>; (c) the obligations of the registered keeper where the vehicle registration document is issued in Great Britain on or after 24 March 1997 and the new keeper is a vehicle trader<sup>14</sup>; and (d) the obligations of vehicle traders where the registration document is issued in Great Britain on or after 24 March 1997<sup>15</sup>;
- 987 (3) on a change in the keeper of a vehicle from one government department to another, the provisions as to: (a) change of keeper generally<sup>16</sup>; and (b) change of keeper where the registration document is issued in Great Britain on or after 24 March 1997 where the new keeper is not a vehicle trader<sup>17</sup>.

1 Ie the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742 (as amended).

2 For the meaning of 'vehicle' see PARA 519 note 2 ante.

3 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 29(2). See generally ARMED FORCES.

4 Ibid reg 29(1). As to registration of Crown vehicles see PARA 547 post.

6 For the meaning of 'registered keeper' see PARA 531 note 6 ante.

6 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 30(5).

7 Ie ibid reg 13 (as amended): see PARA 532 ante.

8 Ie ibid reg 14 (as amended): see PARA 532 ante.

9 Ie ibid reg 15 (as amended): see PARA 532 ante.

10 Ie ibid reg 16 (as amended): see PARA 534 ante.

- 11    le ibid reg 18 (as amended): see PARA 539 ante.
- 12    le ibid reg 20: see PARA 535 ante.
- 13    le ibid reg 22 (as amended): see PARA 536 ante.
- 14    le ibid reg 23 (as amended): see PARA 537 ante.
- 15    le ibid reg 24 (as amended): see PARA 538 ante.
- 16    le ibid reg 20: see PARA 535 ante.
- 17    le ibid reg 22 (as amended): see PARA 536 ante.

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#### **547. Registration of Crown vehicles.**

A government department which uses or keeps or, intends to use or keep, a vehicle<sup>1</sup> on a public road<sup>2</sup> must make to the Secretary of State<sup>3</sup> such declaration and furnish him with such particulars as would be required<sup>4</sup> if the department desired to take out a vehicle licence<sup>5</sup> for the vehicle, and make to the Secretary of State a declaration that the vehicle is only to be used for the purposes of the Crown<sup>6</sup>. Upon receipt of the declaration and particulars the Secretary of State must: (1) register the vehicle in the name of the government department; (2) if there is no registration mark for the time being assigned to the vehicle, assign a registration mark to it; and (3) issue a registration document<sup>7</sup> for the vehicle<sup>8</sup>. No vehicle licence or nil licence<sup>9</sup> is to be issued by the Secretary of State in respect of the vehicle so registered<sup>10</sup>.

1    For the meaning of 'vehicle' see PARA 519 note 2 ante.

2    For the meaning of 'public road' see PARA 519 note 5 ante.

3    As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4    le by the Vehicle Excise and Registration Act 1994 s 7 (as amended): see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 761.

5    For the meaning of 'vehicle licence' see PARA 519 note 4 ante.

6    Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 30(1).

7    As to registration documents see PARA 531 ante.

8    Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 30(2). Any registration mark so assigned is deemed to be assigned under the Vehicle Excise and Registration Act 1994 s 23 (as amended) for the purposes of s 23(2) (see PARA 563 post) and of the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742 (as amended): reg 30(3).

9    For the meaning of 'nil licence' see PARA 519 note 5 ante.

10   Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 30(4).

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#### **548. Certificates of Crown exemption.**

For the purposes of identification, a certificate of Crown exemption must be displayed on every vehicle<sup>1</sup> belonging to the Crown which is used or kept on a public road<sup>2</sup> and which is not used or appropriated for use for naval, military or air force purposes<sup>3</sup>. A certificate of Crown exemption is a certificate marked with the registration mark of the vehicle to which it relates, stating that the vehicle is exempt from vehicle excise duty as a Crown vehicle and signed by a duly authorised officer of the government department by which the vehicle is kept<sup>4</sup>. The provisions relating to the exhibition of vehicle and nil licences<sup>5</sup> apply as if references to a vehicle licence included a reference to a certificate of Crown exemption<sup>6</sup>.

1 For the meaning of 'vehicle' see PARA 519 note 2 ante.

2 For the meaning of 'public road' see PARA 519 note 5 ante.

3 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, regs 29(2), 31(1).

4 Ibid reg 31(2).

5 Ibid reg 31(3) refers to 'Regulation 7 (exhibition of vehicle and nil licences)'. It is submitted that the reference to reg 7 (which deals with the prohibition against exhibiting anything resembling a vehicle, trade or nil licence) should be a reference to reg 6 (see PARA 545 ante), to the equivalent of which the predecessor regulation referred. For the meaning of 'vehicle licence' see PARA 519 note 4 ante; and for the meaning of 'nil licence' see PARA 519 note 5 ante.

6 Ibid reg 31(3).

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### **(ii) Other Exempt Vehicles**

#### **549. Other exempt vehicles.**

Nothing in the provisions relating to vehicle registration and licensing<sup>1</sup> applies to a vehicle<sup>2</sup> which is an electrically assisted pedal cycle<sup>3</sup> or a pedestrian controlled vehicle<sup>4</sup>.

Subject to the provisions relating to vehicle registration and licensing<sup>5</sup>, those provisions apply to exempt vehicles<sup>6</sup> so far as they are capable of being applied to such vehicles<sup>7</sup>.

Vehicles imported into Great Britain<sup>8</sup> by members of foreign armed forces and certain other persons are also exempt from vehicle excise duty<sup>9</sup>.

1 I.e. the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, regs 5-47, Schs 1-8 (as amended).

2 For the meaning of 'vehicle' see PARA 519 note 2 ante.

3 'Electrically assisted pedal cycle' means a vehicle which, by virtue of the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 4(1), is an electrically assisted pedal cycle for the purposes of the Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 2A (as added) (electrically assisted pedal cycles exempt vehicles if of a class complying with prescribed requirements): Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 4(3)(a). The requirements specified in the Electrically Assisted Pedal Cycles Regulations 1983, SI 1983/1168, reg 4 are prescribed as requirements for those purposes: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 4(1).

4 Ibid reg 4(2). For the meaning of 'pedestrian controlled vehicle' see PARA 545 note 11 ante.

5 Ie the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742 (as amended).

6 For the meaning of 'exempt vehicle' see PARA 519 note 5 ante. For the meaning of 'vehicle' see PARA 519 note 2 ante. As to exempt vehicles see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 740 et seq.

7 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 32.

8 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

9 See the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 34, Sch 5 (as amended); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 758.

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### **(iii) Nil Licences**

#### **550. Nil licences.**

A nil licence<sup>1</sup> is required to be in force in respect of a nil licensable vehicle<sup>2</sup> which is used or kept on a public road<sup>3</sup>. A nil licence must be granted for a period of 12 months beginning with the first day of the month in which the application for the licence is received by the Secretary of State<sup>4</sup> and must be in the same form as a vehicle licence<sup>5</sup> with the word 'NIL' marked in the space provided for indicating the amount of vehicle excise duty payable<sup>6</sup>.

The keeper<sup>7</sup> of a nil licensable vehicle may apply to the Secretary of State for a nil licence by making to him such a declaration and furnishing him with such particulars and such documentary or other evidence as might be specified<sup>8</sup> if the keeper desired to take out a vehicle licence for the vehicle<sup>9</sup>. The Secretary of State may accept a declaration given, and particulars furnished, orally by telephone<sup>10</sup>.

In the case of a vehicle which is an exempt vehicle by virtue of being used, or kept for use, by or for the purposes of a disabled person meeting specified conditions<sup>11</sup>, the Secretary of State must require the keeper to furnish him with a certificate<sup>12</sup> that the relevant statutory provision<sup>13</sup> applies, unless the Secretary of State satisfies himself by other means that one of those provisions applies<sup>14</sup>.

The requirements as to declarations and certificates<sup>15</sup> do not apply where the person applying for a nil licence agrees to comply with such conditions as may be specified in relation to him by the Secretary of State<sup>16</sup>.

If, following an application made in accordance with the above provisions, the Secretary of State is satisfied that a vehicle is a nil licensable vehicle, he must issue a nil licence to the keeper of the vehicle<sup>17</sup>. If at any time vehicle excise duty becomes chargeable<sup>18</sup> in respect of a vehicle which immediately before that time was a nil licensable vehicle, the keeper of the

vehicle must forthwith return to the Secretary of State any nil licence issued in respect of the vehicle and any certificate obtained by him<sup>19</sup> in relation to the vehicle<sup>20</sup>.

1 For the meaning of 'nil licence' see PARA 519 note 5 ante.

2 'Nil licensable vehicle' means a vehicle which is an exempt vehicle otherwise than by virtue of the Vehicle Excise and Registration Act 1994 s 5(2), Sch 2 para 2, 2A, 3, 22 or 23 (Sch 2 para 2A as added; and Sch 2 paras 22, 23 as amended): Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 33(1) (amended by SI 2003/2154). For the meaning of 'vehicle' see PARA 519 note 2 ante; and for the meaning of 'exempt vehicle' see PARA 519 note 5 ante. As to the classes of exempt vehicles see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 740 et seq.

3 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 33(2). For the meaning of 'public road' see PARA 519 note 5 ante.

4 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 For the meaning of 'vehicle licence' see PARA 519 note 4 ante.

6 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 33(3).

7 For the meaning of 'keeper' see PARA 525 note 2 ante.

8 Ie by the Vehicle Excise and Registration Act 1994 s 7 (as amended): see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 761.

9 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 33(4).

10 Ibid reg 33(5).

11 Ie by virtue of the Vehicle Excise and Registration Act 1994 Sch 2 para 19 (as amended) or s 64, Sch 4 para 7: see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 750 et seq.

12 The certificate is to be obtained by the keeper of the vehicle from the Secretary of State for Work and Pensions, the Secretary of State for Defence or the Department for Social Development for Northern Ireland, whichever is appropriate: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 33(7).

13 Ie the Vehicle Excise and Registration Act 1994 Sch 2 para 19 (as amended) or Sch 4 para 7.

14 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 33(6). The Vehicle Excise and Registration Act 1994 s 22ZA (as added and amended) (information to be supplied, subject to consent, for nil licensing functions: see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 750) applies to information of the following descriptions: (1) the name of any person: (a) to whom disability living allowance or mobility supplement is payable; or (b) to whom disability living allowance has ceased to be payable and who would be entitled to receive the mobility component at the higher rate but for his failure to satisfy a condition referred to in Sch 2 para 19(2A)(b) (as added); (2) that person's date of birth and national insurance number; and (3) if applicable, the date on which the allowance or supplement, as appropriate, will cease to be payable: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 33(8A) (added by SI 2005/2713). For these purposes, 'disability living allowance' means a disability living allowance for the purposes of the Social Security Contributions and Benefits Act 1992 s 71 (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 102); 'mobility component' means the mobility component of a disability living allowance; 'higher rate' means the higher rate of the mobility component for the time being prescribed under s 73 (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 106); and 'mobility supplement' has the meaning which that expression bears in the Vehicle Excise and Registration Act 1994 Sch 2 para 19 (as amended): Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 33(8B) (added by SI 2005/2713). As to disability living allowance and the mobility component see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARAS 102, 106.

15 Ie the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 33(4)-(7): see the text and notes 7-14 supra.

16 Ibid reg 33(8).

17 Ibid reg 33(9).

18 Ie under the Vehicle Excise and Registration Act 1994.

19 le for the purposes of the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 33(6): see the text and note 14 supra.

20 Ibid reg 33(10).

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## **(6) TRADE LICENCES**

### **551. Period for review of decision refusing an application for a trade licence.**

For certain purposes<sup>1</sup> which relate to the review by the Secretary of State<sup>2</sup> of his decision refusing an application for a trade licence<sup>3</sup> by a person entitled to make such an application, the period within which such an applicant may request the Secretary of State for such a review is 28 days beginning with the day after the day on which the decision was given<sup>4</sup>.

1 le for the purposes of the Vehicle Excise and Registration Act 1994 s 14(3)(b) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 769): Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 36.

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 For the meaning of 'trade licence' see PARA 521 note 3 ante.

4 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 36.

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### **552. Conditions subject to which trade licences are to be issued.**

The conditions subject to which trade licences<sup>1</sup> are to be issued, and with which every holder of a trade licence must comply, are prescribed<sup>2</sup>.

If the holder of a trade licence changes his name, the name of his business or his business address he must forthwith notify the change and the new name or address to the Secretary of State<sup>3</sup> and send the licence to the Secretary of State for any necessary amendment<sup>4</sup>.

The holder of the licence must not, and must not permit any person to, alter, deface, mutilate or add anything to a trade plate<sup>5</sup>. The holder of the licence must not, and must not permit any person to, exhibit on any vehicle<sup>6</sup> any trade licence or trade plate which has been altered, defaced mutilated or added to, upon which the figures or particulars have become illegible or the colour of which has altered whether by fading or otherwise<sup>7</sup>.

The holder of the licence must not, and must not permit any person to, exhibit on any vehicle anything which could be mistaken for a trade plate<sup>8</sup>.



The holder of the licence must not permit any person to display the trade licence or any trade plates on a vehicle except a vehicle which that person is using for the purposes of the holder under the licence<sup>9</sup>.

The holder of the licence must not, and must not permit any person to, display the trade licence or any trade plates on any vehicle unless that vehicle is within the specified classes of vehicle<sup>10</sup> and the vehicle is being used for one or more of the prescribed purposes<sup>11</sup> for which the holder may use the vehicle<sup>12</sup>.

The holder of the licence must not display any trade plate on a vehicle used under the licence unless that trade plate shows the general registration mark assigned to the holder in respect of that licence<sup>13</sup>.

1 For the meaning of 'trade licence' see PARA 521 note 3 ante.

2 See the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 37, Sch 6 Pt I.

3 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 6 para 1. See also PARA 553 post.

5 Ibid Sch 6 para 2. As to trade plates see PARA 554 post.

6 For the meaning of 'vehicle' see PARA 519 note 2 ante.

7 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 6 para 3.

8 Ibid Sch 6 para 4.

9 Ibid Sch 6 para 5.

10 I.e. specified in the Vehicle Excise and Registration Act 1994 s 11(2) (if the holder is a motor trader who is a manufacturer of vehicles), s 11(3) (if the holder is any other motor trader) or s 11(4) (if the holder is a vehicle tester). In the Vehicle Excise and Registration Act 1994, 'motor trader' means: (1) a manufacturer or repairer of, or dealer in, vehicles; or (2) any other description of person who carries on a business of such description as may be prescribed by regulations made by the Secretary of State, and a person is treated as a dealer in vehicles if he carries on a business consisting wholly or mainly of collecting and delivering vehicles, and not including any other activities except activities as a manufacturer or repairer of, or dealer in, vehicles: s 62(1). The following descriptions of business are prescribed for the purposes of head (2) supra: (a) the business of modifying vehicles, whether by the fitting of accessories or otherwise; (b) the business of valeting vehicles: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 35. 'Valeting' means the thorough cleaning of a vehicle before its registration by the Secretary of State under the Vehicle Excise and Registration Act 1994 s 21 (as amended) (see PARA 519 ante) or in order to prepare it for sale and includes removing wax and grease from the exterior, engine and interior; and 'valeted' is to be construed accordingly: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 3(1).

11 I.e. in accordance with ibid reg 38 and Sch 6 Pt II: see PARA 557 post. Schedule 6 para 6 refers to reg 36, but it is submitted that the reference should be to reg 38.

12 Ibid Sch 6 para 6.

13 Ibid Sch 6 para 7.

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### **553. Notification of change of name or address.**

If the holder of a trade licence<sup>1</sup> changes the name of his business or his business address, he must notify the Secretary of State<sup>2</sup> of this fact and of the new name or address forthwith and must at the same time deliver up the licence to the Secretary of State<sup>3</sup>. On receiving such notification the Secretary of State must record the alteration in the register of trade licences and send to the holder a new trade licence showing the correct particulars<sup>4</sup>.

1 For the meaning of 'trade licence' see PARA 521 note 3 ante.

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 19(1). This is also a condition of the licence: see PARA 552 ante.

4 Ibid reg 19(2).

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#### **554. Assignment of general registration marks and issue of trade plates.**

On issuing a trade licence<sup>1</sup> the Secretary of State<sup>2</sup> must assign to the holder of the licence a general registration mark in respect of that licence<sup>3</sup>.

The Secretary of State must issue to every holder of a trade licence, as respects each licence held by him, a set of trade plates appropriate to the class of vehicles<sup>4</sup> for which the licence is to be used<sup>5</sup>. Each trade plate must show the general registration mark<sup>6</sup> assigned to the holder of the licence in respect of the licence, and one of the trade plates must include a means whereby the licence may be fixed to it<sup>7</sup>.

Where the holder of a trade licence satisfies the Secretary of State that the vehicles which he will use by virtue of the licence include motor cycles which would otherwise be liable to vehicle excise duty and other vehicles, the Secretary of State must issue to the holder an additional trade plate in respect of the vehicles otherwise liable to vehicle excise duty<sup>9</sup>. Where the licence is to be used only in respect of motor cycles, the Secretary of State must issue only one trade plate to the holder of the licence and that plate must include a means whereby the licence may be fixed to it<sup>10</sup>.

Each trade plate remains the property of the Secretary of State and must be returned forthwith to the Secretary of State by the person to whom it was issued if that person ceases to be the holder of the trade licence in respect of which the trade plate was issued or ceases to be a motor trader<sup>11</sup> or a vehicle tester<sup>12</sup>.

1 For the meaning of 'trade licence' see PARA 521 note 3 ante.

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 39.

4 For the meaning of 'vehicle' see PARA 519 note 2 ante.

- 5 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 40(1).
- 6 As to registration marks see PARAS 563-569 post.
- 7 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 40(2).
- 8 He is liable to duty under the Vehicle Excise and Registration Act 1994 s 2, Sch 1 para 2 (as amended): see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 720.
- 9 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 40(3).
- 10 Ibid reg 40(4).
- 11 For the meaning of 'motor trader' see PARA 552 note 10 ante.
- 12 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 40(5). As to use by a vehicle tester see PARA 559 post.

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### **555. Replacements of trade plates.**

If any trade plate<sup>1</sup> issued by the Secretary of State<sup>2</sup> to the holder of a trade licence<sup>3</sup> is lost, stolen, destroyed or materially damaged, the holder of the licence must apply to the Secretary of State for the issue to him of a replacement set of trade plates<sup>4</sup>, and on receipt of such an application the Secretary of State must so issue a replacement set if:

- 988 (1) he has received all those trade plates in the set which are still in the possession of the holder of the licence;
- 989 (2) the prescribed fee<sup>5</sup> has been paid; and
- 990 (3) he is satisfied that any plate has been lost, stolen, destroyed or materially damaged<sup>6</sup>.

If only that part of a trade plate which consists of a means whereby the trade licence may be fixed to it is lost, stolen, destroyed or materially damaged, the holder of the licence must apply to the Secretary of State for the issue to him of a replacement means of fixing the licence and, upon payment of the prescribed fee<sup>7</sup>, the Secretary of State must issue such a replacement<sup>8</sup>.

If a replacement set of trade plates has been issued on the ground that any of the original trade plates has been lost, stolen or destroyed, and the original plate is subsequently found or recovered, the holder of the licence must, if the original plate is in his possession, forthwith return it to the Secretary of State or, if it is not in his possession but he becomes aware that it is found or recovered, take all reasonable steps to obtain possession of it and return it to the Secretary of State<sup>9</sup>.

- 1 As to the meaning of 'trade plates' see PARA 554 ante.
- 2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 3 For the meaning of 'trade licence' see PARA 521 note 3 ante.
- 4 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 41(1).

5 The fees prescribed by *ibid* reg 41(4). The fees payable under reg 41(2) are: (1) for a replacement set of trade plates comprising two plates, £13.50; (2) for a replacement set of trade plates comprising three plates, £18; (3) for a replacement of a single trade plate issued under reg 40(4), £7: reg 41(4)(a)-(c). No fee is payable under reg 41(4)(a) or (b) on account of the replacement of a trade plate if the Secretary of State is satisfied that the plate has become illegible or the colour of the plate has been altered (whether by fading or by other means) otherwise than by reason of any act or omission of the licence holder: reg 41(5).

6 *Ibid* reg 41(2).

7 The fee for a replacement means of fixing a trade licence to a trade plate is £2: *ibid* reg 41(4)(d). Regulation 41(3), however, refers to 'the fee prescribed by paragraph (4)(c)'.

8 *Ibid* reg 41(3).

9 *Ibid* reg 41(6).

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## **556. Exhibition of trade plates and licences.**

Where a vehicle<sup>1</sup> is in use under a trade licence<sup>2</sup> the general registration mark<sup>3</sup> assigned to the holder of a trade licence must be displayed on the vehicle in the manner specified below<sup>4</sup>.

The trade plates issued by the Secretary of State must be fixed to and displayed on the vehicle in such a manner that, if the general registration mark assigned to the holder were a registration mark<sup>5</sup> assigned to the vehicle, the relevant provisions<sup>6</sup> would be complied with, notwithstanding the vehicle may not have been first registered on or after the relevant date<sup>7</sup>, or it is a works truck<sup>8</sup> or an agricultural machine<sup>9</sup> or a road roller<sup>10</sup>.

The prescribed manner of exhibiting a trade licence on a vehicle<sup>11</sup> is as follows<sup>12</sup>. The trade licence must be exhibited on the front of the vehicle so as to be clearly visible at all times in daylight, and fixed by means of the trade plate<sup>13</sup> issued to the licence holder which contains a means for fixing the licence to it<sup>14</sup>.

1 For the meaning of 'vehicle' see PARA 519 note 2 ante.

2 For the meaning of 'trade licence' see PARA 521 note 3 ante.

3 As to the general registration mark see PARA 554 ante.

4 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 42(1).

5 As to registration marks see PARA 563 post.

6 *Ie* the Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, regs 5, 6. See PARA 572 post.

7 *Ie* as defined in *ibid* reg 2(1). See PARA 572 post.

8 *Ie* as defined by the Vehicle Excise and Registration Act 1994 s 2, Sch 1 para 4(6): see PARA 572 note 1 post.

9 *Ie* as defined by the Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, reg 2(1): see PARA 572 note 2 post.

10 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 42(2).

11 le for the purposes of the Vehicle Excise and Registration Act 1994 s 33(1)(b): see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 781.

12 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 42(3).

13 As to the meaning of 'trade plate' see PARA 554 ante.

14 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 42(4).

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### **557. Purposes for which a vehicle may be used.**

The purposes for which a vehicle<sup>1</sup> may be used by virtue of a trade licence<sup>2</sup> are prescribed by the Road Vehicles (Registration and Licensing) Regulations 2002<sup>3</sup>.

The purposes for which the holder of a trade licence who is a motor trader<sup>4</sup> may use a vehicle (other than a vehicle kept for research and development<sup>5</sup>) on a public road<sup>6</sup> by virtue of that licence are purposes which meet each of the following requirements<sup>7</sup>:

991 (1) they are business purposes<sup>8</sup>;

992 (2) they are purposes of the following kinds ('paragraph 12 purposes')<sup>9</sup>, namely where a vehicle is used:

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96. (a) for its test or trial or the test or trial of its accessories or equipment, in either case in the ordinary course of construction, modification or repair or after completion<sup>10</sup>;

97. (b) for proceeding to or from a public weighbridge for ascertaining its weight or to or from any place for its registration or inspection by a person acting on behalf of the Secretary of State<sup>11</sup>;

98. (c) for its test or trial for the benefit of a prospective purchaser, for proceeding at the instance of a prospective purchaser to any place for the purpose of such test or trial, or for returning after such test or trial<sup>12</sup>;

99. (d) for its test or trial for the benefit of a person interested in promoting publicity in regard to it, for proceeding at the instance of such a person to any place for the purpose of such test or trial, or for returning after such test or trial<sup>13</sup>;

100. (e) for delivering it to the place where the purchaser intends to keep it<sup>14</sup>;

101. (f) for demonstrating its operation or the operation of its accessories or equipment when it is being handed over to the purchaser<sup>15</sup>;

102. (g) for delivering it from one part of the licence holder's premises to another part of his premises, or for delivering it from his premises to premises of, or between parts of premises of, another manufacturer or repairer of or dealer in vehicles or removing it from the premises of another manufacturer or repairer of or dealer in vehicles direct to his own premises<sup>16</sup>;

103. (h) for proceeding to or returning from a workshop in which a body or a special type of equipment or accessory is to be or has been fitted to it or in which it is to be or has been painted, valeted or repaired<sup>17</sup>;

104. (i) for proceeding from the premises of a manufacturer or repairer of or dealer in vehicles to a place from which it is to be transported by train, ship or aircraft or for proceeding to the premises of such a manufacturer, repairer or dealer from a place to which it has been so transported<sup>18</sup>;

- 105. (j) for proceeding to or returning from any garage, auction room or other place at which vehicles are usually stored or usually or periodically offered for sale and at which it is to be or has been stored or is to be or has been offered for sale as the case may be<sup>19</sup>;
- 106. (k) for proceeding to or returning from a place where it is to be or has been inspected or tested<sup>20</sup>; or
- 107. (l) for proceeding to a place where it is to be broken up or otherwise dismantled<sup>21</sup>; and

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- 993 (3) they are purposes that do not include the conveyance of goods or burden of any description except specified loads<sup>22</sup>.

1 For the meaning of 'vehicle' see PARA 519 note 2 ante. Where a vehicle is so constructed that a semi-trailer may by partial superimposition be attached to it in such a manner as to cause a substantial part of the weight of the semi-trailer to be borne by the vehicle, the vehicle and the semi-trailer are to be taken, for the purposes of the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 6 Pt II, to constitute a single vehicle: reg 38, Sch 6 para 8.

2 For the meaning of 'trade licence' see PARA 521 note 3 ante.

3 See the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 38, Sch 6 Pt II.

4 For the meaning of 'motor trader' see PARA 552 note 10 ante.

5 Is a vehicle to which the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 6 para 14 applies: see PARA 558 post.

6 For the meaning of 'public road' see PARA 519 note 5 ante.

7 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 6 para 10.

8 Ibid Sch 6 para 10(a). A vehicle is used for 'business purposes' if it is used for purposes connected with the motor trader's business: (1) as a manufacturer or repairer of or dealer in vehicles; (2) as a manufacturer or repairer of or dealer in trailers carried on in conjunction with his business as a motor trader; (3) of modifying vehicles (whether by the fitting of accessories or otherwise); or (4) of valeting vehicles: Sch 6 para 11. For the meaning of 'valeting' see PARA 552 note 10 ante.

9 Ibid Sch 6 para 10(b).

10 Ibid Sch 6 para 12(a).

11 Ibid Sch 6 para 12(b). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

12 Ibid Sch 6 para 12(c).

13 Ibid Sch 6 para 12(d).

14 Ibid Sch 6 para 12(e).

15 Ibid Sch 6 para 12(f).

16 Ibid Sch 6 para 12(g).

17 Ibid Sch 6 para 12(h).

18 Ibid Sch 6 para 12(i).

19 Ibid Sch 6 para 12(j).

20 Ibid Sch 6 para 12(k).

21 Ibid Sch 6 para 12(l).

22 Ibid Sch 6 para 10(c). A specified load is one of the following kinds of load: (1) a test load; (2) in the case of a vehicle which is being delivered or collected and is being used for a purpose falling within heads (2)(f)-(k) in the text, a load which consists of another vehicle used or to be used for travel from or to the place of delivery or collection; (3) a load which is built in as part of the vehicle or permanently attached to it; (4) in the case of a vehicle which is being used for a purpose falling within head (2)(h), (i) or (j) in the text, a load which consists of a trailer or of parts, accessories or equipment designed to be fitted to the vehicle and of tools for fitting them: Sch 6 para 13(1). A 'test load' means a load which: (a) is carried by a vehicle being used for a purpose falling within head (2)(b), (d), (e) or (g) in the text; (b) is carried solely for the purpose of testing or demonstrating the vehicle or any of its accessories or equipment; and (c) is returned to the place of loading without its having been removed from the vehicle except: (i) for the purpose of testing or demonstrating the vehicle or any of its accessories or equipment; (ii) in the case of accident; or (iii) where the load consists of water, fertiliser or refuse: Sch 6 para 13(2).

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### **558. Manufacturers keeping vehicles for research and development.**

A vehicle<sup>1</sup>: (1) kept by a motor trader<sup>2</sup>, being the holder of a trade licence<sup>3</sup> who is a manufacturer of vehicles; and (2) kept solely for the purposes of conducting research and development in the course of his business as such a manufacturer, may be used on a public road<sup>4</sup> by such person by virtue of the trade licence for the purposes of conducting research and development in the course of his business as a manufacturer of vehicles<sup>5</sup>.

Those purposes are not to be taken to include the conveyance of goods or burden of any description except: (a) a load which is carried solely for the purpose of testing the vehicle or any of its accessories or equipment and which is returned to the place of loading without having been removed from the vehicle except for such purpose or in the case of accident; or (b) any load built in as part of the vehicle or permanently attached to it<sup>6</sup>.

1 For the meaning of 'vehicle' see PARA 519 note 2 ante. See also PARA 557 note 1 ante.

2 For the meaning of 'motor trader' see PARA 552 note 10 ante.

3 For the meaning of 'trade licence' see PARA 521 note 3 ante.

4 For the meaning of 'public road' see PARA 519 note 5 ante.

5 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 38, Sch 6 para 14(1), (2).

6 Ibid Sch 6 para 14(3).

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### **559. Use by vehicle testers.**

The purposes for which the holder of a trade licence<sup>1</sup> who is a vehicle<sup>2</sup> tester may use a vehicle on a public road<sup>3</sup> by virtue of that licence are the purposes of testing it or any trailer drawn by

it or any of the accessories or equipment on the vehicle or trailer in the course of the business of the holder of the trade licence as a vehicle tester<sup>4</sup>.

However, such purposes do not include the conveyance of goods or any other burden of any description on the vehicle except: (1) a load which is carried solely for the purpose of testing or demonstrating the vehicle or any of its accessories or equipment and is returned to the place of loading without having been removed from the vehicle except for that purpose or in the case of accident; or (2) a load which is built in as part of the vehicle or permanently attached to it<sup>5</sup>.

1 For the meaning of 'trade licence' see PARA 521 note 3 ante.

2 For the meaning of 'vehicle' see PARA 519 note 2 ante. See also PARA 557 note 1 ante.

3 For the meaning of 'public road' see PARA 519 note 5 ante.

4 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 38, Sch 6 para 15(1).

5 Ibid Sch 6 para 15(2).

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## **(7) CAPACITIES**

### **560. Seating capacity of buses.**

For the purpose of determining the annual rates of vehicle excise duty applicable to buses<sup>1</sup>, the seating capacity of a bus is to be taken to be the number of persons that may be seated in the bus at any one time, as determined in accordance with the following principles<sup>2</sup>.

Those principles are: (1) where separate seats for each person are provided one person is to be counted for each separate seat provided; (2) where the vehicle is fitted with continuous seats one person is to be counted for each specified length<sup>3</sup>; (3) where any continuous seat is fitted with arms in order to separate the seating spaces and the arms can be folded back or otherwise put out of use, the arms are to be ignored in measuring the seat; (4) no account is to be taken of the driver's seat<sup>4</sup> or any seats alongside the driver's seat, whether separate from or continuous with it, if the Secretary of State<sup>5</sup> is satisfied that the use of those seats by members of the public will not be permitted during the currency of the licence applied for<sup>6</sup>.

1 For the purposes of the Vehicle Excise and Registration Act 1994 s 2, Sch 1 Pt III (as substituted and amended): see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 720.

2 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 44(1).

3 For each complete length of 410 mm measured in a straight line lengthwise on the front of each seat: *ibid* reg 44(2)(b).

4 For this purpose, 'driver's seat' means: (1) any separate seat occupied by the driver; or (2) where no such seat is provided and the driver occupies a portion of a continuous seat, so much of that seat as extends from the right edge of the seat if the vehicle is steered from the right-hand side, or from the left edge of the seat if the vehicle is steered from the left-hand side, to a point 460 mm left or right, as the case may be, of the point on the seat directly behind the centre of the steering column: *ibid* reg 44(3).

5 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.



6 Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 44(2).

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### **561. Cylinder capacity.**

For the purposes of the provisions as to the annual rates of vehicle excise duty<sup>1</sup> the cylinder capacity of an internal combustion engine is taken to be: (1) in the case of a single-cylinder engine, the cylinder capacity attributable to the cylinder<sup>2</sup> of the engine; and (2) in the case of an engine having two or more cylinders, the sum of the cylinder capacities attributable to the separate cylinders<sup>3</sup>.

1 For the purposes of any rate of duty under the Vehicle and Registration Act 1994 s 2, Sch 1 (as amended): see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 719 et seq.

2 The cylinder capacity attributable to any cylinder of an internal combustion engine is deemed to be equal to: (1) in the case of a cylinder having a single piston, the product expressed in cubic centimetres of the square of the internal diameter of the cylinder measured in centimetres, and the distance through which the piston associated with the cylinder moves during one half of a revolution of the engine measured in centimetres multiplied by 0.7854; and (2) in the case of a cylinder having more than one piston, the sum of the products expressed in cubic centimetres of the square of the internal diameter of each part of the cylinder in which a piston moves measured in centimetres, and the distance through which the piston associated with that part of the cylinder moves during one half of a revolution of the engine measured in centimetres multiplied by 0.7854: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 43(2). In measuring cylinders for the purpose of calculating cylinder capacity, and in calculating cylinder capacity, fractions of centimetres are to be taken into account: reg 43(3).

3 Ibid reg 43(1).

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## **(8) FOREIGN GOODS VEHICLES CARRYING PERISHABLE FOODSTUFFS**

### **562. Foreign goods vehicles engaged in the international carriage of perishable foodstuffs.**

For the purposes of the legislation relating to the international carriage of perishable foodstuffs<sup>1</sup>, a foreign goods vehicle is a goods vehicle which has been brought into the United Kingdom<sup>2</sup> and which, if a motor vehicle, is not registered in the United Kingdom, or if a trailer, is drawn by a motor vehicle not registered in the United Kingdom which has been brought into the United Kingdom<sup>3</sup>. For these purposes, a motor vehicle which does not for the time being have exhibited on it a licence<sup>4</sup> or trade plates<sup>5</sup> issued under the Vehicle Excise and Registration Act 1994 is presumed, unless the contrary is proved, not to be registered in the United Kingdom<sup>6</sup>.

- 1 See the International Carriage of Perishable Foodstuffs Act 1976; and CARRIAGE AND CARRIERS vol 7 (2008) PARA 111 et seq.
- 2 For the meaning of 'United Kingdom' see PARA 224 note 5 ante.
- 3 International Carriage of Perishable Foodstuffs Act 1976 s 19(1). See CARRIAGE AND CARRIERS vol 7 (2008) PARA 118. As to the registration of vehicles see PARA 518 et seq ante. As to visiting vehicles see PARA 577 et seq post.
- 4 As to the exhibition of licences see PARA 545 ante.
- 5 As to the exhibition of trade plates see PARA 556 ante.
- 6 International Carriage of Perishable Foodstuffs Act 1976 s 19(4) (amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 9). Where, in accordance with the International Carriage of Perishable Foodstuffs Act 1976 s 19(4) (as amended), a motor vehicle is presumed not to be registered in the United Kingdom, but is subsequently proved to have been so registered, anything which: (1) has been done in relation to the vehicle, or in relation to a trailer drawn by it, by a person relying in good faith on that presumption and purporting to act by virtue of any provision of the International Carriage of Perishable Foodstuffs Act 1976; and (2) would have been lawfully done by virtue of that provision if the vehicle had not been registered in the United Kingdom, is to be treated as having been lawfully done by virtue of that provision: s 19(5). See CARRIAGE AND CARRIERS vol 7 (2008) PARA 118.

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## **(9) REGISTRATION MARKS**

### **(i) Assignment and Transfer**

#### **563. Registration marks.**

Where the Secretary of State<sup>1</sup> registers a vehicle<sup>2</sup> he must assign to the vehicle a mark (a 'registration mark') indicating the registered number of the vehicle<sup>3</sup>. The Secretary of State may, in such circumstances as he may determine:

- 994 (1) assign a registration mark to a vehicle to which another registration mark has previously been assigned<sup>4</sup>;
- 995 (2) assign to a vehicle (whether on its first registration or later) a registration mark previously assigned to another vehicle<sup>5</sup>;
- 996 (3) (whether or not in connection with an assignment within head (1) or head (2) above) withdraw any registration mark for the time being assigned to a vehicle<sup>6</sup>; and
- 997 (4) reassign to a vehicle a registration mark previously assigned to it but subsequently withdrawn<sup>7</sup>.

The Secretary of State may by regulations: (a) provide that the registration mark for the time being assigned to a vehicle must be fixed, in the manner prescribed by the regulations, on the vehicle, on any other vehicle drawn by the vehicle or on both<sup>8</sup>; (b) prescribe the size, shape and character of registration marks to be fixed on any vehicle<sup>9</sup>, and the manner in which registration marks are to be displayed and rendered easily distinguishable (whether by day or by night)<sup>10</sup>; and (c) make provision for assigning general registration marks to persons holding trade licences<sup>11</sup> and (in particular) prescribe the registration marks to be carried by vehicles the use of which is authorised by a trade licence<sup>12</sup>, and make provision for the issue of trade plates

to holders of trade licences and for the charging of a fee for the replacement of trade plates which are or may be lost, stolen, destroyed or damaged<sup>13</sup>.

A person who contravenes or fails to comply with any such regulations is guilty of an offence<sup>14</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 le under the Vehicle Excise and Registration Act 1994 s 21(1) (as substituted): see PARA 519 ante. For the meaning of 'vehicle' see PARA 519 note 2 ante.

3 Ibid s 23(1). There is no common law right to a particular (or any) registration mark. The system of registration marks is a creature of statute, and any right to a particular mark has to be found in statute or statutory instrument. Apart from specific exceptions, there is no general statutory right to a particular registration mark: see *Lloyd v Svenby* [2006] EWHC 315 (QB), [2006] All ER (D) 380 (Feb). As to fixing and displaying registration marks see the Vehicle Excise and Registration Act 1994 ss 42, 43 (s 42 amended by the Finance Act 1996 s 22).

4 Vehicle Excise and Registration Act 1994 s 23(2)(a).

5 Ibid s 23(2)(b).

6 Ibid s 23(2)(c).

7 Ibid s 23(2)(d).

8 Ibid s 23(3).

9 Ibid s 23(4)(a).

10 Ibid s 23(4)(b).

11 For the meaning of 'trade licence' see PARA 521 note 3 ante.

12 Vehicle Excise and Registration Act 1994 s 23(5)(a).

13 Ibid s 23(5)(b). Under this power, the Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561 (as amended) (see PARA 570 et seq post) and the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742 (as amended) (see PARA 529 et seq ante) have been made and, by virtue of the Vehicle Excise and Registration Act 1994 s 64, Sch 4 para 2 (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 717) the Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610 (as amended) (see PARA 577 et seq post) partly have effect as if so made.

14 Vehicle Excise and Registration Act 1994 s 59(1). An offence under s 23(4)(a) (see the text to note 9 supra) is a fixed penalty offence: see PARA 1093 post. As to fixed penalties see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post. A person guilty of any other offence under s 59(1) is liable on summary conviction to a fine not exceeding, in the case of regulations prescribed by regulations made by the Secretary of State as regulations to which s 59(2)(a) applies, level 3 on the standard scale and, in any other case, level 2 on the standard scale: s 59(2)(a), (b). As to the standard scale see PARA 230 note 3 ante. The prescribing of regulations as regulations to which s 59(2)(a) applies does not affect the punishment for a contravention of, or failure to comply with, the regulations before they were so prescribed: s 59(3). The Secretary of State may, if he sees fit, compound any proceedings for an offence under the relevant provisions: s 59(6)(a) (added by the Finance Act 1996 s 23, Sch 2 para 15).

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#### **564. Assignment of registration marks by motor dealers.**

The Secretary of State<sup>1</sup> may by regulations make such provision as he considers appropriate with respect to the allocation of registration marks<sup>2</sup> for vehicles<sup>3</sup> to motor dealers<sup>4</sup> who apply for such allocations, and appear to the Secretary of State suitable to receive them, and with respect to the assigning of the marks to vehicles by motor dealers<sup>5</sup>. Such regulations<sup>6</sup> may, in particular, include provision: (1) as to the mode of application for the allocation of registration marks<sup>7</sup>; (2) as to the transfer of registration marks allocated to a motor dealer in cases where the motor dealer dies or becomes incapacitated or bankrupt and in such other cases as may be prescribed by the regulations<sup>8</sup>; and (3) as to the cancellation of allocations of registration marks<sup>9</sup>. Such regulations<sup>10</sup> may also provide for:

- 998 (a) restricting the circumstances in which a motor dealer may assign a registration mark to a vehicle<sup>11</sup>;
- 999 (b) securing that registration marks allocated to a motor dealer are assigned by him in such sequence as the Secretary of State considers appropriate and that no registration mark is assigned to a vehicle to which a registration mark has already been assigned<sup>12</sup>; and
- 1000 (c) requiring a motor dealer to furnish to the Secretary of State within the period prescribed by the regulations such particulars in respect of each vehicle to which the motor dealer assigns a registration mark as are so prescribed<sup>13</sup>.

Where the Secretary of State rejects an application by a motor dealer for an allocation of registration marks, or cancels an allocation of registration marks made to a motor dealer, and the motor dealer, within the period prescribed by regulations made by the Secretary of State, requests him to review his decision, the Secretary of State must comply with the request and in doing so consider any representations made to him in writing during that period by the motor dealer<sup>14</sup>. Where the Secretary of State cancels an allocation of registration marks made to a motor dealer, the cancellation does not take effect before the end of the period prescribed by regulations made by the Secretary of State<sup>15</sup>; and where during that period the motor dealer requests the Secretary of State to review his decision, the cancellation does not take effect before the Secretary of State gives notice<sup>16</sup> in writing of the result of the review to the motor dealer<sup>17</sup>.

Regulations<sup>18</sup> may provide that a person who contravenes or fails to comply with any specified provision of the regulations is guilty of an offence<sup>19</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'registration mark' see PARA 563 ante.

3 For the meaning of 'vehicle' see PARA 519 note 2 ante.

4 'Motor dealer' means a person carrying on the business of selling or supplying vehicles: Vehicle Excise and Registration Act 1994 s 62(1).

5 Ibid s 24(1).

6 Ie by regulations made under ibid s 24.

7 Ibid s 24(2)(a).

8 Ibid s 24(2)(b).

9 Ibid s 24(2)(c).

10 Ie by regulations made under ibid s 24.

11 Ibid s 24(3)(a).

12 Ibid s 24(3)(b).

13 Ibid s 24(3)(c).

14 Ibid s 24(4).

15 Ibid s 24(5)(a).

16 For the purposes of ibid s 24(5)(b), notice may be given to a person by delivering it to him, leaving it at his proper address, or sending it to him by post; and for the purposes of s 24(6), and of the Interpretation Act 1978 s 7 (see STATUTES vol 44(1) (Reissue) PARA 1388) in its application to the Vehicle Excise and Registration Act 1994 s 24(6), the proper address of a person is his latest address as known to the Secretary of State: s 24(6).

17 Ibid s 24(5)(b). At the date at which this volume states the law no regulations had been made under s 24 and none have effect under it by virtue of s 64, Sch 4 para 2 (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 717).

18 Ie regulations made under ibid s 24.

19 Ibid s 59(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 59(5). As to the standard scale see PARA 230 note 3 ante.

The Secretary of State may, if he sees fit, compound any proceedings for an offence under regulations made under s 24: s 59(6)(b) (added by the Finance Act 1996 s 23, Sch 2 para 15).

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## **565. Charge on request for registration mark.**

The Secretary of State<sup>1</sup> may by regulations provide for a charge prescribed by the regulations to be made in cases where, by request, a particular registration mark<sup>2</sup> is assigned to a vehicle<sup>3</sup> (whether on its first registration or later), having previously been assigned to another vehicle<sup>4</sup>. The regulations may: (1) require the vehicle to which a mark is requested to be assigned, and in cases prescribed by the regulations, the other vehicle, to be made available for inspection at a place designated by or under the regulations<sup>5</sup>; and (2) provide for a charge prescribed by the regulations to be made for the inspection and for the whole or part of the charge to be retained whether or not the mark is assigned as requested<sup>6</sup>. Charges prescribed for these purposes<sup>7</sup> need not be related to the costs of making an assignment<sup>8</sup> or arranging for a vehicle to be inspected<sup>9</sup>.

A person who contravenes or fails to comply with any such regulations is guilty of an offence<sup>10</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'registration mark' see PARA 563 ante.

3 For the meaning of 'vehicle' see PARA 519 note 2 ante.

4 Vehicle Excise and Registration Act 1994 s 25(1). Any charge prescribed by regulations under s 25(1) must be of an amount approved by the Treasury: s 58(1). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

5 Ibid s 25(2)(a).

6 Ibid s 25(2)(b). See the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 11; and PARA 533 ante.

7 le for the purposes of the Vehicle Excise and Registration Act s 25.

8 Ibid s 25(3)(a).

9 Ibid s 25(3)(b).

10 Ibid s 59(1). A person guilty of an offence under this provision is liable on summary conviction to a fine not exceeding, in the case of regulations prescribed by regulations made by the Secretary of State as regulations to which s 59(2)(a) applies, level 3 on the standard scale and, in any other case, level 2 on the standard scale: s 59(2)(a), (b). As to the standard scale see PARA 230 note 3 ante. The prescribing of regulations as regulations to which s 59(2)(a) applies does not affect the punishment for a contravention of, or failure to comply with, the regulations before they were so prescribed: s 59(3).

The Secretary of State may, if he sees fit, compound any proceedings for an offence under the relevant provisions: s 59(6)(a) (added by the Finance Act 1996 s 23, Sch 2 para 15).

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## **566. Retention of registration mark pending transfer.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> provide for a person in whose name a vehicle<sup>3</sup> is registered<sup>4</sup> or, if that person so requests, another person to be granted a right of retention<sup>5</sup> in respect of the registration mark for the time being assigned to the vehicle<sup>6</sup>.

Such regulations may, in particular, make provision:

1001 (1) for the manner in which an application for the grant of a right of retention is to be made to the Secretary of State<sup>7</sup>;

1002 (2) for the payment of a fee prescribed by the regulations on the making of such an application and for the whole or part of the fee to be retained whether or not the application is granted<sup>8</sup>;

1003 (3) for requiring the vehicle to which the registration mark is for the time being assigned to be made available for inspection at a place designated by or under the regulations<sup>9</sup>;

1004 (4) for authorising the Secretary of State to refuse such an application on such grounds as he thinks fit<sup>10</sup>;

1005 (5) with respect to the manner in which rights of retention are to be exercisable<sup>11</sup>;

1006 (6) for enabling or requiring the Secretary of State, on the payment to him of a fee prescribed by the regulations, to extend or (on one or more occasions) further extend the period referred to above<sup>12</sup> where the conditions so prescribed are fulfilled<sup>13</sup>, and he thinks fit to do so in the circumstances of the case<sup>14</sup>;

1007 (7) for rights of retention to be non-transferable (but without prejudice to the vesting of any such right in a person by operation of law)<sup>15</sup>;

1008 (8) with respect to the conditions which must be satisfied before a registration mark may be assigned to a vehicle pursuant to a right of retention<sup>16</sup>;

1009 (9) for authorising the Secretary of State to revoke a right of retention if it appears to him that there are special reasons for doing so<sup>17</sup>, or in any other circumstances prescribed by the regulations<sup>18</sup>;

1010 (10) for allowing a person to be nominated when an application for the grant of a right of retention is made or to be nominated at a later time<sup>19</sup>;

- 1011 (11) for allowing a different person to be nominated in place of a person already nominated<sup>20</sup>;
- 1012 (12) for the manner in which a nomination is to be made and for the payment of a fee prescribed by the regulations where a nomination is made in circumstances so prescribed<sup>21</sup>; and
- 1013 (13) for the payment, in connection with the assignment of a registration mark pursuant to a right of retention, of such charge as is for the time being prescribed<sup>22</sup>.

Such regulations<sup>23</sup> may exempt extensions or assignments of any class or description prescribed by the regulations from any fee or charge payable by virtue of head (6) or head (13) above<sup>24</sup>. An extension or nomination is exempt from a fee payable by virtue of head (6) or head (12) above if the Secretary of State considers it appropriate in the circumstances of the case<sup>25</sup>. Where such regulations provide in any case for there to be no charge in connection with the assignment of a registration mark pursuant to a right of retention<sup>26</sup>:

- 1014 (a) the fee prescribed by virtue of head (2) above in relation to an application for that right may include an amount representing the charge for which provision could have been made by virtue of head (13) above<sup>27</sup>; and
- 1015 (b) the regulations may provide for the part of any such fee which represents a charge for which provision could have been so made to be retained, except where conditions prescribed by the regulations are fulfilled, whether or not there is an assignment<sup>28</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 At the date at which this volume states the law no regulations had been made under the Vehicle Excise and Registration Act 1994 s 26 but by virtue of s 64, Sch 4 para 2 (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 717) the Retention of Registration Marks Regulations 1992, SI 1992/510 (amended by SI 1993/988; SI 1994/2976) (applying in cases where an application for the grant of retention was made before 1 May 1993); and the Retention of Registration Marks Regulations 1993, SI 1993/987 (amended by SI 1994/2976) (applying in cases where such an application was made on or after 1 May 1993) have effect as if so made.

3 For the meaning of 'vehicle' see PARA 519 note 2 ante.

4 Ie under the Vehicle Excise and Registration Act 1994.

5 In ibid s 26(1) (as substituted), the reference to a right of retention is to a right, exercisable on a single occasion falling within a period prescribed by regulations made by the Secretary of State, to have the registration mark assigned to some other vehicle which is registered under the Vehicle Excise and Registration Act 1994 in the name of the person to whom the right is granted or some other person nominated by him in accordance with regulations made by the Secretary of State: s 26(1A) (added by the Vehicle Registration Marks Act 2007 s 1(1)). For the purposes of the Vehicle Excise and Registration Act 1994, 'right of retention' is to be construed in accordance with s 26(1) (as substituted) and s 26(1A) (as added): s 62(1) (amended by the Vehicle Registration Marks Act 2007 s 1(3)). For the meaning of 'registration mark' see PARA 563 ante.

6 Vehicle Excise and Registration Act 1994 s 26(1) (substituted by the Vehicle Registration Marks Act 2007 s 1(1)).

7 Vehicle Excise and Registration Act 1994 s 26(2)(a) (amended by the Vehicle Registration Marks Act 2007 s 1(2)(a)).

8 Vehicle Excise and Registration Act 1994 s 26(2)(b).

9 Ibid s 26(2)(c).

10 Ibid s 26(2)(d).

11 Ibid s 26(2)(e).

12 Ie the period prescribed under ibid s 26(1A) (as added): see note 5 supra.

- 13 Ibid s 26(2)(f)(i) (s 26(2)(f) amended by the Vehicle Registration Marks Act 2007 s 1(2)(b)).
- 14 Vehicle Excise and Registration Act 1994 s 26(2)(f)(ii) (as amended: see note 13 supra).
- 15 Ibid s 26(2)(g).
- 16 Ibid s 26(2)(h).
- 17 Ibid s 26(2)(i)(i).
- 18 Ibid s 26(2)(i)(ii).
- 19 Ibid s 26(2)(j).
- 20 Ibid s 26(2)(k).
- 21 Ibid s 26(2)(l).
- 22 Ibid s 26(2)(m). Such a charge is for the time being prescribed by virtue of s 25(1) (see PARA 565 ante): s 26(2)(m).
- 23 Ie regulations made under ibid s 26.
- 24 Ibid s 26(3).
- 25 Ibid s 26(4).
- 26 Ibid s 26(5).
- 27 Ibid s 26(5)(a).
- 28 Ibid s 26(5)(b).

## **UPDATE**

### **566 Retention of registration mark pending transfer**

NOTE 2--SI 1993/987 further amended: SI 2008/2850.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/5. VEHICLE REGISTRATION/(9) REGISTRATION MARKS/(i) Assignment and Transfer/567. Sale of rights to particular registration marks.

### **567. Sale of rights to particular registration marks.**

The Secretary of State<sup>1</sup> may by regulations make a scheme providing for registration marks<sup>2</sup> to which the provision relating to the sale of rights to particular registration marks applies<sup>3</sup> to be assigned to vehicles registered<sup>4</sup> in the names of, or of the nominees of, persons who have acquired rights under the scheme to have the marks so assigned<sup>5</sup>. Such regulations may, in particular, make provision:

- 1016 (1) for a person to acquire a right under the scheme to have a particular registration mark to which this provision applies assigned to a vehicle registered in his name, or in the name of some other person nominated by him in accordance with the scheme, on payment of such sum as is payable in accordance with the scheme<sup>6</sup>:



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108. (a) in respect of the acquisition of the right<sup>7</sup>; and

109. (b) where no charge is to be made by virtue of head (13) below in connection with an assignment pursuant to the right, in respect of such an assignment<sup>8</sup>;

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1017 (2) with respect to:

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110. (a) the manner in which agreements for the sale of such a right (a 'relevant right') may be effected<sup>9</sup>;

111. (b) the terms which may be contained in, or incorporated into, such agreements<sup>10</sup>; and

112. (c) rights and liabilities arising in connection with such agreements otherwise than under any such terms<sup>11</sup>;

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1018 (3) for enabling the Secretary of State to determine as he thinks fit the prices at which particular relevant rights are to be sold or the reserve prices applicable to the sale of any such rights<sup>12</sup>, or the manner in which any such prices are to be determined<sup>13</sup>;

1019 (4) with respect to the manner in which relevant rights are to be exercisable<sup>14</sup>;

1020 (5) for relevant rights to be exercisable only on a single occasion falling within a period prescribed by the regulations (subject to any provision made by virtue of head (6) below)<sup>15</sup>;

1021 (6) for enabling or requiring the Secretary of State, on the payment to him of a fee prescribed by the regulations, to extend or (on one or more occasions) further extend any such period where<sup>16</sup> the conditions so prescribed are fulfilled<sup>17</sup>, and he thinks fit to do so in the circumstances of the case<sup>18</sup>;

1022 (7) for relevant rights to be non-transferable (but without prejudice to the vesting of any such right in a person by operation of law)<sup>19</sup>;

1023 (8) with respect to the conditions which must be satisfied before a registration mark may be assigned to a vehicle pursuant to a relevant right<sup>20</sup>;

1024 (9) for authorising the Secretary of State to revoke a relevant right<sup>21</sup> if it appears to him that there are special reasons for doing so<sup>22</sup>, or in any other circumstances prescribed by the regulations<sup>23</sup>;

1025 (10) for allowing a person to be nominated when a relevant right is acquired or to be nominated at a later time<sup>24</sup>;

1026 (11) for allowing a different person to be nominated in place of a person already nominated<sup>25</sup>;

1027 (12) for the manner in which a nomination is to be made and for the payment of a fee prescribed by the regulations where a nomination is made in circumstances so prescribed<sup>26</sup>;

1028 (13) for the payment, in connection with the assignment of a registration mark pursuant to a relevant right, of such charge as is for the time being prescribed<sup>27</sup>; and

1029 (14) for so much of any sum paid by virtue of head (1) above in respect of the assignment of a registration mark to be retained, except where conditions prescribed by the regulations are fulfilled, whether or not there is such an assignment<sup>28</sup>.

Such regulations may (without prejudice to the generality of head (2) above) make provision for authorising the Secretary of State to make arrangements with other persons by which such persons<sup>29</sup>:

1030 (i) are given authority (whether irrevocable or otherwise) to act on his behalf in offering for sale, and entering into agreements for the sale of, relevant rights in

- the case of such registration marks, and during such periods, as he may determine<sup>30</sup>;
- 1031 (ii) are required to account to him for sums due to him under such agreements (whether they have received any amounts due from the purchasers under the agreements or not)<sup>31</sup>; and
- 1032 (iii) may become entitled or subject to such rights or liabilities of the Secretary of State in connection with such agreements as may be prescribed by the regulations<sup>32</sup>.

Such regulations may exempt extensions or assignments of any class or description prescribed by the regulations from any fee or charge payable by virtue of head (6) or head (13) above<sup>33</sup>. An extension or nomination is exempt from a fee payable by virtue of head (6) or head (12) above if the Secretary of State considers it appropriate in the circumstances of the case<sup>34</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'registration mark' see PARA 563 ante.

3 I.e. the Vehicle Excise and Registration Act 1994 s 27. Section 27 applies to registration marks which either have never been assigned to a vehicle, or have been assigned to a vehicle but (as a result of having been subsequently withdrawn) are not for the time being so assigned, and which in either case are such as the Secretary of State may from time to time determine: s 27(1). For the meaning of 'vehicle' see PARA 519 note 2 ante.

4 I.e. registered under the Vehicle Excise and Registration Act 1994.

5 Ibid s 27(2). The assignment by the Secretary of State of a registration mark to a vehicle pursuant to a relevant right is without prejudice to the subsequent exercise by him, in relation to the mark, of any of his powers under s 23(2) (see PARA 563 ante): s 27(7). In exercise of the powers conferred by s 27 the Secretary of State has made the Sale of Registration Marks Regulations 1995, SI 1995/2880. Specific provision is made for: (1) the acquisition of a relevant right to a particular registration mark (see reg 3, Schedule para 2); (2) the nomination by the purchaser of a person for the purpose of having a particular registration mark registered in that person's name (see Schedule para 3); (3) agreements for the acquisition of a relevant right (see Schedule para 4); (4) the duration and extension of a relevant right (see Schedule para 5); (5) payments on acquisition of a relevant right (see Schedule para 6); (6) payments on extension of a relevant right (see Schedule para 7); (7) certificates of entitlement (see Schedule para 8); (8) the exercise of a relevant right (see Schedule para 9); (9) the conditions for the assignment of a registration mark (see Schedule para 10); (10) exemption from charge for assignment of a registration mark (see Schedule para 11); (11) the non-transferability of a relevant right (see Schedule para 12); (12) the revocation of a relevant right (see Schedule para 13); (13) the refund of sums paid upon the acquisition of a relevant right (see Schedule para 14); and (14) arrangements with other persons (see Schedule para 15).

6 Vehicle Excise and Registration Act 1994 s 27(3)(a).

7 Ibid s 27(3)(a)(i).

8 Ibid s 27(3)(a)(ii).

9 Ibid s 27(3)(b)(i).

10 Ibid s 27(3)(b)(ii).

11 Ibid s 27(3)(b)(iii).

12 Ibid s 27(3)(c)(i).

13 Ibid s 27(3)(c)(ii).

14 Ibid s 27(3)(d).

15 Ibid s 27(3)(e).

- 16 Ibid s 27(3)(f).
- 17 Ibid s 27(3)(f)(i).
- 18 Ibid s 27(3)(f)(ii).
- 19 Ibid s 27(3)(g).
- 20 Ibid s 27(3)(h).
- 21 Ibid s 27(3)(i).
- 22 Ibid s 27(3)(i)(i).
- 23 Ibid s 27(3)(i)(ii).
- 24 Ibid s 27(3)(j).
- 25 Ibid s 27(3)(k).
- 26 Ibid s 27(3)(l).
- 27 Ibid s 27(3)(m). Such a charge is for the time being prescribed by virtue of s 25(1) (see PARA 565 ante): s 27(3)(m).
- 28 Ibid s 27(3)(n).
- 29 Ibid s 27(4).
- 30 Ibid s 27(4)(a).
- 31 Ibid s 27(4)(b).
- 32 Ibid s 27(4)(c).
- 33 Ibid s 27(5).
- 34 Ibid s 27(6).

## **UPDATE**

### **567 Sale of rights to particular registration marks**

NOTE 5--SI 1995/2880 amended: SI 2008/2372.

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### **568. Registration plates.**

As from a day to be appointed<sup>1</sup>, the Secretary of State<sup>2</sup> may by regulations:

- 1033 (1) prescribe specifications for registration plates<sup>3</sup> (whether relating to their size, shape, material of manufacture or otherwise);
- 1034 (2) provide for registration plates to contain or display such information other than registration marks or (as the case may be) special registration marks as may be specified or described in the regulations<sup>4</sup>.

1 The Vehicle Excise and Registration Act 1994 s 27A is added by the Vehicles (Crime) Act 2001 s 34, as from a day to be appointed under s 44. At the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 For these purposes, 'registration plates' means:

148 (1) plates or other devices for displaying registration marks and for fixing them on vehicles or trailers in accordance with regulations under the Vehicle Excise and Registration Act 1994 s 23(3) (see PARA 563 ante); or

149 (2) plates or other devices for displaying special registration marks and for fixing them on vehicles or trailers in accordance with regulations under s 22(2) (see PARA 523 ante),

and includes plates or other devices which are also for containing or displaying information other than registration marks or (as the case may be) special registration marks (whether or not such information is to be contained or displayed by virtue of regulations under s 27A (as added)); s 27A(3) (s 27A as prospectively added: see note 1 supra). 'Special registration mark' means a mark indicating the registered number of a vehicle or trailer and assigned to the vehicle or trailer by virtue of regulations under s 22(2) (see PARA 523 ante); and 'trailer' has the same meaning as in Sch 1 Pt VIII (as amended) (see CUSTOMS AND EXCISE: s 27A(4) (as so prospectively added)).

4 Ibid s 27A(1) (as prospectively added: see note 1 supra). Regulations under s 27A(1)(b) (see head (2) in the text) may, in particular, prescribe the form and manner in which any such information is to be contained or displayed: s 27A(2) (as so prospectively added).

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## **569. Marking of engines and bodies.**

The Secretary of State<sup>1</sup> may by regulations make such provision as he thinks appropriate with respect to the marking of the engines and bodies of vehicles<sup>2</sup>. Such regulations may, in particular, include provision as to the persons by whom and the times at which engines and bodies of vehicles are to be marked<sup>3</sup>, as to the form of any mark and the manner and position in which it is to be made<sup>4</sup>, and for requiring particulars of marks made under the regulations to be furnished to the Secretary of State<sup>5</sup>.

Such regulations may provide that a person who contravenes or fails to comply with any specified provision of the regulations is guilty of an offence<sup>6</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Vehicle Excise and Registration Act 1994 s 28(1). For the meaning of 'vehicle' see PARA 519 note 2 ante.

3 Ibid s 28(2)(a).

4 Ibid s 28(2)(b).

5 Ibid s 28(2)(c). At the date at which this volume states the law no such regulations had been made under s 28 and none have effect under it by virtue of s 64, Sch 4 para 2 (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 717). However, there is a requirement for engines to be marked under the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078: see reg 67; and PARA 365 ante.

6 Vehicle Excise and Registration Act 1994 s 59(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 59(5)(b). As to the standard scale see PARA 230 note 3 ante.

The Secretary of State may, if he sees fit, compound proceedings for an offence under the regulations: s 59(6) (b) (added by the Finance Act 1996 s 23, Sch 2 para 15).

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## **(ii) Display of Registration Marks**

### **570. Form of registration marks.**

The size, shape and character of any registration mark<sup>1</sup> which is required to be fixed on a vehicle<sup>2</sup> must be in accordance with the prescribed provisions<sup>3</sup>.

1 For the meaning of 'registration mark' see PARA 563 ante.

2 For the meaning of 'vehicle' see PARA 519 note 2 ante. Unless the context otherwise requires, a reference in the Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561 (as amended) to a registration plate fixed or to be fixed to a vehicle, or a registration mark displayed or to be displayed on a plate, is to be construed, where the vehicle is towing a trailer, so as to include a reference to the registration plate which is required under those regulations to be fixed to the trailer or a reference to the mark displayed on the plate fixed to that trailer: reg 2(2).

3 Specific provision is made for: (1) the layout of the numbers and letters (see the Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, reg 13, Sch 3 Pt 1 Table A); (2) the size and spacing of characters (see regs 14, 14A, Sch 3 Pt 3 Table B (reg 14 amended by SI 2001/1079; SI 2002/2687; and the Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, reg 14A added by SI 2002/2687)); and (3) the style and font of characters (see the Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, reg 15, Sch 4). As to the prescribed requirements for registration plates see PARA 571 post.

See, in relation to an exempted vehicle, the Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 8(1); and PARA 581 post.

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### **571. Specifications for registration plates.**

A registration mark<sup>1</sup> must be displayed on a registration plate<sup>2</sup> conforming to the prescribed requirements<sup>3</sup>.

1 For the meaning of 'registration mark' see PARA 563 ante.

2 'Registration plate' means a plate or other device displaying the registration mark of the vehicle and in the case of a dual purpose plate means such part of the plate as is not intended for the display of the international distinguishing sign of the United Kingdom in accordance with EC Council Regulation 2411/98 (OJ L 299, 10.11.1998, p 1) on the recognition in intra-community traffic of the distinguishing signs of member states in which motor vehicles are registered: Road Vehicles (Display of Registration Marks) Regulations 2001, SI

2001/561, reg 2(1). 'Dual purpose plate' means a plate or other device which displays both the registration mark of the vehicle and the international distinguishing sign of the United Kingdom: reg 2(1). The use of international distinguishing signs is prescribed by reg 16, Sch 2 (reg 16 amended by SI 2001/1079).

3 Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, reg 10(1). The construction, colour and other qualities of registration plates are prescribed by regs 10(2)-(6), 11, Sch 2 (reg 11 amended by SI 2002/2687).

## **UPDATE**

### **571 Specifications for registration plates**

NOTE 2--Definition of 'registration plate' amended; definition of 'dual purpose plate' omitted: SI 2001/651 r 2(1) (amended by SI 2009/811).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/5. VEHICLE REGISTRATION/(9) REGISTRATION MARKS/(ii) Display of Registration Marks/572. Vehicles registered on or after 1 October 1938.

### **572. Vehicles registered on or after 1 October 1938.**

In relation to vehicles, other than works trucks<sup>1</sup>, road rollers and agricultural machines<sup>2</sup>, first registered on or after 1 October 1938<sup>3</sup>, a registration plate<sup>4</sup> must be fixed on the rear of the vehicle, or, where the vehicle is towing a trailer, the trailer, or, where the vehicle is towing more than one trailer, the rearmost trailer<sup>5</sup>. Where a vehicle, or, in a case where the plate is required to be fixed on a trailer, that trailer, has been constructed so as to satisfy the requirements of the relevant type-approval Directive<sup>6</sup>, whether or not it is required by law to satisfy them, the plate may be fixed in the space provided in accordance with those requirements but if it is not so fixed it must be fixed vertically or, where that is not reasonably practicable, in a position as close to the vertical as is reasonably practicable, and in such a position that in normal daylight the characters of the registration mark<sup>7</sup> are easily distinguishable from every part of a relevant area<sup>8</sup> having the specified diagonal length<sup>9</sup>.

A registration plate must be fixed on the front of the aforementioned vehicle vertically or, where that is not reasonably practicable, in a position as close to the vertical as is reasonably practicable, in such a position that in normal daylight the characters of the registration mark are easily distinguishable from every part of a relevant area having the specified diagonal length<sup>10</sup>. In the case of a motor cycle or a motor tricycle which does not have a body of a type which is characteristic of the body of a four-wheeled vehicle, a registration plate must not be fixed on the front of a vehicle if it was first registered on or after 1 September 2001, and a plate need not be fixed on the front of the vehicle if it was first registered before 1 September 2001<sup>11</sup>.

Where the aforementioned vehicle is being used on a road between sunset and sunrise the registration plate fixed on the rear of the vehicle, or, where the vehicle is towing a trailer, the trailer or, where the vehicle is towing more than one trailer, the rearmost trailer, must be lit as follows<sup>12</sup>. Where a vehicle or, in a case where the plate is required to be fixed on a trailer, that trailer, has been constructed so as to satisfy the requirements of the relevant type-approval Directive, whether or not it is required by law to satisfy them, that plate may be lit by a lamp which complies with those requirements; but if it is not so lit it must be lit so that it is easily distinguishable from every part of a relevant area of the prescribed<sup>13</sup> dimensions<sup>14</sup>.

1 'Works truck' means a vehicle which is designed for use in private premises, and used on public roads only for carrying goods between private premises and a vehicle on a road in the immediate vicinity, or in passing from one part of private premises to another or between private premises and other private premises in the immediate vicinity, or in connection with road works at or in the immediate vicinity of the site of the works: Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, reg 2(1). As to the provisions relating to works trucks etc see PARA 574 post.

2 'Agricultural machine' means a vehicle which is an agricultural tractor, or an off-road tractor, or a light agricultural vehicle, or an agricultural engine, or a mowing machine: *ibid* reg 2(1).

3 *le* the 'relevant date': see *ibid* reg 2(1). In Northern Ireland, the relevant date is 1 January 1948: reg 2(1).

4 For the meaning of 'registration plate' see PARA 571 note 2 ante.

5 Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, reg 5(1), (2).

6 'Relevant type-approval Directive' means, in the case of a motor cycle, motor tricycle or quadricycle, EC Council Directive 93/94 (OJ 311, 14.12.1993, p 83) as regards the space to be provided for fixing of the rear registration plate, and EC Council Directive 93/92 (OJ L311, 14.12.1993, p 1) as regards the rear registration plate lamp; and in the case of any other vehicle or a trailer, EC Council Directive 70/222 (OJ L76, 6.4.1970, p 25) as regards the space to be provided for fixing of the rear registration plate, and EC Council Directive 76/760 (OJ L262, 27.9.1976, p 85) as regards the rear registration plate lamp: Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, reg 4. 'Motor cycle' means a vehicle having two wheels and includes a vehicle of that description in combination with a sidecar; 'motor tricycle' means a vehicle having three wheels symmetrically arranged; and 'quadricycle' means a vehicle having four wheels, a maximum net engine power not exceeding 15 kw and an unladen mass, excluding the mass of batteries in the case of an electrically-powered vehicle, not exceeding 550 kg in the case of a goods vehicle and 400 kg in any other case: reg 2(1).

7 For the meaning of 'registration mark' see PARA 563 ante.

8 'Relevant area', in relation to a registration plate, means the area contained in a square described on the ground in front of the vehicle in the case of a plate fixed on the front of the vehicle, and behind the vehicle in the case of a plate fixed on the rear of the vehicle, where one corner of the square is immediately below the middle of the plate and the diagonal of the square from that corner is parallel to the longitudinal axis of the vehicle: Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, reg 4.

9 *Ibid* reg 5(3), (5). The diagonal length so specified is, in the case of a mark having characters the width of which is at least 57 mm, 22 m; in the case of a mark having characters the width of which is 50 mm, 21.5 m; and in the case of a mark having characters the width of which is 44 mm, 18 m: reg 5(6).

10 *Ibid* reg 6(1)-(3). The diagonal length so specified is, in the case of a mark having characters the width of which is at least 57 mm, 22 m; in the case of a mark having characters the width of which is 50 mm, 21.5 m; and in the case of a mark having characters the width of which is 44 mm, 18m: reg 6(4).

11 *Ibid* reg 6(5).

12 *Ibid* reg 9(1), (2).

13 *le* having a diagonal length, in the case of a plate displaying a mark having characters with a width of 44 mm, of 15 m, and, in any other case, of 18 m: *ibid* reg 9(5)(a), (b).

14 *Ibid* reg 9(3), (5).

## UPDATE

### 572 Vehicles registered on or after 1 October 1938

NOTE 6--Directives 70/222, 76/760 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1). Directive 93/92 replaced: European Parliament and EC Council Directive 2009/67 (OJ L222, 25.8.2009, p 1). Directive 93/94 replaced: European Parliament and EC Council Directive 2009/62 (OJ L198, 30.7.2009, p 20).

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### **573. Vehicles registered before 1 October 1938.**

Specific provisions apply to vehicles<sup>1</sup>, other than works trucks<sup>2</sup> and agricultural machines<sup>3</sup>, first registered before 1 October 1938<sup>4</sup> as regards the fixing of registration plates<sup>5</sup>.

1 For the meaning of 'vehicle' see PARA 519 note 2 ante.

2 For the meaning of 'works truck' see PARA 572 note 1 ante.

3 For the meaning of 'agricultural machine' see PARA 572 note 2 ante.

4 See PARA 572 text and note 3 ante.

5 See the Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, reg 7, which makes provision for the position and visibility of registration plates. For the meaning of 'registration plate' see PARA 571 note 2 ante.

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### **574. Works trucks, road rollers and agricultural machines.**

A registration plate<sup>1</sup> must be fixed to works trucks<sup>2</sup>, road rollers and agricultural machines<sup>3</sup> in a vertical position or, where that is not possible, in a position as close to the vertical as is reasonably practicable: (1) on both sides of the vehicle, so that the characters of the mark are easily distinguishable from both sides of the vehicle; or (2) on the rear of the vehicle, so that the characters of the mark are easily distinguishable from behind the vehicle; or (3) where the vehicle is towing a trailer or trailers and the plate is not fixed on the sides of the vehicle, on the trailer or the rearmost trailer, as the case may be, so that the characters of the mark are easily distinguishable from behind the trailer<sup>4</sup>.

Where the towing vehicle is an agricultural machine, a plate fixed on the trailer may, instead of displaying the registration mark<sup>5</sup> of the towing vehicle, display the mark of any other agricultural machine kept by the keeper of the towing vehicle<sup>6</sup>.

1 For the meaning of 'registration plate' see PARA 571 note 2 ante.

2 For the meaning of 'works truck' see PARA 572 note 1 ante.

3 For the meaning of 'agricultural machine' see PARA 572 note 2 ante.

4 Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, reg 8(1), (2).

5 For the meaning of 'registration mark' see PARA 563 ante.

6 Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, reg 8(3).



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### **575. Exempt vehicles.**

Nothing in the regulations as to the display of registration marks<sup>1</sup> applies to:

1035 (1) an invalid vehicle, that is a vehicle the unladen weight of which does not exceed 254 kilograms and which is specially designed and constructed, and not merely adapted, for the use of a person suffering from a physical disability and solely used by that person; or

1036 (2) a pedestrian-controlled vehicle, that is a vehicle the unladen weight of which does not exceed 450 kilograms which is neither constructed nor adapted for the carriage of a driver or passenger<sup>2</sup>.

1    Ie the Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561 (as amended).

2    Ibid reg 3.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/5. VEHICLE REGISTRATION/(9) REGISTRATION MARKS/(ii) Display of Registration Marks/576. International distinguishing signs and other material.

### **576. International distinguishing signs and other material.**

No material other than a registration mark<sup>1</sup> may be displayed on a registration plate<sup>2</sup> except material complying with the requirements of any of the relevant specified<sup>3</sup> standards<sup>4</sup>. Where a mark is displayed on a dual purpose plate<sup>5</sup>, no material other than the international distinguishing sign of the United Kingdom displayed in accordance with the relevant Community legislation<sup>6</sup> may be placed in the space provided on the plate for that purpose and no part of the international distinguishing sign may encroach beyond the extreme left of the registration mark (that is to say, the outside edge of the prescribed<sup>7</sup> margin)<sup>8</sup>. Unless it forms part of a dual purpose plate, a registration plate may not be combined with a plate or device of any kind containing material which would not be permitted to be displayed on a dual purpose plate<sup>9</sup>.

1    For the meaning of 'registration mark' see PARA 563 ante.

2    For the meaning of 'registration plate' see PARA 571 note 2 ante.

3    Ie the standards mentioned in the Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, reg 10, Sch 2.

4    Ibid reg 16.

5    For the meaning of 'dual purpose plate' see PARA 571 note 2 ante.

6    Ie EC Council Regulation 2411/98 (OJ L299, 10.11.1998, p 1) on the recognition in intra-community traffic of the distinguishing signs of member states in which motor vehicles are registered: Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, reg 2(1).

7 le prescribed by the Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561 (as amended).

8 Ibid reg 16(2) (amended by SI 2001/1079).

9 Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, reg 16(3).

## **UPDATE**

### **576 International distinguishing signs and other material**

TEXT AND NOTES--Replaced. No material other than a registration mark and material complying with the requirements of any of the relevant standards mentioned in the Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, Sch 2 may be displayed on a registration plate: reg 16(1) (reg 16 substituted by SI 2009/811). Subject to the following provision, a registration plate may not be combined with any other plate or a device of any kind: reg 16(2). The letters 'GB' may be displayed on a plate or other device in accordance with the Annex to EC Council Regulation No 2411/98 on the recognition in intra-Community traffic of the distinguishing sign of the member state in which motor vehicles and their trailers are registered: reg 16(3). Subject to reg 16(5)-(8), there may be displayed on a plate or other device an arrangement of letters corresponding with reg 16(9)(a)-(k) and an emblem corresponding with reg 16(10)(a)-(d): reg 16(4). The arrangement of letters and emblem referred to in reg 16(4) must be displayed to the left of the registration plate and must not encroach into the margin, and for this purpose the expression 'margin' is to have the same meaning as in regs 14(9), 14A(2)(f) (see PARA 570): reg 16(5). The emblem referred to in reg 16(4) must be positioned above the arrangement of letters referred to in that paragraph: reg 16(6). Neither the arrangement of letters referred to in reg 16(4), nor the emblem referred to in that paragraph, must be more than fifty millimetres wide: reg 16(7). Regulation 16(4) does not apply if the letters 'GB' are displayed in accordance with reg 16(3) or if the relevant vehicle is recorded in the part of the register relating to Northern Ireland: reg 16(8). The arrangements of letters referred to in reg 16(4) are (1) 'United Kingdom' or 'UNITED KINGDOM'; (2) 'UK'; (3) 'Great Britain' or 'GREAT BRITAIN'; (4) 'GB'; (5) 'England' or 'ENGLAND'; (6) 'Eng' or 'ENG'; (7) 'Scotland' or 'SCOTLAND'; (8) 'Sco' or 'SCO'; (9) 'Wales' or 'WALES'; (10) 'Cymru' or 'CYMRU'; (11) 'Cym' or 'CYM': reg 16(9). The emblems referred to in reg 16(4) are (a) an image of the Union flag; (b) an image of the Cross of Saint George, as depicted on the flag of England; (c) an image of the Cross of Saint Andrew (the Saltire), as depicted on the flag of Scotland; (d) an image of the Red Dragon of Wales, as depicted on the flag of Wales: reg 16(10).

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## **(10) VISITING VEHICLES**

### **577. Production of documents.**

A person resident outside the United Kingdom<sup>1</sup> who brings into Great Britain<sup>2</sup> a visiting vehicle<sup>3</sup> must, if he is at any reasonable time required to do so, produce to a registration authority

specified documents that have been issued in respect of that vehicle<sup>4</sup>. The specified documents are:

- 1037 (1) a certificate of insurance, or a certificate of security or an insurance card<sup>5</sup>;
- 1038 (2) a visitor's registration document<sup>6</sup>;
- 1039 (3) a registration card<sup>7</sup>.

A person resident outside the United Kingdom who brings into Great Britain a visiting vehicle in respect of which a visitor's registration document has been issued must produce it for inspection if he is at any reasonable time required to do so by a police officer or by a person acting on behalf of the Secretary of State<sup>8</sup>.

1 For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

2 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

3 'Visiting vehicle' means a vehicle brought temporarily into Great Britain by a person resident outside the United Kingdom: Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 3. 'Vehicle' means a mechanically propelled vehicle intended or adapted for use on roads: reg 3.

4 Ibid reg 4(1).

5 Ibid reg 4(2)(a). For these purposes 'insurance card' has the same meaning as in the Motor Vehicles (International Motor Insurance Card) Regulations 1971, SI 1971/792, reg 3(1) (as amended) (see INSURANCE vol 25 (2003 Reissue) PARA 730); Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 3.

6 Ibid reg 4(2)(b). 'Visitor's registration document' means: (1) in the case of a vehicle registered in a country outside the United Kingdom, a registration certificate issued under the law of any country in respect of which a nationality sign has been assigned in, or notified to the Secretary-General of the United Nations under the International Convention relative to Motor Traffic (Paris, 24 April 1926; TS 11 (1930); Cmd 3510), the International Convention on Road Traffic (Geneva, 19 September 1949; TS 49 (1958); Cmd 578), or the International Convention on Road Traffic (Vienna, 8 November 1968; Misc 14 (1969); Cmd 4032), whether or not that country is a party to any of the said Conventions, and containing a registration mark, the name or the trade mark of the maker of the vehicle, the maker's identification or serial number, the date of its registration and the full name and permanent place of residence of the applicant for the said certificate; or (2) a certificate in form D as set out in the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1, Sch 1, issued under the law of a country outside the United Kingdom which is a party to the Convention relative to Motor Traffic (Paris, 24 April 1926; TS 11 (1930); Cmd 3510); or (3) in the case of a vehicle registered in accordance with the registration system of the British Authorities in Germany or the registration system of the United States Authorities in Germany, a registration certificate specifying the registered letter and number allotted to the vehicle under the system: Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 3.

'Nationality sign' means a sign complying with the provisions of the International Convention on Road Traffic (Vienna, 8 November 1968; Misc 14 (1969); Cmd 4032) Annex 3; the International Convention on Road Traffic (Geneva, 19 September 1949; TS 49 (1958); Cmd 578) Annex 4; or the International Convention relative to Motor Traffic (Paris, 24 April 1926; TS 11 (1930); Cmd 3510), Annex C, and bearing the distinctive letters specified in or under the Convention for the country under the law of which the vehicle is registered: Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 3. As to registration marks see PARAS 563-576 ante. As to trade marks generally see TRADE MARKS AND TRADE NAMES.

7 Ibid reg 4(2)(c). 'Registration card' means a card issued under reg 6 (see PARA 579 post) or issued in Northern Ireland under provisions corresponding to reg 6: reg 3.

8 Ibid reg 4(3). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

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# **578. Registration marks for visiting vehicles which are exempted vehicles.**

The registration mark<sup>1</sup> assigned to a visiting vehicle<sup>2</sup>, being an exempted vehicle<sup>3</sup>, is<sup>4</sup>:

1040 (1) in the case of a vehicle in respect of which there has been issued and there is held by the driver of that vehicle a visitor's registration document<sup>5</sup> recording a registration mark which consists of no letters or numerals other than Roman letters or ordinary European numerals or both, that mark<sup>6</sup>;

1041 (2) in any other case either:  
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113. (a) the registration mark assigned to the vehicle under provisions applying in Northern Ireland and corresponding to the provisions of head (b) below<sup>7</sup>; or

114. (b) if no such mark has been assigned<sup>8</sup>, a registration mark consisting of certain letters<sup>9</sup> and of a registered number which has been assigned to that vehicle by a registration authority<sup>10</sup>.

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Such a registration mark assigned to a visiting vehicle, being an exempted vehicle, becomes void when relief from customs duty ceases to be afforded<sup>11</sup> in respect of that vehicle<sup>12</sup>.

1 As to registration marks see PARAS 563-576 ante.

2 For the meaning of 'visiting vehicle' see PARA 577 note 3 ante.

3 'Exempted vehicle' means a vehicle exempt from excise duty by virtue of the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208 (as amended) (see PARA 1637 et seq post): Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 3.

4 Ibid reg 5, which is expressed to be subject to reg 8(5): see the text and notes 11-12 infra.

5 For the meaning of 'visitor's registration document' see PARA 577 note 6 ante.

6 Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 5(a).

7 Ibid reg 5(b)(i).

8 Ie assigned under those provisions applying in Northern Ireland: see the text to note 7 supra.

9 Ie the letters QA, QB, QC, QD, QE, QF, QG, QH, QJ, QK, QL, QM, QN, QP, QQ, QR, QS QT, QU, QV, QW, QX, and QY: see note 10 infra.

10 Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 5(b)(ii). The relevant registration authorities are the Automobile Association, the Royal Automobile Club, the Royal Scottish Automobile Club and the Secretary of State: see the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 5(9) (definition substituted by SI 1985/459). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

11 Ie relief from customs duty afforded in respect of that vehicle under the provisions referred to in the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 5(2) (as substituted) (see PARA 1638 post): Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 8(5). As to relief from customs duty see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 858 et seq.

12 Ibid reg 8(5).

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### **579. Registration cards.**

Where a registration authority<sup>1</sup> assigns a registration mark<sup>2</sup> to a visiting vehicle<sup>3</sup>, the authority must issue to the person who brought that vehicle into Great Britain<sup>4</sup> a registration card<sup>5</sup> containing such particulars as the Secretary of State<sup>6</sup> may direct<sup>7</sup>.

Certain provisions relating to registration and licensing of vehicles<sup>8</sup> apply in relation to a registration card as they apply in relation to a registration book but with the substitution of references to the registration authority for the references to the Secretary of State<sup>9</sup>.

Whenever a visiting vehicle in respect of which a registration card has been issued<sup>10</sup> is sold or transferred, and is removed to a country outside the United Kingdom, or is destroyed, then the holder of the registration card must surrender it to a registration authority<sup>11</sup> informing the authority of the reason for the transfer and, in a case where that vehicle has been sold or transferred, of the name of the new owner and of his address, if any, in the United Kingdom<sup>12</sup>. The registration authority (where other than the Secretary of State) to whom a registration card is so surrendered must forward it to the Secretary of State and inform him of the date of surrender and of the reason for that surrender<sup>13</sup>.

1 As to registration authorities see PARA 578 note 10 ante.

2 As to registration marks see PARAS 563-576 ante.

3 I.e. assigned under the Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 5(b)(ii): see PARA 578 ante. For the meaning of 'visiting vehicle' see PARA 577 note 3 ante. For the meaning of 'vehicle' see PARA 577 note 3 ante.

4 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

5 For the meaning of 'registration card' see PARA 577 note 7 ante.

6 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 6(1).

8 See *ibid* reg 6(2)(a), (b), referring to the Road Vehicles (Registration and Licensing) Regulations 1971, SI 1971/450, reg 6 (as amended) (which related to duplicate registration books), and reg 8(2), (4) (as amended) (which related to the production of registration books and to their defacement or mutilation). The Road Vehicles (Registration and Licensing) Regulations 1971, SI 1971/450, have been revoked and replaced by the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742 (as amended) (see PARA 529 et seq ante), reg 13 of which deals with the issue of replacement registration documents (see PARA 532 ante), but which contain no provisions as to defacement or mutilation.

9 Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 6(2).

10 I.e. issued under *ibid* reg 6(1) (see the text and notes 1-7 supra) or under provisions applying in Northern Ireland and corresponding to the provisions of reg 6(1): see reg 6(3).

11 For the purposes of *ibid* reg 6(3), references to a registration authority include references to any authority which has the functions in Northern Ireland of a registration authority under provisions corresponding to the Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610 (as amended): reg 6(5).

12 *Ibid* reg 6(3).

13 *Ibid* reg 6(4).

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## **580. Excise licences.**

A person who has brought a visiting vehicle<sup>1</sup>, which is not an exempted vehicle<sup>2</sup>, into Great Britain<sup>3</sup> must apply for an excise licence<sup>4</sup> for that vehicle<sup>5</sup>.

<sup>1</sup> For the meaning of 'visiting vehicle' see PARA 577 note 3 ante. For the meaning of 'vehicle' see PARA 577 note 3 ante.

<sup>2</sup> For the meaning of 'exempted vehicle' see PARA 578 note 3 ante.

<sup>3</sup> For the meaning of 'Great Britain' see PARA 205 note 3 ante.

<sup>4</sup> le under the Vehicle Excise and Registration Act 1994 (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 717): Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 7; Interpretation Act 1978 s 17(2).

<sup>5</sup> Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 7.

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## **581. Assigned registration marks.**

The provisions imposing requirements as to the form of registration marks<sup>1</sup> apply to an exempted vehicle<sup>2</sup> as if the reference within those provisions to any registration mark<sup>3</sup> which is required to be fixed on a vehicle<sup>4</sup> included a reference to the assigned registration mark<sup>5</sup>; and the provisions as to the fixing of registration plates<sup>6</sup> apply to an exempted vehicle as if it were a vehicle registered before 1 October 1938<sup>7</sup>.

The provisions which impose requirements as to the form of registration marks do not apply as respects a registration mark<sup>8</sup> if the corresponding requirements of the law under which, or the authority by whom, the registration mark was issued are complied with<sup>9</sup>. Such a registration mark<sup>10</sup> need not be exhibited at the front of the vehicle if that is not required by the law under which, or the authority by whom, the registration mark was issued<sup>11</sup>.

At the back of an exempted vehicle on which is exhibited a registration mark<sup>12</sup> there must be exhibited so as to be clearly distinguishable a nationality sign<sup>13</sup> indicating the country under the law of which the registration mark was issued<sup>14</sup>. However, no nationality sign need be shown on an exempted vehicle in a case where the visitor's registration document is a registration certificate specifying the registered letter and number allotted to the vehicle under the system<sup>15</sup>.

The provisions relating to trailers<sup>16</sup> apply to any trailer drawn by an exempted vehicle as if reference to the registration mark were references to the registration mark displayed by an exempted vehicle<sup>17</sup>. However, in a case where: (1) the registration mark to be displayed by the exempted vehicle consists of no letters or numerals other than Roman letters or ordinary European numerals or both<sup>18</sup>; and (2) the trailer has been brought temporarily into Great Britain<sup>19</sup> by a person resident outside the United Kingdom<sup>20</sup>, a registration mark issued to the

trailer under the law of a country outside the United Kingdom<sup>21</sup> may be displayed at the back of the trailer instead of the registration mark to be displayed by the exempted vehicle<sup>22</sup>.

When an exempted vehicle which must carry a nationality sign<sup>23</sup> is drawing one or more trailers, the nationality sign must be carried in like manner at the back of the trailer or rearmost trailer<sup>24</sup>. However, a trailer carrying a registration mark<sup>25</sup> must carry a nationality sign indicating the country under the law of which that registration mark was issued to the trailer instead of any other nationality sign indicating the country under the law of which a registration mark was issued to the exempted vehicle<sup>26</sup>.

1     Ie the Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, regs 13-15, Sch 3 Pts 1, 3, Sch 4 (as amended): see PARA 570 ante.

2     For the meaning of 'exempted vehicle' see PARA 578 note 3 ante. For the meaning of 'vehicle' see PARA 577 note 3 ante.

3     As to registration marks see PARAS 563-576 ante.

4     Ie required to be fixed on a vehicle by virtue of the Vehicle Excise and Registration Act 1994: Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 8(1); Interpretation Act 1978 s 17(2).

5     Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 8(1). The registration mark is one assigned under reg 5: see PARA 578 ante.

6     Ie the Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, reg 7: see PARA 573 ante.

7     Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 8(1).

8     Ie a registration mark mentioned in *ibid* reg 5(a): see PARA 578 ante.

9     *Ibid* reg 8(1) proviso (a).

10    See note 8 *supra*.

11    Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 8(1) proviso (b).

12    See note 8 *supra*.

13    For the meaning of 'nationality sign' see PARA 577 note 6 ante.

14    Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 8(2).

15    See *ibid* reg 8(2) proviso. See also PARA 577 note 6 ante.

16    The Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610 (as amended) refer to the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 22, but these regulations have been revoked: see now the Road Vehicles (Display of Registration Marks) Regulations 2001, SI 2001/561, reg 5; and PARA 572 ante.

17    Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 8(3). The registration mark referred to in the text is that displayed by an exempted vehicle by virtue of reg 5: see PARA 578 ante.

18    See note 7 *supra*.

19    For the meaning of 'Great Britain' see PARA 205 note 3 ante.

20    For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

21    Ie a country which is party to the International Convention on Road Traffic (Geneva, 19 September 1949; TS 49 (1958); Cmd 578) or the International Convention on Road Traffic (Vienna, 8 November 1968; Misc 14 (1969); Cmd 4032).

22    Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 8(3) proviso.

23 le in pursuance of the Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610 (as amended).

24 Ibid reg 8(4).

25 le carrying a registration mark in pursuance of ibid reg 8(3) proviso: see the text to note 22 supra.

26 Ibid reg 8(4) proviso.

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## **582. Records to be kept by registration authorities.**

Each registration authority<sup>1</sup> must, in relation to every exempted vehicle<sup>2</sup> to which a registration mark<sup>3</sup> is assigned, keep a record of the following particulars<sup>4</sup>:

- 1042 (1) the name of the person applying in respect of the vehicle for that mark, his address in the United Kingdom<sup>5</sup> and (if available) his home address<sup>6</sup>;
- 1043 (2) the make of vehicle and chassis number or engine number<sup>7</sup>;
- 1044 (3) the registration mark assigned to the vehicle, and the date and place at which it was assigned<sup>8</sup>; and
- 1045 (4) if available, the date and place of entry of the vehicle into the United Kingdom<sup>9</sup>.

Each registration authority other than the Secretary of State<sup>10</sup> must forward to the Secretary of State a copy of the particulars so recorded<sup>11</sup>. The Secretary of State must preserve for not less than two years the copies forwarded to him<sup>12</sup> and any records made by him<sup>13</sup>. The Secretary of State must also preserve for not less than two years a record of any particulars forwarded to him for recording under certain provisions made in Northern Ireland<sup>14</sup> as respects a vehicle to which a registration mark has been assigned in Northern Ireland<sup>15</sup>.

The Secretary of State must, on application, furnish free of charge any particulars recorded in any documents preserved by him<sup>16</sup> to the Commissioners for Revenue and Customs<sup>17</sup>, the Department of Environment for Northern Ireland, any registration authority, any local authority, or any chief officer of police<sup>18</sup> in the United Kingdom, and must upon payment of the relevant fee<sup>19</sup> furnish to any other person who can show to the satisfaction of the Secretary of State that he has reasonable cause, the name and address shown in respect of any registration mark contained in any records preserved<sup>20</sup>.

1 As to registration authorities see PARA 578 note 10 ante.

2 For the meaning of 'exempted vehicle' see PARA 578 note 3 ante. For the meaning of 'vehicle' see PARA 577 note 3 ante.

3 le a registration mark mentioned in the Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 5(b)(ii): see PARA 578 ante. As to registration marks see PARAS 563-576 ante.

4 Ibid reg 9(1).

5 For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

6 Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 9(1)(a).



7 Ibid reg 9(1)(b).

8 Ibid reg 9(1)(c).

9 Ibid reg 9(1)(d).

10 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

11 Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 9(2).

12 Ie forwarded under ibid reg 9(2): see the text and notes 10-11 supra.

13 Ibid reg 9(3). Such records are made under reg 9(1): see the text and notes 1-4 supra.

14 Ie provisions made in Northern Ireland corresponding to ibid reg 9(2) (see the text and notes 10-11 supra): see reg 9(4).

15 Ibid reg 9(4). Such a registration mark must be assigned in Northern Ireland under provisions corresponding to reg 5(b)(ii) (see PARA 578 ante): see reg 9(4).

16 Ie preserved under ibid reg 9.

17 As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

18 As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

19 At the date at which this volume states the law the fee is £2: see the Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 9(5).

20 Ibid reg 9(5) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). Any such records are preserved under the Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610 (as amended).

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## 6. USE OF VEHICLES

### (1) LEGISLATION AND ADMINISTRATION

#### 583. Introduction.

The use of vehicles is governed by the Road Traffic Act 1988 and regulations made under it<sup>1</sup>. There are provisions regulating the laden weight of vehicles<sup>2</sup>, the dimensions of laden vehicles<sup>3</sup>, trailers and sidecars<sup>4</sup>, the carriage or haulage of dangerous goods<sup>5</sup>, the use of gas propulsion systems and gas-fired appliances<sup>6</sup>, the control of noise<sup>7</sup> and the avoidance of danger<sup>8</sup>. There are also provisions relating to safety equipment<sup>9</sup> and duties of drivers<sup>10</sup>.

1 Ie the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078 (as amended), made under the Road Traffic Act 1988 s 41 (as amended): see PARA 260 ante.

2 See PARAS 584-589 post.

3 See PARAS 590-595 post.

4 See PARAS 596-605 post.

- 5 See PARA 606 post.
- 6 See PARAS 607-609 post.
- 7 See PARAS 610-613 post.
- 8 See PARAS 614-625 post.
- 9 See PARAS 626-641 post.
- 10 See PARAS 642-648 post.

## **UPDATE**

### **583 Introduction**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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## **(2) LADEN WEIGHT**

### **584. Maximum permitted laden weight of a vehicle.**

The laden weight of a vehicle of a class specified in heads (1) to (17) below must not exceed the maximum permitted laden weight specified<sup>1</sup>; and the maximum permitted laden weight of a vehicle first used<sup>2</sup> before 1 June 1973 which falls in head (1) or head (2) below must not be less than would be the case if the vehicle fell in head (9) below<sup>3</sup>:

- 1046 (1) in the case of a wheeled<sup>4</sup> heavy motor car<sup>5</sup> or motor car<sup>6</sup> which is not described in head (2), (3), (5) or (6) below and which complies with the relevant braking requirement<sup>7</sup>, the maximum permitted laden weight is as determined in accordance with the relevant statutory provisions<sup>8</sup>;
- 1047 (2) in the case of a wheeled heavy motor car or motor car which is not described in head (3), (5) or (6) below, which complies with the relevant braking requirement and in which every driving axle not being a steering axle is fitted with twin tyres<sup>9</sup> and either every driving axle is fitted with road friendly suspension<sup>10</sup> or no axle has an axle weight<sup>11</sup> exceeding 9,500 kilograms, the maximum permitted laden weight is as determined in accordance with the relevant statutory provisions<sup>12</sup>;
- 1048 (3) in the case of a wheeled heavy motor car or motor car, not being an agricultural motor vehicle<sup>13</sup>, which forms part of an articulated vehicle<sup>14</sup> and which complies with the relevant braking requirement, the maximum permitted laden weight is as determined in accordance with the relevant statutory provisions<sup>15</sup>;
- 1049 (4) in the case of a wheeled trailer, including a composite trailer<sup>16</sup>, but not including a semi-trailer, which is drawn by a motor tractor<sup>17</sup>, heavy motor car or motor car which complies with the relevant braking requirement, other than a

- trailer described in head (7), (8), (9) or (12) below, the maximum permitted laden weight is as determined in accordance with the relevant statutory provisions<sup>18</sup>;
- 1050 (5) in the case of an articulated bus<sup>19</sup>, the maximum permitted laden weight is 27,000 kilograms<sup>20</sup>;
- 1051 (6) in the case of a wheeled agricultural motor vehicle, the maximum permitted laden weight is as determined in accordance with the relevant statutory provisions<sup>21</sup>, subject to a maximum of 24,390 kilograms<sup>22</sup>;
- 1052 (7) in the case of a balanced agricultural trailer<sup>23</sup>, which is not described in head (9), (12) or (16) below, the maximum permitted laden weight is as determined in accordance with the relevant statutory provisions<sup>24</sup>, subject to a maximum of 18,290 kilograms<sup>25</sup>;
- 1053 (8) in the case of an unbalanced agricultural trailer<sup>26</sup> which is not described in head (9), (12) or (17) below, the maximum permitted laden weight is 18,290 kilograms inclusive of the weight imposed by the trailer on the drawing vehicle<sup>27</sup>;
- 1054 (9) in the case of a wheeled trailer manufactured on or after 27 February 1977 and fitted with brakes which automatically come into operation on the overrun of the trailer, whether or not it is fitted with any other brake, except an agricultural trailer which is being drawn by an agricultural motor vehicle, which complies with the specified requirements<sup>28</sup> and of which the brakes can be applied either by the driver of the drawing vehicle or by some other person on that vehicle or on the trailer, the maximum permitted laden weight is 3,500 kilograms<sup>29</sup>;
- 1055 (10) in the case of a wheeled heavy motor car or motor car not described in head (1), (3), (5) or (6) above, with not more than four wheels, the maximum permitted laden weight is 14,230 kilograms, with more than four but not more than six wheels, 20,330 kilograms and, with more than six wheels, 24,390 kilograms<sup>30</sup>;
- 1056 (11) in the case of a wheeled trailer not described in head (4), (7), (8), (9) above or head (12) below having less than six wheels, and not forming part of an articulated vehicle, and an agricultural trailed appliance<sup>31</sup>, the maximum permitted laden weight is 14,230 kilograms<sup>32</sup>;
- 1057 (12) in the case of a trailer manufactured before 27 February 1977 and having no brakes other than a parking brake and brakes which come into operation on the overrun of the trailer, the maximum permitted laden weight is 3,560 kilograms<sup>33</sup>;
- 1058 (13) in the case of a wheeled locomotive<sup>34</sup>, not described in head (6) above, which is equipped with suitable and sufficient springs between each wheel and the vehicle's frame and with a pneumatic tyre<sup>35</sup> or a tyre of soft or elastic material fitted to each wheel, the maximum permitted laden weight is, if having less than six wheels, 22,360 kilograms, if having six wheels, 26,420 kilograms, and, if having more than six wheels, 30,490 kilograms<sup>36</sup>;
- 1059 (14) in the case of a track-laying<sup>37</sup> locomotive with resilient material interposed between the rims of the weight-carrying rollers and the road so that the weight of the vehicle, other than that borne by any wheels and the portion of the track in contact with the road, is supported by the resilient material, the maximum permitted laden weight is 22,360 kilograms<sup>38</sup>;
- 1060 (15) in the case of a locomotive not described in head (6), (13) or (14) above, the maximum permitted laden weight is 20,830 kilograms<sup>39</sup>;
- 1061 (16) in the case of a track-laying heavy motor car or motor car, the maximum permitted laden weight is 22,360 kilograms<sup>40</sup>; and
- 1062 (17) in the case of a track-laying trailer, the maximum permitted laden weight is 13,210 kilograms<sup>41</sup>.

The maximum total weight of all trailers, whether laden or unladen, drawn at any one time by a locomotive must not exceed 44,000 kilograms<sup>42</sup>.

Nothing in head (1) or head (2) above prevents a vehicle from being used on a road<sup>43</sup> if: (a) a plating certificate in respect of the vehicle was in force immediately before 1 January 1993<sup>44</sup>; and (b) the laden weight of the vehicle does not exceed the weight shown in that certificate as being the weight not to be exceeded in Great Britain<sup>45</sup>.

1 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 75(1). Nothing in reg 75 (as amended) is to be taken to prohibit the use of a vehicle in circumstances where the maximum authorised weight for the vehicle, for any vehicle combination of which the vehicle forms part and for any axle of the vehicle, as determined in accordance with the Road Vehicles (Authorised Weight) Regulations 1998, SI 1998/3111 (amended by SI 2000/3224; SI 2001/1125), is not exceeded: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 79A (added by SI 1998/3112). As to the meaning of 'axle' see PARA 279 note 13 ante. The onus is on the prosecution to prove that the weigh bridge on which a vehicle was weighed was accurate: *Connolly v Lancashire County Council* [1994] RTR 79, DC; *East West Transport Ltd v DPP* [1996] RTR 184, DC.

2 For the meaning of 'first used' see PARA 267 note 5 ante.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 75(2).

4 For the meaning of 'wheeled' see PARA 267 note 2 ante.

5 For the meaning of 'heavy motor car' see PARA 213 ante.

6 For the meaning of 'motor car' see PARA 212 ante.

7 'Relevant braking requirement' means a requirement that the brakes of a motor vehicle (as assisted, where a trailer is being drawn, by the brakes on the trailer) comply: (1) in a case to which the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 18, Table 1 item 1 (as amended) applies, with the requirements specified in reg 18(3) for vehicles falling in that item (see PARA 290 ante); (2) in any other case, with the requirements specified in reg 18(3) for vehicle classes (a) and (b) in reg 18, Table item 2 (see PARA 290 ante) (whatever the date of first use of the motor vehicle and the date of manufacture of any trailer drawn by it may be): reg 3(2), Table. For the meanings of 'motor vehicle' and 'trailer' see PARA 210 ante.

As to the requirements in relation to buses see reg 78(3) (as amended); and PARA 587 post. For the meaning of 'bus' see PARA 271 note 6 ante.

8 Ibid reg 75(1), Table item 1 (amended by SI 1992/2016). The relevant statutory provisions are the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 75(1), (2), Sch 11 Pt I (substituted by SI 1992/2016).

9 For these purposes, an axle is to be regarded as fitted with twin tyres if it would be regarded as fitted with twin tyres for the purposes of EC Council Directive 92/7 (OJ L57, 2.3.92, p 29): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 75(6) (added by SI 1992/2016).

10 For these purposes, an axle is to be regarded as fitted with a road friendly suspension if its suspension is: (1) an air suspension; or (2) a suspension, not being an air suspension, which is regarded as being equivalent to an air suspension for the purposes of EC Council Directive 92/7 (OJ L57, 2.3.92, p 29): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 75(5) (added by SI 1992/2016). 'Air suspension' means a suspension system in which at least 75% of the spring effect is caused by an air spring: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 75(4) (definition added by SI 1992/2016). 'Air spring' means a spring operated by means of air or other compressible fluid under pressure: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 75(4) (definition added by SI 1992/2016).

11 For the meaning of 'axle weight' see PARA 287 note 23 ante.

12 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 75(1), Table item 1A (added by SI 1992/2016). The relevant statutory provisions are those of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 11 Pt 1A (added by SI 1992/2016).

13 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

14 For the meaning of 'articulated vehicle' see PARA 271 note 6 ante.

15 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 75(1), Table item 2. The weight is the weight specified in Sch 11 Pt II col 5 (amended by SI 1987/676) in the item which is appropriate

having regard to the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 11 Pt II cols 2-4.

16 For the meaning of 'composite trailer' see PARA 271 note 25 ante. For these purposes, a composite trailer is to be treated as one trailer (not being a semi-trailer or a converter dolly): *ibid* reg 3(11). For the meaning of 'semi-trailer' see PARA 271 note 6 ante; and for the meaning of 'converter dolly' see PARA 271 note 25 ante.

17 For the meaning of 'motor tractor' see PARA 216 ante.

18 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 75(1), Table item 3. The relevant statutory provisions are Sch 11 Pt I (as substituted: see note 8 *supra*).

19 For the meaning of 'articulated bus' see PARA 271 note 6 ante. As to articulated buses see *ibid* reg 78(3) (as amended); and PARA 587 post.

20 *Ibid* reg 75(1), Table item 4 (substituted by SI 1992/2016).

21 The relevant statutory provisions are the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 11 Pt I (as substituted: see note 8 *supra*).

22 *Ibid* reg 75(1), Table item 5.

23 For these purposes, 'balanced agricultural trailer' means an agricultural trailer the whole of the weight of which is borne by its own wheels: *ibid* reg 75(4).

24 The relevant statutory provisions are *ibid* Sch 11 Pt I (as substituted: see note 8 *supra*).

25 *Ibid* reg 75(1), Table item 6.

26 For these purposes, 'unbalanced agricultural trailer' means an agricultural trailer of which some, but not more than 35%, of the weight is borne by the drawing vehicle and the rest of the weight is borne by its own wheels: *ibid* reg 75(4).

27 *Ibid* reg 75(1), Table item 7.

28 Ie the requirements specified in *ibid* Sch 3 Table items 3, 14, 17.

29 *Ibid* reg 75(1), Table item 8.

30 *Ibid* reg 75(1), Table item 9.

31 For the meaning of 'agricultural trailed appliance' see PARA 271 note 21 ante.

32 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 75(1), Table item 10.

33 *Ibid* reg 75(1), Table item 11.

34 For the meaning of 'locomotive' see PARA 217 note 3 ante.

35 For the meaning of 'pneumatic tyre' see PARA 271 note 11 ante.

36 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 75(1), Table item 12.

37 For the meaning of 'track-laying' see PARA 267 note 3 ante.

38 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 75(1), Table item 13.

39 *Ibid* reg 75(1), Table item 14.

40 *Ibid* reg 75(1), Table item 15.

41 *Ibid* reg 75(1), Table item 16.

42 *Ibid* reg 75(3) (amended by SI 1998/3112).

43 For the meaning of 'road' see PARA 206 ante.

44 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 75(3A)(a) (reg 75(3A) added by SI 1992/2016). As to plating certificates see PARA 679 post.

45 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 75(3A)(b) (as added: see note 44 supra).

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**585. Maximum permitted laden weight of a vehicle and trailer, other than an articulated vehicle.**

The total laden weight of a motor vehicle<sup>1</sup> and the trailer<sup>2</sup> or trailers, other than semi-trailers, drawn by it must not, in a case specified in heads (1) to (8) below, exceed the specified maximum permitted train weight<sup>3</sup>:

- 1063 (1) in the case of a wheeled<sup>4</sup> trailer which is drawn by a wheeled motor tractor<sup>5</sup> or heavy motor car<sup>6</sup> (not being in any case an agricultural motor vehicle<sup>7</sup>), where the combination has a total of four axles and is being used for international transport and the drawing vehicle is a vehicle which was first used<sup>8</sup> on or after 1 April 1973 and complies with the relevant braking requirement<sup>9</sup>, the maximum permitted train weight is 35,000 kilograms<sup>10</sup>;
- 1064 (2) in the case of a wheeled trailer which is drawn by a wheeled motor tractor, heavy motor car or motor car<sup>11</sup> (not being in any case an agricultural motor vehicle), where the combination has a total of four axles and the following conditions are satisfied in relation to the drawing vehicle: (a) it was first used on or after 1 April 1973; (b) it complies with the relevant braking requirement; (c) every driving axle not being a steering axle is fitted with twin tyres<sup>12</sup>; and (d) every driving axle is fitted with road friendly suspension<sup>13</sup>, the maximum permitted train weight is 35,000 kilograms<sup>14</sup>;
- 1065 (3) in the case of a wheeled trailer which is drawn by a wheeled motor tractor, heavy motor car or motor car (not being in any case an agricultural motor vehicle), where the combination has a total of five or more axles and the following conditions are satisfied in relation to the drawing vehicle: (a) it was first used on or after 1 April 1973; (b) it complies with the relevant braking requirement; (c) every driving axle not being a steering axle is fitted with twin tyres; and (d) either every driving axle is fitted with road friendly suspension or no axle has an axle weight<sup>15</sup> exceeding 8,500 kilograms, the maximum permitted train weight is 38,000 kilograms<sup>16</sup>;
- 1066 (4) in the case of a wheeled trailer, not being part of a combination described in head (1), (2) or (3) above which is drawn by a wheeled motor tractor, heavy motor car or motor car (not being in any case an agricultural motor vehicle), where the trailer is fitted with power-assisted brakes which can be operated by the driver<sup>17</sup> of the drawing vehicle and are not rendered ineffective by the non-rotation of its engine and the drawing vehicle is equipped with a warning device so placed as to be readily visible to the driver of the vehicle and which is capable of indicating any impending failure of, or deficiency in, the vacuum or pressure system, the maximum permitted train weight is 32,520 kilograms<sup>18</sup>;
- 1067 (5) in the case of a wheeled trailer which is of a specified description<sup>19</sup> drawn by a wheeled motor tractor, heavy motor car or motor car (not being in any case an agricultural motor vehicle), the drawing vehicle being a vehicle which was first used

- on or after 1 April 1973 and complies with the relevant braking requirement, the maximum permitted train weight is 29,500 kilograms<sup>20</sup>;
- 1068 (6) in the case of a wheeled agricultural motor vehicle drawing a wheeled unbalanced agricultural trailer<sup>21</sup>, if the distance between the rearmost axle of the trailer and the rearmost axle of the drawing vehicle does not exceed 2.9 metres, the maximum permitted train weight is 20,000 kilograms<sup>22</sup>;
- 1069 (7) in the case of a wheeled trailer or trailers drawn by a wheeled motor tractor, heavy motor car, motor car or agricultural motor vehicle, not being a combination of vehicles mentioned in heads (1) to (6) above, the maximum permitted train weight is 24,390 kilograms<sup>23</sup>; and
- 1070 (8) in the case of a track-laying<sup>24</sup> trailer drawn by a motor tractor, heavy motor car or motor car, whether wheeled or track-laying, and a wheeled trailer drawn by a track-laying vehicle being a motor tractor, heavy motor car or motor car, the maximum permitted train weight is 22,360 kilograms<sup>25</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'trailer' see PARA 210 ante. For these purposes, a composite trailer is to be treated as one trailer (not being a semi-trailer or a converter dolly): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(11). For the meaning of 'semi-trailer' see PARA 271 note 6 ante; and for the meaning of 'converter dolly' see PARA 271 note 25 ante.

3 Ibid reg 76(1). Regulation 76(1) is subject to the provisions in Sch 11A (added by SI 1994/329; and amended by SI 1998/3112; SI 1997/1096) (exemptions relating to combined transport operations): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 76(1A) (added by SI 1994/329). For the meaning of 'train weight' see PARA 340 note 13 ante.

Nothing in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 76 (as amended) is to be taken to prohibit the use of a vehicle in circumstances where the maximum authorised weight for the vehicle, for any vehicle combination of which the vehicle forms part and for any axle of the vehicle, as determined in accordance with the Road Vehicles (Authorised Weight) Regulations 1998, SI 1998/3111 (as amended) (see PARA 584 ante) is not exceeded: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 79A (added by SI 1998/3112). As to the meaning of 'axle' see PARA 279 note 13 ante.

4 For the meaning of 'wheeled' see PARA 267 note 2 ante.

5 For the meaning of 'motor tractor' see PARA 216 ante.

6 For the meaning of 'heavy motor car' see PARA 213 ante.

7 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

8 For the meaning of 'first used' see PARA 267 note 5 ante.

9 For the meaning of 'relevant braking requirement' see PARA 584 note 7 ante.

10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 76(1), Table item 1 (substituted by SI 1994/329). As to the calculation of number of axles see PARA 279 note 13 ante.

11 For the meaning of 'motor car' see PARA 212 ante.

12 As to when an axle is to be regarded as fitted with twin tyres see the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 75(6) (as added); and PARA 584 note 9 ante (provision applied by reg 76(2) (substituted by SI 1992/2016)).

13 As to the meaning of 'road friendly suspension' see PARA 584 note 10 ante; definition applied by the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 76(2) (as substituted: see note 12 supra).

14 Ibid reg 76(1), Table item 1A (added by SI 1992/2016; and substituted by SI 1994/329).

15 For the meaning of 'axle weight' see PARA 287 note 23 ante.

16 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 76(1), Table item 1AA (added by SI 1994/329).

- 17 For the meaning of 'driver' see PARA 207 ante.
- 18 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 76(1), Table item 1B (added by SI 1992/2016; and substituted by SI 1994/329).
- 19 Is a wheeled trailer of a description specified in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 75(1), Table item 8: see PARA 584 head (9) ante.
- 20 Ibid reg 76(1), Table item 1C (added by SI 1992/2016).
- 21 For the meaning of 'unbalanced agricultural trailer' see PARA 584 note 26 ante; definition applied by the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 76(2) (as substituted: see note 12 supra).
- 22 Ibid reg 76(1), Table item 2.
- 23 Ibid reg 76(1), Table item 3 (amended by SI 1992/2016).
- 24 For the meaning of 'track-laying' see PARA 267 note 3 ante.
- 25 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 76(1), Table item 4.

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### **586. Maximum permitted laden weight of an articulated vehicle.**

The laden weight of an articulated vehicle<sup>1</sup> of a class specified in heads (1) and (2) below, other than an agricultural motor vehicle<sup>2</sup>, an agricultural trailer<sup>3</sup> or an agricultural trailed appliance<sup>4</sup>, must not exceed the weight specified in relation to that vehicle<sup>5</sup>:

- 1071 (1) in the case of an articulated vehicle which complies with the relevant braking requirement<sup>6</sup>, the maximum permitted laden weight is that specified in the relevant statutory provisions<sup>7</sup>; and
- 1072 (2) in the case of an articulated vehicle which does not comply with the relevant braking requirement, the maximum permitted laden weight is, if the trailer has less than four wheels, 20,330 kilograms, and, if the trailer has four wheels or more, 24,390 kilograms<sup>8</sup>.

- 1 For the meaning of 'articulated vehicle' see PARA 271 note 6 ante.
- 2 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.
- 3 For the meaning of 'agricultural trailer' see PARA 271 note 30 ante.
- 4 For the meaning of 'agricultural trailed appliance' see PARA 271 note 21 ante.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 77(1), (2). Regulation 77 (as amended) is subject to the provisions of Sch 11A (added by SI 1994/329; and amended by SI 1998/3112; SI 1997/1096) (exemptions relating to combined transport operations): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 77(2A) (added by SI 1994/329).

Nothing in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 77 (as amended) is to be taken to prohibit the use of a vehicle in circumstances where the maximum authorised weight for the vehicle, for any vehicle combination of which the vehicle forms part and for any axle of the vehicle, as determined in accordance with the Road Vehicles (Authorised Weight) Regulations 1998, SI 1998/3111 (as



amended) (see PARA 584 ante), is not exceeded: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 79A (added by SI 1998/3112). As to the meaning of 'axle' see PARA 279 note 13 ante.

6 For the meaning of 'relevant braking requirement' see PARA 584 note 7 ante.

7 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 77(1), Table item 1 (amended by SI 1994/329). The maximum permitted laden weight is whichever is the lower of: (1) the weight specified in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 77 (as amended), Sch 11 Pt III col 3 in the item in which the spacing between the rearmost axles of the motor vehicle and the semi-trailer is specified in Sch 11 Pt III col 2; and (2) if the vehicle is of a description specified in an item in Sch 11 Pt IV col 2 (Sch 11 Pt IV substituted by SI 1992/2016; and amended by SI 1994/329), the weight specified in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 11 Pt IV col 3 (as so substituted). For the meaning of 'motor vehicle' see PARA 210 ante; and for the meaning of 'semi-trailer' see PARA 271 note 6 ante. As to the interpretation of certain terms contained in Sch 11 (as amended) see reg 77(3) (added by SI 1992/2016).

8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 77(1), Table item 2.

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### **587. Maximum permitted wheel and axle weights.**

The weight transmitted to the road by one or more wheels<sup>1</sup> of a vehicle mentioned in heads (1) to (4) below, in the case of wheeled<sup>2</sup> heavy motor cars<sup>3</sup>, motor cars<sup>4</sup> and trailers<sup>5</sup> which comply with the relevant braking requirement<sup>6</sup> and wheeled agricultural motor vehicles<sup>7</sup>, agricultural trailers<sup>8</sup> and agricultural trailed appliances<sup>9</sup> and, where appropriate<sup>10</sup>, buses<sup>11</sup>, must not exceed the specified maximum permitted weight<sup>12</sup>:

1073 (1) in the case of two wheels in line transversely each of which is fitted with a wide tyre or with two pneumatic tyres<sup>13</sup> having the centres of their areas of contact with the road not less than 300 millimetres apart, measured at right angles to the longitudinal axis of the vehicle, the maximum permitted weight is, if the wheels are on the sole driving axle of a motor vehicle, not being a bus, 10,500 kilograms, and, if the vehicle is a bus which has two axles and of which the weight transmitted to the road surface by its wheels is calculated in accordance with the relevant statutory provisions<sup>14</sup>, 10,500 kilograms, and, in any other case, 10,170 kilograms<sup>15</sup>;

1074 (2) in the case of two wheels in line transversely otherwise than as mentioned in head (1) above, the maximum permitted weight is 9,200 kilograms<sup>16</sup>;

1075 (3) in the case of more than two wheels in line transversely, the maximum permitted weight is, in the case of a vehicle manufactured before 1 May 1983 where the wheels are on one axle of a group of closely spaced axles<sup>17</sup>, 10,170 kilograms, and, in the case of a vehicle manufactured on or after 1 May 1983, 10,170 kilograms, and, in any other case, 11,180 kilograms<sup>18</sup>; and

1076 (4) in the case of one wheel not transversely in line with any other wheel, the maximum permitted weight is, if the wheel is fitted as described in head (1) above, 5,090 kilograms, and, in any other case, 4,600 kilograms<sup>19</sup>.

The weight transmitted to the road by one or more wheels of a vehicle mentioned in heads (a) to (c) below, in the case of wheeled heavy motor cars, motor cars and trailers which do not fall within heads (1) to (4) above, must not exceed the specified maximum permitted weight<sup>20</sup>:

1077 (a) in the case of more than two wheels transmitting weight to a strip of the road surface on which the vehicle rests contained between two parallel lines at

- right angles to the longitudinal axis of the vehicle, the maximum permitted weight is, where the lines are less than 1.02 metres apart, 11,180 kilograms, where the lines are 1.02 metres or more apart but less than 1.22 metres apart, 16,260 kilograms, and where the lines are 1.22 metres or more apart but less than 2.13 metres apart, 18,300 kilograms<sup>21</sup>;
- 1078 (b) in the case of two wheels in line transversely, the maximum permitted weight is 9,200 kilograms<sup>22</sup>; and
- 1079 (c) in the case of one wheel, where no other wheel is in the same line transversely, the maximum permitted weight is 4,600 kilograms<sup>23</sup>.

The weight transmitted to the road by one or more wheels of a vehicle as mentioned in heads (i) and (ii) below, in the case of wheeled locomotives<sup>24</sup>, must not exceed the specified maximum permitted weight<sup>25</sup>:

- 1080 (i) in the case of two wheels in line transversely, except in the case of a road roller, or a vehicle with not more than four wheels first used before 1 June 1955, the maximum permitted weight is 11,180 kilograms<sup>26</sup>; and
- 1081 (ii) in the case of any two wheels in the case of a wheeled locomotive having not more than four wheels first used before 1 June 1955, not being a road roller or an agricultural motor vehicle which is not driven at more than 20 miles per hour, the maximum permitted weight is three-quarters of the total weight of the locomotive<sup>27</sup>.

The weight transmitted to the road by one or more wheels of a vehicle as mentioned in heads (A) to (C) below, in the case of track-laying<sup>28</sup> vehicles, must not exceed the specified maximum permitted weight<sup>29</sup>:

- 1082 (A) in the case of the weight of a heavy motor car, motor car or trailer transmitted to any strip of the road surface on which the vehicle rests contained between two parallel lines 0.6 metre apart at right angles to the longitudinal axis of the vehicle, the maximum permitted weight is 10,170 kilograms<sup>30</sup>;
- 1083 (B) in the case of two wheels in line, the maximum permitted weight is, for heavy motor cars or motor cars with two wheels, 8,130 kilograms, and, for heavy motor cars or motor cars with more than two wheels, 7,630 kilograms<sup>31</sup>; and
- 1084 (C) in the case of one wheel, where no other wheel is in the same line transversely, on a heavy motor car or a motor car, the maximum permitted weight is 4,070 kilograms<sup>32</sup>.

1 For the meaning of 'wheel' see PARA 267 note 2 ante.

2 For the meaning of 'wheeled' see PARA 267 note 2 ante.

3 For the meaning of 'heavy motor car' see PARA 213 ante.

4 For the meaning of 'motor car' see PARA 212 ante.

5 For the meaning of 'trailer' see PARA 210 ante.

6 For the meaning of 'relevant braking requirement' see PARA 584 note 7 ante.

7 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

8 For the meaning of 'agricultural trailer' see PARA 271 note 30 ante.

9 For the meaning of 'agricultural trailed appliance' see PARA 271 note 21 ante.

10 I.e. in the case of heads (1) and (2) in the text.

11 For the meaning of 'bus' see PARA 271 note 6 ante.

12 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 78(1), (2)(a), Table Pt I. Nothing in reg 78 (as amended) is to be taken to prohibit the use of a vehicle in circumstances where the maximum authorised weight for the vehicle, for any vehicle combination of which the vehicle forms part and for any axle of the vehicle, as determined in accordance with the Road Vehicles (Authorised Weight) Regulations 1998, SI 1998/3111 (as amended) (see PARA 584 ante), is not exceeded: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 79A (added by SI 1998/3112). As to the meaning of 'axle' see PARA 279 note 13 ante.

13 For the meaning of 'wide tyre' see PARA 297 note 14 ante; and for the meaning of 'pneumatic tyre' see PARA 271 note 11 ante.

14 Is calculated in accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 78(5).

In the case of an articulated bus, or, subject to reg 78(4), of a bus first used before 1 April 1988, the laden weight, for the purposes of reg 75 (as amended) (see PARA 584 ante), and the weight transmitted to the road surface by wheels of the vehicle, for the purposes of reg 78(1), Table Pt I items 1, 2 (item 1 as amended) (see heads (1) and (2) in the text), is to be calculated with reference to the vehicle when it is complete and fully equipped for service with: (1) a full supply of water, oil and fuel; and (2) weights of 63.5 kg for each person (including crew): (a) for whom a seat is provided in the position in which he may be seated; and (b) who may by or under any enactment be carried standing, the total of such weights being reasonably distributed in the space in which such persons may be carried, save that in the case of a bus, not being an articulated bus, only the number of such persons exceeding eight is to be taken into account: reg 78(3) (amended by SI 1992/2016). The weights for the purposes referred to in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 78(3) (as amended) may, in the case of a bus to which reg 78(3) (as amended) applies, be calculated in accordance with reg 78(5) instead of reg 78(3) (as amended): reg 78(4). For the meaning of 'articulated bus' see PARA 271 note 6 ante.

In the case of a bus first used on or after 1 April 1988, the weights for the purposes referred to in reg 78(3) (as amended) are to be calculated with reference to the vehicle when it is complete and fully equipped for service with: (i) a full supply of water, oil and fuel; (ii) a weight of 65 kg for each person (including crew): (A) for whom a seat is provided, in the position in which he may be seated; and (B) who may by or under any enactment be carried standing, the total of such weights being reasonably distributed in the space in which such persons may be so carried, save that in the case of a bus, not being an articulated bus, only the number of such persons exceeding four is to be taken into account; (iii) all luggage space within the vehicle but not within the passenger compartment loaded at the rate of 100 kg per square metre or 10 kg per person mentioned in head (ii) supra, whichever is the less; and (iv) any area of the roof of the vehicle constructed or adapted for the storage of luggage loaded with a uniformly distributed load at the rate of 75 kg per square metre: reg 78(5).

Regulation 75 (as amended) does not apply to a two axle bus if its laden weight as calculated in accordance with reg 75(5) does not exceed 17,000 kg, and the distance between the two axles is at least 3 metres: reg 78(6) (added by SI 1992/2016).

15 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 78(1), (2)(a), Table Pt I item 1 (amended by SI 1987/676).

16 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 78(1), (2)(a), Table Pt I item 2.

17 A reference to axles being closely-spaced is a reference to: (1) two axles (not being part of a group of axles falling within head (2) or head (3) infra) which are spaced at a distance apart of not more than 2.5 metres; (2) three axles (not being part of a group of axles falling within head (3) infra) the outermost of which are spaced at a distance apart of not more than 3.25 metres; or (3) four or more axles the outermost of which are spaced at a distance apart of not more than 4.6 metres, the number of axles for these purposes being determined in accordance with *ibid* reg 3(8) (as amended) (see PARA 279 note 13 ante); and a reference to any particular number of closely-spaced axles is to be construed accordingly: reg 3(8A) (added by SI 1992/2016).

18 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 78(1), (2)(a), Table Pt I item 3 (amended by SI 1992/2016).

19 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 78(1), (2)(a), Table Pt I item 4.

20 *Ibid* reg 78(1), (2)(b), Table Pt II. See also note 12 supra.

21 *Ibid* reg 78(1), (2)(b), Table Pt II item 5.

22 *Ibid* reg 78(1), (2)(b), Table Pt II item 6.

- 23 Ibid reg 78(1), (2)(b), Table Pt II item 7.
- 24 For the meaning of 'locomotive' see PARA 217 note 3 ante.
- 25 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 78(1), (2)(c), Table Pt III. See also note 12 supra.
- 26 Ibid reg 78(1), (2)(c), Table Pt III item 8.
- 27 Ibid reg 78(1), (2)(c), Table Pt III item 9.
- 28 For the meaning of 'track-laying' see PARA 267 note 3 ante.
- 29 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 78(1), (2)(d), Table Pt IV. See also note 12 supra.
- 30 Ibid reg 78(1), (2)(d), Table Pt IV item 10.
- 31 Ibid reg 78(1), (2)(d), Table Pt IV item 11.
- 32 Ibid reg 78(1), (2)(d), Table Pt IV item 12.

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### **588. Maximum permitted weights for certain closely-spaced axles.**

Where (1) a wheeled<sup>1</sup> motor vehicle<sup>2</sup> which complies with the relevant braking requirement<sup>3</sup>; (2) a wheeled trailer<sup>4</sup> which is drawn by such a motor vehicle<sup>5</sup>; or (3) an agricultural motor vehicle<sup>6</sup>, an agricultural trailer<sup>7</sup> or an agricultural trailed appliance<sup>8</sup>, is of a specified description<sup>9</sup> and has two closely-spaced axles<sup>10</sup>, the total weight transmitted to the road surface by all the wheels<sup>11</sup> of those axles must not exceed the maximum permitted weight<sup>12</sup>.

Where such a vehicle is of a specified description<sup>13</sup> and has three closely-spaced axles, the total weight transmitted to the road surface by all the wheels of those axles must not exceed the specified weight<sup>14</sup>.

Where such a vehicle is fitted with four or more closely-spaced axles, the weight transmitted to the road surface by all the wheels of those axles must not exceed 24,000 kilograms<sup>15</sup>.

Nothing in the above provisions<sup>16</sup> applies so as to prevent a vehicle first used<sup>17</sup> before 1 June 1973 from being used on a road at a weight as respects those axles at which it could otherwise be used<sup>18</sup>; and nothing in those provisions prevent a vehicle from being used on a road<sup>19</sup> if:

- 1085 (a) a plating certificate<sup>20</sup> in respect of the vehicle was in force immediately before 1 January 1993<sup>21</sup>; and
- 1086 (b) no axle has an axle weight<sup>22</sup> exceeding the weight shown in that certificate as being the weight not to be exceeded in Great Britain<sup>23</sup> for that axle<sup>24</sup>.

1 For the meaning of 'wheeled' see PARA 267 note 2 ante.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 79(1)(a). For the meaning of 'relevant braking requirement' see PARA 584 note 7 ante.

- 4 For the meaning of 'trailer' see PARA 210 ante.
- 5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 79(1)(b).
- 6 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.
- 7 For the meaning of 'agricultural trailer' see PARA 271 note 30 ante.
- 8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 79(1)(c). For the meaning of 'agricultural trailed appliance' see PARA 271 note 21 ante.
- 9 I.e. a description specified in an item in ibid reg 79(2), Sch 11 Pt V col 2 (Sch 11 Pt V substituted by SI 1992/2016). As to the interpretation of certain provisions contained in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 11 Pt V, Pt VI (as substituted) see reg 79(6) (added by SI 1988/1287; and substituted by SI 1992/2016).
- 10 As to the meaning of 'closely-spaced axle' see PARA 587 note 17 ante; and as to the meaning of 'axle' see PARA 279 note 13 ante.
- 11 For the meaning of 'wheel' see PARA 267 note 2 ante.
- 12 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 79(2) (substituted by SI 1992/2016). The maximum permitted weight is that specified in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 11 Pt V col 3 (as substituted: see note 9 supra) against that item: reg 79(1).
- Nothing in reg 79 (as amended) is to be taken to prohibit the use of a vehicle in circumstances where the maximum authorised weight for the vehicle, for any vehicle combination of which the vehicle forms part and for any axle of the vehicle, as determined in accordance with the Road Vehicles (Authorised Weight) Regulations 1998, SI 1998/3111 (as amended) (see PARA 584 ante), is not exceeded: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 79A (added by SI 1998/3112).
- 13 I.e. a description specified in an item in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 79(2), Sch 11 Pt VI col 2 (Sch 11 Pt VI substituted by SI 1992/2016).
- 14 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 79(3) (substituted by SI 1992/2016). The specified weight is that in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 11 Pt VI col 3 (as substituted: see note 9 supra): reg 79(3) (as so substituted).
- 15 Ibid reg 79(4) (substituted by SI 1992/2016).
- 16 I.e. the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 79(2), (3) or (4) (as substituted): see the text and notes 12-15 supra.
- 17 For the meaning of 'first used' see PARA 267 note 5 ante.
- 18 I.e. if it fell within the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 78(1), Table Pt II item 5.
- 19 Ibid reg 79(5) (amended by SI 1992/2016). For the meaning of 'road' see PARA 206 ante.
- 20 As to plating certificates see PARA 679 post.
- 21 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 79(5)(a) (substituted by SI 1992/2016).
- 22 For the meaning of 'axle weight' see PARA 287 note 23 ante.
- 23 For the meaning of 'Great Britain' see PARA 205 note 3 ante.
- 24 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 79(5)(b) (substituted by SI 1992/2016).

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### **589. Over-riding weight restrictions.**

No person is to use, or cause or permit<sup>1</sup> to be used, on a road<sup>2</sup> a vehicle<sup>3</sup>:

- 1087 (1) being a goods vehicle<sup>4</sup> or a bus<sup>5</sup> fitted with a plate<sup>6</sup>, but for which no plating certificate<sup>7</sup> has been issued, if any of the weights shown on the plate is exceeded<sup>8</sup>;
- 1088 (2) for which a plating certificate has been issued, if any of the weights shown in the plating certificate<sup>9</sup> is exceeded<sup>10</sup>; or
- 1089 (3) being an agricultural trailed appliance<sup>11</sup> required to be fitted with a plate<sup>12</sup>, if the maximum gross weight<sup>13</sup> is exceeded<sup>14</sup>.

Where any two or more axles<sup>15</sup> are fitted with a compensating arrangement<sup>16</sup> the sum of the weights shown for them in the plating certificate must not be exceeded; and in a case where a plating certificate has not been issued the sum of the weights referred to must be that shown for the said axles in the plate<sup>17</sup>.

Heads (1) to (3) above do not apply to a vehicle for which a plating certificate has been issued in the prescribed form<sup>18</sup> where the vehicle is being used for international transport, and none of the weights shown in the plating certificate is exceeded<sup>19</sup>.

Where both a train weight<sup>20</sup> and a maximum train weight are shown in a plating certificate<sup>21</sup> issued for a motor vehicle<sup>22</sup>, head (2) above in so far as it relates to train weights does not apply to the motor vehicle if: (a) the motor vehicle is a wheeled<sup>23</sup> heavy motor car<sup>24</sup> drawing a wheeled trailer<sup>25</sup> and the requirements relating to drawbar combinations<sup>26</sup> are for the time being fulfilled<sup>27</sup>; or (b) the motor vehicle is comprised in an articulated vehicle<sup>28</sup> and the specified requirements<sup>29</sup> are for the time being fulfilled<sup>30</sup>, and the train weight of the motor vehicle does not exceed the maximum train weight shown in the certificate<sup>31</sup>.

Nothing in the provisions relating to maximum weight<sup>32</sup> permits any such weight as is mentioned above to be exceeded and nothing in the above provisions permits any weight prescribed by the provisions relating to maximum weight in relation to the vehicle in question to be exceeded<sup>33</sup>.

Heads (1) to (3) above do not apply where a vehicle is used on a road before 1 January 2000 if:

- 1090 (i) the vehicle is fitted with a plate<sup>34</sup> and the maximum gross weight and the maximum weight for any axle of the vehicle are not exceeded<sup>35</sup>; or
- 1091 (ii) there is in force a plating certificate for the vehicle that was issued before 1 January 1999 and the design weight<sup>36</sup> of the vehicle is not exceeded<sup>37</sup>; and
- 1092 (iii) in either case the maximum authorised weight for the vehicle, maximum authorised weight for a combination of which the vehicle forms part and maximum authorised weight for any axle of the vehicle<sup>38</sup> are not exceeded<sup>39</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 80(1) (amended by SI 1997/1096; SI 1998/3112).

4 For the meaning of 'goods vehicle' see PARA 271 note 26 ante.

5 For the meaning of 'bus' see PARA 271 note 6 ante.

- 6    Ie in accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 66 (as amended): see PARA 364 ante.
- 7    As to plating certificates see PARA 679 post.
- 8    Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 80(1)(a).
- 9    Ie in column (2) of the plating certificate.
- 10   Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 80(1)(b).
- 11   For the meaning of 'agricultural trailed appliance' see PARA 271 note 21 ante.
- 12   Ie required by the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 68: see PARA 366 ante.
- 13   Ie the maximum gross weight referred to in ibid reg 68(2)(c): see PARA 366 ante. For the meaning of 'maximum gross weight' see PARA 271 note 27 ante.
- 14   Ibid reg 80(1)(c).
- 15   As to the meaning of 'axle' see PARA 279 note 13 ante.
- 16   Ie in accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 23 (as amended): see PARA 294 ante.
- 17   Ibid reg 80(2). Such a plate is fitted in accordance with reg 66 (as amended): see PARA 364 ante.
- 18   Ie the form set out in ibid reg 70, Sch 10A (as added) (see PARA 368 ante) or Sch 10C (as added) (see PARA 368 ante).
- 19   Ibid reg 80(2A) (added by SI 1994/329).
- 20   For the meaning of 'train weight' see PARA 340 note 13 ante.
- 21   Ie in column (2) of the plating certificate.
- 22   For the meaning of 'motor vehicle' see PARA 210 ante.
- 23   For the meaning of 'wheeled' see PARA 267 note 2 ante.
- 24   For the meaning of 'heavy motor car' see PARA 213 ante.
- 25   For the meaning of 'trailer' see PARA 210 ante.
- 26   Ie the requirements set out in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 11A Pt II (added by SI 1994/329).
- 27   Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 80(2B)(a) (reg 80(2B) added by SI 1994/329).
- 28   For the meaning of 'articulated vehicle' see PARA 271 note 6 ante.
- 29   Ie the requirements set out in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 11A Pt III (added by SI 1994/329; and amended by SI 1998/3112).
- 30   Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 80(2B)(b) (as added: see note 27 supra).
- 31   Ibid reg 80(2B) (as added: see note 27 supra).
- 32   Ie nothing in ibid regs 75-79 (as amended) (see PARAS 584-588 ante) or in the Road Vehicles (Authorised Weight) Regulations 1998, SI 1998/3111 (as amended) (see PARA 584 ante).
- 33   Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 80(3) (amended by SI 1998/3112).

34 le in accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 66(1)(b): see PARA 364 ante.

35 Ibid reg 80(4)(a) (reg 80(4) added by SI 1998/3112).

36 'Design weight' means, in relation to the gross weight, each axle weight or the train weight of a motor vehicle or trailer, the weight at or below which in the opinion of the Secretary of State or of a person authorised in that behalf by the Secretary of State the vehicle could safely be driven on roads: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table. For the meaning of 'axle weight' see PARA 287 note 23 ante. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

37 Ibid reg 80(4)(b) (as added: see note 35 supra).

38 le determined in accordance with the Road Vehicles (Authorised Weight) Regulations 1998, SI 1998/3111 (see PARA 584 ante).

39 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 80(4)(c) (as added: see note 35 supra).

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### **(3) DIMENSIONS OF LADEN VEHICLES**

#### **590. Restrictions on use of vehicles carrying wide or long loads.**

No load is to be carried on a vehicle so that the overall width<sup>1</sup> of the vehicle together with the width of any lateral projection<sup>2</sup> or projections of its load exceeds 4.3 metres<sup>3</sup>.

No load is to be carried on a vehicle so that the load has a lateral projection or projections on either side exceeding 305 millimetres or the overall width of the vehicle and of any lateral projection or projections of its load exceeds 2.9 metres<sup>4</sup>. However, this prohibition does not apply to the carriage of loose agricultural produce not baled or crated, or an indivisible load<sup>5</sup> in certain circumstances<sup>6</sup>.

1 For the meaning of 'overall width' see PARA 274 ante.

2 For these purposes, 'lateral projection', in relation to a load carried by a vehicle, means that part of the load which extends beyond a side of the vehicle: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 81(a). The width of any lateral projection must be measured between longitudinal planes passing through the extreme projecting point of the vehicle on that side on which the projection lies and that part of the projection furthest from that point: reg 81(b). The extreme projecting point of a vehicle is the point from which the overall width of the vehicle is calculated in accordance with the definition of overall width contained in reg 3(2) (see PARA 274 ante): reg 81(i). For the meaning of 'longitudinal plane' see PARA 274 note 1 ante.

3 Ibid reg 82(1).

4 Ibid reg 82(2).

5 For the meaning of 'indivisible load' see PARA 271 note 34 ante.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 82(2) proviso (amended by SI 1991/2125). The circumstances are: (1) that it is not reasonably practicable to comply with the requirement in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 82(2), and the conditions specified in reg 82(2), Sch 12 paras 1, 5 (Sch 12 para 1 amended, and Sch 12 para 5 added, by SI 1991/2125) are complied with; and (2) that, where the overall width of the vehicle together with the width of any lateral



projection or projections of its load exceeds 3.5 metres, the conditions specified in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 12 para 2 are complied with: reg 82(2) proviso (as so amended).

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### **591. Loads resting on vehicles.**

Where a load is carried so that its weight rests on a vehicle or vehicles, the specified length<sup>1</sup> must not exceed 27.4 metres<sup>2</sup>.

A load must not be carried so that its weight is borne by a vehicle or vehicles if either:

- 1093 (1) the specified length<sup>3</sup> exceeds 18.65 metres<sup>4</sup>; or
- 1094 (2) the load is borne by a trailer or trailers and the specified length<sup>5</sup> exceeds 25.9 metres<sup>6</sup>,

unless the specified conditions<sup>7</sup> are complied with<sup>8</sup>.

1 The length so specified is: (1) where the weight of the load is borne by a single vehicle, the overall length of the vehicle together with the length of any forward and rearward projection of the load; (2) where the weight of the load is borne by a motor vehicle and one trailer, whether or not forming an articulated vehicle, the overall length of the trailer together with the length of any projection of the load in front of the foremost point of the trailer and of any rearward projection of the load; and (3) in any other case, the overall length of all the vehicles which bear the weight of the load, together with the length of any distance between them and of any forward or rearward projection of the load: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 82(5) (amended by SI 1991/2125). For the meaning of 'overall length' see PARA 272 ante. For the meanings of 'motor vehicle' and 'trailer' see PARA 210 ante; and for the meaning of 'articulated vehicle' see PARA 271 note 6 ante.

For these purposes, 'forward projection' and 'rearward projection': (a) in relation to a load carried in such a manner that its weight is borne by only one vehicle, mean respectively that part of the load which extends beyond the foremost point of the vehicle and that part which extends beyond the rearmost point of the vehicle; (b) in relation to a load carried in such a manner that part of its weight is borne by more than one vehicle, mean respectively that part of the load which extends beyond the foremost point of the foremost vehicle by which the load is carried except where the context otherwise requires and that part of the load which extends beyond the rearmost point of the rearmost vehicle by which the load is carried; and (c) in relation to any special appliance or apparatus, mean respectively that part of the appliance or apparatus which, if it were deemed to be a load carried by the vehicle, would be a part of a load extending beyond the foremost point of the vehicle and that part which would be a part of a load extending beyond the rearmost point of the vehicle; and references in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 82 (as amended) and Sch 12 (as amended) to a forward projection or to a rearward projection in relation to a vehicle are to be construed accordingly: reg 81(d) (amended by SI 1991/2125). For the purposes of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 81(d) (as amended), 'vehicle' does not include any special appliance or apparatus or any part which is a forward projection or a rearward projection: reg 81(e). Without prejudice to reg 81(e), the foremost or, as the case may be, the rearmost point of a vehicle is the foremost or rearmost point from which the overall length of the vehicle is calculated in accordance with the definition of overall length contained in reg 3(2) (see PARA 272 ante): reg 81(j). References to a special appliance or apparatus, in relation to a vehicle, are references to any crane or other special appliance or apparatus fitted to the vehicle which is a permanent or essentially permanent fixture: reg 81(c).

References to the distance between vehicles, in relation to vehicles carrying a load, are references to the distance between the nearest points of any two adjacent vehicles by which the load is carried, measured when the longitudinal axis of each vehicle lies in the same vertical plane; and, in determining, for these purposes, the nearest point of two vehicles, any part of either vehicle designed primarily for use as a means of attaching the one vehicle to the other and any fitting designed for use in connection with any such part is to be disregarded: reg 81(f).

2 Ibid reg 82(3).

3 See note 1 *supra*.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 82(4)(a) (reg 82(4) substituted by SI 1991/2125).

5 The length so specified is the overall length of the combination of vehicles, together with the length of any forward or rearward projection of the load: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 82(6). For these purposes, references to a combination of vehicles, in relation to a motor vehicle which is drawing one or more trailers, are references to the motor vehicle and the trailer or trailers drawn by it, including any other motor vehicle which is used for the purpose of assisting in the propulsion of the trailer or the trailers on the road: reg 81(g). The overall length of a combination of vehicles is to be taken as the distance between the foremost point of the drawing vehicle comprised in the combination and the rearmost point of the rearmost vehicle comprised in it, measured when the longitudinal axis of each vehicle comprised in the combination lies in the same vertical plane: reg 81(h).

6 Ibid reg 82(4)(b) (as substituted: see note 4 *supra*).

7 The conditions are specified in *ibid* Sch 12 Pt I paras 1, 2 (Sch 12 para 1 amended by SI 1991/2125).

8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 82(4) (as substituted: see note 4 *supra*).

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## **592. Vehicles, other than straddle carriers, carrying loads or fitted with special appliances or apparatus.**

No person is to use, or cause or permit<sup>1</sup> to be used, on a road<sup>2</sup> a vehicle, not being a straddle carrier<sup>3</sup>, carrying a load or fitted with a special appliance or apparatus<sup>4</sup> if the load, appliance or apparatus has a forward projection<sup>5</sup> of a specified length<sup>6</sup>, or rearward projection of a specified length<sup>7</sup>, unless the specified conditions<sup>8</sup> are complied with<sup>9</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 *ante*.

2 For the meaning of 'road' see PARA 206 *ante*.

3 For the meaning of 'straddle carrier' see PARA 278 note 18 *ante*. As to straddle carriers see PARA 593 *post*.

4 For the meaning of 'special appliance or apparatus' see PARA 591 note 1 *ante*.

5 For the meaning of 'forward projection' see PARA 591 note 1 *ante*.

6 The length is specified in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 82(7), Table col 2. For these purposes, the length of any forward projection or of any rearward projection is to be measured between transverse planes passing: (1) in the case of a forward projection, through the foremost point of the vehicle and that part of the projection furthest from that point; and (2) in the case of a rearward projection, through the rearmost point of the vehicle and that part of the projection furthest from that point: reg 81(e). For the purposes of reg 81(e), 'vehicle' does not include any special appliance or apparatus or any part which is a forward projection or a rearward projection: reg 81(e). For the meaning of 'transverse plane' see PARA 271 note 7 *ante*. For the meaning of 'rearward projection' see PARA 591 note 1 *ante*.

7 *Ie* a length specified in *ibid* reg 82(7), Table col 3.

8 The conditions are specified in *ibid* reg 82(7), Table col 4.

9 Ibid reg 82(7).

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### 593. Straddle carriers.

No person is to use, or cause or permit<sup>1</sup> to be used, on a road<sup>2</sup> a straddle carrier<sup>3</sup> carrying a load if<sup>4</sup>:

1095 (1) the load has a rearward projection<sup>5</sup> exceeding 1 metre, unless the specified conditions<sup>6</sup> are met<sup>7</sup>;

1096 (2) the load has a forward projection exceeding 2 metres or a rearward projection exceeding 3 metres<sup>8</sup>; or

1097 (3) the overall length<sup>9</sup> of the vehicle together with the length of any forward projection and of any rearward projection<sup>10</sup> of its load exceeds 12.2 metres<sup>11</sup>.

Head (1) above does not apply to a vehicle being used in passing from one part of private premises to another part or to other private premises in the immediate neighbourhood<sup>12</sup>; and heads (2) and (3) above do not apply to a vehicle being used in such a way if the vehicle is not being driven at a speed exceeding 12 miles per hour, and, where the overall length of the vehicle together with the length of any forward projection and of any rearward projection of its load exceeds 12.2 metres, the specified conditions<sup>13</sup> are complied with<sup>14</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 For the meaning of 'straddle carrier' see PARA 278 note 18 ante.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 82(8).

5 For the meaning of 'rearward projection' see PARA 591 note 1 ante.

6 The conditions are specified in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 82(8), Sch 12 para 4. Where another vehicle is attached to that end of a vehicle from which a projection extends, then, for the purposes of any requirement in reg 82 (as amended) to comply with Sch 12 para 3 or 4, that projection is to be treated as a forward or rearward projection only if, and to the extent that it extends beyond the foremost point or, as the case may be, the rearmost point, of that other vehicle, measured when the longitudinal axis of each vehicle lies in the same vertical plane: reg 82(9). For the meaning of 'forward projection' see PARA 591 note 1 ante.

7 Ibid reg 82(8)(a).

8 Ibid reg 82(8)(b).

9 For the meaning of 'overall length' see PARA 272 ante.

10 As to the length of any forward or rearward projection see PARA 592 note 6 ante.

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 82(8)(c).

12 Ibid reg 82(8) proviso (i).

13 The conditions are specified in ibid Sch 12 paras 1, 2 (Sch 12 para 1 amended by SI 1991/2125).

14 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 82(8) proviso (ii).

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#### **594. Agricultural, horticultural or forestry implements.**

No person is to use, or cause or permit<sup>1</sup> to be used, on a road<sup>2</sup> an agricultural, horticultural or forestry implement rigidly, but not permanently, mounted on a wheeled<sup>3</sup> agricultural motor vehicle<sup>4</sup>, agricultural trailer<sup>5</sup> or agricultural trailed appliance<sup>6</sup>, whether or not part of its weight is supported by one or more of its own wheels<sup>7</sup> if:

- 1098 (1) the overall width<sup>8</sup> of the vehicle together with the lateral projection of the implement exceeds 2.55 metres<sup>9</sup>; or
- 1099 (2) the implement projects more than 1 metre forwards or rearwards of the vehicle<sup>10</sup>.

This restriction does not apply in a case where: (a) part of the weight of the implement is supported by one or more of its own wheels<sup>11</sup>; and (b) the longitudinal axis of the greater part of the implement is capable of articulating in the horizontal plane in relation to the longitudinal axis of the rear portion of the vehicle<sup>12</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 For the meaning of 'wheeled' see PARA 267 note 2 ante.

4 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

5 For the meaning of 'agricultural trailer' see PARA 271 note 30 ante.

6 For the meaning of 'agricultural trailed appliance' see PARA 271 note 21 ante.

7 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 82(11). For the meaning of 'wheel' see PARA 267 note 2 ante. An agricultural, horticultural or forestry implement rigidly but not permanently mounted on an agricultural motor vehicle, agricultural trailer or agricultural trailed appliance, whether or not part of its weight is supported by one or more of its own wheels, is not to be treated as a load, or special appliance, on that vehicle: reg 81(k).

8 For the meaning of 'overall width' see PARA 274 ante.

9 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 82(11)(a) (amended by SI 1995/3051).

10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 82(11)(b).

11 Ibid reg 82(11)(i).

12 Ibid reg 82(11)(ii).

1663)/6. USE OF VEHICLES/(3) DIMENSIONS OF LADEN VEHICLES/595. Emergency services vehicles.

### **595. Emergency services vehicles.**

In the case of a vehicle being used for fire and rescue authority<sup>1</sup>, ambulance<sup>2</sup> or police purposes<sup>3</sup> or for defence purposes (including civil defence purposes)<sup>4</sup>, or in connection with the removal of any obstruction to traffic<sup>5</sup>, if compliance with any provision relating to the dimensions of laden vehicles<sup>6</sup> would hinder or be likely to hinder the use of the vehicle for the purpose for which it is being used, that provision does not apply to that vehicle while it is being so used<sup>7</sup>.

1 See FIRE SERVICES vol 18(2) (Reissue) PARA 68 et seq.

2 See HEALTH SERVICES vol 54 (2008) PARA 12.

3 As to police vehicles see POLICE vol 36(1) (2007 Reissue) PARA 525.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 82(10)(a) (amended in relation to England by SI 2004/3168; and in relation to Wales by SI 2005/2929). As to defence see ARMED FORCES; WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 539 et seq.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 82(10)(b).

6 *le ibid* reg 82 (as amended): see PARAS 590-594 ante.

7 *Ibid* reg 82(10).

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## **(4) TRAILERS AND SIDECARS**

### **596. Restrictions on vehicles drawing trailers.**

No person is to use, or cause or permit<sup>1</sup> to be used, on a road<sup>2</sup> a wheeled<sup>3</sup> vehicle of a class specified in one of heads (1) to (8) below drawing a trailer<sup>4</sup>, otherwise than as specified below<sup>5</sup>:

- 1100 (1) a straddle carrier must not draw a trailer on a road<sup>6</sup>;
- 1101 (2) an invalid carriage must not draw a trailer on a road<sup>7</sup>;
- 1102 (3) an articulated bus must not draw a trailer on a road<sup>8</sup>;
- 1103 (4) a bus<sup>9</sup>, not being an articulated bus or a minibus<sup>10</sup>, is permitted to draw one broken down bus where no person other than the driver is carried in either vehicle, or one trailer<sup>11</sup>;
- 1104 (5) a locomotive<sup>12</sup> is permitted to draw three trailers<sup>13</sup>;
- 1105 (6) a motor tractor<sup>14</sup> is permitted to draw one trailer or two trailers if neither is laden<sup>15</sup>;
- 1106 (7) a heavy motor car<sup>16</sup> or a motor car<sup>17</sup> not described in head (1), (3) or (4) above is permitted to draw two trailers if one of them is a towing implement<sup>18</sup> and part of the other is secured to and either rests on or is suspended from that implement, or one trailer in any other case<sup>19</sup>;
- 1107 (8) an agricultural motor vehicle<sup>20</sup> is permitted to draw:

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115. (a) in respect of trailers other than agricultural trailers<sup>21</sup> and agricultural trailed appliances<sup>22</sup>, such trailers as are permitted under head (5), (6) or (7) above, as the case may be; or

116. (b) in respect of agricultural trailers and agricultural trailed appliances, two unladen agricultural trailers, or one agricultural trailer and one agricultural trailed appliance, or two agricultural trailed appliances<sup>23</sup>.

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For the purposes of heads (5), (6) and (7) above an unladen articulated vehicle<sup>24</sup>, when being drawn by another motor vehicle<sup>25</sup> because it has broken down, is to be treated as a single trailer<sup>26</sup>; and a towed roller used for the purposes of agriculture, horticulture or forestry and consisting of several separate rollers is to be treated as one agricultural trailed appliance<sup>27</sup>.

No track-laying<sup>28</sup> motor vehicle which exceeds 8 metres in overall length<sup>29</sup> is to draw a trailer other than a broken down vehicle which is being drawn in consequence of the breakdown<sup>30</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 For the meaning of 'wheeled' see PARA 267 note 2 ante.

4 For these purposes, 'trailer' does not include a vehicle which is drawn by a steam-powered vehicle and which is used solely for carrying water for the purpose of the drawing vehicle: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 83(4) (added by SI 1987/676). For the meaning of 'trailer' generally see PARA 210 ante.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 83(1).

6 Ibid reg 83(1), Table item 1. For the meaning of 'straddle carrier' see PARA 278 note 18 ante.

7 Ibid reg 83(1), Table item 2. For the meaning of 'invalid carriage' see PARA 215 ante.

8 Ibid reg 83(1), Table item 3. For the meaning of 'articulated bus' see PARA 271 note 6 ante.

9 For the meaning of 'bus' see PARA 271 note 6 ante.

10 For the meaning of 'minibus' see PARA 317 note 2 ante.

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 83(1), Table item 4 (amended by SI 1989/2360).

12 For the meaning of 'locomotive' see PARA 217 note 3 ante.

13 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 83(1), Table item 5.

14 For the meaning of 'motor tractor' see PARA 216 ante.

15 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 83(1), Table item 6 (amended by SI 1989/2360).

16 For the meaning of 'heavy motor car' see PARA 213 ante.

17 For the meaning of 'motor car' see PARA 212 ante.

18 For the meaning of 'towing implement' see PARA 268 note 19 ante.

19 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 83(1), Table item 7.

20 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.

21 For the meaning of 'agricultural trailer' see PARA 271 note 30 ante.

- 22 For the meaning of 'agricultural trailed appliance' see PARA 271 note 21 ante.
- 23 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 83(1), Table item 8.
- 24 For the meaning of 'articulated vehicle' see PARA 271 note 6 ante.
- 25 For the meaning of 'motor vehicle' see PARA 210 ante.
- 26 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 83(2)(a).
- 27 Ibid reg 83(2)(b).
- 28 For the meaning of 'track-laying' see PARA 267 note 3 ante.
- 29 For the meaning of 'overall length' see PARA 272 ante.
- 30 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 83(3).

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### **597. Trailers drawn by motor cycles.**

No person is to use, or cause or permit<sup>1</sup> to be used, on a road<sup>2</sup> a motor cycle<sup>3</sup>:

- 1108 (1) drawing behind it more than one trailer<sup>4</sup>;
  - 1109 (2) drawing behind it any trailer carrying a passenger<sup>5</sup>;
  - 1110 (3) drawing behind it a trailer with an unladen weight<sup>6</sup> exceeding 254 kilograms<sup>7</sup>;
  - 1111 (4) with not more than two wheels<sup>8</sup>, without a sidecar, and with an engine capacity which does not exceed 125 cubic centimetres, drawing behind it any trailer<sup>9</sup>; or
  - 1112 (5) with not more than two wheels, without a sidecar and with an engine capacity exceeding 125 cubic centimetres, drawing behind it any trailer unless<sup>10</sup>:
- 59
- 117. (a) the trailer has an overall width<sup>11</sup> not exceeding 1 metre<sup>12</sup>;
  - 118. (b) the distance between the rear axle<sup>13</sup> of the motor cycle and the rearmost part of the trailer does not exceed 2.5 metres<sup>14</sup>;
  - 119. (c) the motor cycle is clearly and indelibly marked in a conspicuous and readily accessible position with its kerbside weight<sup>15</sup>;
  - 120. (d) the trailer is clearly and indelibly marked in a conspicuous and readily accessible position with its unladen weight<sup>16</sup>; and
  - 121. (e) the laden weight of the trailer does not exceed 150 kilograms or two-thirds of the kerbside weight of the motor cycle, whichever is the less<sup>17</sup>.
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The provisions of heads (2), (4) and (5) above do not apply if the trailer is a broken down motor cycle and one passenger is riding it<sup>18</sup>.

- 1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.
- 2 For the meaning of 'road' see PARA 206 ante.

- 3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 84(1). For the meaning of 'motor cycle' see PARA 214 ante.
- 4 Ibid reg 84(1)(a). For the meaning of 'trailer' see PARA 210 ante.
- 5 Ibid reg 84(1)(b).
- 6 For the meaning of 'unladen weight' see PARA 271 note 21 ante.
- 7 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 84(1)(c).
- 8 For the meaning of 'wheel' see PARA 267 note 2 ante.
- 9 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 84(1)(d).
- 10 Ibid reg 84(1)(e).
- 11 For the meaning of 'overall width' see PARA 274 ante.
- 12 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 84(1)(e)(i).
- 13 As to the meaning of 'axle' see PARA 279 note 13 ante.
- 14 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 84(1)(e)(ii).
- 15 Ibid reg 84(1)(e)(iii). For the meaning of 'kerbside weight' see PARA 367 note 11 ante.
- 16 Ibid reg 84(1)(e)(iv).
- 17 Ibid reg 84(1)(e)(v).
- 18 Ibid reg 84(2).

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### **598. Trailers drawn by agricultural motor vehicles.**

No person is to use, or cause or permit<sup>1</sup> to be used on a road<sup>2</sup>:

- 1113 (1) a wheeled<sup>3</sup> agricultural motor vehicle<sup>4</sup> drawing one or more wheeled trailers<sup>5</sup> if the weight of the drawing vehicle is less than a quarter of the weight of the trailer or trailers, unless the brakes fitted to each trailer<sup>6</sup> are operated directly by the service braking system<sup>7</sup> fitted to the motor vehicle<sup>8</sup>;
- 1114 (2) any motor vehicle drawing an agricultural trailer<sup>9</sup> of which more than 35 per cent of the weight is borne by the drawing vehicle or the gross weight<sup>10</sup> exceeds 14,230 kilograms, unless it is fitted<sup>11</sup> with brakes<sup>12</sup>; or
- 1115 (3) an agricultural trailer manufactured on or after 1 December 1985 which is drawn by a motor vehicle first used<sup>13</sup> on or after 1 June 1986 unless the brakes fitted to the trailer<sup>14</sup> can be applied progressively by the driver<sup>15</sup> of the drawing vehicle, from his normal driving position and while keeping proper control of that vehicle, using a means of operation mounted on the drawing vehicle or automatically come into operation on the over-run of the trailer<sup>16</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.



- 2 For the meaning of 'road' see PARA 206 ante.
- 3 For the meaning of 'wheeled' see PARA 267 note 2 ante.
- 4 For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante.
- 5 For the meaning of 'trailer' see PARA 210 ante.
- 6 le in compliance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15 (as amended) or reg 16 (as amended): see PARA 287 ante.
- 7 For the meaning of 'service braking system' see PARA 290 note 12 ante.
- 8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 85(1). For the meaning of 'motor vehicle' see PARA 210 ante.
- 9 For the meaning of 'agricultural trailer' see PARA 271 note 30 ante.
- 10 For the meaning of 'gross weight' see PARA 271 note 27 ante.
- 11 le as mentioned in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 85(1): see the text and notes 1-8 supra.
- 12 Ibid reg 85(2).
- 13 For the meaning of 'first used' see PARA 267 note 5 ante.
- 14 le in accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15 (as amended) or reg 16 (as amended): see PARA 287 ante.
- 15 For the meaning of 'driver' see PARA 207 ante.
- 16 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 85(3).

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### **599. Distance between motor vehicles and trailers.**

Where a trailer<sup>1</sup> is attached to the vehicle immediately in front of it solely by means of a rope or chain, the distance<sup>2</sup> between the trailer and that vehicle must not in any case exceed 4.5 metres, and must not exceed 1.5 metres unless the rope or chain is made clearly visible to any other person using the road<sup>3</sup> within a reasonable distance from either side<sup>4</sup>.

- 1 For the meaning of 'trailer' see PARA 210 ante.
- 2 For the purpose of determining such distance, any part of either vehicle designed primarily for use as a means of attaching the one vehicle to the other and any fitting designed for use in connection with any such part are to be disregarded: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 86(2).
- 3 For the meaning of 'road' see PARA 206 ante.
- 4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 86(1).

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1663)/6. USE OF VEHICLES/(4) TRAILERS AND SIDECARS/600. Use of secondary coupling on trailers.

**600. Use of secondary coupling on trailers.**

No person is to use or cause or permit<sup>1</sup> to be used on a road<sup>2</sup> a motor vehicle<sup>3</sup> drawing one trailer<sup>4</sup> if the trailer:

- 1116 (1) is a trailer which was first used on or after 1 April 1983<sup>5</sup>; and
- 1117 (2) is not fitted with a device which is designed to stop the trailer automatically in the event of the separation of the main coupling while the trailer is in motion<sup>6</sup>,

unless the prescribed requirements are met in relation to the motor vehicle and trailer<sup>7</sup>. The requirements so prescribed, in relation to a motor vehicle drawing a trailer, are that a secondary coupling is attached to the motor vehicle and trailer in such a way that, in the event of the separation of the main coupling while the trailer is in motion, the drawbar of the trailer would be prevented from touching the ground and there would be some residual steering of the trailer<sup>8</sup>.

Nor is any person to use or cause or permit to be used on a road a motor vehicle drawing one trailer if:

- 1118 (a) the trailer is a trailer which was first used on or after 1 April 1983<sup>9</sup>;
- 1119 (b) the trailer is fitted with a device which is designed to stop the trailer automatically in the event of the separation of the main coupling while the trailer is in motion<sup>10</sup>;
- 1120 (c) the operation of the device in those circumstances depends on a secondary coupling linking the device to the motor vehicle<sup>11</sup>; and
- 1121 (d) the trailer is not also fitted with a device which is designed to stop the trailer automatically in those circumstances in the absence of such a secondary coupling<sup>12</sup>,

unless the secondary coupling is attached to the motor vehicle and trailer in such a way that, in the event of the separation of the main coupling while the trailer is in motion, the device of the kind referred to in heads (b) and (c) above fitted to the trailer would stop the trailer<sup>13</sup>.

No person is to use or cause or permit to be used on a road any light passenger vehicle<sup>14</sup> first used<sup>15</sup> on or after 1 August 1998 in respect of which an EC certificate of conformity has effect unless any mechanical coupling device<sup>16</sup> which is attached to it complies with the relevant technical and installation requirements<sup>17</sup> and is duly marked<sup>18</sup>. For these purposes, in a case where a vehicle is drawing a trailer a mechanical coupling device is not to be regarded as being attached to that vehicle if it forms part of the trailer<sup>19</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 For the meaning of 'motor vehicle' see PARA 210 ante.

4 For the meaning of 'trailer' see PARA 210 ante.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 86A(1)(a) (reg 86A added by SI 1995/551). The text refers to trailers to which the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 15 (as amended) applies: see PARA 287 ante.

6 Ibid reg 86A(1)(b) (as added: see note 5 supra).

7 Ibid reg 86A(1) (as added: see note 5 supra). The provisions of reg 86A (as added) are without prejudice to any other provision in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078 (as amended): reg 86A(5) (as so added).

8 Ibid reg 86A(2) (as added: see note 5 supra).

9 Ibid reg 86A(3)(a) (as added: see note 5 supra). See note 5 supra.

10 Ibid reg 86A(3)(b) (as added: see note 5 supra).

11 Ibid reg 86A(3)(c) (as added: see note 5 supra).

12 Ibid reg 86A(3)(d) (as added: see note 5 supra).

13 Ibid reg 86A(4) (as added: see note 5 supra).

14 For the meaning of 'passenger vehicle' see PARA 287 note 8 ante.

15 For the meaning of 'first used' see PARA 267 note 5 ante.

16 For these purposes, 'mechanical coupling device' is to be construed in accordance with EC Parliament and Council Directive 94/20 (OJ L195, 29.7.94, p 1) relating to the mechanical coupling devices of motor vehicles and their trailers and their attachment to those vehicles: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 86B(4) (reg 86B added by SI 1998/1281).

17 The requirements are those in EC Council Directive 94/20 (OJ L195, 29.7.94, p 1).

18 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 86B(1), (2) (as added: see note 16 supra). The vehicle must be marked in accordance with EC Council Directive 94/20 (OJ L195, 29.7.94, p 1).

19 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 86B(3) (as added: see note 16 supra).

## UPDATE

### 600 Use of secondary coupling on trailers

NOTES 16, 18--Directive 94/20 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

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### 601. Unbraked trailers.

No person is to use, or cause or permit<sup>1</sup> to be used, on a road<sup>2</sup> an unbraked wheeled<sup>3</sup> trailer<sup>4</sup>, other than an agricultural trailer<sup>5</sup> and certain other specified trailers<sup>6</sup>, if its laden weight exceeds its maximum gross weight<sup>7</sup> or it is drawn by a vehicle of which the kerbside weight<sup>8</sup> is less than twice the sum of the unladen weight of the trailer and the weight of any load which the trailer is carrying<sup>9</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'road' see PARA 206 ante.

- 3 For the meaning of 'wheeled' see PARA 267 note 2 ante.
- 4 For the meaning of 'unbraked trailer' see PARA 371 note 10 ante.
- 5 For the meaning of 'agricultural trailer' see PARA 271 note 30 ante.
- 6 The trailers mentioned in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 16(3)(b) (as substituted), reg 16(3)(bb) (as added), reg 16(3)(bc) (as added), or reg 16(3)(c), (d), (e), (f) or (g) (as amended): see PARA 287 ante.
- 7 For the meaning of 'maximum gross weight' see PARA 271 note 27 ante.
- 8 For the meaning of 'kerbside weight' see PARA 367 note 11 ante.
- 9 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 87(1), (2) (amended by SI 1996/3033).

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## **602. Leaving trailers at rest.**

No person in charge of a motor vehicle<sup>1</sup>, or trailer<sup>2</sup> drawn by a motor vehicle, is to cause or permit<sup>3</sup> such trailer to stand on a road<sup>4</sup> when detached from the drawing vehicle unless one at least of the wheels<sup>5</sup> of the trailer is prevented from revolving by the setting of a parking brake or the use of a chain, chock or other efficient device, or, in the case of a track-laying<sup>6</sup> trailer, its tracks are so prevented from revolving<sup>7</sup>.

- 1 For the meaning of 'motor vehicle' see PARA 210 ante.
- 2 For the meaning of 'trailer' see PARA 210 ante.
- 3 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.
- 4 For the meaning of 'road' see PARA 206 ante.
- 5 For the meaning of 'wheel' see PARA 267 note 2 ante.
- 6 For the meaning of 'track-laying' see PARA 267 note 3 ante.
- 7 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 89 (amended by SI 1996/3033).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(4) TRAILERS AND SIDECARS/603. Passengers in trailers.

## **603. Passengers in trailers.**

No person is to use, or cause or permit<sup>1</sup> to be used, on a road<sup>2</sup> any trailer<sup>3</sup> for the carriage of passengers for hire or reward<sup>4</sup>. That prohibition does not apply, however, in respect of a wheeled<sup>5</sup> trailer which is, or is carrying, a broken down motor vehicle<sup>6</sup> if the trailer is drawn at a speed not exceeding 30 miles per hour and, where the trailer is, or is carrying, a broken down bus<sup>7</sup>, it is attached to the drawing vehicle by a rigid draw bar<sup>8</sup>.

No person is to use, or cause or permit to be used, on a road a wheeled trailer in which any person is carried and which is a living van<sup>9</sup> having either less than four wheels or four wheels consisting of two close-coupled<sup>10</sup> wheels on each side<sup>11</sup>. This prohibition does not apply, however, in respect of a trailer which is being tested by its manufacturer, a person by whom it has been, or is being, repaired or a distributor of, or dealer in, trailers<sup>12</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 For the meaning of 'trailer' see PARA 210 ante.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 90(1).

5 For the meaning of 'wheeled' see PARA 267 note 2 ante.

6 As to the meaning of 'broken-down vehicle' see PARA 271 note 36 ante; and for the meaning of 'motor vehicle' see PARA 210 ante.

7 For the meaning of 'bus' see PARA 271 note 6 ante.

8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 90(2).

9 For the meaning of 'living van' see PARA 295 note 25 ante.

10 'Close-coupled', in relation to wheels on the same side of a trailer, means fitted so that at all times while the trailer is in motion they remain PARALLEL to the longitudinal axis of the trailer, and the distance between the centres of their respective areas of contact with the road surface does not exceed 1 metre: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

11 Ibid reg 90(3).

12 Ibid reg 90(4).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(4) TRAILERS AND SIDECARS/604. Attachment of sidecars.

#### **604. Attachment of sidecars.**

Every sidecar fitted to a motor cycle<sup>1</sup> must be so attached that its wheel<sup>2</sup> is not wholly outside the space between transverse planes<sup>3</sup> passing through the extreme projecting points at the front and at the rear of the motor cycle<sup>4</sup>.

1 For the meaning of 'motor cycle' see PARA 214 ante.

2 For the meaning of 'wheel' see PARA 267 note 2 ante.

3 For the meaning of 'transverse plane' see PARA 271 note 7 ante.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 92.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(4) TRAILERS AND SIDECARS/605. Use of sidecars.

### **605. Use of sidecars.**

No person is to use or cause or permit<sup>1</sup> to be used on a road<sup>2</sup> any two-wheeled<sup>3</sup> motor cycle<sup>4</sup> registered on or after 1 August 1981, not being a motor cycle brought temporarily into Great Britain<sup>5</sup> by a person resident abroad<sup>6</sup>, if there is a sidecar attached to the right (or off) side of the motor cycle<sup>7</sup>.

- 1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.
- 2 For the meaning of 'road' see PARA 206 ante.
- 3 For the meaning of 'wheeled' see PARA 267 note 2 ante.
- 4 For the meaning of 'motor cycle' see PARA 214 ante.
- 5 For the meaning of 'Great Britain' see PARA 205 note 3 ante.
- 6 As to residence see CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 57-61 et seq.
- 7 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 93.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(5) USE OF MOTOR VEHICLES FOR THE CARRIAGE OR HAULAGE OF DANGEROUS GOODS/606. Additional braking requirements for motor vehicles carrying or hauling dangerous goods.

## **(5) USE OF MOTOR VEHICLES FOR THE CARRIAGE OR HAULAGE OF DANGEROUS GOODS**

### **606. Additional braking requirements for motor vehicles carrying or hauling dangerous goods.**

No person is to use, or cause or permit<sup>1</sup> to be used, a motor vehicle<sup>2</sup> for the carriage or haulage of dangerous goods<sup>3</sup> on a road<sup>4</sup> if it is a specified vehicle<sup>5</sup> and: (1) its maximum gross weight<sup>6</sup> exceeds 16,000 kilograms<sup>7</sup>; or (2) it is drawing a trailer<sup>8</sup> which has a maximum total design axle weight<sup>9</sup> exceeding 10,000 kilograms<sup>10</sup>, unless the vehicle meets the prescribed requirements<sup>11</sup>.

- 1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.
- 2 For the meaning of 'motor vehicle' see PARA 210 ante.
- 3 For these purposes, a reference to dangerous goods is a reference to a load comprising explosives of such type and in such quantity that it could not be carried by road in a single transport unit of Type I and II without there being a contravention of the restrictions set out in the European Agreement concerning the international carriage of dangerous goods by road ('ADR') and protocol of signature done at Geneva on 30 September 1957, Annex B marginal note 11 401, as read with marginal note 11 402: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 93A(8), (10) (reg 93A added by SI 1996/3133). The ADR Annex B marginal note 11 402 has effect, however, with the omission of the words 'in conformity with the prohibitions of mixed loading contained in 11 403'; and 'transport unit of Type I or II' means a transport unit of Type I or a transport unit of Type II as defined in Annex B marginal note 11 204: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 93A(9) (as so added).
- 4 For the meaning of 'road' see PARA 206 ante.

5 le a vehicle within the meaning of EEC Council Directive 70/156 on the approximation of the laws of the member states relating to the type-approval of motor vehicles and their trailers (OJ L42, 23.2.70, p 1) (as amended).

6 For the meaning of 'maximum gross weight' see PARA 271 note 27 ante.

7 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 93A(1)(a) (as added: see note 3 supra).

8 For the meaning of 'trailer' see PARA 210 ante.

9 For the meaning of 'maximum total design axle weight' see PARA 287 note 23 ante.

10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 93A(1)(b) (as added: see note 3 supra).

11 Ibid reg 93A(1) (as added: see note 3 supra). As to the prescribed requirements see reg 93A(2)-(7) (as so added).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(6) USE OF GAS PROPULSION SYSTEMS AND GAS-FIRED APPLIANCES/607. Use of gas propulsion systems.

## **(6) USE OF GAS PROPULSION SYSTEMS AND GAS-FIRED APPLIANCES**

### **607. Use of gas propulsion systems.**

No person is to use, or cause or permit<sup>1</sup> to be used:

1122 (1) on a road<sup>2</sup> a vehicle with a gas<sup>3</sup> propulsion system unless the whole of such system is in a safe condition<sup>4</sup>;

1123 (2) in any gas supply system for the propulsion of a vehicle when the vehicle is on a road any fuel except liquefied petroleum gas<sup>5</sup>; and

1124 (3) on a road a vehicle which is propelled by gas unless the gas container in which such fuel is stored is on the motor vehicle<sup>6</sup>, and not on any trailer<sup>7</sup>, and in the case of an articulated vehicle<sup>8</sup> on the portion of the vehicle to which the engine is fitted<sup>9</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 For the meaning of 'gas' see PARA 316 note 3 ante.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 94(1).

5 Ibid reg 94(2). For these purposes, and for the purposes of reg 95 (see PARA 608 post), 'liquefied petroleum gas' means: (1) butane gas in any phase which meets the requirements contained in the specification of commercial butane and propane issued by the British Standards Institution under the number BS 4250: 1975 and published on 29 August 1975 (see now BS 4250: 1997 published on 15 October 1997); (2) propane gas in any phase which meets the requirements contained in the said specification; or (3) any mixture of such butane gas and such propane gas: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 94(4).

6 For the meaning of 'motor vehicle' see PARA 210 ante.

7 For the meaning of 'trailer' see PARA 210 ante.

8 For the meaning of 'articulated vehicle' see PARA 271 note 6 ante.

9 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 94(3).

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# **608. General requirements as to use of gas-fired appliances.**

No person is to use, or cause or permit<sup>1</sup> to be used:

1125 (1) in or on a vehicle on a road<sup>2</sup> any gas-fired appliance<sup>3</sup> unless the whole of such appliance and the gas system attached to it is in an efficient and safe condition<sup>4</sup>;

1126 (2) in any gas-fired appliance in or on a vehicle on a road any fuel except liquefied petroleum gas<sup>5</sup>;

1127 (3) in or on a vehicle on a road any gas-fired appliance unless the vehicle is so ventilated that<sup>6</sup>:

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122. (a) an ample supply of air is available for the operation of the appliance<sup>7</sup>;

123. (b) the use of the appliance does not adversely affect the health or comfort of any person using the vehicle<sup>8</sup>; and

124. (c) any unburnt gas is safely disposed of to the outside of the vehicle<sup>9</sup>; and

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1128 (4) on a road a vehicle in or on which there is:

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125. (a) one gas-fired appliance unless the gas-supply for such appliance is shut off at the point where it leaves the container or containers at all times when the appliance is not in use<sup>10</sup>;

126. (b) more than one gas-fired appliance each of which has the same supply of gas unless the gas supply for such appliances is shut off at the point where it leaves the container or containers at all times when none of such appliances is in use<sup>11</sup>; or

127. (c) more than one gas-fired appliance each of which does not have the same supply of gas unless each gas supply for such appliances is shut off at the point where it leaves the container or containers at all times when none of such appliances which it supplies is in use<sup>12</sup>.

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1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 For the meaning of 'gas-fired appliance' see PARA 316 note 9 ante.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 95(1).

5 Ibid reg 95(2). For the meaning of 'liquefied petroleum gas' see PARA 607 note 5 ante.

6 Ibid reg 95(3).

7 Ibid reg 95(3)(a).

8 Ibid reg 95(3)(b).



- 9 Ibid reg 95(3)(c).
- 10 Ibid reg 95(4)(a).
- 11 Ibid reg 95(4)(b).
- 12 Ibid reg 95(4)(c).

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**609. Use of gas-fired appliances when a vehicle is in motion.**

No person is to use, or cause or permit<sup>1</sup> to be used, in any motor vehicle<sup>2</sup> or trailer<sup>3</sup>, other than a vehicle constructed or adapted for the conveyance of goods under controlled temperatures<sup>4</sup>, while the vehicle is in motion on a road<sup>5</sup>, any gas-fired appliance<sup>6</sup> except:

- 1129 (1) a gas-fired appliance which is fitted to engineering plant<sup>7</sup> while the plant is being used for the purposes of the engineering operations for which it was designed<sup>8</sup>;
- 1130 (2) a gas-fired appliance which is permanently attached to a bus<sup>9</sup>, provided that any appliance for heating or cooling the interior of the bus for the comfort of the driver and any passengers does not expose a naked flame on the outside of the appliance<sup>10</sup>; or
- 1131 (3) in any other vehicle, a refrigerating appliance or an appliance which does not expose a naked flame on the outside of the appliance and which is permanently attached to the vehicle and designed for the purpose of heating any part of the interior of the vehicle for the comfort of the driver and any passengers<sup>11</sup>.

No person is to use, or cause or permit to be used, in any motor vehicle or trailer which is in motion on a road any gas-fired appliance unless it is fitted with a valve which stops the supply of gas to the appliance if the appliance fails to perform its function and causes gas to be emitted<sup>12</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'trailer' see PARA 210 ante.

4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 96(1), (2).

5 For the meaning of 'road' see PARA 206 ante.

6 For the meaning of 'gas-fired appliance' see PARA 316 note 9 ante.

7 For the meaning of 'engineering plant' see PARA 271 note 11 ante.

8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 96(3)(a). No person is to use, or cause or permit to be used, in any motor vehicle or trailer, other than a vehicle constructed or adapted for the conveyance of goods under controlled temperatures, while the vehicle is in motion on a road, any gas-fired appliance to which reg 96(3)(a) refers, unless the appliance complies with the requirements specified in reg 96(4), Sch 5 paras 12, 13 and the gas system to which it is attached complies with the requirements specified in Sch 5 paras 2-9, 15 (Sch 5 paras 4 substituted, Sch 5 para 4A added, and Sch 5 para 8 amended by SI 2003/1690): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 96(4)(a).

9 For the meaning of 'bus' see PARA 271 note 6 ante.

10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 96(3)(b). No person is to use, or cause or permit to be used, in any motor vehicle or trailer, other than a vehicle constructed or adapted for the conveyance of goods under controlled temperatures, while the vehicle is in motion on a road, any gas-fired appliance to which reg 96(3)(b) refers, unless the appliance complies with the requirements specified in Sch 5 paras 12-14 and the gas system to which it is attached complies with the requirements specified in Sch 5 paras 2-9, 11, 15 (as amended: see note 8 supra): reg 96(4)(b).

11 Ibid reg 96(3)(c). No person is to use, or cause or permit to be used, in any motor vehicle or trailer, other than a vehicle constructed or adapted for the conveyance of goods under controlled temperatures, while the vehicle is in motion on a road, any gas-fired appliance to which reg 96(3)(c) refers, unless the appliance complies, if it is fitted to a motor vehicle, with the requirements specified in Sch 5 paras 12-14 and, in any other case, with the requirements specified in Sch 5 paras 12, 13, and the gas system to which the appliance is attached complies with the requirements specified in Sch 5 paras 2-9, 15 (as amended: see note 8 supra): reg 96(4)(c).

12 Ibid reg 96(5).

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## **(7) CONTROL OF NOISE**

### **610. Avoidance of excessive noise.**

No motor vehicle<sup>1</sup> is to be used on a road<sup>2</sup> in such manner as to cause any excessive noise which could have been avoided by the exercise of reasonable care on the part of the driver<sup>3</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 97. For the meaning of 'driver' see PARA 207 ante.

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### **611. Stopping engine when stationary.**

The driver<sup>1</sup> of a vehicle must, when the vehicle is stationary, stop the action of any machinery attached to, or forming part of, the vehicle so far as may be necessary for the prevention of noise or of exhaust emissions<sup>2</sup>. This requirement does not apply:

- 1132 (1) when the vehicle is stationary owing to the necessities of traffic<sup>3</sup>;
- 1133 (2) so as to prevent the examination or working of the machinery where the examination is necessitated by any failure or derangement of the machinery or where the machinery is required to be worked for a purpose other than driving the vehicle<sup>4</sup>; or

1134 (3) in respect of a vehicle propelled by gas<sup>5</sup> produced in plant carried on the vehicle, to such plant<sup>6</sup>.

- 1 For the meaning of 'driver' see PARA 207 ante.
- 2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 98(1) (amended by SI 1998/1).
- 3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 98(2)(a).
- 4 Ibid reg 98(2)(b).
- 5 For the meaning of 'gas' see PARA 316 note 3 ante.
- 6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 98(2)(c).

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## **612. Use of audible warning instruments.**

No person is to sound, or cause or permit<sup>1</sup> to be sounded, any horn<sup>2</sup>, gong, bell or siren<sup>3</sup> fitted to or carried on a vehicle which is<sup>4</sup>:

- 1135 (1) stationary on a road<sup>5</sup>, at any time, other than at times of danger due to another moving vehicle on or near the road<sup>6</sup>, except where a reversing alarm<sup>7</sup> is sounded when the vehicle to which it is fitted is about to move backwards and its engine is running or in respect of a boarding aid alarm<sup>8</sup>; or
- 1136 (2) in motion on a restricted road<sup>9</sup>, between 11.30 pm and 7.00 am in the following morning<sup>10</sup>.

No person is to sound, or cause or permit to be sounded, on a road any reversing alarm or boarding aid alarm<sup>11</sup> fitted to a vehicle<sup>12</sup>:

- 1137 (a) unless the vehicle is a goods vehicle<sup>13</sup> which has a maximum gross weight<sup>14</sup> not less than 2,000 kilograms, a bus<sup>15</sup>, engineering plant<sup>16</sup>, a refuse vehicle<sup>17</sup> or a works truck<sup>18</sup>; or
- 1138 (b) if the sound of the alarm is likely to be confused with a sound emitted in the operation of an established<sup>19</sup> pedestrian crossing<sup>20</sup>.

No person is to sound, or cause or permit to be sounded, a gong, bell, siren or two-tone horn<sup>21</sup>, fitted to or otherwise carried on a vehicle, whether it is stationary or not<sup>22</sup>.

Nothing in the above provisions<sup>23</sup> prevents the sounding of:

- 1139 (i) an instrument or apparatus fitted to, or otherwise carried on, a vehicle at a time when the vehicle is being used for fire and rescue authority<sup>24</sup>, ambulance<sup>25</sup>, police<sup>26</sup> or other specified purposes<sup>27</sup> and it is necessary or desirable to do so either to indicate to other road users the urgency of the purposes for which the vehicle is being used, or to warn other road users of the presence of the vehicle on the road<sup>28</sup>; or

- 1140 (ii) a horn (not being a two-tone horn), bell, gong or siren to raise alarm as to the theft or attempted theft of the vehicle or its contents or, in the case of a bus, to summon help for the driver, the conductor or an inspector<sup>29</sup>.

Notwithstanding the above provisions<sup>30</sup>, a person may, between 12 pm and 7 pm, sound or cause or permit to be sounded an instrument or apparatus, other than a two-tone horn, fitted to or otherwise carried on a vehicle, being an instrument or apparatus designed to emit a sound for the purpose of informing members of the public that the vehicle is conveying goods for sale if, when the apparatus or instrument is sounded, it is sounded only for that purpose<sup>31</sup>.

- 1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.
- 2 For the meaning of 'horn' see PARA 312 note 4 ante.
- 3 For the meaning of 'bell, gong or siren' see PARA 312 note 4 ante.
- 4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 99(1), which is expressed to be subject to reg 99(2)-(7) (see the text and notes 8, 11-31 infra).
- 5 For the meaning of 'road' see PARA 206 ante.
- 6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 99(1)(a).
- 7 For the meaning of 'reversing alarm' see PARA 312 note 5 ante.
- 8 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 99(2) (amended by SI 2000/1971).
- 9 For these purposes, 'restricted road' means a road which is a restricted road for the purposes of the Road Traffic Regulation Act 1984 s 81 (see PARA 847 post): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 99(7).
- 10 Ibid reg 99(1)(b).
- 11 For the meaning of 'boarding aid alarm' see PARA 312 note 7 ante.
- 12 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 99(3) (amended by SI 2000/1971).
- 13 For the meaning of 'goods vehicle' see PARA 271 note 26 ante.
- 14 For the meaning of 'maximum gross weight' see PARA 271 note 27 ante.
- 15 For the meaning of 'bus' see PARA 271 note 6 ante.
- 16 For the meaning of 'engineering plant' see PARA 271 note 11 ante.
- 17 For the meaning of 'refuse vehicle' see PARA 279 note 11 ante.
- 18 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 99(3)(a) (amended by SI 1987/676). For the meaning of 'works truck' see PARA 278 note 18 ante.
- 19 I.e. a pedestrian crossing established, or having effect as if established, under the Road Traffic Regulation Act 1984 Pt III (ss 23-31) (as amended): see PARA 776 et seq post.
- 20 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 99(3)(b).
- 21 For the meaning of 'two-tone horn' see PARA 312 note 6 ante.
- 22 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 99(4), which is expressed to be subject to reg 99(5), (6): see the text to notes 23-31 infra.
- 23 I.e. nothing in ibid reg 99(1) (see the text and notes 1-10 supra) or reg 99(4) (see the text and notes 21-22 supra).

- 24 See FIRE SERVICES vol 18(2) (Reissue) PARA 68 et seq.
- 25 See HEALTH SERVICES vol 54 (2008) PARA 12.
- 26 As to police vehicles see POLICE vol 36(1) (2007 Reissue) PARA 525.
- 27 Ie a purpose specified in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 37(5) (as amended): see PARA 312 ante.
- 28 Ibid reg 99(5)(a).
- 29 Ibid reg 99(5)(b).
- 30 Ie notwithstanding ibid reg 99(1) (see the text and notes 1-10 supra) or reg 99(4) (see the text and notes 21-22 supra).
- 31 Ibid reg 99(6), which is expressed to be subject to the provisions of the Control of Pollution Act 1974 s 62 (as amended): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 841. As to noise nuisance see also NUISANCE vol 78 (2010) PARA 165.

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### **613. Emission of excessive noise from motor cycles.**

No person may, in the course of carrying on a business, supply<sup>1</sup> or offer or agree to supply or expose or have in his possession for the purpose of supplying an exhaust system for a motor cycle<sup>2</sup>, or a silencer, or any component other than a silencer or fixing, for such a system, unless the system, silencer or component complies with such requirements as may be prescribed by regulations<sup>3</sup> made by the Secretary of State<sup>4</sup> and, as respects such a system or silencer, the requirements of the regulations as to packaging, labelling and the provision of accompanying instructions are complied with<sup>5</sup>.

The regulations made by the Secretary of State for these purposes must be such as he considers necessary for preventing the supply of exhaust systems, silencers and components which are likely to result in motor cycles to which they are fitted emitting excessive noise; and those regulations may<sup>6</sup>: (1) prescribe requirements by reference to any British Standard specification, any regulations made under the provisions relating to the regulation of construction, weight equipment and use of vehicles<sup>7</sup>, any Community instrument or any other instrument issued by an international authority<sup>8</sup>; and (2) make different provision for different cases<sup>9</sup>. Before making any such regulations the Secretary of State must consult such representative organisations as he thinks fit<sup>10</sup>.

Exemptions from these provisions or any requirements imposed under them may be conferred by regulations made by the Secretary of State or, in the case of an exemption applying to a particular person, by a notice in writing given by him to that person<sup>11</sup>.

Any person who contravenes these provisions is guilty of an offence<sup>12</sup>. Where the commission by any person of such an offence is due to the act or default of some other person, the other person is guilty of the offence and may be charged with and convicted of the offence whether or not proceedings are taken against the first-mentioned person<sup>13</sup>. It is not a defence to a charge of committing such an offence that the accused took all reasonable steps and exercised all due diligence to avoid committing the offence<sup>14</sup>. Where such an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager,

secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly<sup>15</sup>.

- 1 References to supply include references to gratuitous supply: Motor Cycle Noise Act 1987 s 2(2).
  - 2 References to a motor cycle include references to a moped and a motor scooter: *ibid* s 2(2).
  - 3 In exercise of this power the Motor Cycle Silencer and Exhaust System Regulations 1995, SI 1995/2370, have been made.
  - 4 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
  - 5 Motor Cycle Noise Act 1987 s 1(1). This provision is expressed to be subject to s 1(3) and (4) (see the text and notes 10-11 *infra*): see s 1(1). Section 1(1) does not apply in any case in which the person in question reasonably believes that the exhaust system, silencer or component will not be used in the United Kingdom: s 1(4).
  - 6 *Ibid* s 1(2).
  - 7 *Ie* under the Road Traffic Act 1988 s 41 (as amended): see PARA 260 ante.
  - 8 Motor Cycle Noise Act 1987 s 1(2)(a) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 33).
  - 9 Motor Cycle Noise Act 1987 s 1(2)(b).
  - 10 *Ibid* s 1(5). The power to make regulations under s 1 (as amended) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 1(6).
  - 11 *Ibid* s 1(3).
  - 12 *Ibid* s 1(7), Schedule para 1(1). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale: Schedule para 1(1). As to the standard scale see PARA 230 note 3 ante. As from a day to be appointed, the penalty of imprisonment for this offence is removed: Schedule para 1(1) (prospectively amended by the Criminal Justice Act 2003 s 332, Sch 37 Pt 9). At the date at which this volume states the law no such day had been appointed.
- The Consumer Protection Act 1987 Pt IV (ss 27-35) (enforcement) (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 701 et seq), except s 31 (power of revenue and customs officers to detain goods), has effect as if the provisions of the Motor Cycle Noise Act 1987 were safety provisions within the meaning of the Consumer Protection Act 1987; and in Pt V (ss 36-50) (miscellaneous and supplemental), except in s 49 (as amended) (Northern Ireland), references to provisions of Pt IV include references to those provisions as so applied: Motor Cycle Noise Act 1987 Schedule para 3 (substituted by the Consumer Protection Act 1987 s 48, Sch 4).
- 13 Motor Cycle Noise Act 1987 Schedule para 1(2).
  - 14 *Ibid* Schedule para 1(3).
  - 15 *Ibid* Schedule para 2(1). Where the affairs of a body corporate are managed by its members, Schedule para 2(1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: Schedule para 2(2).

## UPDATE

### 613 Emission of excessive noise from motor cycles

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 3--SI 1995/2370 amended: SI 2008/1277.

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## **(8) AVOIDANCE OF DANGER**

### **614. Maintenance and use of vehicle so as not to be a danger.**

A motor vehicle<sup>1</sup>, every trailer<sup>2</sup> drawn by it and all parts and accessories of such vehicle and trailer must at all times be in such condition, and the number of passengers carried<sup>3</sup> by such vehicle or trailer, the manner in which any passengers are carried in or on such vehicle or trailer, and the weight, distribution, packing and adjustment of the load of such vehicle or trailer must at all times be such that no danger is caused or is likely to be caused to any person in or on the vehicle or trailer or on a road<sup>4</sup>.

The load carried by a motor vehicle or trailer must at all times be so secured, if necessary by physical restraint other than its own weight, and be in such a position, that neither danger nor nuisance is likely to be caused to any person or property by reason of the load or any part of it falling or being blown from the vehicle or by reason of any other movement of the load or any part of it in relation to the vehicle<sup>5</sup>.

No motor vehicle or trailer is to be used for any purpose for which it is so unsuitable as to cause or be likely to cause danger or nuisance to any person in or on the vehicle or trailer or on a road<sup>6</sup>.

No person is to use, or cause or permit<sup>7</sup> to be used, on a road:

- 1141 (1) a vehicle displaying the rectangular plate for a low platform trailer<sup>8</sup> or anything resembling such a plate at a speed exceeding 40 miles per hour<sup>9</sup>; or
- 1142 (2) a vehicle displaying the rectangular plate for a restricted speed vehicle<sup>10</sup> or anything resembling such a plate at a speed exceeding 50 miles per hour<sup>11</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'trailer' see PARA 210 ante.

3 The provisions of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 100, with regard to the number of passengers carried do not apply to a vehicle to which the Public Service Vehicles (Carrying Capacity) Regulations 1984, SI 1984/1406 (see PARA 1174 post) apply: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 100(1) proviso.

4 Ibid reg 100(1). For the meaning of 'road' see PARA 206 ante. As to the question of what amounts to a load, it has been observed that loads, particularly in the countryside of England, can take many strange and unexpected forms, and a large dog could possibly be capable of amounting to one of those forms: see *Simpson v Vant* [1986] RTR 247 at 251, DC, per Nolan J.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 100(2). Where a load is knocked off a vehicle it has fallen from the vehicle and, in order to decide whether the securing of the load was sufficient, it is necessary to consider the nature of the load, its positioning, the way it was secured and the nature of the journey: *Walker-Trowbridge Ltd v DPP* [1992] RTR 182, DC (where a vat strapped to the deck of a trailer hit the underside of a bridge and fell off the trailer). See also *Young v DPP* [1992] RTR 194, DC.

6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 100(3).

7 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

8 Is the rectangular plate described in the definition of 'low platform trailer'. 'Low platform trailer' means a trailer fitted with tyres with a rim diameter size code of less than 20 and displaying a rectangular plate which: (1) is at least 225 mm wide and at least 175 mm high; and (2) bears two black letters 'L' on a white ground each at least 125 mm high and 90 mm wide with a stroke width of 12 mm: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (definition added by SI 1990/1981). For the meaning of 'rim diameter size code' see PARA 295 note 10 ante.

9 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 100A(1) (reg 100A added by SI 1990/1981).

10 Is the rectangular plate described in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Sch 13 (added by SI 1990/1981). 'Restricted speed vehicle' means a vehicle displaying at its rear a '50' plate in accordance with the requirements of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, Sch 13 (added by SI 1990/1981): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (definition added by SI 1990/1981).

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 100A(2) (as added: see note 9 supra).

## UPDATE

### 614 Maintenance and use of vehicle so as not to be a danger

NOTE 4--As to who may be prosecuted for such an offence see *Williams (t/a Williams of Porthmadog) v Vehicle and Operator Services Agency* [2008] All ER (D) 132 (Apr), DC.

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### 615. Parking in darkness.

No person is, except with the permission of a police officer in a uniform<sup>1</sup>, to cause or permit<sup>2</sup> any motor vehicle<sup>3</sup> to stand on a road<sup>4</sup> at any time between sunset and sunrise unless the near side of the vehicle is as close as may be to the edge of the carriageway<sup>5</sup>. That requirement does not apply, however, in respect of any motor vehicle:

- 1143 (1) being used for fire and rescue authority<sup>6</sup>, ambulance<sup>7</sup> or police<sup>8</sup> purposes or for defence purposes (including civil defence purposes)<sup>9</sup> if compliance with that requirement would hinder or be likely to hinder the use of the vehicle for the purpose for which it is being used on that occasion<sup>10</sup>;
- 1144 (2) being used in connection with any building operation or demolition, the repair of any other vehicle, the removal of any obstruction to traffic, the maintenance, repair or reconstruction of any road or the laying, erection, alteration or repair in or near to any road of any sewer, main, pipe or apparatus for the supply of gas, water or electricity, of any electronic communication apparatus<sup>11</sup> or of the apparatus of any electric transport undertaking, if, in any such case, compliance with that requirement would hinder or be likely to hinder the use of the vehicle for the purpose for which it is being used on that occasion<sup>12</sup>;
- 1145 (3) on any road in which vehicles are allowed to proceed in one direction only<sup>13</sup>;
- 1146 (4) standing on a part of a road set aside for the parking of vehicles or as a stand for hackney carriages<sup>14</sup> or as a stand for buses<sup>15</sup> or as a place at which such vehicles may stop for a longer time than is necessary for the taking up and setting



- down of passengers where compliance with that requirement would conflict with the provisions of any order, regulations or byelaws governing the use of such part of a road for that purpose<sup>16</sup>; or
- 1147 (5) waiting to set down or pick up passengers in accordance with regulations made or directions given by a chief officer of police<sup>17</sup> in regard to such setting down or picking up<sup>18</sup>.

1 As to police officers see generally POLICE. A permission has to be given to a person other than the police officer himself: *Keene v Muncaster* [1980] RTR 377, DC.

2 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

3 For the meaning of 'motor vehicle' see PARA 210 ante.

4 For the meaning of 'road' see PARA 206 ante.

5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 101(1) (amended by SI 1991/2125).

6 See FIRE SERVICES vol 18(2) (Reissue) PARA 68 et seq.

7 See HEALTH SERVICES vol 54 (2008) PARA 12.

8 As to police vehicles see POLICE vol 36(1) (2007 Reissue) PARA 525.

9 See ARMED FORCES; WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 539 et seq.

10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 101(2)(a) (amended, in relation to England, by SI 2004/3168; and, in relation to Wales by SI 2005/2929).

11 For the meaning of 'electronic communications apparatus' see TELECOMMUNICATIONS vol 97 (2010) PARA 163.

12 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 101(2)(b) (amended by SI 2001/2155).

13 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 101(2)(c).

14 As to hackney carriages see PARA 1431 et seq post.

15 For the meaning of 'bus' see PARA 271 note 6 ante.

16 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 101(2)(d).

17 As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

18 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 101(2)(e).

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## **616. Passengers on motor cycles.**

If any person in addition to the driver is carried astride a two-wheeled<sup>1</sup> motor cycle<sup>2</sup> on a road<sup>3</sup>, whether a sidecar is attached to it or not, suitable supports or rests for the feet must be available on the motor cycle for that person<sup>4</sup>.

1 For the meaning of 'wheeled' see PARA 267 note 2 ante.

- 2 For the meaning of 'motor cycle' see PARA 214 ante.
- 3 For the meaning of 'road' see PARA 206 ante.
- 4 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 102.

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### **617. Obstruction of the road.**

No person in charge of a motor vehicle<sup>1</sup> or trailer<sup>2</sup> is to cause or permit<sup>3</sup> the vehicle to stand on a road<sup>4</sup> so as to cause any unnecessary obstruction<sup>5</sup> of the road<sup>6</sup>.

- 1 For the meaning of 'motor vehicle' see PARA 210 ante.
- 2 For the meaning of 'trailer' see PARA 210 ante.
- 3 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.
- 4 For the meaning of 'road' see PARA 206 ante.
- 5 Where part of a highway has been wilfully and without lawful excuse obstructed so as to deny access to that part of the highway and so constitute an unreasonable use of the highway the obstruction falls within this provision: *Carey v Chief Constable of Avon and Somerset* [1995] RTR 405, CA.
- 6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 103.

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### **618. Driver's control.**

No person is to drive<sup>1</sup>, or cause or permit<sup>2</sup> any other person to drive, a motor vehicle<sup>3</sup> on a road<sup>4</sup> if he is in such a position that he cannot have proper control of the vehicle or have a full view of the road and traffic ahead<sup>5</sup>.

- 1 For the meaning of 'drive' see PARA 207 ante.
- 2 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.
- 3 For the meaning of 'motor vehicle' see PARA 210 ante.
- 4 For the meaning of 'road' see PARA 206 ante.
- 5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 104. As to the offence of breaching this requirement see PARA 264 ante.

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### **619. Opening of doors.**

No person is to open, or cause or permit<sup>1</sup> to be opened, any door of a vehicle on a road<sup>2</sup> so as to injure or endanger any person<sup>3</sup>.

- 1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.
- 2 For the meaning of 'road' see PARA 206 ante.
- 3 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 105.

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### **620. Reversing.**

No person is to drive<sup>1</sup>, or cause or permit<sup>2</sup> to be driven, a motor vehicle<sup>3</sup> backwards on a road<sup>4</sup> further than may be requisite for the safety or reasonable convenience of the occupants of the vehicle or other traffic, unless it is a road roller or is engaged in the construction, maintenance or repair of the road<sup>5</sup>.

- 1 For the meaning of 'drive' see PARA 207 ante.
- 2 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.
- 3 For the meaning of 'motor vehicle' see PARA 210 ante.
- 4 For the meaning of 'road' see PARA 206 ante.
- 5 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 106.

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### **621. Leaving motor vehicle unattended.**

No person is to leave, or cause or permit<sup>1</sup> to be left, on a road<sup>2</sup> a motor vehicle<sup>3</sup> which is not attended by a person licensed to drive it unless the engine is stopped and any parking brake<sup>4</sup> with which the vehicle is required to be equipped is effectively set<sup>5</sup>. The requirement as to the stopping of the engine does not apply, however, in respect of a vehicle<sup>6</sup>:

- 1148 (1) being used for ambulance<sup>7</sup>, fire and rescue authority<sup>8</sup> or police<sup>9</sup> purposes<sup>10</sup>;  
or

1149 (2) in such a position and condition as not to be likely to endanger any person or property and engaged in an operation which requires its engine to be used to drive machinery forming part of, or mounted on, the vehicle and used for purposes other than driving the vehicle or to maintain the electrical power of the batteries of the vehicle at a level required for driving that machinery or apparatus<sup>11</sup>.

- 1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.
- 2 For the meaning of 'road' see PARA 206 ante.
- 3 For the meaning of 'motor vehicle' see PARA 210 ante.
- 4 For these purposes, 'parking brake' means a brake fitted to a vehicle in accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 16(4), Sch 3 Table item 16 or 18 (see PARA 287 ante): reg 107(3).
- 5 Ibid reg 107(1). An offence is committed under this provision if a vehicle is left unattended while goods are being unloaded and taken into nearby premises: *Bulman v Godbold* [1981] RTR 242, DC.
- 6 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 107(2).
- 7 See HEALTH SERVICES vol 54 (2008) PARA 12.
- 8 See FIRE SERVICES vol 18(2) (Reissue) PARA 68 et seq.
- 9 As to police vehicles see POLICE vol 36(1) (2007 Reissue) PARA 525.
- 10 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 107(2)(a) (amended, in relation to England, by SI 2004/3168; and, in relation to Wales, by SI 2005/2929).
- 11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 107(2)(a), reg 107(2)(b).

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## **622. Securing of suspended implements.**

Where a vehicle is fitted with any apparatus or appliance designed for lifting and part of the apparatus or appliance consists of a suspended implement, the implement must at all times while the vehicle is in motion on a road<sup>1</sup> and when the implement is not attached to any load supported by the appliance or apparatus be so secured either to the appliance or apparatus or to some part of the vehicle that no danger is caused or is likely to be caused to any person on the vehicle or on the road<sup>2</sup>.

- 1 For the meaning of 'road' see PARA 206 ante.
- 2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 108.

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### 623. Television sets.

No person is to drive<sup>1</sup>, or cause or permit<sup>2</sup> to be driven, a motor vehicle<sup>3</sup> on a road<sup>4</sup>, if the driver<sup>5</sup> is in such a position as to be able to see, whether directly or by reflection, a television receiving apparatus<sup>6</sup> or other cinematographic apparatus used to display anything other than information<sup>7</sup>:

- 1150 (1) about the state of the vehicle or its equipment<sup>8</sup>;
- 1151 (2) about the location of the vehicle and the road on which it is located<sup>9</sup>;
- 1152 (3) to assist the driver to see the road adjacent to the vehicle<sup>10</sup>; or
- 1153 (4) to assist the driver to reach his destination<sup>11</sup>.

1 For the meaning of 'drive' see PARA 207 ante.

2 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

3 For the meaning of 'motor vehicle' see PARA 210 ante.

4 For the meaning of 'road' see PARA 206 ante.

5 For the meaning of 'driver' see PARA 207 ante.

6 For these purposes, 'television receiving apparatus' means any cathode ray tube carried on a vehicle and on which there can be displayed an image derived from a television broadcast, a recording or a camera or computer: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 109(2). The proper test to be applied is not whether the equipment is capable of receiving an outside signal, but whether it was designed to do so: *Target Travel (Coaches) Ltd v Roberts* [1986] RTR 120, DC.

7 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 109(1).

8 Ibid reg 109(1)(a).

9 Ibid reg 109(1)(b).

10 Ibid reg 109(1)(c).

11 Ibid reg 109(1)(d).

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### 624. Use of mobile telephones.

No person is to drive<sup>1</sup> a motor vehicle<sup>2</sup> on a road<sup>3</sup> if he is using a hand-held<sup>4</sup> mobile telephone or a hand-held device of a specified<sup>5</sup> kind<sup>6</sup>. No person is to cause or permit any other person to drive a motor vehicle on a road while that other person is using a hand-held mobile telephone or a hand-held device of a specified kind<sup>7</sup>. No person is to supervise a holder of a provisional licence<sup>8</sup> if the person supervising is using a hand-held mobile telephone or a hand-held device of a specified kind at a time when the provisional licence holder is driving a motor vehicle on a road<sup>9</sup>.

A person does not contravene any of these provisions if, at the time of the alleged contravention:

- 1154 (1) he is using the telephone or other device to call the police, fire, ambulance or other emergency service on 112 or 999;  
 1155 (2) he is acting in response to a genuine emergency; and  
 1156 (3) it is unsafe or impracticable for him to cease driving in order to make the call (or, in relation to the supervision of a provisional licence holder<sup>10</sup>, for the provisional licence holder to cease driving while the call was being made)<sup>11</sup>.

1 For the meaning of 'drive' see PARA 207 ante.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 A mobile telephone or other device is to be treated as hand-held if it is, or must be, held at some point during the course of making or receiving a call or performing any other interactive communication function: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 110(6)(a) (reg 110 added by SI 2003/2695). 'Interactive communication function' includes the following: (1) sending or receiving oral or written messages; (2) sending or receiving facsimile documents; (3) sending or receiving still or moving images; and (4) providing access to the internet: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 110(6)(c) (as so added).

5 Ie a device, other than a two-way radio, which performs an interactive communication function by transmitting and receiving data: ibid reg 110(4) (as added: see note 4 supra). 'Two-way radio' means any wireless telegraphy apparatus which is designed or adapted: (1) for the purpose of transmitting and receiving spoken messages; and (2) to operate on any frequency other than 880 MHz to 915 MHz, 925 MHz to 960 MHz, 1710 MHz to 1785 MHz, 1805 MHz to 1880 MHz, 1900 MHz to 1980 MHz or 2110 MHz to 2170 MHz; and 'wireless telegraphy' has the same meaning as in the Wireless Telegraphy Act 1949 s 19(1) (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 227): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 110(6)(d), (e) (as so added).

6 Ibid reg 110(1) (as added: see note 4 supra).

7 Ibid reg 110(2) (as added: see note 4 supra). As to the specified kind of device see note 5 supra.

8 For these purposes, a person supervises the holder of a provisional licence if he does so pursuant to a condition imposed on that licence holder prescribed under the Road Traffic Act 1988 s 97(3)(a) (grant of provisional licence) (see PARA 464 ante): Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 110(6)(b) (as added: see note 4 supra). For the meaning of 'provisional licence' see PARA 445 note 27 ante.

9 Ibid reg 110(3) (as added: see note 4 supra).

10 Ie in the case of an alleged contravention of ibid reg 110(3)(b).

11 Ibid reg 110(5) (as added: see note 4 supra). As to the offence of breaching these requirements see PARA 264 ante.

## UPDATE

### 624-626 Use of mobile telephones ... Wearing of seat belts by adults

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(8) AVOIDANCE OF DANGER/625. Using vehicle in dangerous condition etc.

## 625. Using vehicle in dangerous condition etc.

If a person uses, or causes or permits<sup>1</sup> another to use, a motor vehicle<sup>2</sup> or trailer<sup>3</sup> on a road<sup>4</sup> when:

- 1157 (1) the condition of the motor vehicle or trailer, or of its accessories or equipment<sup>5</sup>;
- 1158 (2) the purpose for which it is used<sup>6</sup>;
- 1159 (3) the number of passengers carried by it, or the manner in which they are carried<sup>7</sup>; or
- 1160 (4) the weight, position or distribution of its load, or the manner in which it is secured<sup>8</sup>,

is such that the use of the motor vehicle or trailer involves a danger of injury to any person, he is guilty of an offence<sup>9</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'trailer' see PARA 210 ante.

4 For the meaning of 'road' see PARA 206 ante.

5 Road Traffic Act 1988 s 40A(a) (s 40A added by the Road Traffic Act 1991 s 8(1)). The question of whether there is a danger for the purposes of this provision is a matter of fact in any particular case, including the nature of the road: *DPP v Potts* [2000] RTR 1, DC (an agricultural vehicle was being driven along a road with movable arms lowered). The use of agricultural vehicles authorised under the Motor Vehicles (Authorisation of Special Types) General Order 1979, SI 1979/1198 (see now the Road Traffic Act 1988 s 44; the Road Vehicles (Authorisation of Special Types) (General) Order 2003, SI 2003/1998; and PARAS 376-377 ante), with the effect that the Road Traffic Act 1988 s 40A (as added) is disapplied, may still be prosecuted under ss 1, 2 (as substituted) (see PARAS 963-964 post) in certain circumstances: *R v Marchant* [2003] EWCA Crim 2099, [2004] 1 All ER 1187.

6 Road Traffic Act 1988 s 40A(b) (as added: see note 5 supra).

7 Ibid s 40A(c) (as added: see note 5 supra).

8 Ibid s 40A(d) (as added: see note 5 supra).

9 Ibid s 40A (as added: see note 5 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale if the offence is committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers, or to a fine not exceeding level 4 on the standard scale in any other case; disqualification is discretionary; endorsement is obligatory if committed within three years of a previous conviction of the offender under s 40A (as added), and discretionary in any other case; and 3 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 26, Sch 2; and the Road Safety Act 2006 s 25(1)). An offence under the Road Traffic Act 1988 s 40A (as added) of using a vehicle in a dangerous condition is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3 (entry amended by the Road Traffic Act 1991 s 48, Sch 4 para 112). As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; and as to legal proceedings generally see PARA 1023 et seq post.

The Road Traffic Act 1988 s 40A (as added) does not apply to tramcars or trolley vehicles: Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, regs 7, 9. For the meanings of 'tramcar' and 'trolley vehicle' see PARA 219 ante. As to tramcars and trolley vehicles see PARA 1532 et seq post.

As to the application of the Road Traffic Act 1988 s 40A (as added) to vehicles and persons in the public service of the Crown see PARA 205 ante; as to the power to prohibit the driving of foreign goods or public service vehicles where s 40A (as added) has been, or will be, contravened see the Road Traffic (Foreign Vehicles) Act

1972 s 1, Sch 2 (as amended); and PARA 1643 post. As to the exemption of certain special vehicles see PARA 376 ante.

## **UPDATE**

### **624-626 Use of mobile telephones ... Wearing of seat belts by adults**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(9) PROTECTIVE MEASURES/(i) Seat Belts/A. ADULTS/626. Wearing of seat belts by adults.

## **(9) PROTECTIVE MEASURES**

### **(i) Seat Belts**

#### **A. ADULTS**

#### **626. Wearing of seat belts by adults.**

The Secretary of State<sup>1</sup> may make regulations requiring, subject to such exceptions as may be prescribed<sup>2</sup>, persons who are driving<sup>3</sup> or riding in motor vehicles<sup>4</sup> on a road<sup>5</sup> to wear seat belts of such description as may be prescribed<sup>6</sup>. Regulations so made requiring the wearing of seat belts by persons riding in motor vehicles do not apply to children under the age of 14 years<sup>7</sup>.

Such regulations:

- 1161 (1) may make different provision in relation to different classes of vehicles<sup>8</sup>, different descriptions of persons and different circumstances<sup>9</sup>;
- 1162 (2) may authorise the wearing of a seat belt approved under the law of a member state other than the United Kingdom<sup>10</sup>;
- 1163 (3) must include exceptions for:
  - 65 128. (a) the driver of or a passenger in a motor vehicle constructed or adapted for carrying goods<sup>11</sup>, while on a journey which does not exceed the prescribed distance and which is undertaken for the purpose of delivering or collecting any thing<sup>12</sup>;
  - 129. (b) the drivers of vehicles while performing a manoeuvre which includes reversing<sup>13</sup>; and
  - 130. (c) any person holding a valid certificate signed by a medical practitioner to the effect that it is inadvisable on medical grounds for him to wear a seat belt<sup>14</sup>;
- 66 1164 (4) must include an exception for any person holding a certificate to the like effect as that mentioned in head (3)(c) above which was issued in a member state other than the United Kingdom and which, under the law of that state, is valid for purposes corresponding to those of these provisions<sup>15</sup>;
- 1165 (5) may make any prescribed exceptions subject to such conditions as may be prescribed<sup>16</sup>; and



1166 (6) may prescribe cases in which a fee of a prescribed amount may be charged on an application for any certificate required as a condition of any prescribed exception<sup>17</sup>.

A person who drives or rides in a motor vehicle in contravention of regulations so made is guilty of an offence<sup>18</sup>; but, notwithstanding any enactment or rule of law, no person other than the person actually committing the contravention is guilty of an offence by reason of the contravention<sup>19</sup>.

If the holder of any such certificate as is referred to in head (3) or head (4) above is informed by a constable<sup>20</sup> that he may be prosecuted for such an offence, he is not in proceedings for that offence entitled to rely on the exception afforded to him by the certificate unless<sup>21</sup>:

- 1167 (i) it is produced to the constable at the time he is so informed<sup>22</sup>;
- 1168 (ii) it is produced within seven days after the date on which he is so informed, or as soon as is reasonably practicable, at such police station as he may have specified to the constable<sup>23</sup>; or
- 1169 (iii) where it is not produced at such police station, it is not reasonably practicable for it to be produced there before the day on which the proceedings are commenced<sup>24</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'prescribed' see PARA 205 note 6 ante. See note 6 infra.

3 For the meaning of 'drive' see PARA 207 ante.

4 For the meaning of 'motor vehicle' see PARA 210 ante.

5 For the meaning of 'road' see PARA 206 ante.

6 Road Traffic Act 1988 s 14(1). In exercise of the power so conferred the Secretary of State has made the Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176 (as amended): see PARAS 627-629 post. As to the making of regulations generally see PARA 243 ante. The Secretary of State may make payments to police authorities in relation to the prevention, detection and enforcement of offences under the Road Traffic Act 1988 s 14 (as amended): see the Serious Organised Crime and Police Act 2005 s 155.

7 Road Traffic Act 1988 s 14(6). As to the wearing of seat belts by children see PARAS 631-636 post.

8 As to classes of vehicles see PARA 208 ante.

9 Road Traffic Act 1988 s 14(2)(a).

10 Ibid s 14(2)(aa), (7) (added by the Road Traffic Act 1988 (Amendment) Regulations 1992, SI 1992/3105, reg 2(2), (4)). Such authorisation is for the purpose of implementing EC Council Directive 91/671 (OJ L373, 31.12.91, p 26) on the approximation of the laws of the member states relating to compulsory use of safety belts in vehicles of less than 3.5 tonnes. For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

11 For the meaning of 'goods' see PARA 220 note 4 ante.

12 Road Traffic Act 1988 s 14(2)(b)(i) (substituted by the Railways and Transport Safety Act 2003 s 110).

13 Road Traffic Act 1988 s 14(2)(b)(ii).

14 Ibid s 14(2)(b)(iii).

15 Ibid s 14(2)(bb), (7) (added by the Road Traffic Act 1988 (Amendment) Regulations 1992, SI 1992/3105, reg 2(2), (4)). Such exception is for the purposes of implementing EC Council Directive 91/671 (OJ L373, 31.12.91, p 26).

16 Road Traffic Act 1988 s 14(2)(c).

17 Ibid s 14(2)(d).

18 A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. An offence under the Road Traffic Act 1988 s 14 (as amended) of breaching regulations requiring the wearing of seat belts is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

19 Road Traffic Act 1988 s 14(3).

20 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

21 Road Traffic Act 1988 s 14(4) (amended by the Road Traffic Act 1988 (Amendment) Regulations 1992, SI 1992/3105, reg 2(3)).

22 Road Traffic Act 1988 s 14(4)(a).

23 Ibid s 14(4)(b).

24 Ibid s 14(4)(c). For these purposes, the laying of the information is to be treated as the commencement of the proceedings: s 14(5).

## UPDATE

### 624-626 Use of mobile telephones ... Wearing of seat belts by adults

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(9) PROTECTIVE MEASURES/(i) Seat Belts/A. ADULTS/627. Adults in the front or rear of a vehicle.

### 627. Adults in the front or rear of a vehicle.

Every person, other than a person under the age of 14 years<sup>1</sup>:

1170 (1) driving<sup>2</sup> a motor vehicle<sup>3</sup> (other than a two-wheeled motor cycle<sup>4</sup> with or without a sidecar)<sup>5</sup>; or

1171 (2) riding in a front or rear seat<sup>6</sup> of a motor vehicle (other than a two-wheeled motor cycle with or without a sidecar)<sup>7</sup>,

must wear an adult belt<sup>8</sup>.

1 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 5(2) (reg 5 substituted by SI 2006/1892).

2 For the meaning of 'drive' see PARA 207 ante.

3 For the meaning of 'motor vehicle' see PARA 210 ante.

4 For the meaning of 'motor cycle' see PARA 214 ante.

5 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 5(1)(a) (as substituted: see note 1 supra).

6 For these purposes, 'seat' includes any part designed for the accommodation of one adult of a continuous seat designed for the accommodation of more than one adult: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(8); definition applied by the Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 2(1). 'Rear seat' in relation to a vehicle means a seat not being the driver's seat, a seat alongside the driver's seat or a specified passenger seat: reg 2(1). 'Specified passenger seat' means: (1) in the case of a vehicle which has one forward-facing front seat alongside the driver's seat, that seat, and in the case of a vehicle which has more than one such seat, the one furthest from the driver's seat; or (2) if the vehicle normally has no seat which is the specified passenger seat under head (1) supra, the forward-facing front seat for a passenger which is foremost in the vehicle and furthest from the driver's seat, unless there is a fixed partition separating that seat from the space in front of it alongside the driver's seat: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(8); definition applied by the Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 2(1).

7 Ibid reg 5(1)(b) (as substituted: see note 1 supra).

8 Ibid reg 5(1) (as substituted: see note 1 supra). This is expressed to be subject to regs 6-10 (as amended). As to exemptions see PARA 628 post.

For these purposes, 'adult belt' means a seat belt in respect of which one or more of the following requirements is satisfied (reg 2(4)), namely that:

- 150 (1) it is a three-point belt which has been marked in accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(7) (as amended) (see PARA 335 ante) (Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 2(4)(a));
- 151 (2) it is a lap belt which has been so marked (reg 2(4)(b));
- 152 (3) it is a seat belt that falls within the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(4)(c)(i) or (ii) (as amended) (see PARA 335 ante) (Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 2(4)(c));
- 153 (4) it is a seat belt fitted in a vehicle and comprised in a restraint system: (a) of a type which has been approved by an authority of another member state for use by all persons who are either aged 13 years or more or of 150 cm or more in height; and (b) in respect of which, by virtue of such approval, the requirements of the law of another member state corresponding to the Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176 (as amended) would be met were it to be worn by persons who are either aged 13 years or more or of 150 cm or more in height when travelling in that vehicle in that state (reg 2(4)(d) (amended by SI 2006/1892)).

'Lap belt' means a seat belt which passes across the front of the wearer's pelvic region and which is designed for use by an adult; and 'three point belt' means a seat belt which restrains the upper and lower parts of the torso, includes a lap belt, is anchored at not less than three points and is designed for use by an adult: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(8); applied by the Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 2(1). 'Restraint system' means a system combining a seat fixed to the structure of the vehicle by appropriate means and a seat belt for which at least one anchorage point is located on the seat structure: reg 2(1).

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## 628. Exemptions.

The requirement for adults to wear adult belts<sup>1</sup> does not apply to<sup>2</sup>:

- 1172 (1) a person holding a medical certificate<sup>3</sup>;

- 1173 (2) the driver of or a passenger in a motor vehicle constructed or adapted for carrying goods, while on a journey which does not exceed 50 metres and which is undertaken for the purpose of delivering or collecting any thing<sup>4</sup>;
- 1174 (3) a person driving a vehicle while performing a manoeuvre which includes reversing<sup>5</sup>;
- 1175 (4) a qualified driver<sup>6</sup> who is supervising the holder of a provisional licence<sup>7</sup> while that holder is performing a manoeuvre which includes reversing<sup>8</sup>;
- 1176 (5) a person by whom a test of competence to drive is being conducted<sup>9</sup> and whose wearing of a seat belt would endanger himself or any other person<sup>10</sup>;
- 1177 (6) a person driving or riding in a vehicle while it is being used for fire and rescue authority<sup>11</sup> or police<sup>12</sup> purposes or for carrying a person in lawful custody (a person who is being so carried being included in this exemption)<sup>13</sup>;
- 1178 (7) a person driving or riding in a vehicle while it is being used for Serious Organised Crime Agency purposes<sup>14</sup>;
- 1179 (8) the driver of a licensed taxi<sup>15</sup> while it is being used for seeking hire, or answering a call for hire or carrying a passenger for hire, or a private hire vehicle<sup>16</sup> while it is being used to carry a passenger for hire<sup>17</sup>;
- 1180 (9) a person riding in a vehicle, being used under a trade licence<sup>18</sup>, for the purpose of investigating or remedying a mechanical fault in the vehicle<sup>19</sup>;
- 1181 (10) a disabled person who is wearing a disabled person's belt<sup>20</sup>; or
- 1182 (11) a person riding in a vehicle while it is taking part in a procession organised by or on behalf of the Crown<sup>21</sup>.

Without prejudice to head (11) above, the requirement for adults to wear adult belts does not apply to a person riding in a vehicle which is taking part in a procession held to mark or commemorate an event if either<sup>22</sup>: (a) the procession is one commonly or customarily held in the police area<sup>23</sup> or areas in which it is being held<sup>24</sup>; or (b) notice in respect of the procession was duly given<sup>25</sup>. Nor does the requirement for adults to wear adult belts apply to:

- 1183 (i) a person driving a vehicle if the driver's seat<sup>26</sup> is not provided with an adult belt<sup>27</sup>;
- 1184 (ii) a person riding in the front of a vehicle if no adult belt is available<sup>28</sup> for him in the front of the vehicle<sup>29</sup>; or
- 1185 (iii) a person riding in the rear of a vehicle if no adult belt is available for him in the rear of the vehicle<sup>30</sup>.

The requirement for a person riding in a front or rear seat of a motor vehicle to wear an adult belt<sup>31</sup> does not apply to a person riding in a small or large bus<sup>32</sup>: (A) which is being used to provide a local service<sup>33</sup> in a built-up area<sup>34</sup>; or (B) which is constructed or adapted for the carriage of standing passengers and on which the operator<sup>35</sup> permits standing<sup>36</sup>.

1    le the requirement of the Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 5 (as substituted): see PARA 627 ante. For the meaning of 'adult belt' see PARA 627 note 8 ante.

2    Ibid reg 6(1).

3    Ibid reg 6(1)(a). 'Medical certificate', in relation to a person driving or riding in a vehicle, means: (1) a valid certificate signed by a medical practitioner to the effect that it is inadvisable on medical grounds for him to wear a seat belt; or (2) a valid certificate to such effect issued by the authority having power to issue such a certificate under the law of another member state corresponding to the Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176 (as amended): reg 2(1), Sch 1 Pt I para 1. A certificate is not, however, to be regarded as a medical certificate in relation to a person driving or riding in a vehicle for these purposes unless it specifies its period of validity and bears the prescribed symbol shown in Sch 1 Pt II: Sch 1 Pt I para 2 (amended by SI 2006/1892). The Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, Sch 1 Pt I para 2 (as amended) does not apply in relation to a certificate issued before 1 January 1995: Sch 1 Pt I para 3.

- 4 Ibid reg 6(1)(b) (substituted by SI 2005/27).
- 5 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 6(1)(c).
- 6 le within the meaning given by the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 17 (as amended): see PARA 464 ante.
- 7 le within the meaning of the Road Traffic Act 1988 Pt III (ss 87-109) (as amended): see PARA 445 note 27 ante.
- 8 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 6(1)(d) (amended by SI 2005/27).
- 9 le as provided by the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864 (as amended): see PARA 451 ante.
- 10 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 6(1)(e) (amended by SI 2005/27).
- 11 See FIRE SERVICES vol 18(2) (Reissue) PARA 68 et seq.
- 12 As to police vehicles see POLICE vol 36(1) (2007 Reissue) PARA 525.
- 13 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 6(1)(f) (amended, in relation to England, by SI 2004/3168; and, in relation to Wales, by SI 2005/2929).
- 14 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 6(1)(fa) (added by SI 2006/594).
- 15 For the meaning of 'licensed taxi' see PARA 1495 note 1 post. As to taxis see PARA 1431 et seq post.
- 16 'Private hire vehicle' means a motor vehicle which has no more than eight seats in addition to the driver's seat, other than a licensed taxi or a public service vehicle (within the meaning of the Public Passenger Vehicles Act 1981: see PARA 1136 post), which is provided for hire with the services of a driver for the purpose of carrying passengers and which displays a sign pursuant to either the Vehicle (Excise) Act 1971 s 21 (repealed) or the Local Government (Miscellaneous Provisions) Act 1976 s 48(2) or any similar enactment: Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 2(1).
- 17 Ibid reg 6(1)(g).
- 18 For the meaning of 'trade licence' see PARA 521 note 3 ante; definition applied by ibid reg 2(1).
- 19 Ibid reg 6(1)(h).
- 20 Ibid reg 6(1)(j). 'Disabled person's belt' means a seat belt which has been specially designed or adapted for use by an adult or young person suffering from some physical defect or disability and which is intended for use solely by such a person: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(8); definition applied by the Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 2(1).
- 21 Ibid reg 6(1)(k).
- 22 Ibid reg 6(2).
- 23 As to police areas see POLICE vol 36(1) (2007 Reissue) PARA 136 et seq.
- 24 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 6(2)(a).
- 25 Ibid reg 6(2)(b). Notice is given in accordance with the Public Order Act 1986 s 11: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 578.
- 26 As to the meaning of 'seat' see PARA 627 note 6 ante.
- 27 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 6(3)(a). For these purposes, a seat is to be regarded as provided with an adult seat belt if it is fixed in such a position that it can be worn by an occupier of that seat: reg 2(6). A seat is not to be regarded as provided with an adult seat belt if the seat belt: (1) has an inertia reel mechanism which is locked as a result of the vehicle being, or having been, on a steep incline; or (2) does not comply with the requirements of the Road Vehicles (Construction and Use)

Regulations 1986, SI 1986/1078, reg 48 (as amended) (see PARA 336 ante): Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 2(7).

28 As to the availability of seat belts see PARA 629 post.

29 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 6(3)(b).

30 Ibid reg 6(3)(c).

31 Ie the requirement of ibid reg 5(1)(b) (as substituted): see PARA 627 head (2) ante.

32 Ibid reg 6(4) (added by SI 2006/1892). For these purposes, 'large bus' means a motor vehicle which: (1) is constructed or adapted for use for the carriage of passengers; (2) has more than eight seats in addition to the driver's seat; (3) has four or more wheels; (4) has a maximum design speed exceeding 25 km per hour; and (5) has a maximum laden weight exceeding 3.5 tonnes: Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 2(1) (definition added by SI 2006/1892). 'Small bus' means a motor vehicle which: (a) is constructed or adapted for use for the carriage of passengers; (b) has more than eight seats in addition to the driver's seat; (c) has four or more wheels; (d) has a maximum design speed exceeding 25 km per hour; and (e) has a maximum laden weight not exceeding 3.5 tonnes: Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 2(1) (definition as so added).

33 Ie within the meaning of the Transport Act 1985: see PARA 1177 post.

34 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 6(4)(a) (as added: see note 32 supra). For the purposes of the Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176 (as amended), references to a bus being used to provide a service in a 'built-up area' are to be construed in the same way as in the Transport Act 1985 s 15B(6) (as added) (see PARA 630 post): Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 2(9A) (added by SI 2006/1892).

35 'Operator', in relation to a small or large bus, means: (1) the owner of the bus; or (2) if the bus is in the possession of any other person under an agreement for hire, hire-purchase, conditional sale, loan or otherwise, that person: Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 2(1) (definition added by SI 2006/1892).

36 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 6(4)(b) (as added: see note 32 supra).

## UPDATE

### 628 Exemptions

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(9) PROTECTIVE MEASURES/(i) Seat Belts/A. ADULTS/629. Availability of seat belts.

### 629. Availability of seat belts.

In relation to a person aged 14 years or more riding in a vehicle<sup>1</sup>:

1186 (1) if any front seat<sup>2</sup> in the vehicle, other than the driver's seat, is provided with an adult belt<sup>3</sup>, that belt is to be regarded as being available for him in the front of the vehicle unless the requirements set out in heads (i) to (vii) below<sup>4</sup> are satisfied in relation to that person, that seat and that belt<sup>5</sup>; and

- 1187 (2) if any rear seat in the vehicle is provided with an adult belt, that belt is to be regarded as being available for him in the rear of the vehicle unless the requirements set out in heads (i) to (vii) below<sup>6</sup> are satisfied in relation to that person, that seat and that belt<sup>7</sup>.

In relation to a child<sup>8</sup> riding in a vehicle<sup>9</sup>:

- 1188 (a) if any front seat in the vehicle, other than the driver's seat, is provided with an appropriate seat belt<sup>10</sup>, that belt is to be regarded as an appropriate seat belt available for him in the front of the vehicle unless the requirements set out in heads (i) to (vii) below<sup>11</sup> are satisfied in relation to that child, that seat and that belt<sup>12</sup>; and
- 1189 (b) if any rear seat in a vehicle is provided with an appropriate seat belt, that belt is to be regarded as an appropriate seat belt available for him in the rear of the vehicle unless the requirements set out in heads (i) to (vii) below<sup>13</sup> are satisfied in relation to that child, that seat and that belt<sup>14</sup>.

The requirements are satisfied in relation to a particular person ('the person in question') and a particular seat ('the relevant seat') provided with a particular seat belt ('the relevant belt') if<sup>15</sup>:

- 1190 (i) another person is wearing the relevant belt<sup>16</sup>;
- 1191 (ii) a child is occupying the relevant seat and wearing a child restraint<sup>17</sup> which is an appropriate child restraint for that child<sup>18</sup>;
- 1192 (iii) another person, being a person holding a medical certificate<sup>19</sup>, is occupying the relevant seat<sup>20</sup>;
- 1193 (iv) a disabled person, not being the person in question, is occupying the relevant seat and wearing a disabled person's belt<sup>21</sup>;
- 1194 (v) by reason of his disability, it would not be practicable for the person in question to wear the relevant belt<sup>22</sup>;
- 1195 (vi) the person in question is prevented from occupying the relevant seat by the presence of a child restraint which could not readily be removed without the aid of tools<sup>23</sup>; or
- 1196 (vii) the relevant seat is specially designed so that: (A) its configuration can be adjusted in order to increase the space in the vehicle available for goods or personal effects<sup>24</sup>; and (B) when it is so adjusted, the seat cannot be used as such<sup>25</sup>, and the configuration is adjusted in the manner described in head (A) above and it would not be reasonably practicable for the goods and personal effects being carried in the vehicle to be so carried were the configuration not so adjusted<sup>26</sup>.

1 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 2(9), Sch 2 para 1.

2 As to the meaning of 'seat' see PARA 627 note 6 ante.

3 For the meaning of 'adult belt' see PARA 627 note 8 ante.

4 I.e. the requirements of the Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, Sch 2 para 3: see the text and notes 15-26 infra.

5 Ibid Sch 2 para 1(a).

6 See note 4 supra.

7 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, Sch 2 para 1(b).

8 'Child' means person under the age of 14 years: ibid reg 2(3).

9 Ibid Sch 2 para 2.

10 'Seat belt' includes a child restraint (see note 17 infra); and references to wearing a seat belt are to be construed accordingly: ibid reg 2(1). For these purposes, a seat belt is appropriate: (1) in relation to a small child, if it is a child restraint of a description prescribed for a child of his height and weight by reg 8 (as amended) (see PARA 635 post); (2) in relation to a large child, if it is a child restraint of a description prescribed for a child of his height and weight by reg 8 (as amended) (see PARA 635 post) or an adult belt; or (3) in relation to a person aged 14 years or more, if it is an adult belt: reg 2(8) (substituted by SI 2006/1892). 'Large child' means a child who is not a small child; and 'small child' means a child who is: (a) aged under 12 years; and (b) under 135 cm in height: Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 2(3) (amended by SI 2006/1892).

11 See note 4 supra.

12 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, Sch 2 para 2(a).

13 See note 4 supra.

14 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, Sch 2 para 2(b).

15 Ibid Sch 2 para 3. Schedule 2 para 3 has effect in relation to reg 10(5) (see PARA 636 post) as if Sch 2 paras 3(a)-(d) (see heads (i)-(iv) in the text) were omitted: Sch 2 para 4.

16 Ibid Sch 2 para 3(a).

17 A child restraint is to be regarded as provided for a seat for these purposes if: (1) it is fixed in such a position that it can be worn by an occupier of that seat; or (2) it is elsewhere in or on the vehicle but it could readily be fixed in such a position without the aid of tools and it is not being worn by a child for whom it is appropriate and who is occupying another seat: ibid Sch 2 para 8.

'Child restraint' means a seat belt or other device in respect of which the following requirements are satisfied, namely that: (a) it is a seat belt or any other description of restraining device for the use of a child which is: (i) designed either to be fitted directly to a suitable anchorage or to be used in conjunction with an adult seat belt and held in place by the restraining action of that belt; and (ii) marked in accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(7) (as amended) (see PARA 335 ante); or (b) it is a seat belt consisting of or comprised in a restraint system fitted in a relevant vehicle ('the vehicle in question'), being a restraint system: (i) of a type which has been approved by an authority of another member state for use by a child; and (ii) in respect of which, by virtue of such approval, the requirements of the law of that state corresponding to the Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176 (as amended) would be met were it to be worn by a child when travelling in the vehicle in question in that state: reg 2(1).

18 Ibid Sch 2 para 3(b). Schedule 2 para 3(b) does not apply unless the presence of the other person renders it impracticable for the person in question to wear the relevant belt: Sch 2 para 5.

19 For the meaning of 'medical certificate' see PARA 628 note 3 ante.

20 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, Sch 2 para 3(c).

21 Ibid Sch 3 para 3(d). Schedule 2 para 3(d) does not apply unless the presence of the other person renders it impracticable for the person in question to wear the relevant belt: Sch 2 para 5. For the meaning of 'disabled person's belt' see PARA 628 note 20 ante.

22 Ibid Sch 2 para 3(e).

23 Ibid Sch 2 para 3(g). Schedule 2 para 3(g) does not apply if the person in question is a child and the child restraint is appropriate for him: Sch 2 para 7.

24 Ibid Sch 2 para 3(h)(i).

25 Ibid Sch 2 para 3(h)(ii).

26 Ibid Sch 2 para 3(h).



1663)/6. USE OF VEHICLES/(9) PROTECTIVE MEASURES/(i) Seat Belts/A. ADULTS/630.  
Requirement to notify bus passengers to wear seat belts.

### **630. Requirement to notify bus passengers to wear seat belts.**

The operator<sup>1</sup> of a bus<sup>2</sup> in which any of the passenger seats<sup>3</sup> are equipped with seat belts must take all reasonable steps to ensure that every passenger is notified that he is required to wear a seat belt at all times when he is in a seat equipped with a seat belt and the bus is in motion<sup>4</sup>. For these purposes, a passenger may be notified only by one or more of the following means<sup>5</sup>:

- 1197 (1) an official announcement<sup>6</sup>, or an audio-visual presentation, made when the passenger joins the bus or within a reasonable time of his doing so<sup>7</sup>;
- 1198 (2) a sign prominently displayed at each passenger seat equipped with a seat belt<sup>8</sup>.

The notification requirement does not apply in relation to a bus: (a) which is being used to provide a local service<sup>9</sup> in a built-up area<sup>10</sup>; or (b) which is constructed or adapted for the carriage of standing passengers and on which the operator permits standing<sup>11</sup>.

An operator who fails to comply with the notification requirement is guilty of an offence<sup>12</sup>. Where such an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in such a capacity, he as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly<sup>13</sup>.

1 'Operator', in relation to a bus, means: (1) the owner of the bus; or (2) if the bus is in the possession of any other person under an agreement for hire, hire-purchase, conditional sale, loan or otherwise, that person: Road Traffic Act 1988 s 15B(7) (s 15B added by the Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2006, SI 2006/1892, regs 2, 4).

2 For the meaning of 'bus' see PARA 631 note 8 post; definition applied by the Road Traffic Act 1988 s 15B(7) (as added: see note 1 supra).

3 'Passenger seat', in relation to a bus, means any seat other than the driver's seat: *ibid* s 15B(7) (as added: see note 1 supra).

4 *Ibid* s 15B(1) (as added: see note 1 supra).

5 *Ibid* s 15B(2) (as added: see note 1 supra).

6 For these purposes, 'official announcement' means an announcement by the driver of the bus, by a conductor or courier or by a person who is a group leader in relation to any group of persons who are passengers on the bus: *ibid* s 15B(2) (as added: see note 1 supra).

7 *Ibid* s 15B(2)(a) (as added: see note 1 supra).

8 *Ibid* s 15B(2)(b) (as added: see note 1 supra). For these purposes, a sign that takes the form of a pictorial symbol must be in the form shown in Sch 2A (added by the Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2006, SI 2006/1892, reg 5), depicting a white figure on a blue background: Road Traffic Act 1988 s 15B(3) (as so added).

9 *Ie* within the meaning of the Transport Act 1985: see PARA 1177 post.

10 Road Traffic Act 1988 s 15B(6)(a) (as added: see note 1 supra). For these purposes, a local service is provided in a built-up area if the entire route used by that service consists of restricted roads: s 15B(6) (as so added). 'Restricted road' means a road that is restricted for the purposes of the Road Traffic Regulation Act 1984 s 81 (ignoring any direction under s 82(2)(b)) or would be so restricted but for a direction under s 82(2)(a) or an order under s 84(1) (see PARAS 847-848 post): Road Traffic Act 1988 s 15B(7) (as so added).

11 Ibid s 15B(6)(b) (as added: see note 1 supra).

12 Ibid s 15B(4) (as added: see note 1 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry added by the Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2006, SI 2006/1892, regs 6, 8(b)). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

13 Road Traffic Act 1988 s 15B(5) (as added: see note 1 supra).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(9) PROTECTIVE MEASURES/(i) Seat Belts/B. CHILDREN/631. Restriction on carrying children not wearing seat belts in motor vehicles.

## **B. CHILDREN**

### **631. Restriction on carrying children not wearing seat belts in motor vehicles.**

Except as provided by regulations<sup>1</sup>, where a child under the age of 14 years is in the front<sup>2</sup> of a motor vehicle<sup>3</sup>, a person must not without reasonable excuse drive<sup>4</sup> the vehicle on a road<sup>5</sup> unless the child is wearing a seat belt<sup>6</sup> in conformity with regulations<sup>7</sup>. Where (1) a child is in the front of a motor vehicle other than a bus<sup>8</sup>; (2) the child is in a rear-facing child restraining device; and (3) the passenger seat where the child is placed is protected by a front air bag, a person must not without reasonable excuse drive the vehicle on a road unless the air bag is deactivated<sup>9</sup>.

If a person drives a motor vehicle in contravention of these prohibitions, he is guilty of an offence<sup>10</sup>.

Except as provided by regulations:

1199 (1) where:

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131. (a) a child under the age of three years is in the rear of a motor vehicle<sup>11</sup>; or

132. (b) a child of or over that age but under the age of 14 years is in the rear of a motor vehicle and any seat belt is fitted in the rear of that vehicle<sup>12</sup>,

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1200 a person must not without reasonable excuse drive the vehicle on a road unless the child is wearing a seat belt in conformity with regulations<sup>13</sup>;

1201 (2) where:

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133. (a) a child who is under the age of 12 years and less than 150 centimetres in height is in the rear of a passenger car<sup>14</sup>;

134. (b) no seat belt is fitted in the rear of the passenger car<sup>15</sup>; and

135. (c) a seat in the front of the passenger car is provided with a seat belt but is not occupied by any person<sup>16</sup>,

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1202 a person must not without reasonable excuse drive the passenger car on a road<sup>17</sup>.

If a person drives a motor vehicle in contravention of head (1) or head (2) above, he is guilty of an offence<sup>18</sup>.

Provision may be made by regulations:

- 1203 (i) excepting from the prohibition in the above provisions<sup>19</sup> children of any prescribed<sup>20</sup> description, vehicles of a prescribed class<sup>21</sup> or the driving of vehicles in such circumstances as may be prescribed<sup>22</sup>;
- 1204 (ii) defining in relation to any class of vehicle what part of the vehicle is to be regarded as the front of the vehicle for the above purposes<sup>23</sup> or as the rear of the vehicle for the above purposes<sup>24</sup>; and
- 1205 (iii) prescribing for the above purposes<sup>25</sup> the descriptions of seat belt to be worn by children of any prescribed description and the manner in which such seat belt is to be fixed and used<sup>26</sup>.

Regulations made for the purposes of head (1) or head (2) above: (A) must include an exemption for any child holding a valid certificate signed by a medical practitioner to the effect that it is inadvisable on medical grounds for him to wear a seat belt<sup>27</sup>; and (B) must include an exemption for any child holding a certificate to the like effect which was issued in any member state other than the United Kingdom and which, under the law of that state, is valid for purposes corresponding to those of these provisions<sup>28</sup>, but the regulations may make either of those exemptions subject to such conditions as may be prescribed<sup>29</sup>.

If the driver of a motor vehicle is informed by a constable<sup>30</sup> that he may be prosecuted for an offence<sup>31</sup>, he is not in proceedings for that offence entitled to rely on an exception afforded to a child by a certificate<sup>32</sup> unless it is produced to the constable at the time he is so informed, or it is produced within seven days after the date on which he is so informed, or as soon as is reasonably practicable, at such police station as he may have specified to the constable, or, where it is not produced at such police station, it is not reasonably practicable for it to be produced there before the day on which the proceedings are commenced<sup>33</sup>.

1 For these purposes, 'regulations' means regulations made by the Secretary of State under the Road Traffic Act 1988 s 15 (as amended): s 15(9) (amended by the Road Traffic Act 1988 (Amendment) Regulations 1992, SI 1992/3105, reg 3(7)). See notes 7, 13, 14 *infra*. As to the Secretary of State see PARA 236 *ante*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 *ante*.

2 Every part of the vehicle forward of the transverse vertical plane passing through the rearmost part of the driver's seat is to be regarded as the front of the vehicle; and accordingly no part of the vehicle to the rear of that plane is to be regarded as being in the front of the vehicle: Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, reg 4(1), (2). Where a vehicle has a deck which is above the level of the driver's head when he is in the normal driving position, no part of the vehicle above that level is to be regarded as being in the front of the vehicle: reg 4(1), (3).

3 For the meaning of 'motor vehicle' see PARA 210 *ante*.

4 For the meaning of 'drive' see PARA 207 *ante*.

5 For the meaning of 'road' see PARA 206 *ante*.

6 For these purposes, 'seat belt' includes any description of restraining device for a child; and any reference to wearing a seat belt is to be construed accordingly: Road Traffic Act 1988 s 15(9).

7 *Ibid* s 15(1). In exercise of this power the Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31 (amended by SI 2006/2213) have been made. As to the making of regulations generally see PARA 243 *ante*.

8 For these purposes, 'bus' means a motor vehicle that: (1) has at least four wheels; (2) is constructed or adapted for the carriage of passengers; (3) has more than eight seats in addition to the driver's seat; and (4) has a maximum design speed exceeding 25 kmph: Road Traffic Act 1988 s 15(9) (definition added by the Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2006, SI 2006/1892, regs 2, 3(4)).

9 Road Traffic Act 1988 s 15(1A) (added by the Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2006, SI 2006/1892, reg 3(1)). For these purposes, the reference to the air bag being deactivated includes a reference to the case where the air bag is designed or adapted in such a way that it cannot inflate

enough to pose a risk of injury to a child travelling in a rear-facing child restraining device in the seat in question: Road Traffic Act 1988 s 15(9A) (added by the Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2006, SI 2006/1892, reg 3(5)). The Road Traffic Act 1988 s 15(9A) (as added) refers to 'subsection (1)', but it is submitted that this should be a reference to s 15(1A) (as added).

10 Ibid s 15(2) (amended by the Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2006, SI 2006/1892, reg 3(2)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry amended by the Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2006, SI 2006/1892, regs 6, 8(a)). As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Act 1988 s 15(2) of breaching the restriction on carrying children in the front of vehicles or in a rear-facing child restraint in the front seat with an active air bag is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post. The Secretary of State may make payments to police authorities in relation to the prevention, detection and enforcement of offences under the Road Traffic Act 1988 s 15(2) (as amended): see the Serious Organised Crime and Police Act 2005 s 155.

11 Road Traffic Act 1988 s 15(3)(a) (s 15(3) substituted by the Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2006, SI 2006/1892, reg 3(3)).

12 Road Traffic Act 1988 s 15(3)(b) (as substituted: see note 11 supra).

13 Ibid s 15(3) (as substituted: see note 11 supra). In exercise of this power the Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176 (as amended) have been made: see PARAS 635-636 post. As to provision corresponding to the Road Traffic Act s 15(3) (as substituted) in relation to Northern Ireland see the Motor Vehicles (Wearing of Rear Seat Belts by Children) Act 1988 s 2 (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 38).

14 Road Traffic Act 1988 s 15(3A)(a) (s 15(3A) added by the Road Traffic Act 1988 (Amendment) Regulations 1992, SI 1992/3105, reg 3). In exercise of this power the Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176 (as amended) have been made: see PARAS 635-636 post. For these purposes, 'passenger car' means a motor vehicle which: (1) is constructed or adapted for use for the carriage of passengers and is not a goods vehicle; (2) has no more than eight seats in addition to the driver's seat; (3) has four or more wheels; (4) has a maximum design speed exceeding 25 kmph; and (5) has a maximum laden weight not exceeding 3.5 tonnes: Road Traffic Act 1988 s 15(9) (amended by the Road Traffic Act 1988 (Amendment) Regulations 1992, SI 1992/3105, reg 3). 'Maximum laden weight' has the meaning given by the Road Traffic Regulation Act 1984 s 86(1), Sch 6 Pt IV (see PARA 851 note 21 post): Road Traffic Act 1988 s 15(9) (as so amended). For the meaning of 'goods vehicle' see PARA 220 ante.

15 Ibid s 15(3A)(b) (as added: see note 14 supra).

16 Ibid s 15(3A)(c) (as added: see note 14 supra).

17 Ibid s 15(3A) (as added: see note 14 supra).

18 Ibid s 15(4) (amended by the Road Traffic Act 1988 (Amendment) Regulations 1992, SI 1992/3105, reg 3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I (amended by the Road Safety Act 2006 s 24).

An offence under the Road Traffic Act 1988 s 15(4) (as amended) of breaching the restriction on carrying children in the rear of vehicles is a fixed penalty offence: Road Traffic Offenders Act 1988 Sch 3 (entry amended by the Fixed Penalty Offences Order 1992, SI 1992/345, art 2).

The Secretary of State may make payments to police authorities in relation to the prevention, detection and enforcement of offences under the Road Traffic Act 1988 s 15(4) (as amended): see the Serious Organised Crime and Police Act 2005 s 155.

19 Ie the Road Traffic Act 1988 s 15(1) (see the text and notes 1-7 supra), s 15(3) (as substituted) (see the text and notes 11-13 supra) or s 15(3A) (as added) (see the text and notes 14-17 supra).

20 For the meaning of 'prescribed' see PARA 205 note 6 ante.

21 As to classes of vehicles see PARA 208 ante.

22 Road Traffic Act 1988 s 15(5)(a) (amended by the Road Traffic Act 1988 (Amendment) Regulations 1992, SI 1992/3105, reg 3).

23 le for the purposes of the Road Traffic Act 1988 s 15(1) (see the text and notes 1-7 supra) or s 15(3A) (as added) (see the text and notes 14-17 supra).

24 Ibid s 15(5)(b) (amended by the Road Traffic Act 1988 (Amendment) Regulations 1992, SI 1992/3105, reg 3).

25 le for the purposes of the Road Traffic Act 1988 s 15(1) (see the text and notes 1-7 supra) or s 15(3) (as substituted) (see the text and notes 11-13 supra).

26 Ibid s 15(5)(c). Without prejudice to the generality of s 15(5) (as amended), regulations made by virtue of s 15(5)(c) may, for the purpose of implementing EC Council Directive 91/671 (OJ L373, 31.12.91, p 26) on the approximation of the laws of the member states relating to compulsory use of safety belts in vehicles of less than 3.5 tonnes, make different provision in relation to different vehicles and different circumstances and authorise the wearing of a seat belt approved under the law of any member state other than the United Kingdom: Road Traffic Act 1988 s 15(5A) (added by the Road Traffic Act 1988 (Amendment) Regulations 1992, SI 1992/3105, reg 3). For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

27 Road Traffic Act 1988 s 15(6)(a) (s 15(6) substituted by the Road Traffic Act 1988 (Amendment) Regulations 1992, SI 1992/3105, reg 3).

28 Road Traffic Act 1988 s 15(6)(b) (as substituted: see note 27 supra). Regulations made under s 15(6)(b) (as substituted) are made for the purpose of implementing EC Council Directive 91/671 (OJ L373, 31.12.91, p 26): see the Road Traffic Act 1988 s 15(6) (as so substituted).

29 Ibid s 15(6) (as substituted: see note 27 supra).

30 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

31 le an offence under the Road Traffic Act 1988 s 15(4) (as amended): see the text and note 18 supra.

32 le a certificate referred to in ibid s 15(6) (as substituted): see the text and notes 27-29 supra.

33 Ibid s 15(7). For these purposes, the laying of the information is to be treated as the commencement of the proceedings: s 15(8).

## UPDATE

### 631-636 Children

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(9) PROTECTIVE MEASURES/(i) Seat Belts/B. CHILDREN/632. Seat belts to be worn by children in the front of a vehicle.

### 632. Seat belts to be worn by children in the front of a vehicle.

For a child<sup>1</sup> of any particular height and weight travelling in the front of a particular vehicle, other than a two-wheeled motor cycle<sup>2</sup> with or without a sidecar, the description of seat belt<sup>3</sup> to be worn by him is<sup>4</sup>:

1206 (1) if he is a small child<sup>5</sup>, a child restraint<sup>6</sup> of a description specified in head (a) or (b) below<sup>7</sup>;

1207 (2) if he is a large child<sup>8</sup>, a child restraint of a description specified in head (a) below or an adult belt<sup>9</sup>.

The descriptions of seat belt are:

- 1208 (a) a child restraint with the required marking<sup>10</sup> if the marking indicates that it is suitable for his weight and either indicates that it is suitable for his height or contains no indication as respects height<sup>11</sup>;
- 1209 (b) a child restraint which would meet the corresponding requirements<sup>12</sup> of the law of another member state were it to be worn by that child when travelling in that vehicle in that state<sup>13</sup>.

1 'Child' means a person under the age of 14 years: Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, reg 2(3).

2 For the meaning of 'motor cycle' see PARA 214 ante.

3 In the description of seat belt prescribed for the purposes of the Road Traffic Act 1988 s 15(1): see PARA 631 ante. For these purposes, 'seat belt' includes a child restraint (see note 6 infra); and references to wearing a seat belt are to be construed accordingly: Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, reg 2(1).

4 Ibid regs 5(1), 6.

5 'Small child' means a child who is aged under 12 years and under 135 cm in height: ibid reg 2(3) (amended by SI 2006/2213).

6 'Child restraint' means a seat belt or other device in respect of which the following requirements are satisfied, namely that: (1) it is a seat belt or any other description of restraining device for the use of a child which is: (a) designed either to be fitted directly to a suitable anchorage or to be used in conjunction with an adult belt and held in place by the restraining action of that belt; and (b) marked in accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(7) (as amended) (see PARA 335 ante); or (2) it is a seat belt consisting of or comprised in a restraint system fitted in a vehicle, being a restraint system: (a) of a type which has been approved by an authority of another member state for use by a child; and (b) in respect of which, by virtue of such approval, the requirements of the law of that state corresponding to the Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31 (as amended) would be met were it to be worn by a child when travelling in that vehicle in that state: reg 2(5) (amended by SI 2006/2213). 'Restraint system' means a system combining a seat fixed to the structure of the vehicle by appropriate means and a seat belt for which at least one anchorage point is located on the seat structure: Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, reg 2(1).

A seat is to be regarded as provided with a child restraint if a child restraint is: (i) fixed in such a position that it can be worn by an occupier of that seat; or (ii) elsewhere in or on the vehicle but it could readily be fixed in such a position without the aid of tools, and is not being worn by a child for whom it is appropriate and who is occupying another seat: reg 2(8).

7 Ibid reg 5(1)(a).

8 'Large child' means a child who is not a small child: ibid reg 2(3).

9 Ibid reg 5(1)(c). For exemptions see PARA 633 post. 'Adult belt' means a seat belt in respect of which one or more of the following requirements is satisfied, namely that: (1) it is a three-point belt which has been marked in accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(7) (as amended) (see PARA 335 ante); (2) it is a lap belt which has been so marked; (3) it is a seat belt that falls within reg 47(4)(c)(i) or (ii) (see PARA 335 ante); (4) it is a seat belt fitted in a vehicle and comprised in a restraint system: (a) of a type which has been approved by an authority of another member state for use by all persons who are either aged 13 years or more or of 150 cm or more in height; and (b) in respect of which, by virtue of such approval, the requirements of the law of another member state corresponding to the Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31 (as amended) would be met were it to be worn by persons who are either aged 13 years or more or of 150 cm or more in height when travelling in that vehicle in that state: reg 2(4) (amended by SI 2006/2213). For the meanings of 'three-point belt' and 'lap belt' see PARA 627 note 11 ante; definitions applied by the Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, reg 2(1).

10 In the marking required under the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(7) (as amended): see PARA 335 ante.

11 Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, reg 5(2) (a).

12 ie the law of another member state corresponding to the Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31 (as amended).

13 Ibid reg 5(2)(b).

## UPDATE

### 631-636 Children

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(9) PROTECTIVE MEASURES/(i) Seat Belts/B. CHILDREN/633. Exemptions.

### 633. Exemptions.

The prohibition on carrying children not wearing seat belts in the front of motor vehicles<sup>1</sup> does not apply in relation to:

- 1210 (1) a small child<sup>2</sup> aged three years or more who is riding in a bus and is wearing an adult belt<sup>3</sup> if an appropriate seat belt<sup>4</sup> is not available<sup>5</sup> for him in the front or rear of the vehicle<sup>6</sup>;
- 1211 (2) a child for whom there is a medical certificate<sup>7</sup>; or
- 1212 (3) a disabled child who is wearing a disabled person's belt<sup>8</sup>.

Nor does the prohibition on carrying children not wearing seat belts in motor vehicles apply in relation to a child riding in a bus:

- 1213 (a) which is being used to provide a local service<sup>10</sup> in a built-up area<sup>11</sup>; or
- 1214 (b) which is constructed or adapted for the carriage of standing passengers and on which the operator<sup>12</sup> permits standing<sup>13</sup>.

The prohibition does not apply in relation to a large child<sup>14</sup> if no appropriate seat belt is available for him in the front of the vehicle<sup>15</sup>.

1 ie the prohibition in the Road Traffic Act 1988 s 15(1): see PARA 631 ante.

2 For the meaning of 'small child' see PARA 632 note 5 ante.

3 For the meaning of 'adult belt' see PARA 632 note 9 ante.

4 For the meaning of 'seat belt' see PARA 632 note 3 ante. For these purposes, a seat belt is appropriate: (1) in relation to a small child, if it is a child restraint of a description prescribed for a child of his height and weight by the Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, reg 5 (as

amended) (see PARA 632 ante); (2) in relation to a large child, if it is a child restraint of a description prescribed for a child of his height and weight by reg 5 (as amended) or an adult belt; or (3) in relation to a person aged 14 years or more, if it is an adult belt: reg 2(9) (substituted by SI 2006/2213).

5 As to the availability of seat belts see PARA 634 post.

6 Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, reg 7(1)(a) (reg 7(1) substituted by SI 2006/2213). As to the front of a vehicle see PARA 631 note 2 ante.

7 Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, reg 7(1)(b) (as substituted: see note 6 supra). For these purposes, 'medical certificate', in relation to a person driving or riding in a vehicle, means: (1) a valid certificate signed by a medical practitioner to the effect that it is inadvisable on medical grounds for him to wear a seat belt; or (2) a valid certificate to such effect issued by the authority having power to issue such a certificate under the law of another member state corresponding to the Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31 (as amended): reg 2(1), Sch 1 Pt I para 1. A certificate is not to be regarded as a medical certificate in relation to a person driving or riding in a vehicle for these purposes unless: (a) it specifies its period of validity and bears the prescribed symbol shown in Sch 1 Pt II; or (b) the person is aged under 14 years: Sch 1 Pt I para 2 (amended by SI 2006/2213). The Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, Sch 1 Pt I para 2 (as amended) does not apply in relation to a certificate issued before 1 January 1995: Sch 1 Pt I para 3.

8 Ibid reg 7(1)(c). For the meaning of 'disabled person's belt' see PARA 628 note 20 ante; definition applied by reg 2(1).

9 For the meaning of 'motor car' see PARA 212 ante.

10 le within the meaning of the Transport Act 1985: see PARA 1177 post.

11 Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, reg 7(2) (a) (reg 7(2) substituted by SI 2006/2213). For these purposes, references to a bus being used to provide a service in a 'built-up area' are to be construed in the same way as in the Road Traffic Act 1988 s 15B(6) (as added) (see PARA 630 note 10 ante): Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, reg 2(9A) (added by SI 2006/2213).

12 For these purposes, 'operator', in relation to a bus, means: (1) the owner of the bus; or (2) if the bus is in the possession of any other person under an agreement for hire, hire-purchase, conditional sale, loan or otherwise, that person: Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, reg 2(1) (definition added by SI 2006/2213).

13 Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, reg 7(2) (b) (as substituted: see note 11 supra).

14 For the meaning of 'large child' see PARA 632 note 8 ante.

15 Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, reg 7(3).

## UPDATE

### 631-636 Children

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(9) PROTECTIVE MEASURES/(i) Seat Belts/B. CHILDREN/634. Availability of seat belts.



### 634. Availability of seat belts.

In relation to a child<sup>1</sup> riding in a vehicle:

- 1215 (1) if any front seat<sup>2</sup> in the vehicle, other than the driver's seat, is provided with an appropriate seat belt<sup>3</sup>, that belt is to be regarded as being available for him in the front of the vehicle unless the following requirements<sup>4</sup> are satisfied in relation to that child, that seat and that belt<sup>5</sup>; and
- 1216 (2) if any rear seat<sup>6</sup> in the vehicle is provided with an appropriate seat belt, that belt is to be regarded as being available for him in the rear of the vehicle unless the following requirements<sup>7</sup> are satisfied in relation to that child, that seat and that belt<sup>8</sup>.

The requirements are satisfied in relation to a particular child ('the child in question') and a particular seat ('the relevant seat') provided with a particular seat belt ('the relevant belt') if<sup>9</sup>:

- 1217 (a) another person is wearing the relevant belt<sup>10</sup>;
- 1218 (b) another child is occupying the relevant seat and wearing a child restraint<sup>11</sup> which is an appropriate child restraint for that child<sup>12</sup>;
- 1219 (c) another person, being a person holding a medical certificate<sup>13</sup>, is occupying the relevant seat<sup>14</sup>;
- 1220 (d) a disabled person, not being the child in question, is occupying the relevant seat and wearing a disabled person's belt<sup>15</sup>;
- 1221 (e) by reason of his disability, it would not be practicable for the child in question to wear the relevant belt<sup>16</sup>;
- 1222 (f) the child in question is prevented from occupying the relevant seat by the presence of a child restraint which could not readily be removed without the aid of tools<sup>17</sup>; or
- 1223 (g) the relevant seat is specially designed so that: (i) its configuration can be adjusted in order to increase the space in the vehicle available for goods or personal effects<sup>18</sup>; and (ii) when it is so adjusted the seat cannot be used as such<sup>19</sup>, and the configuration is adjusted in the manner described in head (i) above and it would not be reasonably practicable for the goods and personal effects being carried in the vehicle to be so carried were the configuration not so adjusted<sup>20</sup>.

1 For the meaning of 'child' see PARA 632 note 1 ante.

2 'Front seat', in relation to a vehicle, means a seat which is wholly or partially in the front of the vehicle: Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, reg 2(1). As to the front of a vehicle see PARA 631 note 2 ante.

3 As to when a seat belt is appropriate see PARA 633 note 4 ante. A seat is to be regarded as provided with an adult belt if an adult belt is fixed in such a position that it can be worn by an occupier of that seat: *ibid* reg 2(6). A seat is not to be regarded as provided with an adult belt if the belt: (1) has an inertia reel mechanism which is locked as a result of the vehicle being, or having been, on a steep incline; or (2) does not comply with the requirements of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 48 (as amended) (see PARA 336 ante): Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, reg 2(7). For the meaning of 'adult belt' see PARA 632 note 9 ante.

4 I.e. the requirements of *ibid* reg 7(4), Sch 2 para 2 (amended by SI 2006/213): see the text and notes 9-20 *infra*.

5 Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, Sch 2 para 1(a) (amended by SI 2006/2213).

6 'Rear seat', in relation to a vehicle, means any seat which is not a front seat: Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, reg 2(1).

7 See note 4 supra.

8 Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, Sch 2 para 1(b) (amended by SI 2006/2213).

9 Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, Sch 2 para 2.

10 Ibid Sch 2 para 2(a).

11 For the meaning of 'child restraint' see PARA 632 note 6 ante.

12 Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, Sch 2 para 2(b). Schedule 2 para 2(b) does not apply unless the presence of the other person renders it impracticable for the child in question to wear the relevant belt: Sch 2 para 3.

13 For the meaning of 'medical certificate' see PARA 633 note 7 ante.

14 Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993, SI 1993/31, Sch 2 para 2(c).

15 Ibid Sch 2 para 2(d). Schedule 2 para 2(d) does not apply unless the presence of the other person renders it impracticable for the child in question to wear the relevant belt: Sch 2 para 3. For the meaning of 'disabled person's belt' see PARA 628 note 20 ante; definition applied by reg 2(1).

16 Ibid Sch 2 para 2(e).

17 Ibid Sch 2 para 2(g). Schedule 2 para 2(g) does not apply if the child restraint is appropriate for the child in question: Sch 2 para 5.

18 Ibid Sch 2 para 2(h)(i).

19 Ibid Sch 2 para 2(h)(ii).

20 Ibid Sch 2 para 2(h).

## UPDATE

### 631-636 Children

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(9) PROTECTIVE MEASURES/(i) Seat Belts/B. CHILDREN/635. Seat belts to be worn by children in the rear of a vehicle.

### 635. Seat belts to be worn by children in the rear of a vehicle.

For a child<sup>1</sup> of any particular height and weight travelling in the rear of a particular vehicle, the description of seat belt<sup>2</sup> to be worn by him is<sup>3</sup>:

1224 (1) if he is a small child<sup>4</sup>, a child restraint<sup>5</sup> of a description specified in head (a) or (b) below<sup>6</sup>;

- 1225 (2) if he is a large child<sup>7</sup>, a child restraint of a description specified in head (a) below or an adult belt<sup>8</sup>.

The descriptions of seat belt are:

- 1226 (a) a child restraint with the required marking<sup>9</sup> if the marking indicates that it is suitable for his weight and either indicates that it is suitable for his height or contains no indication as respects height<sup>10</sup>; and  
 1227 (b) a child restraint which would meet the corresponding requirements<sup>11</sup> of the law of another member state were it to be worn by that child when travelling in that vehicle in that state<sup>12</sup>.

The following classes of vehicles<sup>13</sup> are exempt from the prohibition on carrying children not wearing seatbelts in the rear of a vehicle<sup>14</sup>:

- 1228 (i) large buses<sup>15</sup>;  
 1229 (ii) licensed taxis<sup>16</sup> and licensed hire cars<sup>17</sup> in which, in each case, the rear seats<sup>18</sup> are separated from the driver by a fixed partition<sup>19</sup>.

1 For the meaning of 'child' see PARA 629 note 8 ante.

2 I.e. the description of seat belt prescribed for the purposes of the Road Traffic Act 1988 s 15(3) (as substituted) (see PARA 631 ante): Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 7. For the meaning of 'seat belt' see PARA 629 note 10 ante.

3 Ibid reg 8(1).

4 For the meaning of 'small child' see PARA 629 note 10 ante.

5 For the meaning of 'child restraint' see PARA 629 note 17 ante.

6 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 8(1)(a).

7 For the meaning of 'large child' see PARA 629 note 10 ante.

8 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 8(1)(c). For the meaning of 'adult belt' see PARA 627 note 8 ante.

9 I.e. the marking required under the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(7) (as amended): see PARA 335 ante.

10 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 8(2)(a).

11 I.e. the law of another member state corresponding to the Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176 (as amended).

12 Ibid reg 8(2)(b).

13 As to classes of vehicles see PARA 208 ante.

14 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 9. The prohibition is contained in the Road Traffic Act 1988 s 15(3) (as substituted), reg 15(3A) (as added): see PARA 631 ante.

15 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 9(a) (amended by SI 2006/1892). For the meaning of 'large bus' see PARA 628 note 32 ante.

16 For the meaning of 'licensed taxi' see PARA 1495 note 1 post; definition applied by the Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 2(1).

17 For the meaning of 'licensed hire car' see PARA 1496 note 4 post; definition applied by ibid reg 2(1).

18 For the meaning of 'rear seat' see PARA 627 note 6 ante.

19 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 9(b).

## UPDATE

### 631-636 Children

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(9) PROTECTIVE MEASURES/(i) Seat Belts/B. CHILDREN/636. Exemptions.

### 636. Exemptions.

The prohibitions on carrying children not wearing seat belts in the rear of motor vehicles<sup>1</sup> do not apply in relation to:

- 1230 (1) a child<sup>2</sup> for whom there is a medical certificate<sup>3</sup>;
- 1231 (2) a small child<sup>4</sup> aged under three years who is riding in a licensed taxi<sup>5</sup> or licensed hire car<sup>6</sup>, if no appropriate seat belt<sup>7</sup> is available for him<sup>8</sup> in the front or rear of the vehicle<sup>9</sup>;
- 1232 (3) a small child aged three years or more who is riding in a licensed taxi, a licensed hire car or a small bus<sup>10</sup> and wearing an adult belt<sup>11</sup> if an appropriate seat belt is not available for him in the front or rear of the vehicle<sup>12</sup>;
- 1233 (4) a small child aged three years or more who is wearing an adult belt and riding in a passenger car<sup>13</sup> or light goods vehicle<sup>14</sup> where the use of child restraints<sup>15</sup> by the child occupants of two seats in the rear of the vehicle prevents the use of an appropriate seat belt for that child and no appropriate seat belt is available for him in the front of the vehicle<sup>16</sup>;
- 1234 (5) a small child who is riding in a vehicle being used for the purposes of the police, security or emergency services to enable the proper performance of their duty<sup>17</sup>;
- 1235 (6) a small child aged three years or more who is wearing an adult belt and who, because of an unexpected necessity, is travelling a short distance in a passenger car or light goods vehicle in which no appropriate seat belt is available for him<sup>18</sup>; or
- 1236 (7) a disabled child who is wearing a disabled person's belt<sup>19</sup> or whose disability makes it impracticable to wear a seat belt where a disabled person's belt is unavailable to him<sup>20</sup>.

The prohibition on carrying children not wearing seat belts in the rear of motor vehicles where a seat belt is fitted in the rear<sup>21</sup> does not apply to:

- 1237 (a) a child aged under three years riding in a rear seat of a small bus<sup>22</sup>;

- 1238 (b) a small child aged three years or more riding in a rear seat of a small bus if neither an appropriate seat belt<sup>23</sup> nor an adult belt is available for him in the front or rear of the vehicle<sup>24</sup>;
- 1239 (c) a large child<sup>25</sup> in any vehicle if no appropriate seat belt is available for him in the rear of the vehicle<sup>26</sup>;
- 1240 (d) a child riding in a small bus: (i) which is being used to provide a local service<sup>27</sup> in a built-up area<sup>28</sup>; or (ii) which is constructed or adapted for the carriage of standing passengers and on which the operator<sup>29</sup> permits standing<sup>30</sup>.

The prohibition on carrying small children not wearing seat belts in the rear of motor vehicles<sup>31</sup> does not apply in relation to a child if no appropriate seat belt is available for him in the front of the vehicle<sup>32</sup>.

- 1     le the prohibition in the Road Traffic Act 1988 s 15(3) (as substituted), s 15(3A) (as added): see PARA 631 ante.
- 2     For the meaning of 'child' see PARA 629 note 8 ante.
- 3     Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 10(1)(a) (reg 10(1) substituted by SI 2006/1892). For the meaning of 'medical certificate' see PARA 628 note 3 ante.
- 4     For the meaning of 'small child' see PARA 629 note 10 ante.
- 5     For the meaning of 'licensed taxi' see PARA 1495 note 1 post; definition applied by the Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 2(1).
- 6     For the meaning of 'licensed hire car' see PARA 1496 note 4 post; definition applied by ibid reg 2(1).
- 7     For the meaning of 'seat belt' see PARA 629 note 10 ante.
- 8     As to the availability of seat belts see PARA 629 ante.
- 9     Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 10(1)(b) (as substituted: see note 3 supra).
- 10    For the meaning of 'small bus' see PARA 628 note 32 ante.
- 11    For the meaning of 'adult belt' see PARA 627 note 8 ante.
- 12    Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 10(1)(c) (as substituted: see note 3 supra).
- 13    For the meaning of 'passenger car' see PARA 631 note 14 ante.
- 14    'Light goods vehicle' means a motor vehicle which: (1) has four or more wheels; (2) has a maximum design speed exceeding 25 kmph; and (3) has a maximum laden weight not exceeding 3.5 tonnes: Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 2(1) (definition added by SI 2006/1892).
- 15    For the meaning of 'child restraint' see PARA 629 note 17 ante.
- 16    Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 10(1)(d) (as substituted: see note 3 supra).
- 17    Ibid reg 10(1)(e) (as substituted: see note 3 supra).
- 18    Ibid reg 10(1)(f) (as substituted: see note 3 supra).
- 19    For the meaning of 'disabled person's belt' see PARA 628 note 20 ante.
- 20    Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 10(1)(g) (as substituted: see note 3 supra).
- 21    le the prohibition in the Road Traffic Act 1988 s 15(3) (as substituted): see PARA 631 ante.

22 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 10(2) (substituted by SI 2006/1892).

23 For these purposes, a reference to an appropriate seat belt in the Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, Sch 2 paras 2, 3 (as amended) is to be read as including reference to an adult belt: reg 10(3A) (added by SI 2006/1892).

24 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 10(3) (substituted by SI 2006/1892).

25 For the meaning of 'large child' see PARA 629 note 10 ante.

26 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 10(4).

27 Ie within the meaning of the Transport Act 1985: see PARA 1177 post.

28 As to the provision of a local bus service in a built-up area see PARA 628 note 34 ante.

29 For the meaning of 'operator' see PARA 628 note 35 ante.

30 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 10(4A) (added by SI 2006/1892).

31 Ie the prohibition in the Road Traffic Act 1988 s 15(3A) (as added): see PARA 631 ante.

32 Motor Vehicles (Wearing of Seat Belts) Regulations 1993, SI 1993/176, reg 10(5).

## UPDATE

### 631-636 Children

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(9) PROTECTIVE MEASURES/(i) Seat Belts/C. PAYMENTS IN RESPECT OF PERSONS EXEMPT FROM WEARING SEAT BELTS/637. Payments in respect of applicants for exemption from wearing seat belts.

## ***C. PAYMENTS IN RESPECT OF PERSONS EXEMPT FROM WEARING SEAT BELTS***

### **637. Payments in respect of applicants for exemption from wearing seat belts.**

The Secretary of State<sup>1</sup> may make payments out of money provided by Parliament in respect of the examination of applicants falling within any of the following classes, being applicants for medical certificates required as a condition of any exception prescribed by regulations under the provisions relating to the wearing of seat belts<sup>2</sup>. The classes are:

- 1241 (1) those in receipt of:
- 71
- 136. (a) attendance allowance<sup>3</sup>;
- 137. (b) a disability living allowance<sup>4</sup>;

- 138. (c) disablement pension<sup>5</sup> at an increased weekly rate because constant attendance is needed<sup>6</sup>;
  - 139. (d) a constant attendance allowance for a member of the armed forces<sup>7</sup>;
  - 140. (e) a mobility supplement<sup>8</sup>;
  - 141. (f) a disability pension paid to a member of the armed forces by the Secretary of State for Defence<sup>9</sup> on account of disability attributable to injury sustained after 30 September 1921 but before 3 September 1939 together with a mobility supplement<sup>10</sup>;
- 72
- 1242 (2) those in receipt of income support or an income-based jobseeker's allowance<sup>11</sup>, any element of child tax credit other than the family element of working tax credit and their dependants<sup>12</sup>;
  - 1243 (3) those in receipt of guarantee state pension credit and those persons who are members of a couple the other member of which is in receipt of guarantee state pension credit<sup>13</sup>; and
  - 1244 (4) those whose names are in the register of disabled persons<sup>14</sup>.

The Secretary of State may by order amend the classes so as to omit any of the classes mentioned or add to or substitute for any of those classes other classes of any description<sup>15</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Transport Act 1982 s 70(1). The provisions relating to the wearing of seat belts are those contained in the Road Traffic Act 1988 s 14 (as amended) (see PARA 626 ante), s 15 (as amended) (see PARA 631 ante): Transport Act 1982 s 70(1); Interpretation Act 1978 s 17(2).

3 Transport Act 1982 s 70(2)(a)(i) (amended by the Social Security (Consequential Provisions) Act 1992 s 4, Sch 2 para 64(a)). Attendance allowance is paid under the Social Security Contributions and Benefits Act 1992 s 64 (as amended): see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 113.

4 Transport Act 1982 s 70(2)(a)(iA) (added by the Disability Living Allowance and Disability Working Allowance Act 1991 s 4(2), Sch 2 para 12; and amended by the Social Security (Consequential Provisions) Act 1992 s 4, Sch 2 para 64(b)). Disability living allowance is paid under the Social Security Contributions and Benefits Act 1992 s 71 (as amended): see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARAS 102-103.

5 *Ie* under *ibid* s 103: see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARAS 141-142.

6 Transport Act 1982 s 70(2)(a)(iii) (amended by the Social Security (Consequential Provisions) Act 1992 Sch 2 para 64(c)). The weekly rate is increased by virtue of the Social Security Contributions and Benefits Act 1992 s 104(1): see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 147.

7 Transport Act 1982 s 70(2)(a)(iv). A constant attendance allowance is paid under the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 14 (see ARMED FORCES vol 2(2) (Reissue) PARA 291): Transport Act 1982 s 70(2)(a)(iv); Interpretation Act 1978 s 17(2).

8 Transport Act 1982 s 70(2)(a)(v) (added by the Motor Vehicles (Payments in Respect of Applicants for Exemption from Wearing Seat Belts) Order 1984, SI 1984/1996, art 2). A mobility supplement for war pensioners is paid under a scheme made under the Personal Injuries (Emergency Provisions) Act 1939 (see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 599 *et seq*) or under an Order in Council made under the Social Security (Miscellaneous Provisions) Act 1977 s 12 (see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARAS 595, 609).

9 As to the Secretary of State for Defence see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 438 *et seq*.

10 Transport Act 1982 s 70(2)(a)(vi) (added by the Motor Vehicles (Payments in Respect of Applicants for Exemption from Wearing Seat Belts) Order 1984, SI 1984/1996, art 2). Such payments are paid under the Naval and Marine Pay and Pensions (Disablement Awards) (No 2) Order 1984 or under the Royal Warrant dated 30 December 1949 or under Queen's Regulations for the Royal Air Force.

11 le payable under the Jobseekers Act 1995: see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 258 et seq.

12 Transport Act 1982 s 70(2)(b) (amended by the Social Security Act 1986 s 86, Sch 10 para 57; the Jobseekers Act 1995 s 41(4), Sch 2 para 7; and the Tax Credits Act 2002 s 47, Sch 3 para 9). See further SOCIAL SECURITY AND PENSIONS.

13 Transport Act 1982 s 70(2)(bb) (added by the State Pension Credit Act 2002 s 14, Sch 2 Pt 3 para 26; and amended by the Civil Partnership Act 2004 (Overseas Relationships and Consequential, etc Amendments) Order 2005, SI 2005/3129, art 4(4), Sch 4 para 6). As to guarantee state pension credit see SOCIAL SECURITY AND PENSIONS.

14 Transport Act 1982 s 70(2)(d). The text refers to the register maintained under the Disabled Persons (Employment) Act 1944 s 6 (repealed).

15 Transport Act 1982 s 70(3).

## UPDATE

### **637 Payments in respect of applicants for exemption from wearing seat belts**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTE 12--1982 Act s 70(2)(b) further amended: Welfare Reform Act 2007 Sch 3 para 3.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(9) PROTECTIVE MEASURES/(ii) Safety Equipment for Children/638. Safety equipment for children in motor vehicles.

## **(ii) Safety Equipment for Children**

### **638. Safety equipment for children in motor vehicles.**

The Secretary of State<sup>1</sup> may make regulations prescribing (by reference to shape, construction or any other quality) types of equipment<sup>2</sup> that are recommended as conducive to the safety in the event of accident of prescribed<sup>3</sup> classes of children in prescribed classes<sup>4</sup> of motor vehicles<sup>5</sup>; and such regulations may make different provision in relation to different circumstances<sup>6</sup>.

Such regulations may make provision for securing that, when equipment of a type prescribed by the regulations is sold or offered for sale as equipment which is so conducive<sup>7</sup>:

- 1245 (1) appropriate information is provided in relation to it in such manner as may be prescribed<sup>8</sup>; and
- 1246 (2) inappropriate information is not provided in relation to it<sup>9</sup>.

Except in such circumstances as may be prescribed, if a person sells, or offers for sale, or lets on hire or offers to let on hire, equipment of any description for which a type is so prescribed as equipment which is so conducive and that equipment is not of a type so prescribed or is sold or offered for sale in contravention of regulations so made, he is guilty of an offence<sup>10</sup>.



Except in such circumstances as may be prescribed, if a person sells, or offers for sale, or lets on hire or offers to let on hire, equipment of any description for which a type is so prescribed as equipment conducive to the safety in the event of accident of children not of a class prescribed in relation to equipment of that type or of children in motor vehicles not of a class prescribed in relation to equipment of that type, he is guilty of an offence<sup>11</sup>.

A person is not, however, to be convicted of an offence under the above provisions<sup>12</sup> in respect of the sale or offer for sale or letting on hire or offer to let on hire of equipment if he proves that it was sold or, as the case may be, offered for sale for export from Great Britain<sup>13</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 The Road Traffic Act 1988 s 15A (as added) applies to equipment of any description for use in a motor vehicle consisting of: (1) a restraining device for a child or for a carry-cot; or (2) equipment designed for use by a child in conjunction with any description of restraining device: s 15A(8) (s 15A added by the Motor Vehicles (Safety Equipment for Children) Act 1991 s 1). For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'prescribed' see PARA 205 note 6 ante.

4 As to classes of vehicles see PARA 208 ante.

5 Road Traffic Act 1988 s 15A(1) (as added: see note 2 supra). At the date at which this volume states the law no such regulations had been made.

6 Ibid s 15A(7) (as added: see note 2 supra).

7 Ibid s 15A(2) (as added: see note 2 supra).

8 Ibid s 15A(2)(a) (as added: see note 2 supra).

9 Ibid s 15A(2)(b) (as added: see note 2 supra).

10 Ibid s 15A(3), (9) (as added: see note 2 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry amended by the Motor Vehicles (Safety Equipment for Children) Act 1991 s 3). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

11 Road Traffic Act 1988 s 15A(4), (9) (as added: see note 2 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I (entry as amended: see note 10 supra).

12 Ie under the Road Traffic Act 1988 s 15A(3) or (4) (as added): see the text and notes 10-11 supra.

13 Ibid s 15A(5) (as added: see note 2 supra). For the meaning of 'Great Britain' see PARA 205 note 3 ante.

## UPDATE

### 638 Safety equipment for children in motor vehicles

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1663)/6. USE OF VEHICLES/(9) PROTECTIVE MEASURES/(iii) Protective Headgear/639.  
Wearing of protective headgear.

### **(iii) Protective Headgear**

#### **639. Wearing of protective headgear.**

The Secretary of State<sup>1</sup> may make regulations requiring, subject to such exceptions as may be specified in the regulations, persons driving<sup>2</sup> or riding (otherwise than in sidecars) on motor cycles<sup>3</sup> of any class<sup>4</sup> specified in the regulations to wear protective headgear of such description as may be so specified<sup>5</sup>; and such regulations may make different provision in relation to different circumstances<sup>6</sup>. A requirement imposed by regulations so made does not apply to any follower of the Sikh religion while he is wearing a turban<sup>7</sup>.

A person who drives or rides on a motor cycle in contravention of regulations so made is guilty of an offence<sup>8</sup>. However, notwithstanding any enactment or rule of law, no person other than the person actually committing the contravention is guilty of an offence by reason of the contravention unless the person actually committing the contravention is a child under the age of 16 years<sup>9</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'drive' see PARA 207 ante.

3 For the meaning of 'motor cycle' see PARA 214 ante.

4 As to classes of vehicles see PARA 208 ante.

5 Road Traffic Act 1988 s 16(1). In exercise of this power the Motor Cycles (Protective Helmets) Regulations 1998, SI 1998/1807 (amended by SI 2000/1488) have been made. As to the making of regulations generally see PARA 243 ante.

Every person driving or riding (otherwise than in a side-car) on a motor bicycle when on a road must wear protective headgear: Motor Cycles (Protective Helmets) Regulations 1998, SI 1998/1807, reg 4(1). This does not apply to any person driving or riding on a motor bicycle if it is a mowing machine, or it is for the time being propelled by a person on foot: reg 4(2). For these purposes, 'motor bicycle' means a two-wheeled motor cycle, whether or not having a sidecar attached, and where the distance measured between the centre of the area of contact with the road surface of any two wheels of a motor cycle is less than 460 mm, those wheels are to be counted as one wheel; and 'protective headgear' means a helmet which: (1) either bears a marking applied by its manufacturer indicating compliance with the specifications contained in one of the British Standards (whether or not as modified by any amendment) mentioned in reg 4, Sch 2, or is of a type manufactured for use by persons on motor cycles which by virtue of its shape, material and construction could reasonably be expected to afford to the wearer a degree of protection from accidental injury similar to or greater than that provided by a helmet of a type prescribed by reg 5; (2) if worn with a chin cup attached to or held in position by a strap, is provided with an additional strap (to be fastened under the wearer's jaw) for securing the helmet to the head; and (3) is securely fastened to the head by means of straps provided for that purpose; and 'strap' includes any fastening device: reg 4(2).

A non-traditional, two-wheel design motor cycle which has enhanced safety features including a roof, seat belts and side-protection safety bars which may be said to be driven in, rather than on, is a motor cycle whose rider is required to wear protective headgear: *DPP v Parker* [2004] EWHC 1248 (Admin), [2005] RTR 16.

6 Road Traffic Act 1988 s 16(3).

7 Ibid s 16(2).

8 Ibid s 16(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. An offence under the Road Traffic Act 1988 s 16 of breaching regulations relating to protective headgear for motor cycle drivers and passengers is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings

generally see PARA 1023 et seq post. Failure to wear a helmet may constitute contributory negligence: *Hilder v Associated Portland Cement Manufacturers Ltd* [1961] 3 All ER 709, [1961] 1 WLR 1434.

9 Road Traffic Act 1988 s 16(4). As to the application of s 16 to vehicles and persons in the public service of the Crown see PARA 205 ante.

## UPDATE

### 639-641 Protective Headgear

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 639 Wearing of protective headgear

NOTE 5--SI 1998/1807 further amended: SI 2008/1277.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(9) PROTECTIVE MEASURES/(iii) Protective Headgear/640. Protective helmets for motor cyclists.

### 640. Protective helmets for motor cyclists.

The Secretary of State<sup>1</sup> may make regulations prescribing, by reference to shape, construction or any other quality, types of helmet<sup>2</sup> recommended as affording protection to persons on or in motor cycles<sup>3</sup>, or motor cycles of different classes<sup>4</sup>, from injury in the event of accident<sup>5</sup>.

If a person sells or offers for sale, or lets on hire or offers to let on hire, a helmet as a helmet for affording protection to persons on or in motor cycles and the helmet is neither of a type so prescribed nor of a type authorised under regulations so made and sold or offered for sale or let on hire or offered for let on hire subject to any conditions specified in the authorisation, he is guilty of an offence<sup>6</sup>. A person is not, however, to be convicted of such an offence in respect of the sale or offer for sale or letting on hire or offering to let on hire of a helmet if he proves that it was sold or, as the case may be, offered for sale for export from Great Britain<sup>7</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For these purposes, 'helmet' includes any head-dress: Road Traffic Act 1988 s 17(5).

3 For the meaning of 'motor cycle' see PARA 214 ante.

4 As to classes of vehicles see PARA 208 ante.

5 Road Traffic Act 1988 s 17(1). In exercise of this power the Motor Cycles (Protective Helmets) Regulations 1998, SI 1998/1807 (amended by SI 2000/1488) have been made. See PARA 639 note 5 ante. As to the making of regulations generally see PARA 243 ante.

6 Road Traffic Act 1988 s 17(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal

proceedings generally see PARA 1023 et seq post. It is no defence to prove that the helmet was only for use off the road: see *Losexis Ltd v Clarke* (1983) Times, 10 May, DC.

7 Road Traffic Act 1988 s 17(3). For the meaning of 'Great Britain' see PARA 205 note 3 ante.

## UPDATE

### 639-641 Protective Headgear

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 640 Protective helmets for motor cyclists

NOTE 5--SI 1998/1807 further amended: SI 2008/1277.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(9) PROTECTIVE MEASURES/(iii) Protective Headgear/641. Authorisation of head-worn appliances for use on motor cycles.

### 641. Authorisation of head-worn appliances for use on motor cycles.

The Secretary of State<sup>1</sup> may make regulations prescribing, by reference to shape, construction or any other quality, types of appliance of any description<sup>2</sup> as authorised for use by persons driving<sup>3</sup> or riding, otherwise than in sidecars, on motor cycles<sup>4</sup> of any class<sup>5</sup> specified in the regulations<sup>6</sup>. Such regulations may impose restrictions or requirements with respect to the circumstances in which appliances of any type prescribed by the regulations may be used and may make different provision in relation to different circumstances<sup>7</sup>.

If a person driving or riding on a motor cycle on a road<sup>8</sup> uses an appliance of any description for which a type is so prescribed<sup>9</sup> and that appliance is not of a type so prescribed or is otherwise used in contravention of regulations so made, he is guilty of an offence<sup>10</sup>.

If a person sells, offers for sale or lets on hire or offers to let on hire an appliance of any such description as is authorised for use by persons on or in motor cycles, or motor cycles of any class, and that appliance is not of a type so prescribed as authorised for such use, he is guilty of an offence<sup>11</sup>.

A person is not, however, to be convicted of an offence under the above provisions in respect of the sale or offer for sale or hire or offer to let on hire of an appliance if he proves that it was sold or, as the case may be, offered for sale for export from Great Britain<sup>12</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 The Road Traffic Act 1988 s 18 applies to appliances of any description designed or adapted for use with any headgear or by being attached to or placed on the head (eg eye protectors or earphones): s 18(7).

3 For the meaning of 'drive' see PARA 207 ante.

4 For the meaning of 'motor cycle' see PARA 214 ante.

5 As to classes of vehicles see PARA 208 ante.

6 Road Traffic Act 1988 s 18(1). In exercise of this power the Motor Cycles (Eye Protectors) Regulations 1999, SI 1999/535 (amended by SI 2000/1489) have been made, which specify the prescribed types of authorised eye protectors. As to the making of regulations generally see PARA 243 ante.

7 Road Traffic Act 1988 s 18(2).

8 For the meaning of 'road' see PARA 206 ante.

9 For the meaning of 'prescribed' see PARA 205 note 6 ante.

10 Road Traffic Act 1988 s 18(3). A person guilty of an offence under s 18(3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. An offence under the Road Traffic Act 1988 s 18(3) is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3 (entry added by the Fixed Penalty Offences Order 2004, SI 2004/2922, art 2(2)). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post.

11 Road Traffic Act 1988 s 18(4), (8). A person guilty of an offence under s 18(4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I.

12 Road Traffic Act 1988 s 18(5). For the meaning of 'Great Britain' see PARA 205 note 3 ante.

## UPDATE

### 639-641 Protective Headgear

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(10) DUTIES OF DRIVERS/642. Drivers to comply with traffic directions.

## (10) DUTIES OF DRIVERS

### 642. Drivers to comply with traffic directions.

Where a constable<sup>1</sup> or traffic officer<sup>2</sup> is for the time being engaged in the regulation of traffic in a road<sup>3</sup>, a person driving<sup>4</sup> or propelling a vehicle who neglects or refuses: (1) to stop the vehicle<sup>5</sup>; or (2) to make it proceed in, or keep to, a particular line of traffic<sup>6</sup>, when directed to do so by the constable or traffic officer in the execution of his duty is guilty of an offence<sup>7</sup>.

Where a traffic survey of any description is being carried out on or in the vicinity of a road<sup>8</sup> and a constable or traffic officer gives to a person driving or propelling a vehicle a direction: (a) to stop the vehicle<sup>9</sup>; (b) to make it proceed in, or keep to, a particular line of traffic<sup>10</sup>; or (c) to proceed to a particular point on or near the road on which the vehicle is being driven or propelled<sup>11</sup>, being a direction given for the purposes of the survey (but not a direction requiring any person to provide any information for the purposes of a traffic survey)<sup>12</sup>, the person is guilty of an offence if he neglects or refuses to comply with the direction<sup>13</sup>. The power to give such a direction for the purposes of a traffic survey must be so exercised as not to cause any

unreasonable delay to a person who indicates that he is unwilling to provide any information for the purposes of the survey<sup>14</sup>.

1 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. The Road Traffic Act 1988 s 35 (as amended) also has effect where a constable's powers are exercised by a community support officer (see the Police Reform Act 2002 s 38(6), Sch 4 para 12(2)), or by persons accredited for the purposes of a community safety accreditation scheme (see s 41(3), Sch 5 para 9), for the purposes of escorting a vehicle or trailer carrying a load of exceptional dimensions. As to community safety accreditation schemes generally see POLICE vol 36(1) (2007 Reissue) PARA 532 et seq.

2 As to traffic officers see PARA 863 et seq post.

3 For the meaning of 'road' see PARA 206 ante.

4 For the meaning of 'drive' see PARA 207 ante.

5 Road Traffic Act 1988 s 35(1)(a).

6 Ibid s 35(1)(b).

7 Ibid s 35(1) (amended by the Traffic Management Act 2004 s 6(2)(a)). At the date at which this volume states the law the amendment made by the Traffic Management Act 2004 is in force only in relation to England.

A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale; disqualification is discretionary if an offence is committed in respect of a motor vehicle by failure to comply with a direction of a constable or traffic warden; endorsement is obligatory if so committed; and 3 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I. An offence under the Road Traffic Act 1988 s 35 (as amended) of failure to comply with traffic directions is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; and as to legal proceedings generally see PARA 1023 et seq post.

8 Road Traffic Act 1988 s 35(2)(a).

9 Ibid s 35(2)(b)(i).

10 Ibid s 35(2)(b)(ii).

11 Ibid s 35(2)(b)(iii).

12 Ibid s 35(2)(b) (amended by the Traffic Management Act 2004 s 6(2)(a)). At the date at which this volume states the law the amendment made by the Traffic Management Act 2004 is in force only in relation to England.

13 Road Traffic Act 1988 s 35(2). For the punishment for such an offence see note 7 supra.

14 Ibid s 35(3).

## UPDATE

### 642-650 Duties of Drivers

Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(10) DUTIES OF DRIVERS/643. Drivers to comply with traffic signs.

### 643. Drivers to comply with traffic signs.

Where a traffic sign<sup>1</sup>, being a sign: (1) of the prescribed<sup>2</sup> size, colour and type<sup>3</sup>; or (2) of another character authorised by the Secretary of State<sup>4</sup>, has been lawfully placed on or near a road<sup>5</sup>, a person driving<sup>6</sup> or propelling a vehicle who fails to comply with the indication given by the sign is guilty of an offence<sup>7</sup>.

A traffic sign is not to be treated for these purposes as having been lawfully placed unless either:

1247 (a) the indication given by the sign is an indication of a statutory<sup>8</sup> prohibition, restriction or requirement<sup>9</sup>; or

1248 (b) it is expressly provided by or under any provision of the enactments relating to traffic<sup>10</sup> that these provisions are to apply to the sign or to signs of a type of which the sign is one<sup>11</sup>,

and, where the indication mentioned in head (a) above is of the general nature only of the prohibition, restriction or requirement to which the sign relates, a person is not to be convicted of failure to comply with the indication unless he has failed to comply with the prohibition, restriction or requirement to which the sign relates<sup>12</sup>.

Where a traffic survey of any description is being carried out on or in the vicinity of a road, the above provisions apply to a traffic sign by which a direction is given: (i) to stop a vehicle<sup>13</sup>; (ii) to make it proceed in, or keep to, a particular line of traffic<sup>14</sup>; or (iii) to proceed to a particular point on or near the road on which the vehicle is being driven or propelled<sup>15</sup>, being a direction given for the purposes of the survey (but not a direction requiring any person to provide any information for the purposes of the survey)<sup>16</sup>.

1 For the meaning of 'traffic sign' see PARA 830 post; definition applied by the Road Traffic Act 1988 s 192(1). As to traffic signs see PARA 830 et seq post.

2 For the meaning of 'prescribed' see PARA 205 note 6 ante.

3 Road Traffic Act 1988 s 36(1)(a).

4 Ie under the provisions in that behalf of the Road Traffic Regulation Act 1984 (see PARA 830 et seq post): Road Traffic Act 1988 s 36(1)(b). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 For the meaning of 'road' see PARA 206 ante.

6 For the meaning of 'drive' see PARA 207 ante.

7 Road Traffic Act 1988 s 36(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale; disqualification is discretionary if the offence is committed in respect of a motor vehicle by failure to comply with an indication given by a sign specified for these purposes in regulations made under s 36; endorsement is obligatory if so committed; and 3 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I. An offence under the Road Traffic Act 1988 s 36 (as amended) of failure to comply with traffic signs is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; and as to legal proceedings generally see PARA 1023 et seq post.

For these purposes, a traffic sign placed on or near a road is deemed: (1) to be of the prescribed size, colour and type, or of another character authorised by the Secretary of State under the provisions in that behalf of the

Road Traffic Regulation Act 1984; and (2) subject to the Road Traffic Act 1988 s 36(2) (see the text and notes 8-12 infra), to have been lawfully so placed, unless the contrary is proved: s 36(3).

Regulations made by the Secretary of State may specify any traffic sign for the purposes of the entry in the Road Traffic Offenders Act 1988 Sch 2 col 5 relating to offences under the Road Traffic Act 1988 s 36 (as amended): s 36(5) (amended by the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971, art 6(1), Schedule para 10); Transfer of Functions (Road Traffic) Order 1999, SI 1999/3143, art 2(2). The Traffic Signs Regulations and General Directions 2002, SI 2002/3113 (as amended) (see PARA 830 et seq post) have been made under the Road Traffic Act 1988 s 36(5) (as amended).

The Secretary of State may make payments in respect of the whole or any part of the expenditure of a public authority in relation to the prevention or detection of offences under s 36(1) which consist in the failure to comply with an indication given by a light signal that vehicular traffic is not to proceed or any enforcement action or proceedings in respect of such offences or any alleged such offences: Vehicles (Crime) Act 2001 s 38(1), (2)(e). As to such payments see further PARA 758 post.

8 'Statutory', in relation to any prohibition, restriction, requirement or provision, means contained in, or having effect under, any enactment (including any enactment contained in the Road Traffic Act 1988): s 192(1).

9 Ibid s 36(2)(a).

10 Ie the Road Traffic Regulation Act 1984, the Road Traffic Act 1988, the Road Traffic Offenders Act 1988 or the Road Traffic (Consequential Provisions) Act 1988.

11 Road Traffic Act 1988 s 36(2)(b).

12 Ibid s 36(2). The provisions of s 36 (as amended) have been applied to specified signs, signals and road markings: see the Traffic Signs Regulations and General Directions 2002, SI 2002/3113, reg 10(1).

13 Road Traffic Act 1988 s 36(4)(a).

14 Ibid s 36(4)(b).

15 Ibid s 36(4)(c).

16 Ibid s 36(4).

## UPDATE

### 642-650 Duties of Drivers

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(10) DUTIES OF DRIVERS/644. Directions to pedestrians.

### 644. Directions to pedestrians.

Where a constable<sup>1</sup> in uniform or a traffic officer<sup>2</sup> is for the time being engaged in the regulation of vehicular traffic in a road<sup>3</sup>, a person on foot who proceeds across or along the carriageway in contravention of a direction to stop given by the constable or traffic officer in the execution of his duty, either to persons on foot or to persons on foot and other traffic, is guilty of an offence<sup>4</sup>.

A constable may require a person committing such an offence to give his name and address; and, if that person fails to do so, he is guilty of an offence<sup>5</sup>.



1 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. The Road Traffic Act 1988 s 37 (as amended) also has effect where a constable's powers are exercised by a community support officer (see the Police Reform Act 2002 s 38(6), Sch 4 para 12(2)), or by persons accredited for the purposes of a community safety accreditation scheme (see s 41(3), Sch 5 para 9), for the purposes of escorting a vehicle or trailer carrying a load of exceptional dimensions. As to community safety accreditation schemes generally see POLICE vol 36(1) (2007 Reissue) PARA 532 et seq.

2 As to traffic officers see PARA 863 et seq post.

2 For the meaning of 'road' see PARA 206 ante.

4 Road Traffic Act 1988 s 37 (amended by the Traffic Management Act 2004 s 6(3)). At the date at which this volume states the law the amendment made by the Traffic Management Act 2004 is in force only in relation to England.

A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry amended by the Traffic Management Act 2004 s 98, Sch 12 Pt 2). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

5 Road Traffic Act 1988 s 169. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I.

## UPDATE

### 642-650 Duties of Drivers

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(10) DUTIES OF DRIVERS/645. Stopping and furnishing particulars after accident.

### 645. Stopping and furnishing particulars after accident.

Where, owing to the presence of a mechanically propelled vehicle<sup>1</sup> on a road<sup>2</sup> or other public place, an accident<sup>3</sup> occurs by which<sup>4</sup>:

1249 (1) personal injury is caused to a person other than the driver<sup>5</sup> of that mechanically propelled vehicle<sup>6</sup>; or

1250 (2) damage is caused:

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142. (a) to a vehicle<sup>7</sup> other than that mechanically propelled vehicle or a trailer<sup>8</sup> drawn by that mechanically propelled vehicle<sup>9</sup>; or

143. (b) to an animal<sup>10</sup> other than an animal in or on that mechanically propelled vehicle or a trailer drawn by that mechanically propelled vehicle<sup>11</sup>; or

144. (c) to any other property constructed on, fixed to, growing in or otherwise forming part of the land on which the road or place in question is situated or land adjacent to such land<sup>12</sup>,

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the driver of the mechanically propelled vehicle must stop and, if required to do so by any person having reasonable grounds for so requiring, give his name and address and also the name and address of the owner<sup>13</sup> and the identification marks of the vehicle<sup>14</sup>. If for any reason<sup>15</sup> the driver of the mechanically propelled vehicle does not give his name and address as required, he must report the accident<sup>16</sup>. A person who fails to comply with these requirements<sup>17</sup> is guilty of an offence<sup>18</sup>.

If, in a case where head (1) above applies the driver of a motor vehicle<sup>19</sup>, other than an invalid carriage<sup>20</sup>, does not at the time of the accident produce a certificate of insurance or security or other evidence<sup>21</sup> to a constable or to some person who, having reasonable grounds for so doing, has required him to produce it, the driver must report the accident and produce such a certificate or other evidence<sup>22</sup>. To comply with a duty under the above provisions to report an accident or to produce a certificate of insurance or security, or other evidence, the driver must do so at a police station or to a constable and as soon as is reasonably practicable<sup>23</sup> and, in any case, within 24 hours of the occurrence of the accident<sup>24</sup>. A person who fails to comply with such a duty is guilty of an offence<sup>25</sup>, but he is not to be convicted by reason only of a failure to produce a certificate or other evidence if, within seven days after the occurrence of the accident, the certificate or other evidence is produced at a police station that was specified by him at the time when the accident was reported<sup>26</sup>.

1 As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.

2 For the meaning of 'road' see PARA 206 ante. There must be some direct connection between the motor vehicle and the happening of the accident: see *Quelch v Phipps* [1955] 2 QB 107, [1955] 2 All ER 302, DC (where a bus driver was held to be under a duty to report an accident in which a passenger fell off the bus). See also *Redman v Taylor* [1975] Crim LR 348, DC (where a car left the road, collided with a gate pillar on private land and the accident was held to have occurred owing to the presence of that motor vehicle on the road).

3 'Accident' means an unintended occurrence which has an adverse physical result: *R v Morris* [1972] 1 All ER 384, [1972] 1 WLR 228, CA, per Sachs LJ.

4 Road Traffic Act 1988 s 170(1) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 72; and the Motor Vehicles (Compulsory Insurance) Regulations 2000, SI 2000/726, reg 2(6)).

5 For the meaning of 'driver' see PARA 207 ante.

6 Road Traffic Act 1988 s 170(1)(a) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 72).

7 A bicycle is a vehicle: *Ellis v Nott-Bower* (1896) 60 JP 760, DC.

8 For the meaning of 'trailer' see PARA 210 ante.

9 Road Traffic Act 1988 s 170(1)(b)(i) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 72).

10 For these purposes, 'animal' means horse, cattle, ass, mule, sheep, pig, goat or dog: Road Traffic Act 1988 s 170(8).

11 Ibid s 170(1)(b)(ii).

12 Ibid s 170(1)(b)(iii) (amended by the Motor Vehicles (Compulsory Insurance) Regulations 2000, SI 2000/726, reg 2(6)).

13 For the meaning of 'owner' see PARA 207 ante.

14 Road Traffic Act 1988 s 170(2) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 72). This provision creates only one offence, comprising two elements (the failure to stop, and the failure to give particulars), and, if either element is not complied with, the offence is committed: *North v Gerrish* (1959) 123 JP 313, DC; *DPP v Bennett* [1993] RTR 175, DC. The information must be given by the driver personally and not by his agent: *Lee v Knapp* [1967] 2 QB 442, [1966] 3 All ER 961, DC. The driver is under no obligation to inquire as to the owner of a parked car damaged in the collision: *Mutton v Bates* [1984] RTR 256, (1983) 147 JP 459. The driver's duty is to stop immediately at the point in the road where the accident occurred, or as near to it as is safely possible: *Hallinan v DPP* (1999) 163 JP 651, DC. Whether there is a failure to stop is a question of fact and degree, taking into account all the circumstances of the case: *McDermott v DPP* (1996) 161 JP 244, DC (offence committed

where driver drove on for 80 yards before returning to the scene of the accident). See also *Cawthorn v DPP* [2000] RTR 45, DC. The requirements of the Road Traffic Act 1988 s 170 (as amended) may be met if a driver gives the name and address of his solicitor: see *DPP v McCarthy* (1999) 163 JP 585.

For the purpose of determining whether a motor vehicle was or was not being driven in contravention of the Road Traffic Act 1988 s 143 (as amended) (see PARA 937 post) on any occasion when the driver was required under s 170 (as amended) to produce such a certificate of insurance or security, or other evidence, as is mentioned in s 165(2)(a) (see PARA 648 head (a) post), the owner of the vehicle must give such information as he may be required, by or on behalf of a chief officer of police, to give: s 171(1). For these purposes, 'owner', in relation to a vehicle which is the subject of a hiring agreement, includes each party to the agreement: s 171(3). If a person fails to comply with the requirement of s 171(1), he is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 171(2); Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

The Road Traffic Act 1988 s 171 (as amended) does not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), (2)(b).

15 The obligation to report arises if for any reason the driver has not given the information, whether it was required of him or not: *Peek v Towle* [1945] 1 KB 458, [1945] 2 All ER 611, DC.

16 Road Traffic Act 1988 s 170(3) (amended by the Road Traffic Act 1991 Sch 4 para 72).

17 In the requirements of the Road Traffic Act 1988 s 170(2), (3) (as amended): see the text and notes 13-16 supra.

18 Ibid s 170(4). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or to both; disqualification is discretionary; endorsement is obligatory; and 5-10 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 26, Sch 2). As to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; and as to penalty points see PARA 1048 et seq post. As to the general power of arrest without a warrant in relation to any offence see the Police and Criminal Evidence Act 1984 s 24 (as substituted); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 924.

19 For the meaning of 'motor vehicle' see PARA 210 ante.

20 For the meaning of 'invalid carriage' see PARA 215 ante.

21 In such as is mentioned in the Road Traffic Act 1988 s 165(2)(a): see PARA 648 post.

22 Ibid s 170(5) (amended by the Road Traffic Act 1991 Sch 4 para 72). The provisions of the Road Traffic Act 1988 s 170(5)-(7) (as amended) do not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), (2)(b).

23 'As soon as reasonably practicable' means precisely what it says; the limit of 24 hours does not entitle a driver to wait up to that period before reporting: *Bulman v Bennett* [1974] RTR 1, DC.

24 Road Traffic Act 1988 s 170(6). See also note 22 supra. There is no need to report the accident if s 170(2) (as amended) has been complied with: *Green v Dunn* [1953] 1 All ER 550, DC. Reporting the accident to a detective constable in the capacity of personal friend rather than as police officer is not enough: *Mutton v Bates* [1984] RTR 256, (1983) 147 JP 459. Although the driver is personally known to persons at the scene of the accident, he is nevertheless under a duty to report the accident: *R v Kingston upon Thames Crown Court, ex p Scarll* [1990] Crim LR 429, DC.

25 A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I.

26 Road Traffic Act 1988 s 170(7) (amended by the Road Traffic Act 1991 Sch 4 para 72). See also note 22 supra. Ignorance of the accident is a defence: *Harding v Price* [1948] 1 KB 695, [1948] 1 All ER 283, DC; *Selby v Chief Constable of Avon and Somerset* [1988] RTR 216, DC. However, subject to this, the duty to report is absolute, and failure to report is not excused by the fact that the police may have been informed of the accident by other means: *Dawson v Winter* (1932) 149 LT 18, DC. See also *DPP v Hay* [2005] EWHC 1395 (Admin), [2006] RTR 32 (obligation to comply with requirements of Road Traffic Act 1988 s 170 (as amended) not negated by police attendance and defendant's conveyance to hospital).

## UPDATE

## 642-650 Duties of Drivers

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(10) DUTIES OF DRIVERS/646. Stopping when required by constable.

### 646. Stopping when required by constable.

A person driving<sup>1</sup> a mechanically propelled vehicle<sup>2</sup> on a road<sup>3</sup> must stop the vehicle on being required to do so by a constable<sup>4</sup> in uniform or a traffic officer<sup>5</sup>. Similarly, a person riding a cycle<sup>6</sup> on a road must stop the cycle on being required to do so by a constable in uniform or a traffic officer<sup>7</sup>. If a person fails to stop when so required, he is guilty of an offence<sup>8</sup>.

1 For the meaning of 'drive' see PARA 207 ante.

2 As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

5 Road Traffic Act 1988 s 163(1) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 67; and the Traffic Management Act 2004 s 6(4)). At the date at which this volume states the law the amendment made by the Traffic Management Act 2004 is in force only in relation to England. As to traffic officers see PARA 863 et seq post. For the purposes of the Road Traffic Act 1988 s 163, an order under the Road Traffic Regulation Act 1984 s 95(5) (see PARA 868 post) may provide for the discharge of certain functions by traffic wardens and, if such an order is made, references to a constable in the Road Traffic Act 1988 s 163 (as amended) include references to a traffic warden: see the Road Traffic Regulation Act 1984 s 96(1), (2)(c)(ii) (as amended); and PARA 868 post. At the date at which this volume states the law no such order had been made.

As to failure to obey a constable's requirement to stop under the Road Traffic Act 1988 s 163 (as amended) see *R v Waterfield* [1964] 1 QB 164, [1963] 3 All ER 659, CCA (doubted in *Ghani v Jones* [1970] 1 QB 693, [1969] 3 All ER 1700, CA); *Beard v Wood* [1980] RTR 454, DC (where it was held that a constable had the power to stop, providing he was acting in good faith and not capriciously).

6 For the meaning of 'cycle' see PARA 409 note 3 ante.

7 Road Traffic Act 1988 s 163(2) (amended by the Traffic Management Act 2004 s 6(4)). At the date at which this volume states the law the amendment made by the Traffic Management Act 2004 is in force only in relation to England.

8 Road Traffic Act 1988 s 163(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale if the offence is committed by a person driving a mechanically propelled vehicle and level 3 on the standard scale if it is committed by a person riding a cycle: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (amended by the Road Safety Act 2006 s 27). As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Act 1988 s 163 (as amended) of failing to stop a vehicle on being so required by a constable in uniform is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

As to a constable's power to require production of a driving licence see the Road Traffic Act 1988 s 164 (as amended); and PARA 647 post. As to a constable's power to obtain the name and address of a driver see s 165 (as amended); and PARA 648 post. As to the duty to give information as to the identity of the driver or, as the case may be, cyclist see s 172 (as substituted and amended); and PARA 1026 post.

The Secretary of State may make payments to police authorities in relation to the prevention, detection and enforcement of offences under s 163 (as amended): see the Serious Organised Crime and Police Act 2005 s 155.

## **UPDATE**

### **642-650 Duties of Drivers**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(10) DUTIES OF DRIVERS/647. Production of driving licence to constable.

#### **647. Production of driving licence to constable.**

Any of the following persons:

- 1251 (1) a person driving<sup>1</sup> a motor vehicle<sup>2</sup> on a road<sup>3</sup>;
- 1252 (2) a person whom a constable<sup>4</sup> or vehicle examiner<sup>5</sup> has reasonable cause to believe to have been the driver<sup>6</sup> of a motor vehicle at a time when an accident occurred owing to its presence on a road<sup>7</sup>;
- 1253 (3) a person whom a constable or vehicle examiner has reasonable cause to believe to have committed an offence in relation to the use of a motor vehicle on a road<sup>8</sup>; or
- 1254 (4) a person who supervises the holder of a provisional licence<sup>9</sup> while the holder is driving a motor vehicle on a road, or whom a constable or vehicle examiner has reasonable cause to believe was supervising the holder of a provisional licence while driving, at a time when an accident occurred owing to the presence of the vehicle on a road or at a time when an offence is suspected of having been committed by the holder of the provisional licence in relation to the use of the vehicle on a road<sup>10</sup>,

must, on being so required by a constable or vehicle examiner, produce his licence<sup>11</sup> and its counterpart<sup>12</sup> for examination, so as to enable the constable or vehicle examiner to ascertain the name and address of the holder of the licence, the date of issue, and the authority by which they were issued<sup>13</sup>. A person so required by a constable to produce his licence must in prescribed circumstances<sup>14</sup>, on being so required by the constable, state his date of birth<sup>15</sup>.

If (a) the Secretary of State<sup>16</sup> has revoked a licence<sup>17</sup> or revoked or suspended<sup>18</sup> a large goods vehicle driver's licence<sup>19</sup> or a passenger-carrying vehicle driver's licence<sup>20</sup> or served notice requiring the delivery of a licence to him<sup>21</sup>; and (b) the holder of the licence fails to deliver it and its counterpart to the Secretary of State or the traffic commissioner<sup>22</sup>, as the case may be<sup>23</sup>, a constable or vehicle examiner may require him to produce the licence and its counterpart, and, on their being produced, may seize them and deliver them to the Secretary of State<sup>24</sup>.

Where a constable has reasonable cause to believe that the holder of a licence, or any other person, has knowingly made a false statement for the purpose of obtaining the grant of the licence, the constable may require the holder of the licence to produce it and its counterpart to him<sup>25</sup>.

Where a constable to whom a provisional licence has been produced by a person driving a motor bicycle has reasonable cause to believe that the holder was not driving it as part of the training being provided on a training course for motor cyclists<sup>26</sup>, the constable may require him to produce the prescribed certificate of completion of a training course for motor cyclists<sup>27</sup>.

Where a person has been required<sup>28</sup> to produce a licence and its counterpart to the court and fails to do so, a constable may require him to produce them and, on their being produced, may seize them and deliver them to the court<sup>29</sup>.

If a person required under the above provisions to produce a licence and its counterpart or to state his date of birth or to produce his certificate of completion of a training course for motor cyclists fails to do so he is guilty of an offence<sup>30</sup>. A person is not guilty of such an offence where he is required on any occasion under the above provisions to produce a licence and its counterpart<sup>31</sup> and he:

- 1255 (i) produces on that occasion a current receipt for the licence and its counterpart<sup>32</sup> and, if required to do so, produces the licence and its counterpart in person immediately on their return at a police station that was specified on that occasion<sup>33</sup>; or
- 1256 (ii) within seven days after that occasion produces such a receipt in person at a police station that was specified by him on that occasion and, if required to do so, produces the licence and its counterpart in person immediately on their return at that police station<sup>34</sup>.

In proceedings against any person for the offence of failing to produce a licence and its counterpart or, as the case may be, a certificate of completion of a training course for motor cyclists, it is a defence for him to show<sup>35</sup> that:

- 1257 (A) within seven days after the production of his licence and its counterpart or, as the case may be, certificate was required, he produced them or it in person at a police station that was specified by him at the time their or its production was required<sup>36</sup>; or
- 1258 (B) he produced them or it in person there as soon as was reasonably practicable<sup>37</sup>; or
- 1259 (C) it was not reasonably practicable for him to produce them or it there before the day on which the proceedings were commenced<sup>38</sup>.

Where, in accordance with the above provisions, a person has stated his date of birth to a constable, the Secretary of State may serve on that person a notice in writing<sup>39</sup> requiring him to provide the Secretary of State with such evidence in that person's possession or obtainable by him as the Secretary of State may specify for the purpose of verifying that date, and, if his name differs from his name at the time of his birth, with a statement in writing specifying his name at that time; and a person who knowingly fails to comply with such a notice is guilty of an offence<sup>40</sup>.

1 For the meaning of 'drive' see PARA 207 ante.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 Road Traffic Act 1988 s 164(1)(a). For the meaning of 'road' see PARA 206 ante.

4 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. A person authorised for the purpose by a traffic commissioner appointed under the Public Passenger Vehicles Act 1981 (see PARA 1132 et seq post), may, on production if so required of his authority, exercise in the case of goods vehicles or passenger-carrying vehicles of any prescribed class all such powers as are, under the Road Traffic Act 1988 s 164(1) or (3) (as amended), exercisable by a constable: s 166 (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 20; and amended by the Road Traffic Act 1991 s 48, Sch 4 para 70). For the meaning of 'goods vehicle' see PARA 220 ante. For the meaning of 'prescribed' see PARA 205 note 6 ante.

For the purposes of the Road Traffic Act 1988 s 164 (as amended), an order under the Road Traffic Regulation Act 1984 s 95(5) (see PARA 868 post) may provide for the discharge of certain functions by traffic wardens and, if such an order is made, references to a constable in the Road Traffic Act 1988 s 164(1), (2), (6) (as amended) include references to a traffic warden: see the Road Traffic Regulation Act 1984 s 96(1), (2)(c)(iii) (as amended); and PARA 868 post. References in the Road Traffic Act 1988 s 164(1), (2), (6) (as amended) to a constable or police constable include references to a traffic warden only where: (1) the traffic warden has reasonable cause to believe that an offence has been committed by causing a vehicle, or any part of it, to stop in contravention of regulations made under the Road Traffic Regulation Act 1984 s 25 (see PARA 778 post) or that an offence has been committed in contravention of the Road Traffic Act 1988 s 22 (as amended) (see PARA 999 post) (leaving vehicles in dangerous positions); or (2) the traffic warden is employed to perform functions in connection with the custody of vehicles removed from a road or land in the open air in pursuance of regulations made under the Road Traffic Regulation Act 1984 s 99 (as amended) (see PARA 870 post) or from a parking place in pursuance of a street parking place order, and he has reasonable cause to believe that an offence has been committed in respect of a vehicle by its obstructing a road, or waiting, or being left or parked, or being loaded or unloaded, in a road: Functions of Traffic Wardens Order 1970, SI 1970/1958, art 3(4) (substituted by SI 1993/1334).

5 For these purposes, 'vehicle examiner' means an examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 post): s 164(11) (substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 30(3)).

6 For the meaning of 'driver' see PARA 207 ante.

7 Road Traffic Act 1988 s 164(1)(b) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 68(2)).

8 Road Traffic Act 1988 s 164(1)(c) (amended by the Road Traffic Act 1991 Sch 4 para 68(2)).

9 For the meaning of 'provisional licence' see PARA 445 note 27 ante; definition applied by the Road Traffic Act 1988 s 164(11) (as substituted: see note 5 supra).

10 Ibid s 164(1)(d) (amended by the Road Traffic Act 1991 Sch 4 para 68(2)).

11 For these purposes, 'licence' means a licence under the Road Traffic Act 1988 Pt III (ss 87-109) (as amended) (see PARA 442 et seq ante), a Northern Ireland licence or a Community licence: s 164(11) (as substituted (see note 5 supra); and amended by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 17, 27(b)(i)). For the meaning of 'Community licence' see PARA 415 note 16 ante; definition applied by the Road Traffic Act 1988 s 164(11) (as so substituted).

12 For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by ibid s 164(11) (as substituted: see note 5 supra). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 2, 26(1), (8) so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

13 Road Traffic Act 1988 s 164(1) (amended by the Road Traffic Act 1991 Sch 4 para 68(2); and the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, reg 2(1), Sch 1 para 9). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 Sch 3 para 26(2), (3), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

As to a constable's powers to seize immediately vehicles where the driver fails to produce a valid licence see PARA 649 post. As to the retention and disposal of vehicles so seized see PARA 650 post.

14 The circumstances so prescribed are: (1) where that person fails to produce forthwith for examination his licence on being required to do so by a police constable under the Road Traffic Act 1988 s 164 (as amended); (2) where, on being so required, that person produces a licence: (a) which the police constable in question has reason to suspect was not granted to that person, was granted to that person in error or contains an alteration in the particulars entered on the licence (other than as described in head (b) infra) made with intent to deceive; or (b) in which the driver number has been altered, removed or defaced; or (3) where that person is a person specified in s 164(1)(d) (as amended) (see head (4) in the text) and the police constable has reason to suspect that he is under 21 years of age: Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, reg 83(1).

For these purposes, 'driver number' means the number described as the driver number in the licence: reg 83(2). For the meaning of 'prescribed' see PARA 205 note 6 ante.

15 Road Traffic Act 1988 s 164(2) (amended by the Road Traffic Act 1991 Sch 4 para 68(3)).

16 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

17 Ie under the Road Traffic Act 1988 s 92 (as amended) (see PARA 455 ante), s 93 (as amended) (see PARA 456 ante) or s 99 (as amended) (see PARA 468 ante).

18 Ie under ibid s 115 (as substituted and amended): see PARA 495 ante.

19 For the meaning of 'large goods vehicle driver's licence' see PARA 490 note 6 ante.

20 For the meaning of 'passenger-carrying vehicle driver's licence' see PARA 490 note 7 ante.

21 Road Traffic Act 1988 s 164(3)(a) (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 18(a); and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 30(2)(a); and the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 14). Such notice is served in pursuance of the Road Traffic Act 1988 s 99C (as added) (see PARA 475 ante) or s 115A (as added) (see PARA 497 ante). As from a day to be appointed, the Road Traffic Act 1988 s 164(3)(a) is further amended by the Crime (International Co-operation) Act 2003 Sch 5 para 27(a)(i), (ii) so as to add a reference to where a person is required to deliver his licence and its counterpart to the Secretary of State under the Crime (International Co-operation) Act 2003 s 63, and to notice requiring the delivery of a licence to him in pursuance of the Road Traffic Act 1988 s 109B (as added) (see PARA 484 ante). Section 164(3)(a) is further prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 26(2), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day or days had been appointed.

22 As to traffic commissioners see PARA 493 et seq ante.

23 Road Traffic Act 1988 s 164(3)(b) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 3 para 18(a); the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 1 para 9; the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 30(2)(b); and the Driving Licences (Community Driving Licence) Regulations 1998, SI 1998/1420, reg 14). A licence and its counterpart must be delivered in pursuance of the Road Traffic Act 1988 s 92 (as amended) (see PARA 455 ante), s 93 (as amended) (see PARA 456 ante), s 99 (as amended) (see PARA 468 ante), s 99C (as added) (see PARA 475 ante), s 115A (as added) (see PARA 497 ante) or s 118 (as substituted and amended) (see PARA 500 ante), as the case may be. As from a day to be appointed, the Road Traffic Act 1988 s 164(3)(b) is further amended by the Crime (International Co-operation) Act 2003 Sch 5 para 27(a)(iii) so as to add a reference to where a licence and its counterpart are delivered in pursuance of the Road Traffic Act 1988 s 109B (as added) or the Crime (International Co-operation) Act 2003 s 63. The Road Traffic Act 1988 s 164(3)(b) is further prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 26(2), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day or days had been appointed.

24 Road Traffic Act 1988 s 164(3) (amended by the Road Traffic Act 1991 Sch 4 para 68(4); and the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 1 para 9). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 Sch 3 para 26(2), (4), Sch 7 so as to remove the references to the counterpart.

25 Road Traffic Act 1988 s 164(4) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 1 para 9).

26 For the meaning of 'training course for motor cyclists' see PARA 451 note 17 ante; definition applied by the Road Traffic Act 1988 s 164(11) (as substituted: see note 5 supra). As from a day to be appointed, this provision is amended by the Transport Act 2000 s 260, Sch 29 paras 1, 5(1), (5) so as to remove the reference to this definition.

27 Road Traffic Act 1988 s 164(4A) (added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 3 para 18(b)). For the meaning of 'prescribed certificate of completion' see PARA 451 note 16 ante; definition applied by the Road Traffic Act 1988 s 164(11) (as substituted: see note 5 supra). As from a day to be appointed, this provision is amended by the Transport Act 2000 Sch 29 para 5(5) so as to remove the reference to this definition.

As from a day to be appointed, the Road Traffic Act 1988 s 164(4A) is substituted by the Transport Act 2000 Sch 29 para 5(2) so as to provide that if regulations make provision for the evidencing of the successful completion of driver training courses or of a person's being within the exemption specified in the Road Traffic Act 1988 s



99ZA(2) (as added), or any exemption provided by virtue of s 99ZA(3) (as added) (see PARA 485 ante), a person driving on a road a motor vehicle which he is not authorised so to drive without having successfully completed such a course, or would not be authorised so to drive apart from the exemption, may be required by a constable to produce prescribed evidence of the successful completion by him of such a course or of his being within the exemption. At the date at which this volume states the law no such day had been appointed.

28 le under the Road Traffic Offenders Act 1988 s 26 (as substituted and amended) (see PARA 1046 post) or s 27 (as amended) (see PARA 1047 post), the Child Support Act 1991 s 40B (as added) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 559), the Crime (Sentences) Act 1997 s 40 (as amended) or the Powers of Criminal Courts (Sentencing) Act 2000 s 146 or s 147 (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 313-314). As from a day to be appointed, the reference to the Crime (Sentences) Act 1997 s 40 (as amended) is replaced by a reference to the Criminal Justice Act 2003 s 301: see s 304, Sch 32 Pt 1 para 51. At the date at which this volume states the law no such day had been appointed.

29 Road Traffic Act 1988 s 164(5) (amended by the Road Traffic Act 1991 Sch 4 para 68(5); the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 117; the Child Support, Pensions and Social Security Act 2000 s 16(4); and the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 1 para 9). As to the prospective amendment of this provision by the Criminal Justice Act 2003 see note 28 supra. As from a day to be appointed, the Road Traffic Act 1988 s 164(5) is further amended by the Road Safety Act 2006 Sch 3 para 26(2), (5), Sch 7 so as to remove references to the counterpart. At the date at which this volume states the law no such day had been appointed.

30 Road Traffic Act 1988 s 164(6) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 3 para 18(c); the Road Traffic Act 1991 ss 48, 83, Sch 4 para 68(6), Sch 8; and the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 1 para 9). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 Sch 3 paras 2, 26, Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 26, Sch 2; and the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, reg 2(2), Sch 2 para 27(c); and prospectively amended by the Road Safety Act 2006 Sch 3 paras 30, 63(1), (3), Sch 7). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 post.

As from a day to be appointed, the Road Traffic Act 1988 s 164(6) is further amended by the Transport Act 2000 Sch 29 para 5(3) so as to replace the requirement to produce a certificate of completion of a training course for motor cyclists with the requirement to produce prescribed evidence of the successful completion by him of a driver training course or of his being within an exemption. At the date at which this volume states the law no such day had been appointed.

31 Road Traffic Act 1988 s 164(7) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 1 para 9). This provision is further amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 26(2) (6), Sch 7 so as to remove references to the counterpart. At the date at which this volume states the law no such day had been appointed.

32 le issued under the Road Traffic Offenders Act 1988 s 56 (as amended): see PARA 1099 post.

33 Road Traffic Act 1988 s 164(7)(a) (as amended: see note 31 supra).

34 Ibid s 164(7)(b) (as amended: see note 31 supra).

35 Ibid s 164(8), (8A) (s 164(8) amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 1 para 9; and the Road Traffic Act 1988 s 164(8A) added by the Road Traffic Act 1991 Sch 4 para 68(7)). As from a day to be appointed, the Road Traffic Act 1988 s 164(8A) (as added) is amended by the Transport Act 2000 Sch 29 para 5(4) so as to replace the reference to a certificate of completion of a training course for motor cyclists with a reference to prescribed evidence of the successful completion of a driver training course or of being within an exemption. The Road Traffic Act 1988 s 164(8A) (as added) is further prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 26(2), (7), Sch 7 so as to remove the references to the counterpart. At the date at which this volume states the law no such day or days had been appointed.

36 Road Traffic Act 1988 s 164(8)(a) (as amended: see note 35 supra); s 164(8A) (as added: see note 35 supra).

37 Ibid s 164(8)(b) (as amended: see note 35 supra); s 164(8A) (as added: see note 35 supra).

38 Ibid s 164(8)(c) (as amended: see note 35 supra); s 164(8A) (as added: see note 35 supra). For these purposes, the laying of the information is to be treated as the commencement of the proceedings: s 164(8).

39 A notice authorised to be so served on any person may be served on him by delivering it to him or by leaving it at his proper address or by sending it to him by post; and for these purposes, and for the purposes of the Interpretation Act 1978 s 7 (see STATUTES vol 44(1) (Reissue) PARA 1388) in its application to the Road Traffic Act 1988 s 164(10), the proper address of any person is his latest address as known to the person giving the notice: s 164(10).

40 Ibid s 164(9). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I (entry as amended: see note 30 supra).

## UPDATE

### 642-650 Duties of Drivers

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(10) DUTIES OF DRIVERS/648. Giving of names and addresses and production of insurance or security and test certificates.

### **648. Giving of names and addresses and production of insurance or security and test certificates.**

Any of the following persons:

- 1260 (1) a person driving<sup>1</sup> a motor vehicle<sup>2</sup> (other than an invalid carriage<sup>3</sup>) on a road<sup>4</sup>; or
- 1261 (2) a person whom a constable<sup>5</sup> or vehicle examiner<sup>6</sup> has reasonable cause to believe to have been the driver<sup>7</sup> of a motor vehicle (other than an invalid carriage) at a time when an accident occurred owing to its presence on a road or other public place<sup>8</sup>; or
- 1262 (3) a person whom a constable or vehicle examiner has reasonable cause to believe to have committed an offence in relation to the use on a road of a motor vehicle (other than an invalid carriage)<sup>9</sup>,

must, on being so required by a constable or vehicle examiner, give his name and address and the name and address of the owner<sup>10</sup> of the vehicle and produce the following documents for examination<sup>11</sup>. The documents are:

- 1263 (a) the relevant certificate of insurance<sup>12</sup> or certificate of security<sup>13</sup>, or such other evidence that the vehicle is not or was not being driven without compulsory insurance or security<sup>14</sup> as may be prescribed by regulations made by the Secretary of State<sup>15</sup>;
- 1264 (b) in relation to a vehicle requiring an obligatory test certificate<sup>16</sup>, a test certificate issued in respect of the vehicle<sup>17</sup>; and

1265 (c) in relation to a goods vehicle the use of which on a road without a plating certificate<sup>18</sup> or goods vehicle test certificate<sup>19</sup> is an offence<sup>20</sup>, any such certificate issued in respect of that vehicle or any trailer<sup>21</sup> drawn by it<sup>22</sup>.

A person who fails to comply with a requirement under the above provisions is guilty of an offence<sup>23</sup>. A person is not, however, to be convicted of such an offence by reason only of failure to produce any certificate or other evidence if in proceedings against him for the offence he shows that<sup>24</sup>: (i) within seven days after the date on which the production of the certificate or other evidence was required, it was produced at a police station that was specified by him at the time when its production was required<sup>25</sup>; or (ii) it was produced there as soon as was reasonably practicable<sup>26</sup>; or (iii) it was not reasonably practicable for it to be produced there before the day on which the proceedings were commenced<sup>27</sup>.

A person:

- 1266 (A) who supervises the holder of a provisional licence<sup>28</sup> while the holder is driving on a road a motor vehicle (other than an invalid carriage)<sup>29</sup>; or
- 1267 (B) whom a constable or vehicle examiner has reasonable cause to believe was supervising the holder of such a licence while driving, at a time when an accident occurred owing to the presence of the vehicle on a road or at a time when an offence is suspected of having been committed by the holder of the provisional licence in relation to the use of the vehicle on a road<sup>30</sup>,

must, on being so required by a constable or vehicle examiner, give his name and address and the name and address of the owner of the vehicle<sup>31</sup>. A person who fails to comply with such a requirement is guilty of an offence<sup>32</sup>.

1 For the meaning of 'drive' see PARA 207 ante.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'invalid carriage' see PARA 215 ante.

4 Road Traffic Act 1988 s 165(1)(a). For the meaning of 'road' see PARA 206 ante.

5 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. A person authorised for the purpose by a traffic commissioner appointed under the Public Passenger Vehicles Act 1981 (see PARA 1132 et seq post) may, on production if so required of his authority, exercise in the case of goods vehicles or passenger-carrying vehicles of any prescribed class all such powers as are, under the Road Traffic Act 1988 s 165 (as amended), exercisable by a constable: s 166 (substituted by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 20; and amended by the Road Traffic Act 1991 s 48, Sch 4 para 70). As to traffic commissioners see PARA 1139 post. For the meaning of 'goods vehicle' see PARA 220 ante. For the meaning of 'prescribed' see PARA 205 note 6 ante.

For the purposes of the Road Traffic Act 1988 s 165 (as amended), an order under the Road Traffic Regulation Act 1984 s 95(5) (see PARA 868 post) may provide for the discharge of certain functions by traffic wardens and, if such an order is made, references to a constable in the Road Traffic Act 1988 s 165 (as amended) include references to a traffic warden: see the Road Traffic Regulation Act 1984 s 96(1), (2)(c)(iv) (as amended); and PARA 868 post.

6 For these purposes, 'vehicle examiner' means an examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 ante): s 165(7) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 69(1), (4)).

7 For the meaning of 'driver' see PARA 207 ante.

8 Road Traffic Act 1988 s 165(1)(b) (amended by the Road Traffic Act 1991 Sch 4 para 69(1), (4); and the Motor Vehicles (Compulsory Insurance) Regulations 2000, SI 2000/726, reg 2(1), (5)).

9 Road Traffic Act 1988 s 165(1)(c) (amended by the Road Traffic Act 1991 Sch 4 para 69(1), (4)).

10 For these purposes, 'owner', in relation to a vehicle which is the subject of a hiring agreement, includes each party to the agreement: Road Traffic Act 1988 s 165(7).

11 Ibid s 165(1) (amended by the Road Traffic Act 1991 Sch 4 para 69(1), (2)). The Road Traffic Act 1988 s 165 (as amended) does not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), (2) (b). The Road Traffic Act 1988 s 165 (as amended), in so far as it provides for the production of test certificates and the giving of names and addresses, applies to a person in connection with a vehicle to which s 47 (as amended) (see PARA 657 post) applies notwithstanding that he or the driver is or was at any material time a person in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(6). The Road Traffic Act 1988 s 165(1) (as amended), in so far as it provides for the production of any certificate mentioned in s 165(2)(c) (see head (c) in the text), applies to a person in connection with a goods vehicle so mentioned notwithstanding that he or the driver is or was at any time a person in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(7).

12 Ie within the meaning of the Road Traffic Act 1988 Pt VI (ss 143-162) (as amended): see PARA 947 post.

13 Ie within the meaning of ibid Pt VI (as amended): see PARA 947 post.

14 Ie in contravention of ibid s 143 (as amended): see PARA 937 post. For the purpose of determining whether a motor vehicle was or was not being driven in contravention of s 143 (as amended) on any occasion when the driver was required under s 165(1) (as amended) to produce such a certificate of insurance or security, or other evidence, as is mentioned in s 165(2)(a) (see head (a) in the text), the owner of the vehicle must give such information as he may be required, by or on behalf of a chief officer of police, to give: s 171(1). For these purposes, 'owner', in relation to a vehicle which is the subject of a hiring agreement, includes each party to the agreement: s 171(3). If a person fails to comply with the requirement of s 171(1), he is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 171(2); Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

15 Road Traffic Act 1988 s 165(2)(a). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. The Motor Vehicles (Third Party Risks) Regulations 1972, SI 1972/1217 (amended by SI 1973/1821; SI 1974/792; SI 1974/2187; SI 1981/1567; SI 1992/1283; SI 1997/97; SI 1999/2392) have effect as if made under this provision.

16 Ie a vehicle to which the Road Traffic Act 1988 s 47 (as amended) applies: see PARA 657 post.

17 Ibid s 165(2)(b). A test certificate is issued as mentioned in s 47(1): see PARA 657 post.

18 For the meaning of 'plating certificate' see PARA 679 post.

19 For the meaning of 'goods vehicle test certificate' see PARA 679 post.

20 Ie under the Road Traffic Act 1988 s 53(1) or (2): see PARA 676 post.

21 For the meaning of 'trailer' see PARA 210 ante.

22 Road Traffic Act 1988 s 165(2)(c).

23 Ibid s 165(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 83, Sch 8). As to a constable's powers to seize immediately vehicles where the driver fails to produce evidence that a motor vehicle is not or was not being driven without insurance see PARA 649 post. As to the retention and disposal of vehicles so seized see PARA 650 post.

24 Road Traffic Act 1988 s 165(4) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 19; and the Road Traffic Act 1991 Sch 8).

25 Road Traffic Act 1988 s 165(4)(a).

26 Ibid s 165(4)(b).

27 Ibid s 165(4)(c). For these purposes, the laying of the information is to be treated as the commencement of the proceedings: s 165(4).

28 le granted under ibid Pt III (ss 87-109) (as amended): see PARA 442 et seq ante. For the meaning of 'provisional licence' see PARA 445 note 27 ante.

29 Ibid s 165(5)(a).

30 Ibid s 165(5)(b) (amended by the Road Traffic Act 1991 Sch 4 para 69(1), (3)).

31 Road Traffic Act 1988 s 165(5) (amended by the Road Traffic Act 1991 Sch 4 para 69(1), (3)).

32 Road Traffic Act 1988 s 165(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I (entry as amended: see note 23 supra).

## UPDATE

### 642-650 Duties of Drivers

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 648 Giving of names and addresses and production of insurance or security and test certificates

NOTE 15--SI 1972/1217 further amended: SI 2010/1115.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(10) DUTIES OF DRIVERS/649. Power to seize vehicles driven without licence or insurance.

### 649. Power to seize vehicles driven without licence or insurance.

Where any of the following conditions are satisfied, namely that:

- 1268 (1) a constable in uniform requires<sup>1</sup> a person to produce his licence and its counterpart<sup>2</sup> for examination, the person fails to produce them, and the constable has reasonable grounds for believing that a motor vehicle<sup>3</sup> is or was being driven by the person without a valid licence<sup>4</sup>;
- 1269 (2) a constable in uniform requires<sup>5</sup> a person to produce evidence that a motor vehicle is not or was not being driven without insurance<sup>6</sup>, the person fails to produce such evidence, and the constable has reasonable grounds for believing that the vehicle is or was being so driven<sup>7</sup>;
- 1270 (3) a constable in uniform requires<sup>8</sup> a person driving a motor vehicle to stop the vehicle, the person fails to stop the vehicle, or to stop the vehicle long enough, for the constable to make such lawful enquiries as he considers appropriate, and the constable has reasonable grounds for believing that the vehicle is or was being driven without a valid licence or without insurance<sup>9</sup>,

the constable may:

- 1271 (a) seize the vehicle<sup>10</sup> and remove it;

- 1272 (b) enter, for the purpose of exercising a power falling within head (a) above, any premises, other than a private dwelling house<sup>11</sup>, on which he has reasonable grounds for believing the vehicle to be;
- 1273 (c) use reasonable force, if necessary, in the exercise of any power conferred by head (a) or head (b) above<sup>12</sup>.

Before seizing the motor vehicle, the constable must warn the person by whom it appears that the vehicle is or was being driven that he will seize it if the person does not either produce his licence and its counterpart immediately<sup>13</sup>, or provide him immediately with evidence that the vehicle is not or was not being driven without insurance<sup>14</sup>, as the case may be<sup>15</sup>. But the constable is not required to give such a warning if the circumstances make it impracticable for him to do so<sup>16</sup>.

If the constable is unable to seize the vehicle immediately because the person driving the vehicle has failed to stop as requested or has driven off, he may seize it at any time within the period of 24 hours beginning with the time at which the condition in question is first satisfied<sup>17</sup>.

The Secretary of State may by regulations make provision as to the removal and retention of motor vehicles seized under the above provisions and the release or disposal of such motor vehicle<sup>18</sup>; and the powers conferred on a constable above are exercisable only at a time when such regulations are in force<sup>19</sup>.

1    Ie under the Road Traffic Act 1988 s 164: see PARA 647 ante.

2    'Counterpart' and 'licence' have the same meanings as in *ibid* s 164 (as amended) (see PARA 647 ante); s 165A(9)(c) (ss 165A, 165B added by the Serious Organised Crime and Police Act 2005 s 152).

3    A reference to a motor vehicle does not include an invalid carriage: Road Traffic Act 1988 s 165A(9)(a) (as added: see note 2 *supra*).

4    *Ibid* s 165A(1), (2) (as added: see note 2 *supra*). The reference to a vehicle being driven without a valid licence is to a vehicle being so driven in contravention of s 87(1) (as amended): see PARA 444 ante.

5    Ie under *ibid* s 165 (as amended): see PARA 648 ante.

6    Ie in contravention of *ibid* s 143 (as amended): see PARA 937 post. A reference to evidence that a motor vehicle is not or was not being driven in contravention of s 143 (as amended) is a reference to a document or other evidence within s 165(2)(a) (see PARA 648 ante); s 165A(9)(b) (as added: see note 2 *supra*).

7    *Ibid* s 165A(3) (as added: see note 2 *supra*).

8    Ie under *ibid* s 163 (as amended): see PARA 646 ante.

9    *Ibid* s 165A(4) (as added: see note 2 *supra*).

10   Ie in accordance with *ibid* s 165A(6), (7) (as added): see text to notes 13-17 *infra*.

11   'Private dwelling house' does not include any garage or other structure occupied with the dwelling house, or any land appurtenant to the dwelling house: *ibid* s 165A(9)(d) (as added: see note 2 *supra*).

12   *Ibid* s 165A(5) (as added: see note 2 *supra*).

13   Ie in a case where it is suspected the person is in contravention of *ibid* s 87(1) (as amended): see PARA 444 ante.

14   Ie in a case where it is suspected the person is in contravention of *ibid* s 143 (as amended): see PARA 937 post.

15   *Ibid* s 165A(6) (as added: see note 2 *supra*).

16   *Ibid* s 165A(6) (as added: see note 2 *supra*).

17 Ibid s 165A(7) (as added: see note 2 supra).

18 Ibid s 165B(1) (as added: see note 2 supra). Regulations under s 165B(1) (as added) may, in particular, make provision: (1) for the giving of notice of the seizure of a motor vehicle under s 165A (as added) to a person who is the registered keeper, the owner or the driver of that vehicle; (2) for the procedure by which a person who claims to be the registered keeper or the owner of a motor vehicle seized under s 165A (as added) may seek to have it released; (3) for requiring the payment, by the registered keeper, owner or driver of the vehicle, of fees, charges or costs in relation to the removal and retention of such a motor vehicle and to any application for its release; (4) as to the circumstances in which a motor vehicle seized under s 165A (as added) may be disposed of; (5) as to the destination: (a) of any fees or charges payable in accordance with the regulations; (b) of the proceeds (if any) arising from the disposal of a motor vehicle seized under s 165A (as added); (6) for the delivery to a local authority, in circumstances prescribed by or determined in accordance with the regulations, of any motor vehicle seized under s 165A (as added): s 165B(2) (as so added). For these purposes, 'local authority' means, in relation to England, a county council, the council of a district comprised in an area for which there is no county council, a London borough council, the Common Council of the City of London, or Transport for London, and, in relation to Wales, the council of a county or county borough; and 'registered keeper', in relation to a motor vehicle, means the person in whose name the vehicle is registered under the Vehicle Excise and Registration Act 1994: Road Traffic Act 1988 s 165B(5) (as so added). The regulations must provide that a person who would otherwise be liable to pay any fee or charge under the regulations is not liable to pay it if he was not driving the motor vehicle at the time in question, and he did not know that the vehicle was being driven at that time, had not consented to its being driven and could not, by the taking of reasonable steps, have prevented it from being driven: s 165B(3) (as so added). The regulations may make different provision for different cases: s 165B(4) (as so added). As to regulations made under s 165B (as added) see the Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) Regulations 2005, SI 2005/1606; and PARA 650 post.

19 Road Traffic Act 1988 s 165A(8) (as added: see note 2 supra).

## **UPDATE**

### **642-650 Duties of Drivers**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/6. USE OF VEHICLES/(10) DUTIES OF DRIVERS/650. Retention and disposal of seized motor vehicles.

### **650. Retention and disposal of seized motor vehicles.**

A relevant motor vehicle<sup>1</sup> must be passed into and remain in the custody of a constable or other person authorised<sup>2</sup> by the chief officer of the police force for the area in which the vehicle was seized ('the authorised person') until the authorised person permits it to be removed from his custody by a person appearing to him to be the registered keeper<sup>3</sup> or owner<sup>4</sup> of the vehicle, or until it has been disposed of<sup>5</sup>. While the vehicle is in the custody of the authorised person, the authorised person is under a duty to take such steps as are reasonably necessary for its safe-keeping<sup>6</sup>.

A constable, on seizing a vehicle<sup>7</sup>, must give a seizure notice<sup>8</sup> to the driver of the vehicle being seized unless the circumstances make it impracticable for him to do so<sup>9</sup>. The authorised person must, as soon as he is able after a relevant motor vehicle has been taken into his custody, take such steps as are reasonably practicable to give a seizure notice to the person who is the registered keeper and to the owner, where that appears to be someone different, of that vehicle, except where : (1) the authorised person is satisfied that a seizure notice has already

been given by a constable to the registered keeper and to the owner, where that appears to be someone different, of the vehicle; or (2) the vehicle has been released from the authorised person's custody<sup>10</sup>.

If, before a relevant motor vehicle is disposed of by an authorised person, a person: (a) satisfies the authorised person that he is the registered keeper<sup>11</sup> or the owner<sup>12</sup> of that vehicle; (b) pays to the authorised person such a charge in respect of its seizure and retention as is payable<sup>13</sup>; and (c) produces at a police station specified in the seizure notice a valid certificate of insurance<sup>14</sup> covering his use of that vehicle and a valid licence<sup>15</sup> authorising him to drive it, the authorised person must permit him to remove the vehicle from his custody<sup>16</sup>.

The authorised person may, in such manner as he thinks fit, dispose of the vehicle at any time if: (i) where the registered keeper and owner of the vehicle appear to be the same person, that person fails to comply with any requirement in a seizure notice given to him, or the authorised person was not able, having taken such steps as were reasonably practicable, to give a seizure notice to that person; or (ii) where the registered keeper and owner appear to be different: (A) where a seizure notice was given to both of those persons, neither the registered keeper nor the owner of the vehicle comply with all requirements in that seizure notice; (B) where the authorised person was only able, having taken such steps as were reasonably practicable, to give a seizure notice to one of those persons, that person failed to comply with any requirement in that seizure notice; or (C) the authorised person was not able, having taken such steps as were reasonably practicable, to give a seizure notice to either the registered keeper or the owner<sup>17</sup>.

1 'Relevant motor vehicle' means a motor vehicle which has been seized and removed under the Road Traffic Act 1988 s 165A (as added) (see PARA 649 ante): Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) Regulations 2005, SI 2005/1606, reg 2.

2 Ie authorised under ibid reg 3: see the text to notes 5, 6 infra.

3 'Registered keeper', in relation to a motor vehicle, means the person in whose name the vehicle is registered under the Vehicle Excise and Registration Act 1994: Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) Regulations 2005, SI 2005/1606, reg 2.

4 'Owner' includes: (1) the person by whom, according to the records maintained by the Secretary of State in connection with any functions exercisable by him by virtue of the Vehicle Excise and Registration Act 1994, the vehicle is kept and used; (2) in relation to a vehicle which is the subject of a hiring agreement or a hire-purchase agreement, the person entitled to possession of the vehicle under the agreement: Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) Regulations 2005, SI 2005/1606, reg 2.

5 Ie disposed of under the Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) Regulations 2005, SI 2005/1606: reg 3(1).

6 Ibid reg 3(2).

7 Ie under the Road Traffic Act 1988 s 165A (as added): see PARA 649 ante.

8 As to content and service requirements for seizure notices see the Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) Regulations 2005, SI 2005/1606, reg 4(3)-(5).

9 Ibid reg 4(1).

10 Ie released under ibid reg 5 (see the text to note 16 infra): reg 4(2).

11 In determining whether he is satisfied that a person who claims to be the registered keeper of a relevant motor vehicle is in fact the relevant keeper, an authorised person must refer to the register maintained by the Secretary of State under the Vehicle Excise and Registration Act 1994 Pt II (ss 21-28A) (as amended) (see PARAS 519-523, 544 ante): Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) Regulations 2005, SI 2005/1606, regs 2, 5(4).

12 In determining whether he is satisfied that a person who claims to be the owner of a relevant motor vehicle is in fact the owner, an authorised person must consider such documentary evidence as that person may supply him: ibid reg 5(3).



13 The charge payable is, in respect of the vehicle's seizure, £105; and, in respect of retention, £12 for each period of 24 hours or a part thereof during which vehicle is in the custody of the authorised person: *ibid* reg 6(1). Each period of 24 hours is calculated from noon on the first day after seizure during which the place at which the vehicle is stored is open for the claiming of vehicles before noon: reg 6(2). A person who would otherwise be liable to pay such a charge is not liable to pay if he was not driving the vehicle at the time it was seized and he did not know that the vehicle was being driven at that time, had not consented to its being driven and could not, by the taking of reasonable steps, have prevented it from being driven: reg 5(5).

14 'Certificate of insurance' is to be construed in accordance with the Road Traffic Act 1988 ss 147(1), 161(2) (see PARA 947 *post*): Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) Regulations 2005, SI 2005/1606, reg 2.

15 'Valid licence' means a licence to drive a motor vehicle granted under the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended) (see PARA 442 *et seq ante*), a Community licence (see PARA 415 note 16 *ante*), an exchangeable licence (see PARA 445 note 26 *ante*) or a Northern Ireland driving licence: Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) Regulations 2005, SI 2005/1606, reg 2.

16 *Ibid* reg 5(1). Where a person satisfies heads (a) and (b) in the text but cannot satisfy head (c) in the text, and nominates for this purpose a third person who produces a valid certificate of insurance covering that person's use of that vehicle and a valid driving licence authorising that person to drive that vehicle, the authorised person must permit that person to remove the vehicle from his custody: reg 5(2).

17 *Ibid* reg 7(1). The authorised person may not dispose of the vehicle: (1) during the period of 14 days starting with the date on which the vehicle was seized; (2) if that period has expired, until after the date specified in the seizure notice; or (3) otherwise, during the period of seven working days starting with the date on which the vehicle is claimed under reg 5 (see the text to note 16 *supra*): reg 7(2). 'Working days' is to be taken to exclude Saturdays, Sundays, Christmas Day, Good Friday and any day which is a bank holiday under the Banking and Financial Dealings Act 1971 (see TIME vol 97 (2010) PARA 321): Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) Regulations 2005, SI 2005/1606, reg 2.

As to the application of the net proceeds of a motor vehicle disposed of by means of sale in pursuance of the Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) Regulations 2005, SI 2005/1606, see reg 8.

## UPDATE

### 642-650 Duties of Drivers

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 650 Retention and disposal of seized motor vehicles

NOTE 13--SI 2005/1606 reg 6(1) substituted: SI 2008/2097.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/7. DRIVER INFORMATION SYSTEMS/651. Meaning of driver information systems.

## 7. DRIVER INFORMATION SYSTEMS

### 651. Meaning of driver information systems.

Driver information is information, including guidance and warnings, of use to the drivers of motor vehicles relating to routes for or the position of their vehicles or traffic conditions; and the term 'route guidance' is to be construed accordingly<sup>1</sup>. However, the Secretary of State<sup>2</sup> may by order prescribe descriptions of information which are not to be driver information<sup>3</sup>.

A driver information system is a system for the collection, storage and processing of data<sup>4</sup> from which driver information is derived<sup>5</sup>, or a system for the transmission of data from which driver information is derived, by means of apparatus<sup>6</sup> situated otherwise than in motor vehicles to motor vehicles equipped to receive the transmissions<sup>7</sup>, or a system for both of these<sup>8</sup>. However, data is not collected unless it is collected from motor vehicles whether or not also from other sources<sup>9</sup>. A person operates a driver information system if, otherwise than as an employee, he collects, stores and processes data from which driver information is derived<sup>10</sup>, or transmits such data to motor vehicles<sup>11</sup>. A person operates a driver information system in relation to public roads<sup>12</sup> if he collects data from or, as the case may be, transmits data to, motor vehicles on public roads<sup>13</sup>.

1 Road Traffic (Driver Licensing and Information Systems) Act 1989 s 8(1), (2).

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 Road Traffic (Driver Licensing and Information Systems) Act 1989 s 8(1), (7). Any power to make orders under Pt II (ss 8-15) (as amended) may be exercised so as to make different provision for different circumstances and different provision for England or for Wales: s 15(1). Any power to make orders under Pt II (as amended) is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 15(2). At the date at which this volume states the law no such order had been made.

4 'Data' means information recorded in a form in which it can be processed by equipment operating automatically in response to instructions given for that purpose: *ibid* s 8(1), (5).

5 *Ibid* s 8(1), (3)(a).

6 The 'system apparatus' in relation to a driver information system is the apparatus by means of which the system is operated: *ibid* s 8(1), (6).

7 *Ibid* s 8(1), (3)(b).

8 *Ibid* s 8(1), (3)(c).

9 *Ibid* s 8(1), (3).

10 *Ibid* s 8(1), (4)(a).

11 *Ibid* s 8(1), (4)(b).

12 'Public road' means a highway maintainable at the public expense within the meaning of the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 248); Road Traffic (Driver Licensing and Information Systems) Act 1989 s 8(1), (8)(c).

13 *Ibid* s 8(1), (4). Expressions related to the operation of driver information systems are to be construed accordingly: s 8(1), (4).

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## **652. Requirement for licence to operate a driver information system.**

No person may operate a driver information system<sup>1</sup> in relation to public roads<sup>2</sup> unless he is authorised to do so by a licence granted to him by the Secretary of State<sup>3</sup>. However, the Secretary of State may, by order, direct that this requirement<sup>4</sup> does not apply to any description of driver information system specified in the order, and the description of a system may be framed by reference to any of its characteristics, its effects or any other circumstances<sup>5</sup>.

Any person who operates<sup>6</sup> a driver information system in contravention of this provision<sup>7</sup> commits an offence<sup>8</sup>.

1 For the meaning of 'driver information system' see PARA 651 ante.

2 For the meaning of 'public road' see PARA 651 note 12 ante.

3 Road Traffic (Driver Licensing and Information Systems) Act 1989 s 9(1). The holding by a person of a licence under s 9 (as amended) does not relieve him of: (1) any liability in respect of a failure to hold a licence under the Wireless Telegraphy Act 2006 s 8 (see TELECOMMUNICATIONS AND BROADCASTING); or (2) any obligation to comply with requirements imposed by or under the Communications Act 2003 Pt 2 Ch 1 (ss 31-151) (electronic communications networks and electronic communications services: see TELECOMMUNICATIONS vol 97 (2010) PARA 104); Road Traffic (Driver Licensing and Information Systems) Act 1989 s 9(3) (substituted by the Communications Act 2003 s 406(1), Sch 17 para 97(1), (2); and amended by the Wireless Telegraphy Act 2006 s 123, Sch 7 para 7). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 Ie the provisions of the Road Traffic (Driver Licensing and Information Systems) Act 1989 Pt II (ss 8-15) (as amended): s 9(2).

5 Ibid s 9(2). Any power to make orders under Pt II (as amended) may be exercised so as to make different provision for different circumstances and different provision for England or for Wales: s 15(1). Any power to make orders under Pt II (as amended) is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 15(2). The Driver Information Systems (Exemptions) Order 1990, SI 1990/865 has been made under the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 9(2).

6 For the meaning of 'operates' see PARA 651 ante.

7 Ie in contravention of the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 9 (as amended).

8 Ibid s 9(4). A person guilty of an offence under s 9 (as amended) is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine: s 9(5). As to the statutory maximum see PARA 359 note 11 ante.

## UPDATE

### 652 Requirement for licence to operate a driver information system

NOTE 5--See also the Wireless Telegraphy (Vehicle Based Intelligent Transport Systems) (Exemption) Regulations 2009, SI 2009/65, made under the Wireless Telegraphy Act 2006 s 8(3).

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### 653. Operator's licence.

The Secretary of State<sup>1</sup> may grant a licence to operate<sup>2</sup> a driver information system<sup>3</sup> in any area in England or Wales, and such a licence is referred to as an 'operator's licence'<sup>4</sup>. More than one operator's licence may be granted for the same area but an operator's licence is not assignable<sup>5</sup>. An operator's licence may authorise the operation of all or only one or more descriptions of driver information system and may authorise the transmission of data<sup>6</sup> from which route guidance is derived to the drivers of motor vehicles of all or only one or more classes, or its collection from motor vehicles of all or only one or more classes<sup>7</sup>.

An operator's licence must be in writing and must specify<sup>8</sup> the scope of the authority given and the area within which the licence holder may operate<sup>9</sup>.

An operator's licence remains, unless revoked, suspended or surrendered, in force for the period specified in the licence<sup>10</sup>. An operator's licence is granted on such terms and subject to such conditions as the Secretary of State considers appropriate and he may<sup>11</sup>: (1) with the consent of the licence holder, attach new conditions or vary any of the terms or conditions<sup>12</sup>; or (2) without the consent of the licence holder, attach new conditions designed to prevent danger to the public or vary any such condition<sup>13</sup>. An operator's licence may include a term requiring the rendering to the Secretary of State of a payment on the grant of the licence, or payments during the currency of the licence, or both, of such amount or amounts as may be determined by or under the licence<sup>14</sup>. The conditions subject to which an operator's licence is granted may include, in particular<sup>15</sup>:

- 1274 (a) specifying the classes or descriptions of public road<sup>16</sup> or any particular public road in, upon, under, over, along or across which system apparatus<sup>17</sup> may or may not be installed<sup>18</sup>;
- 1275 (b) specifying the classes or descriptions of public road or any particular public road which may or may not be included in route guidance<sup>19</sup> to drivers or to the drivers of specified classes of motor vehicles, or specifying the circumstances in which the roads or road may be included or excluded<sup>20</sup>;
- 1276 (c) specifying the classes of motor vehicles to whose drivers route guidance may or may not be given or the circumstances in which it may or may not be given to such drivers<sup>21</sup>;
- 1277 (d) regulating the size, shape or other characteristics of system apparatus<sup>22</sup>;
- 1278 (e) regulating the charges that may be made by the licence holder to drivers or other persons for receiving data transmitted by a driver information system<sup>23</sup>;
- 1279 (f) requiring the licence holder to furnish to the Secretary of State such information relating to motor vehicles or traffic conditions derived from data which is or has been stored in the driver information system by the licence holder as the Secretary of State requires and authorising the Secretary of State to make such use, including the sale, of the information as he thinks fit<sup>24</sup>;
- 1280 (g) requiring the licence holder to keep such records relating to the operation of the system as the Secretary of State specifies and to permit persons authorised by the Secretary of State to inspect the records and make copies or extracts from them<sup>25</sup>;
- 1281 (h) authorising the Secretary of State to disclose the roads permitted to be included in route guidance under the licence to persons appearing to him to be affected<sup>26</sup>;
- 1282 (i) requiring the licence holder to disclose the roads included in route guidance under the licence to persons requesting the information on payment (if required) of a charge not exceeding such amount as may be specified in the licence<sup>27</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'operate' see PARA 651 ante. As to the requirement to hold a licence to operate a driver information system see PARA 652 ante.

- 3 For the meaning of 'driver information system' see PARA 651 ante.
- 4 Road Traffic (Driver Licensing and Information Systems) Act 1989 s 10(1).
- 5 Ibid s 10(2).
- 6 For the meaning of 'data' see PARA 651 note 4 ante.
- 7 Road Traffic (Driver Licensing and Information Systems) Act 1989 s 10(3).
- 8 Ie in accordance with ibid s 10(3): see the text to note 7 supra.
- 9 Ibid s 10(4).
- 10 Ibid s 10(5).
- 11 Ibid s 10(6).
- 12 Ibid s 10(6)(a).
- 13 Ibid s 10(6)(b).
- 14 Ibid s 10(7). Any sums received by the Secretary of State in pursuance of s 10(7) are to be paid into the Consolidated Fund: s 10(11). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.
- 15 Ibid s 10(8).
- 16 For the meaning of 'public road' see PARA 651 note 12 ante.
- 17 For the meaning of 'system apparatus' see PARA 651 note 6 ante.
- 18 Road Traffic (Driver Licensing and Information Systems) Act 1989 s 10(8)(a).
- 19 For the meaning of 'route guidance' see PARA 651 ante.
- 20 Road Traffic (Driver Licensing and Information Systems) Act s 10(8)(b).
- 21 Ibid s 10(8)(c).
- 22 Ibid s 10(8)(d).
- 23 Ibid s 10(8)(e).
- 24 Ibid s 10(8)(f). No information may be required to be furnished to the Secretary of State under s 10(8)(f) in a way that would enable individual owners or drivers of motor vehicles to be identified: s 10(9). The Secretary of State may make such payments as he may determine in respect of the furnishing of information by virtue of s 10(8)(f): s 10(10).
- 25 Ibid s 10(8)(g).
- 26 Ibid s 10(8)(h).
- 27 Ibid s 10(8)(i).

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**654. Sanctions for operating outside licence area or for breach of licence conditions.**

The Secretary of State<sup>1</sup> may at any time revoke or suspend an operator's licence<sup>2</sup> on the ground that<sup>3</sup> the licence holder's operations have extended beyond the area in which the licence authorised him to operate<sup>4</sup>, or there has been a breach of any condition of the licence<sup>5</sup>.

However, the Secretary of State must not revoke or suspend a licence for breach of a condition unless he is satisfied<sup>6</sup> that owing to: (1) the frequency of the breach of conditions<sup>7</sup>; (2) the intentional nature of the breach<sup>8</sup>; or (3) the danger to the public involved in the breach<sup>9</sup>, the licence should be revoked or suspended<sup>10</sup>. Where the Secretary of State revokes a licence he may, if it appears to him to be expedient to do so, direct that the revocation is a provisional revocation which will not take effect until a future date<sup>11</sup>. Where the Secretary of State gives such a direction he may either make final the revocation or withdraw it<sup>12</sup>. An operator's licence suspended under these provisions is of no effect during the time of suspension<sup>13</sup>.

If a condition attached to an operator's licence is broken, the holder of the licence commits an offence<sup>14</sup>. It is a defence for a person charged with such an offence to prove that he took all reasonable precautions and exercised all due diligence to avoid a breach of that condition<sup>15</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'operator's licence' see PARA 653 ante.

3 Road Traffic (Driver Licensing and Information Systems) Act 1989 s 11(1).

4 Ibid s 11(1)(a).

5 Ibid s 11(1)(b).

6 Ibid s 11(2).

7 Ibid s 11(2)(a).

8 Ibid s 11(2)(b).

9 Ibid s 11(2)(c).

10 Ibid s 11(2).

11 Ibid s 11(3).

12 Ibid s 11(3).

13 Ibid s 11(4).

14 Ibid s 11(5). A person guilty of an offence under s 11(5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 11(7). As to the standard scale see PARA 230 note 3 ante. As to legal proceedings generally see PARA 1023 et seq post.

15 Ibid s 11(6).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/7. DRIVER INFORMATION SYSTEMS/655. Power to install apparatus etc.

### **655. Power to install apparatus etc.**

The holder of an operator's licence<sup>1</sup> has power to do all or any of the following<sup>2</sup>:

- 1283 (1) install system apparatus<sup>3</sup> in, upon, under, over, along or across a public road<sup>4</sup>;
- 1284 (2) inspect, maintain, adjust, repair, alter, renew or remove any system apparatus so installed<sup>5</sup>; and
- 1285 (3) execute any works requisite for or incidental to the purposes of any works falling within head (1) or head (2) above, including for those purposes breaking up or opening a public road, tunnelling or boring under a public road and breaking up or opening a sewer, drain or tunnel<sup>6</sup>.

The powers so conferred<sup>7</sup> are not exercisable by fixing system apparatus to a traffic sign<sup>8</sup>. The powers conferred are not exercisable<sup>9</sup>:

- 1286 (a) by fixing system apparatus to a structure or attachment to a structure belonging to another person or authority<sup>10</sup>; or
- 1287 (b) by making use, for the purpose of installing system apparatus, of an existing cable, duct or installation of any description (whether under ground or not) belonging to another person or authority<sup>11</sup>,

without the written consent of that other person or authority<sup>12</sup>. A local authority<sup>13</sup> has power to give its consent upon such terms, including such terms as to payment, as it thinks appropriate<sup>14</sup>. The powers conferred are to be so exercised as to comply with any regulations made by the Secretary of State relating to the situation or manner of installation of system apparatus of any description<sup>15</sup>.

Subject to any terms or conditions of the licence<sup>16</sup>, the licence holder, if so required by the highway authority<sup>17</sup>: (i) must remove any system apparatus which at the expiry of the licence remains in any land, whether or not vested in the authority, comprised in or lying under a public road, and must restore the land to its condition before the system apparatus was installed there<sup>18</sup>; or (ii) must reimburse the authority the expenses incurred in doing so<sup>19</sup>.

Provision is also made for the application of certain Acts to licence holders<sup>20</sup>, and, in relation to undertakers' works, for notice of proposed works<sup>21</sup>, counter notices<sup>22</sup>, the execution of works<sup>23</sup> and penalties<sup>24</sup>.

1 For the meaning of 'operator's licence' see PARA 653 ante.

2 Road Traffic (Driver Licensing and Information Systems) Act s 12(2) (amended by the New Roads and Street Works Act 1991 s 168(2), Sch 9).

3 For the meaning of 'system apparatus' see PARA 651 note 6 ante.

4 Road Traffic (Driver Licensing and Information Systems) Act 1989 s 12(2)(a). For the meaning of 'public road' see PARA 651 note 12 ante.

5 Ibid s 12(2)(b).

6 Ibid s 12(2)(c). Section 12 (as amended) has effect for the purposes of any operator's licence to which it is applied by the licence, but subject to any exclusions or other modifications specified in the licence: s 12(1). Section 12 (as amended) applies in relation to any land belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall, or belonging to a government department or held in trust for Her Majesty for the purposes of a government department, as it applies in relation to other land: s 12(9).

7 Ie by ibid s 12(2) (as amended): see the text to notes 1-6 supra.

8 Ibid s 12(3). The reference to a traffic sign is a reference to a traffic sign within the meaning of the Road Traffic Regulation Act 1984 s 64(1) (see PARA 830 post): Road Traffic (Driver Licensing and Information Systems) Act 1989 s 12(3).

9 Ibid s 12(4).

10 Ibid s 12(4)(a).

11 Ibid s 12(4)(b).

12 Ibid s 12(4).

13 For these purposes, 'local authority' has the meaning given by the Local Government Act 1972 (see LOCAL GOVERNMENT vol 69 (2009) PARA 23): Road Traffic (Driver Licensing and Information Systems) Act 1989 s 12(8).

14 Ibid s 12(4). Where the consent in question under s 12(4) would be that of any authority prescribed by order made by the Secretary of State, s 12(4) applies only in the circumstances specified in the order or does not apply except in such circumstances, if any, as may be specified in the order: s 12(5). At the date at which this volume states the law no order had been made under s 12(5).

Any power to make orders under Pt II (ss 8-15) (as amended) may be exercised so as to make different provision for different circumstances and different provision for England or for Wales: s 15(1). Any power to make orders under Pt II (as amended) is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 15(2).

As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

15 Ibid s 12(6).

16 As to the requirement to hold a licence to operate a driver information system see PARA 652 ante. For the meaning of 'driver information system' see PARA 651 ante.

17 'Highway authority' has the same meaning as in the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq): Road Traffic (Driver Licensing and Information Systems) Act 1989 s 8(1), (8)(a).

18 Ibid s 12(7)(a).

19 Ibid s 12(7)(b).

20 See ibid s 13(1), Sch 4 (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 82; the New Roads and Street Works Act 1991 s 168(2), Sch 9; and the Communications Act 2003 s 406(1), Sch 17 para 97).

21 See the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 13(2), Sch 5 para 2.

22 See ibid Sch 5 paras 3-5.

23 See ibid Sch 5 para 6.

24 See ibid Sch 5 para 7.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/7. DRIVER INFORMATION SYSTEMS/656. Offences by officers of bodies corporate.

## **656. Offences by officers of bodies corporate.**

Where a body corporate<sup>1</sup> is guilty of an offence under Part II of the Road Traffic (Driver Licensing and Information Systems) Act 1989<sup>2</sup>, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate<sup>3</sup> or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly<sup>4</sup>.



1 As to bodies corporate see COMPANIES vol 14 (2009) PARA 2; CORPORATIONS.

2 le the Road Traffic (Driver Licensing and Information Systems) Act 1989 Pt II (ss 8-15) (as amended): s 14(1).

3 Where the affairs of a body corporate are managed by its members, *ibid* s 14(1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 14(2).

4 *Ibid* s 14(1).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(i) Motor Vehicles/A. REQUIREMENT FOR TEST CERTIFICATE/657. Prohibition of use of vehicles without test certificates.

## **8. TESTING AND TYPE APPROVAL OF VEHICLES**

### **(1) ISSUE OF TEST CERTIFICATES**

#### **(i) Motor Vehicles**

##### ***A. REQUIREMENT FOR TEST CERTIFICATE***

##### **657. Prohibition of use of vehicles without test certificates.**

A person who uses on a road<sup>1</sup> at any time, or causes or permits to be so used, a motor vehicle<sup>2</sup> to which these provisions apply<sup>3</sup>, and as respects which no test certificate<sup>4</sup> has been issued within the appropriate period<sup>5</sup> before that time, is guilty of an offence<sup>6</sup>. This provision does not apply to vehicles of such classes<sup>7</sup> as may be prescribed<sup>8</sup>. The Secretary of State may by regulations exempt<sup>9</sup> the use of vehicles for such purposes as may be prescribed<sup>10</sup>, and in any such area as may be prescribed<sup>11</sup>.

A test certificate issued in respect of a vehicle within the period of one month ending immediately before the date on which the above provisions first apply to the vehicle must be treated for those purposes as if issued at the end of that period<sup>12</sup>. Where within the appropriate period after a test certificate is issued or treated for those purposes as issued, but not earlier than one month before the end of that period, a further test certificate is issued as respects the same vehicle, the further certificate must be treated for those purposes as if issued at the end of the appropriate period<sup>13</sup>. Where the particulars contained in a test certificate in accordance with regulations<sup>14</sup> include a date of expiry falling later, but not more than one month later, than the end of the appropriate period after the date on which it is issued, the certificate is deemed to have been issued in respect of the same vehicle as an earlier test certificate, and the date on which it was issued is deemed to have been a date falling within the last month of the appropriate period after the date on which that earlier certificate was issued or treated for those purposes as issued; and any date of expiry contained in a test certificate is deemed to have been entered in accordance with the specified regulations unless the contrary is proved<sup>15</sup>.

The motor vehicles to which these provisions apply<sup>16</sup> at any time are: (1) those first registered under the Vehicle Excise and Registration Act 1994<sup>17</sup> or any corresponding earlier legislation, not less than three years<sup>18</sup> before that time<sup>19</sup>; and (2) those which, having a date of manufacture<sup>20</sup> not less than three years before that time, have been used on roads (whether in Great Britain<sup>21</sup> or elsewhere) before being so registered<sup>22</sup>, being, in either case, motor vehicles

other than goods vehicles which are required by regulations<sup>23</sup> to be submitted for a goods vehicle test<sup>24</sup>.

1 For the meaning of 'road' see PARA 206 ante.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 See the text and notes 16-23 infra.

4 For the meaning of 'test certificate' see PARA 660 post.

5 In the Road Traffic Act 1988 ss 47, 48 (as amended), the 'appropriate period' means a period of 12 months or such shorter period as may be prescribed: s 47(1). For the meaning of 'prescribed' see PARA 660 note 5 post.

6 Ibid s 47(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding: (1) level 4 on the standard scale, in the case of a vehicle adapted to carry more than eight passengers; and (2) level 3 on the standard scale, in any other case: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. An offence under the Road Traffic Act 1988 s 47 (as amended) is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3 (entry added by the Fixed Penalty Offences Order 2003, SI 2003/1253, art 2(3)(a)). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; as to legal proceedings generally see PARA 1023 et seq post; as to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. The Road Traffic Offenders Act 1988 s 11 (as amended) (evidence by certificate as to driver, user or owner), s 12(1) (proof, in summary proceedings, of identity of driver of vehicle) (see PARAS 1035-1036 post) apply to this offence: s 1(4), Sch 1. The Secretary of State may make payments to police authorities in relation to the prevention, detection and enforcement of offences under the Road Traffic Act 1988 s 47 (as amended): see the Serious Organised Crime and Police Act 2005 s 155.

7 As to the classes of vehicle see PARA 208 ante.

8 Road Traffic Act 1988 s 47(5). See PARA 658 post.

9 Ie exempt from the provisions of ibid s 47(1). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

10 Ibid s 47(6). See PARA 659 post.

11 Ibid s 47(7). See PARA 659 post.

12 Ibid s 48(1A) (added by the Deregulation (Motor Vehicles Tests) Order 1996, SI 1996/1700, art 2(2)).

13 Road Traffic Act 1988 s 48(2).

14 Ie with regulations made under ibid s 45 (as amended) (see PARA 660 post).

15 Ibid s 48(3). The Secretary of State may by regulations make provision for the issue, in such circumstances as may be prescribed, of a certificate of temporary exemption in respect of a public service vehicle adapted to carry more than eight passengers, exempting that vehicle from the provisions of s 47(1) for such period as may be specified in the certificate: s 48(4). For the meaning of 'public service vehicle' see PARA 1136 post; definition applied by s 85 (amended by the Road Traffic Act 1991 s 48, Sch 4). In relation to any public service vehicle so adapted the provisions of the Road Traffic Act 1988 s 48(1A), (2), (3) (s 48(1A) as added) have effect as if for 'one month' (in each place) there were substituted 'two months' (s 48(5)(a) (amended by the Deregulation (Motor Vehicles Tests) Order 1996, SI 1996/1700, art 2(3))); and the Road Traffic Act 1988 s 48(3) has effect as if for 'last month' there were substituted 'last two months' (s 48(5)(b)).

16 Ie subject to ibid s 47(3), (5).

17 See CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 717 et seq.

18 The Secretary of State may by order made by statutory instrument direct that the Road Traffic Act 1988 s 47(2) is to have effect with the substitution for three years (in both places) of such other period (not being more than ten years) as may be specified in the order: s 47(9). An order under s 47(9) does not have effect unless approved by resolution of each House of Parliament: s 47(9). At the date at which this volume states the law no such order had been made.

For the purpose of spreading the work of issuing certificates in contemplation of a change in the length of the appropriate period, or the length of the period specified in s 47(2)(a), (b) (and whether for the purposes of s 47

or s 66 (see PARA 675 post), the order or, as the case may be, regulations changing the length of that period may be made so as to come into operation on different days as respects vehicles first registered under any of the enactments mentioned in s 47(2) at different times: s 48(1).

19 Ibid s 47(2)(a) (s 47(2) amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 24(2)). As respects a vehicle being:

1288 (1) a motor vehicle used for the carriage of passengers and with more than eight seats, excluding the driver's seat; or

1289 (2) a taxi (as defined in the Transport Act 1980 s 64(3) (as amended) (see PARA 1473 note 1 post)), being a vehicle licensed to ply for hire; or

1290 (3) an ambulance, that is to say, a motor vehicle which is constructed or adapted, and primarily used, for the carriage of persons to a place where they will receive, or from a place where they have received, medical or dental treatment, and which, by reason of design, marking or equipment is readily identifiable as a vehicle so constructed or adapted,

head (1) in the text has effect as if for the period of three years there were substituted a period of one year: Road Traffic Act 1988 s 47(3). For the meaning of 'driver' see PARA 207 ante.

20 For the purposes of ibid s 47 (as amended) the date of manufacture of a vehicle must be taken to be the last day of the year during which its final assembly is completed, except where after that day modifications are made to the vehicle before it is sold or supplied by retail, and in that excepted case must be taken to be the last day of the year during which the modifications are completed: s 47(8).

21 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

22 Road Traffic Act 1988 s 47(2)(b) (as amended: see note 19 supra). For the purposes of head (2) in the text there must be disregarded the use of a vehicle before it is sold or supplied by retail (s 47(4)(a) (s 47(4) substituted by the Finance Act 1994 s 5, Sch 2 paras 25, 29)), and the use of a vehicle to which a motor dealer has assigned a mark under the Vehicle Excise and Registration Act 1994 s 24 (see PARA 564 ante) before it is registered by the Secretary of State under s 21(2) (as amended) (see PARA 519 ante) (Road Traffic Act 1988 s 47(4)(b) (as so substituted; and amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 24(2))).

23 le required by regulations under the Road Traffic Act 1988 s 49 (as amended) (see PARA 679 post).

24 Ibid s 47(2) (as amended: see note 19 supra). For the meaning of 'goods vehicle' see PARA 220 ante.

## UPDATE

### **657-667 Prohibition of use of vehicles without test certificates ... Appeal against refusal of test certificate**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(i) Motor Vehicles/A. REQUIREMENT FOR TEST CERTIFICATE/658. Exemptions from requirement of test certificates for specified vehicles.

### **658. Exemptions from requirement of test certificates for specified vehicles.**

The prohibition on use of a motor vehicle without a test certificate<sup>1</sup> does not apply to:

- 154 (1) a heavy locomotive, a light locomotive and a motor tractor<sup>2</sup>;
- 155 (2) a track laying vehicle<sup>3</sup>;
- 156 (3) a goods vehicle the design gross weight of which exceeds 3,500 kilograms<sup>4</sup>;
- 157 (4) an articulated vehicle not being an articulated bus<sup>5</sup>;
- 158 (5) a vehicle being used on public roads only between parts of the keeper's land<sup>6</sup>;
- 159 (6) a works truck<sup>7</sup>;
- 160 (7) a pedestrian controlled vehicle<sup>8</sup>;
- 161 (8) a vehicle, including a cycle with an attachment for propelling it by mechanical power, not exceeding 306 kilograms in unladen weight which is adapted, and used or kept on a road, for invalids<sup>9</sup>, and such a vehicle exceeding 306 kilograms but not exceeding 510 kilograms in unladen weight which is supplied and maintained by or on behalf of the Department of Health, the Scottish Office or the Welsh Office<sup>10</sup>;
- 162 (9) any of certain vehicles temporarily in Great Britain<sup>11</sup>;
- 163 (10) a vehicle proceeding to a port for export<sup>12</sup>;
- 164 (11) a vehicle in the service of a visiting force or headquarters<sup>13</sup>;
- 165 (12) a vehicle provided for police purposes<sup>14</sup>;
- 166 (13) a vehicle provided for the purposes of the Serious Organised Crime Agency<sup>15</sup>;
- 167 (14) any of certain vehicles imported into Great Britain for military purposes<sup>16</sup>;
- 168 (15) a vehicle currently licensed or tested in Northern Ireland<sup>17</sup>;
- 169 (16) an electrically propelled goods vehicle the design gross weight of which does not exceed 3,500 kilograms<sup>18</sup>;
- 170 (17) any of certain hackney carriages or cabs<sup>19</sup>;
- 171 (18) a private hire car<sup>20</sup> licensed by a local authority<sup>21</sup>;
- 172 (19) an agricultural motor vehicle<sup>22</sup>;
- 173 (20) certain street cleaning and refuse collection vehicles<sup>23</sup>;
- 174 (21) a goods vehicle the design gross weight of which does not exceed 3,500 kilograms in respect of which a goods vehicle test certificate was issued between 1 February 1990 and 17 March 1991, while that certificate is valid<sup>24</sup>;
- 175 (22) a tramcar<sup>25</sup>; and
- 176 (23) a trolley vehicle which is not an auxiliary trolley vehicle<sup>26</sup>.

The Secretary of State<sup>27</sup> may by regulations provide for the issue in prescribed circumstances of a certificate of temporary exemption in respect of a public service vehicle<sup>28</sup> adapted to carry more than eight passengers, exempting the vehicle from this prohibition for a specified period<sup>29</sup>.

1     le the prohibition contained in the Road Traffic Act 1988 s 47 (as amended): see PARA 657 ante. For the meaning of 'motor vehicle' see PARA 210 ante. For the meaning of 'test certificate' see PARA 660 post.

2     Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(1)(i)-(iii). For the meanings of 'heavy locomotive', 'light locomotive' and 'motor tractor' see PARAS 216-217 ante.

3     Ibid reg 6(1)(iv). For the meaning of 'track laying' see PARA 267 note 3 ante; definition applied by reg 3(1) (amended by SI 1998/1672).

4     Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(1)(v) (amended by SI 1991/253). For these purposes, 'goods vehicle' means a motor vehicle constructed or adapted for use for the carriage of goods or burden of any description including a living van but excluding a dual-purpose vehicle (as defined in PARA 271 note 28 ante), a motor caravan and a play bus: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 3(1) (definition amended by SI 1983/1434). 'Living van' means a vehicle (whether mechanically propelled or not) used as living accommodation by one or more persons and also used for the carriage of goods or burden not needed by those persons for their residence in the vehicle; 'motor caravan' means a motor vehicle (not being a living van) constructed or adapted for the carriage of passengers and their effects and containing, as permanently installed equipment, the facilities reasonably necessary to enable the vehicle to provide mobile

living accommodation for its users; and 'play bus' means a motor vehicle which was originally constructed to carry more than 12 passengers but which has been adapted primarily for the carriage of playthings for children (including articles required in connection with the use of those things): Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 3(1) (amended by SI 1982/1477).

'Design gross weight' means: (1) in the case of a vehicle equipped with a Ministry plate, the weight shown thereon as the design weight, or, if no weight is so shown thereon, the weight shown thereon as the weight not to be exceeded in Great Britain; (2) in the case of a vehicle which is not equipped with a Ministry plate, but which is equipped with a plate in accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 66 (as amended) (see PARA 364 ante), the maximum gross weight shown on the plate in respect of Sch 8 Pt I item 7; and (3) in any other case, the weight which the vehicle is designed or adapted not to exceed when in normal use and travelling on a road laden: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 3(1) (definition added by SI 1991/253). For the meaning of 'Great Britain' see PARA 205 note 3 ante.

5 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(1)(vi). For the meanings of 'articulated vehicle' and 'articulated bus' see PARA 271 note 6 ante; definitions applied by reg 3(1) (amended by SI 1998/1672).

6 See the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(1)(vii) (substituted by SI 1995/1457).

7 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(1)(viii). For the meaning of 'works truck' see PARA 278 note 18 ante; definition applied by reg 3(1) (amended by SI 1998/1672).

8 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(1)(ix). For the meaning of 'pedestrian controlled vehicle' see PARA 290 note 8 ante; definition applied by reg 3(1) (amended by SI 1998/1672).

9 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(1)(x)(i).

10 Ibid reg 6(1)(x)(ii).

11 Ibid reg 6(1)(xi), which refers to a vehicle, temporarily in Great Britain, displaying a registration mark mentioned in what is now the Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 5 (see PARA 578 ante), a period of 12 months not having elapsed since the vehicle was last brought into Great Britain.

12 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(1)(xii).

13 Ibid reg 6(1)(xiii). For the meaning of 'vehicle in the service of a visiting force or headquarters' see PARA 268 note 11 ante; definition applied by reg 6(1)(xiii).

14 Ibid reg 6(1)(xiv). Such a vehicle must be maintained in a workshop approved by the Secretary of State, and be a vehicle provided by a police authority or the Receiver for the Metropolitan Police District: reg 6(1)(xiv). As to police authorities generally see POLICE vol 36(1) (2007 Reissue) PARA 139 et seq.

15 Ibid reg 6(1)(xivA) (added by SI 2006/594). As to the Serious Organised Crime Agency see POLICE vol 36(1) (2007 Reissue) PARA 430 et seq.

16 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(1)(xv), which refers to vehicles to which what is now the Road Traffic Act 1988 s 47(2)(b) (see PARA 657 ante) applies, which are owned by or in the service of the naval, military or air forces of Her Majesty raised in the United Kingdom and used for naval, military or air force purposes.

17 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(1)(xvi).

18 Ibid reg 6(1)(xvii) (amended by SI 1991/253).

19 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(1)(xviii), which is expressed to be subject to reg 6(4) (see note 21 infra), and which refers to a hackney carriage or cab in respect of which there is in force a licence to ply for hire under the Metropolitan Public Carriage Act 1869 or the Town Police Clauses Act 1847 or any similar local statutory provision.

20 'Private hire car' means a motor vehicle which is not a vehicle licensed to ply for hire under the statutory or local statutory provisions applicable to hackney carriages (see note 18 supra) but which is kept for the purpose of being let out for hire with a driver for the carrying of passengers in such circumstance that it does not require to be licensed to ply for hire under those provisions: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(5).

21 Ibid reg 6(1)(xix) (amended by SI 2003/1113). These exemptions for hackney carriages and private hire cars do not obtain unless: (1) the authority which issued the licence ('the licensing authority') holds a certificate issued by the Secretary of State evidencing that he is satisfied that the issue of the licence is subject to the vehicle first passing an annual test relating to the prescribed statutory requirements (defined in PARA 660 post); and (2) where a hackney carriage or cab was first used more than one year before the licence was issued or a private hire car was first used more than three years before the licence was issued, the licensing authority also issued to the licensee a certificate recording that on the date on which the certificate was issued that authority was, as a result of a test, satisfied that the prescribed statutory requirements were satisfied: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(4) (amended by SI 2003/1113). 'Test' means an examination of a vehicle in relation to the prescribed statutory requirements conducted by a person appointed to act as an inspector under what is now the Road Traffic Act 1988 s 45 (see PARA 660 post), or acting on behalf of a person so authorised, or by a person on behalf of a police authority: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(5) (definition amended by SI 1983/1434).

22 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(1)(xx) (added by SI 1985/45). For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante; definition applied by reg 3(1) (amended by SI 1985/45; SI 1998/1672).

23 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(1)(xxi) (added by SI 1991/253), which refers to a motor vehicle constructed and not merely adapted for the purpose of street cleansing or the collection or disposal of refuse or the collection or disposal of the contents of gullies and which is either: (1) a three-wheeled vehicle; or (2) a vehicle which: (a) is incapable by reason of its construction of exceeding a speed of 20 mph on the level under its own power; or (b) has an inside track width of less than 810 mm.

24 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(1)(xxii) (added by SI 1991/253).

25 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(1)(xxiv) (added by SI 1992/1217). The Road Traffic Act 1988 s 68 (as substituted; prospectively amended) (see PARA 686 post), s 69 (as substituted; prospectively amended) (see PARA 688 post), s 69A (as added and amended) (see PARA 689 post), s 70 (as amended) (see PARA 690 post), s 71 (as substituted) (see PARA 691 post), s 72 (as substituted; prospectively amended) (see PARA 692 post), s 72A (as added) (see PARA 692 post), s 73 (as substituted; prospectively amended) (see PARA 688 post), s 75 (as amended) (see PARA 694 post), s 76 (as amended) (see PARA 695 post), s 77 (see PARA 696 post), s 78 (see PARA 697 post), s 79 (as amended) (see PARA 697 post) do not apply to tramcars and ss 77-79 (s 79 as amended) do not apply to trolley vehicles: Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, regs 7, 9. The Road Traffic Act 1988 s 68 (as substituted; prospectively amended) applies with modifications to trolley vehicles: Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 10. For the meanings of 'tramcar' and 'trolley vehicle' see PARA 219 ante. As to tramcars and trolley vehicles see PARA 1532 et seq post.

26 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(1)(xxv) (added by SI 1992/1217). 'Auxiliary trolley vehicle' means a trolley vehicle which is adapted to operate under power provided from a source on board when it is not operating from power transmitted to it from some external source: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(5) (definition added by SI 1992/1217).

27 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

28 For the meaning of 'public service vehicle' see PARA 1136 post; definition applied by the Road Traffic Act 1988 s 85 (amended by the Road Traffic Act 1991 s 48, Sch 4).

29 Road Traffic Act 1988 s 48(4), (5).

## UPDATE

### **657-667 Prohibition of use of vehicles without test certificates ... Appeal against refusal of test certificate**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(i) Motor Vehicles/A. REQUIREMENT FOR TEST CERTIFICATE/659. Exemption from vehicle tests for certain purposes or in certain areas.

### **659. Exemption from vehicle tests for certain purposes or in certain areas.**

The prohibition on using or causing or permitting the use on a road of certain motor vehicles in respect of which no test certificate is in force<sup>1</sup> does not apply to the use of a vehicle:

- 177 (1) for the purpose of submitting it by previous arrangement for, or bringing it away from, an examination<sup>2</sup>;
- 178 (2) in the course of an examination, for the purpose of taking it to, or bringing it away from, any place where part of the examination is to be or has been carried out, or of carrying out any part of the examination, where the person using it is either an examiner<sup>3</sup>, a ministry inspector<sup>4</sup> or an inspector appointed by a designated council<sup>5</sup>, or is a person acting under the personal direction of such an examiner, inspector or council<sup>6</sup>;
- 179 (3) where a test certificate is refused on an examination, for the purpose of delivering it by previous arrangement at, or bringing it away from, a place where work is to be or has been done on it to remedy the defects<sup>7</sup> or for the purpose of delivering it, by towing it, to a place where it is to be broken up<sup>8</sup>;
- 180 (4) for any purpose for which the vehicle is authorised to be used on roads by an order<sup>9</sup> in respect of a special vehicle not complying with construction and use regulations<sup>10</sup>;
- 181 (5) where the vehicle has been imported into Great Britain, for the purpose of driving it from its point of arrival to a place of residence of the owner or driver<sup>11</sup>;
- 182 (6) where the vehicle has been abandoned or illegally, obstructively or dangerously parked<sup>12</sup>;
- 183 (7) where the vehicle has been detained or seized by a police constable, for police purposes connected with the detention or seizure<sup>13</sup>;
- 184 (8) where the vehicle has been removed, detained, seized or condemned as forfeited under customs and excise legislation, for any purpose authorised by an officer of revenue and customs<sup>14</sup>;
- 185 (9) for the purpose of testing the vehicle by a motor trader<sup>15</sup> to whom a trade licence<sup>16</sup> has been issued, during the course of or after completion of repairs carried out to it by him<sup>17</sup>;
- 186 (10) on any island in any area mainly surrounded by water, being an island or area from which motor vehicles cannot conveniently be driven to a road in any other part of Great Britain because there is no bridge, tunnel, ford or other way suitable for the passage of the vehicle<sup>18</sup>;
- 187 (11) where, in relation to a public service vehicle, in cases of accident, fire, epidemic, severe weather, failure in the supply of essential services or other unexpected happening, a certificate of temporary exemption has been granted<sup>19</sup>.

1 As to this prohibition see PARA 657 ante.

2 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(2)(a)(i). Regulation 6(2) has effect under the Road Traffic Act 1988 s 47(6): see PARA 657 text and note 10 ante. 'Examination' means an examination of a motor vehicle for the purposes of the Road Traffic Act 1988 s 45 (as amended) (see PARA 660 post): Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 3(1) (definition substituted by SI 2003/1113). For the form of declaration required where an applicant has no intention to use the vehicle apart from for a purpose or in an area which is exempt pursuant to the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(2) or (3) see the Motor Vehicles (Evidence of Test Certificates) Regulations 2004, SI 2004/1896.

3 'Examiner' means an individual, persons in partnership or a company authorised by the Secretary of State under *ibid* reg 8 (see PARA 663 post) to carry out examinations: reg 3(1). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 'Ministry inspector' means any certifying officer, public service vehicle examiner and goods vehicle examiner: *ibid* reg 3(1).

5 'Designated council' means a council designated by the Secretary of State for the purposes of the Road Traffic Act 1988 s 45 (as amended) (tests of satisfactory condition of vehicles) and s 46 (as substituted and amended) (particular aspects of regulations under s 45): Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 3(1) (definition substituted by SI 2003/1113). As to applications for designation see PARA 663 post. See further PARA 246 ante; and LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq; LONDON GOVERNMENT.

6 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(2)(a)(ii).

7 *Ibid* reg 6(2)(a)(iii)(A).

8 *Ibid* reg 6(2)(a)(iii)(B).

9 *Ie* an order under what is now the Road Traffic Act 1988 s 44 (as amended): see PARA 376 ante.

10 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(2)(b).

11 *Ibid* reg 6(2)(c). For the meanings of 'owner' and 'driver' see PARA 207 ante. For the meaning of 'Great Britain' see PARA 205 note 3 ante.

12 See *ibid* reg 6(2)(d), which refers to the removal of a vehicle in pursuance of the Refuse Disposal (Amenity) Act 1978 s 3 (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 743), or regulations under what is now the Road Traffic Regulation Act 1984 s 99 (as amended) (see PARA 870 post), or an order under what is now the Road Traffic Regulation Act 1984 s 35(1) (as amended) (see PARA 790 post), or an order relating to a parking place designated under s 45 (as amended) (see PARA 808 post), or a provision of a designation order having effect by virtue of s 53(3) (see PARA 817 post).

13 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(2)(e). As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

14 *Ibid* reg 6(2)(f) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2), (7)). As to customs and excise legislation see generally CUSTOMS AND EXCISE.

15 For the meaning of 'motor trader' see PARA 552 note 10 ante.

16 For the meaning of 'trade licence' see PARA 521 note 3 ante.

17 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(2)(g).

18 *Ibid* reg 6(3). This does not apply to the Isle of Wight or certain of the larger islands off Scotland: see reg 6(3) proviso (amended by SI 1991/253; SI 1998/1672). The Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 6(3) (as amended) has effect under the Road Traffic Act 1988 s 47(7): see PARA 657 text and note 11 ante.

19 See the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 28 (added by SI 1982/1715). Such a certificate may not be valid for more than three months: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 28(4) (as so added; amended by SI 1983/1434).

## UPDATE

### **657-667 Prohibition of use of vehicles without test certificates ... Appeal against refusal of test certificate**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.



Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(i) Motor Vehicles/B. CONDUCT OF TEST AND ISSUE OF TEST CERTIFICATE/660. Tests of satisfactory condition of vehicles.

## ***B. CONDUCT OF TEST AND ISSUE OF TEST CERTIFICATE***

### **660. Tests of satisfactory condition of vehicles.**

The following provisions apply to motor vehicles<sup>1</sup> other than goods vehicles<sup>2</sup> which are required by regulations<sup>3</sup> to be submitted for a vehicle test and have effect for the purpose of ascertaining whether the following requirements are complied with<sup>4</sup>, namely, the prescribed<sup>5</sup> statutory requirements<sup>6</sup> relating to the construction and condition of motor vehicles or their accessories or equipment<sup>7</sup> and the requirement that the condition of motor vehicles should not be such that their use on a road<sup>8</sup> would involve a danger of injury to any person<sup>9</sup>. The Secretary of State may by regulations make provision for the examination of vehicles submitted for examination under this provision<sup>10</sup>, and for the issue, where it is found on such an examination that the requirements mentioned above are complied with, of a test certificate that at the date of the examination the requirements were complied with in relation to the vehicle<sup>11</sup>. Examinations for these purposes must be carried out by:

- 188 (1) persons, not being officers of the Secretary of State, authorised for those purposes by the Secretary of State ('authorised examiners')<sup>12</sup>;
- 189 (2) nominated testers<sup>13</sup>;
- 190 (3) as from a day to be appointed, any authorised inspector or approved assistant<sup>14</sup>;
- 191 (4) vehicle examiners<sup>15</sup>; or
- 192 (5) inspectors appointed by any council designated for these purposes<sup>16</sup>, being the council of a county, district or London borough or the Common Council of the City of London, and approved by the Secretary of State<sup>17</sup>.

Where a test certificate is refused, the person carrying out the examination must issue a notification of the refusal stating the grounds of the refusal, and a person aggrieved by the refusal or the grounds of the refusal may appeal to the Secretary of State<sup>18</sup>. On any such appeal the Secretary of State must cause a further examination to be made and either issue a test certificate or issue a notification of the refusal stating the grounds of the refusal<sup>19</sup>. For the purposes of their functions under these provisions the Secretary of State or a council designated for these purposes may provide and maintain stations where such examinations may be carried out, and apparatus for carrying out such examinations<sup>20</sup>.

The Secretary of State may provide, or make arrangements for the provision of, courses of instruction in connection with the carrying out of examinations under these provisions, and may charge prescribed fees in respect of attendance on such courses<sup>21</sup>. The Secretary of State must maintain, or cause to be maintained, records containing such particulars as he thinks fit of vehicles submitted for examination under these provisions, and the carrying out of and the results of the examinations<sup>22</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'goods vehicle' see PARA 220 ante.

3 le under the Road Traffic Act 1988 s 49: see PARA 679 post.

4 Ibid s 45(1) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 52(2)).

5 'Prescribed' means prescribed by regulations made by the Secretary of State: Road Traffic Act 1988 s 85. As from a day to be appointed, this provision is renumbered as s 85(1) by virtue of the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 Pt I. At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 In its application to vehicles in which recording equipment is required by the Community Recording Equipment Regulation art 3 to be installed and used, the Road Traffic Act 1988 s 45 (as amended) has effect as if any reference to prescribed statutory requirements relating to the construction and condition of motor vehicles or their accessories or equipment included a reference to the prescribed requirements of so much of the Community Recording Equipment Regulation as relates to the installation of recording equipment and the seals to be fixed to such equipment: Road Traffic Act 1988 s 45(8). 'The Community Recording Equipment Regulation' means EC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) on recording equipment in road transport (as amended) as it has effect in accordance with EEC Commission Regulation 3314/90 (OJ L318, 17.11.90, p 20); EEC Commission Regulation 3688/92 (OJ L374, 22.12.92, p 12); EC Commission Regulation 2479/95 (OJ L256, 26.10.95, p 8); EC Commission Regulation 1056/97 (OJ L154, 12.6.1997, p 21); EC Council Regulation 2135/98 (OJ L274, 9.10.1998, p 1); EC Commission Regulation 1360/2002 (OJ L207, 5.8.2002, p 1); the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ L236, 23.9.2003, p 33); European Parliament and Council Regulation 1882/2003 (OJ L284, 31.10.2003, p 1); EC Commission Regulation 432/2004 (OJ L71, 10.3.2004, p 3); and European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) (see PARAS 1384-1387 post); Road Traffic Act 1988 s 85 (definition substituted by the Passenger and Goods Vehicles (Community Recording Equipment Regulation) Regulations 2006, SI 2006/3276, reg 2(1), (2)(d)).

The prescribed statutory requirements are those specified in relation to the various classes of vehicle to which the regulations apply (see PARA 661 post), set out in the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 4, Sch 2 (reg 4 amended by SI 1991/253; SI 1991/2229; SI 1998/1672; and the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, Sch 2 substituted by SI 1991/2229; and amended by SI 1992/3160; SI 1998/1672; SI 2002/488; SI 2003/1698; SI 2007/506).

7 Road Traffic Act 1988 s 45(1)(a) (as amended: see note 4 supra).

8 For the meaning of 'road' see PARA 206 ante.

9 Road Traffic Act 1988 s 45(1)(b) (as amended: see note 4 supra).

10 Ibid s 45(2)(a). As to the contents of such regulations see PARA 662 post.

11 Ibid s 45(2)(b). As to the forgery of test certificates see s 173 (as amended); and PARA 1012 post. If a person issues a test certificate which is to his knowledge false in a material particular he is guilty of an offence: s 175. As from a day to be appointed, this provision is substituted, and renumbered as s 175(1), by the Transport Act 1982 s 24(1), but without affecting the nature of this offence. At the date at which this volume states the law no such day had been appointed. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry prospectively amended by Transport Act 1982 s 24(3)). As to the standard scale see PARA 230 note 3 ante. See *R v Evans (Stanley)* [1964] 3 All ER 666, [1964] 1 WLR 1388, CCA; *Murphy v Griffiths* [1967] 1 All ER 424, [1967] 1 WLR 333, DC, where a wrong date of issue rendered a certificate false in a material particular. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

12 Road Traffic Act 1988 s 45(3)(a). As to the authorisation procedure of examiners see PARA 663 post. Any person who, with intent to deceive, falsely represents himself to be a person entitled under s 45 (as amended) to carry out examinations of vehicles under that provision is guilty of an offence: s 177 (substituted by the Road Traffic (Vehicle Testing) Act 1999 s 9(2)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I.

13 Road Traffic Act 1988 s 45(3)(za) (added by the Road Traffic (Vehicle Testing) Act 1999 s 1(1)(a)). 'Nominated tester' means an individual nominated by and acting under the supervision of an authorised examiner, and approved by the Secretary of State: Road Traffic Act 1988 s 45(3)(za) (as so added).

14 Ibid s 45(3)(aa). This provision is added, as from a day to be appointed, by the Transport Act 1982 s 10(2) (a) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 Pt I para 4); and amended by

the Road Traffic (Vehicle Testing) Act 1999 s 7, Schedule para 2(a). At the date at which this volume states the law no such day had been appointed. References in any provision of the Road Traffic Act 1988 Pt II (ss 40A-86) (as amended) to an authorised inspector are references to a person authorised by the Secretary of State under the Transport Act 1982 s 8 (as amended) (see PARA 699 post) to exercise the function to which that provision relates: Road Traffic Act 1988 s 85(2). This provision is added, as from a day to be appointed, by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 Pt I. At the date at which this volume states the law no such day had been appointed.

15 le examiners appointed under the Road Traffic Act 1988 s 66A (as added) (see PARA 698 post): s 45(3)(b) (substituted by the Road Traffic Act 1991 s 48, Sch 4 para 52(3)).

16 le including for the purposes of the Road Traffic Act 1988 s 46 (as amended) (see PARA 662 post).

17 Ibid s 45(3)(c) (substituted by the Road Traffic (Vehicle Testing) Act 1999 s 1(1)(b)). As to applications for designation see PARA 663 post. See further PARA 246 ante; and LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq; LONDON GOVERNMENT.

18 Road Traffic Act 1988 s 45(4) (amended by the Road Traffic (Vehicle Testing) Act 1999 s 1(2)). See further PARA 667 post. As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARAS 656, 664.

19 Road Traffic Act 1988 s 45(5). As from a day to be appointed, this provision is amended by the Transport Act 1982 s 21(1) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 Pt I para 10) so as to add a requirement that the further examination be made by an officer of the Secretary of State appointed by him for the purpose. At the date at which this volume states the law no such day had been appointed.

20 Road Traffic Act 1988 s 45(6).

As from a day to be appointed, and without prejudice to any existing power of the Secretary of State to determine the premises at which examinations may be carried out, the Secretary of State may designate premises as stations where examinations of vehicles of any description subject to examination may be carried out; regulations under s 45 (as amended) may require or authorise examinations of vehicles of any description specified in the regulations to be carried out at premises for the time being so designated: Transport Act 1982 s 10(12) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 Pt I para 4). As to the requirement for the Secretary of State to consult before taking decisions relating to the designation of testing stations under the Transport Act 1982 see s 15(1), (2)(f), (5). At the date at which this volume states the law no such day had been appointed.

21 Road Traffic Act 1988 s 45(6A) (s 45(6A), (6B) added by the Road Traffic (Vehicle Testing) Act 1999 s 1(3)). Any sum received by the Secretary of State in pursuance of this provision must be paid into the Consolidated Fund: Road Traffic Act 1988 s 84(4). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

22 Ibid s 45(6B) (as added: see note 21 supra). See further PARA 674 post.

## UPDATE

### **657-667 Prohibition of use of vehicles without test certificates ... Appeal against refusal of test certificate**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **660 Tests of satisfactory condition of vehicles**

NOTE 6--SI 1981/1694 Sch 2 further amended: SI 2009/643. 'The Community Recording Equipment Regulation' now means EEC Council Regulation 3821/85 on recording equipment in road transport as read with the Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819: Road Traffic Act 1988 s 85(1) (definition substituted by SI 2010/892).

NOTE 21--See the Department for Transport (Fees) Order 2009, SI 2009/711 (amended by SI 2009/1885), which specifies for the purposes of the Finance (No 2) Act 1987 s 102(3) the functions to be taken into account in the determination of the fees to be fixed by the Secretary of State.

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### **661. Classification of vehicles for purposes of vehicle testing.**

For the purposes of examinations<sup>1</sup>, vehicles are divided into the following classes<sup>2</sup>:

- 193 (1) Class I: light motor bicycles<sup>3</sup>;
- 194 (2) Class II: motor bicycles<sup>4</sup>;
- 195 (3) Class III: light motor vehicles<sup>5</sup> other than motor bicycles<sup>6</sup>;
- 196 (4) Class IV: motor cars and heavy motor cars<sup>7</sup> not being vehicles falling within Classes III, IVA, V, VA, VI, VIA or VII<sup>8</sup>;
- 197 (5) Class IVA: minibuses<sup>9</sup>, not being vehicles within Classes III, V, VA, VI or VIA, in respect of which any forward-facing seat is fitted with a relevant seat belt<sup>10</sup>;
- 198 (6) Class V: motor vehicles not being vehicles within Class VA which are: (a) large passenger-carrying vehicles<sup>11</sup>; (b) public service vehicles of a specified type<sup>12</sup> which are constructed or adapted to carry more than 12 seated passengers; and (c) play buses<sup>13</sup>;
- 199 (7) Class VA: other motor vehicles<sup>14</sup> which are: (a) large passenger-carrying vehicles; (b) public service vehicles of a specified type<sup>15</sup> which are constructed or adapted to carry more than 12 seated passengers; and (c) play buses, in respect of which any forward-facing seat is fitted with a relevant seat belt<sup>16</sup>;
- 200 (8) Class VI: public service vehicles, other than those of a specified type<sup>17</sup>, not being vehicles within Class VIA<sup>18</sup>;
- 201 (9) Class VIA: other public service vehicles<sup>19</sup>, other than those of a specified type<sup>20</sup>, in respect of which any forward-facing seat<sup>21</sup> is fitted with a relevant seat belt<sup>22</sup>;
- 202 (10) Class VII: goods vehicles of which the design gross weight<sup>23</sup> is more than 3,000 kilograms but does not exceed 3,500 kilograms<sup>24</sup>.

1 For the meaning of 'examination' see PARA 659 note 2 ante.

2 The classes are set out in the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 5(1) (as amended). Save as excepted by reg 6 (as amended) (see PARAS 658-659 ante), the regulations apply to every vehicle falling within these classes: reg 5(2).

3 Ibid reg 5(1). 'Light motor bicycle' means a motor bicycle of which the engine cylinder capacity does not exceed 200 cc; and 'motor bicycle' means a two-wheeled motor cycle (see PARA 639 note 5 ante), whether with or without a sidecar: reg 3(1).

4 Ibid reg 5(1) (entry substituted by SI 1982/814).

5 'Light motor vehicle' means a motor vehicle with three wheels the unladen weight of which does not exceed 450 kg: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 3(1) (definition amended by SI 1991/1525).

6 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 5(1) (entry substituted by SI 1982/814).

7 For the meaning of 'motor car' see PARA 212 ante; and for the meaning of 'heavy motor car' see PARA 213 ante.

8 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 5(1) (entry substituted by SI 1998/1672).

9 In minibuses other than vehicles to which the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 5(4) (as amended) applies. For the meaning of 'minibus' see PARA 317 note 2 ante; definition applied by reg 3(1) (amended by SI 1998/1672).

The Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 5(4) applies to vehicles, in respect of which: (1) a certificate of initial fitness has been issued on or after 1 August 1998; or (2) one or more forward-facing seats are fitted with a relevant seat belt, which, when so equipped, are of a type of vehicle in respect of which the Secretary of State is satisfied that the vehicle manufacturer holds: (a) an approval issued by or on behalf of the approval authority of an EEA state confirming compliance with the installation requirements of Community Directives 77/541 (OJ L220, 29.8.77, p 95), 82/319 (OJ L139, 19.5.82, p 17), 90/628 (OJ L341, 6.12.90, p 1) or 96/36 (OJ L178, 17.7.96, p 15); and (b) either: (i) an approval issued by or on behalf of the approval authority of an EEA state confirming compliance with the technical and installation requirements of Community Directives 76/115 (OJ L024, 30.1.76, p 6), 81/575 (OJ L209, 29.7.81, p 30), 82/318 (OJ L139, 19.5.82, p 9), 90/629 (OJ L341, 6.12.90, p 14) or 96/38 (OJ L187, 26.7.96, p 95); or (ii) an approval issued by or on behalf of the competent authority of a contracting state confirming compliance with the technical and installation requirements of ECE Regulation 14, 14.02 or 14.03: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 5(4) (added by SI 1998/1672). 'Approval authority' has the same meaning as in Community Directive 70/156 (OJ L42, 23.2.70, p 1); 'contracting state' means a state which is a party to the International Agreement; 'the International Agreement' means the Agreement concerning the adoption of uniform conditions of approval for motor vehicle equipment and parts and reciprocal recognition thereof concluded at Geneva on 20 March 1958 (Geneva, 20 March 1958; TS7 (1965); Cmnd 2535) (as amended) to which the United Kingdom is a party; 'EEA state' means a state which is a contracting party to the EEA Agreement; 'EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (Oporto, 2 May 1992; EC 7 (1992); Cm 2073) as adjusted by the Protocol signed at Brussels on 17 March 1993 (Brussels, 17 March 1993; EC 2 (1993); Cmnd 2183): Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 5(5) (added by SI 1998/1672). As to the meaning of 'the ECE Regulation' see PARA 270 note 2 ante; and as to the meaning of 'Community Directive' see PARA 270 note 1 ante. For the meaning of 'certificate of initial fitness' see PARA 1141 post; definition applied by the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 5(5) (as so added). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

10 Ibid reg 5(1) (entry substituted by SI 1998/1672). 'Relevant seat belt' means a seat belt, not being a disabled person's belt or a child restraint, which: (1) is fitted other than as required by the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47 (as amended) (see PARA 335 ante); and (2) on or after 1 August 1998 either: (a) has not undergone an examination and been found to comply with the applicable prescribed statutory requirements; or (b) has undergone an examination and been found so to comply but is fitted in a vehicle in respect of which no test certificate has been issued to the effect that that is the case: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 5(5) (as added: see note 9 supra). 'Seat belt', 'child restraint' and 'disabled person's belt' have the meanings assigned by the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(8) (see PARAS 627 notes 6, 8, 628 note 20 ante): Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 3(1) (amended by SI 1998/1672). For the meaning of 'test certificate' see PARA 660 ante.

11 'Large passenger-carrying vehicle' means a motor vehicle which is constructed or adapted to carry more than 12 seated passengers in addition to the driver and which is not a public service vehicle: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 3(1). For the meaning of 'public service vehicle' see PARA 1136 post; definition applied by the Road Traffic Act 1988 s 85 (amended by the Road Traffic Act 1991 s 48, Sch 4).

12 The public service vehicles so specified are public service vehicles which may lawfully be used on a road in the absence of a certificate of initial fitness by virtue of: (1) the Transport Act 1985 s 23(7) (as amended) (bus being used to provide a community bus service) (see PARA 1186 post); (2) the Public Passenger Vehicles Act 1981 s 46 (as amended) (school bus belonging to a local education authority and being used to provide free school transport and carrying as fare-paying passengers persons other than those for whom the free school transport is provided, and a school bus being used, when it is not being used to provide free school transport, to provide a local bus service) (see PARA 1176 post); or (3) the Transport Act 1985 s 21(2) (small bus used under a permit granted under s 19) (see PARA 1183 post): Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 5(3) (amended by SI 1984/1162; SI 1988/1894; SI 1998/1672).

13 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 5(1) (entry substituted by SI 1998/1672). For the meaning of 'play bus' see PARA 658 note 4 ante.

14 In other than vehicles to which the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 5(4) (as added) applies: see note 9 supra.

- 15 le specified in ibid reg 5(3) (as amended): see note 12 supra.
- 16 Ibid reg 5(1) (entry substituted by SI 1998/1672).
- 17 le specified in the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 5(3) (as amended): see note 12 supra.
- 18 Ibid reg 5(1) (entry substituted by SI 1998/1672).
- 19 le other than vehicles to which the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 5(4) (as added) applies: see note 9 supra.
- 20 le specified in ibid reg 5(3) (as amended): see note 12 supra.
- 21 'Forward-facing seat' has the meaning assigned by the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 47(8) (see PARAS 627 notes 6, 8, 628 note 20 ante): Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 3(1) (definition amended by SI 1998/1672).
- 22 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 5(1) (entry substituted by SI 1998/1672).
- 23 For the meaning of 'design gross weight' see PARA 658 note 4 ante.
- 24 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 5(1) (entry added by SI 1991/253).

## UPDATE

### **657-667 Prohibition of use of vehicles without test certificates ... Appeal against refusal of test certificate**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **661 Classification of vehicles for purposes of vehicle testing**

NOTE 9--Directives 76/115, 77/541 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(i) Motor Vehicles/B. CONDUCT OF TEST AND ISSUE OF TEST CERTIFICATE/662. Content of regulations as to vehicle testing.

### **662. Content of regulations as to vehicle testing.**

The Secretary of State<sup>1</sup> may make regulations for the purpose of giving effect to the statutory provisions as to vehicle testing<sup>2</sup>, and for prescribing anything authorised by those provisions<sup>3</sup> to be prescribed<sup>4</sup>.

Such regulations may in particular make provision as to:

- 203 (1) the authorisation of examiners, the nomination and approval of nominated  
testers, the appointment and approval of inspectors and the designation of  
councils<sup>5</sup>;
- 204 (2) the imposition of conditions to be complied with by the persons referred to in  
head (1) above<sup>6</sup>;
- 205 (3) the circumstances in which a person ceases to be an authorised examiner, a  
nominated tester or an inspector or in which a council ceases to be designated<sup>7</sup>;
- 206 (4) the manner in which, conditions under which and apparatus with which  
examinations are carried out, the maintenance of that apparatus in an efficient  
state, and the inspection of premises at which and apparatus with which  
examinations are being, or are to be, carried out<sup>8</sup>;
- 207 (5) the supervision of examinations and of the premises at which examinations  
are carried out<sup>9</sup>;
- 208 (6) the manner in which applications may be made for the examination of  
vehicles, the manner in which and time within which appeals may be brought  
against refusal to issue a test certificate<sup>10</sup>, the information to be supplied and  
documents to be produced on such an application, examination or appeal, the fees  
to be paid on such an application or appeal, and the repayment of the whole or part  
of the fee paid on such an appeal where it appears to the Secretary of State that  
there were substantial grounds for contesting the whole or part of the decision  
appealed against<sup>11</sup>;
- 209 (7) the form of, and particulars to be contained in, test certificates and  
notifications of the refusal of test certificates and the conditions which must be  
satisfied before such certificates and notifications may be issued<sup>12</sup>;
- 210 (8) the issue of duplicates or copies of test certificates and the fees to be paid on  
applications for such duplicates or copies<sup>13</sup>;
- 211 (9) the correction of errors in test certificates<sup>14</sup>;
- 212 (10) the charges to be paid by authorised examiners, designated councils or  
approved testing authorities to the Secretary of State in connection with: (a) the  
issue of test certificates or notifications of the refusal of test certificates; (b) the  
issue of duplicates or copies of test certificates; and (c) the correction of errors in  
test certificates<sup>15</sup>;
- 213 (11) the keeping by authorised examiners and designated councils and, in the  
case of examinations carried out by authorised inspectors or approved assistants,  
by approved testing authorities of registers of test certificates in the prescribed  
form and containing the prescribed particulars, and the inspection of such registers  
by such persons and in such circumstances as may be prescribed<sup>16</sup>;
- 214 (12) the keeping of records by authorised examiners, designated councils and  
approved testing authorities and the providing by them of returns and information  
to the Secretary of State<sup>17</sup>;
- 215 (13) requiring the Secretary of State to make available for use by prescribed  
persons any particulars contained in the records of vehicles and examinations<sup>18</sup> on  
payment, in prescribed cases, of a fee of such amount as appears to the Secretary  
of State to be reasonable in the circumstances of the case<sup>19</sup>;
- 216 (14) the sale of particulars contained in, or information derived from, those  
records: (a) to such persons as the Secretary of State thinks fit; and (b) for such  
price and on such other terms, and subject to such restrictions, as he thinks fit, if  
those particulars do not (or that information does not) identify the premises at  
which any examination was carried out or any person concerned with the carrying  
out of the examination<sup>20</sup>,

and such regulations may make different provision in relation to different cases or classes of cases and contain such incidental, supplemental or transitional provisions or savings as the Secretary of State thinks fit<sup>21</sup>.

Regulations made under these provisions<sup>22</sup> may include provision for the purpose of securing that private-sector examinations<sup>23</sup> are properly carried out in accordance with the regulations, including provision for the supervision or review of private-sector examinations by persons authorised for the purpose by or under the regulations<sup>24</sup>. Regulations may also require the carrying out of examinations at designated testing stations<sup>25</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 I.e. the Road Traffic Act 1988 s 45 (as amended): see PARA 660 ante.

3 Or by *ibid* s 46 (as amended): see the text and notes 5-33 *infra*.

4 *Ibid* s 45(7). At the date at which this volume states the law no regulations had been made under s 45, but, by virtue of the Road Traffic (Consequential Provisions) Act 1988 s 2(2) and the Interpretation Act 1978 s 17(2) (b) (see STATUTES vol 44(1) (Reissue) PARA 1303), the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694 (amended by SI 1982/814; SI 1982/1477; SI 1982/1715; SI 1983/1434; SI 1984/1126; SI 1985/45; SI 1985/1923; SI 1988/989; SI 1988/1894; SI 1989/1694; SI 1991/253; SI 1991/455; SI 1991/1525; SI 1991/2229; SI 1991/2791; SI 1992/566; SI 1992/1217; SI 1993/3011; SI 1995/1457; SI 1995/2438; SI 1996/1751; SI 1997/81; SI 1997/1679; SI 1998/1672; SI 1999/2199; SI 2000/1432; SI 2000/2322; SI 2001/1648; SI 2001/3330; SI 2002/488; SI 2002/1698; SI 2003/1113; SI 2003/1698; SI 2003/1815; SI 2004/1879; SI 2005/1832; SI 2005/2341; SI 2006/1998; SI 2006/2680) have effect for the purposes of the Road Traffic Act 1988 s 45 (as amended).

5 *Ibid* s 46(1)(a) (s 46 substituted by the Road Traffic (Vehicle Testing) Act 1999 s 2).

6 Road Traffic Act 1988 s 46(1)(b) (as substituted: see note 5 *supra*). The conditions which may be imposed by virtue of s 46(1)(b) (as substituted) include conditions: (1) relating to the successful completion of courses of instruction provided under s 45(6A) (as added) (see PARA 660 text and note 21 ante); and (2) requiring the payment of prescribed fees to the Secretary of State in respect of applications for, or the continuation of, the Secretary of State's authorisation, approval or designation: s 46(2) (as so substituted).

7 *Ibid* s 46(1)(c) (as substituted: see note 5 *supra*).

8 *Ibid* s 46(1)(d) (as substituted: see note 5 *supra*).

9 *Ibid* s 46(1)(e) (as substituted: see note 5 *supra*). The provision which may be made by virtue of s 46(1)(e) (as substituted) includes provision: (1) requiring supervision to be provided by individuals who are nominated by authorised examiners, designated councils or approved testing authorities, in respect of particular premises, and are approved by the Secretary of State (referred to as 'nominated supervisors'); (2) as to the imposition of conditions (including conditions described in note 6 *supra*) to be complied with by any nominated supervisor; and (3) as to the circumstances in which a person ceases to be a nominated supervisor: s 46(3) (as so substituted). As from a day to be appointed, this provision is amended by the Transport Act 1982 s 10(2)(d) (amended by the Road Traffic (Vehicle Testing) Act 1999 s 7, Schedule para 2(c)). At the date at which this volume states the law no such day had been appointed.

10 I.e. under the Road Traffic Act 1988 s 45(4) (see PARA 660 text and note 18 ante). For the meaning of 'test certificate' see PARA 660 ante.

11 *Ibid* s 46(1)(f) (as substituted: see note 5 *supra*).

12 *Ibid* s 46(1)(g) (as substituted: see note 5 *supra*).

13 *Ibid* s 46(1)(h) (as substituted: see note 5 *supra*).

14 *Ibid* s 46(1)(i) (as substituted: see note 5 *supra*).

15 *Ibid* s 46(1)(j) (as substituted: see note 5 *supra*). As from a day to be appointed, this provision is amended by the Transport Act 1982 s 10(2)(aa) (added by the Road Traffic (Vehicle Testing) Act 1999 Schedule para 2(b)). At the date at which this volume states the law no such day had been appointed. The provision which may be made by virtue of the Road Traffic Act 1988 s 46(1)(j) (as substituted) includes provision requiring: (1) the making to the Secretary of State at prescribed times of payments, of such amounts as may be determined by him in accordance with the regulations, on account of charges that may become payable; and (2) where forms for test certificates and notifications of the refusal of test certificates are supplied by the Secretary of State, the payment to him of charges for the supply of such forms, and for the repayment, in prescribed circumstances, of such payments received by the Secretary of State: s 46(4) (as so substituted). Any sum received by the Secretary of State in pursuance of this provision must be paid into the Consolidated Fund: s



84(4). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

16 Ibid s 46(1)(k) (as substituted: see note 5 supra). As from a day to be appointed, this provision is amended by the Transport Act 1982 s 10(2)(b) (amended by the Road Traffic (Vehicle Testing) Act 1999 Schedule para 2(c)). At the date at which this volume states the law no such day had been appointed.

17 Road Traffic Act 1988 s 46(1)(l) (as substituted: see note 5 supra). As from a day to be appointed, this provision is amended by the Transport Act 1982 s 10(2)(c) (amended by the Road Traffic (Vehicle Testing) Act 1999 Schedule para 2(c)). At the date at which this volume states the law no such day had been appointed.

18 The records maintained under the Road Traffic Act 1988 s 45(6B) (as added): see PARA 660 text and note 22 ante.

19 Ibid s 46(5) (as substituted: see note 5 supra).

20 Ibid s 46(6) (as substituted: see note 5 supra).

21 Ibid s 46(7) (as substituted: see note 5 supra).

22 This applies also to regulations made under ibid ss 49, 61 (both as amended): see PARAS 679, 711 post.

23 'Private-sector examination' means an examination carried out by or under the direction of an authorised inspector: Transport Act 1982 s 10(11).

24 Ibid s 10(11) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 Pt I para 4(5), (6)). No person other than an officer of the Secretary of State may be authorised by or under regulations so made to supervise or review an examination carried out in the course of a vehicle testing business carried on by a person other than his own employer: Transport Act 1982 s 10(11).

25 See ibid s 10(12). See also PARA 660 note 21 ante.

## UPDATE

### **657-667 Prohibition of use of vehicles without test certificates ... Appeal against refusal of test certificate**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **662 Content of regulations as to vehicle testing**

NOTES 1-4, 6, 11, 13, 15, 18-20--See the Department for Transport (Fees) Order 2009, SI 2009/711 (amended by SI 2009/1885), which specifies for the purposes of the Finance (No 2) Act 1987 s 102(3) the functions to be taken into account in the determination of the fees to be fixed by the Secretary of State.

NOTE 4--SI 1981/1694 further amended: SI 2008/1461, SI 2009/643, SI 2009/802.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(i) Motor Vehicles/B. CONDUCT OF TEST AND ISSUE OF TEST CERTIFICATE/663. Authorised examiners, designated councils, etc.

### **663. Authorised examiners, designated councils, etc.**

An application by:

- 217 (1) an individual nominated by an authorised examiner<sup>1</sup>, for approval as a nominated tester<sup>2</sup>;
- 218 (2) an individual, for approval as an inspector; or
- 219 (3) a person, for authorisation as an authorised examiner,

must be made on a form supplied or approved by the Secretary of State<sup>3</sup>. An application by a council for designation<sup>4</sup> must be made on a form supplied or approved by the Secretary of State, and must be signed by the proper officer<sup>5</sup>.

The Secretary of State may, after making such investigations and carrying out such inspections as he thinks fit, by an instrument in writing approve, authorise or designate (as the case may be) a person by whom such an application has been made<sup>6</sup>. The Secretary of State may at any time, by an instrument in writing, authorise any other person, other than an officer of the Secretary of State, to carry out examinations<sup>7</sup>.

An approval is subject to prescribed conditions<sup>8</sup> ('the approval conditions') and to such other conditions as may be specified in the approval<sup>9</sup>, and every authorisation is subject to prescribed conditions<sup>10</sup> ('the general authorisation conditions')<sup>11</sup>. The authorisation of an examiner who is not an individual is subject (in addition to the general authorisation conditions) to prescribed conditions<sup>12</sup> ('the corporate authorisation conditions') and to such other conditions as may be specified in the authorisation<sup>13</sup>, and the authorisation of an examiner who is an individual is subject (in addition to the general authorisation conditions) to prescribed conditions<sup>14</sup> ('the individual authorisation conditions') and to such other conditions as may be specified in the authorisation<sup>15</sup>. The designation of a council is subject to prescribed conditions<sup>16</sup> ('the designation conditions') and to such other conditions as may be specified in the designation<sup>17</sup>.

Where the Secretary of State is minded not to approve, authorise or designate a person by whom, or on whose behalf, an application is made ('the applicant'), he must give notice to the applicant to that effect<sup>18</sup>. The applicant (or any person acting on his behalf) may, within 14 days from the date of such notice, make to the Secretary of State, at the address specified in the notice, written representations to the effect that the applicant should be approved, authorised or designated (as the case may be)<sup>19</sup>.

1 For the meaning of 'authorised examiner' see PARA 660 ante.

2 For the meaning of 'nominated tester' see PARA 660 note 13 ante.

3 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 7(1) (reg 7 substituted by SI 2003/1113). The application must be signed: (1) where the applicant is a partnership or company, by a person duly authorised in that behalf; (2) in any other case, by the applicant; and (3) where it relates to approval as a nominated tester, also: (a) by the authorised examiner by whom the applicant is nominated; or (b) where that authorised examiner is a partnership or company, by a person duly authorised in that behalf: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 7(2) (as so substituted). The application must be sent to the Secretary of State at such office of VOSA as he may direct: reg 7(3) (as so substituted). Where a person who wishes to apply for authorisation as an authorised examiner proposes to carry out examinations at more than one place and the Secretary of State so requires, the applicant must make such additional applications as the Secretary of State may, by notice to the applicant, require: reg 7(4) (as so substituted). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. 'VOSA' means the Vehicle and Operator Services Agency: reg 3(1) (definition added by SI 2003/1113).

4 Ie for the purposes of the Road Traffic Act 1988 s 45 (as amended), s 46 (as substituted and amended): see PARAS 660, 662 ante.

5 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 7A(1) (reg 7A added by SI 2003/1113). 'Proper officer', in relation to a designated council in England or Wales, has the meaning given by the Local Government Act 1972 s 270(3) (see LOCAL GOVERNMENT vol 69 (2009) PARA 431): Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 3(1) (definition added by SI 2003/1113). The application must be sent to the Secretary of State at the office of VOSA for the area which includes that of the council by which the application is made: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 7A(2) (as so added).

6 Ibid reg 8(1) (reg 8 substituted by SI 2003/1113).

7 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 8(2) (as substituted: see note 6 supra). For the meaning of 'examination' see PARA 659 note 2 ante.

8 Ie the conditions set out in ibid reg 8A (as added). These conditions are that the person to whom the approval relates:

1291 (1) must not carry out any examination: (a) unless he has successfully completed a course of instruction in the carrying out of examinations provided under the Road Traffic Act 1988 s 45(6A) (as added) (see PARA 660 text and note 21 ante); (b) at a particular vehicle testing station, unless by electronic communication or notice to the Secretary of State, at the office of VOSA for the area in which that testing station is situated, he has informed the Secretary of State of his intention to carry out examinations at that testing station (Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 8A(a) (reg 8A added by SI 2003/1113));

1292 (2) where the approval is expressed to be limited to examinations of a specified class of motor vehicle or of a specified description, must not carry out examinations in relation to any other class of motor vehicle or description of examination (Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 8A(b) (as so added));

1293 (3) must carry out examinations using such methods and to such standards as have been notified to him by the Secretary of State (reg 8A(c) (as so added)); and

1294 (4) if the Secretary of State so requires, must attend further courses of instruction, or otherwise satisfy the Secretary of State of his competence to continue to carry out examinations (reg 8A(d) (as so added)).

'Vehicle testing station' means premises at which the Secretary of State has authorised an examiner to carry out examinations, premises provided by a designated council or the Secretary of State for carrying out examinations, or premises for the time being designated by the Secretary of State under the Public Passenger Vehicles Act 1981 s 8(3) (as amended) (see PARA 1142 post): Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 3(1) (definition substituted by SI 1997/81). For the meaning of 'designated council' see PARA 659 note 5 ante.

9 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 8(3) (as substituted: see note 6 supra).

10 Ie the conditions set out in ibid reg 8B (as added). These conditions are that the authorised examiner:

1295 (1) must comply with any limitation as to: (a) the class of motor vehicle that may be examined; (b) the type of examination that may be carried out; or (c) the vehicle testing station at which examinations may be carried out, to which the authorisation is expressed to be subject (reg 8B(a) (reg 8B added by SI 2003/1113));

1296 (2) unless he is himself to carry out the examination, must not cause or permit an examination to be carried out at any vehicle testing station at which he is authorised to carry out examinations by a person other than: (a) a nominated tester approved by the Secretary of State to carry out examinations at that testing station; or (b) a section 66A examiner (Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 8B(b) (as so added));

1297 (3) must, as regards each of the vehicle testing stations at which he is authorised to carry out examinations, by electronic communication or notice to the Secretary of State, at the office of VOSA for the area in which the testing station is situated, inform the Secretary of State: (a) of the names of the individuals who are nominated testers at that testing station; and (b) the name of any such individual who ceases to act in that capacity (reg 8B(c) (as so added));

1298 (4) must ensure that every test certificate resulting from an examination carried out at any of its testing stations is signed by the person who carried out the examination or by such other person as the Secretary of State may in any particular case direct (reg 8B(d) (as so added));

- 1299 (5) must ensure that every notice of the refusal of a test certificate resulting from an examination carried out at any of its testing stations is signed by the person who carried out the examination (reg 8B(e) (as so added));
- 1300 (6) must comply with any direction of the Secretary of State as to the individuals by whom: (a) examinations may not be carried out; or (b) test certificates or notices of the refusal of a test certificate may not be signed (reg 8B(f) (as so added));
- 1301 (7) must, at each vehicle testing station at which he is authorised to carry out examinations, supervise the carrying out of examinations by the nominated testers authorised to carry out examinations at that testing station (reg 8B(g) (as so added));
- 1302 (8) must, subject to reg 8F (as added), so long as the authorisation is in force, display in a conspicuous place outside the vehicle testing station at which he is authorised to carry out examinations a sign of the size, colour and type shown in the Traffic Signs Regulations and General Directions 2002, SI 2002/3113, Sch 4 diagram 864.1 (Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 8B(h) (as so added));
- 1303 (9) must, so long as the authorisation is in force, display at each vehicle testing station at which he is authorised to carry out examinations, in some conspicuous place and so as to be legible by persons submitting vehicles for examination at that testing station: (a) the authorisation in which that testing station is specified; and (b) a list of the names of the individuals for the time being approved or authorised by the Secretary of State to carry out examinations at that testing station (reg 8B(i) (as so added)); and
- 1304 (10) after not less than three clear days' notice given to the authorised examiner by the Secretary of State, must make available: (a) any vehicle testing station at which he is authorised to carry out examinations; and (b) the apparatus at that testing station with which examinations are carried out, for the purpose of the carrying out by a section 66A examiner of any examination or the investigation of a complaint as to the result of an examination (whether or not the examination was carried out at that testing station (reg 8B(j) (as so added))).

'Section 66A examiner' means an examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 post): Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 3(1) (definition added by SI 2003/1113). For the meaning of 'test certificate' see PARA 660 ante.

A sign: (i) exhibited outside a vehicle testing station immediately before 1 June 2003; and (ii) of the size, colour and type shown in the Traffic Signs Regulations and General Directions 1994, SI 1994/1519, Sch 4 diagram 864 ('a vehicle testing station sign'), is, for the purposes of the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 8B(h) (as added) and reg 8E(g) (as added), to be treated as a vehicle testing station sign so long as it continues to be exhibited outside the vehicle testing station outside which it was exhibited immediately before 1 June 2003 and to comply with the Traffic Signs Regulations and General Directions 1994, SI 1994/1519, as if those regulations had not been revoked: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 8F (added by SI 2003/1113).

11 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 8(4) (as substituted: see note 6 supra).

12 Ie the conditions set out in ibid reg 8C (as added). These conditions are:

- 1305 (1) the authorised examiner must, so long as the authorisation is in force, secure: (a) where the examiner is a company, that at least one of its directors or senior managers has successfully completed a course of instruction in the functions of authorised examiners, provided under the Road Traffic Act 1988 s 45(6A) (as added) (see PARA 660 ante); and (b) where the examiner is persons in partnership, that at least one of the partners has successfully completed such a course (Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 8C(a) (reg 8C added by SI 2003/1113));
- 1306 (2) where the authorised examiner is persons in partnership and there is a change in the firm's constitution, it must inform the Secretary of State, at the office of VOSA for the area in which its testing station is situated, of the particulars of the change within seven days of the effective date of the change (Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 8C(b) (as so added)); and
- 1307 (3) where the authorised examiner is a company and a person becomes, or ceases to be: (a) the secretary of the company; (b) a director; or (c) a senior manager to whom the description mentioned in head (1)(a) supra applies, it must inform the Secretary of State, at the office of

VOSA for the area in which its testing station is situated, of the occurrence of that event, and of the identity of the person or persons concerned, within seven days of the occurrence of the event (reg 8C(c) (as so added)).

13 Ibid reg 8(5) (as substituted: see note 6 supra).

14 Ie the conditions set out in ibid reg 8D (as added). These conditions are that the individual to whom the authorisation relates:

1308 (1) must not carry out any examination: (a) unless he has successfully completed a course of instruction in the carrying out of examinations provided under the Road Traffic Act 1988 s 45(6A) (as added) (see PARA 660 ante); (b) at a particular vehicle testing station, unless by electronic communication to the Secretary of State, at the office of VOSA for the area in which that testing station is situated, or by such other means as the Secretary of State may from time to time require, he has informed the Secretary of State of his intention to carry out examinations at that testing station (Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 8D(a) (reg 8D added by SI 2003/1113));

1309 (2) must, within seven days of entering into a partnership with a view to carrying on at his vehicle testing station a business comprising the carrying out of examinations, inform the Secretary of State, at the office of VOSA for the area in which his vehicle testing station is situated, of his entry into partnership and of the identity of the other members of the firm (Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 8D(b) (as so added)); and

1310 (3) must complete a course of instruction in the functions of authorised examiners provided under the Road Traffic Act 1988 s 45(6A) (as added) (see PARA 660 ante) (Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 8D(c) (as so added)).

15 Ibid reg 8(6) (as substituted: see note 6 supra).

16 Ie the conditions set out in ibid reg 8E (as added). These conditions are that the council:

1311 (1) must comply with any limitation as to: (a) the class of motor vehicle that may be examined; (b) the type of examination that may be carried out; or (c) the vehicle testing station at which examinations may be carried out, to which the designation is expressed to be subject (reg 8E(a) (reg 8E added by SI 2003/1113));

1312 (2) must not cause or permit examinations to be carried out at any of its vehicle testing stations: (a) by a person other than an inspector or a section 66A examiner; or (b) unless at least one individual (who may be an inspector), employed by the council, has completed a course of instruction in the functions of designated councils under the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694 (as amended), provided under the Road Traffic Act 1988 s 45(6A) (as added) (see PARA 660 ante) (Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 8E(b) (as so added));

1313 (3) must, as regards each of its vehicle testing stations, by electronic communication or notice to the Secretary of State, at the office of VOSA for the area in which the testing station is situated, inform the Secretary of State: (a) of the names of the inspectors appointed by the council to carry out examinations at that testing station; and (b) of the revocation of the appointment of any such inspector (reg 8E(c) (as so added));

1314 (4) must secure that every test certificate resulting from an examination carried out at any of its testing stations is signed by the person who carried out the examination or by such other person as the Secretary of State may in any particular case direct (reg 8E(d) (as so added));

1315 (5) must secure that every notice of the refusal of a test certificate resulting from an examination carried out at any of its testing stations is signed by the person who carried out the examination (reg 8E(e) (as so added));

1316 (6) must comply with any direction of the Secretary of State as to the individuals by whom examinations may not be carried out or test certificates or notices of the refusal of a test certificate may not be signed (reg 8E(f) (as so added));

1317 (7) must, subject to reg 8F (as added) (see note 10 supra), so long as the designation remains in force, display in a conspicuous place outside the vehicle testing station to which the

designation relates, a sign of the size, colour and type shown in the Traffic Signs Regulations and General Directions 2002, SI 2002/3113, Sch 4 diagram 864.1 (Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 8E(g) (as so added));

1318 (8) must, so long as the designation remains in force, display at each vehicle testing station to which the designation relates, in some conspicuous place and so as to be legible by persons submitting vehicles for examinations at that testing station: (a) the designation in which that testing station is specified; and (b) a list of the names of the inspectors for the time being approved by the Secretary of State to carry out examinations at that testing station (reg 8E(h) (as so added)); and

1319 (9) after not less than three clear days' notice given to the council by the Secretary of State, must make available: (a) any vehicle testing station to which the council's designation relates; and (b) the apparatus at that testing station with which examinations are carried out, for the purpose of the carrying out by a section 66A examiner of any examination or the investigation of a complaint as to the result of an examination (whether or not the examination was carried out at that testing station) (reg 8E(i) (as so added)).

17 Ibid reg 8(7) (as substituted: see note 6 supra).

18 Ibid reg 8(8) (as substituted: see note 6 supra).

19 Ibid reg 8(9) (as substituted: see note 6 supra).

## UPDATE

### **657-667 Prohibition of use of vehicles without test certificates ... Appeal against refusal of test certificate**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(i) Motor Vehicles/B. CONDUCT OF TEST AND ISSUE OF TEST CERTIFICATE/664. Cessation of authorisation, designation etc.

### **664. Cessation of authorisation, designation etc.**

An individual ceases to be an authorised examiner<sup>1</sup>: (1) if he dies; (2) if he is adjudged bankrupt; (3) if he becomes a patient within the meaning of Part VII of the Mental Health Act 1983<sup>2</sup>; (4) if he has not attended a course of instruction<sup>3</sup> when required by the Secretary of State<sup>4</sup> to attend such a course; (5) if he has attended such a course when so required but has failed to complete it successfully; or (6) if he notifies the Secretary of State that he no longer wishes to be an authorised examiner<sup>5</sup>. Persons in partnership cease to be an authorised examiner if the firm is dissolved or if they notify the Secretary of State that they no longer wish to be an authorised examiner<sup>6</sup>. A company ceases to be an authorised examiner if: (a) in relation to the company, a winding-up order is made, a resolution for voluntary winding-up is passed, a receiver or manager of the company's undertaking is appointed or the taking of possession by or on behalf of the holders of any debenture secured by a floating charge, or of any property of the company comprised in or subject to the charge, occurs; or (b) the secretary of the company notifies the Secretary of State that the company no longer wishes to be an authorised examiner<sup>7</sup>.

A council ceases to be designated if the proper officer<sup>8</sup> notifies the Secretary of State that the council no longer wishes to be designated<sup>9</sup>.

An individual ceases to be a nominated tester<sup>10</sup>: (i) if he dies, if he becomes a patient within the meaning of Part VII of the Mental Health Act 1983, or if he has not attended a course of instruction when required by the Secretary of State to attend such a course or has attended such a course when so required but has failed to complete it successfully; (ii) as regards the carrying out of examinations<sup>11</sup> at a particular vehicle testing station, if his nomination is revoked in relation to that testing station; (iii) if he notifies the Secretary of State that he no longer wishes to be a nominated tester<sup>12</sup>.

An individual ceases to be an inspector: (A) if he dies, if he becomes a patient within the meaning of Part VII of the Mental Health Act 1983, or if he has not attended a course of instruction when required by the Secretary of State to attend such a course or has attended such a course when so required but has failed to complete it successfully; (B) as regards the carrying out of examinations at a particular vehicle testing station, if his appointment is revoked in relation to that testing station; (C) if he notifies the Secretary of State that he no longer wishes to be an inspector<sup>13</sup>.

The Secretary of State may at any time give to an authorised examiner, designated council, inspector or nominated tester a notice which states that from such date as is specified in the notice<sup>14</sup>, unless the notice is cancelled before that date, the person is to cease to be an authorised examiner, an inspector or a nominated tester; or that the person is to cease to be an authorised examiner, inspector or nominated tester (as the case may be) in respect of such vehicle testing stations as may be specified in the notice; or that the council is to cease to be designated or is to cease to be designated in respect of such vehicle testing stations as may be specified in the notice<sup>15</sup>. The notice must also state that within 14 days from the date of the notice, the person to whom the notice relates (or any person acting on his behalf) may make to the Secretary of State, at an address specified in the notice, written representations to the effect, as the case may be, that the person should not cease to be, or should again become, an authorised examiner, nominated tester or inspector, or that the council should not cease to be, or should again be, designated<sup>16</sup>. Where such a notice has been given, and has not been cancelled, the person to whom it relates ceases or, as the case may be, ceases to the specified extent to be an authorised examiner, nominated tester or inspector or the council to which it relates ceases or, as the case may be, ceases to the specified extent to be designated, on the date specified in the notice<sup>17</sup>.

If an authorisation of an examiner, the appointment of an inspector or the nomination of a nominated tester ceases to have effect or the designation of a council is revoked, the person or council must deliver to the Secretary of State, at such place and within such period as the Secretary of State may by notice or electronic communication<sup>18</sup> specify or, if the Secretary of State by notice or electronic communication so requires, permit the collection, from such premises as may be specified in the notice or communication, of certain documents and apparatus<sup>19</sup>.

1 For the meaning of 'authorised examiner' see PARA 660 ante. As to the authorisation procedure of examiners see PARA 663 ante.

2 I.e. within the meaning of the Mental Health Act 1983 Pt VII (ss 93-113) (as amended) see MENTAL HEALTH vol 30(2) (Reissue) PARA 681.

3 I.e. under the Road Traffic Act 1988 s 45(6A) (as added) (see PARA 660 text and note 21 ante).

4 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 9(1) (reg 9 substituted by SI 2003/1113). Where a person gives notice that he no longer wishes to be an authorised examiner, the date on which the

authorisation ceases is the date (if any) specified in the notice or, if no date is so specified, such date as the Secretary of State may by notice specify: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 9(8) (as so substituted). Where an authorised examiner, inspector or nominated tester notifies the Secretary of State that he wishes to cease to be an authorised examiner, inspector or nominated tester (as the case may be) in respect of some only of the vehicle testing stations at which he is approved or authorised to carry out examinations, he ceases to be an authorised examiner, inspector or nominated tester to that extent: reg 9(7) (as so substituted). For the meaning of 'vehicle testing station' see PARA 663 note 8 ante.

6 Ibid reg 9(2) (as substituted: see note 5 supra). Where a partnership gives notice that it no longer wishes to be an authorised examiner, the date on which the authorisation ceases is the date (if any) specified in the notice or, if no date is so specified, such date as the Secretary of State may by notice specify: reg 9(8) (as so substituted).

7 Ibid reg 9(3) (as substituted: see note 5 supra). Where a company gives notice that it no longer wishes to be an authorised examiner, the date on which the authorisation ceases is the date (if any) specified in the notice or, if no date is so specified, such date as the Secretary of State may by notice specify: reg 9(8) (as so substituted). See also note 5 supra.

8 As to the meaning of 'proper officer' see PARA 663 note 5 ante.

9 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 9(4) (as substituted: see note 5 supra). Where a designated council notifies the Secretary of State that it wishes to cease to be designated in respect of some only of the vehicle testing stations to which its designation relates, the council ceases to be designated to that extent: reg 9(8) (as so substituted). For the meaning of 'designated council' see PARA 659 note 5 ante.

10 For the meaning of 'nominated tester' see PARA 660 note 13 ante.

11 For the meaning of 'examination' see PARA 659 note 2 ante.

12 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 9(5) (as substituted: see note 5 supra). Where an individual gives notice that he no longer wishes to be a nominated tester, the date on which the nomination ceases is the date (if any) specified in the notice or, if no date is so specified, such date as the Secretary of State may by notice specify: reg 9(8) (as so substituted). See also note 5 supra.

13 Ibid reg 9(6) (as substituted: see note 5 supra). Where a person gives notice that he no longer wishes to be an inspector, the date on which the appointment ceases is the date (if any) specified in the notice or, if no date is so specified, such date as the Secretary of State may by notice specify: reg 9(8) (as so substituted). See also note 5 supra.

14 Where the specified date is less than 35 days from the date of the notice, the notice must state that the Secretary of State considers it necessary that the notice is to have early effect: *ibid* reg 10(1)(b) (reg 10 substituted by SI 2003/1113).

15 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 10(1)(a) (as substituted: see note 14 supra).

16 Ibid reg 10(1)(c) (as substituted: see note 14 supra).

17 Ibid reg 10(2) (as substituted: see note 14 supra).

18 'Electronic communication' means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa): (1) by means of a telecommunications system (within the meaning of the Telecommunications Act 1984 (definition repealed)); or (2) by other means but while in an electronic form; and 'communication' includes a communication comprising sounds or images or both and a communication effecting a payment: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 3(1) (definitions added by SI 2003/1113). See TELECOMMUNICATIONS.

19 See the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 11(1), (2) (reg 11 substituted by SI 2003/1113). The documents and apparatus are specified in the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 11(3) (as so substituted). Where: (1) a person ceases to be an authorised examiner, an inspector or a nominated tester in respect of some only of the vehicle testing stations at which he formerly carried out examinations; or (2) a council ceases to be designated in respect of some only of the vehicle testing stations at which examinations were carried out by persons appointed by the council, the Secretary of State may, by notice or electronic communication to the person or council concerned, allow him or it to retain such documents and apparatus as may be specified in the notice: reg 11(4) (as so substituted).

As to refunds payable by the Secretary of State on cessation see reg 25B (added by SI 2003/1113).

## UPDATE



### **657-667 Prohibition of use of vehicles without test certificates ... Appeal against refusal of test certificate**

Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **664 Cessation of authorisation, designation etc**

TEXT AND NOTE 2--For the words 'patient ... Mental Health Act 1983' read 'person who lacks capacity within the meaning of the Mental Capacity Act 2005 (see MENTAL HEALTH) to carry on the activities covered by the authorisation: SI 1981/1694 reg 9(1) (amended by SI 2007/1898).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(i) Motor Vehicles/B. CONDUCT OF TEST AND ISSUE OF TEST CERTIFICATE/665. Applications for and carrying out of examinations.

### **665. Applications for and carrying out of examinations.**

An application for an examination<sup>1</sup> may be made to an authorised examiner<sup>2</sup>, a designated council<sup>3</sup> or the Secretary of State<sup>4</sup>, by arrangement<sup>5</sup>. An authorised examiner, a section 66A examiner, an inspector and a nominated tester are not under any obligation to carry out an examination of a motor vehicle where: (1) the applicant does not on request produce the registration book relating to the vehicle or other evidence as to its first use or manufacture, and the chassis or serial number and identification number where appropriate<sup>6</sup>; (2) the vehicle or any part of it or any of its equipment is so dirty as to render an examination unreasonably difficult<sup>7</sup>; (3) the examination cannot with the facilities or apparatus available be completed without the vehicle being driven and it is not fit to be driven to such extent as may be necessary for the examination, either for want of fuel or oil or for any other reason<sup>8</sup>; (4) things not part of the vehicle's equipment or accessories are required to be removed or secured before its examination and are not removed or secured<sup>9</sup>; (5) fees payable in advance are not so paid<sup>10</sup>; (6) in the case of a Class VI or Class VIA vehicle<sup>11</sup>: (a) the vehicle is not submitted for examination at the time and date fixed for the examination; (b) the driver of the vehicle is requested to remain in it or its vicinity throughout the examination, to drive it, to operate its controls, to remove or refit its panels or to open or close its doors and he declines to do so; or (c) wheelchair restraining devices are not installed in the vehicle at the time it is submitted for examination<sup>12</sup>; (7) the vehicle emits substantial quantities of avoidable smoke<sup>13</sup>; (8) a proper examination of the vehicle cannot readily be carried out as a consequence of any door, tailgate, boot lid, engine cover, fuel cap or other device designed to be capable of being readily opened, being locked or otherwise fixed so that it cannot be readily opened<sup>14</sup>; (9) the condition of the vehicle is such that, in the opinion of the examiner, inspector or nominated tester, a proper examination of the vehicle would involve a danger of: (a) injury to any person; or (b) damage to the vehicle or any other property<sup>15</sup>; (10) in the case of certain vehicles<sup>16</sup>, the exhaust system has been so altered that the examiner, inspector or nominated tester is not able, with the facilities and apparatus available to him at the place at which the examination would otherwise be carried out, to determine whether certain statutory provisions<sup>17</sup> apply to the

vehicle<sup>18</sup>; (11) the vehicle: (a) does not have a registration mark, vehicle identification number, chassis number or serial number; or (b) has one or more of those marks and numbers, but none of them is legible or such one or more as is legible is in a script other than English<sup>19</sup>; or (12) an examiner, inspector or nominated tester is not able to open and examine recording equipment fitted to the vehicle in accordance with the Community Recording Equipment Regulation<sup>20</sup>.

Where in the course of an examination it is found that there are such defects in the construction or condition of a vehicle or its equipment or accessories that to carry out a braking test<sup>21</sup> would be likely to cause danger to any person or damage to the vehicle or any other property, the braking test need not be carried out but the rest of the examination must be completed<sup>22</sup>.

An authorised examiner or designated council, as the case may be, has the same responsibility for loss of or damage to the vehicle, its equipment or accessories in connection with the carrying out of the examination or while the vehicle is in the custody of the examiner or council, and for loss of or damage to other property or personal injury (whether fatal or not) arising out of the use of the vehicle in connection with the examination, as would rest on a person who, with the same facilities for examination, had undertaken for payment to accept the custody of the vehicle and to carry out the examination under a contract making no express provision as to the incidence of liability<sup>23</sup>.

1 For the meaning of 'examination' see PARA 659 note 2 ante.

2 For the meaning of 'authorised examiner' see PARA 660 ante. As to the manner of application see the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 12(2), Table (amended by SI 2003/1113). An authorised examiner or a designated council may not examine a vehicle in Class VI or Class VIA (as to which see PARA 661 ante): Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 12(2) (amended by SI 1998/1672). For the meaning of 'vehicle testing station' see PARA 663 note 8 ante. For the meaning of 'examination' see PARA 659 note 2 ante.

3 For the meaning of 'designated council' see PARA 659 note 5 ante.

4 Application for examination of a vehicle in Class VI or Class VIA must be in writing to the Secretary of State: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 12(1) (amended by SI 1989/1694; SI 1998/1672). However, this does not apply if the application is for the re-examination of a vehicle within 28 days of the previous examination: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 12(1A) (added by SI 1989/1694; and amended by SI 1998/1672). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 See the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 12(1), (2), Table (as amended: see notes 2, 4 supra). Authorised examiners and designated councils must ensure that examinations are carried out as soon as possible (see reg 12(3) (amended by SI 2003/1113)) and that records are made of appointments (Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 12(4) (amended by SI 2003/1113)). Authorised examiners, inspectors, nominated testers and section 66A examiners (see PARA 698 post) may carry out examinations even though the provisions of the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 12(1)-(4) (as amended) have not been complied with: reg 12(5) (amended by SI 1995/2438; SI 2003/1113). For the meaning of 'section 66A examiner' see PARA 663 note 10 ante. Nothing in the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 12 (as amended) entitles an authorised examiner or a nominated tester to examine a vehicle of a class not specified in his authorisation, or obliges a designated council or an inspector to examine a vehicle not falling within a type which it has notified the Secretary of State as a type which will be examined by its inspectors: reg 12(6) (amended by SI 2003/1113). As to the fees payable, which in some circumstances may be remitted, see reg 20 (amended by SI 1984/1126; SI 1989/1694; SI 1991/1525; SI 1992/1609; SI 1992/3160; SI 1995/2438; SI 1997/81; SI 1998/1672; SI 2001/3330; SI 2002/488; SI 2002/1698; SI 2003/1113; SI 2003/1815; SI 2004/1879; SI 2005/2341; SI 2006/1998; SI 2006/2680; SI 2007/506; SI 2007/1161).

6 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 13(1)(a) (reg 13 substituted by SI 2003/1698).

7 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 13(1)(b) (as substituted: see note 6 supra).

8 Ibid reg 13(1)(c) (as substituted: see note 6 supra).

- 9 Ibid reg 13(1)(d) (as substituted: see note 6 supra).
- 10 Ibid reg 13(1)(e) (as substituted: see note 6 supra). As to the requirement to pay fees in advance see reg 20 (as amended: see note 5 supra). As to exemption from excise duty for vehicles undergoing tests see the Vehicle Excise and Registration Act 1994 s 5, Sch 2 para 22 (as amended); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 756.
- 11 As to classification of vehicles for these purposes see PARA 661 ante.
- 12 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 13(1)(f) (as substituted: see note 6 supra).
- 13 Ibid reg 13(1)(g) (as substituted: see note 6 supra).
- 14 Ibid reg 13(1)(h) (as substituted: see note 6 supra).
- 15 Ibid reg 13(1)(j) (as substituted: see note 6 supra). This is without prejudice to head (3) in the text: reg 13(1)(j) (as so substituted).
- 16 Ie any vehicle propelled by a compression ignition engine, to which the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61(10BA) (as added) (see PARA 354 ante) applies.
- 17 Ie ibid Sch 7B Pt II (as added) (see PARA 354 ante).
- 18 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 13(1)(k) (added by SI 2000/1432).
- 19 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 13(1)(l) (as substituted: see note 6 supra).
- 20 Ibid reg 13(1)(m) (as substituted: see note 6 supra). For the meaning of the 'Community Recording Equipment Regulation' see PARA 660 note 6 ante; definition applied by the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 3(1) (definition added by SI 1991/1525).
- 21 'Braking test' means that part of the examination of the vehicle which is required or authorised to be carried out to ascertain whether the braking requirements are complied with: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 16(3).
- 22 Ibid reg 16(1) (amended by SI 1995/2438; SI 2003/1113). As to the refusal of a test certificate in such a case see PARA 666 post.
- 23 See the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 14(1) (amended by SI 1995/2438; SI 2003/1113).

Where a motor vehicle has been submitted for an examination to be carried out by an examiner appointed under the Road Traffic Act 1988 s 66A (as added) (see PARA 698 post), the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 14(1) (as amended) applies with modifications so as to confer liability on the Secretary of State: see reg 14(1A) (added by SI 1995/2438; and substituted by SI 2003/1113).

A person submitting a vehicle for examination or having an interest in it must not be requested or required to accept any responsibility or give any release or indemnity in respect of such loss, damage or injury, other than loss of or damage to the vehicle, its equipment or accessories after the time when the vehicle ought to have been removed by him or loss, damage or injury arising out of the carrying out at his request of repairs or replacements: see the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 14(2), (3) (amended by SI 2003/1113). References to an examination include references to a further examination; references to a period while a vehicle is in the custody of a designated council include references to a period while it is in the control or care of an inspector; and references to a period while a vehicle is in the custody of the Secretary of State include references to any period while a vehicle is in the control or care of a section 66A examiner: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 14(4) (amended by SI 1995/2438; SI 2003/1113).

See also BAILMENT vol 3(1) (2005 Reissue) PARAS 38 et seq, 70-71.

## UPDATE

### **657-667 Prohibition of use of vehicles without test certificates ... Appeal against refusal of test certificate**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

## **665 Applications for and carrying out of examinations**

NOTE 5--SI 1981/1694 reg 20 further amended: SI 2008/1402, SI 2008/1461, SI 2009/643, SI 2009/802.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(i) Motor Vehicles/B. CONDUCT OF TEST AND ISSUE OF TEST CERTIFICATE/666. Result of examinations.

## **666. Result of examinations.**

The person by whom an examination<sup>1</sup> is to be carried out must, before carrying out the examination: (1) satisfy himself that there is available to him a supply of the relevant forms<sup>2</sup> sufficient to enable the result of the examination to be recorded<sup>3</sup>; and (2) by electronic communication<sup>4</sup> enter in the electronic record<sup>5</sup>: (a) his intention to carry out the examination; (b) the registration mark (if any) of the vehicle that he intends to examine; and (c) the vehicle identification number, chassis number or serial number of the vehicle<sup>6</sup>.

As soon as reasonably practicable after completing an examination, the person by whom it was carried out: (i) must, by electronic communication, enter in the electronic record, as the circumstances require, either that the prescribed statutory requirements<sup>7</sup> are complied with in relation to the vehicle<sup>8</sup> or that the prescribed statutory requirements are not complied with in relation to the vehicle<sup>9</sup>; (ii) must, by electronic communication, make such other entries in the electronic record as the record requires to be made or, where he has caused those entries to be made, confirm them<sup>10</sup>; (iii) may, by electronic communication, make such other entries in the electronic record as the record allows to be made, and, where he has caused entries to be so made, he must confirm them<sup>11</sup>; and (iv) must issue the test certificate<sup>12</sup> or, as the case may be, the notice of the refusal of a test certificate, generated by the system supporting the electronic record and such other documents as the Secretary of State may from time to time require to be issued<sup>13</sup>.

Where the person carrying out the examination does not carry out a braking test<sup>14</sup>, as soon as reasonably practicable, he: (A) must by electronic communication, enter in the electronic record that the prescribed statutory requirements have not been shown to be met in relation to the vehicle; (B) must by electronic communication make such other entries in the electronic record as the record requires to be made or, where he has caused those entries to be made, confirm them; (C) may, by electronic communication, make such other entries in the electronic record as the record allows to be made, and, where he has caused entries to be so made, he must confirm them; (D) must issue the notice of the refusal of a test certificate generated by the system supporting the electronic record and such other documents as the Secretary of State may from time to time require to be issued<sup>15</sup>.

1 For the meaning of 'examination' see PARA 659 note 2 ante.

2 ie forms VT20 (or VT20W) and VT30 (or VT30W).

3 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 15(1)(a) (reg 15 substituted SI 2003/1113).

4 For the meaning of 'electronic communication' see PARA 664 note 18 ante.

5 'The electronic record' means such of the records of the results of examinations for the purposes of the Road Traffic Act 1988 s 45 (as amended) maintained by the Secretary of State (or caused by him to be maintained) as is maintained in electronic form: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 3(1) (definition added by SI 2003/1113). References in the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694 (as amended) to the making, by electronic communication, of entries in the electronic record include references to causing entries to be made in that record (either by electronic communication or by other means notified by the Secretary of State): reg 3(6) (added by SI 2003/1113). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 15(1)(b) (as substituted: see note 3 supra). Where the person by whom the examination is to be carried out has taken such steps as are reasonably practicable to gain access to the electronic record and has failed to gain access, he must comply with the requirements notified to him by the Secretary of State for advising the Secretary of State that the examination is to be carried out and for recording the result of the examination: reg 15(3) (as so substituted).

7 As to the prescribed statutory requirements see PARA 660 note 6 ante.

8 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 15(2)(a)(i) (as substituted: see note 3 supra). An entry in the electronic record that the prescribed statutory requirements are complied with in relation to a vehicle must not be made unless the authorised examiner or, as the case may be, the designated council at whose vehicle testing station the examination of the vehicle was carried out has paid to the Secretary of State the sum of £1.71: reg 25(1) (substituted by SI 2003/1113; and amended by SI 2006/2680). For the meaning of 'authorised examiner' see PARA 660 ante; for the meaning of 'designated council' see PARA 659 note 5 ante; and for the meaning of 'vehicle testing station' see PARA 663 note 8 ante. Every authorised examiner and every designated council must make such payments to the Secretary of State in anticipation of charges that may become payable by them under the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 25(1) (as substituted and amended) as will, in the opinion of the examiner or council, ensure that the requirements of reg 15(1)(a) (as substituted) are capable of being met as regards examinations at each of their vehicle testing stations: reg 25(2) (substituted by SI 2003/1113; and amended by SI 2003/1698). As to particulars of payments see the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 25(3) (substituted by SI 2003/1113). Charges for apparatus, etc connected with the electronic record are payable: see the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 25A, Sch 3 (both added by SI 2003/1113; and amended by SI 2003/1698).

9 Road Traffic Act 1988 s 45(4) (amended by the Road Traffic (Vehicle Testing) Act 1999 s 1(2)); Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 15(2)(a)(ii) (as substituted: see note 3 supra). As to failure to gain access to the electronic record see note 6 supra. As soon as the electronic record becomes available for use, a person who has complied with the requirements mentioned in reg 15(3) (as substituted) (see note 6 supra) must, by electronic communication, confirm the entries required to be made by reg 15(2)(a) and (b) (as substituted) (see heads (i), (ii) in the text), confirm any other entries that may have been made, and may, by electronic communication, make such other entries in the electronic record as the record allows to be made: reg 15(5) (as so substituted).

10 Ibid reg 15(2)(b) (as substituted: see note 3 supra).

11 Ibid reg 15(2)(c) (as substituted: see note 3 supra).

12 For the meaning of 'test certificate' see PARA 660 ante.

13 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 15(2)(d) (as substituted: see note 3 supra). Where documents cannot be generated by the system supporting the electronic record, the person carrying out the examination must issue a test certificate on form VT20 or VT20W or, as the circumstances require, a notice of the refusal of a test certificate, on form VT30 or VT30W: reg 15(4) (as so substituted). Where reg 15(4) (as substituted) applies, the authorised examiner or designated council at whose vehicle testing station the examination was carried out, or the Secretary of State: (1) if required to do so by the person by whom the vehicle was submitted for examination; (2) on production by that person of the certificate or notice (as the case may be) issued to him in accordance with reg 15(4) (as substituted); and (3) if satisfied that no examination under reg 15 (as substituted) or reg 18 (as amended) (see PARA 667 post) has been carried out in relation to the vehicle since that to which the certificate or notice relates, must supply to him, free of charge, the test certificate or, as the case may be, the notice of the refusal of a test certificate generated by the system supporting the electronic record: reg 15(6) (as so substituted).

A test certificate must be signed by the person by whom the examination was carried out or such other person as the Secretary of State may in any particular case direct (reg 15(7) (as so substituted)), and a notice of the refusal of a test certificate (including a notice issued in the circumstances mentioned in reg 16 (as amended): see the text to notes 14-15 infra) must be signed by the person by whom the examination was carried out (reg 15(8) (as so substituted)). Where a test certificate or notice of the refusal of a test certificate bears a facsimile,

by whatever process reproduced, of the signature of a section 66A examiner, the certificate or notice is to be treated as duly signed for the purposes of reg 15(7) or (8) (as substituted): reg 15(9) (as so substituted). For the meaning of 'section 66A examiner' see PARA 663 note 10 ante.

If a test certificate has been lost or defaced, an application for a duplicate certificate may be made at the vehicle testing station from which the original certificate was obtained, at any other vehicle testing station, or at any office of VOSA, at any time before the end of the period of 18 months beginning with the date on which the examination to which the certificate relates was carried out and on the furnishing of prescribed information by the applicant: see reg 23(1), (2) (reg 23 substituted by SI 2003/1113). For the meaning of 'VOSA' see PARA 663 note 3 ante. The person to whom such application is made, upon tracing sufficient particulars of the certificate to which the application relates to enable a duplicate to be issued and on being paid the fee of £10, must issue a certificate marked 'Duplicate', which has the same effect as the original: see the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 23(3) (as so substituted; and amended by SI 2005/1832). A duplicate need not be signed by the person who carried out the examination as the result of which the original certificate was obtained: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 23(4) (as so substituted).

The Trade Descriptions Act 1968 (see SALE OF GOODS AND SUPPLY OF SERVICES) does not apply to the contents of a certificate or notification: *Wycombe Marsh Garages Ltd v Fowler* [1972] 3 All ER 248, [1972] 1 WLR 1156, DC. Examiners owe a contractual duty to the owner of a vehicle to carry out the test with reasonable skill and care, and the issue of a test certificate imports a warranty that the requirements of the regulations are complied with: *Artingstoll v Hewen's Garages Ltd* [1973] RTR 197.

14 For the meaning of 'braking test' see PARA 665 note 21 ante.

15 See the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 16(1) (amended by SI 1995/2438; SI 2003/1113); and the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 16(2) (substituted by SI 2003/1113). As to failure of the electronic system see the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 16(2A)-(2D) (added by SI 2003/1113).

## UPDATE

### **657-667 Prohibition of use of vehicles without test certificates ... Appeal against refusal of test certificate**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **666 Result of examinations**

NOTE 8--Sum payable now £2.00: SI 1981/1694 reg 25(1) (amended by SI 2009/643).

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### **667. Appeal against refusal of test certificate.**

A person to whom notification of the refusal of a test certificate<sup>1</sup> has been issued and who is aggrieved<sup>2</sup> by the refusal or the grounds of the refusal may appeal to the Secretary of State<sup>3</sup> on a form approved by him<sup>4</sup> and sent to any office of VOSA<sup>5</sup> within 14 days from the date of the notice<sup>6</sup>. On the appeal the Secretary of State must cause a further examination to be made<sup>7</sup>. As soon as reasonably practicable after the appeal is made the Secretary of State must send<sup>8</sup> to the appellant a notice stating the place at which the examination will occur<sup>9</sup> and the time at

which it will start<sup>10</sup>. Save as otherwise permitted by the Secretary of State, the examination must not take place unless the appellant submits the vehicle at the time and place specified<sup>11</sup>, produces to the examiner the notice of refusal<sup>12</sup> and the registration document relating to the vehicle or other sufficient evidence of the date of its first registration or first manufacture<sup>13</sup> and gives the examiner such information as he reasonably requires relating to any event which may have affected the vehicle or its equipment or accessories since the date of the notice of refusal<sup>14</sup>. When the examiner completes the examination he must make appropriate entries in the electronic record<sup>15</sup> or issue to the appellant a test certificate or a notice of the refusal of the test certificate, stating the grounds of refusal<sup>16</sup>.

These provisions do not apply where a notification of refusal of a test certificate has been issued following an examination for the purpose of an appeal<sup>17</sup>.

The fees payable on appeals are prescribed<sup>18</sup>.

1 As to notification of refusal of test certificates see PARA 666 ante. For the meaning of 'test certificate' see PARA 660 ante.

2 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARAS 656, 664.

3 Road Traffic Act 1988 s 45(4); Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 18(1). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 18(1)(a). The appeal must contain the particulars required by the forms: reg 18(1)(a).

5 For the meaning of 'VOSA' see PARA 663 note 3 ante.

6 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 18(1)(b) (amended by SI 2003/1113). The Secretary of State may, however, permit otherwise: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 18(1).

7 Road Traffic Act 1988 s 45(5). As from a day to be appointed, the examination must be carried out by an officer appointed by the Secretary of State for the purpose: Transport Act 1982 s 21(1) (amended by the Road Traffic Consequential Provisions Act 1988 s 4, Sch 2 Pt I para 10)); Road Traffic Act 1988 s 45(5) (prospectively amended by the Transport Act 1982 s 21(1) (as so amended)). At the date at which this volume states the law no such day had been appointed.

8 The notice is sent to the appellant's address given on the appeal: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 18(2).

9 Ibid reg 18(2)(a).

10 Ibid reg 18(2)(b).

11 See ibid reg 18(3)(a).

12 See ibid reg 18(3)(b)(i).

13 See ibid reg 18(3)(b)(ii).

14 Ibid reg 18(3)(c). This includes any alteration made or repairs carried out or any accident or any other event: reg 18(3)(c).

15 For the meaning of 'electronic record' see PARA 666 note 5 ante.

16 Road Traffic Act 1988 s 45(5) (as prospectively amended: see note 7 supra); Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 18(5) (substituted by SI 2003/1113), applying the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 15(2)-(6) (as substituted) (see PARA 666 ante) with modifications. The provisions of reg 13(1)(b)-(d) (as substituted) and reg 16 (as amended) (see PARA 665 ante) apply to examinations for the purposes of an appeal with appropriate modifications: see reg 18(4) (amended by SI 1995/2438; SI 2003/1113). A test certificate issued under the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 18 (as amended) must be signed by the person by whom the examination was carried out or such other person as the Secretary of State may in any particular case direct (reg 18(6) (substituted by SI

2003/1113)); and a notice of the refusal of a test certificate must be signed by the person by whom the examination was carried out (Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 18(6A) (added by SI 2003/1113)).

17 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 18(7). This has the effect of preventing further appeal.

18 See *ibid* reg 21 (amended by SI 2003/1113). The fees payable on appeal are the same as the fees payable for examinations (see the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 20(1) (as substituted and amended); and PARA 665 note 5 ante); reg 21(1). The fee must be paid at the same time as the appeal is made and if it is not so paid the Secretary of State is not obliged to deal with the appeal: reg 21(2). In some circumstances the fees may be remitted: see reg 21(3), (4).

## UPDATE

### **657-667 Prohibition of use of vehicles without test certificates ... Appeal against refusal of test certificate**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **668. Payments to examiners.**

Where arrangements are made between the Secretary of State<sup>1</sup> and an authorised examiner<sup>2</sup> or designated council<sup>3</sup> for the carrying out at a vehicle testing station<sup>4</sup> of that examiner or council of an examination for the purposes of an appeal<sup>5</sup>, an amount equal to half the amount payable on the appeal is payable by the Secretary of State to the examiner or council in respect of the use of the station and apparatus to be made available under the arrangements<sup>6</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'authorised examiner' see PARA 660 ante.

3 For the meaning of 'designated council' see PARA 659 note 5 ante.

4 For the meaning of 'vehicle testing station' see PARA 663 note 8 ante.

5 As to appeals see PARA 667 ante.

6 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 19 (amended by SI 2003/1113). The amount is not payable if the Secretary of State gives not less than one day's notice in writing or otherwise that the examination is not to take place (Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 19 proviso (a)), or if the examiner or council does not make the station and its apparatus available to the Secretary of State to his reasonable requirements (reg 19 proviso (b)).



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### **669. Removal of vehicles submitted for examination.**

Where a vehicle has been submitted for an examination<sup>1</sup> at a vehicle testing station<sup>2</sup> of an authorised examiner, a designated council<sup>3</sup> or the Secretary of State<sup>4</sup>, the person by whom the vehicle has been so submitted must, save as may otherwise be permitted by the examiner, designated council or the Secretary of State, as the case may be, cause it to be removed from the custody<sup>5</sup> of the examiner, council or the Secretary of State<sup>6</sup>:

- 220 (1) where an appointment or arrangement has been made for the carrying out of the examination on a particular day and the examination has been completed on or before that day, before the end of the second day after that day<sup>7</sup>; or
- 221 (2) in any other case, before the end of the second day after the day on which the person submitting the vehicle for examination is given notice (whether in writing or not): (a) that the examination has been carried out; or (b) in a case where the examination is not carried out<sup>8</sup>, that he is to remove the vehicle from such custody<sup>9</sup>.

1 References to an examination include references to a further examination where the vehicle remains in the custody of an authorised examiner, designated council or the Secretary of State for that further examination to be carried out: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 17(2)(a) (amended by SI 2003/1113). For the meaning of 'authorised examiner' see PARA 660 ante.

2 For the meaning of 'vehicle testing station' see PARA 663 note 8 ante.

3 For the meaning of 'designated council' see PARA 659 note 5 ante.

4 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 References to a vehicle as being in the custody of a designated council include references to a vehicle which is, in connection with the carrying out of an examination by an inspector appointed by such a council, in the control or care of such an inspector: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 17(2)(b) (amended by SI 1995/2438; SI 2003/1113). References to a vehicle as being in the custody of the Secretary of State include references to a vehicle which is, in connection with the carrying out of an examination of the vehicle, in the control or care of a section 66A examiner: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 17(2)(c) (added by SI 1995/2438; and amended by SI 2003/1113). For the meaning of 'section 66A examiner' see PARA 663 note 10 ante.

6 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 17(1) (amended by SI 2003/1113).

7 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 17(1)(a).

8 Ie by reason of any of the provisions of *ibid* reg 13 (as substituted): see PARA 665 ante.

9 *Ibid* reg 17(1)(b).

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## 670. Records and returns.

Authorised examiners<sup>1</sup>, designated councils<sup>2</sup>, inspectors and nominated testers<sup>3</sup> must, by electronic communication<sup>4</sup> in the electronic record<sup>5</sup>, or in such other form and by such other means as the Secretary of State<sup>6</sup> may from time to time specify, record such particulars as may be so specified<sup>7</sup>. Where the electronic record is temporarily inaccessible for the purpose of recording particulars, the particulars must be recorded in such other form and by such other means as the Secretary of State may specify<sup>8</sup>; and where particulars are so recorded, appropriate entries must be made or, as the Secretary of State may require, be confirmed, in the electronic record as soon as reasonably practicable after it has become accessible<sup>9</sup>. Records (other than the electronic record) must be kept for a period sufficient to ensure that, upon an inspection<sup>10</sup>, particulars of any matter recorded within the period of 18 months preceding the date of the inspection are available for inspection<sup>11</sup>.

A person authorised in that behalf by the Secretary of State may, in accordance with the terms of his authorisation, correct an error in the records or in any test certificate<sup>12</sup>. The person by whom a correction is made must, if appropriate, make an entry in the electronic record to reflect the correction and, where the correction is of an error in a test certificate, supply to the person who furnishes the certificate containing the error, the test certificate (as corrected) generated by the system supporting the electronic record<sup>13</sup>.

1 For the meaning of 'authorised examiner' see PARA 660 ante.

2 For the meaning of 'designated council' see PARA 659 note 5 ante.

3 For the meaning of 'nominated tester' see PARA 660 note 13 ante.

4 For the meaning of 'electronic communication' see PARA 664 note 18 ante.

5 For the meaning of 'electronic record' see PARA 666 note 5 ante.

6 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 22(1) (reg 22 substituted by SI 2003/1113).

8 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 22(2) (as substituted: see note 7 supra).

9 Ibid reg 22(3) (as substituted: see note 7 supra).

10 Ie under ibid reg 24 (as amended): see PARA 671 post.

11 Ibid reg 22(4) (as substituted: see note 7 supra).

12 Ibid reg 23A(1) (reg 23A added by SI 2003/1113). For the meaning of 'test certificate' see PARA 660 ante. A test certificate may be corrected at any time during the period of the certificate's validity: Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 23A(2) (as so added). Where, in respect of the same vehicle, two or more test certificates are valid, a correction may be made only to the certificate that is the later or latest to be issued: reg 23A(3) (as so added).

13 Ibid reg 23A(4) (as added: see note 12 supra).

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## **671. Inspection of premises, apparatus and records.**

A person authorised by the Secretary of State<sup>1</sup> may at any time during the normal working week<sup>2</sup> of an authorised examiner<sup>3</sup> or designated council<sup>4</sup>, on production of his authority if required, enter any vehicle testing station<sup>5</sup> of the examiner or council<sup>6</sup> and is entitled: (1) to inspect it and the apparatus provided for examinations and watch any examination which may be taking place, including any part of it carried out on a road or elsewhere than at the station<sup>7</sup>; (2) to satisfy himself as to the efficiency of the apparatus and require evidence as to the accuracy, within reasonable limits, of measuring apparatus<sup>8</sup>; (3) to inspect all records required<sup>9</sup> to be kept at the station<sup>10</sup>; and (4) to be furnished with such information as he may reasonably require with respect to any of these matters<sup>11</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 'Normal working week' means: (1) in relation to an authorised examiner, the times of the week which he specified as being times during which he would examine vehicles in his application for an authorisation or other times subsequently substituted with the consent of the Secretary of State; (2) in relation to a designated council, the times of the week it notified to the Secretary of State as being times during which it would examine vehicles; and (3) in relation to the Secretary of State, the times of the week during which he will examine vehicles at any of his testing stations: see the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 3(1).

3 For the meaning of 'authorised examiner' see PARA 660 ante.

4 For the meaning of 'designated council' see PARA 659 note 5 ante.

5 For the meaning of 'vehicle testing station' see PARA 663 note 8 ante.

6 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 24 (amended by SI 2003/1113).

7 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 24(a).

8 Ibid reg 24(b).

9 Ie required by ibid reg 22 (as amended): see PARA 670 ante.

10 Ibid reg 24(c) (amended by SI 1991/253; SI 2003/1113).

11 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 24(d).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(i) Motor Vehicles/B. CONDUCT OF TEST AND ISSUE OF TEST CERTIFICATE/672. Particulars of records.

## **672. Particulars of records.**

The Secretary of State<sup>1</sup> may make particulars contained in the records<sup>2</sup> (including the electronic record<sup>3</sup>) available for use: (1) by a chief officer of police; or (2) on payment of a fee, if any is required by the Secretary of State to be paid, of such amount as appears to the Secretary of State to be reasonable in the circumstances of the case, by any person who can show to the satisfaction of the Secretary of State that he has reasonable cause for wanting the particulars to be made available to him<sup>4</sup>.

The Secretary of State may sell particulars contained in, or information derived from, the records (including the electronic record) to such persons as he thinks fit, and for such price and on such other terms, and subject to such restrictions, as he thinks fit, if those particulars do not (or that information does not) identify the premises at which any examination was carried out or any person concerned with the carrying out of the examination<sup>5</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 'The records' means the records of the results of examinations for the purposes of the Road Traffic Act 1988 s 45 (as amended) (see PARA 660 ante) maintained by the Secretary of State (or caused by him to be maintained): Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 3(1) (definition added by SI 2003/1113).

3 For the meaning of 'electronic record' see PARA 666 note 5 ante.

4 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 29 (added by SI 2003/1113).

5 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 30 (added by SI 2003/1113).

## UPDATE

### 672 Particulars of records

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(i) Motor Vehicles/B. CONDUCT OF TEST AND ISSUE OF TEST CERTIFICATE/673. Return of apparatus and documents.

### 673. Return of apparatus and documents.

Without prejudice to the power to require the return of documents and apparatus on cessation of authorisation<sup>1</sup>, the Secretary of State<sup>2</sup> may at any time, by notice or electronic communication<sup>3</sup> to an authorised examiner<sup>4</sup> or designated council<sup>5</sup>, require the examiner or council: (1) to deliver to him, at such place and within such period as may be specified in the notice or communication; or (2) to permit the collection, from such premises as may be specified in the notice or communication, of apparatus or documents supplied to the examiner or council, by or on behalf of the Secretary of State, for the purposes of, or for purposes connected with, examinations<sup>6</sup> to be carried out at any of the examiner's or council's vehicle testing stations<sup>7</sup>.

1 Ie under the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 11 (as substituted): see PARA 664 ante.

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 For the meaning of 'electronic communication' see PARA 664 note 18 ante.

4 For the meaning of 'authorised examiner' see PARA 660 ante.

5 For the meaning of 'designated council' see PARA 659 note 5 ante.

6 For the meaning of 'examination' see PARA 659 note 2 ante.

7 Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 24A(1) (reg 24A added by SI 2003/1113). For the meaning of 'vehicle testing station' see PARA 663 note 8 ante. A communication or notice under the Motor Vehicles (Tests) Regulations 1981, SI 1981/1694, reg 24A(1) (as added) may refer to the delivery or collection of: (1) particular apparatus or apparatus of a description specified in the communication or notice; (2) a particular document or documents of a description so specified: reg 24A(2) (as so added).

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#### **674. Records of vehicle examinations.**

The Secretary of State<sup>1</sup> may use the information contained in records: (1) maintained in relation to vehicle testing<sup>2</sup>; or (2) maintained in relation to functions exercisable under the Vehicle Excise and Registration Act 1994<sup>3</sup>: (a) to check the accuracy of records<sup>4</sup>; and (b) where appropriate, to amend or supplement information contained in those records<sup>5</sup>. The Secretary of State may also use the information contained in records falling within head (2) above for the purpose of promoting compliance with the requirement to hold a test certificate<sup>6</sup>. These provisions do not limit any other powers of the Secretary of State<sup>7</sup>.

Any statement<sup>8</sup> contained in a document<sup>9</sup> purporting to be: (i) a part of the records referred to in head (1) above; or (ii) a copy<sup>10</sup> of a document forming part of those records; or (iii) a note of any information contained in those records, and to be authenticated by a person authorised to do so by the Secretary of State<sup>11</sup>, is admissible in any proceedings as evidence of any fact stated in it with respect to the issue of a test certificate in respect of a vehicle, and the date of issue of such a certificate, to the same extent as oral evidence of that fact is admissible in the proceedings<sup>12</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Road Traffic Act 1988 s 46A(1)(a) (s 46A added by the Road Traffic (Vehicle Testing) Act 1999 s 3). This provision refers to records maintained under the Road Traffic Act 1988 s 45(6B) (as added); see PARA 660 text and note 22 ante.

3 Ibid s 46A(1)(b) (as added: see note 2 supra).

4 Ibid s 46A(2)(a) (as added: see note 2 supra). This allows the Secretary of State to use the records referred to in head (1) in the text to check the accuracy of the records referred to in head (2) in the text, and vice versa: s 46A(2)(a) (as so added).

5 Ibid s 46A(2)(b) (as added: see note 2 supra).

6 Ibid s 46A(3) (as added: see note 2 supra). As to the requirement to hold a test certificate see s 47 (as amended); and PARA 657 ante.

7 Ibid s 46A(4) (as added: see note 2 supra).

8 'Statement' means any representation of fact, however made: ibid s 46B(3) (s 46B added by the Road Traffic (Vehicle Testing) Act 1999 s 4).

9 'Document' means anything in which information of any description is recorded: Road Traffic Act 1988 s 46B(3) (as added: see note 8 supra).

10 'Copy', in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly: *ibid* s 46B(3) (as added: see note 8 supra).

11 *Ibid* s 46B(2) (as added: see note 8 supra).

12 *Ibid* s 46B(1) (as added: see note 8 supra).

## UPDATE

### **674-676 Records of vehicle examinations ... Prohibition of use of vehicles without plating certificates or test certificates**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(i) Motor Vehicles/C. TESTS AS REQUIREMENT FOR EXCISE LICENCE/675. Regulations prohibiting the grant of excise licences for certain vehicles except on compliance with certain conditions.

## ***C. TESTS AS REQUIREMENT FOR EXCISE LICENCE***

### **675. Regulations prohibiting the grant of excise licences for certain vehicles except on compliance with certain conditions.**

The Secretary of State<sup>1</sup> may by regulations provide that where an application is made for a licence under the Vehicle Excise and Registration Act 1994<sup>2</sup> for a vehicle<sup>3</sup> the licence must not be granted unless one of the following conditions is satisfied<sup>4</sup>. Those conditions are that:

- 222 (1) there is produced such evidence as may be prescribed<sup>5</sup> of the granting of an effective test certificate<sup>6</sup> or (if it is so prescribed) there is produced such a certificate or the Secretary of State is provided with a copy of it<sup>7</sup>;
- 223 (2) the records<sup>8</sup> provide evidence of the granting of an effective test certificate<sup>9</sup>;
- 224 (3) there is made such a declaration as may be prescribed that the vehicle is not intended to be used during the period for which the licence is to be in force except for a prescribed purpose<sup>10</sup> or in a prescribed area<sup>11</sup>; or
- 225 (4) in the case of an application relating to certain vehicles<sup>12</sup>, the owner of the vehicle declares in writing the year in which the vehicle was manufactured<sup>13</sup>, and the specified period<sup>14</sup> from the date of manufacture has not expired<sup>15</sup>.

The Secretary of State may by regulations provide that where an application is made for a licence under the Vehicle Excise and Registration Act 1994 for a goods vehicle<sup>16</sup> or for a vehicle of any class<sup>17</sup>, the licence must not be granted unless specified requirements are satisfied<sup>18</sup>. Such regulations may be made so as to apply to such classes only of vehicles as may be specified in the regulations<sup>19</sup>.

As from a day to be appointed, the Secretary of State may by regulations provide, in relation to vehicles required to be examined and certified by regulations relating to the examination and certification of motor vehicles modified to enable them to be propelled using fuel stored under pressure<sup>20</sup>, that the first licence for such a vehicle under the Vehicle Excise and Registration Act 1994 for a period after the requirement applies to the vehicle is to be granted only if evidence is provided that a certificate has been issued in accordance with those regulations<sup>21</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 See PARA 443 et seq ante.

3 I.e. a vehicle to which the Road Traffic Act 1988 s 47 (as amended) (see PARA 657 ante) applies: s 66(1)(a) (amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 24(1)). In the case of a vehicle to which the Road Traffic Act 1988 s 47 applies by virtue of s 47(2)(b) (see PARA 657 text and note 22 ante), it must appear from the application that the vehicle has been used on roads (whether in Great Britain or elsewhere) before the date of the application: s 66(1)(b). For the meaning of 'road' see PARA 206 ante. For the meaning of 'Great Britain' see PARA 205 note 3 ante.

4 Ibid s 66(1). As to regulations having effect under s 66 see note 19 infra.

5 For the meaning of 'prescribed' see PARA 660 note 5 ante.

6 'Effective test certificate' means, in relation to an application for a licence for a vehicle, a test certificate relating to the vehicle and issued within the appropriate period before the date on which the licence is to come into force: Road Traffic Act 1988 s 66(9). For the meaning of 'test certificate' see PARA 660 ante. For the meaning of 'appropriate period' see PARA 657 note 5 ante; definition applied by virtue of s 66(9).

7 Ibid s 66(2)(a).

8 I.e. the records maintained under ibid s 45(6B) (as added): see PARA 660 text and note 22 ante.

9 Ibid s 66(2)(aa) (added by the Road Traffic (Vehicle Testing) Act 1999 s 5).

10 I.e. prescribed under the Road Traffic Act 1988 s 47(6): see PARA 657 ante.

11 Ibid s 66(2)(b). As to prescribed areas see s 47(7); and PARA 657 ante.

12 I.e. any vehicle to which ibid s 47 (as amended) applies by virtue of s 47(2)(b): see note 3 supra.

13 For these purposes, the date of manufacture of a vehicle is to be taken to be the last day of the year during which its final assembly is completed, except where after that day modifications are made to the vehicle before it is sold or supplied by retail; and in that excepted case must be taken to be the last day of the year during which the modifications are completed: ibid s 66(8).

14 'Specified period' means the period for the time being specified in ibid s 47(2)(a), (b) (see PARA 657 ante): s 66(9).

15 Ibid s 66(2)(c). For the meaning of 'owner' see PARA 207 ante.

16 I.e. a vehicle to which ibid s 53(2) (see PARA 676 post) applies. For the meaning of 'goods vehicle' see PARA 220 ante.

17 I.e. a class of vehicle to which ibid s 63(1) (see PARA 700 post) applies.

18 Ibid s 66(3) (amended by the Vehicle Excise and Registration Act 1994 Sch 3 para 24(1)). The requirements referred to in the text are those of the Road Traffic Act 1988 s 66(4), (5) or (6).

The requirements of s 66(4) are that:

- 1320 (1) on any application, after the relevant date (within the meaning of s 53(2): see PARA 676 note 7 post), for a licence for a vehicle to which s 53(2) applies, there is produced evidence that an effective goods vehicle test certificate is in force for the vehicle (s 66(4)(a));

- 1321 (2) on the first application, after the day appointed by regulations made by virtue of s 63(1) (see PARA 700 post), for a licence for a vehicle of any class to which those regulations apply, there is produced evidence that there is or are one or more certificates in force for the vehicle under ss 54-58 (as amended) (see PARAS 702-706 post) from which it appears that the vehicle complies with all the relevant type approval requirements prescribed by those regulations (s 66(4)(b)).

'Effective goods vehicle test certificate' means, in relation to an application for a licence for a vehicle, a goods vehicle test certificate relating to the vehicle which will be in force on the date on which the licence is to come into force: s 66(9). For the meaning of 'goods vehicle test certificate' see PARA 679 post. For the meaning of 'type approval requirements' see PARA 702 post. In relation to any application referred to in s 66(3) the requirement set out in s 66(4)(b) (see head (2) supra) must be taken to be satisfied if there is produced evidence that an EC certificate of conformity has effect with respect to the vehicle: s 66(4A) (added by the Motor Vehicles (EC Type Approval) Regulations 1992, SI 1992/3107, reg 16, Sch 2 para 4). For the meaning of 'EC certificate of conformity' see PARA 700 note 11 post.

The requirements of the Road Traffic Act 1988 s 66(5) are that there is made such a declaration as may be prescribed that the vehicle is not intended to be used during the period for which the licence is to be in force except for a purpose or in an area prescribed under s 53(5)(a) (see PARA 676 post) or s 63(5) (see PARA 700 post): s 66(5).

The requirements of s 66(6) are that there is produced in respect of the vehicle a certificate of temporary exemption issued by virtue of s 53(5)(b) (see PARA 676 post) or s 63(5)(c) (see PARA 700 post) which exempts that vehicle from the provisions of s 53(2) (see PARA 676 post) or s 63(1) (see PARA 700 post), as the case may be, for a period which includes the date on which the licence is to come into force: s 66(6).

19 Ibid s 66(7). At the date at which this volume states the law the following regulations had effect under s 66: (1) the Motor Vehicles (Evidence of Test Certificates) Regulations 2004, SI 2004/1896; (2) the Goods Vehicles (Evidence of Test Certificates) Regulations 2004, SI 2004/2577; (3) the Motor Vehicles (Type Approval for Goods Vehicles) (Great Britain) Regulations 1982, SI 1982/1271, reg 19 (substituted by SI 1996/3014); (4) the Motor Vehicles (Type Approval) (Great Britain) Regulations 1984, SI 1984/981, reg 14 (substituted by SI 1996/3015); and (5) the Motor Vehicles (Approval) Regulations 2001, SI 2001/25 (amended by SI 2004/623).

20 le under the Road Traffic Act 1988 s 41(2A)(a) (prospectively added): see PARA 260 ante.

21 Ibid s 66(7A) (prospectively added by the Road Safety Act 2006 s 56(1), (5)). At the date at which this volume states the law no day had been appointed for the commencement of this provision.

## UPDATE

### **674-676 Records of vehicle examinations ... Prohibition of use of vehicles without plating certificates or test certificates**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **675 Regulations prohibiting the grant of excise licences for certain vehicles except on compliance with certain conditions**

NOTE 19--SI 2001/25 further amended: SI 2009/815.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(ii) Goods Vehicles/A. REQUIREMENT FOR TEST CERTIFICATE/676. Prohibition of use of vehicles without plating certificates or test certificates.

## **(ii) Goods Vehicles**



## **A. REQUIREMENT FOR TEST CERTIFICATE**

### **676. Prohibition of use of vehicles without plating certificates or test certificates.**

If any person at any time on or after the relevant date<sup>1</sup> uses on a road<sup>2</sup> a goods vehicle of a class<sup>3</sup> required by regulations<sup>4</sup> to have been submitted for examination for plating, or causes or permits to be used on a road a goods vehicle of such a class, and at that time there is no plating certificate<sup>5</sup> in force for the vehicle, he is guilty of an offence<sup>6</sup>. If any person at any time on or after the relevant date<sup>7</sup> uses on a road a goods vehicle of a class required by such regulations to have been submitted for a goods vehicle test, or causes or permits to be used on a road a goods vehicle of such a class, and at that time there is no goods vehicle test certificate<sup>8</sup> in force for the vehicle, he is guilty of an offence<sup>9</sup>.

Any person who uses a goods vehicle on a road, or causes or permits a goods vehicle to be so used, when an alteration has been made to the vehicle or its equipment which is required by such regulations to be, but has not been, notified to the Secretary of State<sup>10</sup> (or, as from a day to be appointed, the prescribed testing authority<sup>11</sup>) is guilty of an offence<sup>12</sup>. In any proceedings for such an offence, it is a defence to prove that the alteration was not specified in the relevant plating certificate in accordance with such regulations<sup>13</sup>.

The Secretary of State may by regulations exempt from all or any of the above provisions the use of goods vehicles for such purposes or in such an area as may be prescribed<sup>14</sup>, and make provision for the issue in respect of a vehicle in such circumstances as may be prescribed of a certificate of temporary exemption exempting that vehicle from the provisions prohibiting use without a testing certificate or plating certificate<sup>15</sup> for such period as may be specified in the certificate<sup>16</sup>.

1 In the Road Traffic Act 1988 s 53(1), 'relevant date', in relation to any goods vehicle, means the date by which it is required by the regulations to be submitted for examination for plating: s 53(1). In Pt II (ss 40A-86) (as amended), 'examination for plating' means an examination under regulations under s 49 (see PARA 679 post) for the purpose of determining plated particulars for a goods vehicle: s 49(4). In Pt II (as amended), 'plated particulars' means such particulars as are required to be marked on a goods vehicle in pursuance of regulations under s 41 (see PARA 260 ante) by means of a plate: s 41(7). For the meaning of 'goods vehicle' see PARA 220 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 As to the classes of vehicle to which these provisions apply see PARA 677 post.

4 In the Road Traffic Act 1988 s 49 (as amended) (see PARA 679 post): see s 53(1).

5 For the meaning of 'plating certificate' see PARA 679 post.

6 Road Traffic Act 1988 s 53(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post. Section 11 (as amended) (evidence by certificate as to driver, user or owner), s 12(1) (proof, in summary proceedings, of identity of driver of vehicle) (see PARAS 1035-1036 post) apply to this offence, and that referred to in note 12 infra: s 1(4), Sch 1.

7 For these purposes, 'relevant date' means, in relation to any goods vehicle, the date by which it is required by the regulations to be submitted for its first goods vehicle test: Road Traffic Act 1988 s 53(2). 'Goods vehicle test' means an examination under regulations under s 49 (as amended) for the purpose of ascertaining whether any prescribed construction and use requirements, or the requirement that the condition of the vehicle is not such that its use on a road would involve a danger of injury to any person are complied with in the case of a goods vehicle: s 49(4) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 54(4)). For the meaning of 'construction and use requirements' see PARA 261 note 1 ante.

8 For the meaning of 'goods vehicle test certificate' see PARA 679 post.

9 Road Traffic Act 1988 s 53(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I.

10 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

11 'Prescribed testing authority' means such approved testing authority as may be prescribed: Road Traffic Act 1988 s 85 (definition prospectively added by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 Pt I para 17(b)).

12 Road Traffic Act 1988 s 53(3). As from a day to be appointed, this provision is amended by the Transport Act 1982 s 10(7)(b) (amended by the Road Traffic Consequential Provisions) Act 1988 s 4, Sch 2 Pt I para 4) so as to add the reference to the prescribed testing authority. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I. See also note 6 supra.

13 Road Traffic Act 1988 s 53(4).

14 Ibid s 53(5)(a). For the meaning of 'prescribed' see PARA 660 note 5 ante.

15 Ie ibid s 53(1), (2) (see the text and notes 1-9 supra).

16 Ibid s 53(5)(b).

At the date at which this volume states the law the Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, Pt VIII (regs 44-46) (amended by SI 1990/448; SI 1997/82; SI 2000/1433; SI 2002/487; SI 2003/1816), have effect under the Road Traffic Act 1988 s 53.

## UPDATE

### **674-676 Records of vehicle examinations ... Prohibition of use of vehicles without plating certificates or test certificates**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(ii) Goods Vehicles/A. REQUIREMENT FOR TEST CERTIFICATE/677. Goods vehicles to which requirement of testing applies.

### **677. Goods vehicles to which requirement of testing applies.**

The goods vehicles<sup>1</sup> to which the requirement of testing<sup>2</sup> applies<sup>3</sup> are:

- 226 (1) heavy motor cars and motor cars<sup>4</sup> constructed or adapted for the purpose of forming part of an articulated vehicle<sup>5</sup>;
- 227 (2) other heavy motor cars<sup>6</sup>;
- 228 (3) other motor cars, the design gross weight<sup>7</sup> of which exceeds 3,500 kilograms<sup>8</sup>;
- 229 (4) semi-trailers<sup>9</sup>;
- 230 (5) converter dollies<sup>10</sup> of any unladen weight manufactured on or after 1 January 1979<sup>11</sup>; or

- 231 (6) trailers, not being converter dollies or semi-trailers, the unladen weight of which exceeds 1,020 kilograms<sup>12</sup>.

However, the regulations do not apply to vehicles falling within the following categories<sup>13</sup>: (a) dual-purpose vehicles<sup>14</sup> not constructed or adapted to form part of an articulated vehicle<sup>15</sup>; (b) mobile cranes<sup>16</sup>; (c) break-down vehicles<sup>17</sup>; (d) certain engineering plant and plant<sup>18</sup>; (e) trailers being drying or mixing plant designed for the production of asphalt or of bituminous or tar macadam<sup>19</sup>; (f) tower wagons<sup>20</sup>; (g) road construction vehicles<sup>21</sup>; (h) vehicles designed and used solely for fire fighting or fire salvage purposes<sup>22</sup>; (i) works trucks, straddle carriers used solely as works trucks, and works trailers<sup>23</sup>; (j) electrically-propelled motor vehicles<sup>24</sup>; (k) vehicles used for clearing frost, ice or snow<sup>25</sup>; (l) motor vehicles used solely for haulage of lifeboats and conveying their gear<sup>26</sup>; (m) living vans the design gross weight of which does not exceed 3,500 kilograms<sup>27</sup>; (n) certain vehicles used for certain health, educational and scientific purposes<sup>28</sup>; (o) trailers which have no other brakes than a parking brake and brakes which automatically come into operation on the over-run of the trailer<sup>29</sup>; (p) a vehicle being used on public roads only between parts of the keeper's land<sup>30</sup>; (q) agricultural motor vehicles and agricultural trailed appliances<sup>31</sup>; (r) agricultural trailers and agricultural trailed appliance conveyors drawn on roads only by an agricultural motor vehicle<sup>32</sup>; (s) converter dollies used solely for the purposes of agriculture, horticulture and forestry<sup>33</sup>; (t) public service vehicles<sup>34</sup>; (u) licensed taxis<sup>35</sup>; (v) vehicles used solely for the purposes of funerals<sup>36</sup>; (w) certain goods vehicles to which prescribed construction and use requirements do not apply<sup>37</sup>; (x) vehicles equipped with new or improved equipment or types of equipment and used, solely by a manufacturer of vehicles or their equipment or by an importer of vehicles, for or in connection with the test or trial of any such equipment<sup>38</sup>; (y) motor vehicles brought into Great Britain and displaying a specified registration mark<sup>39</sup>, within 12 months since the vehicle was last brought into Great Britain<sup>40</sup>; (z) vehicles licensed in Northern Ireland<sup>41</sup>; (aa) vehicles having a base or centre in certain of the islands off Scotland from which the use of the vehicle on a journey is normally commenced<sup>42</sup>; (bb) trailers brought into Great Britain, having a base or centre outside Great Britain, from which the use of the vehicle on a journey is normally commenced, within 12 months since the vehicle was last brought into Great Britain<sup>43</sup>; (cc) track-laying vehicles<sup>44</sup>; (dd) steam propelled vehicles<sup>45</sup>; (ee) certain vehicles and trailers first used or manufactured before 1 January 1960<sup>46</sup>; (ff) certain vehicles used in connection with street-cleaning or refuse collection<sup>47</sup>; (gg) vehicles used for servicing, controlling, loading or unloading aircraft, and vehicles for cleansing and refuse collection at aerodromes<sup>48</sup>; (hh) certain police vehicles<sup>49</sup>; (ii) certain heavy motor cars and motor cars forming part of an articulated vehicle<sup>50</sup>; (jj) play buses<sup>51</sup>; (kk) certain vehicles which comply with specified<sup>52</sup> requirements<sup>53</sup>.

1 For the meaning of 'goods vehicle' see PARA 220 ante.

2 See PARA 679 post.

3 As to the application of the Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478 (as amended) to the Crown see reg 43 (amended by SI 1997/263).

4 For the meaning of 'motor car' see PARA 212 ante; and for the meaning of 'heavy motor car' see PARA 213 ante.

5 Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, reg 4(1)(a). For the meaning of 'articulated vehicle' see PARA 271 note 6 ante; definition applied by reg 3(1).

6 Ibid reg 4(1)(b).

7 'Design gross weight' means: (1) in the case of a vehicle equipped with a Ministry plate, the weight shown thereon as the design weight, or, if no weight is so shown thereon, the weight shown thereon as the weight not to be exceeded in Great Britain; (2) in the case of a vehicle which is not equipped with a Ministry plate, but which is equipped with a plate in accordance with the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 66 (as amended) (see PARA 364 ante), the maximum gross weight shown on the plate in

respect of Sch 8 Pt I item 7; and (3) in any other case, the weight which the vehicle is designed or adapted not to exceed when in normal use and travelling on a road laden: Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, reg 3(1) (definition added by SI 1991/252). For the meaning of 'Great Britain' see PARA 205 note 3 ante.

8 Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, reg 4(1)(c) (substituted by SI 1991/252).

9 Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, reg 4(1)(d). For the meaning of 'semi-trailer' see PARA 271 note 6 ante; definition applied by reg 3(1).

10 For the meaning of 'converter dolly' see PARA 271 note 25 ante; definition applied by ibid reg 3(1).

11 Ibid reg 4(1)(e).

12 Ibid reg 4(1)(f).

13 Ibid reg 4(2).

14 For the meaning of 'dual-purpose vehicle' see PARA 271 note 28 ante; definition applied by ibid reg 3(1).

15 Ibid reg 4(2), Sch 2 para 1.

16 Ibid Sch 2 para 2. For the meaning of 'mobile crane' see the Vehicle Excise and Registration Act 1994 Sch 1 para 4(5).

17 Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, Sch 2 para 3. 'Break-down vehicle' means a motor vehicle on which is permanently mounted apparatus designed for raising one disabled vehicle partly from the ground and for drawing that vehicle when so raised, and which is not equipped to carry any load other than articles required for the operation of, or in connection with, that apparatus or for repairing disabled vehicles: reg 3(1).

18 I.e engineering plant and plant, not being engineering plant, which is movable plant or equipment being a motor vehicle or trailer (not constructed primarily to carry a load) especially designed and constructed for the special purposes of engineering operations: ibid Sch 2 para 4. For the meaning of 'engineering plant' see PARA 271 note 11 ante; definition applied by reg 3(1).

19 Ibid Sch 2 para 5.

20 I.e tower wagons as defined in the Vehicle Excise and Registration Act 1994 Sch 1 para 8 (as originally enacted) or Sch 2 para 17 (as originally enacted): Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, Sch 2 para 6 (substituted by SI 1995/1456). See also *Anderson & Heeley Ltd v Paterson* [1975] 1 All ER 523, [1975] 1 WLR 228, DC.

21 I.e road construction vehicles as defined in the Vehicle Excise and Registration Act 1994 s 61 (as originally enacted), and road rollers: Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, Sch 2 para 7 (amended by SI 1995/1456).

22 Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, Sch 2 para 8 (amended by SI 2005/2343).

23 Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, Sch 2 para 9. For the meanings of 'works truck' and 'straddle carrier' see PARA 278 note 18 ante; and for the meaning of 'works trailer' see PARA 278 note 6 ante (definitions applied by reg 3(1)). See also *G Greaves & Son Ltd v Peam* [1972] RTR 146, (1971) 115 Sol Jo 813, DC.

24 Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, Sch 2 para 10.

25 I.e vehicles used solely for one or both of: (1) clearing frost, ice or snow from roads by means of a snow plough or similar contrivance, whether forming part of the vehicle or not; and (2) spreading material on roads to deal with frost, ice or snow: ibid Sch 2 para 11.

26 Ibid Sch 2 para 12.

27 Ibid Sch 2 para 13 (substituted by SI 1991/252). 'Living van' means a vehicle whether mechanically propelled or not which is used as living accommodation by one or more persons, and which is also used for the carriage of goods or burden which are not needed by such one or more persons for the purpose of their residence in the vehicle: Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, reg 3(1).

28   Ie vehicles constructed or adapted for, and used primarily for the purpose of, carrying equipment permanently fixed to the vehicle which equipment is used for medical, dental, veterinary, health, educational, display, clerical or experimental laboratory purposes, such use: (1) not directly involving the sale, hire or loan of goods from the vehicle; and (2) not directly or indirectly involving drain cleaning or sewage or refuse collection: *ibid* Sch 2 para 14.

29   *Ibid* Sch 2 para 15.

30   *Ibid* Sch 2 para 16 (substituted by SI 1995/1456).

31   Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, Sch 2 para 17. For the meaning of 'agricultural motor vehicle' see PARA 271 note 28 ante; and for the meaning of 'agricultural trailed appliance' see PARA 271 note 21 ante (definitions applied by reg 3(1)).

32   *Ibid* Sch 2 para 18. For the meaning of 'agricultural trailer' see PARA 271 note 30 ante; definition applied by reg 3(1).

33   *Ibid* Sch 2 para 18A (added by SI 1991/252).

34   Ie public service vehicles as defined in the Public Passenger Vehicles Act 1981 s 1 (as amended) (see PARA 1136 post): Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, Sch 2 para 19.

35   Ie licensed taxis as defined in the Transport Act 1985 s 13(3) (as amended) (see PARA 1495 note 1 post): Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, Sch 2 para 20.

36   *Ibid* Sch 2 para 21.

37   *Ibid* Sch 2 para 22.

38   *Ibid* Sch 2 para 23.

39   Ie a registration mark mentioned in the Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 5: see PARA 578 ante.

40   Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, Sch 2 para 24.

41   *Ibid* Sch 2 para 25 (amended by SI 2002/487).

42   Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, Sch 2 para 26.

43   *Ibid* Sch 2 para 27. See also *British Road Services Ltd v Wurzel* [1971] 3 All ER 480, [1971] 1 WLR 1508, DC.

44   Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, Sch 2 para 28.

45   *Ibid* Sch 2 para 29.

46   *Ibid* Sch 2 para 30.

47   Ie motor vehicles constructed, and not merely adapted, for the purpose of street cleansing, or the collection or disposal of refuse or the collection or disposal of the contents of gullies, and which are either: (1) three-wheeled vehicles; or (2) vehicles which are incapable by reason of their construction of exceeding 20 mph on the level under their own power, or have an inside track width of not more than 1,110 mm: *ibid* Sch 2 para 31 (amended by SI 2003/1816).

48   Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, Sch 2 paras 32, 33.

49   *Ibid* Sch 2 para 34.

50   *Ibid* Sch 2 para 35 (amended by SI 1990/448).

51   Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, Sch 2 para 36. 'Play bus' means a motor vehicle which was originally constructed to carry more than 12 passengers but which has been adapted primarily for the carriage of play things for children (including articles required in connection with the use of those things): reg 3(1).

52 le the requirements in the Motor Vehicles (Approval) Regulations 2001, SI 2001/25, reg 4(2). As to type approval requirements see PARA 702 post.

53 Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, Sch 2 para 37 (added by SI 2001/307).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(ii) Goods Vehicles/A. REQUIREMENT FOR TEST CERTIFICATE/678. Exemptions for certain purposes or in certain areas.

### **678. Exemptions for certain purposes or in certain areas.**

The prohibition on using or causing or permitting the use on a road of certain goods vehicles in respect of which no test certificate is in force<sup>1</sup> does not apply to the use of a vehicle:

- 232 (1) for the purpose of submitting it by previous arrangement for, or bringing it away from, an examination<sup>2</sup>;
- 233 (2) where a test certificate is refused on an examination, for the purpose of delivering it by previous arrangement at, or bringing it away from, a place where work is to be or has been done on it to remedy the defects<sup>3</sup> or for the purpose of delivering it, by towing it, to a place where it is to be broken up<sup>4</sup>;
- 234 (3) when unladen, for the purpose of being driven or drawn by a vehicle driven under a trade licence<sup>5</sup>;
- 235 (4) for the purpose of being driven or drawn where it was imported (or first imported) into Great Britain after arrival in Great Britain on the journey from the place where it has arrived in Great Britain to a place where it is to be kept by the person importing the vehicle or by any other person on whose behalf the vehicle was imported<sup>6</sup>;
- 236 (5) for any purpose for which the vehicle is authorised to be used on roads by an order<sup>7</sup> in respect of a special vehicle not complying with construction and use regulations<sup>8</sup>;
- 237 (6) for any purpose connected with its seizure or detention by a constable<sup>9</sup>;
- 238 (7) where the vehicle has been abandoned or illegally, obstructively or dangerously parked<sup>10</sup>;
- 239 (8) on any island in any area mainly surrounded by water, being an island or area from which motor vehicles cannot conveniently be driven to a road in any other part of Great Britain because there is no bridge, tunnel, ford or other way suitable for the passage of the vehicle<sup>11</sup>;
- 240 (9) where, in exceptional circumstances, a certificate of temporary exemption has been granted<sup>12</sup>.

1 As to this prohibition see PARA 657 ante. For the form of declaration required where an applicant is exempted from testing pursuant to the Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, reg 44(1) or (2) (as amended) see the Goods Vehicles (Evidence of Test Certificates) Regulations 2004, SI 2004/2577.

2 Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, reg 44(1)(a). For the meaning of 'examination' see PARA 659 note 2 ante.

3 Ibid reg 44(1)(b)(i).

4 Ibid reg 44(1)(b)(ii).

5 Ibid reg 44(1)(c). The text refers to a trade licence issued under what is now the Vehicle Excise and Registration Act 1994 s 11 (as amended): see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 766.

6 Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, reg 44(1)(d). For the meaning of 'Great Britain' see PARA 205 note 3 ante.

7 le an order under what is now the Road Traffic Act 1988 s 44 (as amended): see PARA 376 ante.

8 Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, reg 44(1)(e) (amended by SI 1990/448).

9 Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, reg 44(1)(f) (amended by SI 1990/448). As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

10 See the Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, reg 44(1)(g), (h), which refers to the removal of a vehicle in pursuance of the Refuse Disposal (Amenity) Act 1978 s 3 (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 743), or regulations under the Road Traffic Regulation Act 1984 s 99 (as amended) (see PARA 870 post), or an order under the Road Traffic Regulation Act 1984 s 35(1) (as amended) (see PARA 790 post), or an order relating to a parking place designated under s 45 (as amended) (see PARA 808 post), or a provision of a designation order having effect by virtue of s 53(3) (see PARA 817 post).

11 Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, reg 44(2) (amended by SI 1990/448). This does not apply to the Isle of Wight or certain of the larger islands off Scotland: see the Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, reg 44(2) (as so amended).

12 See ibid reg 46 (amended by SI 1990/448; SI 1997/82).

## UPDATE

### 678-683 Exemptions for certain purposes or in certain areas ... Appeals

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(ii) Goods Vehicles/B. CONDUCT OF TEST/679. Tests of satisfactory condition of goods vehicles and determination of plated weights, etc.

## ***B. CONDUCT OF TEST***

### **679. Tests of satisfactory condition of goods vehicles and determination of plated weights, etc.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> make provision for the examination of goods vehicles<sup>3</sup> of any prescribed<sup>4</sup> class<sup>5</sup>:

- 241 (1) for the purpose of selecting or otherwise determining plated weights<sup>6</sup> or other plated particulars<sup>7</sup> for goods vehicles of that class<sup>8</sup>; or
- 242 (2) for the purpose of ascertaining whether any prescribed construction and use requirements<sup>9</sup> (whether relating to plated particulars or not) are complied with in the case of goods vehicles of that class<sup>10</sup>; or
- 243 (3) for the purpose of ascertaining whether the condition of the vehicle is such that its use on a road<sup>11</sup> would involve a danger of injury to any person<sup>12</sup>,

or for any of those purposes<sup>13</sup>. In particular the regulations may make provision:

- 244 (a) for the determination, according to criteria or by methods prescribed by or determined under the regulations, of the plated particulars for a goods vehicle (including its plated weights), on an examination of the vehicle for the purpose, and for the issue on such an examination, except as provided by regulations made by virtue of head (c) below, of a certificate (a 'plating certificate') specifying those particulars<sup>14</sup>;
- 245 (b) for the issue, for a goods vehicle which has been found on examination for the purpose to comply with the prescribed construction and use requirements and the requirement that the condition of the vehicle is not such that its use on a road would involve a danger of injury to any person, of a certificate (a 'goods vehicle test certificate') stating that the vehicle has been found so to comply<sup>15</sup>; and
- 246 (c) for the refusal of a goods vehicle test certificate for a goods vehicle which is so found not to comply with those requirements and for requiring a written notification to be given of any such refusal, and of the grounds of the refusal, and for the refusal of a plating certificate where a goods vehicle test certificate is refused<sup>16</sup>.

Without prejudice to the above<sup>17</sup>, such regulations may:

- 247 (i) require or authorise goods vehicles to which the regulations apply to be submitted for examination under the regulations<sup>18</sup> and, in particular,
  - 75 145. (A) require any such vehicle to be submitted for a goods vehicle test<sup>19</sup> at periodic intervals<sup>20</sup>;
  - 146. (B) require or authorise any such vehicle to be submitted for re-examination on the making of any prescribed alteration to it or its equipment and, for the purpose of determining whether any such re-examination is necessary, require any such alteration to be notified to the Secretary of State or, as from a day to be appointed, the prescribed testing authority<sup>21</sup>; and
  - 147. (C) require any such vehicle to be submitted for examination or re-examination for any purpose of plating or certification<sup>22</sup>;
- 76 248 (ii) as from a day to be appointed, require the payment of a fee on any notification of any alteration to a vehicle or its equipment which is required by the regulations to be notified to the Secretary of State or the prescribed testing authority<sup>23</sup>;
- 249 (iii) authorise any examination under the regulations to be carried out by or under the direction of a vehicle examiner<sup>24</sup> or, as from a day to be appointed, an authorised inspector<sup>25</sup>;
- 250 (iv) prescribe the conditions subject to which vehicles will be accepted for such examination<sup>26</sup> and, without prejudice to that,
  - 77 148. (A) authorise any person by whom an examination of the vehicle<sup>27</sup> is carried out to drive<sup>28</sup> the vehicle, whether on a road or elsewhere<sup>29</sup>; and
  - 149. (B) require that a driver<sup>30</sup> of a vehicle so examined is, except so far as permitted to be absent by the person carrying out the examination, present throughout the whole of the examination and drives the vehicle when directed to do so, and operates the controls in accordance with any directions given to him, by that person<sup>31</sup>;

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- 251 (v) require the plating certificate for any vehicle to which the regulations apply to specify any alteration to the vehicle or its equipment which is required by the regulations to be notified to the Secretary of State or, as from a day to be appointed, the prescribed testing authority<sup>32</sup>;
- 252 (vi) authorise the amendment of a plating certificate or the issue of a different plating certificate on the re-examination of any vehicle<sup>33</sup>;
- 253 (vii) provide for the period of validity of goods vehicle test certificates<sup>34</sup>;
- 254 (viii) specify the manner in which, and the time before or within which, applications may be made for the examination of vehicles under the regulations or appeals may be brought<sup>35</sup> and the information to be supplied and documents to be produced on any such application, examination or appeal<sup>35</sup>;
- 255 (ix) make provision as to the fees to be paid on any such application or appeal and as to the repayment of the whole or part of any fee paid on such an appeal where it appears to the Secretary of State that there were substantial grounds for contesting the whole or part of the determination appealed from<sup>37</sup>;
- 256 (x) make provision as to the form of, and particulars to be contained in, plating certificates and goods vehicle test certificates and notifications of the refusal of the latter certificates<sup>38</sup>;
- 257 (xi) provide for the issue of replacements for plates marked with plated particulars, plating certificates and goods vehicle test certificates which have been lost or defaced and for the payment of a fee for their issue<sup>39</sup>;
- 258 (xii) exempt prescribed classes of vehicles from all or any of the provisions of the regulations either generally or in prescribed circumstances<sup>40</sup>;
- 259 (xiii) make different provision for different cases<sup>41</sup>.

Regulations may also be made as to appeals against determinations made on such examinations<sup>42</sup>; and, as from a day to be appointed, for the carrying out and supervision of private sector examinations<sup>43</sup>, and the carrying out of examinations at designated testing stations<sup>44</sup>.

As from a day to be appointed, the Secretary of State must maintain, or cause to be maintained, records containing such particulars as he thinks fit of goods vehicles submitted for examination<sup>45</sup>, and the carrying out of and the results of the examinations<sup>46</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 See the Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478 (amended by SI 1989/1693; SI 1990/448; SI 1991/252; SI 1992/564; SI 1992/2447; SI 1993/2048; SI 1993/3013; SI 1994/328; SI 1995/1456; SI 1997/82; SI 1997/263; SI 1998/1671; SI 1998/3113; SI 2000/1433; SI 2001/1650; SI 2002/487; SI 2003/1816; SI 2004/1873; SI 2005/2343; SI 2007/503).

3 For the meaning of 'goods vehicle' see PARA 220 ante.

4 For the meaning of 'prescribed' see PARA 660 note 5 ante.

5 As to the vehicles to which these provisions apply see PARA 677 ante.

6 In the Road Traffic Act 1988 Pt II (ss 40A-86) (as amended), 'plated weights' means such weights as are required to be marked on a goods vehicle in pursuance of regulations under s 41 (as amended) (see PARA 260 ante) by means of a plate: s 41(7).

7 For the meaning of 'plated particulars' see PARA 676 note 1 ante.

8 Road Traffic Act 1988 s 49(1)(a).

9 For the meaning of 'construction and use requirements' see PARA 261 note 1 ante. References in the Road Traffic Act 1988 s 49(1), (2) (as amended) to construction and use requirements must be construed:

1322 (1) in relation to an examination of a vehicle solely for the purpose of ascertaining whether it complies with any such requirements, as references to such of those requirements as are applicable to the vehicle at the time of the test (s 49(3)(a)); and

1323 (2) in relation to an examination of a vehicle both for that purpose and for the purpose of determining its plated particulars, as references to such of those requirements as will be applicable to the vehicle if a plating certificate is issued for it (s 49(3)(b)).

For the meaning of 'plating certificate' see the text to note 14 infra. In its application to vehicles in which recording equipment is required by the Community Recording Equipment Regulation art 3 to be installed and used, the Road Traffic Act 1988 s 49 (as amended) has effect as if any reference to prescribed construction and use requirements included a reference to prescribed requirements of so much of the Community Recording Equipment Regulation as relates to the installation of recording equipment and the seals to be fixed to such equipment: Road Traffic Act 1988 s 49(5). For the meaning of the 'Community Recording Equipment Regulation' see PARA 660 note 6 ante.

10 Road Traffic Act 1988 s 49(1)(b).

11 For the meaning of 'road' see PARA 206 ante.

12 Road Traffic Act 1988 s 49(1)(b), (c) (s 49(1)(b) amended, and s 49(1)(c) added, by the Road Traffic Act 1991 s 48, Sch 4 para 54(2)).

13 Road Traffic Act 1988 s 49(1) (amended by the Road Traffic Act 1991 Sch 4 para 54(2)).

14 Road Traffic Act 1988 s 49(2)(a). As to the forgery of plating certificates see s 173 (as amended); and PARA 1012 post.

15 Ibid s 49(2)(b) (amended by the Road Traffic Act 1991 Sch 4 para 54(3)). As to the forgery of goods vehicle test certificates see the Road Traffic Act 1988 s 173 (as amended); and PARA 1012 post.

16 Ibid s 49(2)(c).

17 See *ibid* s 49(1) (as amended); and the text and notes 1-13 *supra*.

18 Ibid s 51(1)(a).

19 For the meaning of 'goods vehicle test' see PARA 676 note 7 ante.

20 Road Traffic Act 1988 s 51(1)(a)(i).

21 Ibid s 51(1)(a)(ii). This provision is amended, as from a day to be appointed, by the Transport Act 1982 s 10(7) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 Pt I para 4). At the date at which this volume states the law no such day had been appointed. For the meaning of 'prescribed testing authority' see PARA 676 note 11 ante.

22 Road Traffic Act 1988 s 51(1)(a)(iii).

23 Ibid s 51(1)(aa). This provision is added, as from a day to be appointed, by the Transport Act 1982 s 22(1) (amended by the Road Traffic Consequential Provisions) Act 1988 Sch 2 Pt I para 11). At the date at which this volume states the law no such day had been appointed. Any sum received by the Secretary of State in pursuance of the Road Traffic Act 1988 s 51 (as amended) must be paid into the Consolidated Fund: Road Traffic Act 1988 s 84(4). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

24 For the meaning of 'vehicle examiner' see PARA 698 post.

25 Road Traffic Act 1988 s 51(1)(b) (amended by the Road Traffic Act 1991 s 83, Sch 8). This provision is further amended, as from a day to be appointed, by the Transport Act 1982 s 10(3) (substituted by the Road Traffic Act 1991 s 48, Sch 4 para 19). At the date at which this volume states the law no such day had been appointed. For the meaning of 'authorised inspector' see PARA 660 note 14 ante.

26 Road Traffic Act 1988 s 51(1)(c). As to the giving of directions in relation to the carrying out of examinations, without prejudice to s 51(1)(c), see PARA 681 post.

27 *Ie* under the regulations or *ibid* s 50 (as amended) (see PARA 683 post): see s 51(1)(c)(i).

28 For the meaning of 'drive' see PARA 207 ante. In *ibid* s 51 (as amended) any reference to the driving of a vehicle is, in relation to a trailer, a reference to the driving of the vehicle by which the trailer is drawn: s 51(3). For the meaning of 'trailer' see PARA 210 ante.

29 *Ibid* s 51(1)(c)(i).

30 For the meaning of 'driver' see PARA 207 ante; and see also note 28 *supra*.

31 Road Traffic Act 1988 s 51(1)(c)(ii). Regulations under s 49 (as amended) may provide that a person who contravenes or fails to comply with a requirement of regulations imposed by virtue of s 51(1)(c)(ii) is guilty of an offence: s 51(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 *et seq* post.

32 Road Traffic Act 1988 s 51(1)(d). This provision is amended, as from a day to be appointed, by the Transport Act 1982 s 10(7) (amended by the Road Traffic Consequential Provisions) Act 1988 Sch 2 Pt I para 4). At the date at which this volume states the law no such day had been appointed.

33 Road Traffic Act 1988 s 51(1)(e).

34 *Ibid* s 51(1)(f).

35 *Ie* under *ibid* s 50 (as amended): see PARA 683 post.

36 *Ibid* s 51(1)(g).

37 *Ibid* s 51(1)(h).

38 *Ibid* s 51(1)(j).

39 *Ibid* s 51(1)(k).

40 *Ibid* s 51(1)(l). As to vehicles so exempted see PARA 677 ante.

41 *Ibid* s 51(1)(m).

42 See *ibid* s 50 (as amended); and PARA 683 post.

43 See the Transport Act 1982 s 10(11) (as amended); and PARA 662 text and notes 22-24 ante.

44 See *ibid* s 10(12) (as amended); and PARA 682 post.

45 *Ie* under the Road Traffic Act 1988 s 49 (as amended).

46 *Ibid* s 49(3A). This provision is added, as from a day to be appointed, by the Road Safety Act 2006 s 48(1). At the date at which this volume states the law no such day had been appointed.

## UPDATE

### 678-683 Exemptions for certain purposes or in certain areas ... Appeals

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 679 Tests of satisfactory condition of goods vehicles and determination of plated weights, etc

NOTES 1-16, 37, 39--See the Department for Transport (Fees) Order 2009, SI 2009/711 (amended by SI 2009/1885), which specifies for the purposes of the Finance (No 2) Act

1987 s 102(3) the functions to be taken into account in the determination of the fees to be fixed by the Secretary of State.

NOTE 2--SI 1988/1478 further amended: SI 2008/1460, SI 2009/799.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(ii) Goods Vehicles/B. CONDUCT OF TEST/680. Use of records of examinations.

## **680. Use of records of examinations.**

As from a day to be appointed<sup>1</sup>, the Secretary of State<sup>2</sup> may use the information contained in records falling within either of the two following categories, namely: (1) the records as to goods vehicles submitted for examination, and the carrying out of and the results of the examinations<sup>3</sup>; and (2) the records maintained by the Secretary of State in connection with any functions exercisable by him under or by virtue of the Vehicle Excise and Registration Act 1994<sup>4</sup>, to check the accuracy of the records falling within the other category and, where appropriate, to amend or supplement information contained in those records<sup>5</sup>. The Secretary of State may also use the information contained in records falling within head (2) above for the purpose of promoting compliance with the requirements<sup>6</sup> as to plating certificates or test certificates for vehicles<sup>7</sup>. These provisions do not limit any other powers of the Secretary of State<sup>8</sup>.

1 The Road Traffic Act 1988 s 49A is added by the Road Safety Act 2006 s 48(2) as from a day to be appointed under s 61(1). At the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 I.e. the records maintained by the Secretary of State (or caused by him to be maintained) under the Road Traffic Act 1988 s 49(3A) (prospectively added) (see PARA 679 ante).

4 See CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 717 et seq.

5 Road Traffic Act 1988 s 49A(1), (2) (as added: see note 1 supra).

6 I.e. the requirements of ibid s 53: see PARA 676 et seq ante.

7 Ibid s 49A(3) (as added: see note 1 supra).

8 Ibid s 49A(4) (as added: see note 1 supra).

## **UPDATE**

### **678-683 Exemptions for certain purposes or in certain areas ... Appeals**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(ii) Goods Vehicles/B. CONDUCT OF TEST/681. Directions as to conduct of examinations.

### **681. Directions as to conduct of examinations.**

Without prejudice to regulations<sup>1</sup>, the Secretary of State<sup>2</sup> may give directions with respect to the manner in which examinations<sup>3</sup> are to be carried out<sup>4</sup>.

1    Ie any regulations made under the Road Traffic Act 1988 s 49 (as amended) by virtue of s 51(1)(c) (see PARA 679 text to note 29 ante).

2    As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3    Ie examinations under regulations made under the Road Traffic Act 1988 s 49 (as amended) (see PARA 679 ante) or s 50 (as amended) (see PARA 683 post).

4    Ibid s 52(1). See also PARA 679 text and note 43 ante.

## **UPDATE**

### **678-683 Exemptions for certain purposes or in certain areas ... Appeals**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(ii) Goods Vehicles/B. CONDUCT OF TEST/682. Stations and examinations for carrying out examinations.

### **682. Stations and examinations for carrying out examinations.**

The Secretary of State<sup>1</sup> may provide and maintain stations where examinations<sup>2</sup> of goods vehicles<sup>3</sup> may be carried out, and may provide and maintain the apparatus for carrying out such examinations<sup>4</sup>.

As from a day to be appointed, and without prejudice to any existing power of the Secretary of State to determine the premises at which examinations may be carried out, the Secretary of State may designate premises as stations where examinations of vehicles of any description subject to examination may be carried out<sup>5</sup>.

1    As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2    Ie examinations under regulations made under the Road Traffic Act 1988 s 49 (as amended) (see PARA 679 ante) or s 50 (as amended) (see PARA 683 post).

3 For the meaning of 'goods vehicle' see PARA 220 ante.

4 Road Traffic Act 1988 s 52(2).

5 Transport Act 1982 s 10(12) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 Pt I para 4). Regulations under the Road Traffic Act 1988 s 49 (as amended) (see PARA 679 ante) may require or authorise examinations of vehicles of any description specified in the regulations to be carried out at premises for the time being so designated: Transport Act 1982 s 10(12) (as so amended). At the date at which this volume states the law no day had been appointed for the commencement of s 10(12) (as amended). As to the requirement for the Secretary of State to consult before taking decisions relating to the designation of testing stations under the Transport Act 1982 see s 15(1), (2)(f), (5) (not yet in force).

As from a day to be appointed, the Secretary of State is given power to invest in government-controlled companies interested in former government testing stations: see s 13 (amended by the Companies Consolidation (Consequential Provisions) Act 1985 s 30, Sch 2; and the Road Traffic (Consequential Provisions) Act 1988 Sch 2 Pt I para 5). At the date at which this volume states the law no such day had been appointed. As to the required consultation see the Transport Act 1982 s 15(1), (2)(a), (b), (3) (not yet in force).

## UPDATE

### 678-683 Exemptions for certain purposes or in certain areas ... Appeals

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 682 Stations and examinations for carrying out examinations

NOTE 5--Transport Act 1982 s 13 amended: SI 2009/1941.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(1) ISSUE OF TEST CERTIFICATES/(ii) Goods Vehicles/B. CONDUCT OF TEST/683. Appeals.

### 683. Appeals.

Any person aggrieved by a determination made on an examination under regulations<sup>1</sup> by the person in charge of the examination may appeal to the Secretary of State<sup>2</sup>. On the appeal the Secretary of State must cause the vehicle to be re-examined by an officer appointed by him for the purpose and must make such determination on the basis of the re-examination as he thinks fit<sup>3</sup>.

1 le an examination made under regulations made under the Road Traffic Act 1988 s 49(1) (as amended): see PARA 679 ante. As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARAS 656, 664.

2 Ibid s 50(1) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 55). Regulations under the Road Traffic Act 1988 s 49(1) (as amended) (see PARA 679 ante) may make the like provision in relation to a determination on an appeal under this provision as they make in relation to a determination on an examination under the regulations: s 50(5). See the Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478 (as amended); and PARA 679 note 2 ante. See in particular reg 25 (amended by SI 1993/2048; SI 1997/263; SI 2007/503); the Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, reg 29 (amended by SI 1993/2048); the Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, reg 37 (amended by SI 1993/2048; SI 1997/263); the Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, reg 37D (added by SI 1997/263); and the Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, reg 40 (amended by SI 1990/448).

3 Road Traffic Act 1988 s 50(4).

## UPDATE

### 678-683 Exemptions for certain purposes or in certain areas ... Appeals

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 683 Appeals

NOTE 2--SI 1988/1478 reg 25 further amended: SI 2008/1460.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(2) SPECIFIC POWERS TO TEST VEHICLES/(i) Roadside Tests/684. Testing of condition of vehicles on roads.

## (2) SPECIFIC POWERS TO TEST VEHICLES

### (i) Roadside Tests

#### 684. Testing of condition of vehicles on roads.

An authorised examiner<sup>1</sup> may test<sup>2</sup> a motor vehicle<sup>3</sup> on a road<sup>4</sup> for the purpose of: (1) ascertaining whether the following requirements are complied with as respects the vehicle<sup>5</sup>, namely: (a) the construction and use requirements<sup>6</sup>; and (b) the requirement that the condition of the vehicle<sup>7</sup> is not such that its use on a road would involve a danger of injury to any person<sup>8</sup>; and (2) bringing to the notice of the driver<sup>9</sup> any failure to comply with those requirements<sup>10</sup>. For the purpose of testing a vehicle the examiner may require the driver to comply with his reasonable instructions, and may drive<sup>11</sup> the vehicle<sup>12</sup>. A vehicle cannot be required to stop for a test except by a constable in uniform, a community support officer, a person accredited for the purposes of a community safety accreditation scheme or a traffic warden<sup>13</sup>.

On the examiner proceeding to test a vehicle, the driver may elect that the test must be deferred and carried out at a time and place to be fixed<sup>14</sup>. However, where it appears to a constable that, by reason of an accident having occurred owing to the presence of the vehicle on a road, it is requisite that a test should be carried out forthwith, he may require it to be so carried out and, if he is not to carry it out himself, may require that the vehicle must not be taken away until the test has been carried out<sup>15</sup>. Further, where in the opinion of a constable the vehicle is apparently so defective that it ought not to be allowed to proceed without a test being carried out, he may require the test to be carried out forthwith<sup>16</sup>.

If a person obstructs an authorised examiner acting under the provisions described above, or fails to comply with a requirement of those provisions<sup>17</sup>, he is guilty of an offence<sup>18</sup>.

<sup>1</sup> The following persons may act as authorised examiners for the purposes of the Road Traffic Act 1988 s 67 (as amended):

- 1324 (1) a person appointed as an examiner under s 66A (as added) (see PARA 698 post) (s 67(4)(b) (amended by the Road Traffic Act 1991 ss 10(4), (5), 83, Sch 8));
- 1325 (2) a person appointed to examine and inspect public carriages for the purposes of the Metropolitan Public Carriage Act 1869 (see PARA 1478 et seq post) (Road Traffic Act 1988 s 67(4)(c));
- 1326 (3) a person appointed to act for the purposes of s 67 (as amended) by the Secretary of State (s 67(4)(d));
- 1327 (4) a constable authorised so to act by or on behalf of a chief officer of police (s 67(4)(e) (amended by the Road Traffic Act 1991 Sch 8)); and
- 1328 (5) a person appointed by the police authority for a police area to act, under the directions of the chief officer of police, for the purposes of the Road Traffic Act 1988 s 67 (as amended) (s 67(4)(f)).

A person mentioned in heads (1)-(3) and (5) supra must produce his authority to act for the purposes of s 67 (as amended) if required to do so: s 67(5). As to police authorities and police areas see POLICE vol 36(1) (2007 Reissue) PARA 136 et seq. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

Where the issue is whether it was proved that a particular function of a vehicle was defective, the evidence of a police constable may be received even though he is not an authorised examiner: *Stoneley v Richardson* [1973] RTR 229, DC, where a constable had been able to push the defendant's car along a road with the handbrake fully applied.

2 In the Road Traffic Act 1988 s 67 (as amended) and Sch 2 (as amended) (see PARA 685 post), 'test' includes 'inspect' or 'inspection', as the case may require: s 67(10)(a).

3 For the meaning of 'motor vehicle' see PARA 210 ante.

4 For the meaning of 'road' see PARA 206 ante.

5 Road Traffic Act 1988 s 67(1)(a) (substituted by the Road Traffic Act 1991 s 10(2)).

6 Road Traffic Act 1988 s 67(1)(a)(i) (as substituted: see note 5 supra). For the meaning of 'construction and use requirements' see PARA 261 note 1 ante.

7 In *ibid* s 67 (as amended) and Sch 2 (as amended) (see PARA 685 post), references to a vehicle include references to a trailer drawn by it: s 67(10)(b). For the meaning of 'trailer' see PARA 210 ante.

8 *Ibid* s 67(1)(a)(ii) (as substituted: see note 5 supra).

9 For the meaning of 'driver' see PARA 207 ante.

10 Road Traffic Act 1988 s 67(1)(b). The Secretary of State may give information about vehicles or persons obtained from tests carried out under s 67 (as amended) to the competent authorities in other member states: see the Road Vehicles (Testing) (Disclosure of Information) (Great Britain) Regulations 2002, SI 2002/2426.

11 For the meaning of 'drive' see PARA 207 ante.

12 Road Traffic Act 1988 s 67(2) (substituted by the Road Traffic Act 1991 s 10(3)).

13 Road Traffic Act 1988 s 67(3); Police Reform Act 2002 ss 38(6), 41(3), Sch 4 para 11, Sch 5 para 8. See PARA 868 post; and POLICE.

14 See the Road Traffic Act 1988 s 67(6). This does not apply where, under s 67(7) or (8), the test is required to be carried out forthwith: s 67(6). Times and places for tests are fixed in accordance with Sch 2 (as amended) (see PARA 685 post), the provisions of which apply accordingly: see s 67(6). It appears that the option to elect for a deferred test is conferred on the driver alone, and the examiner need not tell the driver of the option: *Brown v McIndoe* 1963 SLT 233.

15 Road Traffic Act 1988 s 67(7).

16 *Ibid* s 67(8).

17 Or *ibid* Sch 2 (as amended) (see PARA 685 post).



18 Ibid s 67(9). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## **UPDATE**

### **684-697 Specific Powers to Test Vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(2) SPECIFIC POWERS TO TEST VEHICLES/(i) Roadside Tests/685. Deferred tests of condition of vehicles.

#### **685. Deferred tests of condition of vehicles.**

Where the driver<sup>1</sup> is the owner<sup>2</sup> of a vehicle, he may at the time of electing that a test is to be deferred<sup>3</sup>:

- 260 (1) specify a period of seven days within which the deferred test is to take place, being a period falling within the next 30 days, disregarding any day on which the vehicle is outside Great Britain<sup>4</sup>; and
- 261 (2) require that the deferred test is to take place on premises then specified by him where the test can conveniently be carried out or that it is to take place in such area in England, being a county district or Greater London, in such county or county borough in Wales, or in such area in Scotland<sup>5</sup>, as he may specify at that time<sup>6</sup>.

When the driver is not the owner of the vehicle he must inform the examiner of the name and address of the owner of the vehicle and the owner must be afforded an opportunity of specifying such a period, and such premises or area<sup>7</sup>.

Where under these provisions a period has been specified within which the deferred test is to be carried out, the time for carrying it out must be such time within that period as may be notified<sup>8</sup>, being a time not earlier than two days after the giving of the notification<sup>9</sup>. Where no such period has been specified, the time for carrying out the deferred test must be such time as may be notified, being a time not earlier than seven days after the giving of the notification<sup>10</sup>. Where premises have been specified under these provisions for carrying out the deferred test, and the test can conveniently be carried out on those premises, it must be carried out there<sup>11</sup>; where this does not apply, the place for carrying out the deferred test must be such place as may be notified with the notification of the time for the carrying out of the test, and where an area has been so specified the place must be a place in that area<sup>12</sup>. Notwithstanding these provisions, the time and place for the carrying out of the deferred test may be varied by agreement between an authorised examiner<sup>13</sup> and the owner of the vehicle<sup>14</sup>.

The owner of the vehicle must produce it, or secure its production, at the time and place fixed for the carrying out of the deferred test<sup>15</sup>.

If a person fails to comply with a requirement of the provisions described above, he is guilty of an offence<sup>16</sup>.

1 For the meaning of 'driver' see PARA 207 ante.

2 References in the Road Traffic Act 1988 s 67, Sch 2 (as amended) to the owner of a vehicle are references to the owner of the vehicle at the time at which the election is made under s 67(6) (see PARA 684 ante) that the test should be deferred: Sch 2 para 5(1). For the meaning of 'owner' generally see PARA 207 ante. For the meaning of 'vehicle' see PARA 684 note 7 ante. For the purposes of Sch 2 (as amended):

1329 (1) subject to head (2) infra, if at the time at which that election is made the vehicle is in the possession of a person under a hire-purchase agreement or hiring agreement, that person is to be deemed to be the owner of the vehicle to the exclusion of any other person (Sch 2 para 5(2)(a));

1330 (2) if at that time the vehicle is being used under an international circulation permit, the person to whom the permit was issued is to be deemed to be the owner of the vehicle to the exclusion of any other person (Sch 2 para 5(2)(b)).

3 See *ibid* s 67(6); and PARA 684 text and note 14 ante.

4 *Ibid* Sch 2 para 1(a). For the meaning of 'Great Britain' see PARA 205 note 3 ante.

5 *Ie* being the area of a council constituted under the Local Government etc (Scotland) Act 1994 s 2.

6 Road Traffic Act 1988 Sch 2 para 1(b) (amended by the Local Government (Wales) Act 1994 ss 2(1), 66(8), Sch 7 Pt II para 40(2); and the Local Government etc (Scotland) Act 1994 s 180(1), Sch 13 para 159(9)).

7 Road Traffic Act 1988 Sch 2 para 2.

8 'Notified' means notified in writing to the owner of the vehicle on behalf of the Secretary of State, and 'notification' must be construed accordingly; and any notification under *ibid* Sch 2 para 3 may be given by post: Sch 2 para 3(6). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

9 *Ibid* Sch 2 para 3(1).

10 *Ibid* Sch 2 para 3(2).

11 *Ibid* Sch 2 para 3(3).

12 *Ibid* Sch 2 para 3(4).

13 For the meaning of 'authorised examiner' see PARA 660 ante.

14 Road Traffic Act 1988 Sch 2 para 3(5).

15 *Ibid* Sch 2 para 4.

16 *Ibid* s 67(9). As to the penalty see PARA 684 note 18 ante.

## UPDATE

### 684-697 Specific Powers to Test Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(2) SPECIFIC POWERS TO TEST VEHICLES/(ii) Inspections and Prohibitions/A. POWER OF INSPECTION/686. Inspection of public passenger vehicles and goods vehicles.

## **(ii) Inspections and Prohibitions**

### **A. POWER OF INSPECTION**

#### **686. Inspection of public passenger vehicles and goods vehicles.**

A vehicle examiner<sup>1</sup> may: (1) at any time, on production if so required of his authority, inspect any vehicle to which these provisions<sup>2</sup> apply and for that purpose detain the vehicle during such time as is required for the inspection<sup>3</sup>; and (2) at any time which is reasonable, having regard to the circumstances of the case, enter any premises on which he has reason to believe that such a vehicle is kept<sup>4</sup>. These provisions apply to: (a) goods vehicles<sup>5</sup>; (b) public service vehicles<sup>6</sup>; and (c) motor vehicles<sup>7</sup> which are not public service vehicles but are adapted to carry more than eight passengers, but head (2) above does not apply in relation to vehicles within head (c) above or in relation to vehicles used to carry passengers for hire or reward only under specified permits<sup>8</sup>.

The above power to inspect a vehicle includes power to test it and to drive<sup>9</sup> it for the purpose of testing it<sup>10</sup>. A person who intentionally obstructs<sup>11</sup> an examiner in the exercise of his powers is guilty of an offence<sup>12</sup>. A vehicle examiner or a constable in uniform may at any time require any person in charge of a vehicle to which this provision applies and which is stationary on a road<sup>13</sup> to proceed with the vehicle for the purpose of having it inspected to any place where an inspection can be suitably carried out (not being more than five miles from the place where the requirement is made)<sup>14</sup>. A person in charge of a vehicle who refuses or neglects to comply with a requirement so made is guilty of an offence<sup>15</sup>.

1 For the meaning of 'vehicle examiner' see PARA 698 post.

2 I.e. the Road Traffic Act 1988 s 68 (as substituted). Section 68 (as substituted) does not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), (2)(b).

3 Road Traffic Act 1988 s 68(1)(a) (s 68 substituted by the Road Traffic Act 1991 s 11). As from a day to be appointed, an authorised inspector may exercise the powers given by the Road Traffic Act 1988 s 68(1)(a) (as substituted) in relation to any vehicle brought to the place of inspection in pursuance of a direction under s 68(4) (as so substituted): s 68(1) (as so substituted; and prospectively amended by the Transport Act 1982 s 10(6) (amended by the Road Traffic Regulation Act 1984 s 146, Sch 14). At the date at which this volume states the law no such day had been appointed. The Road Traffic Act 1988 s 68(1) (as so substituted) is also purportedly amended by the Road Traffic Act 1991 s 48, Sch 4 para 19(3) so as to refer to the Road Traffic Act 1988 s 68(3), but it is submitted that the context requires the reference to be to s 68(4). For the meaning of 'authorised inspector' see PARA 660 note 14 ante.

4 Ibid s 68(1)(b) (as substituted: see note 3 supra). The Secretary of State may give information about vehicles or persons obtained from inspections carried out under s 68 (as substituted) to the competent authorities in other member states: see the Road Vehicles (Testing) (Disclosure of Information) (Great Britain) Regulations 2002, SI 2002/2426. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 For the meaning of 'goods vehicle' see PARA 220 ante.

6 For the meaning of 'public service vehicle' see PARA 1136 post; definition applied by the Road Traffic Act 1988 s 85 (amended by Road Traffic Act 1991 Sch 4).

7 For the meaning of 'motor vehicle' see PARA 210 ante.

8 Road Traffic Act 1988 s 68(6) (as substituted: see note 3 supra). The permits referred to in the text are permits granted under the Transport Act 1985 s 19 or s 22 (use of vehicles by educational and other bodies) (see PARAS 1183, 1185 post).

9 For the meaning of 'drive' see PARA 207 ante.

10 Road Traffic Act 1988 s 68(2) (as substituted: see note 3 supra).

11 Obstruction can be anything which makes the examiner's job more difficult: see *Hinchcliffe v Sheldon* [1955] 3 All ER 406, [1955] 1 WLR 1207, DC (obstruction of constable). Standing by and doing nothing is probably not obstruction unless there is a legal duty to act: see *Swallow v LCC* [1916] 1 KB 224, DC (refusal to assist where no obligation to do so); cf *Rice v Connolly* [1966] 2 QB 414, [1966] 2 All ER 649, DC. Note, however, that the provisions under which these cases were decided, and from which the Road Traffic Act 1988 s 68 is derived, did not refer to 'intentional' obstruction.

12 Ibid s 68(3) (as substituted: see note 3 supra).

13 For the meaning of 'road' see PARA 206 ante.

14 Road Traffic Act 1988 s 68(4) (as substituted: see note 3 supra). As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

15 Ibid s 68(5) (as substituted: see note 3 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 83, Sch 8). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## UPDATE

### 684-697 Specific Powers to Test Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(2) SPECIFIC POWERS TO TEST VEHICLES/(ii) Inspections and Prohibitions/A. POWER OF INSPECTION/687. Appointment of officials.

#### 687. Appointment of officials.

Subject to the consent of the Treasury<sup>1</sup> as to number, the Secretary of State<sup>2</sup> may appoint such officers and servants as he considers necessary for the operation of the provisions of the Road Traffic Act 1988 relating to inspection of vehicles and the prohibition of unfit vehicles<sup>3</sup>. There must be paid to vehicle examiners<sup>4</sup> such remuneration or salaries and such allowances (if any) as the Secretary of State may, with the consent of the Treasury, determine<sup>5</sup>. In every year there must be paid out of moneys provided by Parliament such sums as the Secretary of State may, with the consent of the Treasury, direct in respect of such remuneration, salaries and allowances and the other expenses of examiners<sup>6</sup>.

<sup>1</sup> As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 le the Road Traffic Act 1988 ss 68-73 (as amended) (see PARAS 686 ante, 688, 690-692 post): s 84(1).

4 For the meaning of 'vehicle examiner' see PARA 698 post.

5 Road Traffic Act 1988 s 84(2) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 60).

6 Road Traffic Act 1988 s 84(3). Any sum received by the Secretary of State in pursuance of ss 45-46 (as amended) (see PARAS 660, 662 ante), ss 49-51 (as amended) (see PARAS 679, 683 ante), ss 54-62 (as amended) (see PARAS 702-707, 710-713 post), s 72(9) (see PARA 692 text to note 12 post) and s 80 (see PARA 714 post) must be paid into the Consolidated Fund: s 84(4). As from a day to be appointed, in s 84(4) for the reference to s 72(9) there is substituted a reference to s 72: Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 Pt I para 16. At the date at which this volume states the law no such day had been appointed. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

## UPDATE

### 684-697 Specific Powers to Test Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(2) SPECIFIC POWERS TO TEST VEHICLES/(ii) Inspections and Prohibitions/B. PROHIBITIONS/688. Power to prohibit driving of unfit vehicles.

## **B. PROHIBITIONS**

### **688. Power to prohibit driving of unfit vehicles.**

If on any inspection of a vehicle<sup>1</sup> it appears to a vehicle examiner<sup>2</sup> or authorised inspector<sup>3</sup> that, owing to any defects in the vehicle, it is, or is likely to become, unfit for service, he may prohibit the driving<sup>4</sup> of the vehicle on a road<sup>5</sup>: (1) absolutely; (2) for one or more specified purposes; or (3) except for one or more specified purposes<sup>6</sup>. If on any inspection of a vehicle<sup>7</sup> it appears to an authorised constable<sup>8</sup> that, owing to any defects in the vehicle, driving it (or driving it for any particular purpose or purposes or for any except one or more particular purposes) would involve a danger of injury to any person, he may prohibit the driving of the vehicle on a road: (a) absolutely; (b) for one or more specified purposes; or (c) except for one or more specified purposes<sup>9</sup>.

Such a prohibition comes into force as soon as the notice referred to below<sup>10</sup> has been given<sup>11</sup> if it is imposed by an authorised constable<sup>12</sup>, or in the opinion of the vehicle examiner or authorised inspector imposing it the defects in the vehicle in question are such that driving it, or driving it for any purpose within the prohibition, would involve a danger of injury to any person<sup>13</sup>. Otherwise, such a prohibition comes into force<sup>14</sup> at such time not later than 10 days from the date of the inspection as seems appropriate to the vehicle examiner or authorised inspector imposing the prohibition, having regard to all the circumstances<sup>15</sup>. A prohibition continues in force until it is removed<sup>16</sup>.

A person imposing such a prohibition must forthwith give notice in writing of the prohibition to the person in charge of the vehicle at the time of the inspection<sup>17</sup>:

- 262 (i) specifying the defects which occasioned the prohibition<sup>18</sup>;
- 263 (ii) stating whether the prohibition is on all driving of the vehicle or driving it for one or more specified purposes or driving it except for one or more specified purposes (and, where applicable, specifying the purpose or purposes in question)<sup>19</sup>; and
- 264 (iii) stating whether the prohibition is to come into force immediately or at the end of a specified period<sup>20</sup>.

Where such a notice has been given, any vehicle examiner or authorised inspector or authorised constable may grant an exemption in writing for the use of the vehicle in such manner, subject to such conditions and for such purpose as may be specified in the exemption<sup>21</sup>. Where such a notice has been given, any vehicle examiner or authorised inspector or authorised constable may by endorsement on the notice vary its terms and, in particular, alter the time at which the prohibition is to come into force or suspend it if it has come into force<sup>22</sup>.

Driving a vehicle in contravention of a prohibition to drive unfit vehicles, or causing or permitting a vehicle to be driven in contravention of such a prohibition is an offence<sup>23</sup>.

1     Ie under the Road Traffic Act 1988 s 41 (as amended) (see PARA 260 ante), s 45 (as amended) (see PARA 660 ante), s 49 (as amended) (see PARA 679 ante), s 61 (as amended) (see PARA 711 post), s 67 (as amended) (see PARA 684 ante), s 68 (as substituted) (see PARA 686 ante) or s 77 (see PARA 696 post).

2     For the meaning of 'vehicle examiner' see PARA 698 post.

3     For the meaning of 'authorised inspector' see PARA 660 note 14 ante.

4     For the meaning of 'drive' see PARA 207 ante. Any reference in the Road Traffic Act 1988 ss 69-72 (as amended) to the driving of a vehicle is, in relation to a trailer, a reference to the driving of the vehicle by which the trailer is drawn: s 73(3). For the meaning of 'trailer' see PARA 210 ante.

5     For the meaning of 'road' see PARA 206 ante.

6     Road Traffic Act 1988 s 69(1) (s 69 substituted by the Road Traffic Act 1991 s 12). The Road Traffic Act 1988 s 69 (as substituted) does not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), (2)(b).

The references in the Road Traffic Act 1988 s 69(1), (3)(b), (4), (7) (as substituted) to authorised inspectors are added as from a day to be appointed by the Transport Act 1982 s 10(3) (substituted by the Road Traffic Act 1991 s 48, Sch 4 para 19). At the date at which this volume states the law no such day had been appointed.

7     Ie under any of the enactments mentioned in note 1 supra.

8     'Authorised constable' means a constable authorised to act for the purposes of the Road Traffic Act 1988 s 69 (as substituted) by or on behalf of a chief officer of police: s 69(9) (as substituted: see note 6 supra). As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

9     Ibid s 69(2) (as substituted see note 6 supra).

10    See the text and note 17 infra.

11    Road Traffic Act 1988 s 69(3) (as substituted: see note 6 supra).

12    Ibid s 69(3)(a) (as substituted: see note 6 supra).

13    Ibid s 69(3)(b) (as substituted: see note 6 supra). As to the prospective amendment of this provision see note 6 supra.

14 le unless previously removed under *ibid* s 72: see PARA 692 post.

15 *Ibid* s 69(4) (as substituted: see note 6 *supra*). As to the prospective amendment of this provision see note 6 *supra*.

16 *Ibid* s 69(5) (as substituted: see note 6 *supra*). The text refers to removal under s 72: see PARA 692 post.

17 *Ibid* s 69(6) (as substituted: see note 6 *supra*).

Where it appears to a person giving such a notice that the vehicle concerned is, by virtue of the Goods Vehicles (Licensing of Operators) Act 1995 s 5 (see PARA 1332 post), authorised to be used under an operator's licence, he must as soon as practicable take steps to bring the contents of the notice to the attention of the traffic commissioner by whom the licence was issued, and the holder of the licence if he is not in charge of the vehicle at the time when the notice is given: Road Traffic Act 1988 s 73(1) (substituted by the Road Traffic Act 1991 Sch 4 para 56(2); and amended by the Goods Vehicles (Licensing of Operators) Act 1995 s 60(1), Sch 7 para 12(1)). For the meaning of 'operator's licence' see PARA 653 ante; definition applied by virtue of the Road Traffic Act 1988 s 73(4) (amended by the Goods Vehicles (Licensing of Operators) Act 1995 s 60(1), Sch 7 para 12(3)).

Where it appears to the person giving the notice that the vehicle is authorised to be used under two or more operators' licences:

1331 (1) if those licences were granted by different traffic commissioners, his duty under the Road Traffic Act 1988 s 73(1) (as substituted) may be discharged by taking steps to bring the contents of the notice to the attention of any one of those commissioners (s 73(1ZA)(a) (s 73(1ZA) added by the Goods Vehicles (Licensing of Operators) Act 1995 Sch 7 para 12(2)));

1332 (2) if those licences are held by different persons and none of those persons is in charge of the vehicle at the time when the notice is given, his duty may be discharged by taking steps to bring the contents of the notice to the attention of any one of those persons (Road Traffic Act 1988 s 73(1ZA)(b) (as so added)); and

1333 (3) if those licences are held by different persons and any of those persons is in charge of the vehicle at the time when the notice is given, no steps need be taken under that provision to bring the contents of the notice to the attention of the others (s 73(1ZA)(c) (as so added)).

Where it appears to a person giving such a notice that the vehicle concerned is used under a PSV operator's licence, he must as soon as practicable take steps to bring the contents of the notice to the attention of the traffic commissioner by whom the PSV operator's licence was granted for the vehicle, and the holder of the licence if he is not in charge of the vehicle at the time when the notice is given: s 73(1A) (added by the Road Traffic Act 1991 Sch 4 para 56(2)). For the meaning of 'PSV operator's licence' see PARA 1136 note 7 post; definition applied by virtue of the Road Traffic Act 1988 s 73(4) (amended by the Road Traffic Act 1991 s 18, Sch 4 para 56(4)).

In a case not within the Road Traffic Act 1988 s 73(1) (as substituted) or s 73(1A) (as added), a person giving such a notice must as soon as practicable take steps to bring the contents of the notice to the attention of the owner of the vehicle if he is not in charge of it at the time when the notice is given: s 73(1B) (added by the Road Traffic Act 1991 Sch 4 para 56(2)). For the meaning of 'owner' see PARA 207 ante.

As from a day to be appointed, the Road Safety Act 2006 s 11(3), Sch 4 (see PARA 1127 et seq post) makes provision about the immobilisation of vehicles the driving of which has been prohibited under the Road Traffic Act 1988 s 69 (as substituted) and about their removal and disposal: s 73(5) (added by the Road Safety Act 2006 s 12(3)). At the date at which this volume states the law no such day had been appointed.

As to the forgery of notices under this provision see the Road Traffic Act 1988 s 173 (as amended); and PARA 1012 post.

Section 73 (as amended) does not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), (2) (b).

18 Road Traffic Act 1988 s 69(6)(a) (as substituted: see note 6 *supra*).

19 *Ibid* s 69(6)(b) (as substituted: see note 6 *supra*).

20 *Ibid* s 69(6)(c) (as substituted: see note 6 *supra*).

21 *Ibid* s 69(7) (as substituted: see note 6 *supra*). As to the prospective amendment of this provision see note 6 *supra*.

22 Ibid s 69(8) (as substituted: see note 6 supra).

23 See *ibid* s 71 (as amended); and PARA 691 post.

## UPDATE

### 684-697 Specific Powers to Test Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 688 Power to prohibit driving of unfit vehicles

NOTE 17--Day appointed in relation to Road Safety Act 2006 ss 11, 12, Sch 4 is 5 January 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(2) SPECIFIC POWERS TO TEST VEHICLES/(ii) Inspections and Prohibitions/B. PROHIBITIONS/689. Prohibitions conditional on inspection etc.

### 689. Prohibitions conditional on inspection etc.

Where it appears to the person imposing a prohibition on the driving of an unfit vehicle<sup>1</sup> that the vehicle is adapted to carry more than eight passengers, or is a public service vehicle<sup>2</sup> not so adapted, the prohibition may be imposed with a direction making it irremovable unless and until the vehicle has been inspected at an official PSV testing station<sup>3</sup>. Where it appears to that person that the vehicle is of a class to which specified regulations<sup>4</sup> apply, the prohibition may be imposed with a direction making it irremovable unless and until the vehicle has been inspected at an official testing station<sup>5</sup>. Where it appears to that person that the vehicle is one to which the provisions with respect to obligatory test certificates apply<sup>6</sup>, or would apply if the vehicle had been registered under the Vehicle Excise and Registration Act 1994<sup>7</sup> more than three years earlier, the prohibition may be imposed with a direction making it irremovable unless and until the vehicle has been inspected, and a test certificate<sup>8</sup> issued<sup>9</sup>. In any other case, the prohibition may be imposed with a direction making it irremovable unless and until the vehicle has been inspected in accordance with specified regulations<sup>10</sup> by a vehicle examiner<sup>11</sup> or authorised constable<sup>12</sup>.

1 Ie a prohibition under the Road Traffic Act 1988 s 69 (as substituted and amended) (see PARA 688 ante).

2 For the meaning of 'public service vehicle' see PARA 1136 post; definition applied by the Road Traffic Act 1988 s 85 (amended by Road Traffic Act 1991 s 48, Sch 4).

3 Road Traffic Act 1988 s 69A(1) (s 69A added by the Road Traffic Act 1991 s 12). For the meaning of 'PSV testing station' see the Public Passenger Vehicles Act 1981 s 8(3) (as amended); and PARA 1142 post. As to the removal of such a prohibition see PARA 692 note 5 post.

4 Ie regulations made under the Road Traffic Act 1988 s 49 (as amended) (see PARA 679 ante). As to the classes of vehicles to which such regulations apply see PARA 677 ante.



5 Ibid s 69A(2) (as added: see note 3 supra). 'Official testing station' means a testing station maintained by the Secretary of State under s 72A (as added) (see PARA 692 post): s 85 (definition amended by the Road Traffic Act 1991 Sch 4 para 61). This definition is further amended, as from a day to be appointed, by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 Pt I para 17 so as to refer additionally to premises designated under the Transport Act 1982 s 10(2). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

As to the removal of a prohibition imposed under these provisions see PARA 692 note 5 post.

6 le the Road Traffic Act 1988 s 47 (as amended) (see PARA 657 ante).

7 See PARA 519 et seq post.

8 For the meaning of 'test certificate' see PARA 660 ante. As to the issue of test certificates see the Road Traffic Act 1988 s 45 (as amended); and PARA 660 ante.

9 Ibid s 69A(3) (as added (see note 3 supra); and amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 24(1)). As to the removal of such a prohibition see PARA 692 note 5 post.

10 le regulations made under the Road Traffic Act 1988 s 72 (as substituted) (see PARA 692 post).

11 For the meaning of 'vehicle examiner' see PARA 698 post.

12 Road Traffic Act 1988 s 69A(4) (as added: see note 3 supra). For the meaning of 'authorised constable' see PARA 688 note 8 ante; definition applied by virtue of s 69A(4) (as so added). As to the removal of such a prohibition see PARA 692 note 5 post.

## UPDATE

### 684-697 Specific Powers to Test Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(2) SPECIFIC POWERS TO TEST VEHICLES/(ii) Inspections and Prohibitions/B. PROHIBITIONS/690. Power to prohibit driving of overloaded vehicles.

#### 690. Power to prohibit driving of overloaded vehicles.

The following provisions apply where a goods vehicle<sup>1</sup>, or a motor vehicle<sup>2</sup> adapted to carry more than eight passengers, has been weighed in pursuance of a requirement to be weighed<sup>3</sup>, and it appears to: (1) a vehicle examiner<sup>4</sup>; (2) a person authorised with the consent of the Secretary of State<sup>5</sup> to act for these purposes by a highway authority<sup>6</sup> other than the Secretary of State<sup>7</sup>; or (3) a constable authorised to act for those purposes by or on behalf of a chief officer of police<sup>8</sup>, that the limit imposed by construction and use requirements<sup>9</sup> with respect to any description of weight which is applicable to that vehicle has been exceeded or would be exceeded if it were used on a road<sup>10</sup>, or that, by reason of excessive overall weight or excessive axle weight on any axle, driving<sup>11</sup> the vehicle would involve a danger of injury to any person<sup>12</sup>.

The person to whom it so appears may, whether or not a notice of prohibition<sup>13</sup> is given, give notice in writing to the person in charge of the vehicle prohibiting the driving of the vehicle on a road<sup>14</sup> until that weight is reduced to that limit or, as the case may be, so that it is no longer

excessive<sup>15</sup>, and official notification<sup>16</sup> has been given to whoever is for the time being in charge of the vehicle that it is permitted to proceed<sup>17</sup>. That person may also by direction in writing require the person in charge of the vehicle to remove it (and, if it is a motor vehicle drawing a trailer<sup>18</sup>, also to remove the trailer) to such place and subject to such conditions as are specified in the direction; and the prohibition does not apply to the removal of the vehicle or trailer in accordance with that direction<sup>19</sup>.

Driving a vehicle in contravention of such a prohibition, or causing or permitting a vehicle to be driven in contravention of such a prohibition, or failure to comply within a reasonable time with a direction, is an offence<sup>20</sup>.

1 For the meaning of 'goods vehicle' see PARA 220 ante.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 Road Traffic Act 1988 s 70(1). A requirement to be weighed may be imposed under s 78 (as amended): see PARA 697 post.

4 Ibid s 70(1)(a) (amended by the Road Traffic Act 1991 s 13(2)). For the meaning of 'vehicle examiner' see PARA 698 post.

5 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 As to highway authorities generally see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq.

7 Road Traffic Act 1988 s 70(1)(b).

8 Ibid s 70(1)(c). As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

9 For the meaning of 'construction and use requirements' see PARA 261 note 1 ante.

10 For the meaning of 'road' see PARA 206 ante.

11 For the meaning of 'drive' see PARA 207 ante. See also PARA 688 note 4 ante.

12 Road Traffic Act 1988 s 70(1) (amended by the Road Traffic Act 1991 s 13(2)). The Road Traffic Act 1988 s 70 (as amended) does not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), (2) (b).

13 Ie notice under the Road Traffic Act 1988 s 69(6) (see PARA 688 text to note 17 ante).

14 Road Traffic Act 1988 s 70(2) (amended by the Road Traffic Act 1991 s 13(3)). The provisions of the Road Traffic Act 1988 s 73(1) (as substituted) and s 73(1ZA), (1A), (1B) (all as added) apply to notices under s 70(2) (as amended): see PARA 688 note 17 ante. As to the forgery of notices under this provision see s 173 (as amended); and PARA 1012 post.

15 Ibid s 70(2)(a) (amended by the Road Traffic Act 1991 s 13(3)).

16 Official notification for this purpose must be in writing and must be given by a vehicle examiner, a person authorised as mentioned in the Road Traffic Act 1988 s 70(1) (as amended) (see the text and notes 1-12 supra) or a constable authorised as so mentioned: s 70(4)(a) (amended by the Road Traffic Act 1991 s 13(4)).

17 Road Traffic Act 1988 s 70(2)(b). Official notification may be withheld until the vehicle has been weighed or reweighed in order to satisfy the person giving the notification that the weight has been sufficiently reduced: s 70(4)(b).

18 For the meaning of 'trailer' see PARA 210 ante.

19 Road Traffic Act 1988 s 70(3).

Nothing in s 70 (as amended) may be construed as limiting the power of the Secretary of State to make regulations under s 71(2) (see PARA 691 post): s 70(5).

As from a day to be appointed, the Road Safety Act 2006 s 11(3), Sch 4 makes provision about the immobilisation of vehicles the driving of which has been prohibited under the Road Traffic Act 1988 s 70 (as amended) and about their removal and disposal: s 73(5) (added by the Road Safety Act 2006 s 12(3)). At the date at which this volume states the law no such day had been appointed.

20 See the Road Traffic Act 1988 s 71 (as substituted); and PARA 691 post.

## UPDATE

### 684-697 Specific Powers to Test Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 690 Power to prohibit driving of overloaded vehicles

NOTE 19--As to regulations made under the Road Safety Act 2006 s 11(3), Sch 4, see PARAS 1127-1131.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(2) SPECIFIC POWERS TO TEST VEHICLES/(ii) Inspections and Prohibitions/B. PROHIBITIONS/691. Unfit and overloaded vehicles: offences.

### 691. Unfit and overloaded vehicles: offences.

A person who: (1) drives<sup>1</sup> a vehicle in contravention of provisions prohibiting the driving of an unfit or overloaded vehicle<sup>2</sup>; (2) or causes or permits a vehicle to be driven in contravention of such a prohibition<sup>3</sup>; or (3) fails to comply within a reasonable time with a specified direction<sup>4</sup>, is guilty of an offence<sup>5</sup>. The Secretary of State<sup>6</sup> may by regulations provide for exceptions from the above provision<sup>7</sup>.

1 For the meaning of 'drive' see PARA 207 ante. See also PARA 688 note 4 ante.

2 Road Traffic Act 1988 s 71(1)(a) (s 71 substituted by the Road Traffic Act 1991 s 14). The provisions referred to in the text are those of the Road Traffic Act 1988 s 69 (as substituted) (see PARA 688 ante) or s 70 (as amended) (see PARA 690 ante).

3 Ibid s 71(1)(b) (as substituted: see note 2 supra).

4 Ibid s 71(1)(c) (as substituted: see note 2 supra). For the prohibitions referred to in the text see s 70(3); and PARA 690 text and note 19 ante.

5 Ibid s 71(1) (as substituted: see note 2 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 83, Sch 8). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post. The Road Traffic Offenders Act 1988 s 11 (as amended) (evidence by certificate as to driver, user or owner), s 12(1) (proof, in summary proceedings, of identity of driver of vehicle) (see PARAS 1035-1036 post) apply to this offence: s 1(4), Sch 1 (entry amended by the Road Traffic Act 1991 ss 22, 83, Sch 1, Sch 8).

The Road Traffic Act 1988 s 71 (as substituted) does not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), (2)(b).

6 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 Road Traffic Act 1988 s 71(2) (as substituted: see note 2 supra). The following exemptions have been granted from heads (1) and (2) in the text:

1334 (1) the driving of a vehicle on a road:

9. (a) solely for the purpose of submitting it by previous arrangement for a specified time on a specified date for an inspection by a vehicle examiner or authorised constable with a view to the removal of the prohibition (Road Vehicles (Prohibition) Regulations 1992, SI 1992/1285, reg 3(1)(a));

9

10. (b) solely for the purpose of submitting it by previous arrangement for a specified time on a specified date for an inspection by a vehicle examiner with a view to the removal of the prohibition and the issue of either a test certificate or a goods vehicle test certificate (reg 3(1)(b));

10

11. (c) in the course of an inspection with a view to the removal of a prohibition (reg 3(1)(c)); or

11

12. (d) within three miles from where it is being, or has been, repaired solely for the purpose of its test or trial with a view to the removal of a prohibition (reg 3(1)(d));

12

1335 (2) where a prohibition has been imposed with a direction under the Road Traffic Act 1988 s 69A(3) (as added) (see PARA 689 ante), the driving of the vehicle on a road solely for the purpose of submitting it by previous arrangement at a specified time for an examination under s 45(3) (see PARA 660 ante) with a view to obtaining a test certificate or bringing it away from such an examination (Road Vehicles (Prohibition) Regulations 1992, SI 1992/1285, reg 3(2));

1336 (3) where: (a) a prohibition has been imposed with a direction under the Road Traffic Act 1988 s 69A(3) (as added) (see PARA 689 ante); and (b) a relevant test certificate has been issued, the driving of the vehicle on a road to a police station with a view to the prohibition being removed under the Road Vehicles (Prohibition) Regulations 1992, SI 1992/1285, reg 4(3) (removal by a person authorised by or on behalf of a chief officer of police) (reg 3(3)).

## UPDATE

### 684-697 Specific Powers to Test Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(2) SPECIFIC POWERS TO TEST VEHICLES/(ii) Inspections and Prohibitions/B. PROHIBITIONS/692. Removal of prohibitions.

### 692. Removal of prohibitions.

Subject to the following provisions, a prohibition on the driving of unfit vehicles or overloaded goods vehicles<sup>1</sup> may be removed by any vehicle examiner<sup>2</sup> or authorised constable<sup>3</sup> or

authorised inspector<sup>4</sup> if he is satisfied that the vehicle is fit for service<sup>5</sup>. A person aggrieved<sup>6</sup> by the refusal of a vehicle examiner or authorised constable or authorised inspector to remove a prohibition may, within the prescribed time and in the prescribed manner, appeal to the Secretary of State<sup>7</sup>. The Secretary of State may make such order on the appeal as he thinks fit<sup>8</sup>. Where a vehicle examiner or authorised constable or authorised inspector removes a prohibition, he must forthwith give notice of the removal to the owner<sup>9</sup> of the vehicle<sup>10</sup>.

The Secretary of State may require the payment of fees, in accordance with prescribed scales and rates, for the inspection of a vehicle with a view to the removal of a prohibition; and payment of fees may be required to be made in advance<sup>11</sup>. The Secretary of State may make regulations for prescribing anything which may be prescribed under this provision and for regulating the procedure, and fees payable, on appeals to him<sup>12</sup>.

The Secretary of State may provide and maintain official testing stations where inspections of goods vehicles for the purposes of the provisions described above in relation to goods vehicles may be carried out, and may provide and maintain the apparatus for carrying out such inspections<sup>13</sup>.

1   le a prohibition under the Road Traffic Act 1988 s 69 (as substituted) (see PARA 688 ante) or s 70 (as amended) (see PARA 690 ante). For the meaning of 'goods vehicle' see PARA 220 ante.

2   For the meaning of 'vehicle examiner' see PARA 698 post.

3   'Authorised constable' means a constable authorised to act for these purposes by or on behalf of a chief officer of police: Road Traffic Act 1988 s 72(10) (s 72 substituted by the Road Traffic Act 1991 s 15). As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

4   For the meaning of 'authorised inspector' see PARA 660 note 14 ante.

5   Road Traffic Act 1988 s 72(1) (as substituted: see note 3 supra). The references in s 72(1), (5), (7) to authorised inspectors are added, as from a day to be appointed, by the Transport Act 1982 s 20 (substituted by the Road Traffic Act 1991 s 48, Sch 4 para 20)). At the date at which this volume states the law no such day had been appointed.

If the prohibition has been imposed with a direction under the Road Traffic Act 1988 s 69A(1) or (2) (as added) (see PARA 689 ante), the prohibition cannot be removed unless and until the vehicle has been inspected in accordance with the direction: s 72(2) (as so substituted). If the prohibition has been imposed with a direction under s 69A(3) (as added) (see PARA 689 ante), s 72(1) (as substituted; prospectively amended) does not apply; but the prohibition must be removed, by such person as may be prescribed, if (and only if) any prescribed requirements relating to the inspection of the vehicle and the issue and production of a test certificate have been complied with: s 72(3) (as so substituted). For the meaning of 'test certificate' see PARA 660 ante. For the meaning of 'prescribed' see PARA 660 note 5 ante. For the prescribed requirements see the Road Vehicles (Prohibition) Regulations 1992, SI 1992/1285, reg 4.

If the prohibition has been imposed with a direction under the Road Traffic Act 1988 s 69A(4) (as added) (see PARA 689 ante), the prohibition cannot be removed unless and until any prescribed requirements relating to the inspection of the vehicle have been complied with: s 72(4) (as so substituted). For the prescribed requirements see the Road Vehicles (Prohibition) Regulations 1992, SI 1992/1285, reg 5.

The Road Traffic Act 1988 s 72 (as substituted) does not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), (2)(b).

6   As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARAS 656, 664.

7   Road Traffic Act 1988 s 72(5) (as substituted: see note 3 supra). As to the prospective amendment of this provision see note 5 supra. For the procedure on appeal see the Road Vehicles (Prohibition) Regulations 1992, SI 1992/1285, reg 6. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

8   Road Traffic Act 1988 s 72(6) (as substituted: see note 3 supra).

9   For the meaning of 'owner' see PARA 207 ante.

10 Road Traffic Act 1988 s 72(7) (as substituted: see note 3 supra). As to the prospective amendment of this provision see note 5 supra. A person giving such notice to the owner of a vehicle must as soon as practicable take steps to bring the contents of the notice to the attention of any other person who was the person to whom the previous notice under s 69(6) (see PARA 688 text and note 17 ante) or s 70(2) (see PARA 690 text and note 14 ante) was given and who was then the owner of the vehicle, or to whose attention the contents of the previous notice were brought under this provision: s 73(1C) (added by the Road Traffic Act 1991 s 48, Sch 4 para 56(2)).

11 Road Traffic Act 1988 s 72(8)(a) (as substituted: see note 3 supra). The Secretary of State must ensure that all the scales and rates prescribed for the purposes of s 72(8) (as substituted) are reasonably comparable with, in the case of goods vehicles, the fees charged by virtue of s 51(1)(h) (see PARA 679 ante) in respect of periodic examination (s 72(8)(b)(i) (as so substituted)), and in the case of other vehicles, the fees charged by virtue of s 46(c) (sic) (see PARA 662 ante) (s 72(8)(b)(ii) (as so substituted)).

12 Ibid s 72(9) (as substituted: see note 3 supra). See the regulations mentioned in notes 5, 7 supra. As to fees see the Road Vehicles (Prohibition) Regulations 1992, SI 1992/1285, regs 7, 8 (both amended by SI 1997/83). Any sum received by the Secretary of State in pursuance of the Road Traffic Act 1988 s 72(9) (as substituted) must be paid into the Consolidated Fund: s 84(4). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

13 Ibid s 72A (added by the Road Traffic Act 1991 s 15).

## UPDATE

### 684-697 Specific Powers to Test Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 692 Removal of prohibitions

NOTES 11, 12--See the Department for Transport (Fees) Order 2009, SI 2009/711 (amended by SI 2009/1885), which specifies the functions to be taken into account in the determination of the fees to be fixed by the Secretary of State.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(2) SPECIFIC POWERS TO TEST VEHICLES/ (iii) Operator's Duty to Inspect Goods Vehicles/693. Operators' duty to inspect, and keep records of inspections of, goods vehicles.

### (iii) Operator's Duty to Inspect Goods Vehicles

#### 693. Operators' duty to inspect, and keep records of inspections of, goods vehicles.

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> requiring the operator<sup>3</sup> for the time being of a goods vehicle to which the regulations apply to secure:

265 (1) the carrying out by a suitably qualified person (including the operator if so qualified) of an inspection of the vehicle for the purpose of ascertaining whether the following requirements are complied with<sup>4</sup>, namely:

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150. (a) the construction and use requirements<sup>5</sup> with respect to any prescribed matters, being requirements applicable to the vehicle<sup>6</sup>; and

151. (b) the requirement that the condition of the vehicle is not such that its use on a road<sup>7</sup> would involve a danger of injury to any person<sup>8</sup>; and
- 80
- 266 (2) the making and authentication of records of such matters relating to any such inspection as may be prescribed, including records of the action taken to remedy any defects discovered on the inspection<sup>9</sup>,

and providing for the preservation of such records for a prescribed period not exceeding 15 months and their custody and production during that period<sup>10</sup>. Such regulations may apply to all goods vehicles or to goods vehicles of such classes as may be prescribed<sup>11</sup>, require the inspection of goods vehicles under the regulations to be carried out at such times, or before the happening of such events, as may be prescribed<sup>12</sup>, and make different provision for different cases<sup>13</sup>.

Any person who contravenes or fails to comply with any provision of such regulations is guilty of an offence<sup>14</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 At the date at which this volume states the law no such regulations had been made.

3 'The operator', in relation to a goods vehicle, means the person to whom it belongs or the hirer of it under a hire purchase agreement; but, if he has let it on hire (otherwise than by way of hire-purchase) or lent it to any other person, it means a person of a class prescribed by regulations under the Road Traffic Act 1988 s 74 (as amended) in relation to any particular class of goods vehicles or, subject to any such regulations, that other person: s 74(4). For the meaning of 'goods vehicle' see PARA 220 ante. For the meaning of 'prescribed' see PARA 660 note 5 ante.

4 Ibid s 74(1)(a) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 57).

5 For the meaning of 'construction and use requirements' see PARA 261 note 1 ante.

6 Road Traffic Act 1988 s 74(1)(a)(i) (renumbered by the Road Traffic Act 1991 Sch 4 para 57).

7 For the meaning of 'road' see PARA 206 ante.

8 Road Traffic Act 1988 s 74(1)(a)(ii) (added by the Road Traffic Act 1991 Sch 4 para 57).

9 Road Traffic Act 1988 s 74(1)(b).

10 Ibid s 74(1). As to the forgery of records required to be kept under these provisions see s 173 (as amended); and PARA 1012 post. Section 74 (as amended) does not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), (2)(b).

11 Road Traffic Act 1988 s 74(2)(a).

12 Ibid s 74(2)(b).

13 Ibid s 74(2)(c).

14 Ibid s 74(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## UPDATE

### 684-697 Specific Powers to Test Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(2) SPECIFIC POWERS TO TEST VEHICLES/(iv) Unroadworthy Vehicles and Defective Parts/694. Vehicles not to be sold in unroadworthy condition or altered so as to be unroadworthy.

#### **(iv) Unroadworthy Vehicles and Defective Parts**

##### **694. Vehicles not to be sold in unroadworthy condition or altered so as to be unroadworthy.**

Subject to certain exceptions<sup>1</sup> no person may supply<sup>2</sup> a motor vehicle<sup>3</sup> or trailer<sup>4</sup> in an unroadworthy condition<sup>5</sup>. Subject to the same exceptions no person may alter a motor vehicle or trailer so as to render its condition such that the use of it on a road in that condition would be unlawful by virtue of any provision made as respects the construction, weight or equipment of vehicles<sup>6</sup> or would involve a danger of injury to any person<sup>7</sup>. A person who supplies or alters a motor vehicle or trailer in contravention of the above provisions, or causes or permits it to be so supplied or altered, is guilty of an offence<sup>8</sup>.

However, a person may not be convicted of such an offence if he proves that: (1) it was supplied or altered, as the case may be, for export from Great Britain<sup>9</sup>; or (2) he had reasonable cause to believe that the vehicle or trailer would not be used on a road in Great Britain, or would not be so used until it had been put into a condition in which it might lawfully be so used<sup>10</sup>.

Nothing in these provisions affects the validity of a contract or any rights arising under a contract<sup>11</sup>.

1    le subject to the Road Traffic Act 1988 s 75(6) (as amended) and s 75(7): see the text and notes 9-11 infra.

2    'Supply' includes sell, offer to sell or supply, and expose for sale: *ibid* s 75(2). See also *British Car Auctions Ltd v Wright* [1972] 3 All ER 462, [1972] 1 WLR 1519, DC (car auctioneers do not offer for sale).

3    For the meaning of 'motor vehicle' see PARA 210 ante.

4    For the meaning of 'trailer' see PARA 210 ante.

5    Road Traffic Act 1988 s 75(1). For this purpose a motor vehicle or trailer is in an unroadworthy condition if: (1) it is in such a condition that the use of it on a road in that condition would be unlawful by virtue of any provision made by regulations under s 41 (as amended) (see PARA 260 ante) as respects brakes, steering gear or tyres, or the construction, weight or equipment of vehicles (s 75(3)(a) (amended by the Road Traffic Act 1991 ss 16(2), 83, Sch 8)); or (2) it is in such a condition that its use on a road would involve a danger of injury to any person (Road Traffic Act 1988 s 75(3)(b) (substituted by the Road Traffic Act 1991 ss 16(2), 83, Sch 8)). For the meaning of 'road' see PARA 206 ante. See also *Vinall v Howard* [1954] 1 QB 375, [1954] 1 All ER 458, CA (silencer defective and chassis fractured); *Smith v Nugent* 1955 SLT (Sh Ct) 60 (absence of ratchet a defect of construction); *R (on the application of Newcastle upon Tyne City Council) v Le Quelenec* (2005) Times, 17 January, DC (trailer not unroadworthy when it was not carrying anything, even though its axle snapped causing damage to another car).

6    le any provision made by regulations under the Road Traffic Act 1988 s 41 (see PARA 260 ante): s 75(4)(a) (amended by the Road Traffic Act 1991 s 16(3)).



7 Road Traffic Act 1988 s 75(4)(b) (added by the Road Traffic Act 1991 s 16(3)).

8 Road Traffic Act 1988 s 75(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

9 Road Traffic Act 1988 s 75(6)(a). For the meaning of 'Great Britain' see PARA 205 note 3 ante.

10 Ibid s 75(6)(b) (amended by the Road Traffic Act 1991 ss 16(4), 83, Sch 8).

The defence under head (2) in the text does not apply in relation to a person who, in the course of a trade or business:

1337 (1) exposes a vehicle or trailer for sale, unless he also proves that he took all reasonable steps to ensure that any prospective purchaser would be aware that its use in its current condition on a road in Great Britain would be unlawful (Road Traffic Act 1988 s 75(6A)(a) (s 75(6A) added by the Road Traffic Act 1991 s 16(5))); or

1338 (2) offers to sell a vehicle or trailer, unless he also proves that he took all reasonable steps to ensure that the person to whom the offer was made was aware of that fact (Road Traffic Act 1988 s 75(6A)(b) (as so added)).

11 Ibid s 75(7). It would appear also that these provisions do not give a purchaser a right of action: see *Badham v Lambs Ltd* [1946] KB 45, [1945] 2 All ER 295 (decided under corresponding earlier legislation).

## UPDATE

### 684-697 Specific Powers to Test Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(2) SPECIFIC POWERS TO TEST VEHICLES/(iv) Unroadworthy Vehicles and Defective Parts/695. Fitting and supply of defective or unsuitable vehicle parts.

#### 695. Fitting and supply of defective or unsuitable vehicle parts.

If any person fits a vehicle part<sup>1</sup> to a vehicle, or causes or permits a vehicle part to be fitted to a vehicle, in such circumstances that the use of the vehicle on a road<sup>2</sup> would, by reason of that part being fitted to the vehicle, involve a danger of injury to any person or constitute a contravention of or failure to comply with any of the construction and use requirements<sup>3</sup>, he is guilty of an offence<sup>4</sup>. However, a person may not be convicted of such an offence if he proves that the vehicle to which the part was fitted was to be exported from Great Britain<sup>5</sup>, or that he had reasonable cause to believe that that vehicle would not be used on a road in Great Britain<sup>6</sup>, or that it would not be so used until it had been put into a condition in which its use on a road would not constitute a contravention of or a failure to comply with any of the construction and use requirements and would not involve a danger of injury to any person<sup>7</sup>.

If a person supplies<sup>8</sup> a vehicle part or causes or permits a vehicle part to be supplied, and has reasonable cause to believe that the part is to be fitted to a motor vehicle<sup>9</sup>, or to a vehicle of a particular class, or to a particular vehicle, he is guilty of an offence if that part could not be

fitted to a motor vehicle or, as the case may require, to a vehicle of that class or of a class to which the particular vehicle belongs, except in such circumstances that the use of the vehicle on a road would, by reason of that part being fitted to the vehicle, constitute a contravention of or failure to comply with any of the construction and use requirements or involve a danger of injury to any person<sup>10</sup>. A person may not be convicted of such an offence in respect of the supply of a vehicle part if he proves that the part was supplied for export from Great Britain<sup>11</sup>, or that he had reasonable cause to believe that it would not be fitted to a vehicle used on a road in Great Britain<sup>12</sup>, or it would not be so fitted until it had been put into such a condition that it could be fitted otherwise than in such circumstances that the use of the vehicle on a road would, by reason of that part being fitted to the vehicle, constitute a contravention of or failure to comply with any of the construction and use requirements or involve a danger of injury to any person<sup>13</sup>.

An authorised examiner<sup>14</sup> may at any reasonable hour enter premises where, in the course of a business, vehicle parts are fitted to vehicles or are supplied and test and inspect any vehicle or vehicle part found on those premises<sup>15</sup> for the purpose of ascertaining whether: (1) a vehicle part has been fitted to the vehicle in such circumstances that the use of the vehicle on a road would, by reason of that part being fitted to the vehicle, constitute a contravention of or failure to comply with any of the construction and use requirements or involve a danger of injury to any person<sup>16</sup>; or (2) the vehicle part could not be supplied for fitting to a vehicle used on roads in Great Britain without the commission of an offence described above relating to the supply of vehicle parts<sup>17</sup>. For the purpose of testing a motor vehicle and any trailer<sup>18</sup> drawn by it the authorised examiner may drive<sup>19</sup> it and for the purpose of testing a trailer may draw it with a motor vehicle<sup>20</sup>. Any person who obstructs an authorised examiner acting under these powers is guilty of an offence<sup>21</sup>.

Nothing in the above provisions affects the validity of a contract or of any rights arising under a contract<sup>22</sup>.

1 'Vehicle part' means any article which is a motor vehicle part, within the meaning of the Road Traffic Act 1988 s 80 (see PARA 714 note 3 post), and any other article which is made or adapted for use as part of, or as part of the equipment of, a vehicle which is intended or adapted to be used on roads but which is not a motor vehicle within the meaning of s 80 (see PARA 714 note 2 post): s 85.

2 For the meaning of 'road' see PARA 206 ante.

3 For the meaning of 'construction and use requirements' see PARA 261 note 1 ante.

4 Road Traffic Act 1988 s 76(1) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 58). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

5 Road Traffic Act 1988 s 76(2)(a). For the meaning of 'Great Britain' see PARA 205 note 3 ante.

6 Ibid s 76(2)(b)(i).

7 Ibid s 76(2)(b)(ii) (amended by the Road Traffic Act 1991 Sch 4 para 58).

8 'Supply' includes sell, and offer to sell or supply: Road Traffic Act 1988 s 76(4).

9 For the meaning of 'motor vehicle' see PARA 210 ante.

10 Road Traffic Act 1988 s 76(3) (amended by the Road Traffic Act 1991 Sch 4 para 58). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I.

11 Road Traffic Act 1988 s 76(5)(a).

12 Ibid s 76(5)(b)(i).

13 Ibid s 76(5)(b)(iii) (amended by the Road Traffic Act 1991 Sch 4 para 58).

14 In the Road Traffic Act 1988 s 76(6)-(8) (as amended), 'authorised examiner' means a person who may act as an authorised examiner for the purposes of s 67 (as amended) (see PARA 684 ante); and any such person, other than a constable in uniform, must produce his authority to act for the purpose of s 76(6), (7) if required to do so: s 76(9).

15 Ibid s 76(6).

16 Ibid s 76(6)(a) (amended by the Road Traffic Act 1991 Sch 4 para 58).

17 Road Traffic Act 1988 s 76(6)(b), which refers to the offence under s 76(3) (see the text and note 10 supra).

18 For the meaning of 'trailer' see PARA 210 ante.

19 For the meaning of 'drive' see PARA 207 ante.

20 Road Traffic Act 1988 s 76(7).

21 Ibid s 76(8). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I.

22 Road Traffic Act 1988 s 76(10).

## UPDATE

### 684-697 Specific Powers to Test Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(2) SPECIFIC POWERS TO TEST VEHICLES/(iv) Unroadworthy Vehicles and Defective Parts/696. Testing condition of used vehicles at sale rooms, etc.

### 696. Testing condition of used vehicles at sale rooms, etc.

An authorised examiner<sup>1</sup> may at any reasonable hour enter premises where used<sup>2</sup> motor vehicles or trailers are supplied<sup>3</sup> in the course of a business and test and inspect any used motor vehicle or trailer found on the premises for the purpose of ascertaining whether it is in an unroadworthy condition<sup>4</sup>. An authorised examiner may at any reasonable hour enter premises where vehicles or vehicle parts<sup>5</sup> of a prescribed class<sup>6</sup> are supplied in the course of a business and test and inspect any such vehicle or vehicle part for the purpose of ascertaining whether the vehicle or vehicle part complies with the type approval requirements<sup>7</sup> applicable to a vehicle or vehicle part of that class<sup>8</sup>. For the purpose of testing a motor vehicle and any trailer drawn by it the authorised examiner may drive<sup>9</sup> it and for the purpose of testing a trailer he may draw it with a motor vehicle<sup>10</sup>. A person who obstructs an authorised examiner so acting is guilty of an offence<sup>11</sup>.

- 1 'Authorised examiner' means a person who may act as an authorised examiner for the purposes of the Road Traffic Act 1988 s 67 (as amended) (see PARA 684 ante); and any such person, other than a constable in uniform, must produce his authority to act for the purposes of s 67 (as amended) if required to do so: s 77(6).
- 2 A motor vehicle or trailer is treated for the purposes of ibid s 77 as used if, but only if, it has previously been sold or supplied by retail: s 77(7). For the meaning of 'motor vehicle' see PARA 210 ante. For the meaning of 'trailer' see PARA 210 ante. 'Sold or supplied by retail' means sold or supplied otherwise than to a person acquiring solely for the purpose of release or of re-supply for a valuable consideration: s 85.
- 3 In ibid s 77 (except in head (4) infra), 'supply' includes: (1) sell; (2) offer for sale or supply; (3) expose for sale; and (4) otherwise keep for sale or supply: s 77(2).
- 4 Ibid s 77(1), which refers to unroadworthiness within the meaning of s 75(1) (see PARA 694 note 5 ante).
- 5 For the meaning of 'vehicle part' see PARA 695 note 1 ante.
- 6 Is prescribed for the purposes of the Road Traffic Act 1988 s 63 (as amended) (see PARA 700 post). For the meaning of 'prescribed' see PARA 660 note 5 ante.
- 7 For the meaning of 'type approval requirements' see PARA 702 post.
- 8 Road Traffic Act 1988 s 77(3).
- 9 For the meaning of 'drive' see PARA 207 ante.
- 10 Road Traffic Act 1988 s 77(4).
- 11 Ibid s 77(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## UPDATE

### 684-697 Specific Powers to Test Vehicles

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(2) SPECIFIC POWERS TO TEST VEHICLES/(v) Weighing of Vehicles/697. Weighing of motor vehicles.

## (v) Weighing of Vehicles

### 697. Weighing of motor vehicles.

Subject to any regulations made by the Secretary of State<sup>1</sup>, an authorised person<sup>2</sup> may, on production of his authority, require the person in charge of a motor vehicle<sup>3</sup> to allow the vehicle or any trailer<sup>4</sup> drawn by it to be weighed, either laden or unladen, and the weight transmitted to the road<sup>5</sup> by any parts of the vehicle or trailer in contact with the road to be tested, and for that purpose, to proceed to a weighbridge or other machine for weighing vehicles<sup>6</sup>.

For the purpose of enabling a vehicle or a trailer drawn by it to be weighed or a weight to be tested in accordance with regulations under the above provision, an authorised person may

require the person in charge of the vehicle to drive<sup>7</sup> the vehicle or to do any other thing in relation to the vehicle or its load or the trailer or its load which is reasonably required to be done for that purpose<sup>8</sup>. If at the time when the requirement is made the vehicle is more than five miles<sup>9</sup> from the weighbridge or other machine, and the weight is found to be within the limits authorised by law, the highway authority on whose behalf the requirement is made must pay, in respect of loss occasioned, such amount as in default of agreement may be determined by a single arbitrator agreed upon by the parties or, in default of agreement, appointed by the Secretary of State<sup>10</sup>. If a person in charge of a motor vehicle refuses or neglects to comply with any such requirement, or obstructs an authorised person in the exercise of his functions under this provision, he is guilty of an offence<sup>11</sup>.

An authorised person may not require the person in charge of the motor vehicle to unload the vehicle or trailer, or to cause or allow it to be unloaded, for the purpose of its being weighed unladen<sup>12</sup>.

Regulations may make provision with respect to the manner in which a vehicle or trailer is to be weighed or a weight is to be tested as mentioned above, and the limits within which, unless the contrary is proved, any weight determined by a weighbridge or other machine for weighing vehicles is to be presumed to be accurate for the purposes of any provision made by or under the Road Traffic Act 1988 or by or under any other enactment relating to motor vehicles or trailers, and the regulations may make different provision in relation to vehicles of different classes, in relation to different types of weighbridges and other machines, and in relation to different circumstances<sup>13</sup>.

Where a motor vehicle or trailer is weighed under the provisions described above, a certificate of weight must be given to the person in charge of the vehicle, and the certificate so given exempts the motor vehicle and the trailer, if any, from being weighed so long as it is during the continuance of the same journey carrying the same load<sup>14</sup>. On production of his authority a vehicle examiner<sup>15</sup> or any of the Secretary of State's officers authorised by him in that behalf may at any time exercise with respect to the weighing of goods vehicles<sup>16</sup>, public service vehicles<sup>17</sup>, and vehicles which are not public service vehicles but are adapted to carry more than eight passengers, all such powers with respect to the weighing of motor vehicles and trailers as are exercisable as described above<sup>18</sup> by an authorised constable<sup>19</sup>.

If, for the purposes of or in connection with the determination of any weight in relation to a vehicle which is brought to a weighbridge or other machine, an authorised person or a person exercising powers by virtue of the above provision drives a vehicle or does any other thing in relation to a vehicle or its load or a trailer or its load, or requires the driver<sup>20</sup> of a vehicle to drive it in a particular manner or to a particular place or to do any other thing in relation to a vehicle or its load or a trailer or its load, neither he nor any person complying with such a requirement is liable for any damage to or loss in respect of the vehicle or its load or the trailer or its load unless it is shown that he acted without reasonable care<sup>21</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 'Authorised person' means a person authorised by a highway authority or a constable authorised on behalf of such an authority by a police authority or a chief officer of police: Road Traffic Act 1988 s 78(8)(b). As to highway authorities see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq. As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq. As to police authorities see POLICE vol 36(1) (2007 Reissue) PARA 139 et seq. See further the text and note 19 infra.

3 For the meaning of 'motor vehicle' see PARA 210 ante.

4 For the meaning of 'trailer' see PARA 210 ante.

5 In the Road Traffic Act 1988 s 78, 'road' includes any land which forms part of a harbour or which is adjacent to a harbour and is occupied wholly or partly for the purposes of harbour operations: s 78(8)(a). For

the meaning of 'harbour' see the Harbours Act 1964 s 57(1); and PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 611 (definition applied by virtue of the Road Traffic Act 1988 s 78(8)). For the meaning of 'harbour operations' see the Harbours Act 1964 s 57(1); and PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 605 (definition applied by virtue of the Road Traffic Act 1988 s 78(8)).

6 Ibid s 78(1). As to regulations made under this provision see note 13 infra.

7 For the meaning of 'drive' see PARA 207 ante.

8 Road Traffic Act 1988 s 78(2).

9 The Secretary of State may by order designate areas in Great Britain where this provision is to have effect, in such cases as may be specified by the order, with the substitution for five miles of a greater distance so specified: ibid s 78(7). Such an order must be made by statutory instrument subject to annulment by a resolution of either House of Parliament: s 78(7). Such orders are local in nature, and are not recorded in this work. For the meaning of 'Great Britain' see PARA 205 note 3 ante.

10 Ibid s 78(6). See further the text and note 19 infra.

11 Ibid s 78(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post. Section 11 (as amended) (evidence by certificate as to driver, user or owner), s 12(1) (proof, in summary proceedings, of identity of driver of vehicle) (see PARAS 1035-1036 post) apply to this offence: s 1(4), Sch 1.

12 Road Traffic Act 1988 s 78(4).

13 Ibid s 78(5). At the date at which this volume states the law the Weighing of Motor Vehicles (Use of Dynamic Axle Weighing Machines) Regulations 1978, SI 1978/1180 (modified by the Road Traffic Act 1991 s 9(2)), have effect under these provisions.

14 Road Traffic Act 1988 s 79(1). A certificate in the prescribed form which purports to be signed by an authorised person (within the meaning of s 78: see note 2 supra) or by a person exercising powers by virtue of s 79(2) (as amended) (see the text and notes 15-19 infra), and states, in relation to a vehicle identified in the certificate, any weight determined in relation to that vehicle on the occasion of its being brought to a weighbridge or other machine in pursuance of a requirement under s 78(1) (see the text and notes 1-6 supra), is evidence of the matter so stated: s 79(4). For the meaning of 'prescribed' see PARA 660 note 5 ante. For the prescribed form see the Weighing of Motor Vehicles (Use of Dynamic Axle Weighing Machines) Regulations 1978, SI 1978/1180, reg 5, Schedule.

15 For the meaning of 'vehicle examiner' see PARA 698 post.

16 For the meaning of 'goods vehicle' see PARA 220 ante.

17 For the meaning of 'public service vehicle' see PARA 1136 post; definition applied by the Road Traffic Act 1988 s 85 (amended by the Road Traffic Act 1991 s 48, Sch 4).

18 Ie under the Road Traffic Act 1988 s 78: see the text and notes 1-13 supra.

19 Ibid s 79(2) (amended by the Road Traffic Act 1991 Sch 4 para 59). See also note 2 supra. The provisions of the Road Traffic Act 1988 s 78 (see the text and notes 1-13 supra) apply accordingly in relation to such vehicles:

1339 (1) as if references to a constable so authorised included references to such an examiner or officer of the Secretary of State (s 79(3)(a) (amended by the Road Traffic Act 1991 Sch 4 para 59)); and

1340 (2) as if the reference in the Road Traffic Act 1988 s 78(6) (see the text and notes 9-10 supra) to the authority on whose behalf the requirement is made were a reference to the Secretary of State (s 79(3)(b) (as so amended)); and

1341 (3) as if the reference in s 78(6) to the Secretary of State were a reference, in relation to England and Wales, to the Lord Chief Justice (s 79(3)(c) (as so amended)).

20 For the meaning of 'driver' see PARA 207 ante.

21 Road Traffic Act 1988 s 79(5).

**UPDATE****684-697 Specific Powers to Test Vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(3) EXAMINERS AND INSPECTORS/698. General power to appoint vehicle examiners.

**(3) EXAMINERS AND INSPECTORS****698. General power to appoint vehicle examiners.**

The Secretary of State<sup>1</sup> must appoint such examiners as he considers necessary for the purpose of carrying out the functions conferred on them by Part II of the Road Traffic Act 1988<sup>2</sup>, the Goods Vehicles (Licensing of Operators) Act 1995<sup>3</sup>, the Public Passenger Vehicles Act 1981<sup>4</sup>, the Transport Act 1968<sup>5</sup> and any other enactment<sup>6</sup>. An examiner so appointed must act under the general directions of the Secretary of State<sup>7</sup>. Such examiners are known as 'vehicle examiners'<sup>8</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Ie the Road Traffic Act 1988 Pt II (ss 40A-86) (as amended).

3 See PARAS 1372-1373, 1378 post.

4 See PARAS 1141, 1143, 1161, 1165, 1306 post.

5 See PARA 1426 post.

6 Road Traffic Act 1988 s 66A(1) (s 66A added by the Road Traffic Act 1991 s 9(1); and the Road Traffic Act 1988 s 66A(1) amended by the Goods Vehicles (Licensing of Operators) Act 1995 s 60(1), Sch 7 para 11).

7 Road Traffic Act 1988 s 66A(2) (as added: see note 6 supra).

8 Ibid s 66A(3) (as added: see note 6 supra). As to the forgery of any document evidencing the appointment of a vehicle examiner see s 173 (as amended); and PARA 1012 post.

As from a day to be appointed, references to a vehicle examiner in any regulations made under any enactment relating to any of the testing and surveillance functions (see PARA 699 post) before the Transport Act 1982 s 10 comes into operation must be read as including an authorised inspector authorised to exercise the function in question: s 10(10) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 19(5)). At the date at which this volume states the law no such day had been appointed.

**UPDATE****698-699 Examiners and Inspectors**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(3) EXAMINERS AND INSPECTORS/699. Approved testing authorities, authorised inspectors and approved assistants.

### **699. Approved testing authorities, authorised inspectors and approved assistants.**

The following provisions take effect as from a day to be appointed<sup>1</sup>.

The Secretary of State<sup>2</sup> may authorise any person, unless he is the holder of a goods vehicle operator's licence<sup>3</sup> or a PSV operator's licence<sup>4</sup>, to conduct a business known as a 'vehicle testing business' consisting of or including the exercise by any person in the course of that business of any of certain testing and surveillance functions under the Road Traffic Act 1988<sup>5</sup>, the Road Traffic (Foreign Vehicles) Act 1972<sup>6</sup> and the Public Passenger Vehicles Act 1981<sup>7</sup> concerned with the testing of goods and other vehicles and related matters<sup>8</sup>. A person so authorised is known as an 'approved testing authority'<sup>9</sup>.

The Secretary of State may also authorise any individual (known as an 'authorised inspector') to exercise all or any of these testing and surveillance functions in the course of a vehicle testing business<sup>10</sup>; and may authorise any individual (known as an 'approved assistant') to act under the directions of an authorised inspector for the purposes of or in connection with the inspector's exercise of any of the testing and surveillance functions<sup>11</sup>.

Any such authorisation so granted is subject to such conditions or limitations as the Secretary of State may at any time notify in writing to the person authorised<sup>12</sup>, and an authorisation to carry on a vehicle testing business or a notification<sup>13</sup> extending the testing and surveillance functions which may be exercised<sup>14</sup> may not be given unless a document giving the required notice<sup>15</sup> of the proposal to do so has been laid before and approved by a resolution of each House of Parliament<sup>16</sup>.

Without the consent of the person authorised, the Secretary of State may not withdraw any such authorisation except for breach of any condition<sup>17</sup> attached to it<sup>18</sup> or, in the case of an authorised inspector or approved assistant, for misconduct or incompetence or other reasonable cause<sup>19</sup>.

Regulations<sup>20</sup> may be made for the proper carrying out and supervision of private sector examinations<sup>21</sup>.

<sup>1</sup> The provisions are to come into force as from a day to be appointed under the Transport Act 1982 s 76(2). At the date at which this volume states the law no such day had been appointed.

<sup>2</sup> As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

<sup>3</sup> I.e a goods vehicles operator's licence granted under the Transport Act 1968 Pt V (ss 59-94) (repealed) or the Goods Vehicles (Licensing of Operators) Act 1995. See generally para 1319 et seq post.

<sup>4</sup> See the Transport Act 1982 s 8(2) (amended by the Goods Vehicles (Licensing of Operators) Act 1995 s 60(1), Sch 7, PARA 8). Any authorisation granted ceases if the person subsequently becomes the holder of a goods vehicle operator's licence or a PSV operator's licence: Transport Act 1982 s 8(2). As to PSV operators' licences see PARA 1163 et seq post.



5 The following functions under the Road Traffic Act 1988 are specified: (1) any determination under construction and use regulations under s 41 (as amended) (see PARA 260 ante) of the suitability for operation in any particular manner (in terms of construction or design) of any public service vehicle; (2) the carrying out or supervision of examinations and the issue or refusal of test certificates under regulations under s 45 (as amended) (see PARA 660 ante); (3) the issue of certificates of temporary exemption under regulations under s 48(4); (4) the carrying out or supervision of examinations and the issue or refusal of certificates under regulations under s 49 (as amended) (see PARA 679 ante); (5) the issue of certificates of temporary exemption under regulations under s 53(5)(b) (see PARA 676 text and notes 15-16 ante); (6) the carrying out or supervision of, or the making of any requirement with respect to, the examination of a vehicle under regulations under s 61 (as amended) (see PARA 711 post); (7) the cancellation, suspension or amendment, on any such examination, of any certificate of conformity or Minister's approval certificate; (8) the power of entry, inspection and detention of vehicles under s 68 (as substituted and amended) (see PARA 686 ante) in relation to a vehicle brought to the place of inspection on the direction of a vehicle examiner or a constable under s 68(3); and (9) the functions of imposing and removing prohibitions under s 69 (as substituted and amended), s 69A (as added and amended), s 70 (as amended) and s 72 (as substituted and amended) on the driving of vehicles, except those under s 70(2) (see PARAS 688-690, 692 ante): Transport Act 1982 s 9 (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 Pt I paras 2, 3; and the Road Traffic Act 1991 ss 48, 83, Sch 4 para 18, Sch 8).

6 The following functions under the Road Traffic (Foreign Vehicles) Act 1972 are specified: any functions under ss 1, 2, so far as exercisable in, or on the removal or remedying of, any of the circumstances mentioned in s 1(2)(a) or (in relation to a contravention of any provision of, or of regulations under, the Road Traffic Act 1988) in the Road Traffic (Foreign Vehicles) Act 1972 s 1(2)(b) (see PARA 1644 post): Transport Act 1982 s 9.

7 The following functions under the Public Passenger Vehicles Act 1981 are specified: (1) the carrying out or supervision of examinations and the issue or refusal of certificates of initial fitness for the purposes of s 6(1)(a) under regulations under s 6(1A) (prospectively added and amended) (see PARA 1141 note 6 post); (2) the carrying out or supervision of examinations and the issue or refusal of type conformity certificates under s 10 (as amended) (see PARA 1143 post); (3) the carrying out or supervision of examinations under regulations made under s 20(2A) (prospectively added and amended) (see PARA 1161 note 8 post); (4) the determination under regulations under s 26 of the number of seated and standing passengers that a vehicle is constructed or adapted or fit to carry or that may be carried in a vehicle: Transport Act 1982 s 9 (as amended: see note 5 supra).

8 Ibid ss 8(1), 26. The provisions of the Landlord and Tenant Act 1954 Pt II (ss 23-46) (as amended), which give security of tenure to business tenants (see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 701 et seq), do not apply to a tenancy granted by the Secretary of State in respect of premises to be occupied as a vehicle testing business (Transport Act 1982 s 14(1), (3)), and no enactment or rule providing for relief against forfeiture applies to any such tenancy (s 14(2)).

9 Ibid ss 8(3), 26. As to the requirement for the Secretary of State to consult before taking decisions relating to approved testing authorities see s 15(1), (2)(c)-(e), (4).

10 Ibid ss 8(4), 26. To the extent that the terms of his authorisation so provide, an authorised inspector has the duty to refuse any certificate or impose or remove any prohibition which he has power to refuse, impose or remove: s 10(1). The Secretary of State may by regulations provide for the exercise by authorised inspectors of specified functions in connection with the inspection and certification of vehicles under the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR) (Geneva, 30 September 1957; TS 83 (1968); Cmnd 3769) and the Convention on the International Transport of Goods under cover of TIR Carnets (Geneva, 14 November 1975; Misc 22 (1976); Cmnd 6492) (Transport Act 1982 s 12(1), (4)), and may designate premises as stations where such inspections may be carried out (s 12(2)). The regulations may provide for fees: s 12(3). A person who, with intent to deceive (as to which see PARA 1370 note 3 post), falsely represents himself to be an authorised inspector is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 25 (amended by virtue of the Criminal Justice Act 1982 s 46(1), (4)). As to the standard scale see PARA 230 note 3 ante. The Transport Act 1982 s 25 (as amended) extends to vehicles and persons in the public service of the Crown (as to which see PARA 1023 note 2 post): s 72(a). A person who, with intent to deceive, uses or lends to or allows to be used by any other person a document evidencing the authorisation of a person as an authorised inspector, or makes or has in his possession any document so closely resembling such a document as to be calculated to deceive, is liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to a fine not exceeding the statutory maximum: s 23(1). As to the statutory maximum see PARA 359 note 11 ante.

11 Ibid s 8(5).

12 Ibid s 8(6). Without prejudice to s 8(6), the Secretary of State may by regulations impose conditions to be complied with by approved testing authorities, authorised inspectors and approved assistants, and regulations under any enactment relating to any of the testing and surveillance functions may impose conditions to be complied with by authorised inspectors and approved assistants in executing any of those functions under the

regulations: s 8(7) (prospectively amended by the Road Traffic (Vehicle Testing) Act 1999 s 1, Schedule para 1(1), (2)(b)).

13    Ie under the Transport Act 1982 s 8(6).

14    The addition of any new functions which may be exercised in the course of a vehicle testing business carried on by an approved testing authority is an extension of the testing and surveillance functions for the purposes of *ibid* s 8 (as amended), notwithstanding that other functions may be excluded from exercise in the course of that business at the same time as the new ones are added: s 8(11).

15    Ie (1) in the case of an authorisation to carry on a vehicle testing business, a notice indicating that the Secretary of State proposes to authorise the person in question to carry on such a business and specifying the testing and surveillance functions within the proposed terms of the authorisation (*ibid* s 8(10)(a)); and (2) in the case of an extension of functions, a notice indicating that the Secretary of State proposes to extend the functions which may be exercised in the course of the business carried on by the approved testing authority in question, and specifying the additional functions (s 8(10)(b)).

16    *Ibid* s 8(9).

17    Ie whether under *ibid* s 8(6), or by regulations made under or by virtue of s 8(7).

18    *Ibid* s 8(8)(a).

19    *Ibid* s 8(8)(b).

20    Ie made under the Road Traffic Act 1988 ss 45, 49, 61 (all as amended) (see PARAS 660, 679 ante, 711 post), or the Public Passenger Vehicles Act 1981 s 6(1A) (prospectively added and amended), s 10(4) (as amended), s 20(2A) (prospectively added and amended) (see PARAS 1141 note 6, 1143, 1161 note 8 post).

21    See the Transport Act 1982 s 10(11); and PARA 662 text and notes 22-24 ante.

## **UPDATE**

### **698-699 Examiners and Inspectors**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **699 Approved testing authorities, authorised inspectors and approved assistants**

NOTE 10--As to fees payable in connection with the approval of a road vehicle design-type and with the issue of a certificate of approval for a road vehicle pursuant to the 1975 Convention Annex 3 see International Transport of Goods under Cover of TIR Carnets (Fees) Regulations 1988, SI 1988/371 (amended by SI 1991/459, SI 2009/861).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(4) TYPE APPROVAL/(i) Type Approval Certificates, Certificates of Conformity and Minister's Approval Certificates/A. IN GENERAL/700. Requirement to hold type approval certificates, certificates of conformity and Minister's approval certificates.

## **(4) TYPE APPROVAL**

## **(i) Type Approval Certificates, Certificates of Conformity and Minister's Approval Certificates**

### **A. IN GENERAL**

#### **700. Requirement to hold type approval certificates, certificates of conformity and Minister's approval certificates.**

If:

- 267 (1) any person at any time on or after the day appointed by regulations made by the Secretary of State<sup>1</sup> in relation to vehicles or vehicle parts<sup>2</sup> of a prescribed<sup>3</sup> class<sup>4</sup>, being vehicles or vehicle parts to which type approval requirements<sup>5</sup> prescribed by those regulations apply, uses on a road<sup>6</sup>, or causes or permits to be so used, a vehicle of that class or a vehicle to which is fitted a vehicle part of that class<sup>7</sup>; and
- 268 (2) it does not appear from one or more certificates then in force<sup>8</sup> that the vehicle or vehicle part complies with those requirements<sup>9</sup>,

he is guilty of an offence<sup>10</sup>. For these purposes a vehicle is taken to comply with all relevant type approval requirements if an EC certificate of conformity<sup>11</sup> has effect with respect to the vehicle<sup>12</sup>.

If a plating certificate<sup>13</sup> has been issued for a goods vehicle<sup>14</sup>, but does not specify a maximum laden weight for the vehicle together with any trailer<sup>15</sup> which may be drawn by it, any person who on or after the relevant date<sup>16</sup> or, as the case may be, the day so appointed, uses the vehicle on a road for drawing a trailer, or causes or permits it to be so used, is guilty of an offence<sup>17</sup>.

Any person who uses a vehicle on a road, or causes or permits a vehicle to be so used, when an alteration has been made to the vehicle or its equipment which is required by regulations or directions<sup>18</sup> to be, but has not been, notified to the Secretary of State or the prescribed testing authority<sup>19</sup> is guilty of an offence<sup>20</sup>.

The Secretary of State may make provision for securing that, subject to such restrictions and conditions as may be specified by or under the instrument by which the provision is made<sup>21</sup>:

- 269 (a) the use of vehicles is exempted from all or any of the preceding provisions for purposes specified in the instrument or in such an area as is so specified<sup>22</sup>;
- 270 (b) goods vehicles are exempted from the offence relating to plating certificates<sup>23</sup>; and
- 271 (c) there are issued in respect of vehicles or vehicle parts, in such circumstances as may be specified in the instrument, certificates of temporary exemption exempting the vehicles or vehicle parts from the requirements as to type approval certificates for such period as may be provided in the certificate<sup>24</sup>.

A number of regulations have been made or have effect under these provisions<sup>25</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Different days may be appointed in relation to different classes of vehicles or vehicle parts: Road Traffic Act 1988 s 63(1). For the meaning of 'vehicle part' see PARA 695 note 1 ante.

3 For the meaning of 'prescribed' see PARA 660 note 5 ante. See note 25 infra.

4 As to classes of vehicles see PARA 208 ante.

5 For the meaning of 'type approval requirements' see PARA 702 post.

6 For the meaning of 'road' see PARA 206 ante.

7 Road Traffic Act 1988 s 63(1)(a). See note 25 infra.

8 Ie under ibid ss 54-58 (as amended): see PARAS 702-706 post.

9 Ibid s 63(1)(b).

10 Ibid s 63(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

11 'EC certificate of conformity' means: (1) in the case of a light passenger vehicle, any certificate of conformity issued by a manufacturer under what are now the Motor Vehicles (EC Type Approval) Regulations 1998, SI 1998/2051 (as amended), or under any provision of the law of a member state other than the United Kingdom giving effect to the light passenger vehicle type approval Directive art 6, which is expressed to be a certificate for a complete or completed vehicle; or (2) in the case of a vehicle to which the motorcycle type approval Directive applies, any certificate of conformity: (a) issued by a manufacturer under the Motor Cycles Etc (EC Type Approval) Regulations 1999, SI 1999/2920, reg 8(1), whether before, on or after 9 November 2003; or (b) issued by a manufacturer under any provision of the law of an EEA state other than the United Kingdom giving effect to the motorcycle type approval Directive art 7(1) or to EC Council Directive 92/61 (OJ L225, 10.8.92, p 72) relating to the type approval of two or three-wheeled motor vehicles art 7(1): Road Traffic Act 1988 s 85 (definition added by the Motor Vehicles (EC Type Approval) Regulations 1992, SI 1992/3107, reg 16, Sch 2 para 5(2); and amended by the Motor Cycles Etc (EC Type Approval) Regulations 1999, SI 1999/2920, reg 19, Sch 2 paras 1, 4(1), (2); and the Motor Cycles Etc (EC Type Approval) (Amendment) Regulations 2003, SI 2003/1099, reg 3(a)).

For the meaning of 'certificate of conformity' see PARA 705 note 10 post. 'The light passenger vehicle type approval Directive' means EEC Council Directive 70/156 (OJ L42, 23.2.70, p 1) on the approximation of the laws of the member states relating to the type-approval of motor vehicles and their trailers, as amended by EEC Council Directive 87/403 (OJ L220, 8.8.87, p 44) and EEC Council Directive 92/53 (OJ L225, 10.8.92, p 1): Road Traffic Act 1988 s 85 (definition added by the Motor Vehicles (EC Type Approval) Regulations 1992, SI 1992/3107, reg 16, Sch 2 para 5). 'The motor cycle type approval Directive' means European Parliament and Council Directive 2002/24 (OJ L124, 9.5.2002, p 1) relating to the type approval of two or three-wheel motor vehicles and repealing EC Council Directive 92/61, as corrected by a Corrigendum of 22 February 2003 (OJ L49, 22.2.2003, p 23): Road Traffic Act 1988 s 85 (definition added by the Motor Vehicles (EC Type Approval) Regulations 1992, SI 1992/3107, Sch 2 para 5; and substituted by the Motor Cycles Etc (EC Type Approval) (Amendment) Regulations 2003, SI 2003/1099, reg 3(b)). For the meaning of 'light passenger vehicle' see PARA 708 note 2 post.

As to the regulations implementing the provisions of Community law requiring the issue of EC type approval as a precondition of the granting of an EC certificate of conformity in respect of light passenger vehicles and motor cycles see the Motor Vehicles (EC Type Approval) Regulations 1998, SI 1998/2051 (amended by SI 1999/778; SI 1999/2324; SI 2000/869; SI 2000/2730; SI 2001/2809; SI 2002/1835; SI 2002/2743; SI 2003/1019; SI 2003/2428; SI 2004/73; SI 2004/2186; SI 2005/2454; SI 2006/142; SI 2006/2816); and the Motor Cycles Etc (EC Type Approval) Regulations 1999, SI 1999/2920 (amended by SI 2001/368; SI 2001/1547; SI 2003/1099; SI 2004/1948; SI 2004/2539; SI 2006/2935; SI 2007/2656).

See also EC Council Decision 2000/125 (OJ L35, 10.2.2000, p 12) concerning the conclusion of the Agreement establishing global technical regulations for wheeled vehicles, equipment and parts which can be fitted and/or used on wheeled vehicles.

12 Road Traffic Act 1988 s 63(1A) (added by the Motor Vehicles (EC Type Approval) Regulations 1992, SI 1992/3107, reg 16, Sch 2 para 1(1)).

13 For the meaning of 'plating certificate' see PARA 679 ante.

14 Ie a goods vehicle to which the Road Traffic Act 1988 s 53(1) (see PARA 676 ante) or s 63(1) (see the text and notes 1-10 supra) applies: see s 63(2). For the meaning of 'goods vehicle' see PARA 220 ante.

15 For the meaning of 'trailer' see PARA 210 ante.

16 le within the meaning of the Road Traffic Act 1988 s 53(1) (see PARA 676 note 1 ante).

17 Ibid s 63(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I.

18 le under the Road Traffic Act 1988 s 59 (see PARA 707 post).

19 The reference to the 'prescribed testing authority' takes effect as from a day to be appointed: ibid s 63(3) (amended by the Transport Act 1982 s 10(7)(c) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4 Sch 2 Pt I para 4)). At the date at which this volume states the law no such day had been appointed. For the meaning of 'prescribed testing authority' see PARA 676 note 11 post.

20 Road Traffic Act 1988 s 63(3) (prospectively amended: see note 19 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I. In any proceedings for such an offence it is a defence to prove that the regulations were not or, as the case may be, the alteration was not, specified in the relevant certificate of conformity or Minister's approval certificate in accordance with regulations under the Road Traffic Act 1988 s 59(3) (see PARA 707 ante): s 63(4). For the meaning of 'Minister's approval certificate' see PARA 706 post.

21 Ibid s 63(5) (substituted by the Transport Act 2000 s 264). Subject to the Road Traffic Act 1988 s 63(7) (as added), the power conferred by s 63(5) (as substituted) is exercisable by regulations: s 63(6) (s 63(6), (7) added by the Transport Act 2000 s 264). See note 25 infra. However, that power is exercisable by order in relation to: (1) specified vehicles; or (2) vehicles of specified persons; and an order under the Road Traffic Act 1988 s 63(7) (as added) may be varied or revoked by a subsequent order of the Secretary of State: s 63(7) (as so added).

22 Ibid s 63(5)(a) (as substituted: see note 21 supra).

23 Ibid s 63(5)(b) (as substituted: see note 21 supra), which permits exception from s 63(2).

24 Ibid s 63(5)(c) (as substituted: see note 21 supra), which permits exception from s 63(1).

25 See the Motor Vehicles (Type Approval) (Great Britain) Regulations 1984, SI 1984/981 (amended by SI 1984/1401; SI 1984/1761; SI 1985/1651; SI 1986/739; SI 1987/1509; SI 1988/1522; SI 1989/1580; SI 1990/94; SI 1990/1839; SI 1991/1022; SI 1991/1971; SI 1992/1341; SI 1992/2161; SI 1992/2908; SI 1993/2201; SI 1994/2190; SI 1995/1322; SI 1996/2330; SI 1996/3015; SI 1997/1502; SI 1997/2933; SI 1998/1005); the Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478, Pt VIII, reg 45 (amended by SI 1990/448); the Motor Vehicles (Type Approval) (Great Britain) (Amendment) Regulations 1998, SI 1998/1005; the Motor Vehicles (Type Approval for Goods Vehicles) (Great Britain) (Amendment) Regulations 1998, SI 1998/1006; the Motor Vehicles (Approval) Regulations 2001, SI 2001/25 (amended by SI 2004/623); and the Motor Vehicles (Type Approval for Goods Vehicles) (Great Britain) (Amendment) Regulations 2007, SI 2007/361. See also the Motor Cycles Etc (Single Vehicle Approval) Regulations 2003, SI 2003/1959.

## UPDATE

### 700-717 Type Approval

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 700 Requirement to hold type approval certificates, certificates of conformity and Minister's approval certificates

NOTE 11--Definition of 'EC certificate of conformity' substituted: Road Traffic Act 1988 s 85 (amended by SI 2009/818). SI 1998/2051 replaced: Road Vehicles (Approval) Regulations 2009, SI 2009/717. As to fees see the Road Vehicles (Individual Approval) (Fees) Regulations 2009, SI 2009/718. SI 1999/2920 further amended: SI 2009/3266.

NOTE 25--SI 2001/25 further amended: SI 2009/815.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(4) TYPE APPROVAL/(i) Type Approval Certificates, Certificates of Conformity and Minister's Approval Certificates/A. IN GENERAL/701. Sale of vehicles and parts without required certificate.

## **701. Sale of vehicles and parts without required certificate.**

If any person at any time on or after the day appointed by regulations<sup>1</sup> supplies<sup>2</sup> a vehicle or vehicle part<sup>3</sup> of a class<sup>4</sup> to which those regulations apply, and it does not appear from one or more certificates in force at that time<sup>5</sup> that the vehicle or vehicle part complies with all the relevant type approval requirements<sup>6</sup> prescribed<sup>7</sup> by those regulations, he is guilty of an offence<sup>8</sup>. For this purpose a vehicle is to be taken to comply with all relevant type approval requirements if an EC certificate of conformity<sup>9</sup> has effect with respect to the vehicle<sup>10</sup>.

A person may not be convicted of such an offence in respect of the supply of a vehicle or vehicle part<sup>11</sup> if he proves:

- 272 (1) that it was supplied for export from Great Britain<sup>12</sup>;
- 273 (2) that he had reasonable cause to believe that it would not be used on a road<sup>13</sup> in Great Britain or, in the case of a vehicle part, that it would not be fitted to a vehicle used on a road in Great Britain or would not be so used or fitted until it had been certified<sup>14</sup>; or
- 274 (3) that he had reasonable cause to believe that it would only be used for purposes or in any area prescribed<sup>15</sup> by the Secretary of State<sup>16</sup>.

1 le under the Road Traffic Act 1988 s 63(1) (see PARA 700 ante).

2 'Supply' includes sell, offer to sell or supply, and expose for sale: *ibid* s 65(2).

3 For the meaning of 'vehicle part' see PARA 695 note 1 ante.

4 As to classes of vehicles see PARA 208 ante.

5 le under the Road Traffic Act 1988 ss 54-58 (as amended): see PARAS 702-706 post.

6 For the meaning of 'type approval requirements' see PARA 702 post.

7 For the meaning of 'prescribed' see PARA 660 note 5 ante.

8 Road Traffic Act 1988 s 65(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

Nothing in the Road Traffic Act 1988 s 65(1) affects the validity of a contract or any rights arising under or in relation to a contract: s 65(4).

9 For the meaning of 'EC certificate of conformity' see PARA 700 note 11 ante.

10 Road Traffic Act 1988 s 65(1A) (added by the Motor Vehicles (EC Type Approval) Regulations 1992, SI 1992/3107, reg 16, Sch 2 para 1(2)).

11 Road Traffic Act 1988 s 65(3).

12 *Ibid* s 65(3)(a). For the meaning of 'Great Britain' see PARA 205 note 3 ante.

13 For the meaning of 'road' see PARA 206 ante.

14 Road Traffic Act 1988 s 65(3)(b), which refers to certification under ss 54-58 (as amended).

15 le prescribed under *ibid* s 63(5) (see PARA 700 ante) or, in the case of a goods vehicle, under s 53(5) (see PARA 676 ante). For the meaning of 'goods vehicle' see PARA 220 ante.

16 *Ibid* s 65(3)(c). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

## UPDATE

### 700-717 Type Approval

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(4) TYPE APPROVAL/(i) Type Approval Certificates, Certificates of Conformity and Minister's Approval Certificates/B. TYPE APPROVAL/702. Type approval requirements.

## ***B. TYPE APPROVAL***

### **702. Type approval requirements.**

The Secretary of State<sup>1</sup> may<sup>2</sup> by regulations prescribe<sup>3</sup> requirements ('type approval requirements'):

- 275 (1) with respect to the design, construction, equipment and marking of vehicles of any class<sup>4</sup>, being requirements which are applicable before, whether or not they are applicable after, vehicles of that class are used on a road<sup>5</sup>;
- 276 (2) with respect to the design, construction, equipment and marking of vehicle parts<sup>6</sup> of any class, being requirements which are applicable before, whether or not they are applicable after, vehicle parts of that class are fitted to a vehicle used on a road<sup>7</sup>.

Such regulations may provide for the determination, according to criteria or by methods prescribed by or determined under the regulations, of weights of any description which in the opinion of the Secretary of State should not be exceeded in the case of vehicles of any class<sup>8</sup>.

A number of regulations have been made, or take effect, under these provisions<sup>9</sup>.

Additionally, a number of type approval requirements are set by Community law, and these have also been implemented by regulations<sup>10</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 This is without prejudice to the Road Traffic Act 1988 s 41 (see PARA 260 ante): see s 54(1).

3 See PARA 660 note 5 ante.

4 As to classes of vehicles see PARA 208 ante.

5 Road Traffic Act 1988 s 54(1)(a). For the meaning of 'road' see PARA 206 ante.

6 For the meaning of 'vehicle part' see PARA 695 note 1 ante. Subject to ibid s 54(5), ss 55-60 (as amended) apply in relation to parts of vehicles as they apply in relation to vehicles and, accordingly, any reference in ss 55-60 (as amended) to a vehicle, other than a reference to a goods vehicle, is to be read as including a reference to a vehicle part: s 54(4). Any provision which relates solely to goods vehicles or design weights does not apply in relation to parts of vehicles, but particular exclusions in ss 55-60 (as amended) do not affect the generality of this exclusion: s 54(5). As to design weights see note 8 infra. For the meaning of 'goods vehicle' see PARA 220 ante.

7 Ibid s 54(1)(b).

8 Ibid s 54(2). In Pt II (ss 40A-86) (as amended), references to design weights are to be construed as references to weights determined by virtue of s 54(2): s 54(3).

9 The following regulations have effect partly under ibid s 54: the Motor Vehicles (Type Approval for Goods Vehicles) (Great Britain) Regulations 1982, SI 1982/1271 (amended by SI 1984/697; SI 1984/1402; SI 1985/46; SI 1986/427; SI 1986/1089; SI 1987/1508; SI 1988/1523; SI 1989/1579; SI 1991/1021; SI 1991/1970; SI 1992/25; SI 1992/1342; SI 1992/3084; SI 1993/2200; SI 1994/2191; SI 1995/1323; SI 1996/3014 (itself amended by SI 1997/1365); SI 1996/3221; SI 1997/2936; SI 1998/1006; SI 2003/582; SI 2003/1866; SI 2006/2565; SI 2007/361); the Motor Vehicles (Type Approval) (Great Britain) Regulations 1984, SI 1984/981 (amended by SI 1984/1401; SI 1984/1761; SI 1985/1651; SI 1986/739; SI 1987/1509; SI 1988/1522; SI 1989/1580; SI 1990/94; SI 1990/1839; SI 1991/1022; SI 1992/1341; SI 1992/2161; SI 1992/2908 (itself amended by SI 1992/3173); SI 1993/2201; SI 1994/2190; SI 1995/1322; SI 1996/2330; SI 1996/3015 (itself amended by SI 1997/1367); SI 1997/1502; SI 1997/2933; SI 1998/1005); the Motor Vehicles (Type Approval of Reduced Pollution Adaptations) Regulations 1998, SI 1998/3093 (amended by SI 2000/3275); and the Motor Vehicles (Approval) Regulations 2001, SI 2001/25 (amended by SI 2004/623). See also the Motor Cycles Etc (Single Vehicle Approval) Regulations 2003, SI 2003/1959.

10 See PARA 715 post.

## **UPDATE**

### **700-717 Type Approval**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **702 Type approval requirements**

NOTE 9--SI 1982/1271 further amended: SI 2009/2084. SI 2001/25 further amended: SI 2009/815.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(4) TYPE APPROVAL/(i) Type Approval Certificates, Certificates of Conformity and Minister's Approval Certificates/B. TYPE APPROVAL/703. Type approval certificates.

### **703. Type approval certificates.**

Where the Secretary of State<sup>1</sup> is satisfied on application made to him by the manufacturer of a vehicle<sup>2</sup> of a class<sup>3</sup> to which type approval regulations<sup>4</sup> apply, and after examination of the vehicle, that:



- 277 (1) the vehicle complies with the relevant type approval requirements<sup>5</sup>; and
- 278 (2) adequate arrangements have been made to secure that other vehicles purporting to conform with that vehicle in the relevant aspects of design, construction, equipment and marking<sup>6</sup> will so conform in all respects or with such variations as may be permitted,

he may approve that vehicle as a type vehicle<sup>7</sup>. Where he approves a vehicle as a type vehicle he must issue a certificate (a 'type approval certificate') stating that the vehicle complies with the relevant type approval requirements<sup>8</sup> and specifying:

- 279 (a) the permitted variations from the type vehicle<sup>9</sup>; and
- 280 (b) the design weights for vehicles so conforming in all respects and for vehicles so conforming with any such variations<sup>10</sup>.

A type approval certificate may be issued for a type vehicle where the Secretary of State is satisfied that one or more, but not all, of the relevant type approval requirements are complied with in the case of that vehicle<sup>11</sup>.

Where the Secretary of State determines on an application not to issue a type approval certificate in respect of a vehicle, he must give to the applicant a written notification of the determination, stating the grounds on which it is based<sup>12</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 As to the meaning of references to 'vehicle' in this provision see PARA 702 note 6 ante.

3 As to classes of vehicles see PARA 208 ante.

4 The regulations under the Road Traffic Act 1988 s 54 (see PARA 702 ante).

5 For the meaning of 'type approval requirements' see PARA 702 ante.

6 In the Road Traffic Act 1988 Pt II (ss 40A-86) (as amended), 'the relevant aspects of design, construction, equipment and marking', in relation to any vehicle, means those aspects of design, construction, equipment and marking which are subject to the type approval requirements or which were used as criteria in determining design weights for that vehicle: s 54(6). As to references to 'design weights' see PARA 702 note 8 ante.

7 Ibid s 55(1).

8 Ibid s 55(2). Type approval certificates apply to vehicles or parts manufactured in a member state outside the United Kingdom as they apply to vehicles and parts manufactured in Great Britain: see the Motor Vehicles (Type Approval) (EEC Manufacturers) Regulations 1981, SI 1981/493 (amended by SI 1997/2971). As to the modification of enactments in such cases see PARA 713 post. For the meaning of 'United Kingdom' see PARA 224 note 5 ante. For the meaning of 'Great Britain' see PARA 205 note 3 ante.

9 Road Traffic Act 1988 s 55(2)(a).

10 Ibid s 55(2)(b).

11 Ibid s 55(4). A further type approval certificate may be issued by virtue of s 55(4) on the application of any person who manufactures any part of the vehicle, or by whom the vehicle is finally assembled; and references in s 55(6)-(8) and in ss 56-59 (as amended) (see PARAS 704-707 post) to a manufacturer must be construed accordingly: s 55(5). For the meaning of 'vehicle part' see PARA 695 note 1 ante.

The first type approval certificate issued for a type vehicle by virtue of s 55(4) must specify the design weights for conforming vehicles, and accordingly:

1342 (1) so much of s 55(2) or s 57(1)-(3) (as amended) (see PARA 705 post) as requires the Secretary of State or the prescribed testing authority or a manufacturer to specify in any

certificate under s 55 or s 57 (as amended) the design weights or plated weights for a vehicle or as requires the Secretary of State or a manufacturer to mark or secure the marking of the plated weights on a vehicle does not apply to a subsequent type approval certificate issued by virtue of s 55(4) or to the certificates of conformity issued in consequence of such a type approval certificate (s 55(6)(a) (prospectively amended, so as to refer to the prescribed testing authority, by the Transport Act 1982 s 17(1)(a) (amended by the Road Traffic Consequential Provisions) Act 1988 s 4, Sch 2 Pt I para 6));

- 1343 (2) so much of the Road Traffic Act 1988 s 58(2) (see PARA 706 post) as requires the Secretary of State to specify in any certificate issued by him the design weights and plated weights for a vehicle or to secure that the plated weights are marked on a vehicle does not apply to a Minister's approval certificate issued by virtue of s 55(4) (s 55(6)(b)).

For the meaning of 'prescribed' see PARA 660 note 5 ante. For the meaning of 'prescribed testing authority' see PARA 676 note 11 ante. For the meaning of 'plated weights' see PARA 679 note 6 ante. For the meaning of 'certificate of conformity' see PARA 705 note 10 post. For the meaning of 'Minister's approval certificate' see PARA 706 post.

Section 55(6) does not apply in relation to vehicle parts: s 55(7). In s 55(4)-(8), and in ss 56-59 (see PARAS 704-707 post), 'conform' means conform in all respects or with any permitted variation: s 55(3).

12 Ibid s 55(8).

## UPDATE

### 700-717 Type Approval

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(4) TYPE APPROVAL/(i) Type Approval Certificates, Certificates of Conformity and Minister's Approval Certificates/B. TYPE APPROVAL/704. Conditions of, and cancellation or suspension of, type approval certificates.

#### **704. Conditions of, and cancellation or suspension of, type approval certificates.**

A type approval certificate<sup>1</sup> may be issued subject to conditions<sup>2</sup> with respect to:

- 281 (1) the inspection by officers of the Secretary of State<sup>3</sup> of vehicles<sup>4</sup> purporting to conform<sup>5</sup> with the type vehicle<sup>6</sup> in the relevant aspects of design, construction, equipment<sup>7</sup> and marking and of parts<sup>8</sup> of such vehicles and their equipment, and the entry of premises where they are manufactured<sup>9</sup>; and
- 282 (2) the notification by the manufacturer<sup>10</sup> of differences of design, construction, equipment or marking (other than permitted variations) between any such vehicles and the type vehicle which might affect the type approval requirements<sup>11</sup> or the criteria for determining the design weights<sup>12</sup> of those vehicles<sup>13</sup>.

If it appears to the Secretary of State that there has been a breach of a condition subject to which a type approval certificate has been granted, or the Secretary of State ceases to be satisfied as to any other matter relevant to a type approval certificate, he may cancel or suspend the certificate, but the cancellation or suspension does not affect the validity of any certificate of conformity<sup>14</sup> previously issued in consequence of the type approval certificate<sup>15</sup>.

Where the Secretary of State cancels or suspends a certificate in pursuance of this provision, he must give a written notification of that fact to the holder of the certificate stating the grounds for the cancellation or suspension<sup>16</sup>.

- 1 For the meaning of 'type approval certificate' see PARA 703 ante.
- 2 Road Traffic Act 1988 s 56(1).
- 3 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 4 As to the meaning of references to 'vehicle' in this provision see PARA 702 note 6 ante.
- 5 For the meaning of 'conform' see PARA 703 note 11 ante.
- 6 As to the designation of type vehicles see PARA 703 ante.
- 7 For the meaning of 'the relevant aspects of design, construction, equipment and marking' see PARA 703 note 6 ante.
- 8 For the meaning of 'vehicle part' see PARA 695 note 1 ante.
- 9 Road Traffic Act 1988 s 56(1)(a).
- 10 As to the meaning of 'manufacturer' see PARA 703 note 11 ante.
- 11 For the meaning of 'type approval requirements' see PARA 702 ante.
- 12 As to references to 'design weights' see PARA 702 note 8 ante.
- 13 Road Traffic Act 1988 s 56(1)(b).
- 14 For the meaning of 'certificate of conformity' see PARA 705 note 10 post.
- 15 Road Traffic Act 1988 s 56(2).
- 16 Ibid s 56(3).

## **UPDATE**

### **700-717 Type Approval**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(4) TYPE APPROVAL/(i) Type Approval Certificates, Certificates of Conformity and Minister's Approval Certificates/C. CERTIFICATES OF CONFORMITY AND MINISTER'S APPROVAL CERTIFICATES/705. Certificates of conformity.

## ***C. CERTIFICATES OF CONFORMITY AND MINISTER'S APPROVAL CERTIFICATES***

### **705. Certificates of conformity.**

The manufacturer<sup>1</sup> of a type vehicle<sup>2</sup> in respect of which a type approval certificate<sup>3</sup> is in force may issue, in respect of each vehicle<sup>4</sup> manufactured by him which conforms<sup>5</sup> with the type vehicle in such of the relevant aspects of design, construction, equipment<sup>6</sup> and marking as are mentioned in the type approval certificate, a certificate stating that it does so conform, and specifying the design weights<sup>7</sup> for the vehicle, and must in the case of goods vehicles<sup>8</sup> of such classes as may be prescribed specify in the certificate one or more of the plated weights<sup>9</sup> for the vehicle<sup>10</sup>. Where a manufacturer issues a certificate of conformity for a goods vehicle, the Secretary of State<sup>11</sup> or the prescribed testing authority<sup>12</sup> must on an application made by any person containing such information as the Secretary of State or that authority may require with respect to the proposed circumstances of operation of the goods vehicle, and on production of that certificate, specify in the certificate any plated weights for the goods vehicle not so specified by the manufacturer<sup>13</sup>. Where a manufacturer issues a certificate of conformity for a goods vehicle, then, if he is required<sup>14</sup> to specify any plated weights for the goods vehicle in the certificate, he must mark those weights on the goods vehicle by means of a plate fixed to it<sup>15</sup>, and in any other case the Secretary of State or the prescribed testing authority<sup>16</sup> must on an application for the purpose secure that those weights are so marked<sup>17</sup>.

1 As to the meaning of 'manufacturer' see PARA 703 note 11 ante.

2 As to the designation of type vehicles see PARA 703 ante.

3 For the meaning of 'type approval certificate' see PARA 703 ante.

4 As to the meaning of references to 'vehicle' in this provision see PARA 702 note 6 ante.

5 For the meaning of 'conform' see PARA 703 note 11 ante.

6 For the meaning of 'the relevant aspects of design, construction, equipment and marking' see PARA 703 note 6 ante.

7 As to references to 'design weights' see PARA 702 note 8 ante.

8 For the meaning of 'goods vehicle' see PARA 220 ante. Except in the case of vehicles of such class as may be prescribed, in the Road Traffic Act 1988 s 57 (as amended), s 58 (see PARA 706 post) and s 61 (as amended) (see PARA 711 post), 'goods vehicle' includes a vehicle which is a chassis for, or will otherwise form part of, a vehicle which when completed will be a goods vehicle: s 62(3). As to classes of vehicles see PARA 208 ante. For the meaning of 'prescribed' see PARA 660 note 5 ante. At the date at which this volume states the law no regulations had been made excepting any class of vehicle under s 62(3).

9 For the meaning of 'plated weights' see PARA 679 note 6 ante.

10 Road Traffic Act 1988 s 57(1) (amended by the Motor Vehicles (EC Type Approval) Regulations 1992, SI 1992/3107, reg 16, Sch 2 para 5(1)). In the Road Traffic Act 1988 Pt II (ss 40A-86) (as amended) (except in the expression 'EC certificate of conformity' and in the definition of that expression in s 85 (as amended) (see PARA 700 note 11 ante)), 'certificate of conformity' means a certificate issued under s 57(1) (as amended): s 57(1A) (added by the Motor Vehicles (EC Type Approval) Regulations 1992, SI 1992/3107, reg 16, Sch 2 para 5(1)). Any certificate of conformity issued in consequence of any type approval certificate issued by virtue of the Road Traffic Act 1988 s 55(4) (see PARA 703 ante) relates only to the requirement or requirements to which that type approval certificate relates: s 57(4).

Certificates of conformity apply to vehicles or parts manufactured in a member state outside the United Kingdom as they apply to vehicles and parts manufactured in Great Britain: see the Motor Vehicles (Type Approval) (EEC Manufacturers) Regulations 1981, SI 1981/493 (amended by SI 1997/2971).

For supplementary provision as to certificates of conformity see PARA 707 post.

11 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

12 References to the prescribed testing authority take effect as from a day to be appointed: Road Traffic Act 1988 s 57(2), (3)(b) (prospectively amended by the Transport Act 1982 s 17(1) (amended by the Road Traffic (Consequential Provisions) Act 1988 ss 3, 4, Sch 1 Pt I, Sch 2 Pt I para 6)). At the date at which this volume states the law no such day had been appointed. For the meaning of 'prescribed testing authority' see PARA 676 note 11 ante.

13 Road Traffic Act 1988 s 57(2) (prospectively amended: see note 12 supra). Section 57(2), (3) (prospectively amended) does not apply in relation to vehicle parts: s 57(5). For the meaning of 'vehicle part' see PARA 695 note 1 ante.

14 le by ibid s 57(1).

15 Ibid s 57(3)(a); and see note 13 supra.

16 See note 12 supra.

17 Road Traffic Act 1988 s 57(3)(b) (prospectively amended: see note 12 supra). See note 13 supra.

## UPDATE

### 700-717 Type Approval

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(4) TYPE APPROVAL/(i) Type Approval Certificates, Certificates of Conformity and Minister's Approval Certificates/C. CERTIFICATES OF CONFORMITY AND MINISTER'S APPROVAL CERTIFICATES/706. Minister's approval certificates.

### 706. Minister's approval certificates.

Where the Secretary of State<sup>1</sup> is satisfied, on application made to him by any person in respect of a vehicle<sup>2</sup> of a class<sup>3</sup> to which specified regulations<sup>4</sup> apply and after examination of the vehicle, that the vehicle complies with the relevant type approval requirements<sup>5</sup>, and in the case of a goods vehicle<sup>6</sup>, the Secretary of State has sufficient information to enable the plated weights<sup>7</sup> to be ascertained for the vehicle, he may issue a certificate (a 'Minister's approval certificate')<sup>8</sup>. The certificate must state that the vehicle complies with those requirements and specify its design weights<sup>9</sup>, and in the case of a goods vehicle, its plated weights, and, where the Secretary of State issues such a certificate in respect of a goods vehicle, he must secure that the plated weights are marked on the vehicle by means of a plate fixed to it<sup>10</sup>.

Where:

- 283 (1) a Minister's approval certificate is given as respects a vehicle<sup>11</sup>; and
- 284 (2) the Secretary of State is satisfied on the application of the manufacturer<sup>12</sup> of the vehicle or, in the case of an imported vehicle, the importer<sup>13</sup> of the vehicle, and after the consideration of such evidence as he thinks necessary, that another vehicle manufactured by that manufacturer or, as the case may be, imported by that importer conforms<sup>14</sup> with the first mentioned vehicle as respects the relevant aspects of design, construction, equipment and marking<sup>15</sup>,

the Secretary of State may issue a Minister's approval certificate in respect of that other vehicle without examining it<sup>16</sup>. Where the Secretary of State issues such a certificate by virtue of the above provision, he must specify the plated weights which are to be marked on the other vehicle<sup>17</sup>. Where the Secretary of State determines on an application under this provision not to

issue a Minister's approval certificate in respect of a vehicle, he must give to the applicant a written notification of the determination, stating the grounds on which it is based<sup>18</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 As to the meaning of references to 'vehicle' in this provision see PARA 702 note 6 ante.

3 As to classes of vehicles see PARA 208 ante.

4 le under the Road Traffic Act 1988 s 54 (see PARA 702 ante).

5 For the meaning of 'type approval requirements' see PARA 702 ante.

6 For the meaning of 'goods vehicle' see PARA 220 ante; and see also PARA 705 note 8 ante.

7 For the meaning of 'plated weights' see PARA 679 note 6 ante.

8 Road Traffic Act 1988 s 58(1). Where by virtue of s 57(4) (see PARA 705 note 10 ante) a certificate of conformity issued in respect of a vehicle relates to one or more, but not all, of the relevant type approval requirements, the Secretary of State may issue in respect of that vehicle a Minister's approval certificate relating to one or more of the other relevant type approval requirements: s 58(3). For the meaning of 'certificate of conformity' see PARA 705 note 10 ante.

For supplementary provision as to Minister's approval certificates see PARA 707 post.

9 As to references to 'design weights' see PARA 702 note 8 ante.

10 Road Traffic Act 1988 s 58(2).

11 Ibid s 58(4)(a).

12 As to the meaning of 'manufacturer' see PARA 703 note 11 ante.

13 The Road Traffic Act 1988 s 58(4) applies in relation to vehicles brought into Great Britain from Northern Ireland as it applies in relation to imported vehicles, and references in s 58(4) to the importer must be construed accordingly: s 58(6). For the meaning of 'Great Britain' see PARA 205 note 3 ante.

14 For the meaning of 'conform' see PARA 703 note 11 ante.

15 Road Traffic Act 1988 s 58(4)(b). For the meaning of 'the relevant aspects of design, construction, equipment and marking' see PARA 703 note 6 ante.

16 Ibid s 58(4).

17 Ibid s 58(5).

18 Ibid s 58(7).

## UPDATE

### 700-717 Type Approval

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Certificates, Certificates of Conformity and Minister's Approval Certificates/C. CERTIFICATES OF CONFORMITY AND MINISTER'S APPROVAL CERTIFICATES/707. Supplementary provisions as to certificates of conformity and Minister's approval certificates.

**707. Supplementary provisions as to certificates of conformity and Minister's approval certificates.**

The Secretary of State<sup>1</sup> may by regulations require that prescribed<sup>2</sup> alterations in any of the relevant aspects of design, construction, equipment or marking<sup>3</sup>, or in any such aspect which affects the plated weight<sup>4</sup>, made to any vehicle<sup>5</sup> for which a certificate of conformity<sup>6</sup> or a Minister's approval certificate<sup>7</sup> is issued must, subject to any exemption granted under the following provision, be notified to the Secretary of State or the prescribed testing authority<sup>8</sup>.

The Secretary of State may by notice in writing given to the manufacturer<sup>9</sup> of vehicles or to the owner of a vehicle for which a Minister's approval certificate is issued<sup>10</sup>:

- 285 (1) direct that any specified alteration in any of the aspects mentioned above to a vehicle to which the direction relates must be notified to the Secretary of State or the prescribed testing authority<sup>11</sup>;
- 286 (2) exempt a vehicle to which the notice relates from all or any of the requirements of the regulations, subject to compliance with any conditions specified in the notice<sup>12</sup>.

The Secretary of State may by regulations require that a certificate of conformity or Minister's approval certificate issued for any vehicle must specify<sup>13</sup>:

- 287 (a) the regulations, if any, applicable to the vehicle at the time of the issue of the certificate<sup>14</sup>;
- 288 (b) any additional alteration to that vehicle required by any direction to be notified to the Secretary of State or the prescribed testing authority<sup>15</sup>; and
- 289 (c) any exemption applicable to that vehicle<sup>16</sup>.

A certificate of conformity or a Minister's approval certificate specifying any plated weights are to be treated for the purposes of the provisions of Part II of the Road Traffic Act 1988<sup>17</sup> and any regulations made under them relating to plating certificates<sup>18</sup> as a plating certificate<sup>19</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'prescribed' see PARA 660 note 5 ante.

3 For the meaning of 'the relevant aspects of design, construction, equipment and marking' see PARA 703 note 6 ante.

4 For the meaning of 'plated weights' see PARA 679 note 6 ante.

5 As to the meaning of references to 'vehicle' in this provision see PARA 702 note 6 ante.

6 For the meaning of 'certificate of conformity' see PARA 705 note 10 ante.

7 For the meaning of 'Minister's approval certificate' see PARA 706 ante.

8 Road Traffic Act 1988 s 59(1). References to a prescribed testing authority take effect as from a day to be appointed: s 59(1)-(3) (prospectively amended by the Transport Act 1982 s 10(7) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 Pt I para 4)). At the date at which this volume states the law no such day had been appointed. For the meaning of 'prescribed testing authority' see PARA 676 note 11 ante.

The Motor Vehicles (Type Approval for Goods Vehicles) (Great Britain) Regulations 1982, SI 1982/1271 (as amended) (see PARA 702 note 9 ante) partly have effect under the Road Traffic Act 1988 s 59(1) (prospectively amended).

9 As to the meaning of 'manufacturer' see PARA 703 note 11 ante.

10 Road Traffic Act 1988 s 59(2).

11 Ibid s 59(2)(a) (prospectively amended: see note 8 supra).

12 Ibid s 59(2)(b).

13 Ibid s 59(3). This is expressed to be without prejudice to the provisions of s 61 (as amended) (see PARA 711 post).

14 Ibid s 59(3)(a).

15 Ibid s 59(3)(b) (prospectively amended: see note 8 supra).

16 Ibid s 59(3)(c).

17 Ie ibid ss 40A-86 (as amended).

18 Ie except ibid s 50(1) (see PARA 683 ante): see s 59(4). For the meaning of 'plating certificate' see PARA 679 ante.

19 Ibid s 59(4). This is expressed not to apply in relation to vehicle parts: s 59(4). For the meaning of 'vehicle part' see PARA 695 note 1 ante.

## **UPDATE**

### **700-717 Type Approval**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(4) TYPE APPROVAL/(i) Type Approval Certificates, Certificates of Conformity and Minister's Approval Certificates/D. LIGHT PASSENGER VEHICLES AND MOTOR CYCLES/708. Requirement to hold EC certificate of conformity for unregistered light passenger vehicle or motor cycle.

## ***D. LIGHT PASSENGER VEHICLES AND MOTOR CYCLES***

### **708. Requirement to hold EC certificate of conformity for unregistered light passenger vehicle or motor cycle.**

Subject to the following provisions, if a person uses on a road<sup>1</sup> a light passenger vehicle<sup>2</sup>, a motor cycle<sup>3</sup> or a tractor<sup>4</sup> which has not been registered under the Vehicle Excise and Registration Act 1994<sup>5</sup>, or under the law of a member state other than the United Kingdom, and in respect of which no EC certificate of conformity<sup>6</sup> has effect, he is guilty of an offence<sup>7</sup>.

A person must not be convicted of such an offence in respect of the use of a light passenger vehicle<sup>8</sup> if he proves:



- 290 (1) that the vehicle was one in respect of which the grant of a licence under the Vehicle Excise and Registration Act 1994 was not prohibited by regulations<sup>9</sup>; or  
 291 (2) in the case of a vehicle in respect of which duty is not chargeable under the Vehicle Excise and Registration Act 1994, that the vehicle was one whose registration<sup>10</sup> was not prohibited by such regulations<sup>11</sup>.

A person must not be convicted of such an offence in respect of the use of a motor cycle if he proves that the vehicle was one in respect of which the grant of a licence or nil licence under the Vehicle Excise and Registration Act 1994 was not prohibited by regulation<sup>12</sup>.

The provisions described above do not apply:

- 292 (a) in relation to a vehicle brought temporarily into Great Britain by a person resident outside the United Kingdom<sup>13</sup>;  
 293 (b) in relation to a vehicle in respect of which a Minister's approval certificate<sup>14</sup> has effect<sup>15</sup>;  
 294 (c) to the use of a vehicle under a trade licence<sup>16</sup> in accordance with regulations<sup>17</sup>.

1 For the meaning of 'road' see PARA 206 ante.

2 'Light passenger vehicle' means any motor vehicle which:

- 1344 (1) has at least four wheels;  
 1345 (2) is equipped with an internal combustion engine;  
 1346 (3) is constructed or adapted for use for the carriage of passengers and is not a goods vehicle;  
 1347 (4) has no more than eight seats in addition to the driver's seat; and  
 1348 (5) has a maximum design speed exceeding 25 kmph,

but does not include a quadricycle within the meaning of the motor cycle type approval Directive art 1(3) or a vehicle used or intended for use for the purposes of any matter in relation to which a fire and rescue authority has functions (whoever uses it for those purposes) (see FIRE SERVICES): Road Traffic Act 1988 s 85 (definition added by the Motor Vehicles (EC Type Approval) Regulations 1992, SI 1992/3107, reg 16, Sch 2 para 5(2); and amended by the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 69). For the meaning of 'motor vehicle' see PARA 210 ante. For the meaning of 'goods vehicle' see PARA 220 ante. For the meaning of 'the motor cycle type approval Directive' see PARA 700 note 11 ante.

3 Ie a vehicle to which the motor cycle type approval Directive applies. In the application of these provisions to a vehicle to which the motor cycle type approval Directive applies, any reference to a member state includes a reference to an EEA state: Road Traffic Act 1988 s 64A(6) (added by the Motor Cycles Etc (EC Type Approval) Regulations 1999, SI 1999/2920, reg 19, Sch 2 paras 1, 2(5)).

4 Ie a vehicle to which the tractor type approval Directive applies. 'The tractor type approval Directive' means European Parliament and EC Council Directive 2003/37 (OJ L171, 9.7.2003, p 1) on type-approval of agricultural or forestry tractors, their trailers and interchangeable towed machinery, together with their systems, components and separate technical units: Tractor etc (EC Type-Approval) Regulations 2005, SI 2005/390, reg 2(1).

5 Ie under the Vehicle Excise and Registration Act 1994 s 21 (as amended) (see PARA 519 ante).

6 For the meaning of 'EC certificate of conformity' see PARA 700 note 11 ante.

7 Road Traffic Act 1988 s 64A(1) (s 64A added by the Motor Vehicles (EC Type Approval) Regulations 1992, SI 1992/3107, regs 1(2), 16, Sch 2 para 2; and the Road Traffic Act 1988 s 64A(1) amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 24(3); the Motor Cycles Etc (EC Type Approval) Regulations 1999, SI 1999/2920, Sch 2 para 2(2); and the Tractor etc (EC Type-Approval) Regulations 2005, SI 2005/390, reg 14).

A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry added by the Motor Vehicles (EC Type Approval) Regulations 1992, SI 1992/3107, Sch 2 para 7; and amended by the Motor Cycles Etc (EC Type Approval) Regulations 1999, SI 1999/2920, Sch 2 para 5). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

8 Road Traffic Act 1988 s 64A(2) (as added (see note 7 supra); and amended by the Motor Cycles Etc (EC Type Approval) Regulations 1999, SI 1999/2920, reg 19, Sch 2 para 1).

9 Road Traffic Act 1988 s 64A(2)(a) (as added (see note 7 supra); and amended by the Vehicle Excise and Registration Act 1994 Sch 3 para 24(3)). See the Motor Vehicles (EC Type Approval) Regulations 1998, SI 1998/2051, reg 11.

10 Ie under the Vehicle Excise and Registration Act 1994 s 21 (as amended): see PARA 519 ante.

11 Road Traffic Act 1988 s 64A(2)(b) (as added (see note 7 supra); and amended by the Vehicle Excise and Registration Act 1994 Sch 3 para 24(3)).

12 Road Traffic Act 1988 s 64A(2A) (s 64A as added (see note 7 supra); and s 64A(2A) added by the Motor Cycles Etc (EC Type Approval) Regulations 1999, SI 1999/2920, reg 19, Sch 2 para 2(4)). The reference in the text to regulation is a reference to the Motor Cycles Etc (EC Type Approval) Regulations 1999, SI 1999/2920, reg 16.

13 Road Traffic Act 1988 s 64A(5) (as added: see note 7 supra). For the meaning of 'United Kingdom' see PARA 224 note 5 ante. For the meaning of 'Great Britain' see PARA 205 note 3 ante.

14 For the meaning of 'Minister's approval certificate' see PARA 706 ante. This also has effect in relation to certificates issued under corresponding Northern Ireland legislation.

15 Road Traffic Act 1988 s 64A(3) (as added: see note 7 supra).

16 Ie a trade licence within the meaning of the Vehicle Excise and Registration Act 1994 (see PARA 521 note 3 ante).

17 Road Traffic Act 1988 s 64A(4) (as added (see note 7 supra); and amended by the Vehicle Excise and Registration Act 1994 Sch 3 para 24(3)). This refers to regulations made under the Vehicle Excise and Registration Act 1994 s 12(2): see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 767.

## UPDATE

### 700-717 Type Approval

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 708 Requirement to hold EC certificate of conformity for unregistered light passenger vehicle or motor cycle

TEXT AND NOTES 1-11--Road Traffic Act 1988 s 64A(1) further amended, s 64A(2), (6) repealed so as to exclude light passenger vehicles from the requirement: SI 2009/818.

NOTE 2--Head (2) and words 'or a vehicle ... for those purposes)' omitted: Road Traffic Act 1988 s 85 (amended by SI 2009/818).

NOTE 3--See also Motor Cycles Etc (Replacement of Catalytic Converters) Regulations 2009, SI 2009/1896, which relate to application to secondhand catalytic converters (reg 3); prohibition on the supply of certain catalytic converters (reg 4); prohibition on the installation of certain catalytic converters (reg 5); offences and enforcement (reg 6); offences and penalties (Schedule para 1); defence (Schedule para 2); liability of

persons other than principal offender (Schedule para 3); obstruction of officers and false statements (Schedule para 4); powers of search etc (Schedule para 5); applications for the release of detained items (Schedule para 6); compensation for seizure and detention (Schedule para 7); recovery of the expenses of enforcement (Schedule para 8); savings for certain privileges (Schedule para 9); and savings for civil rights (Schedule para 10).

NOTE 4--Definition of 'the tractor type approval Directive' amended: SI 2005/390 reg 2(1) (amended by SI 2008/1980).

TEXT AND NOTE 7--Reference to a member state now to an EEA state: Road Traffic Act 1988 s 64A(1) (amended by SI 2009/818).

NOTE 9--SI 1998/2051 replaced: Road Vehicles (Approval) Regulations 2009, SI 2009/717. As to fees see Road Vehicles (Individual Approval) (Fees) Regulations 2009, SI 2009/718.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(4) TYPE APPROVAL/(i) Type Approval Certificates, Certificates of Conformity and Minister's Approval Certificates/D. LIGHT PASSENGER VEHICLES AND MOTOR CYCLES/709. Sale of light passenger vehicles and motor cycles without EC certificate of conformity.

### **709. Sale of light passenger vehicles and motor cycles without EC certificate of conformity.**

Any person who<sup>1</sup> supplies<sup>2</sup> a light passenger vehicle<sup>3</sup> or motor cycle<sup>4</sup> which has not been registered under the Vehicle Excise and Registration Act 1994<sup>5</sup>, or under the law of a member state other than the United Kingdom, and in respect of which no EC certificate of conformity<sup>6</sup> has effect, is guilty of an offence<sup>7</sup>.

A person must not be convicted of such an offence in respect of the supply of a light passenger vehicle<sup>8</sup> if he proves:

- 295 (1) that the vehicle was one in respect of which the grant of a licence under the Vehicle Excise and Registration Act 1994 was not prohibited by regulations<sup>9</sup>; or
- 296 (2) in the case of a vehicle in respect of which duty is not chargeable under the Vehicle Excise and Registration Act 1994, that the vehicle was one whose registration<sup>10</sup> was not prohibited by such regulations<sup>11</sup>.

A person must not be convicted of such an offence in respect of the supply of a motor cycle if he proves that the vehicle was one in respect of which the grant of a licence or nil licence under the Vehicle Excise and Registration Act 1994 was not prohibited by regulations<sup>12</sup>.

A person cannot be convicted of such an offence in respect of the supply of a vehicle if he proves that it was supplied for export from the United Kingdom to a country which is not a member state, or that he had reasonable cause to believe that it would not be used on a road<sup>13</sup> in the United Kingdom or any other member state, or that it would not be so used until an EC certificate of conformity<sup>14</sup> had been issued in respect of it<sup>15</sup>.

The provisions described above do not apply in relation to the supply of a vehicle:

- 297 (a) to the Crown for naval, military or air force purposes<sup>16</sup>;

- 298 (b) for the purposes of the military forces of any country outside the United Kingdom<sup>17</sup>;
- 299 (c) to a police authority for police purposes<sup>18</sup>; or
- 300 (d) to any public authority in a member state outside the United Kingdom which has responsibilities for maintaining public order<sup>19</sup>,

nor do they apply in relation to a vehicle in respect of which a Minister's approval certificate<sup>20</sup> has effect<sup>21</sup>.

1     Ie subject to the Road Traffic Act 1988 s 65A(3)-(6) (as added and amended) (see the text and notes 9-22 infra): see s 65A(1) (s 65A added by the Motor Vehicles (EC Type Approval) Regulations 1992, SI 1992/3107, regs 1(2), 16, Sch 2 para 3).

2     'Supply' includes sell, offer to sell or supply, and expose for sale: Road Traffic Act 1988 s 65A(2) (as added: see note 1 supra).

3     For the meaning of 'light passenger vehicle' see PARA 708 note 2 ante.

4     Ie a vehicle to which the motor cycle type approval Directive applies. In the application of these provisions to a vehicle to which the motor cycle type approval Directive applies, any reference to a member state includes a reference to an EEA state: Road Traffic Act 1988 s 65A(8) (added by the Motor Cycles Etc (EC Type Approval) Regulations 1999, SI 1999/2920, reg 19, Sch 2 paras 1, 3(5)). For the meaning of 'the motor cycle type approval Directive' see PARA 700 note 11 ante.

5     Ie under the Vehicle Excise and Registration Act 1994 s 21 (as amended) (see PARA 519 ante).

6     For the meaning of 'EC certificate of conformity' see PARA 700 note 11 ante.

7     Road Traffic Act 1988 s 65A(1) (as added (see note 1 supra); and amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3, PARA 24(4); and the Motor Cycles Etc (EC Type Approval) Regulations 1999, SI 1999/2920, Sch 2 para 3(2)).

A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry added by the Motor Vehicles (EC Type Approval) Regulations 1992, SI 1992/3107, Sch 2 para 7; and amended by the Motor Cycles Etc (EC Type Approval) Regulations 1999, SI 1999/2920, Sch 2 para 5). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

Nothing in the Road Traffic Act 1988 s 65A(1) (as added) affects the validity of a contract or any rights arising under or in relation to a contract: s 65A(7) (as so added).

8     Ibid s 65A(2) (as added (see note 1 supra); and amended by the Motor Cycles Etc (EC Type Approval) Regulations 1999, SI 1999/2920, Sch 2 para 3(3)).

9     Road Traffic Act 1988 s 65A(3)(a) (as added (see note 1 supra); and amended by the Vehicle Excise and Registration Act 1994 Sch 3 para 24(4)). The reference in the text to regulations is to the Motor Vehicles (EC Type Approval) Regulations 1998, SI 1998/2051, reg 11.

10    Ie under the Vehicle Excise and Registration Act 1994 s 21 (as amended): see PARA 519 ante.

11    Road Traffic Act 1988 s 65A(3)(b) (as added (see note 1 supra); and amended by the Vehicle Excise and Registration Act 1994 Sch 3 para 24(4)).

12    Road Traffic Act 1988 s 65A(3A) (s 65A as added (see note 1 supra); and s 65A(3A) added by the Motor Cycles Etc (EC Type Approval) Regulations 1999, SI 1999/2920 Sch 2 para 3(4)). The reference in the text to regulations is to the Motor Cycles Etc (EC Type Approval) Regulations 1999, SI 1999/2920, reg 16.

13    For the meaning of 'road' see PARA 206 ante.

14    For the meaning of 'EC certificate of conformity' see PARA 700 note 11 ante.

15    Road Traffic Act 1988 s 65A(4) (as added: see note 1 supra).

16    Ibid s 65A(5)(a) (as added: see note 1 supra).

- 17 Ibid s 65A(5)(b) (as added: see note 1 supra).
- 18 Ibid s 65A(5)(d) (as added: see note 1 supra).
- 19 Ibid s 65A(5)(e) (as added: see note 1 supra).
- 20 For the meaning of 'Minister's approval certificate' see PARA 706 ante. This also has effect in relation to certificates issued under corresponding Northern Ireland legislation.
- 21 Road Traffic Act 1988 s 65A(6) (as added: see note 1 supra).

## **UPDATE**

### **700-717 Type Approval**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **709 Sale of light passenger vehicles and motor cycles without EC certificate of conformity**

TEXT AND NOTES 1-11--Road Traffic Act 1988 s 65A(1) further amended; s 65A(3), (8) repealed so as to exclude light passenger vehicles from the scope of the provision: SI 2009/818.

NOTE 4--Words 'a vehicle to which the motor cycle type approval Directive applies' omitted: Road Traffic Act 1988 s 65A(3A) (amended by SI 2009/818).

NOTE 9--SI 1998/2051 replaced: Road Vehicles (Approval) Regulations 2009, SI 2009/717. As to fees see the Road Vehicles (Individual Approval) (Fees) Regulations 2009, SI 2009/718.

TEXT AND NOTE 15--For 'a member state' and 'member state' read 'an EEA state' and 'EEA state': Road Traffic Act 1988 s 65A(4) (amended by SI 2009/818).

TEXT AND NOTE 19--For 'a member state' read 'an EEA state': Road Traffic Act 1988 s 65A(5)(e) (amended by SI 2009/818).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(4) TYPE APPROVAL/(i) Type Approval Certificates, Certificates of Conformity and Minister's Approval Certificates/E. APPEALS AGAINST REFUSAL OF CERTIFICATES/710. Appeals.

## ***E. APPEALS AGAINST REFUSAL OF CERTIFICATES***

### **710. Appeals.**

The following provisions apply until a day to be appointed<sup>1</sup>.

A person aggrieved by the determination made on behalf of the Secretary of State<sup>2</sup> with respect to a type approval certificate<sup>3</sup>, a certificate of conformity<sup>4</sup> or a Minister's approval certificate<sup>5</sup> under specified provisions of the Road Traffic Act 1988<sup>6</sup>, including any determination

with respect to design weights<sup>7</sup> or plated weights<sup>8</sup>, may within the prescribed<sup>9</sup> time and in the prescribed manner appeal to the Secretary of State<sup>10</sup>. On the appeal the Secretary of State has the like powers and duties as he has on an original application for a type approval or a Minister's approval certificate or in respect of the plated weights to be included in a certificate of conformity<sup>11</sup>, may hold an inquiry in connection with it<sup>12</sup>, and may appoint an assessor for the purpose of assisting him with the appeal or any such inquiry<sup>13</sup>.

As from a day to be appointed, the following provisions apply in relation to appeals, instead of those described above<sup>14</sup>.

A person aggrieved by a determination made on behalf of the Secretary of State with respect to a type approval certificate, a certificate of conformity or Minister's approval certificate, including any determination with respect to design weights or plated weights, may appeal to the Secretary of State<sup>15</sup>. A person aggrieved by a determination made by the prescribed testing authority<sup>16</sup> with respect to the plated weights for any goods vehicle may appeal to the Secretary of State<sup>17</sup>. Any such appeal must be made within the prescribed time and in the prescribed manner<sup>18</sup>. Where the appeal is against a determination made by or on behalf of the Secretary of State<sup>19</sup>, the Secretary of State has the like powers and duties as he has on an original application for a type approval or Minister's approval certificate or in respect of the plated weights to be included in a certificate of conformity<sup>20</sup>. Where the appeal is against a determination made by the prescribed testing authority<sup>21</sup>, the Secretary of State has the like powers and duties as he would have had if the application in respect of the plated weights for the goods vehicle concerned had been made to him<sup>22</sup>. The Secretary of State may hold an inquiry in connection with any such appeal and may appoint an assessor for the purpose of assisting him with the appeal or any such inquiry<sup>23</sup>.

1 The Road Traffic Act 1988 s 60 is substituted, as from a day to be appointed, by the Transport Act 1982 s 17(2) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 Pt I para 6(2)). At the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 For the meaning of 'type approval certificate' see PARA 703 ante.

4 For the meaning of 'certificate of conformity' see PARA 705 note 10 ante.

5 For the meaning of 'Minister's approval certificate' see PARA 706 ante.

6 In the Road Traffic Act 1988 ss 54-59 (as amended) (see PARAS 702-707 ante).

7 As to references to 'design weights' see PARA 702 note 8 ante.

8 For the meaning of 'plated weights' see PARA 679 note 6 ante.

9 For the meaning of 'prescribed' see PARA 660 note 5 ante.

10 Road Traffic Act 1988 s 60(1). The Motor Vehicles (Type Approval for Goods Vehicles) (Great Britain) Regulations 1982, SI 1982/1271 (as amended) (see PARA 702 note 9 ante), the Motor Vehicles (Type Approval) (Great Britain) Regulations 1984, SI 1984/981 (as amended) (see PARA 702 note 9 ante), and the Motor Cycles Etc (Single Vehicle Approval) Regulations 2003, SI 2003/1959, have effect under this provision. As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARAS 656, 664.

11 Road Traffic Act 1988 s 60(2)(a).

12 Ibid s 60(2)(b). As to the holding of inquiries see s 180; and PARA 244 ante.

13 Ibid s 60(2)(c).

14 See note 1 supra.

15 Road Traffic Act 1988 s 60(1) (as prospectively substituted (see note 1 supra); and amended by virtue of the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2, PARA 6(2)).

16 For the meaning of 'prescribed testing authority' see PARA 676 note 11 ante.

17 Road Traffic Act 1988 s 60(2) (as prospectively substituted (see note 1 supra); and amended by virtue of the Road Traffic (Consequential Provisions) Act 1988 Sch 2, PARA 6(2)). This does not apply to vehicle parts: Road Traffic Act 1988 s 60(2) (as prospectively substituted: see note 1 supra).

18 Ibid s 60(3) (as prospectively substituted: see note 1 supra).

19 Ie under ibid s 60(1) (as prospectively substituted): see the text and note 15 supra.

20 Ibid s 60(3)(a) (as prospectively substituted: see note 1 supra).

21 Ie under ibid s 60(2) (as prospectively substituted): see the text and note 17 supra.

22 Ibid s 60(3)(b) (as prospectively substituted: see note 1 supra).

23 Ibid s 60(4) (as prospectively substituted: see note 1 supra).

## UPDATE

### 700-717 Type Approval

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(4) TYPE APPROVAL/(i) Type Approval Certificates, Certificates of Conformity and Minister's Approval Certificates/F. TESTING AND APPROVAL/711. Regulations for the approval of design, construction, equipment and marking of vehicles.

## F. TESTING AND APPROVAL

### 711. Regulations for the approval of design, construction, equipment and marking of vehicles.

The Secretary of State<sup>1</sup> may make regulations for purposes relating to type approval<sup>2</sup>. Without prejudice to the generality of that power<sup>3</sup>, such regulations:

- 301 (1) may provide for the examination of any vehicle in respect of which a certificate of conformity<sup>4</sup> or a Minister's approval certificate<sup>5</sup> is in force in the event of an alteration being made to the vehicle which is notifiable<sup>6</sup> and, in particular, may empower a vehicle examiner<sup>7</sup> or an authorised inspector<sup>8</sup> to require the vehicle to be examined at a testing station<sup>9</sup>;
- 302 (2) may authorise the cancellation, suspension or amendment of a certificate of conformity or a Minister's approval certificate on an examination of any vehicle in pursuance of regulations made by virtue of head (1) above<sup>10</sup>;
- 303 (3) must give a right of appeal to any person aggrieved by a determination on any such examination and for that purpose may apply specified provisions of the Road Traffic Act 1988<sup>11</sup>;

- 304 (4) may contain the like provisions with respect to any such examination and any  
appeal brought by virtue of head (3) above as may be contained in certain  
regulations concerning testing and plating<sup>12</sup>;
- 305 (5) may require the payment of fees or other charges in connection with the  
provision by the Secretary of State of services or facilities or the issue by him of  
certificates and other documents<sup>13</sup>;
- 306 (6) may provide:
- 81
152. (a) for the authorisation of persons to carry out examinations, in connection  
with the issue of type approval certificates<sup>14</sup>, of vehicles or vehicle parts<sup>15</sup> of such  
classes<sup>16</sup> as may be specified in the regulations<sup>17</sup>;
153. (b) for the imposition of conditions to be complied with by persons so  
authorised<sup>18</sup>; and
154. (c) for the withdrawal of authorisations<sup>19</sup>;
- 82
- 307 (7) may make provision as to the form of, and particulars to be contained in,  
certificates of conformity and provide for the supply by the Secretary of State of  
forms for such certificates<sup>20</sup>;
- 308 (8) may provide for the issue of replacements for plates fixed to vehicles<sup>21</sup>,  
certificates of conformity and Minister's approval certificates which have been lost  
or defaced and provide for the payment of a fee for their issue<sup>22</sup>;
- 309 (9) may require persons empowered<sup>23</sup> to issue certificates of conformity to keep  
records of certificates of conformity issued by them, and of the vehicles or vehicle  
parts in respect of which such certificates are issued, and may authorise the  
inspection of such records by such persons and in such circumstances as may be  
prescribed<sup>24</sup>; and
- 310 (10) may make different provisions for different cases<sup>25</sup>.

As from a day to be appointed<sup>26</sup>, such regulations may<sup>27</sup> also provide:

- 311 (i) for the fees to be payable on any application for a determination by the  
prescribed testing authority<sup>28</sup> of any plated weights<sup>29</sup> for a goods vehicle<sup>30</sup>;
- 312 (ii) for the issue by the prescribed testing authority of plates for marking on  
goods vehicles any plated weights, whether determined by that authority or not  
(including in particular the issue of such plates on behalf of the Secretary of State)<sup>31</sup>  
and for the fees to be payable to that authority for the issue of any such plates<sup>32</sup>;
- 313 (iii) for the carrying out and supervision of private sector examinations<sup>33</sup>.

In certain cases, contravention of such regulations is an offence<sup>34</sup>.

A number of regulations have been made or take effect under the provisions described above<sup>35</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Ie for the purposes of the Road Traffic Act 1988 ss 54-60 (as amended) (see PARAS 702-707, 710 ante): see s 61(1).

3 See *ibid* s 61(2).

4 For the meaning of 'certificate of conformity' see PARA 705 note 10 ante.

5 For the meaning of 'Minister's approval certificate' see PARA 706 ante.

6 Ie by virtue of the Road Traffic Act 1988 s 59(1) or (2) (see PARA 707 ante).



7 For the meaning of 'vehicle examiner' see PARA 698 ante.

8 For the meaning of 'authorised inspector' see PARA 660 note 14 ante. See note 9 infra.

9 Road Traffic Act 1988 s 61(2)(a) (amended by the Road Traffic Act 1991 s 83, Sch 8; and prospectively amended, so as to refer to an authorised inspector, by the Transport Act 1982 s 10(3)(a) (substituted by the Road Traffic Act 1991 48, Sch 4 para 19)).

The testing stations referred to in head (1) in the text are those provided under the Road Traffic Act 1988 s 52 (see PARA 682 ante), s 62 (see PARA 712 post) or s 72 (as substituted) (see PARA 692 ante) or designated under the Transport Act 1982 s 10(12) (see PARA 682 ante): Road Traffic Act 1988 s 61(2)(a) (as so amended; and prospectively amended, so as to refer to the Transport Act 1982 s 10(12), by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 Pt I para 15 (amended by the Road Traffic Act 1991 s 83, Sch 8)).

Without prejudice to any regulations made by virtue of the Road Traffic Act 1988 s 51(1)(c) (see PARA 679 text and notes 26-31 ante) as applied by s 61 (as amended), the Secretary of State may give directions with respect to the manner in which examinations to which such regulations apply are to be carried out: s 61(3).

10 Ibid s 61(2)(b).

11 Ibid s 61(2)(c). The provisions which may be so applied are s 50(1)-(4) (as amended) (see PARA 683 ante). As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARAS 656, 664.

12 Ibid s 61(2)(d), which refers to regulations made by virtue of s 51(1)(b), (c), (g), (h) (see PARA 679 ante) in relation to the examinations and appeals there mentioned.

As from a day to be appointed, head (4) in the text is substituted so as to provide that regulations may contain the like provisions with respect to any notification of any such alteration as is mentioned in head (1) in the text, with respect to any examination of any vehicle in pursuance of regulations made by virtue of that head and with respect to any appeal brought by virtue of head (3) in the text as may be contained in regulations made by virtue of s 51(1)(aa), (b), (c), (g), (h) (as added or amended) in relation to the notifications, examinations and appeals there mentioned: s 61(2)(d) (substituted by the Transport Act 1982 s 22(2) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4 Sch 2 Pt I para 11)). At the date at which this volume states the law no such day had been appointed.

13 Road Traffic Act 1988 s 61(2)(e).

14 For the meaning of 'type approval certificate' see PARA 703 ante.

15 For the meaning of 'vehicle part' see PARA 695 note 1 ante.

16 As to classes of vehicle see PARA 208 ante.

17 Road Traffic Act 1988 s 61(2)(f)(i).

18 Ibid s 61(2)(f)(ii).

19 Ibid s 61(2)(f)(iii).

20 Ibid s 61(2)(g).

21 Ie under ibid ss 54-58 (as amended) (see PARAS 702-706 ante).

22 Ibid s 61(2)(h).

23 Ie by ibid ss 54-58 (as amended) (see PARAS 702-706 ante).

24 Ibid s 61(2)(j). For the meaning of 'prescribed' see PARA 660 note 5 ante.

25 Ibid s 61(2)(k).

26 Ibid s 61(1A) is added, as from a day to be appointed, by the Transport Act 1982 s 17(4) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 Pt I para 4(4)(b), (c)). At the date at which this volume states the law no such day had been appointed.

27 This is without prejudice to the generality of the Road Traffic Act 1988 s 61(1): see the text and notes 1-2 supra.

28 For the meaning of 'prescribed testing authority' see PARA 676 note 11 ante.

29 For the meaning of 'plated weights' see PARA 679 note 6 ante.

30 Road Traffic Act 1988 s 61(1A)(a) (as added: see note 26 supra). For the meaning of 'goods vehicle' see PARA 220 ante; and see also PARA 705 note 8 ante.

31 le for the purposes of ibid s 58(2) (see PARA 706 text and note 10 ante).

32 Ibid s 61(1A)(b) (as added: see note 26 supra).

33 See the Transport Act 1982 s 10(11) (as amended); and PARA 662 text and notes 22-24 ante.

34 Where such regulations impose the like requirement as may be imposed by regulations made by virtue of the Road Traffic Act 1988 s 51(1)(c)(ii) (see PARA 679 text and notes 30-31 ante), the regulations may provide that a person who contravenes or fails to comply with a requirement so imposed is guilty of an offence: s 61(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

35 See the Motor Vehicles (Type Approval for Goods Vehicles) (Great Britain) Regulations 1982, SI 1982/1271 (amended by SI 1984/697; SI 1984/1402; SI 1985/46; SI 1986/427; SI 1986/1089; SI 1987/1508; SI 1988/1523; SI 1989/1579; SI 1991/1021; SI 1991/1970; SI 1992/25; SI 1992/1342; SI 1992/3084; SI 1993/2200; SI 1994/2191; SI 1995/1323; SI 1996/3014 (itself amended by SI 1997/1365); SI 1996/3221; SI 1997/2936; SI 1998/1006; SI 2003/582; SI 2003/1866; SI 2006/2565; SI 2007/361); the Motor Vehicles (Type Approval) (Great Britain) Regulations 1984, SI 1984/981 (amended by SI 1984/1401; SI 1984/1761; SI 1985/1651; SI 1986/739; SI 1987/1509; SI 1988/1522; SI 1989/1580; SI 1990/94; SI 1990/1839; SI 1991/1022; SI 1991/1971; SI 1992/1341; SI 1992/2161; SI 1992/2908; SI 1993/2201; SI 1994/2190; SI 1995/1322; SI 1996/2330; SI 1996/3015; SI 1997/1502; SI 1997/2933; SI 1998/1005); the Motor Vehicles (Type Approval of Reduced Pollution Adaptations) Regulations 1998, SI 1998/3093 (amended by SI 2000/3275); the Motor Vehicles (Type Approval and Approval Marks) (Fees) Regulations 1999, SI 1999/2149 (amended by SI 2003/2258; SI 2004/2106; SI 2006/1638); the Motor Vehicles (Approval) Regulations 2001, SI 2001/25 (amended by SI 2004/623); and the Motor Vehicles (Approval) (Fees) Regulations 2001, SI 2001/2486 (amended by SI 2007/495). See also the Motor Cycles Etc (Single Vehicle Approval) Regulations 2003, SI 2003/1959; and the Motor Cycles Etc (Single Vehicle Approval) (Fees) Regulations 2003, SI 2003/1960 (amended by SI 2007/507). See further PARA 702 note 9 ante.

## UPDATE

### 700-717 Type Approval

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 711 Regulations for the approval of design, construction, equipment and marking of vehicles

NOTES 12, 13, 21, 22--See the Department for Transport (Fees) Order 2009, SI 2009/711 (amended by SI 2009/1885), which specifies the functions to be taken into account in the determination of the fees to be fixed by the Secretary of State.

NOTE 35--SI 1982/1271 further amended: SI 2009/2084. SI 1999/2149 further amended: SI 2009/719. SI 2001/25 further amended: SI 2009/815. SI 2001/2486 further amended: SI 2008/1443, SI 2009/863. SI 2003/1960 further amended: SI 2008/1462, SI 2009/865.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(4) TYPE APPROVAL/(i) Type Approval

Certificates, Certificates of Conformity and Minister's Approval Certificates/F. TESTING AND APPROVAL/712. Provision of testing stations and equipment.

## **712. Provision of testing stations and equipment.**

The Secretary of State<sup>1</sup> may provide and maintain stations where examinations of vehicles in relation to type approval<sup>2</sup> may be carried out and may provide and maintain the apparatus for carrying out such examinations<sup>3</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Ie under the Road Traffic Act 1988 ss 54-61 (as amended) (see PARAS 702-707, 710-711 ante) or regulations under those provisions: see s 62(1).

3 Ibid s 62(1).

## **UPDATE**

### **700-717 Type Approval**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(4) TYPE APPROVAL/(i) Type Approval Certificates, Certificates of Conformity and Minister's Approval Certificates/G. VEHICLES MANUFACTURED ABROAD/713. Modification of type approval arrangements in consequence of international agreements.

## **G. VEHICLES MANUFACTURED ABROAD**

### **713. Modification of type approval arrangements in consequence of international agreements.**

Where an agreement entered into between Her Majesty's government and the government of a country outside Great Britain provides for the recognition in Great Britain of arrangements under the law of that country with respect to the approval of the design, construction, equipment or marking of vehicles of any description manufactured in that country, the Secretary of State<sup>1</sup> may make regulations<sup>2</sup>:

- 314 (1) applying, with such adaptations and modifications as he thinks fit, all or any of the provisions of the Road Traffic Act 1988 with respect to the approval of the design, construction, equipment or marking of vehicles<sup>3</sup> and of regulations for those purposes<sup>4</sup>, so far as relating to type approval certificates<sup>5</sup> and certificates of conformity<sup>6</sup>, to vehicles of that description manufactured in that country<sup>7</sup>;
- 315 (2) providing that a certificate issued under any such provision as so applied must be treated for the purposes of any other provisions of Part II of the Road

- Traffic Act 1988<sup>8</sup> prescribed<sup>9</sup> by the regulations as a type approval certificate or as a certificate of conformity<sup>10</sup>;
- 316 (3) providing for the cancellation or suspension (subject to any savings prescribed by the regulations) of any such certificate in the event of the agreement ceasing to be in force or being modified<sup>11</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Road Traffic Act 1988 s 62(2). At the date at which this volume states the law the Motor Vehicles (Type Approval) (EEC Manufacturers) Regulations 1981, SI 1981/493 (amended by SI 1997/2971) have effect under this provision. Those regulations refer to provisions of the Road Traffic Act 1972 which have been replaced by the Road Traffic Act 1988 ss 54-61 (as amended).

3 *le ibid* ss 54-60 (as amended): see PARAS 702-707, 710 ante.

4 *le under ibid* s 61 (as amended): see PARA 711 ante.

5 For the meaning of 'type approval certificate' see PARA 703 ante.

6 For the meaning of 'certificate of conformity' see PARA 705 note 10 ante.

7 Road Traffic Act 1988 s 62(2)(a).

8 *le ibid* Pt II (ss 40A-86) (as amended).

9 For the meaning of 'prescribed' see PARA 660 note 5 ante.

10 Road Traffic Act 1988 s 62(2)(b).

11 *Ibid* s 62(2)(c).

## UPDATE

### 700-717 Type Approval

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(4) TYPE APPROVAL/(i) Type Approval Certificates, Certificates of Conformity and Minister's Approval Certificates/G. VEHICLES MANUFACTURED ABROAD/714. Application of approval marks.

### 714. Application of approval marks.

Where any international agreement to which the United Kingdom is a party or a Community obligation provides<sup>1</sup>:

- 317 (1) for markings to be applied:

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155. (a) to motor vehicle<sup>2</sup> parts<sup>3</sup> of any description to indicate conformity with a type approved by any country<sup>4</sup>; or

156. (b) to a motor vehicle to indicate that the vehicle is fitted with motor vehicle parts of any description and either that the parts conform with a type approved by any country or that the vehicle is such that as so fitted it conforms with a type so approved<sup>5</sup>; and
- 84
- 318 (2) for motor vehicle parts or, as the case may be, motor vehicles bearing those markings to be recognised as complying with the requirements imposed by the law of another country<sup>6</sup>,

the Secretary of State<sup>7</sup> may by regulations designate the markings as approval marks, and any markings so designated must be deemed for the purposes of the Trade Descriptions Act 1968<sup>8</sup> to be a trade description<sup>9</sup>.

Any person who, without being authorised by the competent authority<sup>10</sup> to apply any approval mark, applies that mark or a mark so nearly resembling it as to be calculated to deceive is guilty of an offence under the Trade Descriptions Act 1968, whether or not he would be guilty of such an offence apart from this provision<sup>11</sup>.

The conditions subject to which approval of any type may be given on behalf of the United Kingdom or the use of approval marks indicating conformity with a type approved by the United Kingdom may be authorised may include such conditions as to testing or inspection and the payment of fees as the Secretary of State may impose<sup>12</sup>.

1 Road Traffic Act 1988 s 80(1).

2 'Motor vehicle' in this context means a mechanically propelled vehicle or a vehicle designed or adapted for towing by a mechanically propelled vehicle: *ibid* s 80(4).

3 'Motor vehicle part' means any article made or adapted for use as part of a mechanically propelled vehicle or a vehicle drawn by a mechanically propelled vehicle, or for use as part of the equipment of any such vehicle, and must be treated as including any equipment for the protection of drivers or passengers in or on a motor vehicle notwithstanding that it does not form part of, or of the equipment of, that vehicle: *ibid* s 80(4).

4 *Ibid* s 80(1)(a)(i).

5 *Ibid* s 80(1)(a)(ii).

6 *Ibid* s 80(1)(b).

7 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

8 See SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 471 et seq.

9 Road Traffic Act 1988 s 80(1). The markings so designated must be deemed to be a trade description, whether or not the markings fall within the definition of the expression in the Trade Descriptions Act 1968 s 2 (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 481): Road Traffic Act 1988 s 80(1).

At the date at which this volume states the law the Motor Vehicles (Designation of Approval Marks) Regulations 1979, SI 1979/1088 (amended by SI 1980/582; SI 1980/2027; 1981/126; SI 1981/1732; SI 1982/1479; SI 1983/1602; SI 1985/113; SI 1986/369; SI 1989/1014; SI 1990/1838; SI 1991/1979; SI 1992/634; SI 1992/3086; SI 1993/1710; SI 1995/3342; SI 1997/58; SI 1997/2971) have effect under this provision.

10 'The competent authority' means as respects any approval marks indicating conformity with a type approved by the United Kingdom, the Secretary of State, and as respects any approval marks indicating conformity with a type approved by any other country, the authority having power under the law of that country to authorise the use of that mark: Road Traffic Act 1988 s 80(4). For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

11 *Ibid* s 80(2). As to offences under the Trade Descriptions Act 1968 see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 475 et seq.

12 Road Traffic Act 1988 s 80(3). Any sum received by the Secretary of State in pursuance of s 80 must be paid into the Consolidated Fund: s 84(4). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

## **UPDATE**

### **700-717 Type Approval**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **714 Application of approval marks**

TEXT AND NOTES 8, 9, 11--Road Traffic Act 1988 s 80(1), (2) amended: SI 2008/1277.

NOTE 9--SI 1979/1088 further amended: SI 2010/313.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(4) TYPE APPROVAL/(i) Type Approval Certificates, Certificates of Conformity and Minister's Approval Certificates/H. MISCELLANEOUS TYPE APPROVALS/715. Miscellaneous EC type approval requirements.

## ***H. MISCELLANEOUS TYPE APPROVALS***

### **715. Miscellaneous EC type approval requirements.**

In addition to the general provisions in relation to type approval of motor vehicles, goods vehicles, light passenger vehicles and motor cycles<sup>1</sup>, regulations have been made implementing certain requirements of European Community law for type approval of non-road mobile machinery<sup>2</sup>, and tractors and tractor components<sup>3</sup>.

1 See PARA 700 et seq ante.

2 See the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999, SI 1999/1053 (amended by SI 2002/1649; SI 2004/693; SI 2004/2034); and the Non Road Mobile Machinery (Type Approval) (Fees) Regulations 1999, SI 1999/1054.

3 See the Agricultural or Forestry Tractors and Tractor Components (Type Approval) Regulations 1988, SI 1988/1567 (amended by SI 1989/2275; SI 1990/2336; SI 1992/280; SI 2000/828; SI 2001/1710; SI 2002/1890). See also the Agricultural or Forestry Tractors (Emission of Gaseous and Particulate Pollutants) Regulations 2002, SI 2002/1891; and the Tractor etc (EC Type-Approval) Regulations 2005, SI 2005/390.

## **UPDATE**

### **700-717 Type Approval**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

## **715 Miscellaneous EC type approval requirements**

NOTE 2--SI 1999/1053 further amended: SI 2008/2011.

NOTE 3--SI 2005/390 amended: SI 200/8/1980.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/8. TESTING AND TYPE APPROVAL OF VEHICLES/(4) TYPE APPROVAL/(ii) Marking of Weights of Goods Vehicles/716. Alteration of plated weights for goods vehicles without examination.

### **(ii) Marking of Weights of Goods Vehicles**

#### **716. Alteration of plated weights for goods vehicles without examination.**

The Secretary of State<sup>1</sup> may by regulations make provision:

- 319 (1) for the determination, in such circumstances as may be prescribed<sup>2</sup>, of the plated weights<sup>3</sup> (or any of the plated weights) for goods vehicles<sup>4</sup> of any prescribed class<sup>5</sup> otherwise than on an examination under specified regulations<sup>6</sup>; and
- 320 (2) for the amendment of any approval certificate<sup>7</sup> in force in respect of a vehicle of any such class, so as to specify the weights determined for that vehicle under the regulations in place of any weights superseded by those weights, or the cancellation of any such certificate and the issue in place of it of a different certificate specifying the weights so determined in place of any weights so superseded<sup>8</sup>.

Any person aggrieved<sup>9</sup> by a determination of plated weights for a goods vehicle under such regulations may appeal to the Secretary of State and on the appeal the Secretary of State must cause the vehicle to be examined by an officer of the Secretary of State appointed by him for the purpose and must make such determination on the basis of the examination as he thinks fit<sup>10</sup>. Without prejudice to the generality of the above provision, such regulations:

- 321 (a) may provide for the determination of any plated weights for a goods vehicle under the regulations to be made by the Secretary of State or by the prescribed testing authority<sup>11</sup>;
- 322 (b) may contain the like provisions with respect to any appeal<sup>12</sup> and any examination on any such appeal as may be contained in any regulations<sup>13</sup> and any examination on any such appeal<sup>14</sup>;
- 323 (c) may specify the manner in which, and the time before or within which, applications may be made for the determination of plated weights of vehicles under the regulations, and the information to be supplied and documents to be produced on any such application<sup>15</sup>;
- 324 (d) may make provision as to the fees to be paid on any such application<sup>16</sup>;
- 325 (e) may provide for the issue of replacements for any plates fixed to a vehicle specifying weights which have been superseded by weights specified in an approval certificate amended under the regulations or in any certificate issued under the regulations in place of an approval certificate, and for the payment of a fee for their issue<sup>17</sup>; and

326 (f) may make different provision for different cases<sup>18</sup>.

Any certificate issued in respect of a goods vehicle under such regulations in replacement of an approval certificate of any description must:

- 327 (i) be in the form appropriate for an approval certificate of that description<sup>19</sup>;
- 328 (ii) be identical in content with the certificate it replaces, save for any alterations in the plated weights authorised by the regulations<sup>20</sup>; and
- 329 (iii) be treated for the purposes of Part II of the Road Traffic Act 1988<sup>21</sup> (including this provision) and any regulations made under any provision of Part II as if it were the same certificate as the certificate it replaces<sup>22</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'prescribed' see PARA 660 note 5 ante.

3 For the meaning of 'plated weights' see PARA 679 note 6 ante.

4 For the meaning of 'goods vehicle' see PARA 220 ante.

5 As to classes of vehicles see PARA 208 ante.

6 Road Traffic Act 1988 s 63A(1)(a) (s 63A added by the Transport Act 1982 s 18 (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 Pt I para 7); and the Road Traffic Act 1988 s 63A(1)(a) amended by the Road Traffic (Consequential Provisions) Act 1988 Sch 2 Pt I para 7). The regulations referred to in the text are those made under the Road Traffic Act 1988 s 49 (as amended) (see PARA 679 ante) or s 61 (as amended) (see PARA 711 ante). At the date at which this volume states the law no such regulations had been made.

7 'Approval certificate' means a plating certificate and any certificate of conformity or Minister's approval certificate specifying any plated weights: *ibid* s 63A(4) (as added: see note 6 *supra*). For the meaning of 'plating certificate' see PARA 679 ante. For the meaning of 'certificate of conformity' see PARA 705 note 10 ante. For the meaning of 'Minister's approval certificate' see PARA 706 ante.

8 *Ibid* s 63A(1)(b) (as added: see note 6 *supra*). At the date at which this volume states the law no such regulations had been made.

9 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARAS 656, 664.

10 Road Traffic Act 1988 s 63A(2) (as added: see note 6 *supra*).

11 *Ibid* s 63A(3)(a) (as added: see note 6 *supra*). This provision is amended by the Transport Act 1982 (Commencement No 7 and Transitional Provisions) Order 1996, SI 1996/1943, art 3, so as to omit the reference to the prescribed testing authority during the period from 1 August 1996 to the day on which the Transport Act 1982 s 8 (as amended) comes into force. At the date at which this volume states the law s 8 had not been brought into force. For the meaning of 'prescribed testing authority' see PARA 676 note 11 ante.

12 *Ie* an appeal brought by virtue of the Road Traffic Act 1988 s 63A(2) (as added): see the text and note 10 *supra*.

13 *Ie* made by virtue of *ibid* s 51(1)(c), (g), (h) (see PARA 679 ante) in relation to an appeal under s 50(1) (see PARA 683 ante).

14 *Ibid* s 63A(3)(b) (as added (see note 6 *supra*); and amended by the Road Traffic (Consequential Provisions) Act 1988 Sch 2 Pt I para 7).

15 Road Traffic Act 1988 s 63A(3)(c) (as added: see note 6 *supra*).

16 *Ibid* s 63A(3)(d) (as added: see note 6 *supra*).

17 *Ibid* s 63A(3)(e) (as added: see note 6 *supra*).

18 *Ibid* s 63A(3)(f) (as added: see note 6 *supra*).



19 Ibid s 63A(5)(a) (as added: see note 6 supra).

20 Ibid s 63A(5)(b) (as added: see note 6 supra).

21 Ie ibid Pt II (ss 40A-86) (as amended).

22 Ibid s 63A(5)(c) (as added: see note 6 supra). Any plate so issued in replacement of a plate fixed to the vehicle under s 57 (as amended) (see PARA 705 ante) or s 58 (see PARA 706 ante) must, when fixed to the vehicle, be treated as so fixed under s 57 or s 58: s 63A(5) (as so added; and amended by the Road Traffic (Consequential Provisions) Act 1988 Sch 2 Pt I para 7).

## **UPDATE**

### **700-717 Type Approval**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **716 Alteration of plated weights for goods vehicles without examination**

NOTES 14-16--See the Department for Transport (Fees) Order 2009, SI 2009/711 (amended by SI 2009/1885), which specifies the functions to be taken into account in the determination of the fees to be fixed by the Secretary of State.

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### **717. Using goods vehicle with unauthorised weights as well as authorised weights marked on it.**

If there is fixed to a goods vehicle<sup>1</sup> a plate containing plated weights<sup>2</sup> of any description determined for that vehicle<sup>3</sup>, or specified in a certificate for that vehicle<sup>4</sup>, the vehicle must not, while it is used on a road<sup>5</sup>, be marked with any other weights, except other plated weights, other weights required or authorised to be marked on the vehicle by regulations<sup>6</sup> or weights so authorised for these purposes by regulations made by the Secretary of State<sup>7</sup> and marked in the prescribed<sup>8</sup> manner<sup>9</sup>. In the event of a contravention of or failure to comply with this provision the owner of the vehicle is guilty of an offence<sup>10</sup>.

1 For the meaning of 'goods vehicle' see PARA 220 ante.

2 For the meaning of 'plated weights' see PARA 679 note 6 ante.

3 Ie by virtue of the Road Traffic Act 1988 ss 49-52 (as amended).

4 Ie under ibid s 57(1) or (2) (as amended) (see PARA 705 ante) or 58(2) or (5) (see PARA 706 ante).

5 For the meaning of 'road' see PARA 206 ante.

6 Ie regulations made under the Road Traffic Act 1988 s 41 (as amended) (see PARA 260 ante).

7 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

8 For the meaning of 'prescribed' see PARA 660 note 5 ante.

9 Road Traffic Act 1988 s 64(1). At the date at which this volume states the law the Road Vehicles (Marking of Special Weights) Regulations 1983, SI 1983/910 (amended by SI 1987/1326) have effect under the Road Traffic Act 1988 s 64.

10 Road Traffic Act 1988 s 64(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## **UPDATE**

### **700-717 Type Approval**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(1) IN GENERAL/(i) Legislation/718. The legislation.

## **9. ROAD TRAFFIC REGULATION**

### **(1) IN GENERAL**

#### **(i) Legislation**

##### **718. The legislation.**

The principal enactment relating to road traffic regulation is the Road Traffic Regulation Act 1984. With the exception of one provision<sup>1</sup>, the Road Traffic Regulation Act 1984 came into force three months after it was enacted on 26 June 1984<sup>2</sup>. It consolidated earlier legislation<sup>3</sup> and has been extensively amended<sup>4</sup>.

Separate enactments relate to vehicle excise duty and the registration of vehicles<sup>5</sup>, the principal road safety provisions<sup>6</sup>, type approval and the construction and use of vehicles and their parts<sup>7</sup>, the licensing of drivers<sup>8</sup>, the licensing of the operation of public service vehicles<sup>9</sup> and of goods vehicles<sup>10</sup>. Road traffic regulation is also governed by numerous local statutes, particularly in London<sup>11</sup>.

The Road Traffic Regulation Act 1984 makes general provision for traffic regulation in<sup>12</sup> and outside Greater London<sup>13</sup>, including provision for experimental traffic schemes<sup>14</sup> and temporary suspensions<sup>15</sup>, and for traffic regulation in special cases<sup>16</sup>. There are also provisions relating to off-street parking and parking on roads without payment<sup>17</sup>, control of off-street parking<sup>18</sup>, parking on highways for payment<sup>19</sup>, the provision of parking places by parish or community councils<sup>20</sup>, special parking<sup>21</sup>, and parking attendants<sup>22</sup>. There are further provisions relating to crossings and playgrounds<sup>23</sup>, traffic signs<sup>24</sup>, speed limits<sup>25</sup>, bollards and other obstructions<sup>26</sup>, and control and enforcement of the provisions relating to road traffic regulation<sup>27</sup>.

Under the Transport Act 2000, provision is made as to road user charging and workplace parking<sup>28</sup>.

Under the Traffic Management Act 2004, local authorities have the duty to secure the expeditious movement of traffic on their road networks<sup>29</sup>.

A surcharge is charged under the Finance Act 2002 in respect of the use of roads by lorries<sup>30</sup>.

1    Ie the Road Traffic Regulation Act 1984 s 111, Sch 8 para 3 (statutory statements of facts): see PARA 884 post.

2    See *ibid* s 145. For transitional provisions and savings see s 144, Sch 10.

3    Eg the Road Traffic Regulation Act 1967, the Countryside Act 1968, the Hovercraft Act 1968, the Transport Act 1968, the Transport (London) Act 1969, the Parish Councils and Burial Authorities (Miscellaneous Provisions) Act 1970, the Highways Act 1971 and the Road Traffic Act 1974.

4    Eg by the Local Government Act 1985, the New Roads and Street Works Act 1991, the Road Traffic (Temporary Restrictions) Act 1991, the Environment Act 1995, the Road Traffic Act 1991, the Road Traffic (Special Events) Act 1994 and the Greater London Authority Act 1999.

5    Ie the Vehicle Excise and Registration Act 1994 Pt II (ss 21-28) (as amended): see PARAS 518-582 ante.

6    See eg the Road Traffic Act 1988 Pt I (ss 1-40) (as amended): see PARA 963 et seq post.

7    See eg *ibid* Pt II (ss 40A-86) (as amended): see PARAS 260 et seq, 625 ante.

8    See eg *ibid* Pt III (ss 87-109) (as amended) (see PARAS 444, 446 et seq ante), Pt IV (ss 110-122) (as amended) (see PARA 489 et seq ante).

9    See eg the Public Passenger Vehicles Act 1981: see PARA 1132 et seq post.

10   See eg the Goods Vehicles (Licensing of Operators) Act 1995: see PARA 1319 et seq post.

11   See eg the Greater London Council (General Powers) Act 1974; the London Local Authorities Act 1995; the London Local Authorities Act 1996; and the London Local Authorities Act 2000.

12   As to the provision inside Greater London see the Road Traffic Regulation Act 1984 ss 6-8 (as amended); and PARAS 747-750 post.

13   As to the provision outside Greater London see *ibid* ss 1-5 (as amended); and PARAS 742-746 post.

14   See *ibid* ss 9-11 (as amended); and PARAS 751-753 post.

15   See *ibid* s 13A (as added); and PARA 754 post.

16   See *ibid* ss 14-22 (as amended); and PARAS 755-770 post.

17   See *ibid* ss 32-41 (as amended); and PARAS 784-796 post.

18   See *ibid* ss 43-44 (as amended); and PARAS 797-807 post.

19   See *ibid* ss 45-56 (as amended); and PARAS 808, 810-819 post.

20   See *ibid* ss 57-60 (as amended); and PARAS 823-825 post.

21   See *ibid* ss 61-63 (as amended); and PARAS 826-829 post.

22   See *ibid* s 63A (as added); and PARA 869 post.

23   See *ibid* ss 23-31 (as amended); and PARAS 776-783 post.

24   See *ibid* ss 64-80 (as amended); and PARAS 830-845 post.

25   See *ibid* ss 81-89 (as amended); and PARAS 846-856 post.

26   See *ibid* ss 92-94 (as amended); and PARAS 858-859 post.

- 27 See *ibid* ss 95-117 (as amended); and PARA 860 *et seq* post.
- 28 See the Transport Act 2000 Pt III (ss 163-200); and PARAS 901-935 post.
- 29 See the Traffic Management Act 2004 Pt 2 (ss 16-31); and PARAS 771-775 post.
- 30 See the Finance Act 2002 s 137 (as amended); and PARA 936 post.

## UPDATE

### 718 The legislation

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### 719. Crown application.

Certain provisions<sup>1</sup> of the Road Traffic Regulation Act 1984 apply<sup>2</sup> to vehicles and persons in the public service of the Crown<sup>3</sup>.

In relation to vehicles used for naval, military or air force purposes, while being driven<sup>4</sup> by persons for the time being subject to the orders of a member of the armed forces of the Crown, the Secretary of State<sup>5</sup> may by regulations<sup>6</sup> vary the provisions of any statutory<sup>7</sup> provision imposing a speed limit on motor vehicles<sup>8</sup>, but such regulations may provide that any variation made by the regulations is to have effect subject to such conditions as may be specified in the regulations<sup>9</sup>.

1 The provisions which so apply are: the Road Traffic Regulation Act 1984 ss 1-5 (as amended) (see PARAS 742-746 post), s 9 (as amended) (see PARA 751 post), s 10 (as amended) (see PARA 752 post), s 11 (as amended) (see PARA 753 post), s 12 (repealed), s 13 (repealed), s 13A (as added) (see PARA 754 post), s 14 (as substituted) (see PARA 755 post), s 15 (as substituted) (see PARA 756 post), s 16 (as amended) (see PARAS 757-758 post), s 16A (as added) (see PARA 759 post), s 16B (as added) (see PARA 760 post), s 16C (as added) (see PARAS 761-762 post), ss 21-26 (as amended) (see PARAS 769-778, 780 post), s 38 (as amended) (see PARA 795 post), s 42 (foreshore in Scotland), s 45 (as amended) (see PARA 808 post), s 46 (as amended) (see PARA 810 post), s 46A (as added) (see PARA 811 post), s 47 (as amended) (see PARA 812 post), s 48 (see PARA 813 post), s 49 (as amended) (see PARA 814 post), s 50 (repealed), s 51 (as substituted and amended) (see PARA 815 post), s 52(3) (see PARA 816 post), s 58 (as amended) (see PARA 824 post), s 59 (as amended) (see PARAS 823, 825 post), s 60 (see PARA 823 post), s 62 (see PARA 828 post), s 63 (see PARA 829 post), s 63A (as added and amended) (see PARA 869 post), s 64 (as amended) (see PARA 830 post), s 65 (as amended) (see PARA 831 post), s 66 (as amended) (see PARA 832 post), s 67 (as amended) (see PARA 833 post), s 69 (as amended) (see PARA 835 post), s 70 (as amended) (see PARA 836 post), s 71 (as amended) (see PARA 837 post), s 76 (repealed), s 77 (as amended) (see PARA 831 note 5 post), s 78 (repealed), s 79 (as amended) (see PARA 839 post), s 80 (as amended) (see PARA 831 note 1 post), s 81 (see PARA 847 post), s 82 (as amended) (see PARA 847 post), s 83 (as amended) (see PARA 847 post), s 84 (as amended) (see PARA 848 post), s 85 (as amended) (see PARA 849 post), s 86 (as amended) (see PARA 850 post), s 87 (see PARA 854 post), s 88 (see PARA 855 post), s 89 (see PARA 856 post), s 90 (repealed), s 99 (as amended) (see PARA 870 post), s 100 (as amended) (see PARA 870 post), s 104 (as amended) (see PARA 876 post), s 105 (as amended) (see PARA 877 post), s 125 (as amended) (see PARA 730 post) and s 126 (see PARAS 751, 833, 847-848, 855 post); and except in relation to vehicles and persons in the armed forces of the Crown when on duty, s 6 (as amended) (see PARA 747 post), s 7 (as amended) (see PARA 749 post) and s 8 (as amended) (see PARA 750 post): s 130(2) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 3(1), Sch 1 Pt I; the New Roads and Street Works Act 1991 s 168(1), Sch 8 Pt II para 74; the Road Traffic

Regulation (Special Events) Act 1994 s 3(1), Schedule para 3; and the Deregulation (Parking Equipment) Order 1996, SI 1996/1553, art 2(1), Schedule).

2 le subject to the provisions of the Road Traffic Regulation Act 1984 s 130 (as amended) and s 132 (as amended) (see PARA 770 post).

3 Ibid s 130(1).

4 For the meaning of 'drive' see PARA 207 ante.

5 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 At the date at which this volume states the law no such regulations had been made under the Road Traffic Regulation Act 1984 s 130(3), but by virtue of the Interpretation Act 1978 s 17(2)(b), the Motor Vehicles (Variation of Speed Limit) Regulations 1947, SR&O 1947/2192 (amended by SI 1954/943; SI 1964/489) have effect for the purposes of the Road Traffic Regulation Act 1984 s 130(3) and of s 130(3) as extended by s 133 (as amended) (see note 9 infra). As to speed limits generally see PARA 846 et seq post. As to the making of regulations generally see PARA 720 post.

7 'Statutory', in relation to any prohibition, restriction, requirement or provision, means contained in, or having effect under, any enactment (including any enactment contained in the Road Traffic Regulation Act 1984): s 142(1).

8 For the meaning of 'motor vehicle' see PARA 210 ante.

9 Road Traffic Regulation Act 1984 s 130(3).

Section 130(3) has effect in relation to motor vehicles used for salvage purposes pursuant to the Merchant Shipping Act 1995 Pt IX (ss 224-255) (as amended) (see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 883 et seq) as it has effect in relation to vehicles used for naval, military or air force purposes while being driven as mentioned in the Road Traffic Regulation Act 1984 s 130(3): s 133(1) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 71). For these purposes, 'salvage' means the preservation of a vessel which is wrecked, stranded or in distress, or the lives of persons belonging to, or the cargo or apparel of, such a vessel: Road Traffic Regulation Act 1984 s 133(2).

Section 130(3) has effect in relation to vehicles used for the purposes of a visiting force or headquarters, while being driven by a person subject to the orders of a member of such a force or headquarters, as it has effect in relation to vehicles used for naval, military or air force purposes, while being driven as mentioned in that provision: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(3).

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## **720. The making of regulations and orders.**

Any power conferred by the Road Traffic Regulation Act 1984 on the Secretary of State<sup>1</sup>, or on the Ministers<sup>2</sup> acting jointly, to make regulations is exercisable by statutory instrument<sup>3</sup>. Before making any regulations<sup>4</sup>, the Secretary of State or the Ministers acting jointly, as the case may be, must consult with such representative organisations as he or they think fit<sup>5</sup>. A statutory instrument whereby any such power<sup>6</sup> is exercised<sup>7</sup> is subject to annulment in pursuance of a resolution of either House of Parliament<sup>8</sup>. Regulations relating to speed limits for particular classes of vehicles<sup>9</sup> or the treating of certain vehicles as not being motor vehicles<sup>10</sup> do not have effect unless approved by a resolution of each House of Parliament<sup>11</sup>. No regulations containing supplementary provisions as to traffic wardens<sup>12</sup> may be made unless a draft has been laid before Parliament and has been approved by a resolution of each House of Parliament<sup>13</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 'The Ministers' means the Secretaries of State charged with general responsibility under the Road Traffic Regulation Act 1984 in relation to England, Wales and Scotland respectively: s 142(1). See note 1 supra.

3 Ibid s 134(1). As from the day on which the Traffic Management Act 2004 Sch 11 para 3(2) comes into force in relation to England, the Road Traffic Regulation Act 1984 s 134(1) is amended so as to refer also to the Lord Chancellor: see s 134(1) (amended by the Lord Chancellor (Modification of Functions) Order 2007, SI 2007/1756, art 3). The Traffic Management Act 2004 Sch 11 para 3(2) came into force in relation to England for certain purposes on 23 July 2007 and is to come into force in relation to England for remaining purposes on 31 March 2008: see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053.

Any power of the Secretary of State to make an order under the Road Traffic Regulation Act 1984 s 124A (as added) (see PARA 726 post) is exercisable by statutory instrument; and a statutory instrument containing any such order is subject to annulment in pursuance of a resolution of either House of Parliament: s 124A(12) (s 124A added by the Greater London Authority Act 1999 s 272). Such orders are local in nature, and are not recorded in this work.

4 Ie other than under the Road Traffic Regulation Act 1984 s 103(1) (see PARA 875 post), s 104 (as amended) (see PARA 876 post), ss 108-110 (s 110 as amended) (see PARAS 885, 887 post), Sch 4 (as amended) (see PARA 798 et seq post), Sch 8 (see PARAS 882-884 post) and Sch 12 (repealed).

5 Ibid s 134(2).

6 Ie under ibid s 134(1) (as amended) (see the text to notes 1-3 supra).

7 Ie other than the power conferred by ibid s 86 (as amended) (see PARA 850 post), s 97 (as amended) (see PARA 868 post), s 140 (as amended) (see PARA 210 ante), or s 101B (as added and amended) (see PARA 873 post).

8 Ibid s 134(3). As from the day on which the Traffic Management Act 2004 Sch 11 para 3(2) comes into force in relation to England, the Road Traffic Regulation Act 1984 s 134(3) is amended so as to refer also to s 101B (as added and amended) (see note 7 supra; and PARA 873 post): see s 134(3) (amended by the Lord Chancellor (Modification of Functions) Order 2007, SI 2007/1756, art 3). As to the commencement of the Traffic Management Act 2004 Sch 11 para 3(2) see note 3 supra.

9 Ie regulations under the Road Traffic Regulation Act 1984 s 86 (as amended): see PARA 850 post.

10 Ie regulations under ibid s 140 (as amended): see PARA 210 ante.

11 Ibid s 134(4).

12 Ie regulations under ibid s 97 (as amended) (see PARA 868 post) or s 101B (as added and amended) (see PARA 873 post).

13 Ibid s 134(5). As from the day on which the Traffic Management Act 2004 Sch 11 para 3(2) comes into force in relation to England, the Road Traffic Regulation Act 1984 s 134(1) is amended so as to refer also to s 101B (as added and amended) (see note 12 supra; and PARA 873 post): see s 134(5) (amended by the Lord Chancellor (Modification of Functions) Order 2007, SI 2007/1756, art 3). As to the commencement of the Traffic Management Act 2004 Sch 11 para 3(2) see note 3 supra.

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## **721. Regulations relating to exemptions for tramcars and trolley vehicles.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> provide that certain provisions of the Road Traffic Regulation Act 1984<sup>3</sup> as are specified in the regulations do not apply, or apply with modifications, to all tramcars<sup>4</sup> or to tramcars of any specified class, or to all trolley vehicles<sup>5</sup> or

to trolley vehicles of any specified class<sup>6</sup>. Such regulations: (1) may make different provision for different cases<sup>7</sup>; (2) may include such transitional provisions as appear to the Secretary of State to be necessary or expedient<sup>8</sup>; and (3) may make such amendments to any special Act<sup>9</sup> as appear to the Secretary of State to be necessary or expedient in consequence of the regulations or in consequence of the application to any tramcars or trolley vehicles of the specified provisions<sup>10</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 In the exercise of this power the Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, have been made. The modifications made by the Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, are set out in this title alongside the relevant provisions of the Road Traffic Regulation Act 1984. As to the making of regulations generally see PARA 720 ante.

3 The provisions referred to in the text are the Road Traffic Regulation Act 1984 ss 1-6 (as amended) (see PARAS 742-747 post), ss 7-11 (as amended) (see PARAS 749-753 post), s 12 (repealed), s 13 (repealed), s 13A (as added) (see PARA 754 post), s 14 (as substituted and amended) (see PARA 755 post), ss 16A-16C (as added) (see PARAS 759-762 post), s 18 (as amended) (see PARA 766 post), s 81 (see PARA 847 post), ss 82, 83 (as amended) (see PARA 847 post), s 84 (as amended) (see PARA 848 post), s 85 (as amended) (see PARA 849 post), s 86 (as amended) (see PARA 850 post), ss 87-89 (see PARAS 854-856 post): s 141A(2) (s 141A added by the Road Traffic Act 1991 s 46; and the Road Traffic Regulation Act 1984 s 141A(2) amended by the Road Traffic (Special Events) Act 1994 s 3(1), Schedule para 4).

4 For these purposes, 'tramcar' includes any carriage used on any road by virtue of an order under the Light Railways Act 1896: Road Traffic Regulation Act 1984 s 141A(4) (as added: see note 3 supra).

5 For these purposes, 'trolley vehicle' means a mechanically propelled vehicle adapted for use on roads without rails under power transmitted to it from some external source, whether or not there is in addition a source of power on board the vehicle: ibid s 141A(4) (as added: see note 3 supra).

6 Ibid s 141A(1) (as added: see note 3 supra).

7 Ibid s 141A(3)(a) (as added: see note 3 supra).

8 Ibid s 141A(3)(b) (as added: see note 3 supra).

9 For these purposes, 'special Act' means a local Act of Parliament passed before the commencement of the Road Traffic Regulation Act 1984 s 141A (as added) (ie 1 July 1992) which authorises or regulates the use of tramcars or trolley vehicles: s 141A(4) (as added: see note 3 supra).

10 Ibid s 141A(3)(c) (as added: see note 3 supra). As to the specified provisions see note 3 supra.

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## 722. Application of statutory provisions to the Isles of Scilly.

The Secretary of State<sup>1</sup> may, after consultation with the Council of the Isles of Scilly, by order<sup>2</sup> made by statutory instrument provide that any provision of the Road Traffic Regulation Act 1984 specified in the order is to apply to the Isles, subject to such modifications as may be so specified, as if the Isles were a separate county or a district<sup>3</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 In exercise of this power the Isles of Scilly (Road Traffic Regulation) Order 1990, SI 1990/714, has been made.

3 Road Traffic Regulation Act 1984 s 135(1). Section 135(1) has effect without prejudice to the operation of the Local Government Act 1972 s 265 (which relates to the application of that Act to the Isles of Scilly: see LOCAL GOVERNMENT vol 69 (2009) PARA 36) or of any order made under s 265: Road Traffic Regulation Act 1984 s 135(2).

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### **723. Saving for law of nuisance.**

Nothing in the Road Traffic Regulation Act 1984 authorises a person to use on a road<sup>1</sup> a vehicle so constructed or used as to cause a nuisance, whether public or private, or affects the liability, whether under statute or common law, of the driver<sup>2</sup> or owner<sup>3</sup> so using such a vehicle<sup>4</sup>.

1 For the meaning of 'road' see PARA 206 ante.

2 For the meaning of 'driver' see PARA 207 ante.

3 For the meaning of 'owner' see PARA 207 ante.

4 Road Traffic Regulation Act 1984 s 143(1), (2). As to nuisance generally see NUISANCE.

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### **724. Royal parks or highways in London affected by proposals relating to the other.**

The Secretary of State<sup>1</sup> must not exercise any of his functions in relation to the management of roads<sup>2</sup> or traffic in a royal park<sup>3</sup> in such a way as to affect a highway in Greater London unless he has consulted the traffic authority<sup>4</sup> for the highway, and Transport for London<sup>5</sup>, about the exercise of those functions in that way<sup>6</sup>. Such a duty does not apply if it would not be reasonably practicable for the Secretary of State to consult the traffic authority or Transport for London before exercising functions, but, in such a case, as soon as practicable after so exercising functions the Secretary of State must inform the traffic authority and Transport for London that those functions have been so exercised<sup>7</sup>.

A traffic authority must not exercise any of its functions in relation to a highway in Greater London in such a way as to affect a royal park unless it has consulted the Secretary of State about the exercise of those functions in that way<sup>8</sup>. Such a duty does not apply if it would not be reasonably practicable for the traffic authority to consult the Secretary of State before exercising functions, but, in such a case, as soon as practicable after so exercising functions the highway authority must inform the Secretary of State that those functions have been so exercised<sup>9</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.



2 For the meaning of 'road' see PARA 206 ante.

3 For these purposes, 'royal park' means any park to which the Parks Regulation Act 1872 applies (see the Parks Regulation (Amendment) Act 1926 ss 1, 3 (s 1 as amended); and see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 561 et seq); Road Traffic Regulation Act 1984 s 132AA(5) (s 132AA added by the Greater London Authority Act 1999 s 293). The Parks Regulation Act 1872 no longer applies to the royal parks specified in the Royal Parks (Regulation of Specified Parks) Order 2005, SI 2005/1522: see the Serious Organised Crime and Police Act 2005 s 162.

4 As to traffic authorities see PARAS 731-735 post.

5 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

6 Road Traffic Regulation Act 1984 s 132AA(1) (as added: see note 3 supra).

7 Ibid s 132AA(2) (as added: see note 3 supra).

8 Ibid s 132AA(3) (as added: see note 3 supra).

9 Ibid s 132AA(4) (as added: see note 3 supra).

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## (ii) Types of Roads

### 725. Trunk roads, special roads, classified roads and GLA roads.

There are various types of roads referred to in road traffic legislation. These are dealt with in detail elsewhere in this work<sup>1</sup>. In this title particular reference is made to the following types of roads: (1) trunk roads<sup>2</sup>; (2) special roads<sup>3</sup>; (3) classified roads<sup>4</sup>; (4) GLA roads<sup>5</sup>.

1 See HIGHWAYS, STREETS AND BRIDGES.

2 A trunk road is a highway or proposed highway directed by the Secretary of State to be a trunk road by virtue of provisions in the Highway Act 1980 and orders made under it: see ss 10, 11, 19 (all as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 50, 702 et seq. As to the constitution of trunk roads by statute and the continuance of trunk roads existing prior to 1980 see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 702-703. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 A special road is a highway or proposed highway provided or to be provided in pursuance of a scheme under the Highways Act 1980, along a route prescribed by the scheme, for the use of traffic of any class prescribed by the scheme: see s 16; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 731. As to the continuation of roads which were special roads before the commencement of the Highways Act 1980 see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 732. As to special roads generally see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 731 et seq.

4 A classified road is a highway or proposed highway classified by the Secretary of State by virtue of provisions in the Highways Act 1980 and orders made under it: see ss 12, 13; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 26.

5 A GLA road is a highway or proposed highway so designated by the Secretary of State or by the Greater London Authority by virtue of an order made under provisions of the Highways Act 1980: see ss 14A, 14B (both as added); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 822. See also PARA 726 note 6 post. As to the Greater London Authority see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq.

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## **726. GLA side roads.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> designate roads<sup>3</sup> or proposed roads as roads which are to be GLA side roads<sup>4</sup>. Any road or proposed road so designated becomes a GLA side road on such date as may be specified in the order<sup>5</sup>. A road may only be a GLA side road if it has a junction with a GLA road<sup>6</sup> or another road which has a junction with a GLA road<sup>7</sup>. A road or proposed road is not a GLA side road if it is a trunk road<sup>8</sup> or other highway for which the Secretary of State is the highway authority<sup>9</sup>. A road may only be a GLA side road if and to the extent that the appropriate authority<sup>10</sup> considers it appropriate for the road to be a GLA side road in the interests of the management of traffic and the control of the waiting and loading of vehicles on or in the immediate vicinity of GLA roads<sup>11</sup>.

The Secretary of State may by order<sup>12</sup> make provision for or in connection with applying in relation to GLA side roads, with such modifications as he thinks fit, the provisions relating to orders changing what are GLA roads and the provisions relating to certification and records of GLA roads<sup>13</sup>.

Any functions conferred or imposed on the Greater London Authority in relation to GLA side roads are functions of the Authority which are exercisable by the Mayor of London acting on its behalf<sup>14</sup>.

1 As to the Secretary of State see PARA 236 ante.

2 Any power of the Secretary of State to make an order under the Road Traffic Regulation Act 1984 s 124A (as added) is exercisable by statutory instrument; and a statutory instrument containing any such order is subject to annulment in pursuance of a resolution of either House of Parliament: s 124A(12) (s 124A added by the Greater London Authority Act 1999 s 272). Such orders are local in nature, and are not recorded in this work.

3 For the meaning of 'road' see PARA 206 ante.

4 Road Traffic Regulation Act 1984 s 124A(1) (as added: see note 2 supra). Any reference in any provision of the Road Traffic Regulation Act 1984 or any other enactment to a GLA side road is to be construed as a reference to a road in Greater London which is for the time being a GLA side road by virtue of: (1) an order made by the Secretary of State under s 124A(1) (as added); or (2) an order made by the Greater London Authority under s 124B (as added) (see PARA 727 post): s 124A(9) (as so added; and amended by the Road Traffic Regulation Act 1984 (GLA Side Roads Amendment) Order 2000, SI 2000/2237, art 2(1), (3)); Road Traffic Regulation Act 1984 s 142(1) (definition added by the Greater London Authority Act 1999 s 292(1), (3)). As to the Greater London Authority see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq.

5 Road Traffic Regulation Act 1984 s 124A(2) (as added: see note 2 supra).

6 Subject to *ibid* s 142(4) (as added), 'GLA road' has the same meaning as in the Highways Act 1980 (see s 14D(1) (as added), s 329(1) (definition as added); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 822): Road Traffic Regulation Act 1984 s 142(1) (definition added by the Greater London Authority Act 1999 s 292(1), (3)). Any reference in the Road Traffic Regulation Act 1984 to a GLA road includes a reference to a GLA side road: s 142(4) (added by the Greater London Authority Act 1999 s 292(1), (4)). However, in the Road Traffic Regulation Act 1984 s 124A (as added), notwithstanding s 142(4) (as added), a reference to a GLA road does not include a reference to a GLA side road: s 124A(11A) (s 124A as added (see note 2 supra); and s 124A(11A) added by the Greater London Road Traffic (Various Provisions) Order 2001, SI 2001/1353).

7 Road Traffic Regulation Act 1984 s 124A(3) (as added: see note 2 supra)

8 'Trunk road' has the same meaning as in the Highways Act 1980 (see s 329(1); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 50); Road Traffic Regulation Act 1984 s 142(1) (definition added by the Greater London Authority Act 1999 s 292(1), (3)).

9 Road Traffic Regulation Act 1984 s 124A(4) (as added: see note 2 supra). As to highway authorities see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq.

10 For these purposes, 'the appropriate authority' means: (1) in relation to an order under *ibid* s 124A(1) (as added) (see the text and notes 1-4 supra), the Secretary of State; (2) in relation to an order made under s 124B (as added) (see PARA 727 post), the Mayor of London; and (3) in relation to confirmation of such an order by the Secretary of State under that provision as applied, the Secretary of State: s 124A(8) (as added (see note 2 supra); and amended by the Road Traffic Regulation Act 1984 (GLA Side Roads Amendment) Order 2000, SI 2000/2237, art 2(1), (2)). As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

11 Road Traffic Regulation Act 1984 s 124A(5) (as added: see note 2 supra).

12 In exercise of this power the Road Traffic Regulation Act 1984 (GLA Side Roads Amendment) Order 2000, SI 2000/2237, has been made. See PARAS 727-728 post.

13 Road Traffic Regulation Act 1984 s 124A(6) (as added: see note 2 supra). The provisions referred to in the text are the Highways Act 1980 ss 14B, 14C (both as added) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 823-824); see the Road Traffic Regulation Act 1984 s 124A(6) (as so added). The provision that may be made under s 124A(6) (as added) is subject to s 124A(3)-(5) (as added) (see the text and notes 6-7, 10-11 supra): s 124A(7) (as so added).

14 *Ibid* s 124A(10) (as added: see note 2 supra). Section 124A(10) (as added) does not apply in relation to any functions expressly conferred on the London Assembly: s 124A(11) (as so added). As to the London Assembly see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 82.

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## **727. Orders of the Greater London Authority changing what are GLA side roads.**

The Mayor of London<sup>1</sup> must keep under review the roads<sup>2</sup> and proposed roads which have junctions with GLA roads<sup>3</sup> or with other roads having such junctions and must consider the extent to which such roads ought to be or cease to be GLA side roads<sup>4</sup>. If the Mayor of London considers it expedient:

- 330 (1) that any road or proposed road in Greater London, other than a trunk road<sup>5</sup> or other road for which the Secretary of State<sup>6</sup> is the highway authority<sup>7</sup>, ought to become a GLA side road<sup>8</sup>; or
- 331 (2) that any GLA side road ought to cease to be such a road and ought to become a road for which the traffic authority is a London borough council or the Common Council of the City of London<sup>9</sup>,

the Greater London Authority<sup>10</sup> may by order direct that that road or proposed road is to become, or, as the case may be, that that GLA side road is to cease to be, a GLA side road as from such date as may be specified in that behalf in the order<sup>11</sup>. Where such an order directs that a road or proposed road is to become a GLA side road, it becomes such a road as from the date specified in that behalf in the order<sup>12</sup>. Where such an order directs that a GLA side road is to cease to be such a road, then, as from the date specified in that behalf in the order, the road ceases to be a GLA side road and the following authority, that is to say: (a) where the road is situated in a London borough, the council for the London borough<sup>13</sup>; and (b) where the road is situated in the City of London, the Common Council of the City of London<sup>14</sup>, becomes the traffic

authority for the road<sup>15</sup>. Such an order is of no effect unless it is made with the consent of the relevant traffic authority<sup>16</sup> or, if that consent is refused, it is confirmed (with or without modification) by the Secretary of State<sup>17</sup>.

1 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

2 For the meaning of 'road' see PARA 206 ante.

3 As to the meaning of 'GLA road' see PARA 726 note 6 ante. For these purposes, notwithstanding the Road Traffic Regulation Act 1984 s 142(4) (see PARA 726 note 6 ante), a reference to a GLA road does not include a reference to a GLA side road: s 124B(9) (s 124B added by the Road Traffic Regulation Act 1984 (GLA Side Roads Amendment) Order 2000, SI 2000/2237, art 2(1), (4), Schedule). As to the meaning of 'GLA side road' see PARA 726 note 4 ante.

4 Road Traffic Regulation Act 1984 s 124B(1) (as added: see note 3 supra). Where a GLA side road becomes a GLA road it ceases to be a GLA side road: s 124B(8) (as so added).

5 For the meaning of 'trunk road' see PARA 726 note 8 ante.

6 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 As to highway authorities see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq.

8 Road Traffic Regulation Act 1984 s 124B(2)(a) (as added: see note 3 supra).

9 Ibid s 124B(2)(b) (as added: see note 3 supra).

10 As to the Greater London Authority see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq.

11 Road Traffic Regulation Act 1984 s 124B(2) (as added: see note 3 supra). An order under s 124B(2) (as added) may vary, revoke or re-enact with or without modifications: (1) any other order under s 124B(2) (as added) (whether or not that other order was confirmed by the Secretary of State); or (2) an order of the Secretary of State under s 124A(1) (as added) (see PARA 726 ante): s 124B(7) (as so added).

12 Ibid s 124B(3) (as added: see note 3 supra).

13 Ibid s 124B(4)(a) (as added: see note 3 supra). As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq.

14 Ibid s 124B(4)(b) (as added: see note 3 supra).

15 Ibid s 124B(4) (as added: see note 3 supra). As to traffic authorities see PARAS 731-735 post.

16 For these purposes, the relevant traffic authority is: (1) in the case of an order directing that a road or proposed road is to become a GLA side road, the authority that is the traffic authority for the road or proposed road; and (2) in the case of an order directing that a GLA side road is to cease to be such a road, the authority that will become the traffic authority for the road in consequence of the order: ibid s 124B(6) (as added: see note 3 supra).

17 Ibid s 124B(5) (as added: see note 3 supra).

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## **728. Certification and records of GLA side roads.**

A certificate by or on behalf of Transport for London<sup>1</sup> that any road<sup>2</sup> or proposed road is, or is not, for the time being a GLA side road<sup>3</sup> is evidence of the facts stated in the certificate<sup>4</sup>. Such a certificate may describe the road or proposed road in question by reference to a map<sup>5</sup>.

Transport for London must prepare and maintain a record of the roads which are for the time being GLA side roads<sup>6</sup>. The record required to be prepared and maintained may consist of a list, a map, or both a list and a map<sup>7</sup>; and Transport for London must deposit a copy of that record with the Greater London Authority<sup>8</sup>, each of the London borough councils and the Common Council of the City of London<sup>9</sup>. Transport for London, the Greater London Authority, each of the London borough councils and the Common Council of the City of London must make the record, or, as the case may be, the copies of the record deposited with them, available for inspection by the public at all reasonable hours<sup>10</sup>.

1 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

2 For the meaning of 'road' see PARA 206 ante.

3 As to the meaning of 'GLA side road' see PARA 726 note 4 ante.

4 Road Traffic Regulation Act 1984 s 124C(1) (s 124C added by the Road Traffic Regulation Act 1984 (GLA Side Roads Amendment) Order 2000, SI 2000/2237, art 2(1), (4), Schedule).

5 Road Traffic Regulation Act 1984 s 124C(2) (as added: see note 4 supra).

6 Ibid s 124C(3) (as added: see note 4 supra). The record prepared and maintained by Transport for London under s 124C (as added) may be combined with the record which it is required to prepare and maintain under the Highways Act 1980 s 14C (as added) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 824): Road Traffic Regulation Act 1984 s 124C(7) (as so added).

7 Ibid s 124C(4) (as added: see note 4 supra).

8 As to the Greater London Authority see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq.

9 Road Traffic Regulation Act 1984 s 124C(5) (as added: see note 4 supra).

10 Ibid s 124C(6) (as added: see note 4 supra).

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## 729. Crown roads.

'Crown road' means a road<sup>1</sup>, other than a highway, to which the public has access by permission granted by the appropriate Crown authority<sup>2</sup> or otherwise granted by or on behalf of the Crown<sup>3</sup>.

The Secretary of State<sup>4</sup> may, with the consent of the appropriate Crown authority or authorities concerned, by order<sup>5</sup> direct that all or any of the road traffic enactments<sup>6</sup> are to apply to all Crown roads, or to any specified Crown road or Crown roads, or to Crown roads of a specified class, as they apply in relation to other roads to which the public has access<sup>7</sup>.

Any such order with respect to any of the road traffic enactments may, in particular, include provision<sup>8</sup>:

- 332 (1) for enabling functions with respect to a road exercisable under the enactment in question by the local authority or the local traffic authority<sup>9</sup> to be

- exercised with respect to a Crown road by the appropriate Crown authority or by a particular local authority or local traffic authority<sup>10</sup>;
- 333 (2) for enabling power to make an order, regulation or scheme under the enactment in question with respect to a Crown road, which would otherwise be exercisable by a local authority or local traffic authority, to be exercised instead by the Secretary of State, and for requiring the consent of the Secretary of State to the variation or revocation by any other authority of such an order, regulation or scheme made by him<sup>11</sup>;
- 334 (3) for a certificate of the appropriate Crown authority or of the Secretary of State that the authority or Secretary of State has, or has not, consented to the doing of anything for which under the order or under these provisions the consent of the authority or, as the case may be, of the Secretary of State is required to be evidence of the facts stated<sup>12</sup>;
- 335 (4) for exempting from any provision of the enactment in question persons and vehicles on a Crown road in the service of the Crown or of an agent of the Crown<sup>13</sup>.

No order, regulation or scheme in relation to a Crown road may be made, varied or revoked under any of the road traffic enactments by virtue of such an order<sup>14</sup> except by, or with the consent of, the appropriate Crown authority<sup>15</sup>.

With a view to the avoidance of doubt, the road traffic enactments specified in such an order<sup>16</sup> may include any provision of those enactments notwithstanding that it would have applied in relation to Crown roads apart from the making of the order; and inclusion in the order of a provision which would so have applied does not prejudice anything done under that provision in relation to a Crown road before the coming into operation of the order<sup>17</sup>.

1 For the meaning of 'road' see PARA 206 ante.

2 For these purposes, and for the purposes of the Road Traffic Regulation Act 1984 s 132 (as amended) (see PARA 770 post), 'appropriate Crown authority', in relation to a Crown road:

1349 (1) in the case of a road on land belonging to Her Majesty in right of the Crown, means the Crown Estate Commissioners or other government department having the management of that land;

1350 (2) in the case of a road on land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy;

1351 (3) in the case of a road on land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall or the possessor for the time being of the Duchy of Cornwall appoints;

1352 (4) in the case of a road on land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department,

and, if any question arises under this provision as to what authority is the appropriate Crown authority in relation to any Crown road, that question is to be referred to the Treasury, whose decision is final: s 131(7)(a). As to the Crown Estate Commissioners see CROWN PROPERTY vol 12(1) (Reissue) PARA 280 et seq. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

3 Ibid s 131(7)(b) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 75). This definition applies for the purposes of the Road Traffic Regulation Act 1984 s 131 (as amended) and s 132 (as amended) (see PARA 770 post): see s 131(7)(b).

4 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 In exercise of this power the Crown Roads (Royal Parks) (Application of Road Traffic Enactments) Order 1987, SI 1987/363, has been made.

6 For these purposes, and for the purposes of the Road Traffic Regulation Act 1984 s 132 (as amended) (see PARA 770 post), 'road traffic enactments' means enactments, whether passed before or after or contemporaneously with or contained in the Road Traffic Regulation Act 1984, relating to road traffic, including the lighting and parking of vehicles, and any order or other instrument having effect by virtue of any such enactment: s 131(7)(c).

7 Ibid s 131(1). This provision is expressed to be subject to s 131(3) (see the text and notes 14-15 infra) and to such exceptions, adaptations and modifications appearing to the Secretary of State to be necessary or expedient as may be specified in the order: see s 131(1). Any power to make an order under s 131(1) is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 131(5). Section 131(1) has effect without prejudice to the provisions of s 132 (as amended) (see PARA 770 post) in relation to certain Crown roads; and nothing in s 131 (as amended) prejudices any enactment, in addition to s 131 (as amended) and s 132 (as amended), which relates to Crown roads: s 131(6).

8 Ibid s 131(2). This provision is expressed to be without prejudice to the generality of s 131(1) (see the text and notes 1-7 supra) but subject to s 131(3) (see the text to notes 14-15 infra): see s 131(2).

9 For the meaning of 'local traffic authority' see PARA 731 post.

10 Road Traffic Regulation Act 1984 s 131(2)(a) (amended by the New Roads and Street Works Act 1991 Sch 8 para 75).

11 Road Traffic Regulation Act 1984 s 131(2)(b) (amended by the New Roads and Street Works Act 1991 Sch 8 para 75). As to the making of regulations generally see PARA 720 ante.

12 Road Traffic Regulation Act 1984 s 131(2)(c).

13 Ibid s 131(2)(d).

14 Ie an order under ibid s 131(1): see the text and notes 1-7 supra.

15 Ibid s 131(3).

16 See note 14 supra.

17 Road Traffic Regulation Act 1984 s 131(4).

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### **730. Boundary roads.**

For the purposes of the statutory provisions relating to orders similar to traffic regulation orders<sup>1</sup>, experimental traffic orders<sup>2</sup>, powers and duties of local traffic authorities in Greater London in respect of traffic signs<sup>3</sup>, directions that a road either ceases to be a restricted road or becomes one<sup>4</sup>, and speed limits on roads other than restricted roads<sup>5</sup>, where any part of the width of a road<sup>6</sup> is in Greater London, the whole width of the road is to be deemed to be in Greater London<sup>7</sup>.

Any powers which, under the statutory provisions relating to experimental traffic orders<sup>8</sup>, temporary prohibition or restriction on roads<sup>9</sup>, orders regulating the use of highways by public service vehicles<sup>10</sup>, powers of local authorities with respect to pedestrian crossings on roads other than trunk roads<sup>11</sup>, orders prohibiting traffic on roads to be used as playgrounds<sup>12</sup>, powers of local authorities to provide parking places<sup>13</sup>, general powers of parish or community councils for provision of parking places<sup>14</sup>, placing of traffic signs in connection with the exercise of other powers<sup>15</sup>, directions that a road either ceases to be a restricted road or becomes one<sup>16</sup>, and speed limits on roads other than restricted roads<sup>17</sup>, are exercisable by a local authority<sup>18</sup> as respects a road (including powers exercisable by such an authority as highway authority<sup>19</sup>) are,

in the case of a road part of the width of which is in the area of one local authority and part in the area of another, to be exercisable by either authority with the consent of the other<sup>20</sup>.

1    le orders under the Road Traffic Regulation Act 1984 s 6(1) (as amended) or s 6(2) (as substituted): see PARA 747 post. For the meaning of 'traffic regulation order' see PARA 742 post.

2    le orders under ibid s 9 (as amended): see PARA 751 post.

3    le under ibid s 73 (as amended): see PARA 840 post. For the meaning of 'traffic sign' see PARA 830 post.

4    le under ibid s 82(2) (as amended): see PARA 847 post.

5    le under ibid s 84(1) (as substituted) or s 84(3) (as amended): see PARA 848 post.

6    For the meaning of 'road' see PARA 206 ante.

7    Road Traffic Regulation Act 1984 s 125(1).

8    See note 2 supra.

9    le under the Road Traffic Regulation Act 1984 s 14 (as substituted): see PARA 755 post.

10   le under ibid s 19(1) (as amended): see PARA 767 post.

11   le under ibid s 23(1) (as substituted): see PARA 776 post. For the meaning of 'trunk road' see PARA 726 note 8 ante.

12   le under ibid s 29(1) (as substituted): see PARA 782 post.

13   le under ibid s 32(1): see PARA 784 post.

14   le under ibid s 57(1), (2): see PARA 823 post.

15   le under ibid s 68 (as amended): see PARA 834 post.

16   See note 4 supra.

17   le under the Road Traffic Regulation Act 1984 s 84 (as amended): see PARA 848 post.

18   For these purposes, 'local authority' means the council of a county, metropolitan district, London borough, parish or community or the Common Council of the City of London: ibid s 125(4) (amended by the Local Government Act 1985 s 8, Sch 5 para 4(35); and the Local Government (Wales) Act 1994 ss 22(1), 66(8), Sch 7 para 38(9), Sch 18). See further LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

19   As to highway authorities see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq.

20   Road Traffic Regulation Act 1984 s 125(2), (3) (s 125(3) amended by the New Roads and Street Works Act 1991 s 168(1), (2), Sch 8 Pt II para 73, Sch 9). The Road Traffic Regulation Act 1984 s 125(2) is expressed to be subject to s 125(1) (see the text and notes 1-7 supra): see s 125(2).

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### **(iii) Traffic Authorities**

#### **731. Meanings of 'traffic authority' and 'local traffic authority'.**



The Secretary of State<sup>1</sup> is the traffic authority for every highway for which he is the highway authority<sup>2</sup>.

'Local traffic authority' means a traffic authority other than the Secretary of State<sup>3</sup>.

Transport for London<sup>4</sup> is the traffic authority for every GLA road<sup>5</sup>.

In Greater London, the council of the London borough or the Common Council of the City of London is the traffic authority for all roads in the borough or, as the case may be, in the City which are not GLA roads and for which the Secretary of State is not the traffic authority<sup>6</sup>.

Outside Greater London, the council of the county or metropolitan district is the traffic authority for all roads in the county or, as the case may be, the district for which the Secretary of State is not the traffic authority<sup>7</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Road Traffic Regulation Act 1984 s 121A(1) (s 121A added by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 70; and the Road Traffic Regulation Act 1984 s 121A(1) amended by the Scotland Act 1998 (Consequential Modifications) Order 2001, SI 2001/1400, art 2, Schedule para 1(1), (2)); Road Traffic Regulation Act 1984 s 142(1) (definition added by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 78). For these purposes, 'highway authority' means a highway authority within the meaning of the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq): Road Traffic Regulation Act 1984 s 121A(1) (as so added and amended).

3 Ibid s 121A(5) (as added (see note 2 supra); and amended by the Scotland Act 1998 (Consequential Modifications) Order 2001, SI 2001/1400, Schedule para 1(5)); Road Traffic Regulation Act 1984 s 142(1) (definition added by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 78).

4 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

5 Road Traffic Regulation Act 1984 s 121A(1A) (s 121A as added (see note 2 supra); s 121A(1A) added by the Greater London Authority Act 1999 s 271(1), (2)). As to the meaning of 'GLA road' see PARA 726 note 6 ante. Note that since the definition of GLA road includes GLA side roads, Transport for London is also the traffic authority for GLA side roads. As to the meaning of 'GLA side road' see PARA 726 note 4 ante.

6 Road Traffic Regulation Act 1984 s 121A(2) (as added (see note 2 supra); and amended by the Greater London Authority Act 1999 s 271(1), (3)).

7 Road Traffic Regulation Act 1984 s 121A(3) (as added: see note 2 supra).

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### **732. London borough council exercising powers so as to affect another traffic authority's control.**

No London borough council<sup>1</sup> may exercise any power under the Road Traffic Regulation Act 1984 in a way which will affect, or be likely to affect, a GLA road<sup>2</sup>, a strategic road<sup>3</sup>, or a road<sup>4</sup> in another London borough other than a GLA road or strategic road, unless certain requirements<sup>5</sup> have been satisfied<sup>6</sup>. The first requirement is that the council has given notice of the proposal to exercise the power in the way in question to Transport for London<sup>7</sup> and, in a case where the road concerned is in another London borough, to the council for that borough<sup>8</sup>. The second requirement is that:

- 336 (1) the proposal has been approved: (a) in the case of a GLA road, by Transport  
for London; (b) in the case of a strategic road, by Transport for London and, where  
the road concerned is in another London borough, the council for that borough; (c)  
in the case of a road in another London borough other than a GLA road or strategic  
road, by the London borough council concerned<sup>9</sup>; or
- 337 (2) the period of one month beginning with the date on which Transport for  
London and, where applicable, the council received notice of the proposal has  
expired without Transport for London or the council having objected to the  
proposal<sup>10</sup>; or
- 338 (3) any objection made by Transport for London or the council has been  
withdrawn<sup>11</sup>; or
- 339 (4) where an objection has been made by Transport for London or a London  
borough council and not withdrawn, the Greater London Authority<sup>12</sup> has given its  
consent to the proposal after consideration of the objection<sup>13</sup>.

If Transport for London has reason to believe: (i) that a London borough council is proposing to exercise a power under the Road Traffic Regulation Act 1984 in a way which will affect, or be likely to affect, a GLA road, a strategic road, or a road in another London borough other than a GLA road or strategic road<sup>14</sup>; and (ii) that notice of the proposal is required to be, but has not been, given in accordance with the requirement<sup>15</sup>, Transport for London may give a direction to the council requiring it not to proceed with the proposal until the requirements<sup>16</sup> have been satisfied<sup>17</sup>.

If a London borough council exercises any power in contravention of these provisions, Transport for London may take such steps as it considers appropriate to reverse or modify the effect of the exercise of that power<sup>18</sup>; and, for these purposes, Transport for London has power to exercise any power of the London borough council on behalf of that council<sup>19</sup>. Any reasonable expenses incurred by Transport for London in taking any such steps are recoverable by Transport for London from the London borough council concerned as a civil debt<sup>20</sup>.

The Mayor of London may issue a direction dispensing with the requirements<sup>21</sup> in such circumstances as may be specified in the direction<sup>22</sup>. Such a direction may, in particular, dispense with those requirements as respects: (A) all or any of the London borough councils; (B) all or any of the GLA roads or strategic roads; (C) all or any of the roads which are not GLA roads, strategic roads or trunk roads<sup>23</sup>; (D) the exercise of such powers as may be specified in the direction in such manner or circumstances as may be so specified<sup>24</sup>. Such a direction may be varied or revoked by a further direction<sup>25</sup>.

1 For these purposes: (1) the City of London is to be treated as if it were a London borough; (2) the Common Council is to be treated as if it were the council for a London borough; and (3) the Inner Temple and the Middle Temple are to be treated as forming part of the City: Road Traffic Regulation Act 1984 s 121B(9) (s 121B added by the Greater London Authority Act 1999 s 291).

2 As to the meaning of 'GLA road' see PARA 726 note 6 ante.

3 For these purposes, 'strategic road' has the meaning given by the Traffic Management Act 2004 s 60: Road Traffic Regulation Act 1984 s 121B(13) (s 121B as added (see note 1 supra); and s 121B(13) added by the Traffic Management Act 2004 s 63(1), (7)). As to the designation by the Secretary of State of strategic roads in London see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 827.

4 For the meaning of 'road' see PARA 206 ante.

5 I.e. the requirements of the Road Traffic Regulation Act 1984 s 121B(2), (3) (as added and amended): see the text and notes 7-13 infra.

6 Ibid s 121B(1) (as added (see note 1 supra); and amended by the Traffic Management Act 2004 s 63(2)).

7 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

- 8 Road Traffic Regulation Act 1984 s 121B(2) (as added: see note 1 supra).
- 9 Ibid s 121B(3)(a) (as added (see note 1 supra); and amended by the Traffic Management Act 2004 s 63(3)).
- 10 Road Traffic Regulation Act 1984 s 121B(3)(b) (as added: see note 1 supra). References in s 121B(3)(b)-(d) (as added) (see heads (2)-(4) in the text) to objections are to objections made by a person who, in the circumstances, has the power to give an approval under s 121B(3)(a) (as added and amended) (see head (1) in the text): s 121B(3A) (s 121B as so added; and s 121B(3A) added by the Traffic Management Act 2004 s 63(4)).
- 11 Road Traffic Regulation Act 1984 s 121B(3)(c) (as added: see note 1 supra).
- 12 As to the Greater London Authority see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq.
- 13 Road Traffic Regulation Act 1984 s 121B(3)(d) (as added: see note 1 supra). Before deciding whether to give any consent for the purposes of s 121B(3)(d) (as added), the Greater London Authority may cause a public inquiry to be held: s 121B(4) (as so added).
- 14 Ibid s 121B(5)(a) (as added (see note 1 supra); and amended by the Traffic Management Act 2004 s 63(5)).
- 15 Road Traffic Regulation Act 1984 s 121B(5)(b) (as added: see note 1 supra). The requirement referred to in the text is the requirement under s 121B(2) (as added) (see the text to notes 7-8 supra): see s 121B(5)(b) (as so added).
- 16 See note 5 supra.
- 17 Road Traffic Regulation Act 1984 s 121B(5) (as added: see note 1 supra).
- 18 Ibid s 121B(6) (as added: see note 1 supra).
- 19 Ibid s 121B(7) (as added: see note 1 supra).
- 20 Ibid s 121B(8) (as added: see note 1 supra). As to money recoverable summarily as a civil debt see MAGISTRATES vol 29(2) (Reissue) PARA 826; and as to enforcement of civil debts see MAGISTRATES vol 29(2) (Reissue) PARA 828.
- 21 See note 5 supra.
- 22 Road Traffic Regulation Act 1984 s 121B(9) (as added: see note 1 supra).
- 23 For the meaning of 'trunk road' see PARA 726 note 8 ante.
- 24 Road Traffic Regulation Act 1984 s 121B(10) (as added (see note 1 supra); and amended by the Traffic Management Act 2004 s 63(6)).
- 25 Road Traffic Regulation Act 1984 s 121B(11) (as added: see note 1 supra).

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### **733. Functions of the Greater London Authority to be exercised by the Mayor.**

The functions of the Greater London Authority ('GLA')<sup>1</sup> under the Road Traffic Regulation Act 1984 are functions of the GLA which are exercisable by the Mayor of London<sup>2</sup> acting on behalf of the GLA<sup>3</sup>. However, this does not apply in relation to any function expressly conferred or imposed on, or made exercisable by, the London Assembly<sup>4</sup>.

1 As to the Greater London Authority see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq.

2 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

3 Road Traffic Regulation Act 1984 s 121C(1) (s 121C added by the Greater London Authority Act 1999 s 292(1), (2)).

4 Road Traffic Regulation Act 1984 s 121C(2) (as added: see note 3 supra). As to the London Assembly see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 82.

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### **734. Exercise of functions by local authorities.**

It is the duty<sup>1</sup> of every local authority on which functions are conferred by or under the Road Traffic Regulation Act 1984, so to exercise the functions conferred on it by that Act as, so far as practicable having regard to the following matters:

- 340 (1) the desirability of securing and maintaining reasonable access to premises<sup>2</sup>;
- 341 (2) the effect on the amenities of any locality affected and the importance of regulating and restricting the use of roads<sup>3</sup> by heavy commercial vehicles<sup>4</sup>, so as to preserve or improve the amenities of the areas through which the roads run<sup>5</sup>;
- 342 (3) the strategy prepared in respect of the national air quality strategy<sup>6</sup>;
- 343 (4) the importance of facilitating the passage of public service vehicles<sup>7</sup> and of securing the safety and convenience of persons using or desiring to use such vehicles<sup>8</sup>; and
- 344 (5) any other matters appearing to the local authority to be relevant<sup>9</sup>,

to secure the expeditious, convenient and safe movement of vehicular and other traffic, including pedestrians, and the provision of suitable and adequate parking facilities on and off the highway<sup>10</sup>.

1 The duty imposed is subject to the provisions of the Road Traffic Act 1991 Pt II (ss 64-82) (as amended) (parking in London: see PARA 889 post): Road Traffic Regulation Act 1984 s 122(3) (added by the Road Traffic Act 1991 s 81, Sch 7 para 7).

2 Road Traffic Regulation Act 1984 s 122(2)(a).

3 For the meaning of 'road' see PARA 206 ante.

4 For the meaning of 'heavy commercial vehicle' see PARA 220 ante.

5 Road Traffic Regulation Act 1984 s 122(2)(b).

6 Ibid s 122(2)(bb) (added by the Environment Act 1995 s 120, Sch 22 para 36(3)). The strategy referred to in the text is a strategy under the Environment Act 1995 s 80: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 192.

7 For the meaning of 'public service vehicle' see PARA 1136 post; definition applied by virtue of the Road Traffic Regulation Act 1984 s 142(1) (amended by the Transport Act 1985 s 1, Sch 1 para 15).

8 Road Traffic Regulation Act 1984 s 122(2)(c).

9 Ibid s 122(2)(d) (amended by the Local Government Act 1985 s 102, Sch 17).

10 Road Traffic Regulation Act 1984 s 122(1) (amended by the Local Government Act 1985 s 8, Sch 5 para 4(34); and the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 71). See *R (on the application of LPC Group plc) v Leicester City Council* [2002] EWHC 2485 (Admin), [2003] RTR 165 (failure of local authority to fully consider impact on claimant's business of blanket ban on traffic waiting on road side).

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### **735. Prospective exercise of powers.**

Any power under the Road Traffic Regulation Act 1984 to make an order or give a direction may be exercised before the road<sup>1</sup> to which it relates is open for public use, so as to take effect immediately on the road's becoming open for public use<sup>2</sup>.

The procedure for making an order or giving a direction applies in such a case with such modifications as may be prescribed<sup>3</sup>.

1 For the meaning of 'road' see PARA 206 ante.

2 Road Traffic Regulation Act 1984 s 122A(1) (s 122A added by the New Roads and Street Works Act 1991 ss 24, 44).

3 Road Traffic Regulation Act 1984 s 122A(2) (as added: see note 2 supra). 'Prescribed' means prescribed by regulations made by the Secretary of State: s 142(1). As to the making of regulations generally see PARA 720 ante. At the date at which this volume states the law no regulations had been made under s 122A(2) (as added). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

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### **(iv) Special Provisions as to Certain Orders**

#### **736. Secretary of State's reserve powers.**

The Secretary of State<sup>1</sup>, after consultation with a local authority having power to make orders under certain provisions of the Road Traffic Regulation Act 1984<sup>2</sup> (an 'authorised authority'), may<sup>3</sup> give to that authority a direction with respect to any of those provisions<sup>4</sup>, either:

- 345 (1) requiring the authorised authority to make an order under or by virtue of the provision or provisions in question for a specified purpose and coming into operation before the expiry of a specified period<sup>5</sup>; or
- 346 (2) prohibiting the authority (either generally, or without the consent of the Secretary of State, or for a specified period) from making or bringing into operation an order under or by virtue of the provision or provisions in question with respect to specified matters or a specified area<sup>6</sup>.

Any power to make an order conferred on an authorised authority by any of those provisions<sup>7</sup> is exercisable by the Secretary of State as well as by the authority<sup>8</sup>. However, no such order may be made<sup>9</sup> except for the purpose of securing the object of a direction<sup>10</sup> given to an authorised authority with which the authority has failed to comply<sup>11</sup>. Where the Secretary of State has made such an order<sup>12</sup>:

- 347 (a) so far as appears to him necessary in order to make the order effective, he, or<sup>13</sup> any other local authority with which he may make arrangements for the purpose, has power to do anything which the authorised authority would have had power to do if the order had been made by it<sup>14</sup>; and
- 348 (b) he may recover from the authorised authority any expenses incurred by him by virtue of head (a) above, such expenses to be so recoverable by him summarily as a civil debt<sup>15</sup>.

The Secretary of State, after giving notice to the authorised authority concerned and holding, if he thinks fit, a public inquiry, may by order vary or revoke any order made, or having effect as if made, under or by virtue of any of the provisions<sup>16</sup> referred to above<sup>17</sup>.

The Secretary of State may not give any such direction<sup>18</sup> or make any such order<sup>19</sup> unless he is satisfied, having regard to any matters appearing to him to be relevant, that the duty as to the exercise of its functions<sup>20</sup> imposed on the authorised authority concerned is not being satisfactorily discharged by the authority, and that the giving of the direction or the making of the order is necessary to secure compliance with that duty<sup>21</sup>. The Secretary of State may, however, make such an order<sup>22</sup> notwithstanding that he is not so satisfied<sup>23</sup>, if he is satisfied, having regard to any matters appearing to him to be relevant, that there are special circumstances which make it expedient that the order should be made<sup>24</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 I.e. an order under or by virtue of any of the following provisions of the Road Traffic Regulation Act 1984, namely, s 1 (as amended) (see PARA 742 post), s 6 (as amended) (see PARA 747 post), s 9 (as amended) (see PARA 751 post), s 14 (as substituted) (in so far as the power under that provision is exercisable by virtue of s 22C (as added and amended)) (see PARA 755 notes 5, 12 post), s 19 (as amended) (see PARA 767 post), s 32 (as amended) (see PARA 784 post), s 35 (as amended) (see PARA 790 post), s 37 (as amended) (see PARA 794 post), s 38 (as amended) (see PARA 795 post), s 45 (as amended) (see PARA 808 post), s 46 (as amended) (see PARA 810 post), s 49(2), (4) (see PARA 814 post), s 53 (as amended) (see PARA 817 post), s 83(2) (as substituted) (see PARA 847 post) and s 84 (as amended) (see PARA 848 post).

3 I.e. subject to *ibid* s 124(1), Sch 9 para 8 (as amended) (see the text to note 21 *infra*) and Sch 9 para 26 (see PARA 738 post).

4 *Ibid* Sch 9 para 1 (substituted by the Local Government Act 1985 s 8, Sch 5 para 4(39)(a); and amended by the Civil Contingencies Act 2004 s 32(1), Sch 2 Pt 3 para 16(1), (4)(a)). The Road Traffic Regulation Act 1984 Sch 9 para 1 (as substituted and amended) and Sch 9 paras 2-4 (as amended) (see the text and notes 5-15 *infra*) have effect in any case in which it appears to the Secretary of State that the council of a London borough or the Common Council of the City of London has failed in the exercise of the powers conferred on it by s 6 (as amended) (see PARA 747 post) to make such provision for the control of heavy commercial vehicles in its area as is appropriate for preserving or improving the amenities of its area, as if: (1) the power conferred by Sch 9 para 1 (as substituted and amended) to give a direction with respect to s 6 (as amended) were a duty to give such a direction; and (2) the power to make an order under s 6 (as amended) conferred by Sch 9 para 3 (as amended) (see the text to notes 8-11 *infra*) were a duty to make such an order or a similar order under s 9 (as amended) (see PARA 751 ante): Sch 9 para 5(1) (amended by the Local Government Act 1985 s 8, Sch 5 para 4(39)(c)). Any reference in the Road Traffic Regulation Act 1984 to Sch 9 para 1 (as substituted and amended) or Sch 9 para 3 (as amended) is to be construed as including a reference to Sch 9 para 1 (as substituted and amended) or Sch 9 para 3 (as amended) as modified by Sch 9 para 5 (as amended): Sch 9 para 5(2). For the meaning of 'heavy commercial vehicle' see PARA 220 ante.

A power conferred upon the Secretary of State by Sch 9 (as amended), in so far as it relates to the exercise of a power under the Road Traffic Regulation Act 1984 by virtue of s 22C (as added and amended) (see PARAS 742 notes 5-6, 747 note 4, 755 notes 5, 12 post), is exercisable in relation to Wales by the Welsh Ministers with the consent of the Secretary of State: Sch 9 para 12B (added by the Civil Contingencies Act 2004 Sch 2 Pt 3 para 6(4)(b)). See PARA 237 ante.

5 Road Traffic Regulation Act 1984 Sch 9 para 2(a) (Sch 9 para 2 amended by the Local Government Act 1985 s 102, Sch 17).

6 Road Traffic Regulation Act 1984 Sch 9 para 2(b) (as amended: see note 5 supra). Where the Secretary of State: (1) gives a direction under Sch 9 para 2 (as amended) requiring a county council or district council to make an order under s 32(1) (see PARA 784 post) or s 35(1) (as amended) (see PARA 790 post); or (2) makes such an order by virtue of Sch 9 para 3 (as amended) (see the text to notes 8-11 infra), the provisions of s 39(1)-(5) (as amended) (see PARAS 784-785, 787 post) do not apply in relation to anything done in pursuance of the direction or, as the case may be, in relation to the making of the order by the Secretary of State: Sch 9 para 10.

7 le by any of the provisions specified in ibid Sch 9 para 1 (as substituted): see the text to note 4 supra.

8 Ibid Sch 9 para 3(1) (amended by the Local Government Act 1985 Sch 17). Where, by virtue of the Road Traffic Regulation Act 1984 Sch 9 para 3 (as amended), a parking place has been designated under s 45 (as amended) (see PARA 808 post) by an order of the Secretary of State, then if, with the consent of the Treasury, the Secretary of State enters into an agreement with the local authority for the transfer to that authority of the operation of that parking place: (1) the operation of the parking place, and such apparatus or other things held by, and rights or liabilities of, the Secretary of State in connection with the parking place as may be specified in the agreement, is transferred as from such date and on such terms (including terms as to the making of payments to or by the Secretary of State) as may be so specified; (2) from the taking effect of any such transfer of the operation of the parking place, the order designating the parking place has effect subject to such modifications, if any, appearing to the Secretary of State to be requisite in consequence of the transfer as he may direct; and (3) the provisions of ss 45-49 (as amended) (see PARAS 808, 810-814 post) and s 55 (as amended) (see PARA 818 post) thereafter apply as if the parking place had been designated under s 45 (as amended) by an order made by the local authority: Sch 9 para 6(1) (amended by the Local Government Act 1985 Sch 5 para 4(39)(b), (d), Sch 17).

For these purposes, 'local authority' has the meaning assigned to it by the Road Traffic Regulation Act 1984 s 45(7) (as amended) (see PARA 808 note 1 post): Sch 9 para 6(2).

Where the Secretary of State: (a) gives a direction under Sch 9 para 2 (as amended) requiring a county council or metropolitan district council or parish or community council to make an order under s 35(1) (as amended) (see PARA 790 post) in relation to a parking place provided by a parish or community council; or (b) by virtue of Sch 9 para 3 (as amended) makes such an order in relation to such a parking place, neither s 59(4), (5) (as amended) (see PARA 823 post) nor s 59(7) (as amended) (see PARA 823 post) applies in relation to anything done in pursuance of the direction or, as the case may be, in relation to the making of the order by the Secretary of State: Sch 9 para 12 (amended by the Local Government Act 1985 Sch 5 para 4(39)(e)).

9 le by virtue of the Road Traffic Regulation Act 1984 Sch 9 para 3(1) (as amended): see the text to note 8 supra.

10 le a direction under ibid Sch 9 para 2 (as amended): see the text to notes 5-6 supra.

11 Ibid Sch 9 para 3(2) (amended by the Local Government Act 1985 Sch 17).

12 le by virtue of the Road Traffic Regulation Act 1984 Sch 9 para 3 (as amended): see the text to notes 8-11 supra.

13 le except where the power is a power of the council of a London borough or the Common Council of the City of London under ibid s 6 (as amended) (see PARA 747 post), s 9 (as amended) (see PARA 751 post), s 45 (as amended) (see PARA 808 post), s 46 (as amended) (see PARA 810 post), s 49(2) or (4) (see PARA 814 post), s 83(2) (as substituted) (see PARA 847 post) or s 84 (as amended) (see PARA 848 post): Sch 9 para 4(a) (Sch 9 para 4 amended by the Local Government Act 1985 Sch 5 para 4(39)(b), (d), Sch 17).

14 Road Traffic Regulation Act 1984 Sch 9 para 4(a) (as amended: see note 13 supra).

15 Ibid Sch 9 para 4(b) (as amended: see note 13 supra). As to money recoverable summarily as a civil debt see MAGISTRATES vol 29(2) (Reissue) PARA 826; and as to enforcement of civil debts see MAGISTRATES vol 29(2) (Reissue) PARA 828.

16 le ibid Sch 9 para 1 (as substituted and amended): see the text and notes 1-4 supra.

17 Ibid Sch 9 para 7(1) (amended by the Local Government Act 1985 Sch 17). The Road Traffic Regulation Act 1984 Sch 9 para 7 (as amended) has effect without prejudice to any power to make an order for the like purpose by virtue of Sch 9 para 3 (as amended) (see the text to notes 8-11 *supra*) and Sch 9 Pt IV paras 27-29 (as amended) (see PARA 739 *post*): Sch 9 para 7(2). The power to make an order conferred by Sch 9 para 7 (as amended) is exercisable by statutory instrument: Sch 9 para 7(3). Orders made under Sch 9 Pt I paras 1-12 (as amended) are local in nature, and are not recorded in this work.

18 *Ie* under *ibid* Sch 9 para 2 (as amended): see the text to notes 5-6 *supra*.

19 *Ie* under *ibid* Sch 9 para 7 (as amended): see the text and note 17 *supra*.

20 *Ie* under *ibid* s 122(1) (as amended): see PARA 734 *post*.

21 Ibid Sch 9 para 8 (amended by the Local Government Act 1985 Sch 17).

22 *Ie* under the Road Traffic Regulation Act 1984 Sch 9 para 7 (as amended): see the text and notes 16-17 *supra*.

23 *Ie* as mentioned in *ibid* Sch 9 para 8 (as amended): see the text and notes 18-21 *supra*.

24 Ibid Sch 9 para 9.

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### **737. Secretary of State's consent to orders.**

Where, in the case of an order proposed to be made<sup>1</sup> by a local authority other than the council of a London borough and the Common Council of the City of London, it is proposed to include in the order any provision<sup>2</sup>:

- 349 (1) so prohibiting or restricting the use of a road<sup>3</sup> as to prevent, for more than eight hours in any period of 24 hours, access for vehicles of any class<sup>4</sup> to any premises situated on or adjacent to that road or any other premises accessible for vehicles of that class from, and only from, that road<sup>5</sup>; or
- 350 (2) applying to a road for which the Secretary of State is the traffic authority<sup>6</sup>; or
- 351 (3) being, in the case of an order for restricting speed limits on roads other than restricted roads<sup>7</sup>:
- 85
- 157. (a) a provision applying to any road a speed limit of less than 30 miles per hour<sup>8</sup>; or
- 158. (b) a provision imposing a prohibition relating to speed limits on roads other than restricted roads<sup>9</sup>; or
- 86
- 352 (4) varying or revoking, within 12 months of its making, any order made by, or made in pursuance of a direction given by, the Secretary of State<sup>10</sup>; or
- 353 (5) making provision as respects any length of road for any purpose within 12 months after the date when a previous order made as respects that length of road for a similar purpose was varied or revoked by an order made by, or made in pursuance of a direction given by, the Secretary of State<sup>11</sup>,

the order may not be made<sup>12</sup> without the consent of the Secretary of State<sup>13</sup>.



Where in the case of certain orders<sup>14</sup> proposed to be made by the council of a London borough or the Common Council of the City of London, it is proposed to include in the order any provision such as is mentioned in heads (2) to (5) above, the order may not be made<sup>15</sup> except with the consent of the Secretary of State<sup>16</sup>.

The Secretary of State may by order add to or remove from the orders for which his consent is required<sup>17</sup> such orders made by such local authorities for such purposes or in such circumstances as he may see fit to specify in his order<sup>18</sup>. However, no such order removing any order from the orders for which the consent of the Secretary of State is for the time being required may be made unless a draft of the order has been approved by a resolution of each House of Parliament<sup>19</sup>. Any other such order is subject to annulment in pursuance of a resolution of either House of Parliament<sup>20</sup>.

In consenting to any order submitted to him for his consent under the above provisions, the Secretary of State may consent to the order either in the form in which it is submitted to him or with such modifications as he thinks fit, which may include additions, exceptions, or other modifications of any description<sup>21</sup>. Where the Secretary of State proposes to consent to such an order with modifications which appear to him substantially to affect the character of the order as submitted to him, he must, before doing so, take such steps as appear to him to be sufficient and reasonably practicable for informing the local authority in question and other persons likely to be concerned<sup>22</sup>.

The Secretary of State may by order grant a general consent for the making of orders requiring his consent under the above provisions: (i) of such descriptions; or (ii) with respect to such matters only; or (iii) made by such local authorities, or by authorities of such classes of descriptions; or (iv) made in such circumstances; or (v) complying with such requirements, as may be specified in the order<sup>23</sup>. Any such order is subject to annulment in pursuance of a resolution of either House of Parliament<sup>24</sup>.

1     I.e. an order under or by virtue of any of the following provisions of the Road Traffic Regulation Act 1984, namely, s 1 (as amended) (see PARA 742 post), s 9 (as amended) (see PARA 751 post), s 19 (as amended) (see PARA 767 post), s 29 (as substituted) (see PARA 782 post), s 32 (as amended) (see PARA 784 post), s 35 (as amended) (see PARA 790 post), s 37 (as amended) (see PARA 794 post), s 38 (as amended) (see PARA 795 post), s 45 (as amended) (see PARA 808 post), s 46 (as amended) (see PARA 810 post), s 49 (as amended) (see PARA 814 post), s 83(2) (as substituted) (see PARA 847 post) and s 84 (as amended) (see PARA 848 post).

2     Ibid s 124(1), Sch 9 para 13 (amended by the Local Government Act 1985 s 8, Sch 5 para 4(39)(f)).

3     For the meaning of 'road' see PARA 206 ante.

4     As to classes of vehicles see PARA 208 ante.

5     Road Traffic Regulation Act 1984 Sch 9 para 13(1)(a).

6     Ibid Sch 9 para 13(1)(b) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 Pt II para 80(2)). As to traffic authorities see PARAS 731-735 ante.

7     Road Traffic Regulation Act 1984 Sch 9 para 13(1)(d). The order restricting speed limits referred to in the text is an order for the purposes of s 84(1) (as substituted) (see PARA 848 post): Sch 9 para 13(1)(d).

8     Ibid Sch 9 para 13(1)(d)(ii).

9     Ibid Sch 9 para 13(1)(d)(iii) (added by the Road Traffic Act 1991 s 48, Sch 4 para 37). The text refers to a prohibition by virtue of the Road Traffic Regulation Act 1984 s 84(1)(b), (c) (as substituted) (see PARA 848 post): Sch 9 para 13(1)(d)(iii).

10    Ibid Sch 9 para 13(1)(e).

11    Ibid Sch 9 para 13(1)(f).

12    I.e. except in a case to which ibid Sch 9 para 13(2) or (3) (as amended) applies or where the provision is to be included in pursuance of a direction under Sch 9 para 2 (as amended) (see PARA 736 ante): Sch 9 para 13(1).

Schedule 9 para 13(2) applies where it is proposed to include in the order any such provision as is mentioned in Sch 9 para 13(1)(a) and either no owner, lessee or occupier of premises such as are mentioned in Sch 9 para 13(1)(a) has submitted to the authority any objection to the inclusion of that provision in the order, or any such owner, lessee or occupier who has submitted such an objection has withdrawn it: Sch 9 para 13(2). Schedule 9 para 13(3) (as amended) applies in the case of any order proposed to be made under s 9 (as amended) (see PARA 751 post) where: (1) it is proposed to include in the order any such provision as is mentioned in Sch 9 para 13(1)(a); and (2) the effect of the prohibition by the order of the use of the road to which it relates or of any restriction on the use of that road contained in the order would be to prevent vehicles, or vehicles of any class, being loaded or unloaded in that road or to prevent persons boarding or alighting from a vehicle being used in the provision of a local service (within the meaning of the Transport Act 1985: see PARA 1177 post) on that road; and (3) either (a) no person has submitted to the authority any objection to the making of the order on the ground that it would prevent vehicles, or vehicles of that class, being loaded or unloaded in the road, and no person being the operator of a local service (within the meaning of the Transport Act 1985) has submitted to the authority any objection to the making of the order on the ground that it would prevent persons boarding or alighting from a vehicle being used in that service in the road; or (b) any such person who has submitted an objection on that ground has withdrawn it: Road Traffic Regulation Act 1984 Sch 9 para 13(3) (amended by the Transport Act 1985 s 1, Sch 1 para 15).

13 Road Traffic Regulation Act 1984 Sch 9 para 13(1). As to the modification of Sch 9 para 13(1)(d)(ii) (see head (3)(a) in the text), so as to remove orders applying a speed limit of 20 mph to any road from the list of orders requiring the Secretary of State's consent, see the Road Traffic Regulation Act 1984 (Amendment) Order 1999, SI 1999/1608, art 2.

14 Ie an order under or by virtue of any of the following provisions of the Road Traffic Regulation Act 1984, namely, s 6 (as amended) (see PARA 747 post), s 9 (as amended) (see PARA 751 post), s 35 (as amended) (see PARA 790 post), s 38 (as amended) (see PARA 795 post), s 45 (as amended) (see PARA 808 post), s 46 (as amended) (see PARA 810 post), s 49 (as amended) (see PARA 814 post), s 83(2) (as substituted) (see PARA 847 post) and s 84 (as amended) (see PARA 848 post).

15 Ie except where the provision is to be included in pursuance of a direction under *ibid* Sch 9 para 2 (as amended): see PARA 736 text to notes 5-6 ante.

16 *Ibid* Sch 9 para 14 (amended by the Local Government Act 1985 ss 8, 102, Sch 5 para 4(39)(g), Sch 17).

17 Ie by the Road Traffic Regulation Act 1984 Sch 9 paras 13, 14 (as amended): see the text to notes 1-16 *supra*.

18 *Ibid* Sch 9 para 15(1). The power to make an order conferred by Sch 9 para 15 is exercisable by statutory instrument: Sch 9 para 18. As to orders made under this provision see the Traffic Regulation Act 1984 (Amendment) Order 1993, SI 1993/35; and the Road Traffic Regulation Act 1984 (Amendment) Order 1999, SI 1999/1608.

19 Road Traffic Regulation Act 1984 Sch 9 para 15(2).

20 *Ibid* Sch 9 para 15(3).

21 *Ibid* Sch 9 para 16(1).

22 *Ibid* Sch 9 para 16(2).

23 *Ibid* Sch 9 para 17(1). The power to make an order conferred by Sch 9 para 17 is exercisable by statutory instrument: Sch 9 para 18.

24 *Ibid* Sch 9 para 17(2).

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### 738. Procedure as to certain orders.

Before making certain orders<sup>1</sup>, a local authority or Transport for London must consult with the chief officer of police<sup>2</sup> of any police area in which any road<sup>3</sup> or other place to which the order is to relate is situated; and, if the order in question has to be submitted to the Secretary of State<sup>4</sup> for his consent<sup>5</sup>, the authority must so consult before submitting the order to the Secretary of State<sup>6</sup>.

As respects orders<sup>7</sup> of a local authority other than the council of a London borough and the Common Council of the City of London, the Secretary of State may make regulations for providing the procedure to be followed in connection with the making of such orders, the submission of such orders for the consent of the Secretary of State or a county council where such submission is required, and the consideration by him or by the county council of any such order submitted to him or it, and the Secretary of State must by such regulations make such, if any, provision as he considers appropriate with respect to<sup>8</sup>: (1) the publication of any proposal for the making of such an order<sup>9</sup>; (2) the making and consideration of objections to any such proposal<sup>10</sup>; and (3) the publication of notice of the making of the order and of its effect<sup>11</sup>. Such regulations may<sup>12</sup> include provision<sup>13</sup>:

- 354 (a) as to the form of any such order<sup>14</sup>;
- 355 (b) for the holding of inquiries for the purposes of any such order and as to the appointment of the person by whom any such inquiry is to be held<sup>15</sup>;
- 356 (c) for the making of modifications<sup>16</sup> in any such order, whether in consequence of any objections or otherwise, before the order is made<sup>17</sup>;
- 357 (d) requiring any such order to include such exemptions for such purposes and subject to such exceptions as may be provided for by the regulations<sup>18</sup>;
- 358 (e) requiring the authority by which any such order is made to place and maintain, or cause to be placed and maintained, such traffic signs<sup>19</sup> in connection with that order as may be so provided for<sup>20</sup>.

1    le an order under or by virtue of any of the following provisions of the Road Traffic Regulation Act 1984, namely, s 1 (as amended) (see PARA 742 post), s 6 (as amended) (see PARA 747 post), s 9 (as amended) (see PARA 751 post), s 19 (as amended) (see PARA 767 post), s 29 (as substituted) (see PARA 782 post), s 32 (as amended) (see PARA 784 post), s 35 (as amended) (see PARA 790 post), s 37 (as amended) (see PARA 794 post), s 38 (as amended) (see PARA 795 post), s 45 (as amended) (see PARA 808 post), s 46 (as amended) (see PARA 810 post), s 49 (as amended) (see PARA 814 post), s 61 (as amended) (see PARA 826 post), s 83(2) (as substituted) (see PARA 847 post) and s 84 (as amended) (see PARA 848 post).

2    As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

3    For the meaning of 'road' see PARA 206 ante.

4    As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5    le under the Road Traffic Regulation Act 1984 s 124(1), Sch 9 Pt II paras 13-19 (as amended) (see PARA 737 ante) or any other provision of that Act.

6    Ibid Sch 9 para 20(1) (amended by the Local Government Act 1985 ss 8, 102, Sch 5 para 4(39)(h), Sch 7; the New Roads and Street Works Act 1991 s 168(1), (2), Sch 8 para 80(1), (3), Sch 9; and the Greater London Highways and Road Traffic (Various Provisions) Order 2000, SI 2000/1547, art 3(1), (2)). The Road Traffic Regulation Act 1984 Sch 9 para 20(1) (as amended) does not apply to an order made in pursuance of a direction under Sch 9 para 2 (as amended) (see PARA 736 ante), and has effect without prejudice to any further requirements contained in any regulations made under the provisions of Sch 9 Pt III paras 20-26 (as amended): Sch 9 para 20(2).

The Secretary of State may make regulations with respect to the procedure in connection with the making by him: (1) of any order made by virtue of Sch 9 para 3 (as amended) (see PARA 736 ante) or made under Sch 9 para 7 (as amended) (see PARA 736 ante); or (2) of any order which he is authorised to make with respect to roads for which he is the traffic authority under any of the provisions referred to in Sch 9 para 20(1) (as amended), or with respect to the procedure in connection with appeals to him by district councils under s 39 (as amended) (see PARAS 784-785, 787 post): Sch 9 para 24 (amended by the New Roads and Street Works Act 1991 Sch 8 para 80(1), (5); and the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 38(11)). As to traffic

authorities see PARAS 731-735 ante. As to the making of regulations generally see PARA 720 ante. At the date at which this volume states the law no regulations had been made under the Road Traffic Regulation Act 1984 Sch 9 para 24 (as amended).

Any regulations under Sch 9 Pt III paras 20-26 (as amended) may make different provision for different orders or for different circumstances; and, where any such regulations require an authority to post any notice in a road, the authority may, whether or not it is the traffic authority, take such steps for that purpose as it thinks fit, including the use for that purpose of any lamp post, traffic sign or other structure whatsoever in the road, whether or not belonging to that authority: Sch 9 para 25 (amended by the New Roads and Street Works Act 1991 Sch 8 para 80(1), (6)).

Before giving any authority a direction under the Road Traffic Regulation Act 1984 Sch 9 para 2 (as amended) (see PARA 736 ante) to make (with or without modifications) an order under any of the provisions referred to in Sch 9 para 20(1) (as amended) (see note 1 supra), in connection with which steps have already been taken in pursuance of regulations made under Sch 9 Pt IV (as amended), the Secretary of State must consider any objections made to that order: Sch 9 para 26(1). If the order is directed to be made with modifications which appear to the Secretary of State to affect substantially the character of the order, he must take such steps as appear to him to be sufficient and reasonably practicable for informing any local authority concerned and any other person likely to be concerned: Sch 9 para 26(2).

7     Ie orders under any of the provisions referred to in *ibid* Sch 9 para 20(1) (as amended): see note 1 supra.

8     *Ibid* Sch 9 para 21 (amended by the Local Government Act 1985 Sch 5 para 4(39)(i); and the New Roads and Street Works Act 1991 Sch 8 para 80(1), (4), Sch 9).

9     Road Traffic Regulation Act 1984 Sch 9 para 21(a).

10    *Ibid* Sch 9 para 21(b).

11    *Ibid* Sch 9 para 21(c). The Secretary of State, after consultation with the council of a London borough or the Common Council of the City of London or Transport for London: (1) as respects orders made by that council or Transport for London under any of the provisions referred to in Sch 9 para 20(1) (as amended), may make regulations for any of the like purposes as those for which regulations are required or authorised to be made under Sch 9 para 21 (as amended); (2) with respect to any other order the making of which by that council or Transport for London requires the consent of the Secretary of State, may make regulations for providing the procedure to be followed in connection with the obtaining of that consent: Sch 9 para 23(1) (amended by the New Roads and Street Works Act 1991 Sch 8 para 80(1), (4), Sch 9; the Local Government Act 1985 Sch 5 para 4(39)(j); and the Greater London Highways and Road Traffic (Various Provisions) Order 2000, SI 2000/1547, art 3(1), (3)(a)). The following regulations have been made under Sch 9 para 23 (as amended): the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996, SI 1996/2489; the Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (England) Regulations 2000, SI 2000/683; the Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (Wales) Regulations 2000, SI 2000/1785; and the Disabled Persons (Badges for Motor Vehicles) (Wales) Regulations 2000, SI 2000/1786. The following regulations have been made under the Road Traffic Regulation Act 1984 Sch 9 Pt III paras 20-26 (as amended): the Secretary of State's Traffic Orders (Procedure) (England and Wales) Regulations 1990, SI 1990/1656 (amended, in relation to England, by SI 2004/3168; and, in relation to Wales, by SI 2005/2929).

12    Ie without prejudice to the generality of the Road Traffic Regulation Act 1984 Sch 9 para 21 (as amended): see the text and notes 7-11 supra.

13    *Ibid* Sch 9 para 22(1).

14    *Ibid* Sch 9 para 22(1)(a). The text refers to an order as mentioned in Sch 9 para 21 (as amended) (see the text and notes 7-11 supra): Sch 9 para 22(1)(a).

15    *Ibid* Sch 9 para 22(1)(b).

16    In *ibid* Sch 9 para 22(1)(c) (see head (c) in the text), so far as it relates to regulations made under Sch 9 para 23 (as amended), 'modifications' is to be construed as including additions, exceptions or other modifications of any description: Sch 9 para 23(2).

17    *Ibid* Sch 9 para 22(1)(c).

18    *Ibid* Sch 9 para 22(1)(d).

19    For these purposes, in its application to an order under *ibid* s 61 (as amended) (see PARA 826 post), the reference to traffic signs is to be construed in accordance with s 61(8) (see PARA 826 note 14 post): Sch 9 para 22(2). For the meaning of 'traffic sign' generally see PARA 830 post.

20 Ibid Sch 9 para 22(1)(e).

## UPDATE

### 738 Procedure as to certain orders

NOTE 11--SI 1996/2489 amended: SI 2009/1116 (England).

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### 739. Variation or revocation of orders.

Any power to make an order as respects any road<sup>1</sup> or parking place<sup>2</sup> includes power for the authority for the time being having power to make such an order as respects that road or parking place to make an order varying or revoking any previous order as respects that road or parking place made, or having effect as if made, under or by virtue of the provision in question, whether the previous order was made by that or some other authority, and notwithstanding that the previous order was, and the order varying or revoking it is not, made in pursuance of a power exercisable by statutory instrument<sup>3</sup>.

1 For the meaning of 'road' see PARA 206 ante.

2 le conferred by or by virtue of any of the following provisions of the Road Traffic Regulation Act 1984, namely, s 1 (as amended) (see PARA 742 post), s 6 (as amended) (see PARA 747 post), s 9 (as amended) (see PARA 751 post), s 14 (as substituted) (see PARA 755 post), s 16A (as added) (see PARA 759 post), s 19 (as amended) (see PARA 767 post), s 29 (as amended) (see PARA 782 post), s 32 (as amended) (see PARA 784 post), s 35 (as amended) (see PARA 790 post), s 37 (as amended) (see PARA 794 post), s 38 (as amended) (see PARA 795 post), s 45 (as amended) (see PARA 808 post), s 46 (as amended) (see PARA 810 post), s 49(2), (4) (see PARA 814 post), s 50 (repealed), s 53 (as amended) (see PARA 817 ante), s 83 (as amended) (see PARA 847 post), s 84 (as amended) (see PARA 848 post) and Sch 9 para 7 (as amended) (see PARA 736 ante).

3 Ibid s 124(1), Sch 9 para 27(1) (amended by the Road Traffic (Temporary Restrictions) Act 1991 s 1(4); the New Roads and Street Works Act 1991 s 168(1), (2), Sch 8 para 80(1), (7), Sch 9; the Road Traffic Regulation (Special Events) Act 1994 s 3(1), Schedule para 5(2); and the Transport Act 2000 s 161, Sch 11 paras 6, 8(1), (2)). The Road Traffic Regulation Act 1984 Sch 9 para 27(1) (as amended) has effect subject to s 39(6) (as amended) (see PARA 784 post) and s 59(6) (as amended) (see PARA 823 post): Sch 9 para 27(2) (amended by the Local Government (Wales) Act 1994 ss 22(1), 66(8), Sch 7 para 38(11), Sch 18). Where an order is required for the provision of facilities pursuant to a quality partnership scheme made under the Transport Act 2000 Pt II (ss 108-162) (as amended) by more than one authority (see PARA 1200 et seq post): (1) it may not be varied or revoked by virtue of the Road Traffic Regulation Act 1984 Sch 9 para 27 (as amended) by the Secretary of State or the Welsh Ministers unless he has or they have consulted the other authority or authorities who made the scheme; and (2) it may not be varied or revoked by virtue of Sch 9 para 27 (as amended) by any other authority without the consent of that other authority or those other authorities: Sch 9 para 27(3) (added by the Transport Act 2000 Sch 11 para 8(3)).

Subject to the Road Traffic Regulation Act 1984 Sch 9 Pt II paras 13-19 (as amended) (see PARA 737 ante), the power to vary or revoke an order made under or by virtue of any of the provisions referred to in Sch 9 para 27(1) (as amended) (see note 2 supra) extends to the variation or revocation of any such order in connection with the provision in question as is mentioned in heads (1)-(5) infra, notwithstanding that it was made by, or by direction of, the Secretary of State:

1353 (1) an order made in pursuance of a direction under Sch 9 para 2 (as amended) (see PARA 736 ante) (Sch 9 para 28(a));

1354 (2) except where the provision in question is s 45 (as amended) (see PARA 808 post), s 46 (as amended) (see PARA 810 post), s 49 (as amended) (see PARA 814 post) or s 53 (as amended) (see PARA 817 post), an order made by virtue of Sch 9 para 3 (as amended) (see PARA 736 ante) (Sch 9 para 28(b));

1355 (3) where the provision in question is s 45 (as amended), s 46 (as amended), s 49 (as amended) or s 53 (as amended), an order which is made by virtue of Sch 9 para 3 (as amended) and relates to a parking place for the time being controlled by the local authority within the meaning of s 45 (as amended) (Sch 9 para 28(c) (amended by the Local Government Act 1985 s 102, Sch 17));

1356 (4) an order under the Road Traffic Regulation Act 1984 Sch 9 para 7 (as amended) (see PARA 736 ante) (Sch 9 para 28(d) (amended by the Deregulation and Contracting Out Act 1994 ss 39, 81, Sch 11 para 5, Sch 17)); or

1357 (5) an order under the Deregulation and Contracting Out Act 1994 s 34 (see PARA 747 post) (Road Traffic Regulation Act 1984 Sch 9 para 28(e) (added by the Deregulation and Contracting Out Act 1994 ss 39, 81, Sch 11 para 5, Sch 17)).

Nothing in the Road Traffic Regulation Act 1984 Sch 9 para 8 (as amended) (see PARA 736 ante) prevents the exercise by the Secretary of State of the power to revoke any order made by him under Sch 9 para 7 (as amended) (see PARA 736 ante): Sch 9 para 29.

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#### **740. Consultation with the traffic commissioners.**

Before making any order regulating the use of highways by public service vehicles<sup>1</sup> or appointing parking places to be used as a station for, or for a specified class of, public service vehicles<sup>2</sup>, otherwise than in pursuance of a direction given by the Secretary of State<sup>3</sup>, the local authority<sup>4</sup>:

359 (1) must consult with the traffic commissioner<sup>5</sup> for any traffic area<sup>6</sup> constituted for the purposes of the Public Passenger Vehicles Act 1981<sup>7</sup> in which the area, or any part of the area, of the local authority is situated<sup>8</sup>; and

360 (2) if the local authority's area is situated wholly or partly within an area which is a passenger transport area<sup>9</sup>, must consult with the passenger transport executive<sup>10</sup> for that passenger transport area<sup>11</sup>.

If the order is required to be submitted to the Secretary of State for his consent<sup>12</sup>, the local authority must consult as mentioned in heads (1) and (2) above before submitting it to the Secretary of State for his consent<sup>13</sup>.

1    Ie any order made under the Road Traffic Regulation Act 1984 s 19 (as amended): see PARA 767 post. For the meaning of 'public service vehicle' see PARA 1136 post.

2    Ie any order under *ibid* s 38(1)(a): see PARA 795 post. As to classes of vehicles see PARA 208 ante.

3    Ie a direction under *ibid* s 124(1), Sch 9 para 2 (as amended): see PARA 736 ante. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4    Ibid Sch 9 paras 30, 31.

- 5 For the meaning of 'traffic commissioner' see PARA 1138 note 7 post.
- 6 For the meaning of 'traffic area' see PARA 1138 note 5 post.
- 7 As to the Public Passenger Vehicles Act 1981 see PARA 1136 et seq post.
- 8 Road Traffic Regulation Act 1984 Sch 9 para 31(a) (Sch 9 para 31(a), (b) amended by the Transport Act 1985 ss 3, 57(6), Sch 2 Pt II para 6, Sch 3 para 3).
- 9 le for the purposes of the Transport Act 1968 Pt II (ss 9-23A) (as amended): see PARA 247 et seq ante.
- 10 For the meaning of 'passenger transport executive' see PARA 247 ante.
- 11 Road Traffic Regulation Act 1984 Sch 9 paras 31(b) (as amended: see note 8 supra). Schedule 9 para 31 (as amended) and Sch 9 para 32 (see the text to note 13 infra) have effect without prejudice to Sch 9 para 20 (as amended) (see PARA 738 ante) or any regulations made under Sch 9 para 21 (as amended) (see PARA 738 ante) or, in relation to an order under s 38(1)(a) (see PARA 795 post), any regulations made under Sch 9 para 23 (as amended) (see PARA 738 ante): Sch 9 para 33.
- 12 le consent under ibid Sch 9 Pt II paras 13-19 (as amended): see PARA 737 ante.
- 13 Ibid Sch 9 para 32.

## UPDATE

### 740 Consultation with the traffic commissioners

TEXT AND NOTES 9-11--Road Traffic Regulation Act 1984 Sch 9 para 31(b) further amended: Local Transport Act 2008 Sch 4 para 51.

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### 741. Validity of orders.

If any person desires to question the validity of any of the following orders, or of any provision contained in any of them<sup>1</sup>:

- 361 (1) any traffic regulation order<sup>2</sup>;
- 362 (2) any traffic regulation order in Greater London<sup>3</sup>;
- 363 (3) any experimental traffic order<sup>4</sup>;
- 364 (4) an order regulating the use of highways by public service vehicles<sup>5</sup>;
- 365 (5) any order containing a prohibition or restriction on roads in connection with certain events<sup>6</sup>;
- 366 (6) any order providing parking spaces<sup>7</sup>;
- 367 (7) any order containing a general scheme of traffic control<sup>8</sup>;
- 368 (8) any order for a parking place to be used as a bus or coach station<sup>9</sup>; or
- 369 (9) any designation order<sup>10</sup>,

on the grounds that the order is not within the relevant powers<sup>11</sup>, or that any of the relevant requirements<sup>12</sup> has not been complied with in relation to the order<sup>13</sup>, he may, within six weeks from the date on which the order is made, make an application for the purpose to the High Court<sup>14</sup>.

On any such application the court: (a) may, by interim order, suspend the operation of the order to which the application relates, or of any provision of that order, until the final determination of the proceedings<sup>15</sup>; and (b) if satisfied that the order, or any provision of the order, is not within the relevant powers, or that the interests of the applicant have been substantially prejudiced by failure to comply with any of the relevant requirements, may quash the order or any provision of the order<sup>16</sup>. An order specified in heads (1) to (9) above, or a provision of any such order, may be so suspended or quashed either generally or so far as may be necessary for the protection of the interests of the applicant<sup>17</sup>.

Except as provided above<sup>18</sup>, such an order may not, either before or after it has been made, be questioned in any legal proceedings whatever<sup>19</sup>.

1 Road Traffic Regulation Act 1984 s 124(1), Sch 9 para 35.

2 Ie any order made under or by virtue of *ibid* s 1 (as amended) (see PARA 742 post): Sch 9 para 34(1)(a). For the meaning of 'traffic regulation order' see PARA 742 post.

3 Ie any order made under or by virtue of *ibid* s 6 (as amended) (see PARA 747 post): Sch 9 para 34(1)(a).

4 Ie any order made under or by virtue of *ibid* s 9 (as amended) (see PARA 751 post): Sch 9 para 34(1)(a).

5 Ie any order made under or by virtue of *ibid* s 16A (as added) (see PARA 759 post): Sch 9 para 34(1)(a) (amended by the Road Traffic Regulation (Special Events) Act 1994 s 3(1), Schedule para 5(3)).

6 Ie any order made under or by virtue of the Road Traffic Regulation Act 1984 s 19 (as amended) (see PARA 767 post): Sch 9 para 34(1)(a).

7 Ie any order made under or by virtue of *ibid* s 32 (as amended) (see PARA 784 post): Sch 9 para 34(1)(a).

8 Ie any order made under or by virtue of *ibid* s 37 (as amended) (see PARA 794 post): Sch 9 para 34(1)(a).

9 Ie any order made under or by virtue of *ibid* s 38 (as amended) (see PARA 795 post): Sch 9 para 34(1)(a).

10 *Ibid* Sch 9 para 34(1)(b). For the meaning of 'designation order' see PARA 808 note 4 post.

11 *Ibid* Sch 9 para 35(a). For these purposes, 'the relevant powers', in relation to any such order as is mentioned in Sch 9 para 34(1)(a) (as amended) (see heads (1)-(8) in the text), means the powers with respect to such an order conferred by the Road Traffic Regulation Act 1984, and, in relation to a designation order, means the powers of s 45 (as amended) (see PARA 808 post), s 46 (as amended) (see PARA 810 post), s 49 (as amended) (see PARA 814 post) and s 53 (as amended) (see PARA 817 ante): Sch 9 para 34(2)(a) (amended by the Local Government Act 1985 s 102, Sch 17). The powers conferred by the Road Traffic Regulation Act 1984 s 32(1) (see PARA 784 post) are not within the scope of 'relevant powers': see *R v Parking Adjudicator, ex p Bexley London Borough Council* [1998] RTR 128.

12 For these purposes, 'the relevant requirements', in relation to any such order as is mentioned in the Road Traffic Regulation Act 1984 Sch 9 para 34(1)(a) (as amended) (see heads (1)-(8) in the text), means any requirement of any provision of the Road Traffic Regulation Act 1984, or of any instrument made under any such provision, with respect to such an order, and, in relation to a designation order, means any requirement of s 45 (as amended) (see PARA 808 post), s 46 (as amended) (see PARA 810 post), s 49 (as amended) (see PARA 814 post) and s 53 (as amended) (see PARA 817 ante) or of Sch 9 Pt I paras 1-12 (as amended) (see PARA 736 ante), Sch 9 Pt II paras 13-19 (as amended) (see PARA 737 ante) or Sch 9 Pt III paras 20-26 (as amended) (see PARA 738 ante) or of any regulations made under Sch 9 Pt III (as amended): Sch 9 para 34(2)(b) (amended by the Local Government Act 1985 Sch 17).

13 Road Traffic Regulation Act 1984 Sch 9 para 35(b).

14 *Ibid* Sch 9 para 35.

15 *Ibid* Sch 9 para 36(1)(a).

16 *Ibid* Sch 9 para 36(1)(b).

17 *Ibid* Sch 9 para 36(2).

18 Ie except as provided by *ibid* Sch 9 Pt VI paras 34-37 (as amended).



19 Ibid Sch 9 para 37.

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## **(2) TRAFFIC REGULATION**

### **(i) Traffic Regulation Orders and Schemes**

#### ***A. TRAFFIC REGULATION ORDERS OUTSIDE GREATER LONDON***

##### **742. Purposes for which traffic regulation orders may be made.**

The traffic authority<sup>1</sup> for a road<sup>2</sup> outside Greater London may make an order (a 'traffic regulation order') in respect of the road where it appears to the authority making the order that it is expedient to make it<sup>3</sup>:

- 370 (1) for avoiding danger to persons or other traffic<sup>4</sup> using the road or any other road or for preventing the likelihood of any such danger arising<sup>5</sup>; or
- 371 (2) for preventing damage to the road or to any building on or near the road<sup>6</sup>; or
- 372 (3) for facilitating the passage on the road or any other road of any class of traffic<sup>7</sup> (including pedestrians)<sup>8</sup>; or
- 373 (4) for preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property<sup>9</sup>; or
- 374 (5) without prejudice to the generality of head (4) above, for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot<sup>10</sup>; or
- 375 (6) for preserving or improving the amenities of the area through which the road runs<sup>11</sup>; or
- 376 (7) for certain purposes<sup>12</sup> relating to air quality<sup>13</sup>.

A traffic regulation order made by a local traffic authority<sup>14</sup> may, with the consent of the Secretary of State, extend to a road in relation to which he is the traffic authority if the order forms part of a scheme of general traffic control relating to roads of which at least one has a junction with the length of road in question<sup>15</sup>.

A local traffic authority may make a traffic regulation order in respect of a road in relation to which the Secretary of State is the traffic authority if: (a) the order is required for the provision of facilities pursuant to a quality partnership scheme<sup>16</sup>; and (b) the Secretary of State consents<sup>17</sup>.

1 As to traffic authorities see PARAS 731-735 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 Road Traffic Regulation Act 1984 ss 1(1), 142(1) (s 1(1) amended by the New Roads and Street Works Act 1991 s 168(1), (2), Sch 8 para 17(2)). The power to make an order under the Road Traffic Act 1988 s 1 (as amended) is also exercisable by the Secretary of State: see PARAS 736-741 ante. Any power of the Secretary of

State to make an order under or by virtue of s 1 (as amended) is exercisable by statutory instrument: s 124(2). Orders made under s 1 (as amended) are local in nature, and are not recorded in this work. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

Section 1 (as amended) has effect in relation to tramcars and trolley vehicles so that such vehicles are exempt from any order made under it: see the Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, regs 3(1)(a), 5(1)(a), which are expressed to be subject to Pt IV (ie reg 11) (see PARAS 1629-1630 post). Nothing in reg 5(1) affects the operation of any provision in an order under the Road Traffic Regulation Act 1984 s 1 (as amended) prohibiting or restricting the waiting of vehicles or the loading or unloading of vehicles: Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 5(2). For the meanings of 'tramcars' and 'trolley vehicles' see PARA 219 ante.

As to exemptions for disabled persons see, in relation to England, the Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (England) Regulations 2000, SI 2000/683; and, in relation to Wales, the Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (England and Wales) Regulations 1986, SI 1986/178 (amended by SI 1991/2709; SI 2000/683).

4 In relation to any footpath, bridleway, restricted byway or byway open to traffic, any reference in any provision of the Road Traffic Regulation Act 1984, except s 127 (as amended), to traffic is to be construed as including a reference to pedestrians or any person driving, riding or leading a horse or other animal of draught or burden: s 127(1)(b), (2) (s 127(1) amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, reg 2, Schedule Pt I). For these purposes, 'footpath' does not include a highway over which the public has a right of way on foot only which is at the side of a public road; and 'byway open to all traffic' means a highway over which the public has a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used: Road Traffic Regulation Act 1984 s 127(3). A highway at the side of a river, canal or inland navigation is not to be excluded, for these purposes, from the definition of a footpath, bridleway, restricted byway or byway open to all traffic by reason only that the public has a right to use the highway for purposes of navigation, if the highway would fall within that definition if the public had no such right: s 127(4) (amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, Schedule Pt I). For the meaning of 'bridleway' see PARA 206 ante. 'Restricted byway' has the same meaning as in the Countryside and Rights of Way Act 2000 Pt II (ss 47-72) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 603): Road Traffic Regulation Act 1984 s 142(1) (definition added by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, Schedule Pt I). For the meaning of 'footpath' generally see PARA 206 ante.

5 Road Traffic Regulation Act 1984 s 1(1)(a). An order may be made under s 1(1)(a) for the purpose of avoiding or reducing, or reducing the likelihood of, danger connected with terrorism (for which purpose the reference to persons or other traffic using the road are to be treated as including a reference to persons or property on or near the road): s 22C(1) (s 22C added by the Civil Contingencies Act 2004 s 32(1), Sch 2 para 16). 'Terrorism' has the meaning given to it under the Terrorism Act 2000 s 1 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 383): Road Traffic Regulation Act 1984 s 22C(6) (as so added). In Wales an order made, or notice issued, by virtue of s 22C (as added and amended) may be made or issued only with the consent of the Secretary of State if the traffic authority is the Welsh Ministers: s 22C(8) (as so added). See PARA 237 ante.

6 Ibid s 1(1)(b). An order may be made under s 1(1)(b) for the purpose of preventing or reducing damage connected with terrorism: s 22C(2) (as added: see note 5 supra).

7 As to classes of vehicles or traffic see PARA 208 ante.

8 Road Traffic Regulation Act 1984 s 1(1)(c).

9 Ibid s 1(1)(d).

10 Ibid s 1(1)(e).

11 Ibid s 1(1)(f).

12 Ie for the purposes specified in the Environment Act 1995 s 87(1)(a)-(c): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 200.

13 Road Traffic Regulation Act 1984 s 1(1)(g) (added by the Environment Act 1995 s 120(1), Sch 22 para 36(1)).

14 For the meaning of 'local traffic authority' see PARA 731 ante.

15 Road Traffic Regulation Act 1984 s 1(3) (substituted by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 17(4)).

16 le under the Transport Act 2000 Pt II (ss 108-162) (as amended): see PARA 1200 et seq post.

17 Road Traffic Regulation Act 1984 s 1(3A) (added by the Transport Act 2000 s 161, Sch 11 paras 6, 7).

## UPDATE

### 742 Purposes for which traffic regulation orders may be made

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTES 16, 17--Road Traffic Regulation Act 1984 s 1(3A) amended, s 1(3B) added: Local Transport Act 2008 s 45 (in force in relation to England: SI 2009/3242).

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### 743. What a traffic regulation order may provide.

A traffic regulation order<sup>1</sup> may make any provision prohibiting, restricting or regulating the use of a road<sup>2</sup>, or of any part of the width of a road, by vehicular traffic<sup>3</sup>, or by vehicular traffic of any class<sup>4</sup> specified in the order<sup>5</sup>: (1) either generally or subject to such exceptions as may be specified in the order or determined in a manner provided for by it<sup>6</sup>; (2) and subject to such exceptions as may be so specified or determined, either at all times or at times, on days or during periods so specified<sup>7</sup>. The provision that may be made by a traffic regulation order includes any provision<sup>8</sup>:

- 377 (a) requiring vehicular traffic, or vehicular traffic of any class specified in the order, to proceed in a specified direction or prohibiting its so proceeding<sup>9</sup>;
- 378 (b) specifying the part of the carriageway to be used by such traffic proceeding in a specified direction<sup>10</sup>;
- 379 (c) prohibiting or restricting the waiting of vehicles or the loading and unloading of vehicles<sup>11</sup>;
- 380 (d) prohibiting the use of roads by through traffic<sup>12</sup>; or
- 381 (e) prohibiting or restricting overtaking<sup>13</sup>.

The provision that may be made by a traffic regulation order also includes provision prohibiting, restricting or regulating the use of a road, or of any part of the width of a road, by, or by any specified class of, pedestrians<sup>14</sup> either generally or subject to exceptions specified in the order, and either at all times or at times, on days or during periods so specified<sup>15</sup>. A local traffic authority<sup>16</sup> may include in a traffic regulation order any such provision<sup>17</sup>:

- 382 (i) specifying through routes for heavy commercial vehicles<sup>18</sup>; or

- 383 (ii) prohibiting or restricting the use of heavy commercial vehicles (except in such cases, if any, as may be specified in the order) in such zones or on such roads as may be so specified<sup>19</sup>,

as it considers expedient for preserving or improving the amenities of its area or of some part or parts of its area<sup>20</sup>.

- 1 For the meaning of 'traffic regulation order' see PARA 742 ante.
- 2 For the meaning of 'road' see PARA 206 ante.
- 3 As to the meaning of 'traffic' see PARA 742 note 4 ante.
- 4 As to classes of traffic see PARA 208 ante.
- 5 Road Traffic Regulation Act 1984 s 2(1) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 18).
- 6 Road Traffic Regulation Act 1984 s 2(1)(a).
- 7 Ibid s 2(1)(b).
- 8 Ibid s 2(2) (s 2(2) amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 18).
- 9 Road Traffic Regulation Act 1984 s 2(2)(a).
- 10 Ibid s 2(2)(b).
- 11 Ibid s 2(2)(c) (as amended: see note 8 supra). In this context 'loading and unloading' means loading and unloading for commercial purposes, and although it may extend to cases where a private car is used for something which it would not have been reasonable to carry by hand, it does not extend to the case of a shopper who puts things into his car which are easily carried: *Sprake v Tester* (1955) 53 LGR 194, DC. It was held that although unloading might cover time taken to deliver the goods to their destination as well as the actual removal of the goods from the vehicle, it did not cover the delivery of goods which were not in the vehicle when it was parked: see *Pratt v Hayward* [1969] 1 All ER 1094, [1969] 1 WLR 832. The purpose of the exemption for loading or unloading is to exempt those vehicles where it is reasonably necessary to park the vehicle in order that the goods are delivered or collected; it does not include occasions when a vehicle was used by a driver for convenience and he could have reasonably have carried the goods on his person: see *Richards v McKnight* [1977] 3 All ER 625, [1977] 1 WLR 377, DC (the driver of a car parked it outside a bank to collect cash for wages). However, where a driver left his van with the engine running while unloading frozen goods, it was held that the court was unable to say that the justices' finding of fact that the vehicle was waiting only for so long as was necessary to complete unloading was wrong, bearing in mind that the load was frozen goods which could not be left on the pavement: *Bulman v Godbold* [1981] RTR 242, DC. Whether a person is boarding or alighting from a vehicle is a matter of common sense: see *Clifford-Turner v Waterman* [1961] 3 All ER 974, [1961] 1 WLR 1499.
- 12 Road Traffic Regulation Act 1984 s 2(2)(d).
- 13 Ibid s 2(2)(e).
- 14 In relation to any footpath, bridleway, restricted byway or byway open to all traffic any reference in ibid s 2(3) or s 14 (as substituted and amended) (see PARA 755 post) to pedestrians is to be construed as including a reference to any person driving, riding or leading a horse or other animal of draught or burden: s 127(1)(a), (2) (s 127(1) amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, reg 2, Schedule Pt I). For the meanings of 'footpath', 'restricted byway' and 'byway open to all traffic' for these purposes see PARA 742 note 4 ante. For the meaning of 'bridleway' see PARA 206 ante. For the meaning of 'footpath' generally see PARA 206 ante.
- 15 Road Traffic Regulation Act 1984 s 2(3).
- 16 For the meaning of 'local traffic authority' see PARA 731 ante.
- 17 Road Traffic Regulation Act 1984 s 2(4) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 18).

18 Road Traffic Regulation Act 1984 s 2(4)(a). For the meaning of 'heavy commercial vehicles' see PARA 220 ante.

19 Ibid s 2(4)(b).

20 Ibid s 2(4). Nothing in s 2(4) (as amended) is to be construed as limiting the scope of any power or duty to control vehicles conferred or imposed on any local authority or the Secretary of State otherwise than by virtue of s 2(4) (as amended): s 2(5). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

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#### **744. Restrictions on traffic regulation orders.**

A traffic regulation order<sup>1</sup> must not be made with respect to any road<sup>2</sup> which would have the effect<sup>3</sup> of preventing at any time access for pedestrians<sup>4</sup> or of preventing for more than eight hours in any period of 24 hours access for vehicles of any class<sup>5</sup> to any premises situated on or adjacent to the road, or to any other premises accessible for pedestrians, or (as the case may be) for vehicles of that class, from, and only from, the road<sup>6</sup>. However, restriction, so far as it relates to vehicles, does not have effect in so far as the authority making the order is satisfied, and it is stated in the order that it is satisfied, that<sup>7</sup>:

- 384 (1) for avoiding danger to persons or other traffic using the road to which the order relates or any other road<sup>8</sup>; or
- 385 (2) for preventing the likelihood of any such danger arising<sup>9</sup>; or
- 386 (3) for preventing damage to the road or buildings on or near it<sup>10</sup>; or
- 387 (4) for facilitating the passage of vehicular traffic on the road<sup>11</sup>; or
- 388 (5) for preserving or improving the amenities of an area by prohibiting or restricting the use on a road or roads in that area of heavy commercial vehicles<sup>12</sup>,

it is requisite that the restriction should not apply to the order<sup>13</sup>.

Provision for regulating the speed of vehicles on roads may not be made by a traffic regulation order<sup>14</sup>.

1 For the meaning of 'traffic regulation order' see PARA 742 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 Road Traffic Regulation Act 1984 s 3(1) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 19).

4 Road Traffic Regulation Act 1984 s 3(1)(a).

5 Ibid s 3(1)(b). As to classes of vehicle see PARA 208 ante.

6 Ibid s 3(1). A mere hindrance will not suffice for prevention of access: *Corfe Transport Ltd v Gwynedd County Council* [1984] RTR 79, (1983) 81 LGR 745.

7 Road Traffic Regulation Act 1984 s 3(2).

8 Ibid s 3(2)(a).

- 9 Ibid s 3(2)(b).
- 10 Ibid s 3(2)(c).
- 11 Ibid s 3(2)(d).
- 12 Ibid s 3(2)(e). For the meaning of 'heavy commercial vehicle' see PARA 220 ante.
- 13 Ibid s 3(2).
- 14 Ibid s 3(3). As to speed limits see PARA 846 et seq post.

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#### **745. Additional provisions that may be included in traffic regulation orders.**

A traffic regulation order<sup>1</sup> may make provision for identifying any part of any road<sup>2</sup> to which, or any time at which, or period during which, any provision contained in the order is for the time being to apply by means of a traffic sign<sup>3</sup> of a type or character specified in the order<sup>4</sup> and for the time being lawfully in place<sup>5</sup>. A traffic regulation order which imposes any restriction on the use by vehicles of a road, or the waiting of vehicles in a road, may include provision with respect to the issue and display of certificates or other means of identification of vehicles which are excepted from the restriction, whether generally or in particular circumstances or at particular times<sup>6</sup>. A traffic regulation order may also include provision with respect to the issue, display and operation of devices for indicating the time at which a vehicle arrived at, and the time at which it ought to leave, any place in a road in which waiting is restricted by the order, or one or other of those times, and for treating the indications given by any such device as evidence of such facts and for such purposes as may be prescribed by the order<sup>7</sup>.

- 1 For the meaning of 'traffic regulation order' see PARA 742 ante.
- 2 For the meaning of 'road' see PARA 206 ante.
- 3 For the meaning of 'traffic sign' see PARA 830 post.
- 4 Ie being a type prescribed or character authorised under the Road Traffic Regulation Act 1984 s 64 (as amended): see PARA 830 post. For the meaning of 'prescribed' see PARA 735 note 3 ante.
- 5 Ibid s 4(1). For the purposes of any such order so made any such traffic sign placed on and near a road is to be deemed to be lawfully in place unless the contrary is proved: s 4(1).
- 6 Ibid s 4(2).
- 7 Ibid s 4(3) (amended by the Deregulation (Parking Equipment) Order 1996, SI 1996/1553, art 2(1), Schedule). In relation to orders made before 12 June 1996 see the Deregulation (Parking Equipment) Order 1996, SI 1996/1553, art 3.

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and Schemes/A. TRAFFIC REGULATION ORDERS OUTSIDE GREATER LONDON/746.  
 Contravention of traffic regulation order.

#### **746. Contravention of traffic regulation order.**

A person who contravenes a traffic regulation order<sup>1</sup>, or who uses a vehicle, or causes or permits a vehicle to be used in contravention of a traffic regulation order, is guilty of an offence<sup>2</sup>.

1 For the meaning of 'traffic regulation order' see PARA 742 ante.

2 Road Traffic Regulation Act 1984 s 5(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Regulation Act 1984 s 5(1) of using a vehicle in contravention of a traffic regulation order outside Greater London is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

As to the disapplication of the Road Traffic Regulation Act 1984 s 5 (as amended) in relation to special parking areas outside London see PARA 821 note 9 post.

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### ***B. ORDERS IN GREATER LONDON SIMILAR TO TRAFFIC REGULATION ORDERS***

#### **747. Orders similar to traffic regulation orders.**

The traffic authority<sup>1</sup> for a road<sup>2</sup> in Greater London may make an order for controlling or regulating vehicular and other traffic<sup>3</sup> (including pedestrians)<sup>4</sup>. Any such order may be made so as to apply:

- 389 (1) to the whole area of a local authority, or to particular parts of that area, or to particular places or streets<sup>5</sup> or parts of streets in that area<sup>6</sup>;
- 390 (2) throughout the day, or during particular periods<sup>7</sup>;
- 391 (3) on special occasions only, or at special times only<sup>8</sup>;
- 392 (4) to traffic of any class<sup>9</sup>;
- 393 (5) subject to such exceptions as may be specified in the order or determined in a manner provided for by it<sup>10</sup>.

No such order may contain any provision for regulating the speed of vehicles on roads<sup>11</sup>.

1 As to traffic authorities see PARAS 731-735 ante. In the case of a road for which the Secretary of State is the traffic authority, the power to make such an order is also exercisable, with his consent, by the local traffic authority: Road Traffic Regulation Act 1984 s 6(2) (substituted by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 21(3)). For the meaning of 'local traffic authority' see PARA 731 ante. As to the exercise of powers under the Road Traffic Regulation Act 1984 s 6(2) (as substituted) in respect of the width of a road see

PARA 730 ante. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 As to the meaning of 'traffic' see PARA 742 note 4 ante.

4 Road Traffic Regulation Act 1984 s 6(1) (amended by the New Roads and Street Works Act 1991 Sch 8 para 21(2)). Provision may, in particular, be made for any of the purposes, or with respect to any of the matters, mentioned in the Road Traffic Regulation Act 1984 Sch 1 (see PARA 748 post), and for any other purpose which is a purpose mentioned in s 1(1)(a)-(g) (as amended) (see PARA 742 text and notes 1-13 ante): s 6(1)(a), (b) (s 6(1)(b) amended by the Environment Act 1995 s 120(1), Sch 22 para 36(2)). An order under the Road Traffic Regulation Act 1984 s 6 (as amended) made for a purpose mentioned in s 1(1)(a) or (b) may be made for that purpose as qualified by s 22C(1) or (2) (as added) (see PARA 742 notes 5-6 ante): s 22C(3) (s 22C added by the Civil Contingencies Act 2004 s 32(1), Sch 2 para 16). See PARA 742 note 5 ante.

As to the exercise of powers under the Road Traffic Regulation Act 1984 s 6(1) (as amended) in respect of the width of a road see PARA 730 ante.

It has been held, in relation to a condition that certain heavy goods vehicles be fitted with brake noise suppressors, that: (1) the condition had been imposed to promote the policy of the Road Traffic Regulation Act 1984 (ie the protection of the environment) and was therefore valid in English law; and (2) the condition did not infringe either EEC Directive 71/320 (OJ L202, 6.9.71, p 37) (which harmonised technical requirements for brakes throughout the EEC) or EEC Directive 70/157 (OJ L042, 23.2.70, p 16) (which was concerned with maximum permitted levels of vehicle and exhaust noise) as neither was concerned with the control of noise or the regulation of traffic: *Freight Transport Association Ltd v London Boroughs Transport Committee* [1991] 3 All ER 915, sub nom *London Boroughs Transport Committee v Freight Transport Association Ltd* [1991] 1 WLR 828, HL.

The power to make an order under the Road Traffic Regulation Act 1984 s 6 (as amended) is also exercisable by the Secretary of State: see PARAS 736-741 ante. Any power of the Secretary of State to make an order under or by virtue of s 6 (as amended) is exercisable by statutory instrument: s 124(2). Orders made under s 6 (as amended) are local in nature, and are not recorded in this work.

In relation to controls on London lorries, the Secretary of State may by order vary an order under s 6 (as amended): see the Deregulation and Contracting Out Act 1994 s 34.

The Road Traffic Regulation Act 1984 s 6 (as amended) has effect in relation to tramcars and trolley vehicles so that such vehicles are exempt from any order made under it: Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, regs 3(1)(b), 5(1)(b), which are expressed to be subject to Pt IV (ie reg 11) (see PARAS 1629-1630 post). Nothing in reg 5(1) affects the operation of an order under the Road Traffic Regulation Act 1984 s 6 (as amended) in so far as it is made in respect of the matters referred to in Sch 1 para 15 (see PARA 748 text and note 22 post): Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 5(3). For the meanings of 'tramcars' and 'trolley vehicles' see PARA 219 ante. The Road Traffic Regulation Act 1984 s 6 (as amended) does not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), 2(a).

As to exemptions for disabled persons see, in relation to England, the Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (England) Regulations 2000, SI 2000/683; and, in relation to Wales, the Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (England and Wales) Regulations 1986, SI 1986/178 (amended by SI 1991/2709; SI 2000/683).

5 In the Road Traffic Regulation Act 1984 s 6 (as amended), s 7 (as amended) (see PARA 749 post) and Sch 1 (see PARA 748 post), 'street' includes any highway, any bridge carrying a highway, and any lane, mews, footway, square, court, alley or passage whether a thoroughfare or not: s 6(6) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 21(5), Sch 9).

6 Road Traffic Regulation Act 1984 s 6(3)(a) (substituted by the Local Government Act 1985 s 8(1), Sch 5 para 4(3)(b)).

7 Road Traffic Regulation Act 1984 s 6(3)(b).

8 Ibid s 6(3)(c).

9 Ibid s 6(3)(d). As to classes of traffic see PARA 208 ante.

10 Ibid s 6(3)(e).

11 Ibid s 6(5). As to speed limits generally see PARA 846 et seq post.



**UPDATE****747 Orders similar to traffic regulation orders**

NOTE 4--Directive 71/320 replaced with effect from 1 November 2014: European Parliament and EC Council Regulation 661/2009 (OJ L200, 31.7.2009, p 1).

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**748. Matters for which orders similar to traffic regulation orders may be made.**

Orders similar to traffic regulation orders<sup>1</sup> may, in particular, be made for any of following purposes, or with respect to any of following matters<sup>2</sup>:

- 394 (1) for prescribing the routes to be followed by all classes of traffic<sup>3</sup>, or by any class or classes of traffic, from one specified point to another, either generally or between any specified times<sup>4</sup>;
- 395 (2) for prescribing streets<sup>5</sup> which are not to be used for traffic by vehicles, or by vehicles of any specified class<sup>6</sup> or classes, either generally or at specified times<sup>7</sup>;
- 396 (3) for regulating the relative position in the roadway of traffic of differing speeds or types<sup>8</sup>;
- 397 (4) for prescribing the places where vehicles, or vehicles of any class, may not turn so as to face in the opposite direction to that in which they were proceeding, or where they may only so turn under conditions prescribed by the order<sup>9</sup>;
- 398 (5) for prescribing the conditions subject to which, and the times at which, articles of exceptionally heavy weight or exceptionally large dimensions may be carried by road<sup>10</sup>;
- 399 (6) for prescribing the number and maximum size and weight of trailers<sup>11</sup> which may be drawn on streets by vehicles, or by vehicles of any class, either generally or on streets of any class or description, and for prescribing that a man ought to be carried on the trailer or, where more than one trailer is drawn, on the rear trailer for signalling to the driver<sup>12</sup>;
- 400 (7) for prescribing the conditions subject to which, and the times at which, articles may be loaded on to or unloaded from vehicles, or vehicles of any class, on streets<sup>13</sup>;
- 401 (8) for prescribing the conditions subject to which, and the times at which, vehicles, or vehicles of any class, delivering or collecting goods or merchandise, or delivering goods or merchandise of any particular class, may stand in streets, or in streets of any class or description, or in specified streets<sup>14</sup>;
- 402 (9) for prescribing the conditions subject to which, and the times at which, vehicles, or vehicles of any class, may be used on streets for collecting refuse<sup>15</sup>;
- 403 (10) for prescribing rules as to precedence to be observed as between vehicles proceeding in the same direction, in opposite directions, or when crossing<sup>16</sup>;
- 404 (11) for prescribing the conditions subject to which, and the times at which, horses, cattle, sheep and other animals may be led or driven on streets within Greater London<sup>17</sup>;

- 405 (12) for requiring the erection, exhibition or removal of traffic notices, and as to  
the form, plan and character of such notices<sup>18</sup>;
- 406 (13) broken down vehicles<sup>19</sup>;
- 407 (14) vehicles, or vehicles of any class, when unattended<sup>20</sup>;
- 408 (15) places in streets where vehicles, or vehicles of any class, may, or may not,  
wait, either generally or at particular times<sup>21</sup>;
- 409 (16) cabs and hackney carriages not hired and being in a street elsewhere than  
on a cab rank<sup>22</sup>;
- 410 (17) for restricting the use of vehicles and animals, and sandwichmen and other  
persons, in streets for the purposes of advertisement of such a nature or in such a  
manner as is to be likely to be a source of danger or to cause obstruction to  
traffic<sup>23</sup>;
- 411 (18) the lighting and guarding of street works<sup>24</sup>;
- 412 (19) the erection or placing or the removal of any works or objects likely to  
hinder the free circulation of traffic in any street or likely to cause danger to  
passengers or vehicles<sup>25</sup>;
- 413 (20) queues of persons waiting in streets<sup>26</sup>;
- 414 (21) priority of entry to public vehicles<sup>27</sup>;
- 415 (22) for enabling any police, local or other public authority to do anything which  
under the order a person ought to have done and has failed to do, and to recover  
from the person so in default, summarily as a civil debt, the expenses of doing it<sup>28</sup>.

1    le an order under the Road Traffic Regulation Act 1984 s 6 (as amended): see PARA 747 ante. For the meaning of 'traffic regulation order' see PARA 742 ante.

2    Ibid s 6(1)(a).

3    As to classes of traffic see PARA 208 ante.

4    Road Traffic Regulation Act 1984 s 6(1)(a), Sch 1 para 1.

5    For the meaning of 'street' see PARA 747 note 5 ante.

6    As to classes of vehicle see PARA 208 ante.

7    Road Traffic Regulation Act 1984 Sch 1 para 2.

8    Ibid Sch 1 para 3.

9    Ibid Sch 1 para 4.

10   Ibid Sch 1 para 5. For the meaning of 'road' see PARA 206 ante.

11   For the meaning of 'trailer' see PARA 210 ante.

12   Road Traffic Regulation Act 1984 Sch 1 para 6.

13   Ibid Sch 1 para 7. See PARA 743 note 11 ante.

14   Ibid Sch 1 para 8. See PARA 743 note 11 ante.

15   Ibid Sch 1 para 9.

16   Ibid Sch 1 para 10.

17   Ibid Sch 1 para 11.

18   Ibid Sch 1 para 12.

19   Ibid Sch 1 para 13.

20   Ibid Sch 1 para 14.

21 Ibid Sch 1 para 15. The onus of proving that a vehicle was parked so as to fall within the scope of an exemption lies upon the person claiming the benefit of the exemption: *Funnell v Johnson* [1962] Crim LR 488, DC. Parking because coffee had spilt over a person's clothes did not prevent the parking from being unlawful: *Hunter v Hammond* [1964] Crim LR 145, (1963) 107 Sol Jo 1024, DC.

22 Road Traffic Regulation Act 1984 Sch 1 para 16.

23 Ibid Sch 1 para 17.

24 Ibid Sch 1 para 18.

25 Ibid Sch 1 para 19.

26 Ibid Sch 1 para 20.

27 Ibid Sch 1 para 21.

28 Ibid Sch 1 para 22. As to money recoverable summarily as a civil debt see MAGISTRATES vol 29(2) (Reissue) PARA 826; and as to enforcement of civil debts see MAGISTRATES vol 29(2) (Reissue) PARA 828.

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#### **749. Provisions that may be included in orders similar to traffic regulation orders.**

Any order similar to a traffic regulation order<sup>1</sup> may make provision for identifying any part of any road<sup>2</sup> to which, or any time at which, or period during which, any provision contained in the order is for the time being to apply by means of a traffic sign<sup>3</sup> of a type or character specified in the order<sup>4</sup> and for the time being lawfully in place<sup>5</sup>.

Any such order which imposes any restriction on the use by vehicles of streets in Greater London, or the waiting of vehicles in such streets, may include provision with respect to the issue and display of certificates or other means of identification of vehicles which are excepted from the restriction, whether generally or in particular circumstances or at particular times<sup>6</sup>.

Any such order may also include provision with respect to the issue, display and operation of devices for indicating the time at which a vehicle arrived at, and the time at which it ought to leave, any place in a street in which waiting is restricted by the order, or one or other of those times, and for treating the indications given by any such device as evidence of such facts and for such purposes as may be prescribed by the order<sup>7</sup>.

Any such order may provide for the suspension or modification, so long as the order remains in force, of any provisions of any Acts (whether public general or local or private, and including provisions contained in the Road Traffic Regulation Act 1984), byelaws or regulations dealing with the same subject matter as the order, or of any Acts conferring power to make byelaws or regulations dealing with the same subject matter, so far as such provisions apply to any place or street to which the order applies<sup>8</sup>.

No appeal lies to the Secretary of State<sup>9</sup> from the traffic commissioner for the South-Eastern and Metropolitan Traffic Area<sup>10</sup> in the case of a decision of his with respect to a London local service licence if and so far as he certifies that the decision was necessary to secure conformity with any order<sup>11</sup> which prescribes<sup>12</sup>:

- 416 (1) the routes to be followed, or streets which are not to be used, by vehicles affected by the decision<sup>13</sup>; or
- 417 (2) the places in streets where such vehicles may or may not wait<sup>14</sup>; or
- 418 (3) the stopping places for such vehicles<sup>15</sup>.

Before the Secretary of State makes any such order which will impose new or additional duties on the police, he must consult the commissioner of police for any police area<sup>16</sup> in which is situated any road or part of a road to which the order is to relate<sup>17</sup>.

1     Ie an order under the Road Traffic Regulation Act 1984 s 6 (as amended): see PARA 747 ante. For the meaning of 'traffic regulation order' see PARA 742 ante.

2     For the meaning of 'road' see PARA 206 ante.

3     For the meaning of 'traffic sign' see PARA 830 post.

4     Ie being a type prescribed or character authorised under the Road Traffic Regulation Act 1984 s 64: see PARA 830 post. For the meaning of 'prescribed' see PARA 735 note 3 ante.

5     Ibid s 7(1). For the purposes of any such order, any such traffic sign placed on or near a street is deemed to be lawfully in place unless the contrary is proved: s 7(1). As to the meaning of 'street' see PARA 747 note 5 ante. Section 7 (as amended) does not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), 2(a).

6     Road Traffic Regulation Act 1984 s 7(2).

7     Ibid s 7(3) (amended by the Deregulation (Parking Equipment) Order 1996, SI 1996/1553, art 2(1), Schedule). In relation to orders made before 12 June 1996 see the Deregulation (Parking Equipment) Order 1996, SI 1996/1553, art 3.

8     Road Traffic Regulation Act 1984 s 7(4).

9     As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

10    Ie under the Transport Act 1985 s 42 (prospectively repealed): see PARA 1246 post. The reference in the Road Traffic Regulation Act 1984 s 7(5) (as amended) to the South-Eastern and Metropolitan Traffic Area is to be construed as if it were contained in the Public Passenger Vehicles Act 1981 (see PARA 1132 et seq post): Road Traffic Regulation Act 1984 s 7(7) (amended by virtue of the Traffic Areas (Reorganisation) Order 1990, SI 1991/288, art 5(2)).

11    Ie in force under the Road Traffic Regulation Act 1984 s 6 (as amended): see PARA 747 ante.

12    Ibid s 7(5) (amended by the Transport Act 1985 s 1, Sch 1 para 15; and the Traffic Areas (Reorganisation) Order 1990, SI 1991/288 art 5(2)).

13    Road Traffic Regulation Act 1984 s 7(5)(a).

14    Ibid s 7(5)(b).

15    Ibid s 7(5)(c).

16    As to police areas see POLICE vol 36(1) (2007 Reissue) PARA 136 et seq.

17    Road Traffic Regulation Act 1984 s 7(6) (amended by the Road Traffic Act 1991 s 81, Sch 7 para 3; and the Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001, SI 2001/2568, arts 6(1), 16, Schedule para 7(1), (2)).

1663)/9. ROAD TRAFFIC REGULATION/(2) TRAFFIC REGULATION/(i) Traffic Regulation Orders and Schemes/B. ORDERS IN GREATER LONDON SIMILAR TO TRAFFIC REGULATION ORDERS/750. Contravention of orders similar to traffic regulation orders.

### **750. Contravention of orders similar to traffic regulation orders.**

Any person who acts in contravention of, or fails to comply with, an order similar to a traffic regulation order<sup>1</sup> is guilty of an offence<sup>2</sup>.

1     le an order under the Road Traffic Regulation Act 1984 s 6 (as amended): see PARA 747 ante. For the meaning of 'traffic regulation order' see PARA 742 ante.

2     Ibid s 8(1). Section 8(1) does not apply in relation to any order under s 6 (as amended) so far as it designates any parking places: s 8(1A) (added by the Road Traffic Act 1991 s 65(2)). A person guilty of an offence under the Road Traffic Regulation Act 1984 s 8 (as amended) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Regulation Act 1984 s 8(1) of breaching a traffic regulation order in Greater London is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1023 post; and as to legal proceedings generally see PARA 1027 et seq post. The Road Traffic Regulation Act 1984 s 8 does not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), 2(a).

### **UPDATE**

### **750 Contravention of orders similar to traffic regulation orders**

NOTE 2--Road Traffic Regulation Act 1984 s 8(1A) repealed: Traffic Management Act 2004 Sch 12 Pt 1.

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### **C. EXPERIMENTAL ORDERS AND SCHEMES**

### **751. Experimental traffic orders and their time limits.**

The traffic authority<sup>1</sup> for a road<sup>2</sup> may, for the purposes of carrying out an experimental scheme of traffic control, make an order (an 'experimental traffic order') making any such provision, as respects a road outside Greater London, as may be made by a traffic regulation order<sup>3</sup> and, as respects a road in Greater London, as may be made by an order under certain provisions of the Road Traffic Regulation Act 1984<sup>4</sup>. An experimental traffic order made by a local traffic authority<sup>5</sup> outside Greater London may, with the consent of the Secretary of State, extend to a road in relation to which he is the traffic authority if the order forms part of a scheme of general traffic control relating to roads of which at least one has a junction with the length of road in question<sup>6</sup>. In the case of a road in Greater London for which the Secretary of State is the traffic authority, the power to make such an order is also exercisable, with his consent, by the local traffic authority<sup>7</sup>.

An experimental traffic order may not continue in force for longer than 18 months<sup>8</sup>. Where an experimental traffic order has been made for a period of less than 18 months, and the order has not ceased to be in force, the authority by which the order was made may from time to time by order direct that it is to continue in force for a further period ending not later than 18 months after it first came into force<sup>9</sup>.

Where an experimental traffic order made by a London borough council or the Common Council of the City of London has not ceased to be in force, and the Secretary of State is satisfied that:

- 419 (1) an order which the council proposes to make<sup>10</sup> has the sole effect of reproducing and continuing in force indefinitely the provisions of the experimental traffic order, whether or not that order has been varied, or has been modified or suspended<sup>11</sup>; and
- 420 (2) in consequence of the council causing a public inquiry to be held into the order so proposed to be made, it would be unable to make it so that it would come into operation before the experimental traffic order ceases to be in force<sup>12</sup>,

the Secretary of State may, at the request of the council, from time to time direct that the experimental traffic order is to continue in force for a further period not exceeding six months from the date when it would otherwise cease to be in force<sup>13</sup>.

1 As to traffic authorities see PARAS 731-735 ante.

2 In the Road Traffic Regulation Act 1984 s 9 (as amended) and s 10 (as amended) (see PARA 752 post), 'road', in relation to Greater London, includes any street as defined by s 6(6) (see PARA 747 note 5 ante): s 9(6). For the meaning of 'road' generally see PARA 206 ante.

3 For the meaning of 'traffic regulation order' see PARA 742 ante. An experimental traffic order under *ibid* s 9 (as amended) has been held to be valid only if there was a genuine and identified experiment which was designed to gather information by monitoring the working of a traffic scheme: *UK Waste Management Ltd v West Lancashire District Council* [1997] RTR 201, (1996) 95 LGR 484, DC.

4 Road Traffic Regulation Act 1984 ss 9(1), 142(1) (s9(1) substituted by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 23(2); and amended by the Road Traffic Act 1991 s 48, Sch 4 para 24). The orders referred to in the text are orders under the Road Traffic Regulation Act 1984 s 6 (as amended) (see PARA 747 ante), s 45 (as amended) (see PARA 808 post), s 46 (as amended) (see PARA 810 post), s 49 (as amended) (see PARA 814 post), or s 83(2) (as substituted) (see PARA 847 post) or by virtue of s 84(1)(a) (as substituted) (see PARA 848 post): see s 9(1)(b) (as so substituted and amended).

As to the exercise of powers under s 9 (as amended) in respect of the width of a road see PARA 730 ante.

The power to make an order under s 9 (as amended) is also exercisable by the Secretary of State: see PARAS 736-741 ante. Any power of the Secretary of State to make an order under or by virtue of s 9 (as amended) is exercisable by statutory instrument: s 124(2). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. Orders made under s 9 (as amended) are local in nature, and are not recorded in this work.

In relation to controls on London lorries, the Secretary of State may by order vary an order under s 9 (as amended): see the Deregulation and Contracting Out Act 1994 s 34.

Any power which is exercisable in relation to any road under the Road Traffic Regulation Act 1984 s 9 (as amended), otherwise than by virtue of s 125 (as amended) (see PARA 730 ante), is exercisable with respect to the whole or any part of the width of the road: s 126.

So much of s 4(1) (see PARA 745 ante) or s 7(1) (see PARA 749 ante) as provides for a presumption that a traffic sign is lawfully placed applies for the purposes of an order under s 9 (as amended) making any such provision as is referred to in s 4(1) or s 7(1): s 9(5A) (added by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 23(4)). For the meaning of 'traffic sign' see PARA 830 post.

The Road Traffic Regulation Act 1984 s 9 (as amended) has effect in relation to tramcars and trolley vehicles so that such vehicles are exempt from any order made under it: Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, regs 3(1)(c), 5(1)(c), which are expressed to be subject to Pt IV (ie reg 11) (see PARAS 1629-1630 post). For the meanings of 'tramcars' and 'trolley vehicles' see PARA 219 ante. Nothing in reg 5(1) affects the operation:

1358 (1) of any provision in an order under the Road Traffic Regulation Act 1984 s 9 (as amended) prohibiting or restricting the waiting of vehicles or the loading or unloading of vehicles (Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 5(4));

1359 (2) of an order under the Road Traffic Regulation Act 1984 s 9 (as amended) as respects traffic on roads in Greater London in so far as it is made in respect of the matters referred to in Sch 1 para 15 (see PARA 748 text and note 22 ante) or imposes a speed limit (Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 5(5)).

As to exemptions for disabled persons see, in relation to England, the Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (England) Regulations 2000, SI 2000/683; and, in relation to Wales, the Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (England and Wales) Regulations 1986, SI 1986/178 (amended by SI 1991/2709; SI 2000/683).

5 For the meaning of 'local traffic authority' see PARA 731 ante.

6 Road Traffic Regulation Act 1984 s 9(2) (substituted by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 23(3)).

7 Road Traffic Regulation Act 1984 s 9(2A) (added by the New Roads and Street Works Act 1991 Sch 8 para 23(3)).

8 Road Traffic Regulation Act 1984 s 9(3).

9 Ibid s 9(4). This provision is expressed to be subject to s 124, Sch 9 Pts I-III (as amended) (see PARAS 736-738 ante): see s 9(4).

10 Ie under any of the provisions specified in ibid s 9(1)(b) (as substituted and amended): see note 4 supra.

11 Ibid s 9(5)(a) (s 9(5) amended by the Local Government Act 1985 s 8, Sch 5 para 4(4)). The text refers to a modification or suspension under the Road Traffic Regulation Act 1984 s 10(2) (as substituted) (see PARA 752 post): see s 9(5)(a) (as so amended).

12 Ibid s 9(5)(b) (as amended: see note 11 supra).

13 Ibid s 9(5) (as amended: see note 11 supra).

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## **752. Provisions that may be contained in experimental traffic orders.**

An experimental traffic order<sup>1</sup>: (1) may provide for the suspension or modification, while the order is in force, of any provision previously made by or under any enactment, if it is a provision that could have been made by the order<sup>2</sup>; and (2) to the extent that it is inconsistent with any provision subsequently made by or under any enactment, ceases to have effect<sup>3</sup>.

An experimental traffic order may include provision empowering a specified officer of the authority who made the order, or a person authorised by such a specified officer, to modify or suspend the operation of the order or any provision of it if it appears to him essential<sup>4</sup>: (a) in the interests of the expeditious, convenient and safe movement of traffic<sup>5</sup>; (b) in the interests of providing suitable and adequate on-street parking facilities<sup>6</sup>; or (c) for preserving or improving the amenities of the area through which any road traffic affected by the order runs<sup>7</sup>. The power conferred by such a provision must be exercised only after consulting the appropriate chief officer of police and giving such public notice as the Secretary of State<sup>8</sup> may

direct<sup>9</sup>. Any such power to modify an experimental traffic order as is mentioned above does not extend to making additions to the order or to designating additional on-street parking places<sup>10</sup> for which charges are made; but, subject to that, the modifications may be of any description<sup>11</sup>.

No appeal lies to the Secretary of State from the commissioner for the South-Eastern and Metropolitan Traffic Area<sup>12</sup> in the case of a decision of the commissioner with respect to a London local service licence if and so far as he certifies that the decision was necessary to secure conformity with an experimental traffic order prescribing<sup>13</sup>:

- 421 (i) the routes to be followed, or roads<sup>14</sup> which are not to be used, by vehicles affected by the decision<sup>15</sup>; or
- 422 (ii) the places in roads where such vehicles may or may not wait<sup>16</sup>; or
- 423 (iii) the stopping places for such vehicles<sup>17</sup>.

The Secretary of State may repay to a London borough council or the Common Council of the City of London any expenses incurred by that council in connection with any experimental traffic order made by it<sup>18</sup>.

1 For the meaning of 'experimental traffic order' see PARA 751 text and note 3 ante.

2 Road Traffic Regulation Act 1984 s 10(1)(a).

3 Ibid s 10(1)(b).

4 Ibid s 10(2) (substituted by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 24).

5 Road Traffic Regulation Act 1984 s 10(2)(a) (as substituted: see note 4 supra). As to the meaning of 'traffic' see PARA 742 note 4 ante.

6 Ibid s 10(2)(b) (as substituted: see note 4 supra).

7 Ibid s 10(2)(c) (as substituted: see note 4 supra).

8 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

9 Road Traffic Regulation Act 1984 s 10(2) (as substituted: see note 4 supra). As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

10 'Street parking place' refers to parking places on land which forms part of a road: *ibid* s 142(1).

11 Ibid s 10(3) (substituted by the New Roads and Street Works Act 1991 Sch 8 para 24).

12 *Ie* under the Transport Act 1985 s 42 (prospectively repealed): see PARA 1246 post. The reference in the Road Traffic Regulation Act 1984 s 10(4) (as amended) to the South-Eastern and Metropolitan Traffic Area is to be construed as if it were contained in the Public Passenger Vehicles Act 1981 (see PARA 1132 et seq post): Road Traffic Regulation Act 1984 s 10(6) (added by the Transport Act 1985 s 1, Sch 1 para 15; and amended by virtue of the Traffic Areas (Reorganisation) Order 1991, SI 1991/288, art 5(2)).

13 Road Traffic Regulation Act 1984 s 10(4) (amended by the Transport Act 1985 s 1, Sch 1 para 15; and the Traffic Areas (Reorganisation) Order 1991, SI 1991/288, art 5(2)).

14 For the meaning of 'road' for these purposes see PARA 751 note 2 ante, and for the meaning of 'road' generally see PARA 206 ante.

15 Road Traffic Regulation Act 1984 s 10(4)(a) (as amended: see note 13 supra).

16 Ibid s 10(4)(b).

17 Ibid s 10(4)(c).

18 Ibid s 10(5) (amended by the Local Government Act 1985 s 8(1), Sch 5 para 4(5)).



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### **753. Contravention of experimental traffic orders.**

Any person who acts in contravention of, or fails to comply with, an experimental traffic order<sup>1</sup> is guilty of an offence<sup>2</sup>. However, this does not apply in relation to any experimental traffic order so far as it designates any parking places in Greater London<sup>3</sup>.

1 For the meaning of 'experimental traffic order' see PARA 751 text and note 3 ante.

2 Road Traffic Regulation Act 1984 s 11(1) (renumbered by the Road Traffic Act 1991 s 65(3)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Regulation Act 1984 s 11 (as amended) of breaching an experimental traffic order is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

As to the disapplication of the Road Traffic Regulation Act 1984 s 11 (as amended) in relation to special parking areas outside London see PARA 821 note 9 post; and in relation to special parking areas in London see PARA 822 note 6 post.

3 Ibid s 11(2) (added by the Road Traffic Act 1991 s 65(3)). As from a day to be appointed, this provision is repealed by the Traffic Management Act 2004 s 98, Sch 12 Pt 1. The appointed day in relation to England is 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053), but at the date at which this volume states the law no such day had been appointed in relation to Wales.

## **UPDATE**

### **753 Contravention of experimental traffic orders**

NOTE 3--Day appointed in relation to Wales is 31 March 2008: SI 2007/3174.

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## ***D. TEMPORARY SUSPENSION OF ORDERS***

### **754. Temporary suspension of orders.**

The Metropolitan Police Commissioner<sup>1</sup> or the City of London Police Commissioner<sup>2</sup> may temporarily suspend the operation of any provision of certain orders<sup>3</sup> so far as that provision relates to any road<sup>4</sup> or part of a road in Greater London which is within his area, in order to prevent or mitigate congestion or obstruction of traffic<sup>5</sup>, or danger to or from traffic in consequence of extraordinary circumstances<sup>6</sup>. The period of suspension must not continue for

more than seven days<sup>7</sup>. If the Secretary of State<sup>8</sup> gives his consent to the period of suspension being continued for more than seven days, the suspension may continue until the end of such period as may be specified by the Secretary of State in giving his consent<sup>9</sup>.

- 1 As to the Metropolitan Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 183 et seq.
- 2 As to the City of London Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 187.
- 3 le made under the Road Traffic Regulation Act 1984 s 6 (as amended) (see PARA 747 ante) or s 9 (as amended) (see PARA 751 ante).
- 4 For the meaning of 'road' see PARA 206 ante.
- 5 As to the meaning of 'traffic' see PARA 742 note 4 ante.
- 6 Road Traffic Regulation Act 1984 s 13A(1) (s 13A added by the Road Traffic Act 1991 s 81, Sch 7 para 4).
- 7 Road Traffic Regulation Act 1984 s 13A(2) (as added: see note 6 supra).
- 8 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 9 Road Traffic Regulation Act 1984 s 13A(3) (as added: see note 6 supra).

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## **(ii) Temporary Orders and Notices**

### **755. Temporary prohibition or restriction of traffic on roads.**

If the traffic authority<sup>1</sup> for a road<sup>2</sup> is satisfied that traffic<sup>3</sup> on the road ought to be restricted or prohibited:

- 424 (1) because works are being or are proposed to be executed on or near the road<sup>4</sup>; or
- 425 (2) because of the likelihood of danger to the public, or of serious damage to the road, which is not attributable to such works<sup>5</sup>; or
- 426 (3) for the purpose of enabling the duty imposed by provisions relating to litter clearing and cleaning<sup>6</sup> to be discharged<sup>7</sup>,

the authority may by order restrict or prohibit temporarily the use of that road, or of any part of it, by vehicles, or vehicles of any class<sup>8</sup>, or by pedestrians<sup>9</sup>, to such extent and subject to such conditions or exceptions as it may consider necessary<sup>10</sup>.

The traffic authority for a road may at any time by notice restrict or prohibit temporarily the use of the road, or of any part of it, by vehicles, or vehicles of any class, or by pedestrians, where it appears to it that it is: (a) necessary or expedient for the reason mentioned in head (1) above or the purpose mentioned in head (3) above<sup>11</sup>; or (b) necessary for the reason mentioned in head (2) above<sup>12</sup>, that the restriction or prohibition should come into force without delay<sup>13</sup>.

When considering the making of an order or the issue of a notice under these provisions an authority must have regard to the existence of alternative routes suitable for the traffic which will be affected by the order or notice<sup>14</sup>.

An order or notice may make any such provision as may be included in a traffic regulation order<sup>15</sup> or any provision restricting the speed of vehicles, but no such order or notice may be made or issued with respect to any road which would have the effect of preventing at any time access for pedestrians to any premises situated on or adjacent to the road, or to any other premises accessible for pedestrians from, and only from, the road<sup>16</sup>. Where any such order or notice is made or issued by an authority (the 'initiating authority') any such provision as is mentioned above<sup>17</sup> may be made as respects any alternative road<sup>18</sup>:

- 427 (i) if that authority is the traffic authority for the alternative road, by an order made by the initiating authority or by that notice<sup>19</sup>;
- 428 (ii) if the initiating authority is not the traffic authority for the alternative road, by an order made by the initiating authority with the consent of the traffic authority for the alternative road<sup>20</sup>.

An order or notice made or issued under the above provisions<sup>21</sup> may suspend certain provisions<sup>22</sup> or, may, for either of the reasons or for the purpose mentioned in heads (1) to (3) above<sup>23</sup> suspend any such provision without imposing any restriction or prohibition mentioned<sup>24</sup> above<sup>25</sup>.

1 As to traffic authorities see PARAS 731-735 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 As to the meaning of 'traffic' see PARA 742 note 4 ante.

4 Road Traffic Regulation Act 1984 s 14(1)(a) (s 14 substituted by the Road Traffic (Temporary Restrictions) Act 1991 s 1(1), Sch 1). Where traffic has been temporarily prohibited or restricted by an order under the Road Traffic Regulation Act 1984 s 14 (as substituted) for the purpose of enabling works to be carried out on a road, no private law rights exist in respect of the obstruction to the road caused by those works: *Great House at Sonning Ltd v Berkshire County Council* [1996] RTR 407, 95 LGR 350, CA.

5 Road Traffic Regulation Act 1984 s 14(1)(b) (as substituted: see note 4 supra). An order may be made under s 14(1)(b) (as substituted) for a purpose relating to danger or damage connected with terrorism: s 22C(4) (s 22C added by the Civil Contingencies Act 2004 s 32(1), Sch 2 para 16). See PARA 742 note 5 ante. As to the meaning of 'terrorism' see PARA 742 note 5 ante. The powers given by the Road Traffic Regulation Act 1984 s 14 (as substituted) do not authorise the prohibition of traffic in order to reduce pollution; these powers apply only to the risk of damage caused directly by vehicles by way of accidents: *R v Greenwich London Borough Council, ex p Williams* (1996) 160 JP 270, [1997] JPL 62.

6 I.e. the Environmental Protection Act 1990 s 89(1)(a) or (2): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 723.

7 Road Traffic Regulation Act 1984 s 14(1)(c) (as substituted: see note 4 supra).

8 As to classes of vehicle see PARA 208 ante.

9 As to the meaning of 'pedestrians' for these purposes see PARA 743 note 14 ante.

10 Road Traffic Regulation Act 1984 s 14(1) (as substituted: see note 4 supra). As to the exercise of powers under s 14 (as substituted) in respect of the width of a road see PARA 730 ante.

The power to make an order under s 14 (as substituted) is also exercisable by the Secretary of State: see PARAS 736-741 ante. Any power of the Secretary of State to make an order under or by virtue of s 14 (as substituted) is exercisable by statutory instrument: s 124(2). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. Orders made under s 14 (as substituted) are local in nature, and are not recorded in this work.

Section 14 (as substituted) has effect in relation to tramcars and trolley vehicles so that such vehicles are exempt from any order or notice made under it: Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, regs 4(1), 6(1). Nothing in reg 4(1) affects the operation of any provision in an order or notice under the Road Traffic Regulation Act 1984 s 14 (as substituted) restricting the speed of vehicles: Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 4(2). Nothing under reg 6(1) affects the operation of any provision in an order or notice under the Road Traffic Regulation Act 1984 s 14 (as substituted): (1) prohibiting or restricting the waiting of vehicles or the loading and unloading of vehicles; (2) restricting the speed of vehicles; (3) prohibiting or restricting overtaking; or (4) prohibiting or restricting the use of a road or part of the width of a road by vehicular traffic or by any class of vehicular traffic: Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 6(2). For the meanings of 'tramcars' and 'trolley vehicles' see PARA 219 ante.

11 Road Traffic Regulation Act 1984 s 14(2)(a) (as substituted: see note 4 supra).

12 Ibid s 14(2)(b) (as substituted: see note 4 supra). A notice may be issued under s 14(2)(b) (as substituted) for a purpose relating to danger or damage connected with terrorism: s 22C(5) (as added: see note 5 supra).

13 Ibid s 14(2) (as substituted: see note 4 supra).

14 Ibid s 14(3) (as substituted: see note 4 supra).

15 Ie any such provision as is mentioned in ibid s 2(1), (2) or (3) (as amended) (see PARA 743 ante) or s 4(1) (see PARA 745 ante). For the meaning of 'traffic regulation order' see PARA 742 ante.

16 Ibid s 14(4) (as substituted: see note 4 supra).

17 See ibid s 14(4) (as substituted); and the text and notes 15-16 supra.

18 Ibid s 14(5) (as substituted: see note 4 supra). For these purposes, 'alternative road', in relation to a road as respects which an order is made under s 14(1) (as substituted) (see the text and notes 1-10 supra) or a notice is issued under s 14(2) (as substituted) (see the text and notes 11-13 supra), means a road which: (1) provides an alternative route for traffic diverted from the first-mentioned road or from any other alternative road; or (2) is capable of providing such an alternative route apart from any statutory provision authorised by s 14(7) (as substituted) (see the text and notes 21-25 infra) to be suspended by an order made or notice issued by virtue of s 14(5) (as substituted): s 14(9) (as so substituted).

19 Ibid s 14(5)(a) (as substituted: see note 4 supra).

20 Ibid s 14(5)(b) (as substituted: see note 4 supra). The provisions of s 3(1), (2) (as amended) (see PARA 744 ante) apply to the provisions that may be made under s 14(5) (as substituted) as they apply to the provisions of a traffic regulation order: s 14(6) (as so substituted).

21 Ie under ibid s 14 (as substituted).

22 Ie any statutory provision to which ibid s 14(7) (as substituted) applies. Section 14(7) applies to: (1) any statutory provision of a description which could have been contained in an order or notice under s 14 (as substituted); (2) an order under s 32(1)(b) (see PARA 784 post), s 35 (as amended) (see PARA 790 post), s 45 (as amended) (see PARA 808 post), s 46 (as amended) (see PARA 810 post) or s 49 (as amended) (see PARA 814 post) or any such order as is mentioned in Sch 10 para 11(1) (transitional and saving provisions); and (3) an order under s 6 (as amended) (see PARA 747 ante), so far as it designates any parking places in Greater London: s 14(8) (as substituted: see note 4 supra). For the meaning of 'statutory' see PARA 719 note 7 ante.

23 Ie mentioned in s 14(1) (as substituted): see the text and notes 1-10 supra.

24 Ie mentioned in ibid s 14(1) or (2) (as substituted): see the text and notes 1-13 supra.

25 Ibid s 14(7) (as substituted: see note 4 supra).

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## 756. Duration of temporary restriction or prohibition of traffic on roads.

A temporary restriction or prohibition order<sup>1</sup> must not continue in force, if it is in respect of a footpath<sup>2</sup>, bridleway<sup>3</sup>, cycle track<sup>4</sup> or byway open to all traffic<sup>5</sup>, for more than six months and, in any other case, for more than 18 months, from the date on which it comes into force<sup>6</sup>. Where an order subject to the time limit of 18 months ('the temporary order') has not ceased to be in force and the Secretary of State<sup>7</sup> is satisfied that:

- 429 (1) an order which the authority that made the temporary order proposes to make under any other provision of the Road Traffic Regulation Act 1984 has the sole effect of reproducing the provisions of the temporary order and continuing them in force<sup>8</sup>; and
- 430 (2) in consequence of the procedure required to be followed in connection with the making of the proposed order that authority would be unable to make it so that it would come into operation before the temporary order ceases to be in force<sup>9</sup>,

the Secretary of State may from time to time direct that the temporary order is to continue in force for a further period not exceeding six months from the date on which it would otherwise cease to be in force<sup>10</sup>. Where the Secretary of State is not himself the authority that made the temporary order he must not give such a direction except at the request of that authority<sup>11</sup>. The Secretary of State may, at the request of an authority that has made an order subject to the time limit of six months, from time to time direct that the order is to continue in force for a further period from the date on which it would otherwise cease to be in force<sup>12</sup>. Where the Secretary of State refuses such a request in respect of an order no further order<sup>13</sup> may be made in respect of any length of road to which the previous order related unless the Secretary of State has consented to the making of the further order or at least three months have expired since the date on which the previous order ceased to be in force<sup>14</sup>.

A prohibition or restriction notice<sup>15</sup> must not continue in force:

- 431 (a) if issued because works are being or are proposed to be executed on or near the road<sup>16</sup> or for the purpose of enabling the duty to carry out litter clearing and cleaning to be discharged<sup>17</sup>, for more than five days from the date of the notice<sup>18</sup>;
- 432 (b) if issued because of the likelihood of danger to the public, or of serious damage to the road, which is not attributable to such works<sup>19</sup>, for more than 21 days from the date of the notice<sup>20</sup>,

but the Secretary of State may by regulations alter the number of days for the time being so specified<sup>21</sup>.

1 le under the Road Traffic Regulation Act 1984 s 14 (as substituted): see PARA 755 ante.

2 For these purposes, 'footpath' does not include a highway over which the public has a right of way on foot only which is at the side of a public road: *ibid* s 15(9)(a) (s 15 substituted by the Road Traffic (Temporary Restrictions) Act 1991 s 1(1), Sch 1). For the meaning of 'footpath' generally see PARA 206 ante. For the meaning of 'road' see PARA 206 ante.

3 For the meaning of 'bridleway' see PARA 206 ante.

4 For these purposes, 'cycle track' has the same meaning as in the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 64): Road Traffic Regulation Act 1984 s 15(9)(b) (as substituted: see note 2 *supra*).

5 For these purposes, 'byway open to all traffic' means a highway over which the public has a right of way for vehicular and all other kinds of traffic but which is used by the public mainly for the purpose for which footpaths and bridleways are used: *ibid* s 15(9)(c) (as substituted: see note 2 *supra*). As to the meaning of 'traffic' see PARA 742 note 4 ante.

6 Ibid s 15(1) (as substituted: see note 2 supra). This provision is expressed to be subject to s 15(2), (3), (5) (as substituted): see s 15(1) (as so substituted). The time limit of 18 months in s 15(1) (as substituted) does not apply to an order made for the reason mentioned in s 14(1)(a) (as substituted) (see PARA 755 text and notes 1-4 ante) if the authority making it is satisfied, and it is stated in the order that it is satisfied, that the execution of the works in question will take longer; but in any such case the authority must revoke the order as soon as the works are completed: s 15(2) (as so substituted).

7 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

8 Road Traffic Regulation Act 1984 s 15(3)(a) (as substituted: see note 2 supra)

9 Ibid s 15(3)(b) (as substituted: see note 2 supra).

10 Ibid s 15(3) (as substituted: see note 2 supra). This provision is expressed to be subject to s 15(4) (as substituted) (see the text and note 11 infra): see s 15(3) (as so substituted).

11 Ibid s 15(4) (as substituted: see note 2 supra).

12 Ibid s 15(5) (as substituted: see note 2 supra).

13 Ie no further order to which ibid s 15(5) (as substituted) applies.

14 Ibid s 15(6) (as substituted: see note 2 supra).

15 Ie under ibid s 14 (as substituted): see PARA 755 ante.

16 Ie if the notice is issued for the reason mentioned in ibid s 14(1)(a) (as substituted): see PARA 755 head (1) ante.

17 Ie if the notice is issued for the purpose mentioned in ibid s 14(1)(c) (as substituted): see PARA 755 head (3) ante.

18 Ibid s 15(7)(a) (as substituted: see note 2 supra).

19 Ie if the notice is issued for the reason mentioned in ibid s 14(1)(b) (as substituted): see PARA 755 head (2) ante.

20 Ibid s 15(7)(b) (as substituted: see note 2 supra).

21 Ibid s 15(7) (as substituted: see note 2 supra). At the date at which this volume states the law no regulations had been made under s 15(7) (as substituted). As to the making of regulations generally see PARA 720 ante.

Provided that no restriction or prohibition imposed under s 14 (as substituted) (see PARA 755 ante) in respect of any length of road remains in force for more than the period applicable to an order in respect of the road under s 15(1) (as substituted) (except by virtue of s 15(2), (3) or (5) (as substituted) and subject to s 15(6) (as substituted)):

1360 (1) a restriction or prohibition imposed by an order under s 14 (as substituted) may be continued by a further order or further orders under s 14 (as substituted) (s 15(8)(a) (as so substituted)); and

1361 (2) a restriction or prohibition imposed by a notice under s 14 (as substituted) may be continued by an order under s 14 (as substituted) or, if the notice was issued for the reason mentioned in s 14(1)(b) (as substituted), by one (but not more than one) further notice under s 14 (as substituted) (s 15(8)(b) (as so substituted)).

Notices/757. Regulations with respect to orders and notices relating to temporary prohibition or restriction of traffic on roads.

### **757. Regulations with respect to orders and notices relating to temporary prohibition or restriction of traffic on roads.**

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> with respect to the procedure to be followed in connection with the making of orders and the issue of notices under the provisions relating to temporary prohibitions or restrictions on roads<sup>3</sup> including provision for notifying the public of the exercise, or proposed exercise, of certain powers<sup>4</sup> and of the effect of orders and notices made or issued in the exercise of those powers<sup>5</sup>. The Secretary of State may by such regulations make, in relation to such orders as he thinks appropriate, provision for the making and consideration of objections to a proposed order and for any of the specified matters<sup>6</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 As to the regulations made see the Road Traffic (Temporary Restrictions) Procedure Regulations 1992, SI 1992/1215. As to the making of regulations generally see PARA 720 ante.

3 I.e. under the Road Traffic Regulation Act 1984 s 14 (as substituted): see PARA 755 ante.

4 I.e. powers conferred by ibid s 14 (as substituted): see PARA 755 ante.

5 Ibid s 16(2) (substituted by the Road Traffic (Temporary Restrictions) Act 1991 s 1(2)). As to the Secretary of State's power to make payments to public authorities in respect of their expenditure on the prevention and detection of offences under the Road Traffic Regulation Act 1984 s 16 (as amended) and on enforcement action relating to such offences see the Vehicles (Crime) Act 2001 s 38; and PARA 758 post.

6 Road Traffic Regulation Act 1984 s 16(2A)(a), (b) (s 16(2A) added by the Road Traffic (Temporary Restrictions) Act 1991 s 1(2)). The specified matters referred to in the text are any of the matters mentioned in the Road Traffic Regulation Act 1984 s 124, Sch 9 para 22(1) (see PARA 738 ante): see s 16(2A) (as so added). Schedule 9 para 25 (see PARA 738 ante) applies to regulations under s 16(2) (as substituted) as it applies to regulations under Sch 9 Pt III paras 20-26 (as amended) (see PARA 738 ante), taking references to orders as including both orders and notices: s 16(2A) (as so added).

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### **758. Contravention of orders relating to temporary prohibitions or restrictions on roads.**

A person who contravenes, or who uses or permits the use of a vehicle in contravention of, a restriction or prohibition<sup>1</sup> is guilty of an offence<sup>2</sup>.

The Secretary of State<sup>3</sup> may make payments in respect of the whole or any part of the expenditure of a public authority<sup>4</sup> in relation to the prevention or detection of such offences which consist in contraventions of restrictions on the speed of vehicles<sup>5</sup> or any enforcement action or proceedings in respect of such offences or any alleged such offences<sup>6</sup>.

1 I.e. imposed by the Road Traffic Regulation Act 1984 s 14 (as substituted): see PARA 755 ante.

2 Ibid s 16(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale; disqualification is discretionary if committed in respect of a speed restriction; endorsement is obligatory if committed in respect of a speed restriction; and 3-6 penalty points (or 3, if a fixed penalty) may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (amended by the Road Traffic Act 1991 s 26, Sch 2 paras 1, 2). As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Regulation Act 1984 s 16(1) of using a vehicle in contravention of temporary prohibition or restriction of traffic in case of execution of works etc is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; and as to legal proceedings generally see PARA 1023 et seq post.

As to the disapplication of the Road Traffic Regulation Act 1984 s 16(1) in relation to special parking areas outside London see PARA 821 post; and in relation to special parking areas in London see PARA 822 post.

3 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 'Public authority' means: (1) any highway authority (within the meaning of the Highways Act 1980: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 495 et seq); (2) any police authority established under the Police Act 1996 s 3, the Metropolitan Police Authority or the Common Council of the City of London in its capacity as a police authority (see POLICE vol 36(1) (2007 Reissue) PARA 139); and (3) any body or other person not falling within heads (1), (2) supra and so far as exercising functions of a public nature: Vehicles (Crime) Act 2001 s 38(5) (amended by the Courts Act 2003 s 109(1), (3), Sch 8 para 394, Sch 10).

5 le restrictions imposed by the Road Traffic Regulation Act 1984 s 14 (as substituted): see PARA 755 ante.

6 Vehicles (Crime) Act 2001 s 38(1), (2)(a). Payments under s 38 (as amended) must be made to: (1) the public authority in respect of whose expenditure the payments are being made; or (2) any other public authority for payment, in accordance with arrangements agreed with the Secretary of State, to, or on behalf of, the public authority in respect of whose expenditure the payments are being made: s 38(3). They must be paid at such times, in such manner and subject to such conditions as the Secretary of State may determine: s 38(4). As from a day to be appointed, the Secretary of State may by regulations make provision for making to public authorities for road safety purposes payments calculated by reference to any amount by which the amount of the sums paid into the Consolidated Fund in consequence of the commission of offences to which s 38(2) applies, and which are detected by cameras, exceeds the amount of any payments made under s 38(1) (s 38(4A) (prospectively added by the Road Safety Act 2006 s 2(1), (3))); and the Vehicles (Crime) Act 2001 s 38(3), (4) are amended so as to refer to payments under s 38(1) instead of payments under s 38 (as amended) (s 38(3), (4) (prospectively amended by the Road Safety Act 2006 s 2(2))). At the date at which this volume states the law no such day had been appointed. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

## UPDATE

### 758 Contravention of orders relating to temporary prohibitions or restrictions on roads

NOTE 2--A person who contravenes a temporary speed restriction is prosecuted under the same regime as applies to the contravention of a general speed limit: *DPP v Wells* [2007] EWHC 3259 (Admin), [2008] RTR 288, [2007] All ER (D) 181 (Dec).

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### (iii) Special Events Orders

#### 759. Prohibition or restriction of traffic on roads.



If the traffic authority<sup>1</sup> for a road<sup>2</sup> is satisfied that traffic on the road<sup>3</sup> ought to be restricted or prohibited for the purpose of:

- 433 (1) facilitating the holding of a relevant event<sup>4</sup>;
- 434 (2) enabling members of the public to watch a relevant event; or
- 435 (3) reducing the disruption to traffic likely to be caused by a relevant event,

the authority may by order restrict or prohibit temporarily the use of that road, or any part of it, by vehicles or vehicles of any class<sup>5</sup> or by pedestrians, to such extent and subject to such conditions or exceptions as it may consider necessary or expedient<sup>6</sup>. Before making such an order the authority must satisfy itself that it is not reasonably practicable for the event to be held otherwise than on a road<sup>7</sup>.

The provision that may be made by such an order is:

- 436 (a) any specified provision relating to road traffic regulation orders<sup>8</sup>;
- 437 (b) any provision restricting the speed of vehicles<sup>9</sup>; or
- 438 (c) any provision restricting or prohibiting the riding of horses, or the leading or driving of horses, cattle, sheep or other animals<sup>10</sup>,

but no such order may be made with respect to any road which would have the effect of preventing at any time access for pedestrians to any premises situated on or adjacent to the road, or to any other premises accessible for pedestrians from, and only from, the road<sup>11</sup>.

Such an order:

- 439 (i) may not be made in relation to any race or trial falling within the provision relating to motor racing on public ways<sup>12</sup>;
- 440 (ii) may not be made in relation to any competition or trial falling within the provision relating to the regulation of motoring events on public ways<sup>13</sup> unless the competition or trial is authorised by or under regulations under that provision<sup>14</sup>; and
- 441 (iii) may not be made in relation to any race or trial falling within the provision relating to the regulation of cycle racing on public ways<sup>15</sup> unless the race or trial is authorised by or under regulations made under that provision<sup>16</sup>.

Such an order may relate to the road on which the relevant event is to be held or to any other road<sup>17</sup>. In the case of a road for which the Secretary of State is the traffic authority, the power to make such an order is also exercisable, with his consent, by the local traffic authority<sup>18</sup> or by any local traffic authority which is the traffic authority for any other road to which the order relates<sup>19</sup>. In the case of a road for which a local traffic authority is the traffic authority, the power to make such an order is also exercisable, with the consent of that local traffic authority, by a local traffic authority which is the traffic authority for any other road to which the order relates<sup>20</sup>.

When considering the making of such an order, an authority must have regard to the safety and convenience of alternative routes suitable for the traffic which will be affected by the order<sup>21</sup>. Such an order may suspend any statutory<sup>22</sup> provision to which this provision applies<sup>23</sup> or, for any of the purposes mentioned in heads (1) to (3) above<sup>24</sup>, suspend any such provision without imposing any such restriction or prohibition<sup>25</sup>.

1 As to traffic authorities see PARAS 731-735 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 The provisions of the Road Traffic Regulation Act 1984 s 16A (as added) relate only to special events on the road; they do not extend to special events in places, such as sports arenas, which are only served by the road. However, s 16A (as added) is applied (with modifications) to the London Olympics: see the London Olympic Games and Paralympic Games Act 2006 s 16(1).

4 'Relevant event' means any sporting event, social event or entertainment which is held on a road: Road Traffic Regulation Act 1984 s 16A(1) (s 16A added by the Road Traffic Regulation (Special Events) Act 1994 s 1(1)).

5 As to classes of vehicle see PARA 208 ante.

6 Road Traffic Regulation Act 1984 s 16A(2) (as added: see note 4 supra). The power to make an order under s 16A (as added) is also exercisable by the Secretary of State: see PARAS 736-741 ante. Any power of the Secretary of State to make an order under or by virtue of s 16A (as added) is exercisable by statutory instrument: s 124(2) (amended by the Road Traffic Regulation (Special Events) Act 1994 s 3(1), Schedule para 2). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. Orders made under the Road Traffic Regulation Act 1984 s 16A (as added) are local in nature, and are not recorded in this work.

7 Ibid s 16A(3) (as added: see note 4 supra).

8 Ibid s 16A(9)(a) (as added: see note 4 supra). The specified provisions referred to in the text are any such provision as is mentioned in s 2(1), (2) or (3) (as amended) (see PARA 743 ante) or s 4(1) (see PARA 745 ante): see s 16A(9)(a) (as so added). For the meaning of 'traffic regulation order' see PARA 742 ante.

9 Ibid s 16A(9)(b) (as added: see note 4 supra).

10 Ibid s 16A(9)(c) (as added: see note 4 supra).

11 Ibid s 16A(9) (as added: see note 4 supra).

12 Ibid s 16A(4)(a) (as added: see note 4 supra). The provision referred to in the text is the Road Traffic Act 1988 s 12(1): see PARA 992 post.

13 Ie the Road Traffic Act 1988 s 13(1): see PARA 993 notes 1-4 post.

14 Road Traffic Regulation Act 1984 s 16A(4)(b) (as added: see note 4 supra).

15 Ie the Road Traffic Act 1988 s 31(1): see PARA 995 post.

16 Road Traffic Regulation Act 1984 s 16A(4)(c) (as added: see note 4 supra).

17 Ibid s 16A(5) (as added: see note 4 supra).

18 For the meaning of 'local traffic authority' see PARA 731 ante.

19 Road Traffic Regulation Act 1984 s 16A(6) (as added: see note 4 supra).

20 Ibid s 16A(7) (as added: see note 4 supra).

21 Ibid s 16A(8) (as added: see note 4 supra).

22 For the meaning of 'statutory' see PARA 719 note 7 ante.

23 The Road Traffic Regulation Act 1984 s 16A(10) (as added) applies to:

1362 (1) any statutory provision of a description which could have been contained in an order under s 16A (as added) (s 16A(11)(a) (as added: see note 4 supra));

1363 (2) an order under s 32(1)(b) (see PARA 784 head (2) post), s 35 (as amended) (see PARA 790 post), s 45 (as amended) (see PARA 808 post), s 46 (as amended) (see PARA 810 post) or s 49 (as amended) (see PARA 814 post) or any such order as is mentioned in Sch 10 para 11(1) (transitional and saving provisions) (s 16A(11)(b) (as so added)); and

1364 (3) an order under s 6 (as amended) (see PARA 747 ante) so far as it designates any parking places in Greater London (s 16A(11)(c) (as so added)).

24 Ie mentioned in ibid s 16A(2) (as added): see the text to notes 5-6 supra.

25 Ibid s 16A(10) (as added: see note 4 supra).

## UPDATE

### 759 Prohibition or restriction of traffic on roads

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### 760. Restrictions on orders for the prohibition or restriction of traffic on roads.

A prohibition or restriction order on roads<sup>1</sup> in connection with certain events<sup>2</sup> must not continue in force for a period of more than three days beginning with the day on which it comes into force unless the order is made by the Secretary of State<sup>3</sup> as the traffic authority<sup>4</sup> for the road concerned, or before the order is made, he has agreed that it ought continue in force for a longer period<sup>5</sup>. Where such an order has not ceased to be in force and the relevant event<sup>6</sup> to which it relates has not ended, the Secretary of State may from time to time direct that the order is to continue in force for a further period not exceeding three days beginning with the day on which it would otherwise cease to be in force<sup>7</sup>. Such a direction may relate to all the roads to which such an order relates or only to specified roads<sup>8</sup>.

Where such an order relates only to roads for which the Secretary of State is not himself the traffic authority, he must not give such a direction except at the request of the traffic authority for any road to which the order relates<sup>9</sup>. Where such an order relates to any road for which the Secretary of State is not himself the traffic authority, he must not give such a direction affecting that road except with the consent of the traffic authority for that road<sup>10</sup>. Where such an order has been made in any calendar year, no further order may be made in that year so as to affect any length of road affected by the previous order, unless the further order is made by the Secretary of State as the traffic authority for the road concerned, or is made with his consent<sup>11</sup>.

1 For the meaning of 'road' see PARA 206 ante.

2 Ie an order under the Road Traffic Regulation Act 1984 s 16A (as added): see PARA 759 ante. As to the events relevant to the operation of s 16A (as added) see PARA 759 note 4 ante.

3 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 As to traffic authorities see PARAS 731-735 ante.

5 Road Traffic Regulation Act 1984 s 16B(1) (s 16B added by the Road Traffic Regulation (Special Events) Act 1994 s 1(1)). The Road Traffic Regulation Act 1984 s 16B (as added) is disapplied in respect of a closure under s 16A (as added) (see PARA 759 ante) for the purposes of the London Olympics: see the London Olympic Games and Paralympic Games Act 2006 s 16(2).

6 For the meaning of 'relevant event' see PARA 759 note 4 ante.

7 Road Traffic Regulation Act 1984 s 16B(2) (as added: see note 5 supra). This provision is expressed to be subject to s 16B(4), (5) (as added): see s 16B(2) (as so added).

8 Ibid s 16B(3) (as added: see note 5 supra).

9 Ibid s 16B(4) (as added: see note 5 supra).

10 Ibid s 16B(5) (as added: see note 5 supra).

11 Ibid s 16B(6) (as added: see note 5 supra). For the purposes of s 16B(6) (as added), a length of road is affected by an order under s 16A (as added) (see PARA 759 ante) if the order contains provisions prohibiting or restricting traffic on that length of road or suspending any statutory provision applying to traffic on that length of road: s 16B(7) (as so added). For the meaning of 'statutory' see PARA 719 note 7 ante.

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## **761. Making of orders imposing prohibitions or restrictions of traffic on roads.**

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> with respect to the procedure to be followed in connection with the making of orders imposing prohibitions or restrictions on roads in connection with certain events<sup>3</sup> including provision for notifying the public of the exercise or proposed exercise of certain powers<sup>4</sup> and of the effect of orders made in the exercise of those powers<sup>5</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 At the date at which this volume states the law no such regulations had been made. As to the making of regulations generally see PARA 720 ante.

3 I.e. an order under the Road Traffic Regulation Act 1984 s 16A (as added): see PARA 759 ante. As to the events relevant to the operation of s 16A (as added) see PARA 759 note 4 ante.

4 I.e. powers conferred under ibid s 16A (as added): see PARA 759 ante.

5 Ibid s 16C(2) (s 16C added by the Road Traffic Regulation (Special Events) Act 1994 s 1(1)). Without prejudice to the generality of the Road Traffic Regulation Act 1984 s 16C(2) (as added), the Secretary of State may by regulations under s 16C(2) (as added) make, in relation to such orders as he thinks appropriate, provision: (1) for the making and consideration of representations relating to a proposed order; and (2) for any of the matters mentioned in s 124(1), Sch 9 para 22(1)(a), (c), (d) or (e) (see PARA 738 ante): s 16C(3) (as so added). Schedule 9 para 25 (as amended) (see PARA 738 ante) applies to regulations under s 16C(2) (as added) as it applies to regulations under Sch 9 Pt III paras 20-26 (as amended) (see PARA 738 ante): s 16C(3) (as so added).

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## **762. Contravention of orders imposing prohibitions or restrictions of traffic.**

A person who contravenes, or who uses or permits the use of a vehicle in contravention of, a restriction or prohibition imposed by prohibition or restriction orders<sup>1</sup> in connection with certain events<sup>2</sup> is guilty of an offence<sup>3</sup>.

1    le under the Road Traffic Regulation Act 1984 s 16A (as added): see PARA 759 ante.

2    As to the events relevant to the operation of ibid s 16A (as added) see PARA 759 note 4 ante.

3    Ibid s 16C(1) (s 16C added by the Road Traffic Regulation (Special Events) Act 1994 s 1(1)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry added by the Road Traffic Regulation (Special Events) Act 1994 s 1(2)). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

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### **763. Temporary prohibitions in relation to special events in London.**

The relevant authority<sup>1</sup> for a road or part of a road within a special parking area<sup>2</sup> may, by notice, make a special temporary waiting<sup>3</sup> prohibition<sup>4</sup> in respect of that road or part of a road<sup>5</sup>. While a prohibition is in force, the waiting of vehicles on the part of the road to which it relates is prohibited and that prohibition is enforceable as if it had been imposed by an order<sup>6</sup>. A prohibition may not be made unless the relevant authority<sup>7</sup> is satisfied that waiting should be prohibited for the purpose of facilitating the holding of a special event<sup>8</sup>, or enabling members of the public to watch a special event, or reducing the disruption to traffic likely to be caused by a special event<sup>9</sup>. A prohibition may not last longer than three days<sup>10</sup>.

Such a notice must be displayed in a prominent place in the vicinity of the part of the road to which the prohibition relates for a period of not less than one day before the prohibition comes into effect and for the duration of the prohibition and must state that whilst the prohibition is in force the waiting of vehicles is prohibited in the part of the road to which the prohibition relates<sup>11</sup>, and state the maximum duration of the prohibition<sup>12</sup>.

The Secretary of State<sup>13</sup> may make regulations<sup>14</sup> with respect to the procedure to be followed in connection with the giving of notice including provision for notifying the public of the exercise, or proposed exercise, of the powers conferred<sup>15</sup> and the effect of notices made in the exercise of those powers<sup>16</sup>. Such regulations may make different provisions for different circumstances<sup>17</sup>. Where a relevant authority is required<sup>18</sup> to post a notice in a road, the authority may take such steps for that purpose as it thinks fit, including the use for that purpose of any lamp post, traffic sign or other structure whatsoever in the road, whether or not belonging to that authority<sup>19</sup>.

1    The 'relevant authority', in relation to a road or part of a road, in the case of a GLA road or GLA side road means Transport for London and in any other case means the participating council in whose area the road or part of a road lies: London Local Authorities Act 1995 s 9(1A) (added by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, art 2(1), Sch 1 paras 1, 3(1), (3)). For the meaning of 'road' see PARA 206 ante; definition applied by the London Local Authorities Act 1995 s 2. As to the meaning of 'GLA road' see PARA 726 note 6 ante. As to the meaning of 'GLA side road' see PARA 726 note 4 ante.

2    For the meaning of 'special parking area' see PARA 779 note 3 post. As from a day to be appointed, for 'special parking area' there is substituted 'special enforcement area': London Local Authorities Act 1995 s 9(1) (prospectively amended by the Traffic Management Act 2004 s 91, Sch 11 para 6(b)). 'Special enforcement area' means a special enforcement area designated by order of the Secretary of State under the Traffic Management Act 2004 Sch 10 (see PARA 888 post): London Local Authorities Act 1995 s 2 (definition

prospectively added by the Traffic Management Act 2004 Sch 11 para 6(a)). The appointed day in relation to England is 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053), but at the date at which this volume states the law no such day had been appointed in relation to Wales.

3 'Waiting' means waiting for any purpose including the delivery or collection of goods or merchandise and the loading or unloading of vehicles: London Local Authorities Act 1995 s 9(8).

4 'Prohibition' means a special temporary waiting prohibition made under *ibid* s 9(1) (as amended) (see the text to note 5 *infra*): s 9(8).

5 *Ibid* s 9(1) (amended by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, Sch 1 para 3(2)).

6 London Local Authorities Act 1995 s 9(2). The order referred to in the text is an order under the Road Traffic Regulation Act 1984 s 6 (as amended) (see *PARA 747 ante*): London Local Authorities Act 1995 s 9(2).

7 See note 1 *supra*.

8 'Special event' means any individual event including any sporting event, social event, entertainment or funeral which in the opinion of the relevant authority concerned requires a prohibition to be made for the purpose of safety, relieving traffic congestion or facilitating the holding of the event: London Local Authorities Act 1995 s 9(8) (amended by the Transport for London (Consequential Provisions) Order 2007, SI 2007/2935, art 2).

9 London Local Authorities Act 1995 s 9(3)(a) (amended by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, Sch 1 para 3(4)).

10 London Local Authorities Act 1995 s 9(3)(b).

11 *Ibid* s 9(4)(a).

12 *Ibid* s 9(4)(b).

13 As to the Secretary of State see *PARA 236 ante*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see *PARA 237 ante*.

14 *Ie* the Secretary of State may make regulations subject to the London Local Authorities Act 1995 s 9(3), (4) (as amended): see the text and notes 8-12 *supra*. Regulations under s 9 (as amended) are made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 9(7). At the date at which this volume states the law no such regulations had been made.

15 *Ie* the powers conferred by *ibid* s 9(5): see the text to note 16 *infra*.

16 *Ibid* s 9(5).

17 *Ibid* s 9(6).

18 *Ie* required under *ibid* s 9 (as amended) or any regulations made thereunder.

19 *Ibid* s 9(6) (amended by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, Sch 1 para 3(5)).

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## **(iv) Traffic Regulation in Particular Cases**

### **764. Traffic regulation on special roads.**

A special road<sup>1</sup> must not be used<sup>2</sup> except by traffic of a class<sup>3</sup> authorised to do so by a scheme made, or having effect as if made, under certain provisions<sup>4</sup> of the Highways Act 1980<sup>5</sup>. The Secretary of State<sup>6</sup> may make regulations<sup>7</sup> with respect to the use of special roads, and such regulations may, in particular<sup>8</sup>:

- 442 (1) regulate the manner in which and the conditions subject to which special roads may be used by traffic authorised to do so<sup>9</sup>;
- 443 (2) authorise, or enable such authority as may be specified in the regulations to authorise, the use of special roads on occasion or in an emergency or for the purpose of crossing, or for the purpose of securing access to premises abutting on or adjacent to the roads, by traffic other than that described in head (1) above<sup>10</sup>;
- 444 (3) relax, or enable any authority so specified to relax, any prohibition or restriction imposed by the regulations<sup>11</sup>;
- 445 (4) include provisions having effect in such places, at such times, in such manner or in such circumstances as may for the time being be indicated by traffic signs<sup>12</sup> in accordance with the regulations<sup>13</sup>.

Such regulations may make provision with respect to special roads generally, or may make different provision with respect to special roads provided for the use of different classes of traffic, or may make provision with respect to any particular special road<sup>14</sup>.

If a person uses a special road in contravention of these provisions or of such regulations, he is guilty of an offence<sup>15</sup>.

These provisions and any such regulations do not apply in relation to a road<sup>16</sup>, or part of a road, until the date declared by the traffic authority<sup>17</sup>, by notice published in the prescribed manner<sup>18</sup>, to be the date on which the road or part is open for use as a special road<sup>19</sup>. This does not prevent the making of regulations<sup>20</sup> before that date, so as to come into force in relation to that road or part on that date<sup>21</sup>.

1 'Special road' has the same meaning as in the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 731): Road Traffic Regulation Act 1984 s 142(1) (definition substituted by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 78(1), (3)-(6)).

2 For these purposes, 'use', in relation to a road, includes crossing: Road Traffic Regulation Act 1984 s 17(6) (amended by the New Roads and Street Works Act 1991 s 168(1), (2), Sch 8 para 28(5), Sch 9).

3 As to classes of traffic see PARA 208 ante.

4 ie under the Highways Act 1980 s 16 or by virtue of Sch 23 para 3: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 731 et seq.

5 Road Traffic Regulation Act 1984 s 17(1)(a) (s 17(1) substituted by the New Roads and Street Works Act 1991 s 168(1), (2), Sch 8 para 28(2)).

6 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 At the date at which this volume states the law no regulations relating to special roads had been made under the Road Traffic Regulation Act 1984 s 17(2) (as amended), but by virtue of the Interpretation Act 1978 s 17(2)(b), the following regulations have effect as if made under it: the Motorways Traffic (Speed Limit) Regulations 1974, SI 1974/502 (amended by SI 2000/1811); and the Motorways Traffic (England and Wales) Regulations 1982, SI 1982/1163 (amended by SI 1983/374; SI 1984/1479; SI 1992/1364; SI 1995/158; SI 1996/3053; SI 2004/3168; SI 2004/3258; SI 2005/2929; SI 2006/594; and modified by SI 2005/1761). Regulations applying only to particular special roads are local in nature, and are not recorded in this work. As to the making of regulations generally see PARA 720 ante.

8 Road Traffic Regulation Act 1984 s 17(2) (amended by the New Roads and Street Works Act 1991 Sch 8 para 28(3)).

9 Road Traffic Regulation Act 1984 s 17(2)(a) (substituted by the New Roads and Street Works Act 1991 Sch 8 para 28(3)).

10 Road Traffic Regulation Act 1984 s 17(2)(b).

11 Ibid s 17(2)(c).

12 For the meaning of 'traffic sign' see PARA 830 post.

13 Road Traffic Regulation Act 1984 s 17(2)(d) (added by the Road Traffic Act 1991 ss 48, 83, Sch 4 para 25, Sch 8).

14 Road Traffic Regulation Act 1984 s 17(3).

15 Ibid s 17(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale; disqualification is discretionary, and endorsement is obligatory, if the offence is committed in respect of a motor vehicle otherwise than by unlawfully stopping or allowing the vehicle to remain at rest on a part of a special road on which vehicles are in certain circumstances permitted to remain at rest; and 3-6 penalty points (or 3, if a fixed penalty) may be attributed if the offence is committed in respect of a speed restriction, or 3 in any other case: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (amended by the Road Traffic Act 1991 s 26, Sch 2 paras 1, 3). The entry relating to penalty points is prospectively amended, as from a day to be appointed, by the Road Safety Act 2006 s 17, to the effect that 2-6 or appropriate penalty points (fixed penalty) may be attributed if the offence is committed in respect of a speed limit, and 3 in any other case. At the date at which this volume states the law no such date had been appointed. As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Regulation Act 1984 s 17(4) of wrongful use of a special road is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; and as to legal proceedings generally see PARA 1023 et seq post.

The Secretary of State may make payments (see PARA 758 ante) in respect of the whole or any part of the expenditure of a public authority in relation to the prevention or detection of offences under the Road Traffic Regulation Act 1984 s 17(4) which consist in contraventions of restrictions on the speed of vehicles imposed under s 17 (as amended) or any enforcement action or proceedings in respect of such offences or any alleged such offences: Vehicles (Crime) Act 2001 s 38(1), (2)(b).

16 For the meaning of 'road' see PARA 206 ante.

17 As to traffic authorities see PARAS 731-735 ante.

18 Ie in the manner prescribed by regulations: see PARA 735 note 3 ante. The notice required for these purposes to be published by the traffic authority for a special road, declaring the date on which that road or part of it is open for use as a special road, is, not less than seven days before that date, to be published in at least one local newspaper circulating in the area in which the special road or, as the case may be, the relevant part of it is situated and in the London Gazette: Special Roads (Notice of Opening) Regulations 1992, SI 1992/1371, reg 3.

19 Road Traffic Regulation Act 1984 s 17(5) (substituted by the New Roads and Street Works Act 1991 s 168(1), (2), Sch 8 para 28(4)).

20 Ie regulations under the Road Traffic Regulation Act 1984 s 17(2) (as amended): see the text and notes 6-13 supra.

21 Ibid s 17(5) (as substituted: see note 19 supra).

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## **765. Further provisions as to special roads.**



On the date declared by the traffic authority<sup>1</sup>, by notice published in the prescribed manner<sup>2</sup>, to be the date on which a special road<sup>3</sup>, or a part of a special road, is open for use as a special road, any existing order<sup>4</sup> relating to that road or part ceases to have effect<sup>5</sup>. This is without prejudice to any power to make orders<sup>6</sup> in relation to the road or part as a special road, and any such power may be exercised before the date referred to above, so as to take effect on that date<sup>7</sup>. The procedure for making an order applies in such a case with such modifications as may be prescribed<sup>8</sup>.

1 As to traffic authorities see PARAS 731-735 ante.

2 Ie in the manner prescribed by regulations: see PARA 735 note 3 ante. As to the making of regulations generally see PARA 720 ante. See the Special Roads (Notice of Opening) Regulations 1992, SI 1992/1371; and PARA 764 note 19 ante.

3 As to the meaning of 'special road' see PARA 764 note 1 ante.

4 Ie under the Road Traffic Regulation Act 1984 s 1 (as amended) (see PARA 742 ante), s 6 (as amended) (see PARA 747 ante), s 9 (as amended) (see PARA 751 ante) or s 84 (as amended) (see PARA 848 post).

5 Ibid s 17A(1) (s 17A added by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 29).

6 Ie under the provisions mentioned in the Road Traffic Regulation Act 1984 s 17A(1) (as added): see the text and notes 1-5 supra.

7 Ibid s 17A(2) (as added: see note 5 supra).

8 Ibid s 17A(3) (as added: see note 5 supra). At the date at which this volume states the law no such modifications had been prescribed.

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## **766. One-way traffic on trunk roads.**

Where the Secretary of State<sup>1</sup> proposes to make an order<sup>2</sup> directing that a road<sup>3</sup> is to become a trunk road, and considers it expedient<sup>4</sup>: (1) that the road, when it becomes a trunk road<sup>5</sup>, ought to be used only for traffic passing in one direction<sup>6</sup>; and (2) that any other road which is a trunk road, or is to become a trunk road by virtue of the order, ought to be used only for traffic passing in the other direction<sup>7</sup>, the order may make provision for restricting the use of those roads accordingly as from such date as may be specified in the order<sup>8</sup>. A person who uses a vehicle, or causes or permits a vehicle to be used, in contravention of any provision made by virtue of the above provision is guilty of an offence<sup>9</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Ie under the Highways Act 1980 s 10 (as amended): see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 704 et seq.

3 For the meaning of 'road' see PARA 206 ante.

4 Road Traffic Regulation Act 1984 s 18(1) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 30).

5 For the meaning of 'trunk road' see PARA 726 note 8 ante.

6 Road Traffic Regulation Act 1984 s 18(1)(a).

7 Ibid s 18(1)(b).

8 Ibid s 18(1) (as amended: see note 4 supra). Section 18(1) (as amended) has effect without prejudice to the powers of the Secretary of State under s 1 (as amended) (see PARA 742 ante): s 18(2).

Section 18 (as amended) has effect in relation to tramcars and trolley vehicles so that such vehicles are exempt from any order made under it: Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, regs 3(1)(d), 5(1)(d), which are expressed to be subject to Pt IV (ie reg 11) (see PARAS 1629-1630 post). For the meanings of 'tramcars' and 'trolley vehicles' see PARA 219 ante.

9 Road Traffic Regulation Act 1984 s 18(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Regulation Act 1984 s 18(3) of using a vehicle in contravention of a provision for one-way traffic on a trunk road is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

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## **767. Regulation of use of highways by public service vehicles.**

A local traffic authority<sup>1</sup> outside Greater London may make orders<sup>2</sup>:

- 446 (1) for determining the highways in its area which may or may not be used by public service vehicles<sup>3</sup>;
- 447 (2) for fixing stands for public service vehicles on such highways<sup>4</sup>;
- 448 (3) as to the places at which public service vehicles may stop for a longer time than is necessary for taking up and setting down passengers<sup>5</sup>; and
- 449 (4) as to the manner of using such stands and places<sup>6</sup>.

Any such order may be made so as to apply only to public service vehicles of a specified class<sup>7</sup>, or so as to have effect as respects a limited period only or as respects only limited periods in the year, and may make different provision for different classes of public service vehicles<sup>8</sup>.

1 For the meaning of 'local traffic authority' see PARA 731 ante.

2 Road Traffic Regulation Act 1984 s 19(1) (amended by the New Roads and Street Works Act 1991 s 168(1), (2), Sch 8 para 31(2)). The power to make an order under the Road Traffic Regulation Act 1984 s 19 (as amended) is also exercisable by the Secretary of State: see PARAS 736-741 ante. Any power of the Secretary of State to make an order under or by virtue of s 19 (as amended) is exercisable by statutory instrument: s 124(2). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. Orders made under s 19 (as amended) are local in nature, and are not recorded in this work. As to the exercise of powers under s 19(1) (as amended) in respect of the width of a road see PARA 730 ante. Section 19 (as amended) does not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), 2(a).

3 Road Traffic Regulation Act 1984 s 19(1)(a) (substituted by the New Roads and Street Works Act 1991 Sch 8 para 31(2)). For the meaning of 'public service vehicle' see PARA 1136 post; definition applied by virtue of the Road Traffic Regulation Act 1984 s 142(1) (amended by the Transport Act 1985 s 1, Sch 1 para 15).

- 4 Road Traffic Regulation Act 1984 s 19(1)(b) (substituted by the New Roads and Street Works Act 1991 Sch 8 para 31(2)).
- 5 Road Traffic Regulation Act 1984 s 19(1)(c).
- 6 Ibid s 19(1)(d).
- 7 As to classes of vehicles see PARA 208 ante.
- 8 Road Traffic Regulation Act 1984 s 19(2).

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### **768. Prohibition or restriction of use of certain classes of vehicles on roads.**

The Secretary of State<sup>1</sup>, if he is satisfied that it is desirable to do so, may by order<sup>2</sup> made by statutory instrument prohibit or restrict, subject to such exceptions and conditions as to occasional use or access to premises or otherwise as may be specified in the order, the driving<sup>3</sup> of vehicles on all roads<sup>4</sup> of any such class as may be specified in the order<sup>5</sup>. Such a prohibition or restriction may be imposed either generally or in relation to any class of vehicle<sup>6</sup>, and for these purposes the Secretary of State may classify roads in any manner he thinks fit, having regard to their character and situation or the nature of the traffic to which they are suited, and may determine in what class any particular road is to be included<sup>7</sup>. No such order may be made or apply in relation to a special road<sup>8</sup> on or after the date declared by the traffic authority<sup>9</sup>, by notice published in the prescribed manner<sup>10</sup>, to be the date on which the special road, or the relevant part of the special road, is open for use as a special road<sup>11</sup>. A statutory instrument by which such an order is made, revoked or varied does not have effect unless and until it has been approved by a resolution of each House of Parliament<sup>12</sup>. A person who drives a vehicle, or causes or permits a vehicle to be driven, in contravention of such an order is guilty of an offence<sup>13</sup>.

- 1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 2 At the date at which this volume states the law no such order had been made.
- 3 For the meaning of 'driving' see PARA 207 ante.
- 4 For the meaning of 'road' see PARA 206 ante.
- 5 Road Traffic Regulation Act 1984 s 20(1). Section 20 (as amended) does not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), 2(a).
- 6 As to classes of vehicle see PARA 208 ante.
- 7 Road Traffic Regulation Act 1984 s 20(2).
- 8 As to the meaning of 'special road' see PARA 764 note 1 ante.
- 9 As to traffic authorities see PARAS 731-735 ante.
- 10 I.e. in the manner prescribed by regulations: see PARA 735 note 3 ante. See the Special Roads (Notice of Opening) Regulations 1992, SI 1992/1371; and PARA 764 note 19 ante.

11 Road Traffic Regulation Act 1984 s 20(3) (substituted by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 32).

12 Road Traffic Regulation Act 1984 s 20(4).

13 Ibid s 20(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Regulation Act 1984 s 20(5) of driving a vehicle in contravention of an order prohibiting or restricting driving vehicles on certain classes of roads is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

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### **769. Permit for trailer to carry excess weight.**

As regards any road<sup>1</sup> or bridge the appropriate authority<sup>2</sup> may, subject to such conditions as it thinks fit, grant a permit in respect of any trailer<sup>3</sup> specified in the permit, when drawn by a heavy locomotive or a light locomotive<sup>4</sup> on the road or bridge, to carry weights specified in the permit, notwithstanding that, when conveying such weights, the trailer does not comply with any regulations made, or having effect as if made, by the Secretary of State<sup>5</sup> as to the weight laden of trailers or as to the maximum weight which may be transmitted to the road or any part of it by trailers<sup>6</sup>. Where such a permit is granted in respect of a trailer it is not, so long as the conditions (if any) attached to the permit are complied with, an offence to carry on the road or bridge weights authorised by the permit by reason only that the trailer, when conveying them, does not comply with any such regulations<sup>7</sup>.

1 For the meaning of 'road' see PARA 206 ante.

2 For these purposes, 'the appropriate authority' is: (1) in relation to a bridge for the maintenance of which a bridge authority is responsible, or a road passing over such a bridge, the bridge authority; and (2) in relation to any other road, the traffic authority and any other person responsible for the maintenance of the road: Road Traffic Regulation Act 1984 s 21(3) (substituted by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 33). 'Bridge authority' means the authority or person responsible for the maintenance of a bridge: Road Traffic Regulation Act 1984 s 142(1). As to traffic authorities see PARAS 731-735 ante.

3 For the meaning of 'trailer' see PARA 210 ante.

4 For the meanings of 'light locomotive' and 'heavy locomotive' see PARA 217 ante.

5 Ie under the Road Traffic Act 1988 s 41 (as amended): see PARA 260 ante. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. As to the making of regulations generally see PARA 720 ante.

6 Road Traffic Regulation Act 1984 s 21(1) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 25(1)).

7 Road Traffic Regulation Act 1984 s 21(2).

## **UPDATE**

### **769 Permit for trailer to carry excess weight**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **770. Traffic regulation for special areas in the countryside and for conserving natural beauty.**

The following provision applies to roads<sup>1</sup> in England and Wales which are in, or form part of, or are adjacent to or contiguous with<sup>2</sup>:

- 450 (1) a national park<sup>3</sup>;
- 451 (2) an area of outstanding natural beauty<sup>4</sup>;
- 452 (3) certain country parks<sup>5</sup>;
- 453 (4) an area in which Natural England is conducting an experimental scheme or the Countryside Council for Wales is conducting a scheme<sup>6</sup>;
- 454 (5) a nature reserve or an area subject to a specified agreement<sup>7</sup>;
- 455 (6) a long distance route<sup>8</sup>;
- 456 (7) land belonging to the National Trust which is held by the Trust inalienably<sup>9</sup>; or
- 457 (8) a site of special scientific interest<sup>10</sup>.

Natural England and the Countryside Council for Wales may each make submissions to the Secretary of State as to the desirability of a traffic regulation order being made in relation to a road to which this provision applies, whether or not it is a road for which he is the traffic authority<sup>11</sup>. Where such a submission is made as respects a road for which he is not the traffic authority, and the traffic authority for the road notifies him that it does not intend to make an order, the Secretary of State may by order make any such provision as he might have made by a traffic regulation order if he had been the traffic authority<sup>12</sup>. The Road Traffic Regulation Act 1984 applies to such an order as to an order made by the Secretary of State in relation to a road for which he is the traffic authority<sup>13</sup>.

As respects certain other roads<sup>14</sup>, the Road Traffic Regulation Act 1984 has effect as if, in relation to the making of provision with respect to vehicular traffic, the list of purposes for which a traffic regulation order<sup>15</sup> may be made<sup>16</sup> included the purpose of conserving or enhancing the natural beauty of the area<sup>17</sup>.

Particular provision is made in relation to byways, bridleways, footpaths etc in national parks<sup>18</sup>.

1 For the meaning of 'road' see PARA 206 ante.

2 Road Traffic Regulation Act 1984 s 22(1)(a) (amended by the Countryside and Rights of Way Act 2000 ss 66(1)(a), 102, Sch 16 Pt II). The Road Traffic Regulation Act 1984 has effect as respects roads to which s 22 (as amended) applies as if the list of purposes for which a traffic regulation order may be made under s 1 (as amended) (see PARA 742 ante), as set out in s 1(1)(a)-(g) (as amended) and referred to in s 6(1)(b) (as amended) (see PARA 747 note 4 ante), included the purpose of conserving or enhancing the natural beauty of the area, or of affording better opportunities for the public to enjoy the amenities of the area, or recreation or the study of nature in the area: s 22(2) (amended by the Countryside and Rights of Way Act 2000 s 66(2)). For the meaning of 'traffic regulation order' see PARA 742 ante. In the Road Traffic Regulation Act 1984 s 22(2) (as

amended), the reference to conserving the natural beauty of an area is to be construed as including a reference to conserving its flora, fauna and geological and physiographical features: s 22(5) (added by the Countryside and Rights of Way Act 2000 s 66(3)).

The Road Traffic Regulation Act 1984 s 1 (as amended) (see PARA 742 ante), as applied for the purposes set out in s 22(2), has effect so as to authorise the making of a traffic regulation order as respects any Crown road; and an order (a 'traffic regulation order') may be made under s 22(3) (see the text and note 11 infra) as respects any Crown road: s 132(2). The consent of the appropriate Crown authority must be given before a traffic regulation order is so made as respects a Crown road: s 132(3). A traffic regulation order made by virtue of s 132(2) as respects a Crown road does not apply to vehicles or persons in the public service of the Crown, except so far as is expressly provided in the order; and the inclusion of any such express provision in an order not made by the Secretary of State requires his approval: s 132(4). If a traffic regulation order is, or is to be, made by virtue of s 132(2) as respects a Crown road, the traffic authority may, after consultation with the appropriate Crown authority, place and maintain, or cause to be placed and maintained, such traffic signs of any type prescribed or authorised under s 64 (as amended) (see PARA 830 post) as the traffic authority may consider necessary in connection with the order: s 132(5) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 76(1), (2)). The powers conferred by the Road Traffic Regulation Act 1984 s 132(5) (as amended) are exercisable subject to and in conformity with any general directions given under s 65(1) (see PARA 831 post); and any other power conferred by s 65 to give directions to a local traffic authority includes power to give the like directions to it as respects the Crown road, but after consultation with the appropriate Crown authority: s 132(5) (as so amended). For these purposes, references to a Crown road are references to a Crown road of a description mentioned in s 22(1)(a) (as amended): s 132(1). References in any enactment (including any enactment contained in the Road Traffic Regulation Act 1984) to the erection or placing of traffic signs include references to the display of traffic signs in any manner, whether or not involving fixing or placing: s 64(6). As to traffic authorities see PARAS 731-735 ante. For the meaning of 'local traffic authority' see PARA 731 ante. For the meaning of 'Crown road' see PARA 729 ante. For the meaning of 'appropriate Crown authority' see PARA 729 note 2 ante. For the meaning of 'traffic sign' see PARA 830 post. As to where traffic signs may be placed see PARA 830 et seq post. As to the application of road traffic enactments to Crown roads see PARA 729 ante.

3 Ibid s 22(1)(a)(i). As to national parks see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 636 et seq.

4 Ie an area of outstanding natural beauty designated as such under the Countryside and Rights of Way Act 2000 s 82: Road Traffic Regulation Act 1984 s 22(1)(a)(ii) (amended by the Countryside and Rights of Way Act 2000 s 93, Sch 15 Pt I para 7). As to areas of outstanding natural beauty see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 658 et seq.

5 Road Traffic Regulation Act 1984 s 22(1)(a)(iii). The country parks referred to in the text are those provided under the Countryside Act 1968 s 7(1) which in the opinion of the Secretary of State serve the purpose set out in s 6(1) when the considerations in s 6(1)(a), (b) are taken into account, and any park or pleasure ground in the Lee Valley Regional Park which in the opinion of the Secretary of State serves that purpose: Road Traffic Regulation Act 1984 s 22(1)(a)(iii). As to such country parks see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 566. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 Road Traffic Regulation Act 1984 s 22(1)(a)(iv) (substituted by the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 Pt 1 para 104(1), (2)). As to Natural England and the Countryside Council for Wales see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARAS 523-524. The schemes referred to in the text are an experimental scheme under the Natural Environment and Rural Communities Act 2006 s 8 (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 523) or a scheme under the Countryside Act 1968 s 4 (as amended) (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 524): see the Road Traffic Regulation Act 1984 s 22(1)(a)(iv) (as so substituted).

7 Ibid s 22(1)(a)(v) (substituted by the Natural Environment and Rural Communities Act 2006 Sch 11 Pt 1 para 104(2)). The agreement referred to in the text is an SSSI agreement or an agreement under the Countryside Act 1968 s 15 (as amended) (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 687): see the Road Traffic Regulation Act 1984 s 22(1)(a)(v) (as so substituted). 'SSSI agreement' has the same meaning as in the Countryside Act 1968 s 15A (as added) (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 690): Road Traffic Regulation Act 1984 s 22(4A) (added by the Natural Environment and Rural Communities Act 2006 Sch 11 Pt 1 para 104(4)).

8 Road Traffic Regulation Act 1984 s 22(1)(a)(vi). As to long distance routes see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 696-701.

9 Ibid s 22(1)(a)(vii). As to the National Trust see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 979 et seq.

10 Ie within the meaning of the Wildlife and Countryside Act 1981 (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 674 et seq): Road Traffic Regulation Act 1984 s 22(1)(a)(viii) (added by the Countryside and Rights of Way Act 2000 s 66(1)(c)).

11 Road Traffic Regulation Act 1984 s 22(3) (substituted by the New Roads and Street Works Act 1991 Sch 8 para 34(1), (2); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 Pt 1 para 104(3); and by the Development Commission (Transfer of Functions and Miscellaneous Provisions) Act 1999, SI 1999/416, art 3(d), Sch 1 para 10).

12 Road Traffic Regulation Act 1984 s 22(4) (substituted by the New Roads and Street Works Act 1991 Sch 8 para 34(1), (2)).

13 Road Traffic Regulation Act 1984 s 22(4) (as substituted: see note 12 supra).

14 Ie other than: (1) roads to which *ibid* s 22 (as amended) applies; (2) special roads; and (3) any road which is a trunk road, a classified road, a GLA road, a cycle track, a bridleway, a restricted byway or a footpath, as those expressions are defined by the Highways Act 1980 s 329 (see *HIGHWAYS, STREETS AND BRIDGES* vol 21 (2004 Reissue) PARA 64); Road Traffic Regulation Act 1984 s 22A(1) (s 22A added by the Countryside and Rights of Way Act 2000 s 66(4); and amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, reg 2, Schedule Pt I). As to the meaning of 'special road' see PARA 764 note 1 ante.

15 Ie under the Road Traffic Regulation Act 1984 s 1 (as amended): see PARA 742 ante.

16 Ie as set out in *ibid* s 1(1)(a)-(g) (as amended) (see PARA 742 heads (1)-(7) ante) and referred to in s 6(1) (b) (as amended) (see PARA 747 note 4 ante).

17 *Ibid* s 22A(2) (as added: see note 14 supra). In s 22A(2) (as added), the reference to conserving the natural beauty of an area is to be construed as including a reference to conserving its flora, fauna and geological and physiographical features: s 22A(3) (as so added).

18 See the Road Traffic Regulation Act 1984 ss 22BB, 22BC (both added by the Natural Environment and Rural Communities Act 2006 s 72); and the National Park Authorities' Traffic Orders (Procedure) (England) Regulations 2007, SI 2007/2542.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(2) TRAFFIC REGULATION/(v) Network Management/A. GENERAL DUTIES RELATING TO NETWORK MANAGEMENT/771. The network management duty.

## **(v) Network Management**

### **A. GENERAL DUTIES RELATING TO NETWORK MANAGEMENT**

#### **771. The network management duty.**

It is the duty of a local traffic authority<sup>1</sup> to manage its road network<sup>2</sup> with a view to achieving, so far as may be reasonably practicable having regard to its other obligations, policies and objectives, the following objectives:

- 458 (1) securing the expeditious movement of traffic<sup>3</sup> on the authority's road network; and
- 459 (2) facilitating the expeditious movement of traffic on road networks for which another authority is the traffic authority<sup>4</sup>.

The action which the authority may take in performing that duty includes, in particular, any action which it considers will contribute to securing:

- 460 (a) the more efficient use of its road network; or

- 461 (b) the avoidance, elimination or reduction of road congestion or other disruption to the movement of traffic on its road network or a road network for which another authority is the traffic authority;

and may involve the exercise of any power to regulate or co-ordinate the uses made of any road (or part of a road) in the road network, whether or not the power was conferred on it in its capacity as a traffic authority<sup>5</sup>.

A local traffic authority must make such arrangements as it considers appropriate for planning and carrying out the action to be taken in performing the network management duty<sup>6</sup>. The arrangements must include provision for the appointment of a person (to be known as the 'traffic manager') to perform such tasks as the authority considers will assist it to perform its network management duty<sup>7</sup>. The traffic manager may, but need not, be an employee of the authority<sup>8</sup>.

The arrangements must also include provision for establishing processes for ensuring, so far as may be reasonably practicable, that the authority identifies things, including future occurrences, which are causing, or which have the potential to cause, road congestion or other disruption to the movement of traffic on its road network; and considers any possible action that could be taken in response to, or in anticipation of, anything so identified<sup>9</sup>.

The arrangements must also include provision for ensuring that the authority:

- 462 (i) determines specific policies or objectives in relation to different roads or classes of road in its road network;
- 463 (ii) monitors the effectiveness of the authority's organisation and decision-making processes, and the implementation of its decisions; and
- 464 (iii) assesses its performance in managing its road network<sup>10</sup>.

The authority must keep under review the effectiveness of the arrangements it has in place under these provisions<sup>11</sup>.

The appropriate national authority<sup>12</sup> may publish guidance to local traffic authorities about the techniques of network management or any other matter relating to the performance of the duties imposed above<sup>13</sup>, and in performing those duties a local traffic authority must have regard to any such guidance<sup>14</sup>.

1 'Local traffic authority' means a traffic authority other than the Secretary of State; 'traffic authority' has the same meaning as in the Road Traffic Regulation Act 1984 (see PARA 731 ante); Traffic Management Act 2004 s 31. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 'Road network', in relation to a local traffic authority, means the network of roads for which the authority is the traffic authority; 'road' means any length of highway or of any other road to which the public has access, and includes bridges over which a road passes: *ibid* s 31.

3 'Traffic' includes pedestrians: *ibid* s 31.

4 *Ibid* s 16(1).

5 *Ibid* s 16(2).

6 *Ibid* s 17(1). For the purposes of Pt 2 (ss 16-31) 'network management duty', in relation to a local traffic authority, means its duty under s 16 (see the text and notes 1-4 *supra*): s 16(3).

7 *Ibid* s 17(2).

8 *Ibid* s 17(3).



9 Ibid s 17(4). However, nothing in s 17(4) is to be taken to require the identification or consideration of anything appearing to have only an insignificant effect, or potential effect, on the movement of traffic on an authority's road network: s 17(4).

10 Ibid s 17(5).

11 Ibid s 17(6).

12 'Appropriate national authority', as respects England, means the Secretary of State: ibid s 31.

13 Ibid s 18(1).

14 Ibid s 18(2).

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## **772. Power to require information relating to network management.**

The appropriate national authority<sup>1</sup> may direct a local traffic authority<sup>2</sup> to provide it, within a specified period, with specified information connected with any aspect of the performance of its network management duties<sup>3</sup>. The information that may be specified in such a direction must be information which the authority has in its possession or can reasonably be expected to acquire, and includes, in particular, information relating to the management of a local traffic authority's road network<sup>4</sup>, or the use of its road network by different kinds of traffic<sup>5</sup> or the effects of that use<sup>6</sup>.

A direction under this provision may be given to two or more local traffic authorities or to local traffic authorities of a description specified in the direction<sup>7</sup>. A direction given to a London authority<sup>8</sup> must be copied to the Mayor<sup>9</sup>.

1 See PARA 771 note 12 ante.

2 For the meaning of 'local traffic authority' see PARA 771 note 1 ante.

3 Traffic Management Act 2004 s 19(1). The reference to network management duties is to an authority's duties under ss 16, 17 (see PARA 771 ante).

4 For the meaning of 'road network' see PARA 771 note 2 ante.

5 For the meaning of 'traffic' see PARA 771 note 3 ante.

6 Traffic Management Act 2004 s 19(2).

7 Ibid s 19(3).

8 'London authority' means Transport for London, a London borough council or the Common Council of the City of London: ibid s 31.

9 Ibid s 19(4). 'Mayor' means the Mayor of London: s 31. As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-

1663)/9. ROAD TRAFFIC REGULATION/(2) TRAFFIC REGULATION/(v) Network Management/B. ENFORCEMENT OF NETWORK MANAGEMENT DUTIES/773. Intervention notices.

## ***B. ENFORCEMENT OF NETWORK MANAGEMENT DUTIES***

### **773. Intervention notices.**

If the appropriate national authority<sup>1</sup> considers that a local traffic authority<sup>2</sup> may be failing properly to perform any of its duties in relation to network management<sup>3</sup> it may give a notice stating that it is of that opinion (an 'intervention notice') to the authority<sup>4</sup>.

An intervention notice must give brief particulars of the grounds for giving the notice, and offer the local traffic authority the opportunity, within a specified period, to make representations or proposals about any matter raised by the notice<sup>5</sup>. The notice may also require the local traffic authority to provide the national authority, within the period specified above, with specified information<sup>6</sup>. Any information so specified must be information that the national authority considers will assist it in deciding what further action, if any, to take<sup>7</sup>.

The Secretary of State must consult the Mayor<sup>8</sup> before giving an intervention notice to a London authority<sup>9</sup> and, if such a notice is given, must give him a copy of it<sup>10</sup>.

1 For the meaning of 'appropriate national authority' see PARA 771 note 12 ante.

2 For the meaning of 'local traffic authority' see PARA 771 note 1 ante.

3 In its duties under the Traffic Management Act 2004 ss 16, 17 (see PARA 771 ante).

4 Ibid s 20(1).

5 Ibid s 20(2).

6 Ibid s 20(3).

7 Ibid s 20(4).

8 For the meaning of 'Mayor' see PARA 772 note 9 ante.

9 For the meaning of 'London authority' see PARA 772 note 8 ante.

10 Traffic Management Act 2004 s 20(5). As to the application of s 20 to local traffic authorities exercising functions jointly see s 26; and PARA 774 post.

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### **774. Intervention orders.**

If the appropriate national authority<sup>1</sup> is satisfied that a local traffic authority<sup>2</sup> is failing properly to perform any of its duties in relation to network management<sup>3</sup> it may by order made by statutory instrument (an 'intervention order') make provision for or in connection with the appointment of a traffic director<sup>4</sup>.

An intervention order providing for the appointment of a traffic director must, among other things:

- 465 (1) state that the national authority is satisfied as mentioned above;
- 466 (2) give brief particulars of the grounds for appointing a traffic director;
- 467 (3) set out the objectives of the traffic director; and
- 468 (4) confer such general powers on the traffic director as the national authority considers appropriate for achieving those objectives<sup>5</sup>.

The general powers which may be conferred on the traffic director are powers authorising him:

- 469 (a) to monitor any matter<sup>6</sup>;
- 470 (b) to report on any matter<sup>7</sup>;
- 471 (c) to intervene in activities of the local traffic authority<sup>8</sup>; and
- 472 (d) to carry out functions of the local traffic authority<sup>9</sup>.

The order may require the traffic director to carry out functions of the local traffic authority<sup>10</sup>.  
The order may:

- 473 (i) limit the scope of any general powers conferred on the traffic director or any duty imposed on him<sup>11</sup>;
- 474 (ii) confer ancillary powers on the traffic director;
- 475 (iii) provide for the circumstances in which any general or ancillary power may, or may not, be exercised;
- 476 (iv) impose conditions on the exercise of any general or ancillary power<sup>12</sup>;
- 477 (v) make incidental or supplementary provision;
- 478 (vi) make different provision for different circumstances<sup>13</sup>.

The appropriate national authority must consult the local traffic authority before making an intervention order which makes further provision in connection with the appointment of a traffic director under an earlier intervention order<sup>14</sup>. The Secretary of State must consult the Mayor before making an intervention order in relation to a London authority<sup>15</sup>.

The appropriate national authority may give guidance to traffic directors in relation to the performance of their duties<sup>16</sup>. Such guidance may be general or given to a particular traffic director<sup>17</sup>. In carrying out his duties a traffic director must have regard to any such guidance which is applicable to him<sup>18</sup>. The appropriate national authority must publish any guidance given under this provision<sup>19</sup>.

Where a traffic director has been appointed in respect of a local traffic authority, the appropriate national authority may recover from the local traffic authority such sum or sums as it may consider appropriate<sup>20</sup>. The amount recovered must not exceed the total expenditure of the national authority which is attributable to the appointment of the traffic director, including expenditure towards any costs incurred by the traffic director which are not met from any other source<sup>21</sup>.

1 For the meaning of 'appropriate national authority' see PARA 771 note 12 ante.

2 For the meaning of 'local traffic authority' see PARA 771 note 1 ante.

3 ie its duties under the Traffic Management Act 2004 ss 16, 17 (see PARA 771 ante).

4 Ibid s 21(1). 'Traffic director' means a person appointed by the national authority with such objectives as the national authority considers will secure that the duty in question is properly performed: s 21(2). Where by virtue of an intervention order a traffic director is to be appointed in relation to a local traffic authority: (1) any person (including the national authority making the order, another local traffic authority, a passenger transport executive or any other public authority) may be appointed; (2) the appointment may be made on such terms as that national authority may consider appropriate; and (3) the appointment may be revoked by that national

authority: s 22(1). The powers conferred by s 22(1) have effect subject to the provisions of the order: s 22(2). Notice of any appointment of a traffic director (or the revocation of an appointment) must be given to the local traffic authority and, in the case of a London authority, to the Mayor: s 22(3). For the meaning of 'London authority' see PARA 772 note 8 ante; for the meaning of 'Mayor' see PARA 772 note 9 ante. Any such notice of an appointment must be given before the traffic director begins to carry out any of his duties: s 22(4).

Where a traffic director is appointed in relation to a London authority: (a) a copy of any report made by a traffic director to the authority must be given to the Mayor; (b) in carrying out his duties the traffic director need not comply with, or have regard to, any directions or guidance given by the Mayor under the Greater London Authority Act 1999 Pt IV (ss 141-303) (as amended) (see LONDON GOVERNMENT); (c) the duty to comply with a direction given by the traffic director prevails, to the extent of any inconsistency, over the duty to comply with, or have regard to, any direction or guidance mentioned in head (b) supra: Traffic Management Act 2004 s 29(1)-(4). Where a traffic director is appointed in relation to Transport for London: (i) if the traffic director exercises the power of Transport for London under the Highways Act 1980 s 301A(3) (as added) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 827) to object to a proposal and does not withdraw that objection, or directs Transport for London to exercise the power to object to a proposal and not to withdraw the objection, that provision has effect as if s 301A(3)(d), (4) (as added) were omitted; (ii) if the traffic director exercises the power of Transport for London under the Road Traffic Regulation Act 1984 s 121B(3) (as added and amended) (see PARA 732 ante) to object to a proposal and does not withdraw that objection, or directs Transport for London to exercise the power to object to a proposal and not to withdraw the objection, that provision has effect as if s 121B(3)(d), (4) (as added) were omitted; (iii) while the intervention order to which the appointment relates is in force the Mayor may not, without the consent of the traffic director, issue a direction under the Highways Act 1980 s 301A(9) (as added) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 827) or the Road Traffic Regulation Act 1984 s 121B(9) (as added) (see PARA 732 ante), dispensing with any of the requirements mentioned there (whether or not by varying an existing direction): Traffic Management Act 2004 s 29(5)-(8).

5 Ibid s 21(3). However, such an order may not be made unless: (1) reasonable notice of the grounds for appointing a traffic director has been given to the local traffic authority in an intervention notice under s 20 (see PARA 773 ante); and (2) the period specified in the notice under s 20(2) has expired; but if that period has expired an order may be made whether or not the local traffic authority has complied with any requirements specified under s 20(3): s 21(4).

6 The general powers which may be conferred by an intervention order under head (a) in the text are powers to monitor anything connected with the performance by the local traffic authority of its duties under ibid ss 16, 17 (see PARA 771 ante), including the use of its road network by different kinds of traffic or the effects of that use: s 23(1).

7 The general powers which may be conferred by an intervention order under head (b) in the text are powers to make reports about anything connected with the carrying out of the traffic director's objectives; or anything connected with the performance by the local traffic authority of its duties under ibid ss 16, 17 (see PARA 771 ante), including the use of its road network by different kinds of traffic or the effects of that use: s 23(2). The order may provide for such reports to be made to the appropriate national authority or the local traffic authority (or both): s 23(3).

8 Ibid s 24 explains the general powers which may be conferred by an intervention order under head (c) in the text: s 24(1). Such powers may authorise the traffic director to give to the local traffic authority directions with respect to the exercise of any specified function, including in particular directions: (1) to exercise (or to cease or refrain from exercising) such a function; (2) as to the way in which such a function is (or is not) to be exercised; (3) as to the policies to be adopted in the exercise of any function: s 24(2). The order may specify any function of the authority (whether or not conferred in its capacity as a traffic authority) the exercise of which appears to the appropriate national authority to be capable of contributing to, or interfering with, the achievement of the traffic director's objectives: s 24(3). Such powers may also authorise the traffic director, where it appears to him that the authority has failed to comply with a direction: (a) to take any steps which still remain to be taken by the authority to comply with the direction; and (b) to recover from the authority as a civil debt the costs reasonably incurred by him in taking those steps: s 24(4). Anything done by the traffic director under head (a) supra is to be treated as having been done by the authority: s 24(5). As to money recoverable summarily as a civil debt see MAGISTRATES vol 29(2) (Reissue) PARA 826; and as to enforcement of civil debts see MAGISTRATES vol 29(2) (Reissue) PARA 828.

9 Ibid s 21(5). Section 25 explains the general powers which may be conferred by an intervention order under head (d) in the text and the duty which may be imposed under s 21(6) (see the text to note 10 infra): s 25(1). The order may authorise or require the traffic director to take over from the authority the exercise of any specified function: s 25(2). The order may specify any function of the authority (whether or not conferred in its capacity as a traffic authority) the exercise of which appears to the appropriate national authority to be capable of contributing to, or interfering with, the achievement of the traffic director's objectives: s 25(3). The order may require the authority to take action to co-ordinate its activities with those of the traffic director in the exercise of functions specified under s 25(2), and to co-operate with the traffic director in the exercise of such functions:

s 25(4). Anything done by the traffic director in the exercise of a specified function is to be treated as having been done by the authority: s 25(5).

10 Ibid s 21(6).

11 Ie under ibid s 21(6) (see the text and note 10 supra).

12 For these purposes, 'ancillary power' means a power to do anything calculated to facilitate (or to be conducive or incidental to): (1) the exercise by the traffic director of his general powers; or (2) the performance of any duty imposed on him under s 21(6) (see the text and note 10 supra), including, in particular, power to require the local traffic authority to provide him with information and assistance: s 21(8).

13 Ibid s 21(7).

14 Ibid s 21(9).

15 Ibid s 21(10). The appropriate national authority may by order made by statutory instrument make provision for the application of s 20 (see PARA 773 ante) and ss 21-25 (with or without modifications) in cases where to any extent the performance of the duties under ss 16, 17 (see PARA 771 ante) is carried out jointly by two or more local traffic authorities: s 26(1). A statutory instrument containing such an order made by the Secretary of State is subject to annulment in pursuance of a resolution by either House of Parliament: s 26(2).

16 Ibid s 28(1).

17 Ibid s 28(2).

18 Ibid s 28(3).

19 Ibid s 28(4).

20 Ibid s 30(1), (2).

21 Ibid s 30(3).

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### **775. Criteria for deciding whether to give an intervention notice or make an intervention order.**

The appropriate national authority<sup>1</sup> must give<sup>2</sup> guidance about the criteria which it proposes to apply for the purpose of deciding whether to give an intervention notice<sup>3</sup> or make an intervention order<sup>4</sup>. The guidance must be appended to an order made by the authority by statutory instrument<sup>5</sup>.

A statutory instrument containing such an order made by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament<sup>6</sup>.

1 For the meaning of 'appropriate national authority' see PARA 771 note 12 ante.

2 Ie in accordance with the Traffic Management Act 2004 s 27(2).

3 'Intervention notice' means a notice under ibid s 20 (see PARA 773 ante): s 31.

4 Ibid s 27(1). 'Intervention order' means an order under s 21 (see PARA 774 ante): s 31.

5 Ibid s 27(2). As to the guidance which has been made see the Traffic Management (Guidance on Intervention Criteria) (England) Order 2007, SI 2007/339; and the Traffic Management (Guidance on Intervention Criteria) (Wales) Order 2007, SI 2007/1712.

6 Traffic Management Act 2004 s 27(3).

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### **(3) CROSSINGS AND PLAYGROUNDS**

#### **(i) Pedestrian Crossings**

#### **776. Powers of local authorities with respect to pedestrian crossings on roads other than trunk roads.**

A local traffic authority<sup>1</sup> may establish crossings for pedestrians on roads<sup>2</sup> for which it is the traffic authority<sup>3</sup>, and may alter or remove any such crossings<sup>4</sup>. Before establishing, altering, or removing a crossing a local traffic authority must consult the chief officer of police<sup>5</sup> about its proposal to do so, must give public notice of that proposal and must inform the Secretary of State<sup>6</sup> in writing<sup>7</sup>. It is the duty of a local traffic authority to execute any works (including the placing, erection<sup>8</sup>, maintenance, alteration and removal of marks and traffic signs) required in connection with the establishment, alteration or removal of crossings in accordance with the pedestrian crossing regulations<sup>9</sup>, or in connection with the indication of crossings in accordance with such regulations<sup>10</sup>.

1 For the meaning of 'local traffic authority' see PARA 731 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 As to traffic authorities see PARAS 731-735 ante.

4 Road Traffic Regulation Act 1984 s 23(1) (substituted by the New Roads and Street Works Act 1991 s 168(1), (2), Sch 8 para 35(2)). The crossings must be indicated in the manner prescribed by regulations under the Road Traffic Regulation Act 1984 s 25 (see PARA 778 post): s 23(1) (as so substituted). As to the exercise of powers under s 19(1) (as amended) in respect of the width of a road see PARA 730 ante. See *Crank v Brooks* [1980] RTR 441, DC.

5 As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

6 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 Road Traffic Regulation Act 1984 s 23(2) (amended by the New Roads and Street Works Act 1991 s 168(1), (2), Sch 8 para 35(3)). As to transitional provisions see the Road Traffic Regulation Act 1984 Sch 10 paras 1, 9. See *R (on the application of Wainwright) v Richmond upon Thames London Borough Council* [2001] EWCA Civ 2062, (2002) Times, 16 January (decision to approve crossing, reached in breach of duty to consult, not quashed where same decision would have been breached if duty complied with).

8 As to the erection or placing of traffic signs see PARA 770 note 2 ante. For the meaning of 'traffic sign' see PARA 830 post.

9 Ie regulations having effect under the Road Traffic Regulation Act 1984 s 25: see PARA 778 post.

10 Ibid s 23(3) (amended by the New Roads and Street Works Act 1991 s 168(1), (2), Sch 8 para 35(3)). As to transitional provisions see the Road Traffic Regulation Act 1984 Sch 10 paras 1, 9.

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### **777. Pedestrian crossings on trunk roads.**

The Secretary of State<sup>1</sup> must establish on roads<sup>2</sup> for which he is the traffic authority<sup>3</sup> such crossings for pedestrians as he considers necessary, and execute any works (including the placing, erection<sup>4</sup>, maintenance, alteration and removal of marks and traffic signs) required in connection with the establishment of those crossings<sup>5</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 As to traffic authorities see PARAS 731-735 ante.

4 As to the placing and erection of traffic signs see PARA 770 note 2 ante. For the meaning of 'traffic sign' see PARA 830 post.

5 Road Traffic Regulation Act 1984 s 24 (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 36).

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### **778. Pedestrian crossing regulations.**

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> with respect to the precedence of vehicles and pedestrians respectively, and generally with respect to the movement of traffic (including pedestrians), at and in the vicinity of crossings<sup>3</sup>. Such regulations may be made: (1) prohibiting pedestrian traffic on the carriageway within 100 yards of a crossing<sup>4</sup>; and (2) with respect to the indication of the limits of a crossing, or of any other matter whatsoever relating to the crossing, by marks or devices on or near the roadway or otherwise, and generally with respect to the erection of traffic signs<sup>5</sup> in connection with a crossing<sup>6</sup>. Different regulations may be made in relation to different traffic conditions, and in particular (but without prejudice to the generality of the foregoing words) different regulations may be made in relation to crossings in the vicinity of, and at a distance from, a junction of roads<sup>7</sup>, and in relation to traffic which is controlled by the police, and by traffic signals, and by different kinds of traffic signals, and traffic which is not controlled<sup>8</sup>. Regulations may be made applying only to a particular crossing or particular crossings specified in the regulations<sup>9</sup>. A person who contravenes any such regulations is guilty of an offence<sup>10</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 In exercise of this power, the Secretary of State has made the Zebra, Pelican and Puffin Pedestrian Crossings Regulations and General Directions 1997, SI 1997/2400 (amended by SI 1998/901; SI 2003/2155; SI 2004/3168 (England); SI 2005/2929 (Wales); SI 2006/594). As to the making of regulations generally see PARA 720 ante.

3 Road Traffic Regulation Act 1984 s 25(1). 'Crossing' means a crossing for pedestrians established by a local authority under s 23 (as amended) (see PARA 776 ante), or by the Secretary of State in the discharge of the duty imposed on him by s 24 (as amended) (see PARA 777 ante), and (in either case) indicated in accordance with the regulations having effect as respects that crossing; and, for the purposes of a prosecution for a contravention of the provisions of a regulation having effect as respects a crossing, the crossing is deemed to be so established and indicated unless the contrary is proved: s 25(6). As to transitional provisions see Sch 10 paras 1, 9.

4 Ibid s 25(2)(a). Section 25(2) is expressed to be without prejudice to the generality of s 25(1) (see the text and notes 1-3 supra): see s 25(2).

5 As to the erection of traffic signs see PARA 770 note 2 ante. For the meaning of 'traffic sign' see PARA 830 post.

6 Road Traffic Regulation Act 1984 s 25(2)(b). See also note 4 supra.

7 For the meaning of 'road' see PARA 206 ante.

8 Road Traffic Regulation Act 1984 s 25(3).

9 Ibid s 25(4).

10 Ibid s 25(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale; disqualification is discretionary if committed in respect of a motor vehicle; endorsement is obligatory if committed in respect of a motor vehicle; and 3 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Regulation Act 1984 s 25(5) of breaching pedestrian crossing regulations, except an offence in respect of a moving motor vehicle (other than a contravention of the Zebra, Pelican and Puffin Pedestrian Crossings Regulations and General Directions 1997 SI 1997/2400, regs 23, 24, 25 and 26) is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3 (amended by the Fixed Penalty Offences Order 1999, SI 1999/1851, art 2(3)(a)). As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; and as to legal proceedings generally see PARA 1023 et seq post.

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## 779. Stopping on or near pedestrian crossings in London.

The following provisions have effect until a day to be appointed<sup>1</sup>.

A driver of a vehicle must not at any time cause it to stop on a part of a road<sup>2</sup> in a special parking area<sup>3</sup> in the borough of a participating council<sup>4</sup> within the limits of a crossing or a crossing controlled area, and the prohibition is enforceable as if it had been imposed by an order<sup>5</sup>. However, this does not prohibit the driver of a vehicle from causing it to stop within the limits of a crossing<sup>6</sup> or a crossing controlled area<sup>7</sup> in circumstances where doing so would not contravene certain regulations<sup>8</sup>.

1 The London Local Authorities Act 1995 s 4 is repealed, as from a day to be appointed, by the Traffic Management Act 2004 s 98, Sch 12 Pt 1. The appointed day in relation to England is 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI



2007/2053), but at the date at which this volume states the law no such day had been appointed in relation to Wales.

2 For the meaning of 'road' see PARA 206 ante; definition applied by the London Local Authorities Act 1995 s 2.

3 'Special parking area' means a special parking area designated by an order made under the Road Traffic Act 1991 s 76(1) (as amended) (see PARA 822 post): London Local Authorities Act 1995 s 2.

4 'Participating council' means the Common Council of the City of London and the council of any London borough; and 'borough' and 'council' are to be construed accordingly: *ibid* s 2 (definition amended by the London Local Authorities Act 1996 s 27).

5 London Local Authorities Act 1995 s 4(1), (2). The order referred to in the text is an order under the Road Traffic Regulation Act 1984 s 6 (as amended) (see PARA 747 ante): London Local Authorities Act 1995 s 4(2). No penalty charge is payable pursuant to s 4(2) by the driver of a vehicle who causes it to stop contrary to that provision in any case where: (1) by reason of that stopping the vehicle is removed by, or under arrangements made by, a constable or traffic warden under regulations made pursuant to the Road Traffic Regulation Act 1984 s 99 (as amended) (see PARA 870 post); or (2) a notice is given to the driver under the Road Traffic Offenders Act 1988 s 54(2), (4) (as amended) (see PARA 1097 post) in respect of any offence under the Road Traffic Regulation Act 1984 s 25 (see PARA 778 ante) constituted by that stopping; or (3) notification of an intention to prosecute the driver in respect of such an offence is given by the Commissioner, in the case of a crossing situated on a GLA road or GLA side road, to Transport for London or, in any other case, to the council of the borough in which the crossing is situated before the expiry of the period of 14 days, beginning with the day on which the stopping takes place: London Local Authorities Act 1995 s 4(4)(a) (amended by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, art 2(1) Sch 1, PARAS 1, 2). As to the meaning of 'Commissioner' see PARA 871 note 3 post. As to the meaning of 'GLA road' see PARA 726 note 6 ante; and as to the meaning of 'GLA side road' see PARA 726 note 4 ante.

Where the driver of a vehicle causes it to stop contrary to the London Local Authorities Act 1995 s 4(2), he is not liable to be prosecuted in respect of any offence under the Road Traffic Regulation Act 1984 s 25 constituted by that stopping, unless the case falls within head (1), (2) or (3) *supra*: London Local Authorities Act 1995 s 4(4)(b).

Nothing in s 4(2) requires the placing of any traffic signs in connection with the prohibition thereby imposed: s 4(5). For the meaning of 'traffic sign' see PARA 830 post; definition applied by London Local Authorities Act 1995 s 2.

6 For these purposes, 'crossing' means a crossing for pedestrians established or having effect as if established pursuant to the Road Traffic Regulation Act 1984 s 23 (as amended) (see PARA 776 ante): London Local Authorities Act 1995 s 4(6)(a).

7 For these purposes, 'crossing controlled area' means any area of the carriageway in the vicinity of a crossing being an area the presence and limits of which are indicated in accordance with regulations made or having effect as if made under the Road Traffic Regulation Act 1984 s 25 (see PARA 778 ante): London Local Authorities Act 1995 s 4(6)(b).

8 *Ibid* s 4(3). The regulations referred to are regulations made or having effect as if made under the Road Traffic Regulation Act 1984 s 25 (see PARA 778 ante): London Local Authorities Act 1995 s 4(3).

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## **(ii) School Crossings**

### **780. Arrangements for patrolling school crossings.**

Arrangements may be made by the appropriate authority<sup>1</sup> for the patrolling of places where children cross roads<sup>2</sup> on their way to or from school, or from one part of a school to another, by persons appointed by or on behalf of the appropriate authority, other than constables<sup>3</sup>. The

functions of the appropriate authority for the purposes of such arrangements include the duty to satisfy itself of the adequate qualifications of persons appointed to patrol, and to provide requisite training of persons to be appointed<sup>4</sup>.

In taking decisions as to making such arrangements, the council of a county or metropolitan district must have regard to any representations made to it by local authorities for localities in the county or metropolitan district, as the case may be<sup>5</sup>. Before making such arrangements for the patrolling of places where children cross GLA roads<sup>6</sup>, a London borough council or the Common Council of the City of London must consult Transport for London and take account of any representations made by Transport for London<sup>7</sup>. Any such arrangements if made by the council of the county, London borough or metropolitan district as respects places in the county, London borough or district, may include an agreement between that council and the police authority for the police area<sup>8</sup> in which those places are, for the performance by the police authority<sup>9</sup>, on such terms as may be specified in the agreement, of such functions for the purposes of the arrangements as may be so specified<sup>10</sup>.

1 For the purposes of the Road Traffic Regulation Act 1984 s 26 (as amended), in its application to England and Wales, the appropriate authority:

1365 (1) as respects places outside Greater London, is the council of the county or metropolitan district in which the places in question are (s 26(2)(a) (amended by the Local Government Act 1985 s 8(1), Sch 5 para 4(10)(a); and the Greater London Authority Act 1999 s 288(1), (2)(a));

1366 (2) as respects places in the City of London, is the Common Council of the City (Road Traffic Regulation Act 1984 s 26(2)(b)); and

1367 (3) as respects places in a London borough, is the council for the borough (s 26(2)(c) (substituted by the Greater London Authority Act 1999 s 288(1), (2)(a))).

As to local government areas and authorities see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; LONDON GOVERNMENT.

2 For the meaning of 'road' see PARA 206 ante.

3 Road Traffic Regulation Act 1984 s 26(1) (amended by the Transport Act 2000 ss 270(1), (2)(a), 274, Sch 31 Pt V(2)). Arrangements under the Road Traffic Regulation Act 1984 s 26(1) (as amended) may be made for patrolling places at such times as the authority thinks fit: s 26(1A) (added by the Transport Act 2000 s 270(2) (b)). As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

4 Road Traffic Regulation Act 1984 s 26(3).

5 Ibid s 26(4) (amended by the Local Government Act 1985 s 8(1), Sch 5 para 4(10)(b); and the Greater London Authority Act 1999 ss 288(1), (3), 423, Sch 34 Pt VI).

6 As to the meaning of 'GLA road' see PARA 726 note 6 ante.

7 Road Traffic Regulation Act 1984 s 26(4A) (added by the Greater London Authority Act 1999 s 288(1), (4)). As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

8 As to police areas see POLICE vol 36(1) (2007 Reissue) PARA 136 et seq.

9 As to police authorities see POLICE vol 36(1) (2007 Reissue) PARA 139 et seq.

10 Road Traffic Regulation Act 1984 s 26(5) (amended by the Local Government Act 1985 Sch 5 para 4(10) (c); and the Greater London Authority Act 1999 s 288(1), (5)).

## UPDATE

### 780 Arrangements for patrolling school crossings

NOTE 2--SI 1997/2439 amended: SI 2008/2266.

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### **781. Stopping of vehicles at school crossings.**

When a vehicle is approaching a place in a road<sup>1</sup> where a person is crossing or seeking to cross the road, a school crossing patrol<sup>2</sup> wearing a uniform approved by the Secretary of State<sup>3</sup> has power, by exhibiting a prescribed sign<sup>4</sup>, to require the person driving<sup>5</sup> or propelling the vehicle to stop it<sup>6</sup>. When a person has been so required to stop a vehicle: (1) he must cause the vehicle to stop before reaching the place where the person is crossing or seeking to cross and so as not to stop or impede his crossing<sup>7</sup>; and (2) the vehicle must not be put in motion again so as to reach the place in question so long as the sign continues to be exhibited<sup>8</sup>. A person who fails to comply with head (1) above, or who causes a vehicle to be so put in motion in contravention of head (2) above, is guilty of an offence<sup>9</sup>.

1 For the meaning of 'road' see PARA 206 ante.

2 'School crossing patrol' means a person authorised to patrol in accordance with arrangements under the Road Traffic Regulation Act 1984 s 26 (as amended) (see PARA 780 ante): s 28(4)(b). As to the employment of traffic wardens as school crossing patrols see PARA 868 post.

3 For these purposes, where it is proved that a school crossing patrol was wearing a uniform, the uniform is to be presumed, unless the contrary is proved, to be a uniform approved by the Secretary of State: *ibid* s 28(5) (b). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 'Prescribed sign' means a sign of a size, colour and type prescribed by regulations made by the Secretary of State or, if authorisation is given by the Secretary of State for the use of signs of a description not so prescribed, a sign of that description: *ibid* s 28(4)(a). Such regulations may provide for the attachment of reflectors to signs or for the illumination of signs: s 28(4). For the prescribed sign see the School Crossing Patrol Sign (England and Wales) Regulations 2006, SI 2006/2215. For the meaning of 'traffic sign' see PARA 830 post. The sign must be exhibited so that on coming traffic can see the wording on the sign even if the sign is not held full-face to the traffic: see *Hoy v Smith* [1964] 3 All ER 670, [1964] 1 WLR 1377, DC. As to the making of regulations generally see PARA 720 ante.

For these purposes, where it is proved that a sign was exhibited by a school crossing patrol, it is to be presumed, unless the contrary is proved, to be of a size, colour and type prescribed, or of a description authorised, under the Road Traffic Regulation Act 1984 s 28(4)(b) (see note 2 *supra*), and, if it was exhibited in circumstances in which it was required by the regulations to be illuminated, to have been illuminated in the prescribed manner: s 28(5)(a).

5 For the meaning of 'driving' see PARA 207 ante.

6 Road Traffic Regulation Act 1984 s 28(1) (amended by the Transport Act 2000 ss 270(1), (3)(a), 274, Sch 31 Pt V(2)). Once the sign is properly exhibited, the driver of the vehicle is obliged to stop even though the pedestrians have cleared the section of the carriageway, and the obligation to stop cannot be released until the sign is no longer exhibited: *Franklin v Langdown* [1971] 3 All ER 662, [1971] RTR 471.

7 Road Traffic Regulation Act 1984 s 28(2)(a).

8 *Ibid* s 28(2)(b).

9 *Ibid* s 28(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale; disqualification is discretionary if committed in respect of a motor vehicle; endorsement is obligatory if committed in respect of a motor vehicle; and 3 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; as to

disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; as to fixed penalties see PARA 1089 et seq post; and as to legal proceedings generally see PARA 1023 et seq post.

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### **(iii) Street Playgrounds**

#### **782. Power to prohibit traffic on roads to be used as playgrounds.**

For the purpose of enabling a road<sup>1</sup> for which it is the traffic authority<sup>2</sup> to be used as a playground for children, a local traffic authority<sup>3</sup> may make an order prohibiting or restricting the use of the road by vehicles, or by vehicles of any specified class<sup>4</sup>, either generally or on particular days or during particular hours<sup>5</sup>. The prohibition or restriction may be subject to such exceptions and conditions as to occasional use or otherwise as may be specified in the order<sup>6</sup>. Such an order must make provision for permitting reasonable access to premises situated on or adjacent to the road<sup>7</sup>. A person who uses a vehicle, or causes or permits a vehicle to be used, in contravention of such an order is guilty of an offence<sup>8</sup>.

1 For the meaning of 'road' see PARA 206 ante.

2 As to traffic authorities see PARAS 731-735 ante.

3 For the meaning of 'local traffic authority' see PARA 731 ante.

4 As to classes of vehicle see PARA 208 ante.

5 Road Traffic Regulation Act 1984 s 29(1) (s 29 substituted by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 37). The power to make an order under the Road Traffic Regulation Act 1984 s 29 (as substituted) is also exercisable by the Secretary of State: see PARAS 736-741 ante. Any power of the Secretary of State to make an order under or by virtue of s 29 (as substituted) is exercisable by statutory instrument: s 124(2). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. Orders made under s 29 (as substituted) are local in nature, and are not recorded in this work. As to the exercise of powers under s 29(1) (as substituted) in respect of the width of a road see PARA 730 ante.

6 Ibid s 29(1) (as substituted: see note 5 supra).

7 Ibid s 29(2) (as substituted: see note 5 supra).

8 Ibid s 29(3) (as substituted: see note 5 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale; disqualification is discretionary if committed in respect of a motor vehicle; endorsement is obligatory if committed in respect of a motor vehicle; and 2 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Regulation Act 1984 s 29(3) (as substituted) of using a vehicle in contravention of a street playground order is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3 (entry amended by the New Road and Street Works Act 1991 s 168(2), Sch 9). As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; and as to legal proceedings generally see PARA 1023 et seq post.

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### **783. Byelaws with respect to roads used as playgrounds.**

Where an order is or has been made with respect to roads<sup>1</sup> used as playgrounds<sup>2</sup>, the local traffic authority<sup>3</sup> may make byelaws authorising the use of the road as a playground for children and making provision<sup>4</sup>:

- 479 (1) with respect to the admission of children to the road when used as a playground<sup>5</sup>;
- 480 (2) with respect to the safety of children so using the road and their protection from injury by vehicles using the road for access to premises situated on or adjacent to it or otherwise<sup>6</sup>; and
- 481 (3) generally with respect to the proper management of the road when used as a playground for children<sup>7</sup>.

Such byelaws are subject to confirmation by the Secretary of State<sup>8</sup>.

1 For the meaning of 'road' see PARA 206 ante.

2 Ie under the Road Traffic Regulation Act 1984 s 29 (as substituted): see PARA 782 ante.

3 For the meaning of 'local traffic authority' see PARA 731 ante.

4 Road Traffic Regulation Act 1984 s 31(1) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 38).

5 Road Traffic Regulation Act 1984 s 31(1)(a).

6 Ibid s 31(1)(b).

7 Ibid s 31(1)(c).

8 Ibid s 31(2) (amended by the Local Government Act 1985 s 8(1), Sch 5 para 4(13)). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

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## **(4) PARKING**

### **(i) Provision of Off-street Parking and Parking on Roads without Payment**

#### **784. Power of local authorities to provide parking places.**

Where for the purpose of relieving or preventing congestion of traffic it appears to a local authority<sup>1</sup> to be necessary to provide within its area suitable parking places<sup>2</sup> for vehicles, the local authority<sup>3</sup>:

- 482 (1) may provide off-street parking places<sup>4</sup> (whether above or below ground and whether or not consisting of or including buildings) together with means of entrance to and egress from them<sup>5</sup>; or
- 483 (2) may by order authorise the use as a parking place of any part of a road<sup>6</sup> within its area, not being a road the whole or part of the width of which is within Greater London<sup>7</sup>.

A local authority may adapt for use as, or for providing means of entrance to or egress from, a parking place any land acquired or appropriated by it for these purposes, and may, with the consent of the authority or person responsible for the maintenance of a road, adapt any part of it for the purpose of providing means of entrance to or egress from a parking place<sup>8</sup>.

The exercise by a local authority of its powers under the above provisions with respect to the use as a parking place of any part of a road does not render it subject to any liability in respect of the loss of or damage to any vehicle or the fittings or contents of any vehicle parked in the parking place<sup>9</sup>.

1 In the Road Traffic Regulation Act 1984 s 32 (as amended) and in ss 33-41 (s 34, s 35 as amended, ss 35A-35C as added, and ss 36-39 as amended) (see PARA 785 et seq post), 'local authority' means (subject to s 36(3) (as amended) (see note 7 infra)) the council of a county, London borough or district or the Common Council of the City of London: s 32(4)(a) (amended by the Local Government Act 1985 s 102(2), Sch 17). As to local government areas and authorities see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; LONDON GOVERNMENT.

For the application of the Road Traffic Regulation Act 1984 to the Channel Tunnel system see the Channel Tunnel (Application of Road Traffic Enactments) (No 2) Order 1994, SI 1994/1667, which confers functions exercisable by local authorities on the Channel Tunnel Concessionaires.

2 In the Road Traffic Regulation Act 1984 s 32 (as amended) and in ss 33-41 (s 34, s 35 as amended, ss 35A-35C as added, and ss 36-39 as amended) (see PARA 785 et seq post), 'parking place' means a place where vehicles, or vehicles of any class, may wait: s 32(4)(b). As to classes of vehicles see PARA 208 ante. For the meaning of 'road' see PARA 206 ante.

Any power conferred by s 32 (as amended) to provide a parking place includes power to maintain it (if below ground) and to maintain buildings comprised in it, and to provide and maintain any cloakroom or other convenience for use in connection with it; and references in other provisions of s 32 (as amended) to parking places are accordingly to be construed as including references to any such conveniences: s 32(3).

3 Ibid s 32(1). This provision is expressed to be subject to s 124(1), Sch 9 Pt I paras 1-12 (as amended), Sch 9 Pt II paras 13-19 (as amended) and Sch 9 Pt III paras 20-26 (as amended) (see PARAS 736-738 ante): see s 32(1). The power to make an order under s 32 (as amended) is also exercisable by the Secretary of State: see PARAS 736-741 ante. Any power of the Secretary of State to make an order under or by virtue of s 32 (as amended) is exercisable by statutory instrument: s 124(2). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. Orders made under s 32 (as amended) are local in nature, and are not recorded in this work. As to the exercise of powers under s 32(1) (as amended) in respect of the width of a road see PARA 730 ante.

A local authority may contribute towards the expenses incurred by any other authority in the exercise of its powers under s 32 (as amended): s 41.

Before exercising its powers under s 32(1), except in the case of the exercise of the power conferred by s 32(1) (b) (see the text and notes 6-7 infra) in relation to a road in England, a county council must consult with the council of the district in which the parking place is to be, or is, situated: s 39(1). A district council, other than a metropolitan district council, may not exercise its powers under s 32 (as amended) without the consent of the county council; and any consent given by the county council may be subject to such conditions or restrictions as it thinks fit: s 39(3) (amended by the Local Government Act 1985 s 8, Sch 5 para 4(16)). A district council aggrieved by the refusal of the county council to give consent under the Road Traffic Regulation Act 1984 s 39(3) (as amended) or by any conditions or restrictions subject to which any such consent is given, may appeal to the Secretary of State; and, on any such appeal, the Secretary of State may give such directions as he thinks

fit, either dispensing with the need for consent or varying or revoking any such conditions, restrictions or modifications: s 39(5).

The power to vary or revoke an order made by a district council, other than a metropolitan district council, under s 32(1) is exercisable by the county council as well as by the district council: s 39(6) (amended by the Local Government Act 1985 Sch 5 para 4(16)). Where, however, a county council proposes to make an order by virtue of the Road Traffic Regulation Act 1984 s 39(6) (as amended), the county council must send a copy of the proposed order to the district council; and if, not later than six weeks after it has received such a copy from the county council, the district council serves notice on the county council and the Secretary of State of its objection to the making of the proposed order, and the objection is not withdrawn by a further notice served not later than six weeks after the service of the notice of objection, the county council must submit a copy of the proposed order to the Secretary of State, and may not make the order except with his consent: s 39(7). Section 39(7) does not apply in Wales: s 39(7A) (added by the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 38(1)). If the Secretary of State consents to an order submitted to him for his consent under the Road Traffic Regulation Act 1984 s 39(7), he may consent to the order either in the form in which it was submitted to him or with such modifications as he thinks fit, which may include additions, exceptions or other modifications of any description; but where he proposes to consent to the order with modifications which appear to him substantially to affect the character of the order as submitted to him, he must, before doing so, take such steps as appear to him to be sufficient and reasonably practicable for informing the county council and district council in question and any other persons likely to be concerned: s 39(8).

4 'Off-street parking place' refers to parking places on land which does not form part of a road: *ibid* s 142(1).

5 *Ibid* s 32(1)(a).

6 For the purposes of *ibid* s 32 (as amended) and in ss 33-41 (s 34, s 35 as amended, ss 35A-35C as added, and ss 36-39 as amended) (see PARA 785 *et seq post*), an underground parking place is not to be deemed to be part of a road by reason only of its being situated under a road: s 32(4).

7 *Ibid* s 32(1)(b). Subject to s 37 (as amended), no order under s 32(1)(b) may: (1) authorise the use of any part of a road so as unreasonably to prevent access to any premises adjoining the road or the use of the road by any person entitled to use it, or so as to be a nuisance; or (2) be made in respect of any part of a road without the consent of the authority or person responsible for the maintenance of the road: s 36(1). In relation to roads in England the power to make an order under s 32(1)(b) is not exercisable by non-metropolitan district councils: s 36(3) (amended by the Local Government Act 1985 s 8, Sch 5 para 4(14)). The Road Traffic Regulation Act 1984 s 36(3) (as amended) does not affect the operation of the Local Government Act 1972 s 101(1) (arrangements for discharge of functions by local authorities: see LOCAL GOVERNMENT vol 69 (2009) PARA 370), which has effect as if the Road Traffic Regulation Act 1984 s 36(3) (as amended) were contained in an Act passed before the Local Government Act 1972: Road Traffic Regulation Act 1984 s 36(4).

8 *Ibid* s 32(2).

9 *Ibid* s 36(2).

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### **785. Power to arrange for management or provision of parking places.**

A local authority<sup>1</sup> may let for use as a parking place<sup>2</sup> any off-street parking place<sup>3</sup> provided by it; and, where the parking place is in a building, the local authority may let the parking place separately from the rest of the building or let the whole or any part of the building with the parking place<sup>4</sup>. A local authority also has power to enter into arrangements with any person under which, in consideration of the payment by him to the authority of a lump sum, or of a series of lump sums, he is authorised to collect and retain the charges made in respect of the parking of vehicles in an off-street parking place provided<sup>5</sup> by the authority<sup>6</sup>.

A local authority may, on such terms as it thinks fit:

- 484 (1) let land on which it could erect or adapt a building for the purpose of providing an off-street parking place with a view to its being provided by some other person<sup>7</sup>; or
- 485 (2) arrange with any person for him to provide such a parking place on any land of which he is the owner or in which he has an interest<sup>8</sup>.

1 For the meaning of 'local authority' see PARA 784 note 1 ante.

2 For the meaning of 'parking place' see PARA 784 note 2 ante.

3 For the meaning of 'off-street parking place' see PARA 784 note 4 ante.

4 Road Traffic Regulation Act 1984 s 33(3). Neither s 33(3) nor s 33(4) (see the text and notes 7-8 infra) affects the provisions of any local Act as to the provision of parking places: s 33(6). As to the application of s 33(3) where a parking place is provided in a building for other purposes see PARA 787 post. As to the acquisition and appropriation of land for parking places see PARA 796 post.

A district council, other than a metropolitan district council, may not exercise its powers under s 33(3) or s 33(4) (see the text to notes 7-8 infra) without the consent of the county council; and any consent given by the county council may be subject to such conditions or restrictions as it thinks fit: s 39(3) (amended by the Local Government Act 1985 s 8, Sch 5 para 4(16)). A district council aggrieved by the refusal of the county council to give consent under the Road Traffic Regulation Act 1984 s 39(3) (as amended), or by any conditions or restrictions subject to which any such consent is given, may appeal to the Secretary of State; and, on any such appeal, the Secretary of State may give such directions as he thinks fit, either dispensing with the need for consent or varying or revoking any such conditions, restrictions or modifications: s 39(5). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 *Ibid* under *ibid* s 32 (as amended): see PARA 784 ante.

6 *Ibid* s 33(7). As to transitional provisions see Sch 10 paras 1, 10.

7 *Ibid* s 33(4)(a). See also note 4 supra.

8 *Ibid* s 33(4)(b). See also note 4 supra.

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## **786. Temporary off-street parking places.**

A local authority<sup>1</sup> may adapt for use as a temporary off-street parking place<sup>2</sup> any land owned by it or under its control, not being, in the case of land owned by it, land acquired or appropriated by it for use as an off-street parking place<sup>3</sup>.

1 For the meaning of 'local authority' see PARA 784 note 1 ante.

2 For the meaning of 'off-street parking place' see PARA 784 note 4 ante; and for the meaning of 'parking place' see PARA 784 note 2 ante.

3 Road Traffic Regulation Act 1984 s 33(2). Section 33(2) does not affect the provisions of any local Act as to the provision of parking places: s 33(6). As to the acquisition and appropriation of land for parking places see PARA 796 post.



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### **787. Parking places in buildings used for other purposes.**

The power of a local authority<sup>1</sup> to provide off-street parking places<sup>2</sup> includes power to provide them in buildings used also for other purposes, and to erect or adapt, and to maintain, equip and manage, buildings accordingly<sup>3</sup>.

The authority by which a parking place is so provided may let, on such terms as it thinks fit, parts of the building which are not used for the parking place; and may provide services for the benefit of persons occupying or using those parts, and may make such reasonable charges for those services as it may determine<sup>4</sup>.

1 For the meaning of 'local authority' see PARA 784 note 1 ante.

2 The power under the Road Traffic Regulation Act 1984 s 32 (as amended): see PARA 784 ante. For the meaning of 'off-street parking place' see PARA 784 note 4 ante; and for the meaning of 'parking place' see PARA 784 note 2 ante.

3 Ibid s 33(1). Section 33(1) does not affect the provisions of any local Act as to the provision of parking places: s 33(6). As to the acquisition and appropriation of land for parking places see PARA 796 post. A local authority may contribute towards the expenses incurred by any other authority in the exercise of its powers under s 33(1): s 41.

A district council, other than a metropolitan district council, may not exercise its powers under s 33(1) without the consent of the county council; and any consent given by the county council may be subject to such conditions or restrictions as it thinks fit: s 39(3) (amended by the Local Government Act 1985 s 8, Sch 5 para 4(16)). A district council aggrieved by the refusal of the county council to give consent under the Road Traffic Regulation Act 1984 s 39(3) (as amended), or by any conditions or restrictions subject to which any such consent is given, may appeal to the Secretary of State; and, on any such appeal, the Secretary of State may give such directions as he thinks fit, either dispensing with the need for consent or varying or revoking any such conditions, restrictions or modifications: s 39(5). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 Ibid s 33(1). See also note 3 supra.

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### **788. Service station facilities at off-street parking places.**

A local authority<sup>1</sup> may, at an off-street parking place<sup>2</sup> provided by it<sup>3</sup>, provide and maintain such buildings, facilities and apparatus as it thinks fit for the storage and sale of fuel and lubricants and the supply of air and water for the vehicles, and may let or hire out, on such terms as it thinks fit, the buildings, facilities or apparatus so provided, but may not itself sell or supply fuel or lubricants<sup>4</sup>.

1 For the meaning of 'local authority' see PARA 784 note 1 ante.

<sup>2</sup> For the meaning of 'off-street parking place' see PARA 784 note 4 ante; and for the meaning of 'parking place' see PARA 784 note 2 ante.

<sup>3</sup> le under the Road Traffic Regulation Act 1984 s 32 (as amended): see PARA 784 ante.

<sup>4</sup> Ibid s 33(5). Section 33(5) does not affect the provisions of any local Act as to the provision of parking places: s 33(6). As to the acquisition and appropriation of land for parking places see PARA 796 post.

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### **789. Provision of access to premises through off-street parking place.**

Where it appears to a local authority<sup>1</sup> which proposes to provide, or has provided, an off-street parking place<sup>2</sup>:

- 486 (1) that it would relieve or prevent congestion of traffic on a highway if use were made of the parking place<sup>3</sup> to provide a means of access from the highway or road to premises adjoining, or abutting on, the parking place<sup>4</sup>; and
- 487 (2) that it would be possible to provide such access and at the same time ensure that vehicles using the parking place to obtain access to the premises in question would, while in the parking place, proceed in the direction in which other vehicles using the parking place are to be, or are, required to proceed<sup>5</sup>,

the authority may provide such a means of access in accordance with the following provisions<sup>6</sup>.

A local authority may adapt for use as, or for providing, means of access under this provision: (a) an off-street parking place provided by it<sup>7</sup>; (b) any land acquired or appropriated by it for these purposes<sup>8</sup>; or (c) with the consent of the authority or person responsible for the maintenance of a road<sup>9</sup>, any part of that road<sup>10</sup>.

A local authority which proposes to provide, or has provided, a means of access to any premises under this provision:

- 488 (i) may enter into an agreement with the occupier of the premises with respect to the use of the means of access and for the making by him of contributions towards the expenses incurred by the authority in providing the means of access<sup>11</sup>;
- 489 (ii) may, for such consideration and on such terms and conditions as may be agreed, grant to the occupier of the premises, or any other person having an interest in them, a right of way over any such part of the land comprised in the parking place as is to be used as the means of access, and such other rights (if any) incidental to, or connected with, the use of the means of access as it thinks it necessary or expedient to grant<sup>12</sup>.

Subject to the provisions of any agreement made by it under head (i) above and to any rights granted by it under head (ii) above, a local authority may stop up any means of access so provided by it<sup>13</sup>.

<sup>1</sup> For the meaning of 'local authority' see PARA 784 note 1 ante.

2 le under the Road Traffic Regulation Act 1984 s 32 (as amended): see PARA 784 ante. For the meaning of 'off-street parking place' see PARA 784 note 4 ante.

3 References in *ibid* s 34 (as amended) to a parking place include references to the means of entrance to and egress from the parking place: s 34(5). For the meaning of 'parking place' generally see PARA 784 note 2 ante.

4 *Ibid* s 34(1)(a) (substituted by the New Roads and Street Works Act 1991 s 168, Sch 8 Pt II para 40).

5 Road Traffic Regulation Act 1984 s 34(1)(b).

6 *Ibid* s 34(1) (amended by the New Roads and Street Works Act 1991 s 168, Sch 8 Pt II para 40, Sch 9). A local authority may contribute towards the expenses incurred by any other authority in the exercise of its powers under the Road Traffic Regulation Act 1984 s 34 (as amended): s 41.

A district council, other than a metropolitan district council, may not exercise its powers under s 34 (as amended) without the consent of the county council; and any consent given by the county council may be subject to such conditions or restrictions as it thinks fit: s 39(3) (amended by Local Government Act 1985 s 8, Sch 5 para 4(16)). A district council aggrieved by the refusal of the county council to give consent under the Road Traffic Regulation Act 1984 s 39(3) (as amended) or by any conditions or restrictions subject to which any such consent is given, may appeal to the Secretary of State; and, on any such appeal, the Secretary of State may give such directions as he thinks fit, either dispensing with the need for consent or varying or revoking any such conditions, restrictions or modifications: s 39(5).

7 *Ibid* s 34(2)(a). The text refers to the provision of off-street parking places under s 32 (as amended) (see PARA 784 ante): s 34(2)(a).

8 *Ibid* s 34(2)(b). The purposes referred to in the text are the purposes of s 34 (as amended) or s 32 (as amended) (see PARA 784 ante): s 34(2)(b).

9 For the meaning of 'road' see PARA 206 ante.

10 Road Traffic Regulation Act 1984 s 34(2)(c).

11 *Ibid* s 34(3)(a).

12 *Ibid* s 34(3)(b).

13 *Ibid* s 34(4).

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## **790. Provisions as to use of parking places.**

As respects any parking place<sup>1</sup> provided by a local authority<sup>2</sup>, or provided under any letting or arrangements made by a local authority<sup>3</sup>, the local authority may by order make provision as to<sup>4</sup>:

- 490 (1) the use of the parking place, and in particular the vehicles or class of vehicles<sup>5</sup> which may be entitled to use it<sup>6</sup>;
- 491 (2) the conditions on which it may be used<sup>7</sup>;
- 492 (3) the charges to be paid in connection with its use (where it is an off-street one)<sup>8</sup>; and
- 493 (4) the removal from it of a vehicle left there in contravention of the order and the safe custody of the vehicle<sup>9</sup>.

The power under head (3) above to make provision as to the payment of charges includes power to make provision requiring those charges, or any part of them, to be paid by means of the hire or purchase in advance, or the use, of parking devices<sup>10</sup> in accordance with the order<sup>11</sup>.

Where a means of access to any premises has been provided by a local authority through an off-street parking place<sup>12</sup>, then the authority may by such an order<sup>13</sup> make provision as to the use of the parking place as the means of access and, in particular, as to the vehicles or class of vehicles which may be entitled to use the means of access and as to the conditions on which the means of access may be used<sup>14</sup>. Such an order may provide for a specified apparatus or device to be used:

- 494 (a) as a means to indicate the time at which a vehicle arrived at, and the time at which it ought to leave, a parking place, or one or other of those times<sup>15</sup>; or
- 495 (b) as a means to indicate the charges paid or payable in respect of a vehicle in an off-street parking place<sup>16</sup>; or
- 496 (c) as a means to collect any such charges<sup>17</sup>,

and may make provision regulating the use of any such apparatus or device<sup>18</sup>. Such an order may also provide:

- 497 (i) for regulating the issue, use and surrender of parking devices<sup>19</sup>;
- 498 (ii) for requiring vehicles to display parking devices when left in any parking place in respect of which the parking devices may be used<sup>20</sup>;
- 499 (iii) without prejudice to the generality of head (ii) above, for regulating the manner in which parking devices are to be displayed or operated<sup>21</sup>;
- 500 (iv) for prescribing the use, and the manner of use, of apparatus designed to be used in connection with parking devices<sup>22</sup>;
- 501 (v) for treating the indications given by a parking device, or the display or the failure to display a parking device on or in any vehicle left in any parking place, as evidence of such facts as may be provided by the order<sup>23</sup>;
- 502 (vi) for the refund, in such circumstances and in such manner as may be prescribed in the order, of the whole or part of the amount of any charge paid in advance in respect of a parking device<sup>24</sup>;
- 503 (vii) for the payment of a deposit in respect of the issue of a parking device and for the repayment of the whole or any part of any such deposit<sup>25</sup>.

1 For the meaning of 'parking place' see PARA 784 note 2 ante.

2 Ie under the Road Traffic Regulation Act 1984 s 32 (as amended): see PARA 784 ante. For the meaning of 'local authority' see PARA 784 note 1 ante.

3 Ie under *ibid* s 33(4): see PARA 785 ante.

4 *Ibid* s 35(1). This provision is expressed to be subject to s 124(1), Sch 9 Pt I paras 1-12 (as amended), Sch 9 Pt II paras 13-19 (as amended) and Sch 9 Pt III paras 20-26 (as amended) (see PARAS 736-738 ante): see s 35(1). The power to make an order under s 35 (as amended) is also exercisable by the Secretary of State: see PARAS 736-741 ante. Any power of the Secretary of State to make an order under or by virtue of s 35 (as amended) is exercisable by statutory instrument: s 124(2). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. Orders made under s 35 (as amended) are local in nature, and are not recorded in this work.

As to exemptions for disabled persons see, in relation to England, the Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (England) Regulations 2000, SI 2000/683; and, in relation to Wales, the Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (England and Wales) Regulations 1986, SI 1986/178 (amended by SI 1991/2709; SI 2000/683).

5 As to classes of vehicles see PARA 208 ante.

6 Road Traffic Regulation Act 1984 s 35(1)(i).

7 Ibid s 35(1)(ii). It has been held that: (1) orders made by local authorities under the Road Traffic Regulation Act 1984 respecting the regulation of parking must fulfil a parking purpose; and (2) the imposition of a condition compliance with which a parking attendant had no means of checking, and which extended the ambit of the criminal law, was unreasonable according to the principles set out in *Associated Provincial Picture Houses Ltd v Wednesbury Corp*n [1948] 1 KB 223, [1947] 2 All ER 680, CA: *R v Parking Adjudicator, ex p Bexley London Borough Council* [1998] RTR 128, (1997) 96 LGR 433.

8 Road Traffic Regulation Act 1984 s 35(1)(iii). In relation to orders made before 12 June 1996 see the Deregulation (Parking Equipment) Order 1996, SI 1996/1553, art 3.

9 Road Traffic Regulation Act 1984 s 35(1)(iv).

10 In ibid s 35 (as amended) and s 35A (as added) (see PARA 791 post), 'parking device' means a card, disc, token, meter, permit, stamp or other similar device, whether used in a vehicle or not, which, being used either by itself or in conjunction with any such apparatus as is referred to in s 35(3A)(d) (as added and amended) (see the text and note 22 infra):

1368 (1) indicates, or causes to be indicated, the payment of a charge, and:

13. (a) the period in respect of which it has been paid and the time of the beginning or end of the period (s 35(3B)(a)(i) (s 35(3B) added by the Parking Act 1989 s 1(3))); or

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14. (b) whether or not the period for which it has been paid or any further period has elapsed (Road Traffic Regulation Act 1984 s 35(3B)(a)(ii) (as so added)); or

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15. (c) the period for which the vehicle in relation to which the parking device is used is permitted to park in the parking place, and the time of the beginning or end of the period(s 35(3B)(a)(iii) (as so added)); or

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16. (d) whether or not the period for which the vehicle in relation to which the parking device is used is permitted to park in the parking place or any further period has elapsed (s 35(3B)(a)(iv) (as so added)); or

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1369 (2) operates apparatus controlling the entry of vehicles to or their exit from the parking place, or enables that apparatus to be operated (s 35(3B)(b) (as so added)),

or any other device of any such description as may from time to time be prescribed for the purposes of s 35 (as amended) and s 35A (as added) by order made by the Secretary of State: s 35(3B) (as so added; and amended by the Deregulation (Parking Equipment) Order 1996, SI 1996/1553, art 2(1)(a), Schedule)); Road Traffic Regulation Act 1984 s 142(1) (definition amended by the Parking Act 1989 s 4, Schedule para 8). An order under the Road Traffic Regulation Act 1984 s 35(3B) (as added) which revokes or amends a previous order under s 35(3B) (as added) may make such saving and transitional provision as appears to the Secretary of State to be necessary or expedient: s 35(3C) (added by the Parking Act 1989 s 1(3)). The power to make orders under the Road Traffic Regulation Act 1984 s 35(3B) (as added) is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 35(3D) (added by the Parking Act 1989 s 1(3)).

11 Road Traffic Regulation Act 1984 s 35(1) (amended by the Parking Act 1989 s 1(2)).

Before exercising its powers under the Road Traffic Regulation Act 1984 s 35(1) (as amended), a county council must consult with the council of the district in which the parking place is to be, or is, situated: s 39(1).

A district council, other than a metropolitan district council, may not exercise its powers under s 35(1) (as amended) without the consent of the county council; and any consent given by the county council may be subject to such conditions or restrictions as it thinks fit: s 39(3) (amended by the Local Government Act 1985 s 8, Sch 5 para 4(16)(a)). Where a non-metropolitan district council in England proposes to make an order under the Road Traffic Regulation Act 1984 s 35 (as amended), the council must submit a draft of the order to the county council, which, without prejudice to its power to give or withhold consent to the making of the order, may require such modifications of the terms of the proposed order as it thinks appropriate: s 39(4) (amended by the Local Government Act 1985 ss 8, 102, Sch 5 para 4(16)(b), Sch 17; and the Local Government (Wales) Act 1994 ss 22(1), 66(8), Sch 7 para 38(1), Sch 18). A district council aggrieved by the refusal of the county council to give consent under the Road Traffic Regulation Act 1984 s 39(3) (as amended), or by any conditions or restrictions subject to which any such consent is given, or by any modifications required under s 39(4) (as amended), may appeal to the Secretary of State; and, on any such appeal, the Secretary of State may give such directions as he thinks fit, either dispensing with the need for consent or varying or revoking any such conditions, restrictions or modifications: s 39(5).

The power to vary or revoke an order made by a district council, other than a metropolitan district council, under s 35(1) (as amended) is exercisable by the county council as well as by the district council; and the powers of a county council under s 35 (as amended) apply in relation to a parking place: (1) provided by the council of a district in the county under s 32 (as amended) (see PARA 784 ante); or (2) provided under any letting or arrangements made by the council of such a district under s 33(4) (see PARA 785 ante), as they apply in relation to parking places provided by, or under any letting or arrangements made by, the county council: s 39(6) (amended by the Local Government Act 1985 Sch 5 para 4(16)(a), (c)). Where, however, a county council proposes to make an order by virtue of the Road Traffic Regulation Act 1984 s 39(6) (as amended), the county council must send a copy of the proposed order to the district council; and if, not later than six weeks after it has received such a copy from the county council, the district council serves notice on the county council and the Secretary of State of its objection to the making of the proposed order, and the objection is not withdrawn by a further notice served not later than six weeks after the service of the notice of objection, the county council must submit a copy of the proposed order to the Secretary of State, and may not make the order except with his consent: s 39(7). Section 39(7) does not apply in Wales: s 39(7A) (added by the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 38(1)). If the Secretary of State consents to an order submitted to him for his consent under the Road Traffic Regulation Act 1984 s 39(7), he may consent to the order either in the form in which it was submitted to him or with such modifications as he thinks fit, which may include additions, exceptions or other modifications of any description; but where he proposes to consent to the order with modifications which appear to him substantially to affect the character of the order as submitted to him, he must, before doing so, take such steps as appear to him to be sufficient and reasonably practicable for informing the county council and district council in question and any other persons likely to be concerned: s 39(8). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

12    Ie under *ibid* s 34 (as amended): see PARA 789 ante. For the meaning of 'off-street parking place' see PARA 784 note 4 ante.

13    Ie an order under *ibid* s 35(1) (as amended): see the text and notes 1-11 *supra*.

14    Ibid s 35(2). This provision is expressed to be subject to s 124(1), Sch 9 Pt I paras 1-12 (as amended), Sch 9 Pt II paras 13-19 (as amended) and Sch 9 Pt III paras 20-26 (as amended) (see PARAS 736-738 ante), to the provisions of any agreement made by the local authority under s 34(3) (see PARA 789 ante), and to any rights granted by it under s 34(3): see s 35(2).

15    Ibid s 35(3)(a)(i).

16    Ibid s 35(3)(a)(ii).

17    Ibid s 35(3)(b).

18    Ibid s 35(3) (amended by the Deregulation (Parking Equipment) Order 1996, SI 1996/1553, art 2(1), Schedule). In relation to orders made before 12 June 1996 see the Deregulation (Parking Equipment) Order 1996, SI 1996/1553, art 3.

19    Road Traffic Regulation Act 1984 s 35(3A)(a) (s 35(3A) added by the Parking Act 1989 s 1(3)).

20    Road Traffic Regulation Act 1984 s 35(3A)(b) (as added: see note 19 *supra*).

21    Ibid s 35(3A)(c) (as added: see note 19 *supra*).

22    Ibid s 35(3A)(d) (as added (see note 19 *supra*); and amended by the Deregulation (Parking Equipment) Order 1996, SI 1996/1553, art 2(1), Schedule). In relation to orders made before 12 June 1996 see the Deregulation (Parking Equipment) Order 1996, SI 1996/1553, art 3.

23    Road Traffic Regulation Act 1984 s 35(3A)(e) (as added: see note 19 *supra*).

24    Ibid s 35(3A)(f) (as added: see note 19 *supra*).

25    Ibid s 35(3A)(g) (as added: see note 19 *supra*).

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### 791. Offences and proceedings in connection with parking places.

In the event of any contravention of, or non-compliance with, a provision of an order relating to the use of parking places<sup>1</sup> the person responsible is guilty of an offence<sup>2</sup>. A person who, with intent to defraud:

- 504 (1) interferes with any such apparatus or device<sup>3</sup> as is by an order<sup>4</sup> to be used for the collection of charges at an off-street parking place<sup>5</sup>, or operates or attempts to operate it by the insertion of objects other than current coins or bank notes of the appropriate denomination, or the appropriate credit<sup>6</sup> or debit cards<sup>7</sup>; or
- 505 (2) interferes with any apparatus designed to be used in connection with parking devices<sup>8</sup>, or interferes with a parking device<sup>9</sup>, or operates or attempts to operate any such apparatus or any parking device otherwise than in the manner prescribed<sup>10</sup>; or
- 506 (3) displays a parking device otherwise than in the manner prescribed<sup>11</sup>,

is guilty of an offence<sup>12</sup>.

An order relating to the use of parking places<sup>13</sup> may include provision:

- 507 (a) for determining the person responsible for any contravention of or non-compliance with the order<sup>14</sup>;
- 508 (b) for treating: (i) the indications given by any such apparatus or device<sup>15</sup> used in pursuance of the order<sup>16</sup>; or (ii) the indications given by any such apparatus designed to be used in connection with parking devices<sup>17</sup> used in pursuance of the order, or any tickets issued by it, or the absence of any such ticket from a vehicle left in a parking place, as evidence of such facts and for such purposes as may be provided by the order<sup>18</sup>;
- 509 (c) for applying with any appropriate adaptations any of the provisions in connection with offences relating to designated parking places<sup>19</sup>.

While a vehicle is within a parking place, it is not lawful for the driver<sup>20</sup> or conductor of the vehicle, or for any person employed in connection with it, to ply for hire or accept passengers for hire<sup>21</sup>. If a person acts in contravention of this provision he is guilty of an offence<sup>22</sup>.

1    le under the Road Traffic Regulation Act 1984 s 35(1) (as amended): see PARA 790 ante. For the meaning of 'parking place' see PARA 784 note 2 ante.

2    Ibid s 35A(1) (s 35A added by the Parking Act 1989 s 2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding: (1) level 3 on the standard scale in the case of an offence committed by a person in a street parking place reserved for disabled persons' vehicles or in an off-street parking place reserved for such vehicles, where that person would not have been guilty of that offence if the motor vehicle in respect of which it was committed had been a disabled person's vehicle; or (2) level 2 on the standard scale in any other case: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (amended by the Parking Act 1989 s 4, Schedule para 11). As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Act 1988 s 35A(1) (as added) of breaching an order regulating the use etc of a parking place provided by a local authority, where the offence is committed in relation to a parking place provided on a road, is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3 (amended by the Parking Act 1989 Schedule para 12). As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

As to the disapplication of the Road Traffic Regulation Act 1984 s 35A(1) (as added) in relation to permitted parking areas outside London see PARA 820 note 10 post; and in relation to special parking places inside London see PARA 822 note 6 post. As to transitional provisions see s 144 and Sch 10.

- 3    le any apparatus or device mentioned in ibid s 35(3) (as amended): see PARA 790 text and notes 15-18 ante.
- 4    le under ibid s 35(1) (as amended): see PARA 790 ante.
- 5    For the meaning of 'off-street parking place' see PARA 784 note 4 ante.
- 6    'Credit card' means a card or similar thing issued by any person, use of which enables the holder to defer the payment by him of the charge for parking a vehicle: Road Traffic Regulation Act 1984 s 35A(6) (as added: see note 2 supra); s 142(1) (definition added by the Parking Act 1989 Schedule para 8).
- 7    Road Traffic Regulation Act 1984 s 35A(2)(a) (as added: see note 2 supra). 'Debit card' means a card or similar thing issued by any person, use of which by the holder causes the charge for parking a vehicle to be paid by the electronic transfer of funds from any current account of his at a bank or other institution providing banking services: s 35A(6) (as so added); s 142(1) (definition added by the Parking Act 1989 Schedule para 8).
- 8    le mentioned in the Road Traffic Regulation Act 1984 s 35(3A)(d) (as added and amended): see PARA 790 text and note 22 ante.
- 9    For the meaning of 'parking device' see PARA 790 note 10 ante.
- 10   Road Traffic Regulation Act 1984 s 35A(2)(b) (as added: see note 2 supra).
- 11   Ibid s 35A(2)(c) (as added: see note 2 supra).
- 12   Ibid s 35A(2) (as added: see note 2 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (amended by the Parking Act 1989 Schedule para 11).
- 13   le under the Road Traffic Regulation Act 1984 s 35(1) (as amended): see PARA 790 ante.
- 14   Ibid s 35A(3)(a) (as added: see note 2 supra).
- 15   le any apparatus or device mentioned in ibid s 35(3): see PARA 790 text and notes 15-18 ante.
- 16   Ibid s 35A(3)(b)(i) (as added: see note 2 supra).
- 17   le mentioned in ibid s 35(3A)(d) (as added): see PARA 790 text and note 22 ante.
- 18   Ibid s 35A(3)(b)(ii) (as added: see note 2 supra).
- 19   Ibid s 35A(3)(c) (as added: see note 2 supra). The provisions referred to in the text are provisions under s 47(4), (6) (see PARA 812 post): see s 35A(3)(c) (as so added).
- 20   For the meaning of 'driver' see PARA 207 ante.
- 21   Road Traffic Regulation Act 1984 s 35A(5) (as added: see note 2 supra).
- 22   Ibid s 35A(5) (as added: see note 2 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (amended by the Parking Act 1989 Schedule para 11).

## **UPDATE**

### **791 Offences and proceedings in connection with parking places**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.



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## **792. Display of information.**

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> requiring local authorities<sup>3</sup> to display at off-street parking places<sup>4</sup> provided by them<sup>5</sup> such information about parking there as is specified in the regulations<sup>6</sup>. Such regulations may also:

- 510 (1) require the display of any orders<sup>7</sup> relating to the parking place<sup>8</sup>;
- 511 (2) specify the manner in which the information and orders are to be displayed<sup>9</sup>;
- 512 (3) exempt local authorities, in specified circumstances or subject to specified conditions, from the requirement to display information and orders, or to display them in the specified manner<sup>10</sup>; and
- 513 (4) provide, in relation to a parking place at which a local authority fails to comply with the regulations or with any specified provision of the regulations, that, except in any specified circumstances, any such order relating to the use of parking places<sup>11</sup> is to be of no effect in its application to that parking place in so far as it requires the payment of any charge in connection with use of the parking place while the failure to comply continues, and, as respects vehicles parked there when the failure to comply was remedied, during a specified period thereafter<sup>12</sup>.

Such regulations may make different provision for different circumstances and for different descriptions of parking place, and may exempt specified descriptions of parking place from any provision of the regulations<sup>13</sup>. In any proceedings for contravention of, or non-compliance with, such an order<sup>14</sup> relating to an off-street parking place, it must be assumed, unless the contrary is shown, that any relevant regulations were complied with at all material times<sup>15</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 At the date at which this volume states the law no such regulations had been made. As to the making of regulations generally see PARA 720 ante.

3 For the meaning of 'local authority' see PARA 784 note 1 ante.

4 For the meaning of 'off-street parking place' see PARA 784 note 4 ante.

5 I.e. under the Road Traffic Regulation Act 1984 s 32 (as amended): see PARA 784 ante.

6 Ibid s 35B(1) (s 35B added by the Parking Act 1989 s 3).

7 I.e. under the Road Traffic Regulation Act 1984 s 35(1) (as amended): see PARA 790 ante.

8 Ibid s 35B(2)(a) (as added: see note 6 supra). For the meaning of 'parking place' see PARA 784 note 2 ante.

9 Ibid s 35B(2)(b) (as added: see note 6 supra).

10 Ibid s 35B(2)(c) (as added: see note 6 supra).

11 I.e. an order under ibid s 35(1) (as amended): see PARA 790 ante.

12 Ibid s 35B(2)(d) (as added: see note 6 supra).

13 Ibid s 35B(3) (as added: see note 6 supra).

14 I.e. an order under ibid s 35(1) (as amended): see PARA 790 ante.

15 Ibid s 35B(4) (as added: see note 6 supra).

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### **793. Variation of charges at off-street parking places.**

Where an order<sup>1</sup> makes provision as to the charges to be paid in connection with the use of off-street parking places<sup>2</sup>, the authority making that order may vary those charges by notice<sup>3</sup>. The variation of any such charges by notice is not to be taken to prejudice any power to vary those charges by order<sup>4</sup>. The Secretary of State<sup>5</sup> may by regulations<sup>6</sup> make provision as to the procedure to be followed by any local authority<sup>7</sup> giving such a notice<sup>8</sup>. The regulations may, in particular, make provision with respect to: (1) the publication, where an authority proposes to give notice, of details of its proposal<sup>9</sup>; (2) the form and manner in which notice is to be given<sup>10</sup>; and (3) the publication of notices<sup>11</sup>. In giving any such notice a local authority must comply with the regulations<sup>12</sup>.

1 Ibid under the Road Traffic Regulation Act 1984 s 35(1)(iii): see PARA 790 text and note 8 ante.

2 For the meaning of 'off-street parking place' see PARA 784 note 4 ante; and for the meaning of 'parking place' see PARA 784 note 2 ante.

3 Road Traffic Regulation Act 1984 s 35C(1) (s 35C added by the Road Traffic Act 1991 s 41).

4 Road Traffic Regulation Act 1984 s 35C(2) (as added: see note 3 supra). The order referred to in the text is an order under s 35 (as amended) (see PARA 790 ante): see s 35C(2) (as so added).

5 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 As to the regulations made see the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996, SI 1996/2489. As to the making of regulations generally see PARA 720 ante.

7 For the meaning of 'local authority' see PARA 784 note 1 ante.

8 Road Traffic Regulation Act 1984 s 35C(3) (as added: see note 3 supra).

9 Ibid s 35C(4)(a) (as added: see note 3 supra).

10 Ibid s 35C(4)(b) (as added: see note 3 supra).

11 Ibid s 35C(4)(c) (as added: see note 3 supra).

12 Ibid s 35C(5) (as added: see note 3 supra).

### **UPDATE**

### **793 Variation of charges at off-street parking places**

NOTE 6--SI 1996/2489 amended: SI 2009/1116 (England).

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#### **794. Extension of powers for purposes of general scheme of traffic control.**

In the case of a traffic regulation order<sup>1</sup> and an order relating to the provision of parking places<sup>2</sup> by the council of a county or metropolitan district where the order is, and is stated to be, made by virtue of the following provisions and for the purposes of a general scheme of traffic control in a stated area, the following provisions apply<sup>3</sup>. No authority may make such an order unless it is satisfied that the general scheme of traffic control<sup>4</sup>:

- 514 (1) is adequate in point of area<sup>5</sup>;
- 515 (2) takes adequate account of the need for maintaining the free movement of traffic and of the need for maintaining reasonable access to premises<sup>6</sup>;
- 516 (3) takes adequate account of the effect of heavy commercial vehicles<sup>7</sup> on amenities<sup>8</sup>; and
- 517 (4) makes provision for street parking places<sup>9</sup>, and for regulating their use with the aid of apparatus or devices, which is suitable, regard being had to the extent to which off-street parking places<sup>10</sup> are available in the neighbourhood or their provision is likely to be encouraged by the scheme<sup>11</sup>.

1 Is an order made under the Road Traffic Regulation Act 1984 s 1 (as amended): see PARA 742 ante. For the meaning of 'traffic regulation order' see PARA 742 ante.

2 Is under ibid s 32 (as amended): see PARA 784 ante. For the meaning of 'parking place' see PARA 784 note 2 ante.

3 Ibid s 37(1) (substituted by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 41(2)).

The power to make an order under the Road Traffic Regulation Act 1984 s 37 (as amended) is also exercisable by the Secretary of State: see PARAS 736-741 ante. Any power of the Secretary of State to make an order under or by virtue of s 37 (as amended) is exercisable by statutory instrument: s 124(2). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. Orders made under s 37 (as amended) are local in nature, and are not recorded in this work.

Without prejudice to s 124(1), Sch 9 Pt I paras 1-12 (as amended), Sch 9 Pt II paras 13-19 (as amended) and Sch 9 Pt III paras 20-26 (as amended) (see PARAS 736-738 ante), the following provisions of the Road Traffic Regulation Act 1984, ie s 3(1) (as amended) (see PARA 744 ante) so far as it relates to vehicles, s 3(2) (see PARA 744 ante), and s 36(1)(a) (see PARA 784 ante), do not apply to any order to which s 37 (as amended) applies, or to any order under the Road Traffic Regulation Act 1984 revoking or varying such an order: s 37(2). Any provision of an order to which s 37 (as amended) applies in so far as it has effect by virtue of s 1 (as amended) (see PARA 742 ante), or any provision of an order revoking or varying such an order in so far as the order revoked or varied has effect by virtue of s 1 (as amended), may, notwithstanding anything in s 1 (as amended), be made so as to apply to a road for which the Secretary of State is the traffic authority: s 37(3) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 41(3)). For the meaning of 'road' see PARA 206 ante. As to traffic authorities see PARAS 731-735 ante.

4 Road Traffic Regulation Act 1984 s 37(4).

5 Ibid s 37(4)(a).

6 Ibid s 37(4)(b).

7 For the meaning of 'heavy commercial vehicle' see PARA 220 ante.

8 Road Traffic Regulation Act 1984 s 37(4)(c).

9 For the meaning of 'street parking place' see PARA 752 note 10 ante.

10 For the meaning of 'off-street parking place' see PARA 784 note 4 ante.

11 Road Traffic Regulation Act 1984 s 37(4)(d) (amended by the Deregulation (Parking Equipment) Order 1996, SI 1996/1553, art 2(1), Schedule).

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### **795. Parking place for use as bus or coach station.**

Where, in pursuance of the powers of the local authority<sup>1</sup> to provide parking places<sup>2</sup>, a local authority provides a parking place<sup>3</sup> which may be used by public service vehicles<sup>4</sup>, the local authority may, if it thinks fit<sup>5</sup>:

- 518 (1) by order appoint that parking place as a station for, or for a specified class of, public service vehicles<sup>6</sup>;
- 519 (2) by regulation, declare that the statutory restriction on plying for hire or accepting passengers for hire<sup>7</sup> does not apply to public service vehicles, either absolutely or to such extent as may be specified in the regulation<sup>8</sup>.

A local authority by which a parking place is so appointed as a station for public service vehicles may:

- 520 (a) do all such things as are necessary to adapt the parking place for use as such a station, and in particular provide and maintain waiting rooms, ticket offices and lavatories and other similar accommodation in connection with it<sup>9</sup>;
- 521 (b) make reasonable charges for the use of, or let on hire to any person, any accommodation so provided<sup>10</sup>; and
- 522 (c) make regulations as to the use of any such accommodation<sup>11</sup>.

A local authority has power to make such reasonable charges for the use of a parking place (not being part of a road<sup>12</sup>) as a station for public service vehicles as may be fixed by the local authority<sup>13</sup>. If, however, the holder of a PSV operator's licence<sup>14</sup> in respect of any vehicles using the parking place as a station considers that the charges so fixed are unreasonable, then, in default of agreement between the licence holder and the local authority for a reduction of them, the charges in respect of those vehicles are to be such as may be determined by the appropriate traffic commissioner<sup>15</sup>.

1 For the meaning of 'local authority' see PARA 784 note 1 ante.

2 ie the powers conferred by the Road Traffic Regulation Act 1984 s 32 (as amended): see PARA 784 ante.

3 For the meaning of 'parking place' see PARA 784 note 2 ante.

4 For the meaning of 'public service vehicle' see PARA 1136 post; definition applied by virtue of the Road Traffic Regulation Act 1984 s 142(1) (amended by the Transport Act 1985 s 1, Sch 1 para 15).

5 Road Traffic Regulation Act 1984 s 38(1). This provision is expressed to be subject to s 124(1), Sch 9 Pt I paras 1-12 (as amended), Sch 9 Pt II paras 13-19 (as amended), Sch 9 Pt III paras 20-26 (as amended) (see PARAS 736-738 ante), and Sch 9 Pt V paras 30-33 (as amended) (see PARA 740 ante): see s 38(1).

The powers conferred on a local authority by s 38(1) (as amended) and s 38(2) (see the text and notes 9-11 *infra*) are in addition to, and not in substitution for, the powers conferred on a local authority by s 32 (as amended) (see PARA 784 *ante*) and s 33(1) (see PARA 787 *ante*): s 38(5).

The purposes of s 38 (as amended) are purposes for which a local authority may borrow: s 38(6).

6 Ibid s 38(1)(a). The power to make an order under s 38 (as amended) is also exercisable by the Secretary of State: see PARAS 736-741 *ante*. Any power of the Secretary of State to make an order under or by virtue of s 38 (as amended) is exercisable by statutory instrument: s 124(2). As to the Secretary of State see PARA 236 *ante*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 *ante*. Orders and regulations made under s 38 (as amended) are local in nature, and are not recorded in this work. As to the classification of public service vehicles see PARAS 1136-1137 *post*.

7 Ibid s 35A(5) (as added): see PARA 791 *ante*.

8 Ibid s 38(1)(b) (amended by the Parking Act 1980 s 4, Schedule para 1).

9 Road Traffic Regulation Act 1984 s 38(2)(a). See also note 5 *supra*.

10 Ibid s 38(2)(b). See also note 5 *supra*.

11 Ibid s 38(2)(c). See also note 5 *supra*.

12 For the meaning of 'road' see PARA 206 *ante*.

13 Road Traffic Regulation Act 1984 s 38(3) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 42).

14 'PSV operator's licence' means a PSV operator's licence granted under the provisions of the Public Passenger Vehicles Act 1981 Pt II (ss 6-29) (as amended) (see PARA 1141 *et seq post*): Road Traffic Regulation Act 1984 s 38(7)(b). As to public service vehicle operators' licences see PARA 1144 *et seq post*.

15 Ibid s 38(4) (amended by the Transport Act 1985 s 3, Sch 2 para 6). 'The appropriate traffic commissioner' means the commissioner for any traffic area constituted for the purposes of the Public Passenger Vehicles Act 1981 (see PARAS 1139-1140 *post*) in which the area or any part of the area of the local authority is situated: Road Traffic Regulation Act 1984 s 38(7)(a) (amended by the Transport Act 1985 s 3, Sch 2 para 6). As to traffic commissioners see PARA 1139 *post*.

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## **796. Acquisition of land: provisions as to parking places.**

A local authority<sup>1</sup> may be authorised by the Secretary of State<sup>2</sup> to purchase compulsorily land for purposes of providing parking spaces<sup>3</sup>, letting land on which it could erect or adapt a building for the purpose of providing an off-street parking place with a view to its being provided by some other person<sup>4</sup>, or providing access to premises through an off-street parking place<sup>5</sup>. Land compulsorily acquired by a local authority otherwise than for the purposes of an off-street parking place<sup>6</sup>, and not appropriated for a purpose other than that for which it was acquired, must not be used by it for providing an off-street parking place on it for a period exceeding 12 months except with the consent of the Minister of the Crown who, at the time when his consent is sought, is the minister concerned with the function for the purposes of which the land was acquired<sup>7</sup>.

1 For the meaning of 'local authority' see PARA 784 note 1 *ante*.

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 le the purposes of the Road Traffic Regulation Act 1984 s 32 (as amended): see PARA 784 ante.

4 le the purposes of *ibid* s 33(4)(a): see PARA 785 text to note 7 ante.

5 *Ibid* s 40(1). The purposes referred to in the text are the purposes of s 34 (as amended): see PARA 789 ante. The Acquisition of Land Act 1981 applies in relation to the compulsory purchase of land under the Road Traffic Regulation Act 1984 s 40: s 40(1). As to the acquisition of land by local authorities generally see LOCAL GOVERNMENT vol 69 (2009) PARA 509 et seq. As to the compulsory acquisition of land generally see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq. As to the Acquisition of Land Act 1981 see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 556 et seq.

The power of a local authority to acquire land for the purposes of the Road Traffic Regulation Act 1984 s 32 (as amended) (see PARA 784 ante), s 33(4)(a) (see PARA 785 ante) and s 34 (as amended) (see PARA 789 ante) extends to the acquisition of any interest or right in, over or under land; and in s 40(1) 'land' is to be construed as including any such interest or right: s 40(2).

A local authority may contribute towards the expenses incurred by any other authority in the exercise of its powers under s 40: s 41.

6 For the meaning of 'off-street parking place' see PARA 784 note 4 ante.

7 Road Traffic Regulation Act 1984 s 40(3).

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## **(ii) Control of Off-street Parking**

### **A. IN GREATER LONDON**

#### **797. In general.**

Specific provisions relating to the control of off-street parking in Greater London<sup>1</sup> apply to any area in Greater London which the local authority<sup>2</sup> may by regulations designate as a controlled area for these purposes; and any such regulations<sup>3</sup>:

- 523 (1) in addition to including any such provision as is authorised<sup>4</sup>, may prescribe forms to be used for these purposes and any other matters<sup>5</sup> which are to be prescribed<sup>6</sup>;
- 524 (2) may include such supplementary, incidental and consequential provision as appear to the local authority to be necessary or expedient for these purposes<sup>7</sup>; and
- 525 (3) may make different provision as respects like matters in different circumstances<sup>8</sup>.

Such regulations so made by a local authority may include provision<sup>9</sup>:

- 526 (a) as to the maximum number of parking spaces to be made available at licensed parking places for all, or for any, of the following descriptions<sup>10</sup> of parking, namely, short term parking<sup>11</sup>, long term parking<sup>12</sup>, casual parking and regular parking or any particular category of regular parking in, or in any specified part of, any controlled area<sup>13</sup>;

- 527 (b) requiring that, in the case of licensed parking places in a particular controlled area or part of a controlled area, all or any of the specified matters<sup>14</sup> are or, as the case may be, are not to be the subject of conditions specified in the licence<sup>15</sup>;
- 528 (c) regulating the conditions which may be imposed with respect to any of the above matters<sup>16</sup>.

1     Ie the provisions of the Road Traffic Regulation Act 1984 s 43 (as amended): see notes 2-16 *infra*; and PARA 798 *et seq post*.

2     For these purposes, 'local authority' means the council of a London borough or the Common Council of the City of London: *ibid* s 43(14) (definition substituted by the Local Government Act 1985 ss 8, 102, Sch 5 para 4(17)(d), Sch 17). As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 *et seq*. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 *et seq*.

For the application of the Road Traffic Regulation Act 1984 to the Channel Tunnel system see the Channel Tunnel (Application of Road Traffic Enactments) (No 2) Order 1994, SI 1994/1667, which confers functions exercisable by local authorities on the Channel Tunnel Concessionaires.

3     Road Traffic Regulation Act 1984 s 43(1) (amended by the Local Government Act 1985 s 8, Sch 5 para 4(17)(a); and the Airports Act 1986 s 83(5), Sch 6 Pt I). The provisions of the Road Traffic Regulation Act 1984 s 43(1), Sch 4 Pt I (as amended) (see PARA 798 *post*) apply to the making of any such regulations: s 43(1) (as amended). Orders and regulations made under s 43 (as amended) are local in nature, and are not recorded in this work.

The local authority for a controlled area must have regard to any regulations for the time being in force under s 43 (as amended) when exercising in that area any of its functions under ss 32-36, 39-41 (as amended) (see PARA 784 *et seq ante*); and, where a public off-street parking place is provided in a controlled area by the local authority under s 32 (as amended), any such regulations apply to the operation of that parking place with such modifications as may be prescribed for the purpose, being modifications appearing to the local authority to be necessary to ensure that the parking place is operated by or on behalf of the local authority with suitable provision as to the matters referred to in s 43(4)(b), (c)(i)-(iv) (see PARA 800 *post*) in like manner as if it were being operated under a licence granted by the local authority: s 43(13) (amended by the Local Government Act 1985 Sch 5 para 4(17)(c)). For these purposes, 'public off-street parking place' means a place, whether above or below ground and whether or not consisting of or including buildings, where off-street parking accommodation is made available by any person to the public for payment; and references to operating, or to the operation of, or to the operator of, such a parking place are to be construed as references to making, or as the case may be to the person making, such parking accommodation at the parking place so available: Road Traffic Regulation Act 1984 s 43(14) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 43). 'Off-street parking accommodation' means parking accommodation for motor vehicles off the highway: Road Traffic Regulation Act 1984 s 142(1) (added by the New Roads and Street Works Act 1991 Sch 8 para 78). For the meaning of 'motor vehicle' see PARA 210 *ante*.

4     Ie by the Road Traffic Regulation Act 1984 s 43(6) (as amended): see the text and note 9 *infra*.

5     Ie under *ibid* s 43 (as amended) or Sch 4 (as amended): see PARA 798 *et seq post*.

6     *Ibid* s 43(1)(a). For these purposes, 'prescribed' means prescribed by regulations made under s 43 (as amended): s 43(14). See note 3 *supra*.

7     *Ibid* s 43(1)(b) (as amended: see note 3 *supra*).

8     *Ibid* s 43(1)(c). For an order prohibiting parking to be effective, traffic signs giving adequate information as to the effect of the order must be erected: *James v Cavey* [1967] 2 QB 676, [1967] 1 All ER 1048. It is not an offence to disobey a mark which does not comply with the regulations: *Davies v Heatley* [1971] RTR 145, DC. A system of double white lines that did not include a direction arrow in accordance with the prescribed traffic sign was not lawfully placed: *O'Halloran v DPP* [1990] RTR 62, 154 JP 837.

9     Road Traffic Regulation Act 1984 s 43(6) (amended by the Local Government Act 1985 Sch 5 para 4(17)(b)).

10    Ie the descriptions of parking referred to in the Road Traffic Regulation Act 1984 s 43(4)(b): see PARA 800 *head* (2) *post*.

11    For these purposes, 'short term parking' means parking for a continuous period not exceeding four hours or such longer period as may be prescribed: *ibid* s 43(14).

12 For these purposes, 'long term parking' means parking for a continuous period exceeding four hours or such longer period as may be prescribed: *ibid* s 43(14).

13 *Ibid* s 43(6)(a) (amended by the Local Government Act 1985 s 102, Sch 17).

14 In all or any of the matters referred to in the Road Traffic Regulation Act 1984 s 43(4)(c): see PARA 800 head (3) post.

15 *Ibid* s 43(6)(b).

16 *Ibid* s 43(6)(c).

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### **798. Procedure for making local authority regulations.**

Before deciding to propose the making of regulations under the provisions relating to controlling off-street parking in Greater London<sup>1</sup> with respect to any matter, the local authority must consult with such representative organisations as it thinks fit<sup>3</sup>. If after such consultation the local authority decides to make such a proposal, it must cause to be published in the London Gazette and in one or more daily newspapers circulating throughout Greater London a notice stating that it proposes to make such regulations, giving a summary of their effect, and specifying:

- 529 (1) a place at which provisional draft regulations may be inspected at all reasonable hours and from which a copy of those draft regulations may be obtained on request<sup>4</sup>; and
- 530 (2) a date, not being earlier than six weeks after the date of publication of the notice, by which representations with respect to the draft regulations, which ought to include the grounds for any objection to it, must be sent in writing to the local authority<sup>5</sup>,

and, on causing such a notice to be published, the local authority must send a copy of the notice and of the draft regulations to the Secretary of State<sup>6</sup>, and the local authority may not make any regulations in pursuance of the proposal to which the notice relates before the expiration of the period of 12 weeks beginning with the date when the notice is published<sup>7</sup>.

As soon as may be after the date specified by the notice for the making of representations with respect to the draft regulations, the local authority must send to the Secretary of State copies of all representations received by it by that date or, if no representations have been so received, must inform the Secretary of State in writing of that fact<sup>8</sup>.

In the case of any proposal, the Secretary of State may, at any time before the expiration of the period of 12 weeks, give to the local authority a direction in writing that, except with the consent of the Secretary of State, regulations are not to be made in pursuance of that proposal<sup>9</sup>: (a) with respect to all, or with respect to such as may be specified, of the matters to which the proposal relates<sup>10</sup>; or (b) in relation to, or to a specified part of, any specified area which has been or is proposed to be designated as a controlled area<sup>11</sup>. On any such direction being given, the Secretary of State must cause notice of it to be published in the London Gazette and the local authority must comply with that direction<sup>12</sup>.



Where, in the case of any proposal, the Secretary of State has given a direction, he must, as soon thereafter as he is in a position to do so, notify the local authority in writing with respect to each of the matters or areas to which the direction relates:

- 531 (i) that he consents to the making of regulations with respect to that matter or in relation to that area in pursuance of that proposal<sup>13</sup>; or
- 532 (ii) that he is not prepared in any circumstances to consent to the making of such regulations in pursuance of that proposal<sup>14</sup>; or
- 533 (iii) that he is prepared to consider consenting to the making of such regulations in pursuance of that proposal if a revised draft is submitted to him for the purpose of incorporating modifications of a specified nature or in other specified circumstances<sup>15</sup>,

and, before deciding the notification to be so given to the local authority with respect to any matter or in relation to any area, the Secretary of State may, if he thinks fit, appoint a person to hold any inquiry in connection with that matter or area<sup>16</sup>.

In the case of any proposal, the local authority may, if it thinks fit, at any time after the expiration of the period of 12 weeks make regulations in pursuance of that proposal with respect to any matter or in relation to certain areas<sup>17</sup>, being regulations either<sup>18</sup>:

- 534 (A) in the form of the provisional draft with any modifications necessary in consequence of any such direction with respect to any other matter or area<sup>19</sup>; or
- 535 (B) in the form of that draft modified in such manner as the local authority thinks fit, whether as a result of any representations<sup>20</sup> or otherwise<sup>21</sup>.

1 le under the Road Traffic Regulation Act 1984 s 43 (as amended): see PARAS 797 ante, 799 et seq post.

2 For the meaning of 'local authority' see PARA 797 note 2 ante.

3 Road Traffic Regulation Act 1984 s 43(1), Sch 4 para 1 (amended by the Local Government Act 1985 s 8, Sch 5 para 4(38)(a)).

4 Road Traffic Regulation Act 1984 Sch 4 para 1(a).

5 Ibid Sch 4 para 1(b) (as amended: see note 3 supra).

6 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 Road Traffic Regulation Act 1984 Sch 4 para 1 (as amended (see note 3 supra); and further amended by the Local Government Act 1985 s 102, Sch 17).

8 Road Traffic Regulation Act 1984 Sch 4 para 2 (Sch 4 paras 2-6 amended by the Local Government Act 1985 Sch 5 para 4(38)(b)).

9 Road Traffic Regulation Act 1984 Sch 4 para 3 (as amended: see note 8 supra).

10 Ibid Sch 4 para 3(a).

11 Ibid Sch 4 para 3(b).

12 Ibid Sch 4 para 3 (as amended: see note 8 supra).

13 Ibid Sch 4 para 4(1)(a) (as amended: see note 8 supra).

14 Ibid Sch 4 para 4(1)(b) (as amended: see note 8 supra).

15 Ibid Sch 4 para 4(1)(c) (as amended: see note 8 supra). This provision is expressed to be subject to Sch 4 para 4(2) (as amended): see Sch 4 para 4(1)(c) (as so amended). The Secretary of State is not to consider any

such revised draft as is referred to in Sch 4 para 4(1)(c) (as amended) unless he is satisfied that the local authority:

1370 (1) has taken appropriate steps to inform any persons affected by the modifications incorporated in the revised draft of the nature of those modifications and has afforded those persons a reasonable opportunity to make representations with respect to the revised draft regulations (Sch 4 para 4(2)(a)); and

1371 (2) has supplied the Secretary of State with copies of any such representations made (Sch 4 para 4(2)(b)).

16 Ibid Sch 4 para 4(1) (as amended: see note 8 supra). The provisions of the Local Government Act 1972 s 250(2)-(5) apply to any such inquiry as they apply to such an inquiry as is referred to in s 250(1) (see LOCAL GOVERNMENT VOL 69 (2009) PARA 105), with the substitution for any reference to a department of a reference to the Secretary of State: Road Traffic Regulation Act 1984 Sch 4 para 4(1) (as so amended).

17 In any area which is not subject of a direction under ibid Sch 4 para 3 (as amended) (see the text and notes 9-12 supra), or which is the subject of such a consent under Sch 4 para 4(1)(a) (as amended) (see the text and note 13 supra).

18 Ibid Sch 4 para 5(1) (as amended: see note 8 supra). In deciding in the case of any proposal whether or not to make any regulations in pursuance thereof by virtue of Sch 4 para 5 (as amended), the local authority must have regard to any representations to which Sch 4 para 2 (see the text and note 8 supra) applies; and in deciding whether or not to give any consent under Sch 4 Pt I paras 1-6 (as amended) to the making of regulations by the local authority in pursuance of any such proposal, the Secretary of State must have regard to any such representations, to the report of any person appointed to hold an inquiry under Sch 4 para 4 (as amended) (see the text and notes 13-16 supra) in connection with the proposal in question, and to any such representations as are referred to in Sch 4 para 4(2) (see note 15 supra); and the Secretary of State must cause notice of the giving by him of any consent under Sch 4 Pt I (as amended) to be published in the London Gazette: Sch 4 para 6 (as amended: see note 8 supra).

19 Ibid Sch 4 para 5(1)(a).

20 In any representations to which ibid Sch 4 para 2 (as amended) applies: see the text to note 8 supra.

21 Ibid Sch 4 para 5(1)(b). The local authority may not make any regulations by virtue of Sch 4 para 5(1)(b) unless a draft of the regulations in the form in which they are to be made has been submitted to the Secretary of State and the Secretary of State has given his consent to their being made: Sch 4 para 5(2) (as amended: see note 8 supra).

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## **799. Application for a licence.**

In a controlled area no person other than the local authority<sup>1</sup> may operate a public off-street parking place<sup>2</sup> of a prescribed<sup>3</sup> description except under and in accordance with the terms and conditions of a licence<sup>4</sup> granted to that person by the local authority<sup>5</sup>. Any person who, in contravention of this restriction, operates a public off-street parking place without holding a licence for the purpose is guilty of an offence<sup>6</sup>.

An applicant for a licence in respect of any premises may apply either for a permanent licence or for a licence for such limited period not exceeding five years as the applicant may specify; and any application to the local authority for a licence must be accompanied by the prescribed fee appropriate to the type of licence applied for towards the administrative expenses of the local authority under these provisions<sup>7</sup>; and, on any such application, the local authority may at its discretion either grant the applicant a licence of the type applied for or refuse the application<sup>8</sup>.

1 For the meaning of 'local authority' see PARA 797 note 2 ante.

2 For the meaning of 'public off-street parking place' see PARA 797 note 3 ante.

3 See PARA 797 note 6 ante.

4 For these purposes, 'licence' means a licence under the Road Traffic Regulation Act 1984 s 43 (as amended): s 43(14).

5 Ibid s 43(2). This provision is expressed to be subject to s 43(15) (as amended): see s 43(2). The Secretary of State, after consultation with a local authority, may at any time, if it appears to him expedient so to do by reason of any emergency which appears to him to have arisen or to be likely to arise, by order (which must be laid before Parliament after being made) provide that s 43(15) is to apply either in relation to all areas for the time being designated by the local authority as controlled areas or in relation to such parts of any of those areas as may be specified in the order; and: (1) during the period while any such order is in force in relation to any controlled area or part of it, any public off-street parking place in that area or part may be operated as if that area or part were not, or, as the case may be, were not comprised in, a controlled area; and (2) nothing in s 43(10) (see PARA 803 post) or s 43(12) (see the text and note 6 infra) applies to anything done at any such parking place during that period: s 43(15) (amended by the Local Government Act 1985 s 8, Sch 5 para 4(17) (e)). As to the contents of a licence see PARA 800 post. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 Road Traffic Regulation Act 1984 s 43(12). This provision is expressed to be subject to s 43(15) (see note 5 supra) and Sch 4 Pt V paras 25-27 (see PARA 806 post): see s 43(12). A person guilty of an offence under s 43(12) is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

7 Ie under the Road Traffic Regulation Act 1984 s 43 (as amended) (see further PARAS 797 ante, 800 et seq post).

8 Ibid s 43(3). This provision is expressed to be subject to s 43(6) (see PARA 797 ante): see s 43(3). The provisions of Sch 4 Pt III paras 14-18 (as amended) (see PARA 804 post) and Sch 4 Pt IV paras 19-24 (as amended) (see PARA 805 post) have effect with respect to appeals and compensation in connection with certain decisions of a local authority under s 43 (as amended) (see further PARAS 797 ante, 800 et seq post); and every person who applies for or is the holder of a licence in respect of any premises must give to any other person known to him to be entitled to any interest in those premises information as soon as may be: (1) of the making of the application; and (2) of any decision of the local authority relating to the premises of which he is, or is deemed under Sch 4 para 14(2) (see PARA 804 notes 15-18 post) to have been, notified by the local authority; and (3) of the bringing, and of the determination or abandonment, of any appeal from any such decision brought by that person under Sch 4 Pt III (as amended): s 43(9) (amended by the Local Government Act 1985 s 102, Sch 17).

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## **800. Contents of a licence.**

Every licence<sup>1</sup> must specify:

- 536 (1) the period of its duration, that is to say, whether it is a permanent licence or a licence for a limited period and, if for a limited period, the period for which it is granted<sup>2</sup>;
- 537 (2) the maximum number of parking spaces to be provided at the licensed parking place for all, and, if the local authority<sup>3</sup> thinks fit, for any, of the following

- descriptions of parking, namely, short term parking<sup>4</sup>, long term parking<sup>5</sup>, casual parking and regular parking or any particular category of regular parking<sup>6</sup>;
- 538 (3) any conditions, in addition to those specified in heads (i) and (ii) below, subject to which the licence is granted, being such conditions, if any, as the local authority may think fit with respect to all or any of the following matters<sup>7</sup>:
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159. (a) the scale of charges<sup>8</sup>, or the minimum charges, or the maximum and minimum charges, to be made for the use of parking spaces at the licensed parking place for all, or for any, of the descriptions of parking referred to in head (2) above<sup>9</sup>;
160. (b) the proportion of parking spaces to be available respectively for casual parking and for, or for any specified category of, regular parking<sup>10</sup>;
161. (c) the times of opening and closing of the licensed parking place for the reception of vehicles<sup>11</sup>;
162. (d) the manner in which users of the licensed parking place are to be informed of the effect of the terms and conditions of the licence<sup>12</sup>;
163. (e) the keeping by the operator<sup>13</sup> of the licensed parking place as respects all, or as respects any, of the descriptions of parking referred to in head (2) above of records showing for each day the number of vehicles using parking spaces at the licensed parking place and the sums received by way of charges for the use of those parking spaces<sup>14</sup>.
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It is a condition of every licence:

- 539 (i) that any person authorised in that behalf in writing by the local authority may, subject to production, if requested, of his authority, at all reasonable hours enter on and inspect the licensed parking place<sup>15</sup>; and
- 540 (ii) that the holder of the licence must, on being given reasonable notice for the purpose by any such person, produce to that person and permit him to examine and make copies of, or take extracts from, any records required by virtue of head (3)(e) above to be kept in connection with the operation of that parking place<sup>16</sup>,

but, if any such person discloses to any other person, otherwise than in the performance of his duty, any information with regard to the operation of that parking place or to any trade secret obtained by him at that parking place or from any such examination, or if any member or officer of the local authority to which any such information is disclosed by reason of his official position discloses that information to any person, otherwise than in the performance of his duty, that person or, as the case may be, that member or officer is guilty of an offence<sup>17</sup>.

1 For the meaning of 'licence' see PARA 799 note 4 ante.

2 Road Traffic Regulation Act 1984 s 43(4)(a).

3 For the meaning of 'local authority' see PARA 797 note 2 ante.

4 For the meaning of 'short term parking' see PARA 797 note 11 ante.

5 For the meaning of 'long term parking' see PARA 797 note 12 ante.

6 Road Traffic Regulation Act 1984 s 43(4)(b).

7 Ibid s 43(4)(c).

8 For these purposes, 'charges' includes fares, rates, tolls and dues of every description: ibid s 43(14).

9 Ibid s 43(4)(c)(i).

10 Ibid s 43(4)(c)(ii).

11 Ibid s 43(4)(c)(iii).

12 Ibid s 43(4)(c)(iv).

13 As to the meaning of 'operator' see PARA 797 note 3 ante.

14 Road Traffic Regulation Act 1984 s 43(4)(c)(v).

15 Ibid s 43(5)(a).

16 Ibid s 43(5)(b).

17 Ibid s 43(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

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### **801. Grant, refusal, transfer and revocation of licences generally.**

Where the local authority<sup>1</sup> decides<sup>2</sup> to refuse an application for a licence<sup>3</sup> or to grant a licence subject to any conditions which it is not required<sup>4</sup> to impose with respect to any of the specified matters<sup>5</sup>, it must inform the applicant in writing of the reasons for its decision at the same time as it informs him of that decision<sup>6</sup>.

Where a licence has been granted:

- 541 (1) the local authority must, if so requested by a successor in title to the business (so far as it consists of the operation of the licensed parking place) of the person to whom the licence was granted, transfer the licence to that successor in title, but a licence is not otherwise transferable<sup>7</sup>;
- 542 (2) the holder of the licence may at any time surrender it by giving notice in writing for the purpose to the local authority which must include a statement certifying either that the holder is the only person entitled to any interest in the licensed premises or that, not less than 21 days before the date of the notice, the holder has notified all other persons known to him to be so entitled of his intention to serve the notice<sup>8</sup>;
- 543 (3) the local authority may at any time, on the application or with the agreement of the holder of the licence, vary any of the specified terms and conditions<sup>9</sup> in the licence<sup>10</sup>;
- 544 (4) in the case of a permanent licence, the local authority has further powers<sup>11</sup> of revocation or variation of the licence<sup>12</sup>.

Save as otherwise provided<sup>13</sup>, a licence may not be revoked<sup>14</sup>.

1 For the meaning of 'local authority' see PARA 797 note 2 ante.

2 ie in pursuance of the Road Traffic Regulation Act 1984 s 43(3): see PARA 799 ante.

- 3 For the meaning of 'licence' see PARA 799 note 4 ante.
- 4 Ie by regulations under the Road Traffic Regulation Act 1984 s 43(6) (as amended): see PARA 797 ante.
- 5 Ie the matters referred to in ibid s 43(4)(c)(i)-(v): see PARA 800 heads (3)(a)-(e) ante.
- 6 Ibid s 43(7). As to revocation or variation of permanent licences see PARA 802 post.
- 7 Ibid s 43(8)(a).
- 8 Ibid s 43(8)(b).
- 9 Ie the conditions specified in the licence under ibid s 43(4)(b), (c): see PARA 800 heads (2), (3) ante.
- 10 Ibid s 43(8)(c).
- 11 Ie the further powers conferred on it by ibid Sch 4 Pt II paras 7-13 (as amended): see PARA 802 post.
- 12 Ibid s 43(8)(d).
- 13 Ie save as provided by ibid s 43(10) (see PARA 803 post) or Sch 4 Pt II paras 7-13 (as amended) (see PARA 802 post).
- 14 Ibid s 43(11). The revocation of a licence in pursuance of an order under s 43(10) or the revocation or variation of a licence under Sch 4 Pt II paras 7-13 (as amended) (see PARA 802 post) is not to take effect: (1) before the expiration of the period for giving notice of appeal from the order or, as the case may be, notice of appeal under Sch 4 Pt III paras 14-18 (as amended) (see PARA 804 post) from the local authority's decision to revoke or, as the case may be, vary the licence; or (2) if such a notice of appeal is duly given, until the effectiveness or otherwise of the order or, as the case may be, the local authority's decision is finally determined in accordance with the relevant procedure: s 43(11)(a), (b).

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## **802. Revocation or variation of permanent licences.**

The following provisions apply in relation to any permanent licence<sup>1</sup> granted by the local authority<sup>2</sup>.

If at any time it appears to the local authority expedient to do so in the interests of the proper planning of transport in its area, it may by not less than 12 months' notice in writing to the holder of the licence either revoke the licence or vary certain terms and conditions<sup>3</sup> of it<sup>4</sup>.

If at any time it appears to the local authority that the holder of a licence, whether the person for the time being holding that licence or a previous holder of it, has discontinued making parking spaces available to the public at the licensed parking place and that the discontinuance has lasted for a period of not less than two years, the local authority may, by notice in writing to the holder of the licence, revoke it<sup>5</sup>.

If at any time it appears to the local authority that for a period of not less than two years the person, or each of the persons, who was for the time being during that period the holder of a licence in respect of a licensed parking place has made available to the public at that parking place a substantially lower number of parking spaces than that authorised by the licence, the local authority may, by notice in writing to the holder of the licence, vary certain terms and conditions of the licence<sup>6</sup> so as to authorise the provision at the licensed parking place of only that number of parking spaces which it appears to the local authority was being provided at the date of the notice<sup>7</sup>.

If in the case of a licensed parking place which was ready for operation at the date of the grant of the licence the local authority is satisfied at any time that for a period of not less than two years beginning with that date the person, or each of the persons, who was for the time being during that period the holder of the licence has not made any significant number of parking spaces available to the public at the licensed parking place, the local authority may, by notice in writing to the holder of the licence, revoke it<sup>8</sup>.

Where at the date when the licence was granted, the development as a public off-street parking place<sup>9</sup> of the premises in respect of which the licence was granted had not been begun or had not been completed, then:

- 545 (1) if there has been a period of not less than three years since that date without that development being begun<sup>10</sup>; or
- 546 (2) if there has been a period of not less than seven years since that date without that development being completed<sup>11</sup>; or
- 547 (3) if for a period of not less than two years beginning with the date of the completion of that development the person, or each of the persons, who was for the time being during that period the holder of the licence has not made any significant number of parking spaces available to the public at the licensed parking place<sup>12</sup>,

the local authority may, by notice in writing to the holder of the licence, revoke it<sup>13</sup>.

Where, however, notice under the above provisions<sup>14</sup> is given after the expiration of the relevant period referred to therein<sup>15</sup>, the notice is of no effect if it is given more than three months after the expiration of that period<sup>16</sup>.

1 For the meaning of 'licence' see PARA 799 note 4 ante.

2 Road Traffic Regulation Act 1984 s 43(1), Sch 4 para 7. This provision is expressed to be subject to the provisions of Sch 4 Pt III paras 14-18 (as amended) (see PARA 804 post) and Sch 4 Pt IV paras 19-24 (as amended) (see PARA 805 post) with respect to appeals and compensation: see Sch 4 para 7. For the meaning of 'local authority' see PARA 797 note 2 ante.

3 I.e. the terms and conditions specified under *ibid* s 43(4)(b), (c): see PARA 800 heads (2), (3) ante.

4 *Ibid* Sch 4 para 8 (amended by the Local Government Act 1985 s 8, Sch 5 para 4(38)(c)).

5 Road Traffic Regulation Act 1984 Sch 4 para 9.

6 See note 3 *supra*.

7 Road Traffic Regulation Act 1984 Sch 4 para 10.

8 *Ibid* Sch 4 para 11.

9 For the meaning of 'public off-street parking place' see PARA 797 note 3 ante.

10 Road Traffic Regulation Act 1984 Sch 4 para 12(1)(a).

11 *Ibid* Sch 4 para 12(1)(b).

12 *Ibid* Sch 4 para 12(1)(c).

13 *Ibid* Sch 4 para 12(1). For the purposes of Sch 4 para 12(1), the development there referred to is to be taken to begin at the earliest date on which any material operation within the meaning of the Town and Country Planning Act 1990 s 56(4) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 221) comprised in that development begins to be carried out: Road Traffic Regulation Act 1984 Sch 4 para 12(2) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 64(2)(a)).

14 I.e. under the Road Traffic Regulation Act 1984 Sch 4 para 9, 10, 11 or 12(1).

15 le in *ibid* Sch 4 para 9, 10, 11 or 12(1).

16 *Ibid* Sch 4 para 13.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(4) PARKING/(ii) Control of Off-street Parking/A. IN GREATER LONDON/803. Failure to comply with the terms of a licence.

### **803. Failure to comply with the terms of a licence.**

Any holder of a licence<sup>1</sup> who contravenes or fails to comply with any of the terms and conditions of the licence and who does not show that the contravention or failure was due to an act or omission of a person not connected with the operation of the licensed parking place which the persons so connected could not reasonably have been expected to prevent is guilty of an offence<sup>2</sup>. On the conviction of the holder of a licence of such an offence, the court before which he is convicted may make an order for the revocation of the licence, if on an application made for the purpose by the local authority<sup>3</sup> the court is satisfied that it is proper so to do by reason of the extent to which, or the period over which, or the frequency with which, the holder of the licence has contravened or failed to comply with the terms and conditions of the licence or by reason of the wilfulness of the offence<sup>4</sup>.

1 For the meaning of 'licence' see PARA 799 note 4 ante.

2 Road Traffic Regulation Act 1984 s 43(10). This provision is expressed to be subject to s 43(15) (see PARA 799 ante) and Sch 4 Pt V paras 25-27 (as amended) (see PARA 806 post): see s 43(10). A person guilty of an offence under s 43(10) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

3 For the meaning of 'local authority' see PARA 797 note 2 ante.

4 Road Traffic Regulation Act 1984 s 43(10).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(4) PARKING/(ii) Control of Off-street Parking/A. IN GREATER LONDON/804. Rights of appeal.

### **804. Rights of appeal.**

If a person who is, or who proposes to become, the operator<sup>1</sup> of a public off-street parking place<sup>2</sup> in a controlled area or any other person entitled to an interest in the premises used or proposed to be used for the purposes of that parking place is aggrieved by a decision of the local authority<sup>3</sup>:

548 (1) to refuse an application for the grant of a licence<sup>4</sup> in respect of those premises<sup>5</sup>; or

549 (2) as to the terms and conditions to be specified<sup>6</sup> in a licence granted in respect of those premises<sup>7</sup>; or



- 550 (3) to refuse an application for a variation of the terms and conditions so  
specified in a permanent licence granted in respect of those premises<sup>8</sup>; or  
551 (4) to revoke a licence granted in respect of those premises<sup>9</sup>; or  
552 (5) to vary<sup>10</sup> any of the specified terms and conditions<sup>11</sup> in a permanent licence  
granted in respect of those premises<sup>12</sup>,

he may, by notice served within such time (not being less than 28 days from the date of notification of the decision to which it relates) and in such manner as the Secretary of State may<sup>13</sup> direct, appeal to the Secretary of State from that decision<sup>14</sup>.

If, in a case where:

- 553 (a) a person makes an application to the local authority for a licence in respect of  
premises in respect of which a licence is not for the time being in force<sup>15</sup>; or  
554 (b) the person who is the holder of a permanent licence in respect of any  
premises duly makes an application to the local authority for a specified variation<sup>16</sup>  
of the terms and conditions of the licence<sup>17</sup>,

the local authority has not notified that person of its decision on his application by the expiration of the period of two months beginning with the date when it received the application or such longer period beginning with that date as may have been agreed for the purpose between that person and the local authority, the local authority is deemed for these purposes to have notified that person at the date of the expiration of that period that it has decided to refuse the application<sup>18</sup>.

The Secretary of State is not required to entertain an appeal under these provisions from any decision of a local authority if or to the extent that it appears to him that the decision was necessary in order to comply with the statutory requirements<sup>19</sup> or with any regulations made<sup>20</sup> by the local authority which are for the time being in force<sup>21</sup>.

Before determining such an appeal, the Secretary of State must, if either the appellant or the local authority so requests, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose<sup>22</sup>. If, however, the Secretary of State thinks fit in any case where such a request is made, he may, instead of complying with that request, appoint a person to hold an inquiry in connection with the appeal<sup>23</sup>.

The Secretary of State may by regulations<sup>24</sup> make provisions as to the procedure to be followed in connection with appeals under these provisions, including the procedure in connection with matters preparatory to, or subsequent to, the consideration of the appeal<sup>25</sup>.

On an appeal being brought under the above provisions from a decision of the local authority, the Secretary of State may either dismiss the appeal or substitute for that decision such other decision as he thinks fit; and the decision of the Secretary of State on the appeal is<sup>26</sup> final and is binding both on the appellant and on the local authority, and the local authority must take such steps as may be necessary to give effect to any such substituted decision<sup>27</sup>.

1 As to the meaning of 'operator' see PARA 797 note 3 ante.

2 For the meaning of 'public off-street parking place' see PARA 797 note 3 ante.

3 For the meaning of 'local authority' see PARA 797 note 2 ante.

4 For the meaning of 'licence' see PARA 799 note 4 ante.

5 Road Traffic Regulation Act 1984 s 43(1), Sch 4 para 14(1)(a).

- 6 le the terms and conditions to be specified under *ibid* s 43(4)(b), (c): see PARA 800 heads (2), (3) ante.
- 7 *Ibid* Sch 4 para 14(1)(b).
- 8 *Ibid* Sch 4 para 14(1)(c).
- 9 *Ibid* Sch 4 para 14(1)(d).
- 10 le under *ibid* Sch 4 Pt II paras 7-13 (as amended): see PARA 802 ante.
- 11 See note 6 *supra*.
- 12 Road Traffic Regulation Act 1984 Sch 4 para 14(1)(e).
- 13 le under *ibid* Sch 4 para 17: see the text and notes 24-25 *infra*.
- 14 *Ibid* Sch 4 para 14(1). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 15 *Ibid* Sch 4 para 14(2)(a).
- 16 See note 6 *supra*.
- 17 Road Traffic Regulation Act 1984 Sch 4 para 14(2)(b).
- 18 *Ibid* Sch 4 para 14(2).
- 19 le the requirements of *ibid* s 43 (as amended): see PARA 797 *et seq* ante.
- 20 le by virtue of *ibid* s 43(6) (as amended): see PARA 797 ante.
- 21 *Ibid* Sch 4 para 15 (amended by the Local Government Act 1985 s 8, Sch 5 para 4(38)(d)).
- 22 Road Traffic Regulation Act 1984 Sch 4 para 16(1).
- 23 *Ibid* Sch 4 para 16(2). The provisions of the Local Government Act 1972 s 250(2)-(5) apply to any such inquiry as they apply to such an inquiry as is referred to in s 250(1) (see LOCAL GOVERNMENT vol 69 (2009) PARA 105), with the substitution for any reference to a department of a reference to the Secretary of State: Road Traffic Regulation Act 1984 Sch 4 para 16(2).
- 24 The Control of Off-Street Parking in Greater London (Appeals Procedure) Regulations 1986, SI 1986/262, have been made in exercise of this power. As to the making of regulations generally see PARA 720 ante.
- 25 Road Traffic Regulation Act 1984 Sch 4 para 17(1).
- 26 le subject to *ibid* Sch 4 para 18(2) (as amended). The Tribunals and Inquiries Act 1992 s 11(1) (as amended) (which relates to appeals on points of law from decisions of certain tribunals) applies to a decision of the Secretary of State on an appeal under the Road Traffic Regulation Act 1984 Sch 4 Pt III paras 14-18 (as amended) as it applies to a decision of any of the tribunals mentioned in the Tribunals and Inquiries Act 1992 s 11(1) (as amended), but as if the reference to any party to proceedings before such a tribunal were a reference to the local authority or any person who had, or if aggrieved would have had, a right to appeal to the Secretary of State under the Road Traffic Regulation Act 1984 Sch 4 Pt III paras 14-18 (as amended), whether or not he has exercised that right; and accordingly references in the Tribunals and Inquiries Act 1992 s 11(1), (4) to a tribunal are to be construed in relation to such an appeal as references to the Secretary of State: Road Traffic Regulation Act 1984 Sch 4 para 18(2) (amended by the Tribunals and Inquiries Act 1992 s 18(1), Sch 3 para 15).
- 27 Road Traffic Regulation Act 1984 Sch 4 para 18(1).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(4) PARKING/(ii) Control of Off-street Parking/A. IN GREATER LONDON/805. Right to compensation in certain circumstances.

### 805. Right to compensation in certain circumstances.

If, on a claim made to the local authority in writing within the period of six months or such longer period as may be allowed<sup>1</sup> beginning with the date when the person who is (or who proposes to become) the operator of a public off-street parking place<sup>2</sup> is (or is deemed<sup>3</sup> to have been) notified of a decision of the local authority<sup>4</sup> relating to that parking place, that person or any other person entitled to an interest in the premises used or proposed to be used for the purposes of that parking place shows that the decision is a qualifying decision<sup>5</sup> and that the claimant has suffered damage<sup>6</sup> in consequence of that decision by depreciation of the value of his interests in those premises, or by being disturbed in his enjoyment of those premises, the local authority must pay the claimant compensation in respect of that damage<sup>7</sup>.

A qualifying decision is a decision:

- 555 (1) where a person who, at the date when the area is first designated as a controlled area by regulations of the local authority<sup>8</sup>, is the operator<sup>9</sup> of a public off-street parking place at premises in that area which have at that date been used as such a parking place for a continuous period of not less than six months duly makes an application to the local authority for a licence<sup>10</sup> in respect of those premises before the expiration of the period prescribed<sup>11</sup> for such applications in respect of parking places in operation at that date, and the local authority decides either to refuse the application or to grant the applicant a licence on terms and conditions<sup>12</sup> such that under the licence the applicant will not be able to operate the premises as a parking place to such advantage or potential advantage as immediately before he made his application<sup>13</sup>;

- 556 (2) where:

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164. (a) at the date when notice of a proposal to make regulations<sup>14</sup> designating an area as a controlled area<sup>15</sup> is published by the local authority<sup>16</sup>: (i) planning permission has been granted for a development which consists of or includes the provision at any premises in that area of a public off-street parking place<sup>17</sup>; and (ii) that development involves substantial building or engineering operations<sup>18</sup>; and (iii) either one or more material operations<sup>19</sup> comprised in that development have begun to be carried out or a contract (other than a lease) has been entered into with a person carrying on a business consisting wholly or mainly of the execution of building operations or of building operations and engineering operations whereby that person has undertaken to erect in the course of that business at such premises a building or structure as a place for the provision of parking places for motor vehicles<sup>20</sup>; and

165. (b) at the date when the area is designated as a controlled area in pursuance of that proposal those premises have not been in use as such a parking place to the full extent provided for by the planning permission for a continuous period of not less than six months<sup>21</sup>; and

166. (c) the person operating or proposing to operate those premises as such a parking place duly makes application to the local authority for a licence in respect of those premises before the expiration of the period prescribed for such applications in respect of parking places in operation at the date referred to in head (2)(b) above<sup>22</sup>; and

167. (d) the local authority decides either to refuse the application or to grant the applicant a licence on terms and conditions<sup>23</sup> such that under the licence the applicant will not be able to operate the premises as such a parking place to such advantage or potential advantage as if the area had not been designated as a controlled area<sup>24</sup>; or

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557 (3) made by the local authority:

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168. (a) to revoke a permanent licence<sup>25</sup>; or

169. (b) to vary<sup>26</sup> any of the terms and conditions specified in a permanent licence<sup>27</sup> in such manner that the holder of the licence will not be able to operate the licensed parking place to such advantage or potential advantage as if the variation had not been made<sup>28</sup>; or

170. (c) to refuse an application by the holder of a permanent licence for a specified variation of the terms and conditions<sup>29</sup> in a case where<sup>30</sup>: (i) by reason of a happening beyond the control of the holder of the licence he cannot continue to operate the licensed parking place in accordance with the licence as for the time being in force to such advantage or potential advantage as before that happening<sup>31</sup>; and (ii) the making of that variation would wholly or partly mitigate the adverse effects of that happening without enabling the holder of the licence to operate the licensed parking place to greater advantage or potential advantage than before that happening<sup>32</sup>.

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1 If within that period of six months any such person as is referred to in the Road Traffic Regulation Act 1984 s 43(1), Sch 4 para 22(1) has made an application to the Secretary of State for that purpose and has given notice to the local authority of the making of that application, the Secretary of State may, if he thinks fit in the circumstances of the case, direct that Sch 4 para 22(1) is to apply in relation to the decision in question as if for the reference in Sch 4 para 22(1) to six months there were substituted a reference to such longer period as the Secretary of State thinks fit: Sch 4 para 22(2). For the meaning of 'local authority' see PARA 797 note 2 ante. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'public off-street parking place' see PARA 797 note 3 ante.

3 Ie under the Road Traffic Regulation Act 1984 Sch 4 para 14(2): see PARA 804 ante.

4 Ie under ibid s 43 (as amended) (see PARA 797 et seq ante) or Sch 4 Pt II paras 7-13 (as amended) (see PARA 802 ante).

5 Ie under ibid Sch 4 para 19 (as amended) or Sch 4 para 20 (as amended) or Sch 4 para 21: see the text and notes 8-32 infra.

6 For the purpose of determining whether or not a claimant has suffered damage, there must be taken into account any alternative use to which the premises could reasonably be put, being a use in the case of which the local authority shows either:

1372 (1) that any necessary planning permission, whether conditional or unconditional, for that use has already been granted; or

1373 (2) that the local planning authority has given an undertaking that, if planning permission for that use is applied for, it will be granted either unconditionally or subject to specified conditions,

and, in a case where this provision applies by virtue of ibid Sch 4 para 21(c) (see head 3(c) in the text) there must also be taken into account any alternative variation to that applied for by the holder of the licence in question which the local authority has undertaken to grant on an application being made for that purpose: Sch 4 para 22(3).

7 Ibid Sch 4 para 22(1). The Town and Country Planning Act 1990 s 117 (as amended) (see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 930) applies to any compensation payable under the Road Traffic Regulation Act 1984 Sch 4 para 22(1) in respect of depreciation of the value of a claimant's interest in the premises concerned; and any question as to the right to, or the amount of, compensation under Sch 4 para 22(1) must be referred to and determined by the Lands Tribunal, and in relation to the determination of any such question the provisions of the Land Compensation Act 1961 s 2 (as amended) and s 4 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 715 et seq) apply subject to any necessary modifications: Road Traffic Regulation Act 1984 Sch 4 para 22(4) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 64(2)(c)). As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

Where compensation has become payable under the Road Traffic Regulation Act 1984 Sch 4 para 22(1) in respect of an interest in any premises and subsequently an order with respect to the use of those premises as a parking place is made under the Town and Country Planning Act 1990 s 97 (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 541) or s 102 (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 546 et seq) or Sch 9 para 1 (as amended) (see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARAS 757-758), the amount of that compensation is to be taken into account in assessing any compensation on a claim by reason of expenditure, loss or damage in consequence of that order made in respect of that interest under s 107 (as amended) (see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 914) or, as the case may be, s 115 (see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 923): Road Traffic Regulation Act 1984 Sch 4 para 22(5) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 64(2)(c)).

Where notice of appeal from any such decision of the local authority as is referred to in the Road Traffic Regulation Act 1984 Sch 4 para 19 (as amended) (see head (1) in the text), Sch 4 para 20 (as amended) (see head (2) in the text) or Sch 4 para 21 (see head (3) in the text) has been duly given under Sch 4 Pt III paras 14-18 (as amended) (see PARA 804 ante): (1) Sch 4 para 22 (as amended) does not have effect in relation to that decision until that appeal is determined or abandoned; (2) the person who is, or who proposes to become, the operator of a public off-street parking place at the premises to which the decision relates is deemed, for the purposes of Sch 4 para 22 (as amended), to have been notified of the local authority's decision on the date when the appeal is determined or abandoned; and (3) if on that appeal the Secretary of State substitutes a different decision for that of the local authority, the local authority is deemed, for the purposes of Sch 4 para 22 (as amended) to have made that substituted decision and not its original decision: Sch 4 para 23.

Where, in the case of a decision of the local authority relating to any premises, Sch 4 para 22 (as amended) applies to that decision both by virtue of Sch 4 para 19 (as amended) (see head (1) in the text) and by virtue of Sch 4 para 20 (as amended) (see head (2) in the text), then: (a) on the person who is, or who proposes to become, the operator of a public off-street parking place at those premises making a claim in respect of that decision under Sch 4 para 22 (as amended) by virtue of either Sch 4 para 19 (as amended) or Sch 4 para 20 (as amended), any subsequent claim in respect thereof by that person by virtue of the other of Sch 4 para 19 (as amended) and Sch 4 para 20 (as amended), and any claim in respect thereof made whether before or after that person's claim by any other person by virtue of the other of Sch 4 para 19 (as amended) and Sch 4 para 20 (as amended), is of no effect; and (b) subject to head (a) supra, if a claim in respect of that decision is made under Sch 4 para 22 (as amended) by any person by virtue of either of Sch 4 para 19 (as amended) or Sch 4 para 20 (as amended), any subsequent claim in respect thereof by virtue of the other of Sch 4 paras 19 (as amended) and Sch 4 para 20 (as amended) is of no effect: Sch 4 para 24.

8     Ie under *ibid* s 43 (as amended): see PARA 797 et seq ante.

9     As to the meaning of 'operator' see PARA 797 note 3 ante.

10    For the meaning of 'licence' see PARA 799 note 4 ante.

11    See PARA 797 note 6 ante.

12    Ie the terms and conditions specified in the Road Traffic Regulation Act 1984 s 43(4)(b), (c): see PARA 800 heads (2), (3) ante.

13    Ibid Sch 4 para 19 (amended by the Local Government Act 1985 s 8, Sch 5 para 4(38)(d)).

14    See note 8 supra.

15    Ie for the purposes of the Road Traffic Regulation Act 1984 s 43 (as amended): see PARA 797 et seq ante.

16    Ibid Sch 4 para 20(a) (amended by the Local Government Act 1985 Sch 5 para 4(38)(d)). The text refers to publication of a notice under the Road Traffic Regulation Act 1984 Sch 4 para 1 (as amended) (see PARA 798 ante): Sch 4 para 20(a) (as so amended).

17    Ibid Sch 4 para 20(a)(i).

18    Ibid Sch 4 para 20(a)(ii). The operations referred to in the text are operations within the meaning of the Town and Country Planning Act 1990 s 336(1) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 218 et seq): Road Traffic Regulation Act 1984 Sch 4 para 20(a)(ii) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 64(2)(b)).

19    Ie within the meaning of the Town and Country Planning Act 1990 s 56(4) (as amended): see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 221.

20    Road Traffic Regulation Act 1984 Sch 4 para 20(a)(iii) (amended by the Statute Law (Repeals) Act 1998). For the meaning of 'motor vehicle' see PARA 210 ante.

- 21 Road Traffic Regulation Act 1984 Sch 4 para 20(b).
- 22 Ibid Sch 4 para 20(c).
- 23 Ie under the terms and conditions specified in s 43(4)(b), (c): see PARA 800 heads (2), (3) ante.
- 24 Ibid Sch 4 para 20(d).
- 25 Ibid Sch 4 para 21(a). The text refers to revocation under Sch 4 para 8 (as amended) (see PARA 802 ante): Sch 4 para 21(a).
- 26 Ie under ibid Sch 4 para 8 (as amended): see PARA 802 ante.
- 27 See note 26 supra.
- 28 Road Traffic Regulation Act 1984 Sch 4 para 21(b).
- 29 See note 26 supra.
- 30 Road Traffic Regulation Act 1984 Sch 4 para 21(c).
- 31 Ibid Sch 4 para 21(c)(i).
- 32 Ibid Sch 4 para 21(c)(ii).

## UPDATE

### 805 Right to compensation in certain circumstances

NOTE 7--Reference to the Lands Tribunal is now to the Upper Tribunal: Road Traffic Regulation Act 1984 Sch 4 para 22(4) (amended by SI 2009/1307).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(4) PARKING/(ii) Control of Off-street Parking/A. IN GREATER LONDON/806. Permissible periods of unlicensed operation of parking places.

### 806. Permissible periods of unlicensed operation of parking places.

Where, at the date when any area first becomes a controlled area, a person is operating<sup>1</sup> a public off-street parking place<sup>2</sup> in that area, he is not guilty of an offence<sup>3</sup> by reason of continuing to operate the parking place after that date without a licence<sup>4</sup>:

- 558 (1) at any time before the expiration of the period prescribed<sup>5</sup> for the making of applications for licences in respect of parking places in operation at that date<sup>6</sup>; or
- 559 (2) if during that period he duly makes an application for a licence in respect of the parking place, at any time after the expiration of that period but before the local authority<sup>7</sup> notifies him either that he has been granted a licence or that his application is refused<sup>8</sup>; or
- 560 (3) if the local authority notifies him that his application is refused, at any time thereafter before the expiration of the time for giving notice of appeal from that decision<sup>9</sup>; or
- 561 (4) if such a notice of appeal is duly given, at any time thereafter until either the local authority's decision becomes finally effective<sup>10</sup> or the licence is granted<sup>11</sup>.

Where, in pursuance of the application referred to in head (2) above, the person referred to therein is granted a licence, he is not guilty of an offence<sup>12</sup> by reason of contravening or failing to comply with any of the terms and conditions specified in the licence<sup>13</sup>:

- 562 (a) at any time before the expiration of the time for giving notice of appeal<sup>14</sup> from the decision of the local authority as to those terms and conditions<sup>15</sup>; or
- 563 (b) if such a notice of appeal is duly given, at any time thereafter until either the local authority's decision becomes finally effective<sup>16</sup> or the terms and conditions specified in the licence are varied as a result of that procedure<sup>17</sup>.

Where the operator of a public off-street parking place who is the holder of a licence in respect of that parking place granted for a limited period duly makes an application to the local authority before the date of expiry of that licence for a new licence, whether permanent or for a limited period, authorising the operation of that parking place for a further period after that date, then, if and for so long as he continues to operate that parking place after that date in accordance with the terms and conditions of the expired licence, other than the provision as to its date of expiry<sup>18</sup>:

- 564 (i) he is not guilty of an offence<sup>19</sup> by reason of operating the parking place after such date without a licence<sup>20</sup>;
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- 171. (A) at any time before the local authority notifies him either that he has been granted a new licence in respect of the parking place or that his application is refused<sup>21</sup>; or
- 172. (B) if the local authority notifies him that his application is refused at any time thereafter before the expiration of the period for giving notice of appeal from that decision<sup>22</sup>; or
- 173. (C) if such a notice of appeal is duly given, at any time thereafter until either the local authority's decision becomes finally effective<sup>23</sup> or a new licence is granted<sup>24</sup>;
- 94
- 565 (ii) where he is granted a new licence in pursuance of the application, he is not guilty of an offence<sup>25</sup> by reason of contravening or failing to comply with any of the terms and conditions specified in that new licence<sup>26</sup>;

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- 174. (A) at any time before the expiration of the time for giving notice of appeal<sup>27</sup> from the decision of the local authority as to those terms and conditions<sup>28</sup>; or
- 175. (B) if such a notice of appeal is duly given, at any time thereafter until either the local authority's decision becomes finally effective<sup>29</sup> or the terms and conditions specified in the new licence are varied<sup>30</sup>.

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1 As to the meaning of 'operating' see PARA 797 note 3 ante.

2 For the meaning of 'public off-street parking place' see PARA 797 note 3 ante.

3 le under the Road Traffic Regulation Act 1984 s 43(12); see PARA 799 ante.

4 Ibid s 43(1), Sch 4 para 25. For the meaning of 'licence' see PARA 799 note 4 ante.

5 See PARA 797 note 6 ante.

6 Road Traffic Regulation Act 1984 Sch 4 para 25(a).

7 For the meaning of 'local authority' see PARA 797 note 2 ante.

8 Road Traffic Regulation Act 1984 Sch 4 para 25(b).

- 9 Ibid Sch 4 para 25(c). The reference in the text to giving notice of appeal is a reference to giving notice under Sch 4 Pt III paras 14-18 (as amended) (see PARA 804 ante): Sch 4 para 25(c).
- 10 Ie under the procedure provided for by ibid Pt III paras 14-18 (as amended): see PARA 804 ante.
- 11 Ibid Sch 4 para 25(d).
- 12 Ie under ibid s 43(10): see PARA 803 ante.
- 13 Ibid Sch 4 para 26. The terms and conditions referred to in the text are terms and conditions specified under ibid s 43(4)(b), (c): see PARA 800 heads (2), (3) ante.
- 14 Ie a notice of appeal under ibid Sch 4 Pt III paras 14-18 (as amended): see PARA 804 ante.
- 15 Ibid Sch 4 para 26(a).
- 16 See note 10 supra.
- 17 Road Traffic Regulation Act 1984 Sch 4 para 26(b).
- 18 Ibid Sch 4 para 27.
- 19 See note 3 supra.
- 20 Road Traffic Regulation Act 1984 Sch 4 para 27(a).
- 21 Ibid Sch 4 para 27(a)(i).
- 22 Ibid Sch 4 para 27(a)(ii). The decision referred to in the text is a decision under Sch 4 Pt III paras 14-18 (as amended) (see PARA 804 ante): Sch 4 para 27(a)(ii).
- 23 See note 10 supra.
- 24 Road Traffic Regulation Act 1984 Sch 4 para 27(a)(iii).
- 25 See note 12 supra.
- 26 Road Traffic Regulation Act 1984 Sch 4 para 27(b). The terms and conditions referred to in the text are terms and conditions specified under s 43(4)(b), (c): see PARA 800 heads (2), (3) ante.
- 27 Ie under ibid Sch 4 Pt III paras 14-18 (as amended): see PARA 804 ante.
- 28 Ibid Sch 4 para 27(b)(i).
- 29 See note 10 supra.
- 30 Road Traffic Regulation Act 1984 Sch 4 para 27(b)(ii). The text refers to a variation as a result of the procedure provided for by Sch 4 Pt III paras 14-18 (as amended) (see PARA 804 ante): see Sch 4 para 27(b)(ii).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(4) PARKING/(ii) Control of Off-street Parking/B. OUTSIDE GREATER LONDON/807. Control of off-street licensed parking in controlled areas outside Greater London.

## ***B. OUTSIDE GREATER LONDON***

### **807. Control of off-street licensed parking in controlled areas outside Greater London.**



With a view to providing further means of regulating traffic in urban areas, Her Majesty may by Order in Council provide for enabling the operation of public off-street parking places<sup>1</sup> to be regulated in English counties, by the county council or metropolitan district council, and in Welsh counties or county boroughs, by the county council or (as the case may be) county borough council, by the county council<sup>2</sup>. Such an Order may make any such provision for the remainder of England and Wales as is made for Greater London<sup>3</sup> and must be so framed as to conform with the London provisions<sup>4</sup> as respects all matters there dealt with, subject only to the modifications permitted or required by the following provision and other minor and incidental modifications<sup>5</sup>. The modifications referred to above are that the Order:

- 566 (1) must provide for controlled areas to be so designated that they comprise only premises to which there is no road access otherwise than (directly or indirectly) from one or more urban roads<sup>6</sup>;
- 567 (2) may in relation to non-metropolitan counties in England provide for certain functions of local authorities<sup>7</sup> under the London provisions in respect of areas designated as controlled areas to be conferred on district councils or on both county councils and district councils, and may in consequence of any such distribution of functions make such incidental and supplementary provision as appears to Her Majesty to be necessary or expedient<sup>8</sup>;
- 568 (3) may include, in place of references and requirements which are apposite only for London, corresponding references and requirements apposite for other areas of Great Britain<sup>9</sup>.

Any such Order must also require councils to consult organisations representative of the disabled before deciding to propose the designation of a controlled area under the Order<sup>10</sup> and, if representations are received from such organisations about the proposal, require councils to send to the Secretary of State<sup>11</sup> (together with copies of representations received from other organisations consulted) a statement of how parking requirements of the disabled arising from implementation of the proposal are met by existing facilities or, if in the opinion of the council they are not already so met, how it is intended to meet them<sup>12</sup>. Such an Order is subject to annulment by resolution of either House of Parliament<sup>13</sup>.

1 For the meaning of 'public off-street parking place' see PARA 797 note 3 ante. As to the operation of a public off-street parking place see PARA 797 note 3 ante.

2 Road Traffic Regulation Act 1984 s 44(1)(a) (substituted by the Local Government Act 1985 s 8, Sch 5 para 4(18)(a); and amended by the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 38(2)(a)). In exercise of the power under the Road Traffic Regulation Act 1984 s 44 (as amended), the Control of Off-Street Parking (England and Wales) (Metropolitan Districts) Order 1986, SI 1986/225, and the Control of Off-Street Parking (Appeals Procedure) (England and Wales) (Metropolitan Districts) Regulations 1986, SI 1986/264, have been made. By virtue of the Interpretation Act 1978 s 17(2)(b), the Control of Off-Street Parking (England and Wales) Order 1978, SI 1978/1535 (amended by SI 1996/1008) and the Control of Off-Street Parking Outside Greater London (Appeals Procedure) (England and Wales) Regulations 1979, SI 1979/236 (amended by SI 1996/1008) have effect as if made under the Road Traffic Regulation Act 1984 s 44 (as amended). As to local government areas and authorities see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; LONDON GOVERNMENT.

3 le by ibid s 43 (as amended): see PARA 797 et seq ante.

4 'The London provisions' means ibid s 43 (as amended) and Sch 4 (see PARA 797 et seq ante): s 44(5)(a).

5 Ibid s 44(2).

6 Ibid s 44(3)(a). 'Urban road' means a road which is a restricted road for the purposes of s 81 (see PARA 847 post) or is subject to an order made by virtue of s 84(1)(a) (as substituted) (see PARA 848 post) imposing a speed limit of not more than 40 mph: s 44(5)(b) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 26).

7 For the meaning of 'local authority' see PARA 797 note 2 ante.

8 Road Traffic Regulation Act 1984 s 44(3)(b) (substituted by the Local Government Act 1985 s 8, Sch 5 para 4(18)(b); and amended by the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 38(2)(b), Sch 18).

9 Road Traffic Regulation Act 1984 s 44(3)(d).

10 Ibid s 44(4)(a).

11 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

12 Road Traffic Regulation Act 1984 s 44(4)(b).

13 Ibid s 44(6).

## UPDATE

### **807 Control of off-street licensed parking in controlled areas outside Greater London**

NOTE 2--SI 1978/1535, SI 1986/225 amended: SI 2009/1307.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(4) PARKING/(iii) Designated Parking Places/808. Designation of parking places in general.

### **(iii) Designated Parking Places**

#### **808. Designation of parking places in general.**

A local authority<sup>1</sup> may by order designate parking places on highways in its area for vehicles or vehicles of any class<sup>2</sup> specified in the order, and the authority may make charges<sup>3</sup> for vehicles left in a parking place so designated<sup>4</sup>. The exercise of this power by a local authority in relation to a highway for which it is not the traffic authority<sup>5</sup> is subject to obtaining the consent of the traffic authority<sup>6</sup>. Such an order may designate a parking place for use (either at all times or at times specified in the order) only by such persons or vehicles, or such persons or vehicles of a class specified in the order, as may be authorised for the purpose by a permit from the authority operating the parking place or both by such persons or vehicles or classes of persons or vehicles and also, with or without charge and subject to such conditions as to duration of parking or times at which parking is authorised, by such other persons or vehicles, or persons or vehicles of such other class, as may be specified<sup>7</sup>; and

- 569 (1) in the case of any particular parking place and any particular vehicle, or any vehicle of a particular class, the authority operating the parking place may issue a permit for that vehicle to be left in the parking place while the permit remains in force, either at all times or at such times as may be specified in the permit<sup>8</sup>; and
- 570 (2) except in the case of a public service vehicle<sup>9</sup>, may make such charge in connection with the issue or use of the permit, of such amount and payable in such manner, as the authority by which the designation order was made may by order prescribe<sup>10</sup>.

In determining what parking places are to be so designated the authority concerned<sup>11</sup> must consider both the interests of traffic and those of the owners and occupiers of adjoining property, and in particular the matters to which that authority must have regard include<sup>12</sup>:

- 571 (a) the need for maintaining the free movement of traffic<sup>13</sup>;
- 572 (b) the need for maintaining reasonable access to premises<sup>14</sup>; and
- 573 (c) the extent to which off-street parking accommodation<sup>15</sup>, whether in the open or under cover, is available in the neighbourhood or the provision of such parking accommodation is likely to be encouraged there by the designation of parking places under this provision<sup>16</sup>.

The exercise by an authority of such functions does not render the authority subject to any liability in respect of the loss of or damage to any vehicle in a parking place or the contents or fittings of any such vehicle<sup>17</sup>.

Subject to certain statutory provisions<sup>18</sup>, where it appears to the authority concerned to be expedient to do so having regard to any objections duly made in respect of proposals made by that authority for a designation order it may, if it thinks fit, make an interim order pursuant to the proposals or application in respect of any one or more of the sites affected, or in respect of any part of any of those sites, and postpone for further consideration the making of any further order in pursuance of the proposals or application<sup>19</sup>.

1 For these purposes, and for the purposes of the Road Traffic Regulation Act 1984 ss 46-55 (as amended) (see PARA 810 et seq post), 'local authority' in England means the council of a county, metropolitan district or London borough or the Common Council of the City of London or Transport for London; and in Wales means the council of a county or county borough: Road Traffic Regulation Act 1984 s 45(7)(a), (b) (amended by the Local Government Act 1985 s 8, Sch 5 para 4(19)(b); the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 38(3); and the Greater London Authority Act 1999 s 281(1), (4)). For these purposes, and for the purposes of the Road Traffic Regulation Act 1984 ss 46-55 (as amended) (see PARA 810 et seq post), 'the local authority' in relation to a parking place or proposed parking place on any site means the local authority (as defined above) in whose area the site is unless the site is in Greater London, in which case: (1) if the site is on a GLA road and the parking place is, or is proposed to be, designated by Transport for London, 'the local authority' means Transport for London; (2) if the site is on a GLA road and the parking place is, or is proposed to be, designated by the London local authority in whose area the site is, 'the local authority' means that London local authority; and (3) if the site is on a highway which is not a GLA road, 'the local authority' means the London local authority in whose area the site is: s 45(7) (amended by the Local Government (Wales) Act 1994 ss 22(1), 66(8), Sch 7 para 38(3), Sch 18; and the Greater London Authority Act 1999 s 281(1), (5)). For these purposes, 'London local authority' means the council of a London borough or the Common Council of the City of London: Road Traffic Regulation Act 1984 s 45(8) (added by the Greater London Authority Act 1999 s 281(1), (6)). For these purposes, and for the purposes of the Road Traffic Regulation Act 1984 ss 46-55 (as amended) (see PARA 810 et seq post), Transport for London's area is to be taken to be Greater London: s 45(9) (added by the Greater London Authority Act 1999 s 281(1), (6)). As to the meaning of 'GLA road' see PARA 726 note 6 ante. As to local government areas and authorities see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; LONDON GOVERNMENT. As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

2 As to classes of vehicles see PARA 208 ante.

3 le of such amount as may be prescribed under the Road Traffic Regulation Act 1984 s 46 (as amended): see PARA 810 post.

4 Ibid s 45(1) (substituted by the New Roads and Street Works Act 1991 s 168(1), Sch 8 Pt II para 44(2)). 'Designation order' means an order under the Road Traffic Regulation Act 1984 s 45 (as amended), including any order so made by virtue of s 50(1) (repealed); and 'designated parking place' means a parking place designated by a designation order: s 142(1). Transport for London may not by virtue of s 45(1) (as substituted and amended) designate parking places on any highway which is not a GLA road: s 45(1A) (added by the Greater London Authority Act 1999 s 281(1), (3)).

Nothing in the Road Traffic Regulation Act 1984 s 45 (as amended) can affect the operation of s 6 (as amended) (see PARA 747 ante) or s 32 (see PARA 784 ante): s 45(5).

The power to make an order under s 45 (as amended) is also exercisable by the Secretary of State: see PARAS 736-741 ante. Any power of the Secretary of State to make an order under or by virtue of s 45 (as amended) is exercisable by statutory instrument: s 124(2). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. Orders and regulations made under s 45 (as amended) are local in nature, and are not recorded in this work.

As to exemptions for disabled persons see, in relation to England, the Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (England) Regulations 2000, SI 2000/683; and, in relation to Wales, the Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (England and Wales) Regulations 1986, SI 1986/178 (amended by SI 1991/2709; SI 2000/683).

5 As to traffic authorities see PARAS 731-735 ante.

6 Road Traffic Regulation Act 1984 s 45(1) (as substituted (see note 4 supra); and amended by the Greater London Authority Act 1999 ss 281(1), (2), 423, Sch 34 Pt VI).

7 Road Traffic Regulation Act 1984 s 45(2) (amended by the Road Traffic Regulation (Parking) Act 1986 s 1).

8 Road Traffic Regulation Act 1984 s 45(2)(a) (as amended: see note 7 supra).

9 For the meaning of 'public service vehicle' see PARA 1136 post; definition applied by virtue of s 142(1) (amended by the Transport Act 1985 s 1, Sch 1 para 15).

10 Road Traffic Regulation Act 1984 s 45(2)(b).

11 It has been held that: (1) what is lawful to take into account in administering a given statutory scheme will depend on the policy and objects of the statute; (2) the Road Traffic Regulation Act 1984 is not to be used to raise revenue; and (3) the process of consultation must be effective, and looked at as a whole it must be fair: *Cran v Camden London Borough Council* [1995] RTR 346, sub nom *R v Camden London Borough Council, ex p Cran* (1995) 94 LGR 8. This requires that consultation must take place while the proposals are still at a formative stage; those consulted must be provided with information which is accurate and sufficient to enable them to make a meaningful response; they must be given adequate time to do so; there must be adequate time for their responses to be considered; and the consulting party must consider the responses with a receptive mind and in a conscientious manner when reaching its decision.

12 Road Traffic Regulation Act 1984 s 45(3).

13 Ibid s 45(3)(a).

14 Ibid s 45(3)(b).

15 For the meaning of 'off-street parking accommodation' see PARA 797 note 3 ante.

16 Road Traffic Regulation Act 1984 s 45(3)(c) (amended by the New Roads and Street Works Act 1991 Sch 8 Pt II para 44(3)).

17 Road Traffic Regulation Act 1984 s 45(4).

18 Ie ibid Sch 9 Pts I-III paras 1-26 (as amended): see PARAS 736-738 ante.

19 Ibid s 45(6) (amended by the Local Government Act 1985 s 102, Sch 17).

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## **809. Parking outside designated parking places in London.**

The following provisions have effect until a day to be appointed<sup>1</sup>.

In application to participating councils<sup>2</sup> and to Transport for London<sup>3</sup>, there is a prohibition on the waiting of vehicles in the following circumstances:

- 574 (1) where the vehicle is on the carriageway of a road<sup>4</sup> and wholly or partly within a special parking area<sup>5</sup>; and
- 575 (2) where no part of the vehicle is within 50 centimetres of the edge of the carriageway<sup>6</sup>; and

- 576 (3) where the vehicle is not wholly within a designated parking place or any other part of a road in respect of which the waiting of vehicles is specifically authorised<sup>7</sup>,

and such prohibition is enforceable as if it had been imposed by an order under the provision<sup>8</sup> relating to orders similar to traffic regulation orders<sup>9</sup>.

However, this does not prohibit the driver of a vehicle from causing it to stop in the circumstances mentioned in heads (1) to (3) above<sup>10</sup>:

- 577 (a) if the driver is prevented from proceeding by circumstances beyond his control or it is necessary for him to stop in order to avoid an accident<sup>11</sup>;  
 578 (b) if the vehicle is stopped for the purpose of making a left or right turn<sup>12</sup>;  
 579 (c) if the vehicle is being used for fire and rescue authority, ambulance or police purposes<sup>13</sup>;  
 580 (d) for so long as may be necessary up to a maximum of 20 minutes for the delivery or collection of goods or merchandise or the loading or unloading of the vehicle at any premises if that cannot reasonably be carried out as respects those premises without stopping in the circumstances mentioned in heads (1) to (3) above<sup>14</sup>;  
 581 (e) for so long as may be necessary to enable the vehicle, if it cannot be used for such purpose without stopping in the circumstances mentioned in heads (1) to (3) above, to be used in connection with any building operation, demolition or excavation, the collection of waste by any participating council, the removal of any obstruction to traffic, the maintenance, improvement or reconstruction of the road, or the laying, erection, alteration, repair or cleaning of any traffic sign or sewer or of any main, pipe or apparatus for the supply of gas, water or electricity, or of any telegraph or telephone wires, cables, posts or supports<sup>15</sup>;  
 582 (f) for so long as may be necessary for the purpose of enabling persons to board or alight from the vehicle<sup>16</sup>.

1 The London Local Authorities Act 1995 s 5 (as substituted and amended) is repealed, as from a day to be appointed, by the Traffic Management Act 2004 s 98, Sch 12 Pt 1. The appointed day in relation to England is 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053), but at the date at which this volume states the law no such day had been appointed in relation to Wales.

2 For the meaning of 'participating council' see PARA 779 note 4 ante.

3 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

4 For the meaning of 'road' see PARA 206 ante; definition applied by the London Local Authorities Act 1995 s 2.

5 Ibid s 5(2)(a) (s 5 substituted by the London Local Authorities Act 2000 s 6). As to special parking areas in London see PARA 822 post.

6 London Local Authorities Act 1995 s 5(2)(b) (as substituted: see note 5 supra).

7 Ibid s 5(2)(c) (as substituted: see note 5 supra).

8 Ie under the Road Traffic Regulation Act 1984 s 6 (as amended): see PARA 747 ante.

9 London Local Authorities Act 1995 s 5(1) (as substituted (see note 5 supra); and amended by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, art 3(1), Sch 2 paras 1, 4). Nothing in the London Local Authorities Act 1995 s 5(1) (as substituted and amended) requires the placing of any traffic signs in connection with the prohibition imposed by it: s 5(3) (as so substituted). For the meaning of 'traffic sign' see PARA 830 post; definition applied by s 2.

10 Ibid s 5(4) (as substituted: see note 5 supra).

- 11 Ibid s 5(4)(a) (as substituted: see note 5 supra).
- 12 Ibid s 5(4)(b) (as substituted: see note 5 supra).
- 13 Ibid s 5(4)(c) (as substituted (see note 5 supra); and amended by the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 93).
- 14 London Local Authorities Act 1995 s 5(4)(d) (as substituted: see note 5 supra).
- 15 Ibid s 5(4)(e) (as substituted: see note 5 supra).
- 16 Ibid s 5(4)(f) (as substituted: see note 5 supra).

## UPDATE

### 809 Parking outside designated parking places in London

TEXT AND NOTE 1--Repeal of 1995 Act s 5 deferred: SI 2007/2053 (amended by SI 2008/757).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(4) PARKING/(iii) Designated Parking Places/810. Charges at, and regulation of, designated parking places.

### 810. Charges at, and regulation of, designated parking places.

The authority by which a designation order<sup>1</sup> is made with respect to any parking place outside Greater London, and not in a civil enforcement area for parking contraventions<sup>2</sup>, must by order prescribe any charges to be paid for vehicles left in a parking place designated by the order, and any such charge may be prescribed either<sup>3</sup>: (1) as an amount (an 'initial charge') payable in respect of an initial period and an amount (an 'excess charge') payable, in addition to an initial charge, in respect of any excess over an initial period<sup>4</sup>; or (2) as an amount payable regardless of the period for which a vehicle is left<sup>5</sup>.

Where the authority by which a designation order is made with respect to any parking place in Greater London, or outside Greater London in a civil enforcement area for parking contraventions, imposes charges to be paid for vehicles left in a parking place designated by the order, those charges must be prescribed by the designation order or by a separate order made by the authority<sup>6</sup>.

The authority by which a designation order is made may<sup>7</sup> by order make such provision as may appear to that authority to be necessary or expedient for regulating or restricting the use of any parking place designated by the order, or otherwise for or in connection with the operation of such a parking place, and in particular (but without prejudice to the generality of the foregoing words) it may make provision<sup>8</sup>:

- 583 (a) for regulating the time at which and the method by which any charge is to be paid and for requiring the use of apparatus (a 'parking meter') being apparatus designed either<sup>9</sup>: (i) to indicate whether any charge has been paid and whether the period for which it has been paid or any further period has elapsed<sup>10</sup>; or (ii) to indicate the time and to issue tickets indicating the payment of a charge and the period in respect of which it has been paid<sup>11</sup>;

- 584 (b) for treating the indications given by a parking meter or any ticket issued by it, or the absence of any such ticket from a vehicle left in a parking place, as evidence of such facts as may be provided by the order<sup>12</sup>;
- 585 (c) for prohibiting the insertion in a parking meter of coins or bank notes additional to those inserted by way of payment of any charge, or for prohibiting the insertion or re-insertion in a parking meter of a credit or debit card<sup>13</sup> additional to the original insertion of such a card<sup>14</sup>;
- 586 (d) for enabling the local authority<sup>15</sup> to determine, subject to any restrictions specified in the order, the number and dimensions of the spaces in which vehicles may be left in a parking place<sup>16</sup>;
- 587 (e) for authorising the alteration of the position in a parking place, or the removal from a parking place, of vehicles in respect of which any order relating to the parking place has been contravened or not complied with and for the safe custody of vehicles so removed<sup>17</sup>;
- 588 (f) for exempting from the payment of any charge any vehicle left in a parking place in such circumstances as may be specified in the order, and for treating any vehicle so exempted as having been left there, and the charge from which it is exempted as having been paid, at such time as may be so specified<sup>18</sup>;
- 589 (g) for prohibiting or restricting the carrying on of trade or other activities, or the doing of any other thing, at a parking place<sup>19</sup>;
- 590 (h) for conferring on the local authority powers of illuminating parking places, and of erecting notices or signs and carrying out work on or in the vicinity of a parking place<sup>20</sup>;
- 591 (i) for regulating the grant, revocation and surrender of any permit<sup>21</sup> and the issue, use and surrender of tokens indicating the holding of such a permit, or the payment of any charge in connection with the issue or use of the permit<sup>22</sup>;
- 592 (j) for requiring a vehicle to which such a permit applies to display the permit or such a token when left in a parking place to which the permit applies, and for treating the display of, or failure to display, the permit or such a token on any vehicle left at a parking place as evidence of such facts as may be provided by the order<sup>23</sup>;
- 593 (k) for the refund, in such circumstances and in such manner as may be prescribed by the order, of the amount of any charge paid in advance<sup>24</sup>.

Where provision is made for the use of parking meters it is the duty of the local authority to take such steps as appears to it to be appropriate for the periodical inspection of the meters and for dealing with any found to be out of order, for securing the testing of the meters, both before they are brought into force and afterwards, and for recording the date on which, and the person by whom, a meter has been tested<sup>25</sup>.

1 For the meaning of 'designation order' see PARA 808 note 4 ante.

2 For these purposes, 'civil enforcement area for parking contraventions' has the same meaning as in the Traffic Management Act 2004 Pt 6 (ss 72-93) (as amended): Road Traffic Regulation Act 1984 s 46(6) (added by the Traffic Management Act 2004 s 91, Sch 11 para 1(1), (4)). See PARA 888 post.

3 Road Traffic Regulation Act 1984 s 46(1) (amended by the Road Traffic Act 1991 s 64(1)). This provision is expressed to be subject to the Road Traffic Regulation Act 1984 s 124(1), Sch 9 Pt I paras 1-12 (as amended), Sch 9 Pt II paras 13-19 (as amended) and Sch 9 Pt III paras 20-26 (as amended) (see PARAS 736-738 ante): see s 46(1) (as so amended).

The power to make an order under s 46 (as amended) is also exercisable by the Secretary of State: see PARAS 736-741 ante. Any power of the Secretary of State to make an order under or by virtue of s 46 (as amended) is exercisable by statutory instrument: s 124(2). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. Orders made under s 46 (as amended) are local in nature, and are not recorded in this work.

As to exemptions for disabled persons see, in relation to England, the Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (England) Regulations 2000, SI 2000/683; and, in relation to Wales, the Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (England and Wales) Regulations 1986, SI 1986/178 (amended by SI 1991/2709; SI 2000/683).

4 Road Traffic Regulation Act 1984 ss 46(1)(a), 142(1).

5 Ibid s 46(1)(b).

6 Ibid s 46(1A) (added by the Road Traffic Act 1991 s 64(2); and amended by the Traffic Management Act 2004 Sch 11 para 1(3)). This provision is expressed to be subject to the Road Traffic Regulation Act 1984 Sch 9 Pts I-III (as amended) (see PARAS 736-738 ante): see s 46(1A) (as so added).

7 Ie subject to ibid Sch 9 Pts I-III (as amended): see PARAS 736-738 ante.

8 Ibid s 46(2).

9 Ibid ss 46(2)(a), 142(1) (s 46(2)(a) amended by the Deregulation (Parking Equipment) Order 1996, SI 1996/1553, art 2(1), Schedule). In relation to orders made before 12 June 1996 see the Deregulation (Parking Equipment) Order 1996, SI 1996/1553, art 3.

10 Road Traffic Regulation Act 1984 s 46(2)(a)(i).

11 Ibid s 46(2)(a)(ii).

12 Ibid s 46(2)(b). In relation to orders made before 12 June 1996 see the Deregulation (Parking Equipment) Order 1996, SI 1996/1553, art 3.

13 For the meanings of 'credit card' and 'debit card' see PARA 791 notes 6, 7 ante; definitions applied by the Road Traffic Regulation Act 1984 s 46(5).

14 Ibid s 46(2)(c) (substituted by the Parking Act 1989 s 4, Schedule para 2). In relation to orders made before 12 June 1996 see the Deregulation (Parking Equipment) Order 1996, SI 1996/1553, art 3.

15 For the meaning of 'local authority' see PARA 808 note 1 ante.

16 Road Traffic Regulation Act 1984 s 46(2)(d).

17 Ibid s 46(2)(e).

18 Ibid s 46(2)(f).

19 Ibid s 46(2)(g).

20 Ibid s 46(2)(h).

21 Ie such as is mentioned in ibid s 45(2)(a) (see PARA 808 ante): see s 46(2)(i).

22 Ibid s 46(2)(i).

23 Ibid s 46(2)(j).

24 Ibid s 46(2)(k). The charges referred to in the text are charges paid in advance by virtue of s 45(2)(b) (see PARA 808 ante): s 46(2)(k).

25 Ibid s 46(3). Where provision is made for the use of apparatus other than parking meters, s 46(3) applies to such apparatus as it applies to a parking meter: s 46(4).

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## **811. Variation of charges at designated parking places.**



Where<sup>1</sup> any charges have been prescribed by a designation order<sup>2</sup> or by an order under the provisions relating to charges at, and the regulation of, designated parking places<sup>3</sup>, the authority making that order may vary those charges by notice<sup>4</sup>. The variation of any such charges by notice is not to be taken to prejudice any power to vary those charges by order under the provisions<sup>5</sup> relating to charges at, and the regulation of, designated parking places<sup>6</sup>. The Secretary of State<sup>7</sup> may by regulations<sup>8</sup> make provision as to the procedure to be followed by any local authority<sup>9</sup> giving such notice<sup>10</sup>. The regulations may, in particular, make provision with respect to: (1) the publication, where an authority propose to give notice, of details of its proposal<sup>11</sup>; (2) the form and manner in which notice is to be given<sup>12</sup>; and (3) the publication of notices<sup>13</sup>. In giving any such notice a local authority must comply with the regulations<sup>14</sup>.

1 le by virtue of the Road Traffic Regulation Act 1984 s 46 (as amended): see PARA 810 ante.

2 For the meaning of 'designation order' see PARA 808 note 4 ante.

3 le under the Road Traffic Regulation Act 1984 s 46 (as amended): see PARA 810 ante.

4 Ibid s 46A(1) (s 46A added by the Road Traffic Act 1991 s 42).

5 See note 3 supra.

6 Road Traffic Regulation Act 1984 s 46A(2) (as added: see note 4 supra).

7 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

8 As to the regulations made see the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996, SI 1996/2489. As to the making of regulations generally see PARA 720 ante.

9 For the meaning of 'local authority' see PARA 808 note 1 ante.

10 Road Traffic Regulation Act 1984 s 46A(3) (as added: see note 4 supra).

11 Ibid s 46A(4)(a) (as added: see note 4 supra).

12 Ibid s 46A(4)(b) (as added: see note 4 supra).

13 Ibid s 46A(4)(c) (as added: see note 4 supra).

14 Ibid s 46A(5) (as added: see note 4 supra).

## UPDATE

### 811 Variation of charges at designated parking places

NOTE 8--SI 1996/2489 amended: SI 2009/1116 (England).

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### 812. Offences relating to designated parking places outside Greater London.

A person who:

- 594 (1) being the driver<sup>1</sup> of a vehicle, leaves the vehicle in a designated parking place<sup>2</sup> otherwise than as authorised by or under an order relating to the parking place, or leaves the vehicle in a designated parking place for longer after the excess charge<sup>3</sup> has been incurred than the time so authorised, or fails duly to pay any charge payable<sup>4</sup>, or contravenes or fails to comply with any provision of an order relating to the parking place as to the manner in which vehicles must stand in, or be driven into or out of, the parking place<sup>5</sup>; or
- 595 (2) whether being the driver of a vehicle or not, otherwise contravenes or fails to comply with any order relating to designated parking places<sup>6</sup>,

is guilty of an offence<sup>7</sup>.

A person who, with intent to defraud, interferes with a parking meter<sup>8</sup>, or operates or attempts to operate a parking meter by the insertion of objects other than current coins or bank notes of the appropriate denomination, or the appropriate credit or debit cards<sup>9</sup>, is guilty of an offence<sup>10</sup>.

Where, in any proceedings for such an offence of failing to pay any charge, it is proved that the amount which has become due, or any part of that amount, has not been duly paid, the court must order the payment of the sum not paid, and any sum so ordered to be paid is recoverable as a penalty<sup>11</sup>. Where in any proceedings for such an offence of failing to pay an excess charge it is not proved that the excess charge had become due, but it is proved that an initial charge<sup>12</sup> has not been paid, the defendant may be convicted of an offence of failing to pay an initial charge<sup>13</sup>.

1 For the meaning of 'driver' see PARA 207 ante.

2 For the meaning of 'designated parking place' see PARA 808 note 4 ante.

3 For the meaning of 'excess charge' see PARA 810 ante.

4 Ie under the Road Traffic Regulation Act 1984 s 45 (as amended): see PARA 808 ante.

5 Ibid s 47(1)(a). In relation to an offence under s 47(1)(a) of leaving a vehicle for longer after the excess charge has been incurred than the time authorised by an order relating to the parking place, or failing duly to pay any charge payable under s 45 (as amended) (see PARA 808 ante), the reference in s 47(1)(a) to the driver of a vehicle is to be construed as a reference to the person driving the vehicle at the time when it was left in the parking place: s 47(2).

6 Ibid s 47(1)(b).

7 Ibid s 47(1). This provision is expressed to be subject to s 48 (see PARA 813 post): see s 47(1). A person guilty of an offence under s 47(1) is liable on summary conviction to: (1) a fine not exceeding level 3 on the standard scale in the case of an offence committed by a person in a street parking place reserved for disabled persons' vehicles where that person would not have been guilty of that offence if the motor vehicle in respect of which was committed had been a disabled person's vehicle; or (2) a fine not exceeding level 2 on the standard scale in any other case: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Regulation Act 1984 s 47(1) of breaching a provision of a parking place designation order and other offences committed in relation to a parking place designated by such an order, except any offence of failing to pay an excess charge within the meaning of s 46 (as amended) (see PARA 810 ante) is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

The Road Traffic Regulation Act 1984 s 47(1) (as amended) does not apply in relation to any designated parking place in Greater London: s 47(1) (amended by the Road Traffic Act 1991 s 65(1)). This disapplication is repealed, in relation to England, with effect from 31 March 2008: see the Traffic Management Act 2004 s 98, Sch 12 Pt 1; and the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053.

As to the disapplication of the Road Traffic Regulation Act 1984 s 47(1) (as amended) in relation to permitted parking areas outside London and special parking areas outside London see PARAS 820-821 post.

8 For the meaning of 'parking meter' see PARA 810 ante.

9 For the meanings of 'credit card' and 'debit card' see PARA 791 notes 6, 7 ante; definitions applied by the Road Traffic Regulation Act 1984 s 46(5).

10 Ibid s 47(3) (amended by the Parking Act 1989 s 4, Schedule para 3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I.

11 Road Traffic Regulation Act 1984 s 47(4).

12 For the meaning of 'initial charge' see PARA 810 ante.

13 Road Traffic Regulation Act 1984 s 47(6).

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### **813. Acceptance of payment as a bar to proceedings.**

Where a parking meter<sup>1</sup> relating to the space in which a vehicle is left in a designated parking place<sup>2</sup> indicates that the period for which payment was made for the vehicle by an initial charge<sup>3</sup> has expired, but the authority by which the parking place is controlled is satisfied that the initial charge was not paid, acceptance by the authority of payment of the excess charge<sup>4</sup> is a bar to proceedings for an offence<sup>5</sup> of failing to pay the initial charge<sup>6</sup>.

Where in the case of any vehicle:

- 596 (1) an authorisation by way of a certificate, other means of identification or device<sup>7</sup>, or a permit or token<sup>8</sup> has been issued with respect to the vehicle<sup>9</sup>; and
- 597 (2) the authority by which a designated parking place is controlled is satisfied that, in accordance with the terms on which the authorisation was issued, a charge has become payable and has not been paid in respect of any period for which the vehicle has been left in that parking place<sup>10</sup>,

acceptance by that authority of payment of the amount of that charge is a bar to proceedings for an offence<sup>11</sup> of failing duly to pay the charge<sup>12</sup>.

1 For the meaning of 'parking meter' see PARA 810 ante.

2 For the meaning of 'designated parking place' see PARA 808 note 4 ante.

3 For the meaning of 'initial charge' see PARA 810 ante.

4 For the meaning of 'excess charge' see PARA 810 ante.

5 Ie under the Road Traffic Regulation Act 1984 s 47(1)(a): see PARA 812 ante.

6 Ibid s 48(1).

7 Ie as referred to in ibid s 4(2), (3) (as amended) (see PARA 745 ante), s 7(2) or (3) (as amended) (see PARA 749 ante).

8 Ie as referred to in ibid s 46(2)(i): see PARA 810 ante.

- 9 Ibid s 48(2)(a).
- 10 Ibid s 48(2)(b).
- 11 See note 5 supra.
- 12 Road Traffic Regulation Act 1984 s 48(2).

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#### **814. Supplementary provisions as to designation orders and designated parking places.**

Where under a designation order<sup>1</sup> vehicles may not be left at all times in the designated parking place<sup>2</sup>:

- 598 (1) the parking place must for certain purposes<sup>3</sup> be treated, as respects any time during which vehicles may not be left there in pursuance of the order, as if it were not designated by the order<sup>4</sup>; and
- 599 (2) any vehicle left in the parking place which remains there at the beginning of a period during which vehicles may be left there in pursuance of the order must, for those purposes, be treated as if it had been left there at the beginning of that period, but without prejudice to any rights or liabilities in respect of anything done or omitted at any time before the beginning, or after the end, of that period<sup>5</sup>.

A designation order may revoke the designation of any place as a parking place<sup>6</sup> and such an order, or an order<sup>7</sup> containing a designation of a place as a parking place, may provide that the designation is not to have effect as respects any time in respect of which provision is made<sup>8</sup> for the leaving of vehicles in that place<sup>9</sup>.

The authority by which a parking place is designated<sup>10</sup> may by order empower the local authority<sup>11</sup>, the chief officer of police<sup>12</sup> or any other person specified by or under the order to provide for the moving, in case of emergency, of vehicles left in the parking place; to suspend the use of the parking place or any part of it on such occasions or in such circumstances as may be determined by or under the order; and to provide for the temporary removal of any parking meters<sup>13</sup> installed at the parking place<sup>14</sup>.

A constable<sup>15</sup>, or a person acting under the instructions (whether general or specific) of the chief officer of police, may suspend the use of a parking place so designated<sup>16</sup> for not more than seven days in order to prevent or mitigate congestion or obstruction of traffic, or danger to or from traffic, in consequence of extraordinary circumstances<sup>17</sup>. Any local authority may acquire, whether by purchase or by hiring, such parking meters and other apparatus as appear to the authority to be required or likely to be required for the purposes<sup>18</sup> of its statutory functions<sup>19</sup>.

1 For the meaning of 'designation order' see PARA 808 note 4 ante.

2 For the meaning of 'designated parking place' see PARA 808 note 4 ante.

3 Ie the purposes of the Road Traffic Regulation Act 1984 s 46 (as amended) (see PARA 810 ante), s 47 (as amended) (see PARA 812 ante).

- 4 Ibid s 49(1)(a).
- 5 Ibid s 49(1)(b).
- 6 Ie under ibid s 6 (as amended) (see PARA 747 ante) or s 32 (as amended) (see PARA 784 ante).
- 7 See note 6 supra.
- 8 Ie under the Road Traffic Regulation Act 1984 s 45 (as amended): see PARA 808 ante.
- 9 Ibid s 49(2). The power to make orders under s 49(2), (4) is also exercisable by the Secretary of State: see PARAS 736-741 ante. Any power of the Secretary of State to make an order under or by virtue of s 49(2), (4) is exercisable by statutory instrument: s 124(2). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. Orders made under s 49(2), (4) are local in nature, and are not recorded in this work.
- 10 See note 8 supra.
- 11 For the meaning of the 'local authority' see PARA 808 note 1 ante.
- 12 As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.
- 13 For the meaning of 'parking meter' see PARA 810 ante.
- 14 Road Traffic Regulation Act 1984 s 49(4). This provision is expressed to be subject to s 124(1), Sch 9 Pt I paras 1-12 (as amended), Sch 9 Pt II paras 13-19 (as amended) and Sch 9 Pt III paras 20-26 (as amended) (see PARAS 736-738 ante): see s 49(4). As to the power to make orders under s 49(4) see note 9 supra.
- 15 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.
- 16 See note 8 supra.
- 17 Road Traffic Regulation Act 1984 s 49(4A) (added by the Road Traffic Act 1991 s 48, Sch 4 para 27).
- 18 Ie under the Road Traffic Regulation Act 1984 s 45 (as amended) (see PARA 808 ante), s 46 (as amended) (see PARA 810 ante) and s 49(1), (2), (4) (see the text and notes 1-14 supra). Anything authorised or required by the provisions of s 45 (as amended), s 46 (as amended) and s 49(1), (2), (4) to be prescribed or done by order may, except as otherwise expressly provided, be prescribed or done either by a designation order or by a general order: s 49(6).
- 19 Ibid s 49(5).

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### **815. Parking devices for designated parking places.**

Any power of a local authority<sup>1</sup> to make charges<sup>2</sup> for vehicles left in a designated parking place<sup>3</sup> includes power to require those charges, or any part of them, to be paid by means of the hire or purchase in advance, or the use, of parking devices<sup>4</sup> in accordance with any relevant provision<sup>5</sup> of an order<sup>6</sup>. Any power of a local authority to make orders<sup>7</sup> includes power by any such order to make provision<sup>8</sup>:

- 600 (1) for regulating the issue, use and surrender of parking devices<sup>9</sup>;
- 601 (2) for requiring vehicles to display parking devices when left in any parking place in respect of which the parking devices may be used<sup>10</sup>;
- 602 (3) without prejudice to the generality of head (2) above, for regulating the manner in which parking devices are to be displayed or operated<sup>11</sup>;

- 603 (4) for prescribing the use, and the manner of use, of apparatus designed to be  
used in connection with parking devices<sup>12</sup>;
- 604 (5) for treating the indications given by a parking device, or the display or the  
failure to display a parking device on or in any vehicle left in any parking place, as  
evidence of such facts as may be provided by the order<sup>13</sup>;
- 605 (6) for the refund, in such circumstances and in such manner as may be  
prescribed in the order, of the whole or part of the amount of any charge paid in  
advance in respect of a parking device<sup>14</sup>;
- 606 (7) for the payment of a deposit in respect of the issue of a parking device and  
for the repayment of the whole or part of any such deposit<sup>15</sup>.

1 For the meaning of 'local authority' see PARA 808 note 1 ante.

2 le under the Road Traffic Regulation Act 1984 s 45 (as amended): see PARA 808 ante.

3 For the meaning of 'designated parking place' see PARA 808 note 4 ante.

4 In the Road Traffic Regulation Act 1984 s 51 (as substituted) and s 52 (as amended) (see PARA 816 post), 'parking device' means either a card, disc, token, meter, permit, stamp or other similar device, whether used in a vehicle or not, which, being used either by itself or in conjunction with any such apparatus as is referred to in s 51(2)(d) (as substituted) (see head (4) in the text), indicates, or causes to be indicated, the payment of a charge, and:

1374 (1) the period in respect of which it has been paid and the time of the beginning or end of the period; or

1375 (2) whether or not the period for which it has been paid or any further period has elapsed; or

1376 (3) the period for which the vehicle in relation to which the parking place is used is permitted to park in the parking place, and the time of the beginning or end of the period; or

1377 (4) whether or not the period for which the vehicle in relation to which the parking device is used is permitted to park in the parking place or any further period has elapsed,

or any other device of any such description as may from time to time be prescribed for the purposes of s 51 (as substituted) and s 52 (as amended) by order made by the Secretary of State: ss 51(4), 142(1) (s 51 substituted by the Road Traffic Regulation (Parking) Act 1986 s 2(1); and the Road Traffic Regulation Act 1984 s 51(4) amended by the Parking Act 1989 s 4, Schedule para 4; and the Deregulation (Parking Equipment) Order 1996 SI 1996/1553, art 2(1)(a), Schedule). In relation to orders made before 12 June 1996 see the Deregulation (Parking Equipment) Order 1996 SI 1996/1553, art 3. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

An order under the Road Traffic Regulation Act 1984 s 51(4) (as substituted and amended) which revokes or amends a previous order under that provision may make such saving and transitional provision as appears to the Secretary of State to be necessary or expedient: s 51(4A) (s 51 as so substituted; and s 51(4A) added by the Parking Act 1989 s 4, Schedule para 4). The power to make orders under the Road Traffic Regulation Act 1984 s 51(4) (as substituted and amended) is exercisable by statutory instrument which is subject to annulment in pursuance of resolution of either House of Parliament: s 51(4B) (s 51 as so substituted; and s 51(4B) added by the Parking Act 1989 Schedule para 4).

At the date at which this volume states the law no order had been made under the Road Traffic Regulation Act 1984 s 51(4) (as substituted and amended).

5 le under *ibid* s 46 (as amended): see PARA 810 ante.

6 *Ibid* s 51(1) (as substituted: see note 4 *supra*).

7 le under *ibid* s 46(2): see PARA 810 ante.

8 *Ibid* s 51(2). For the purposes of s 51(2): (1) the references to parking meters in s 46(2)(b), (c) (see PARA 810 ante) include references to the apparatus referred to in s 51(2)(d) (see head (4) in the text); and (2) the reference in s 46(2)(c) (see PARA 810 ante) to the insertion in a parking meter of coins or bank notes additional to those inserted by way of payment of any charge or to the insertion or re-insertion in a parking meter of a

credit or debit card additional to the original insertion of such a card includes (so far as is appropriate) a reference to insertions or re-insertions in any such apparatus of parking devices additional to the original insertion of those devices: s 51(3) (as substituted (see note 4 supra); and amended by the Parking Act 1989 Schedule para 4). For the meaning of 'parking meter' see PARA 810 ante. For the meanings of 'credit card' and 'debit card' see PARA 791 notes 6, 7 ante.

9 Road Traffic Regulation Act 1984 s 51(2)(a) (as substituted: see note 4 supra).

10 Ibid s 51(2)(b) (as substituted: see note 4 supra).

11 Ibid s 51(2)(c) (as substituted: see note 4 supra).

12 Ibid s 51(2)(d) (as substituted (see note 4 supra); and amended by the Deregulation (Parking Equipment) Order 1996, SI 1996/1553, art 2(1)(a), Schedule). In relation to orders made before 12 June 1996 see the Deregulation (Parking Equipment) Order 1996, SI 1996/1553, art 3.

13 Road Traffic Regulation Act 1984 s 51(2)(e) (as substituted (see note 4 supra); and amended by the Parking Act 1989 Schedule para 4).

14 Road Traffic Regulation Act 1984 s 51(2)(f) (as substituted: see note 4 supra).

15 Ibid s 51(2)(g) (as substituted: see note 4 supra).

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## **816. Offences and proceedings in connection with parking devices and associated apparatus.**

A person who, with intent to defraud: (1) interferes with any apparatus<sup>1</sup> or with a parking device<sup>2</sup>, or operates or attempts to operate any such apparatus or any parking device otherwise than in the manner prescribed<sup>3</sup>; or (2) displays a parking device otherwise than in the manner prescribed<sup>4</sup>, is guilty of an offence<sup>5</sup>.

1 Ie any apparatus referred to in the Road Traffic Regulation Act 1984 s 51(2)(d) (as substituted and amended): see PARA 815 ante. In s 48(1) (see PARA 813 ante) the reference to a parking meter relating to the space in which a vehicle is left in a designated parking place includes references to any such apparatus as is referred to in s 51(2)(d) (as substituted and amended) (see PARA 815 ante) which relates to the space in which a vehicle is so left and to a parking device used in respect of a vehicle left in a space in a designated parking place: s 52(3). For the meaning of 'parking meter' see PARA 810 ante. For the meaning of 'designated parking place' see PARA 808 note 4 ante.

2 For the meaning of 'parking device' see PARA 815 note 4 ante.

3 Road Traffic Regulation Act 1984 s 52(1)(a). See PARA 735 note 3 ante.

4 Ibid s 52(1)(b).

5 Ibid s 52(1). A person guilty of an offence under s 52(1) is liable on summary conviction to a fine not exceeding level 2 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

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1663)/9. ROAD TRAFFIC REGULATION/(4) PARKING/(iii) Designated Parking Places/817. Designation orders outside Greater London.

### **817. Designation orders outside Greater London.**

A designation order<sup>1</sup> made in respect of highways in any area outside Greater London may include such provisions:

- 607 (1) for any of certain purposes relating to provisions which may be made by a traffic regulation order<sup>2</sup>; or
- 608 (2) for authorising the use without charge (subject to such, if any, conditions as may be specified in the order) of any part of a road<sup>3</sup> as a parking place for vehicles, or for vehicles of such classes<sup>4</sup> as may be specified in the order<sup>5</sup>,

as the authority making the order may consider appropriate in connection with the designation order<sup>6</sup>.

A designation order making provision for any of the purposes referred to in head (1) above may vary or revoke any subsisting provision made for any of those purposes under the provisions relating to traffic regulation orders outside Greater London<sup>7</sup>. A person who uses a vehicle, or causes or permits a vehicle to be used, in contravention of any provision of a designation order having effect by virtue of head (1) above is guilty of an offence<sup>8</sup>.

A designation order making such provision as is mentioned in head (2) above may include provision for the removal, from any place authorised by virtue of that head to be used as a parking place, of any vehicle left there in contravention of the order, and for the safe custody of the vehicle<sup>9</sup>. In the event of a contravention of, or non-compliance with, a provision of a designation order having effect by virtue of head (2) above, the person responsible, as determined in accordance with the order, is guilty of an offence<sup>10</sup>.

1 For the meaning of 'designation order' see PARA 808 note 4 ante.

2 Road Traffic Regulation Act 1984 s 53(1)(a). The purposes referred to in the text are the purposes specified in s 2(2)(a)-(c) (as amended) (see PARA 743 ante): s 53(1)(a). For the meaning of 'traffic regulation order' see PARA 742 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 As to classes of vehicle see PARA 208 ante.

5 Road Traffic Regulation Act 1984 s 53(1)(b).

6 Ibid s 53(1) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 45). The Road Traffic Regulation Act 1984 s 47 (as amended) (see PARA 812 ante) does not apply to contraventions of, or failures to comply with, any provisions of a designation order having effect by virtue of s 53(1) (as amended): s 53(4).

The power to make an order under s 53 (as amended) is also exercisable by the Secretary of State: see PARAS 736-741 ante. Any power of the Secretary of State to make an order under or by virtue of s 53 (as amended) is exercisable by statutory instrument: s 124(2). Orders made under s 53 (as amended) are local in nature, and are not recorded in this work.

7 Ibid s 53(2). The provisions relating to traffic regulation orders outside Greater London referred to in the text are the provisions of s 1 (as amended) (see PARA 742 ante): s 53(2).

8 Ibid s 53(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Regulation Act 1984 s 53(5) of using a vehicle in contravention of any provision of a parking place designation order having effect by virtue of s 53(1)(a) (inclusion of certain traffic regulation provisions: see head (1) in the text) is a fixed penalty offence: Road Traffic



Offenders Act 1988 s 51, Sch 3. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

As to the disapplication of the Road Traffic Regulation Act 1984 s 53(5) in relation to permitted parking areas outside London see PARA 820 post.

9 Ibid s 53(3).

10 Ibid s 53(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. An offence under the Road Traffic Regulation Act 1984 s 53(6) of breaching a provision of a parking place designation order having effect by virtue of s 53(1)(b) (use of any part of a road for parking without charge: see head (2) in the text) is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3.

As to the disapplication of the Road Traffic Regulation Act 1984 s 53(6) in relation to permitted parking areas outside London see PARA 820 post.

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## **818. Financial provisions relating to designated parking places.**

A local authority<sup>1</sup> must keep an account of its income and expenditure in respect of parking places for which it is the local authority and which are, in the case of Transport for London<sup>2</sup>, the council of a London borough and the Common Council of the City of London, parking places on the highway, and, in the case of any other authority, designated parking places<sup>3</sup>.

At the end of each financial year any deficit in the account must be made good out of the general fund or, in Wales, council fund; and, subject to the following provision, any surplus must be applied for all or any of the following purposes<sup>4</sup>:

- 609 (1) the making good to the general fund or, in Wales, council fund of any amount charged to that fund<sup>5</sup> in the four years immediately preceding the financial year in question<sup>6</sup>;
- 610 (2) meeting all or any part of the cost of the provision and maintenance by the local authority of off-street parking accommodation<sup>7</sup>, whether in the open or under cover<sup>8</sup>;
- 611 (3) the making to other local authorities or to other persons of contributions towards the cost of the provision and maintenance by them, in the area of the local authority or elsewhere, of off-street parking accommodation, whether in the open or under cover<sup>9</sup>;
- 612 (4) if it appears to the local authority that the provision in its area of further off-street parking accommodation is unnecessary or undesirable, the following purposes: (a) meeting costs incurred, whether by the local authority or by some other person, in the provision or operation of, or of facilities for, public passenger transport services; (b) the purposes of a highway improvement project<sup>10</sup> in the local authority's area; (c) in the case of a London authority, meeting costs incurred by the authority in respect of the maintenance of roads maintained at the public expense by it; (d) the purposes of environmental improvement<sup>11</sup> in the local authority's area; and (e) in the case of such local authorities as may be prescribed<sup>12</sup>, any other purposes for which the authority may lawfully incur expenditure<sup>13</sup>;
- 613 (5) in the case of a London authority<sup>14</sup>, meeting all or any part of the cost of the doing by the authority in its area of anything: (a) which facilitates the

- implementation of the London transport strategy<sup>15</sup>; and (b) which is for the time being specified in that strategy as a purpose for which a surplus may be applied by virtue of this provision<sup>16</sup>;
- 614 (6) in the case of a London authority, the making to any other London authority of contributions towards the cost of the doing by that other authority of anything towards the doing of which in its own area the authority making the contribution has power: (a) to apply any surplus on the account required to be kept<sup>17</sup>; or (b) to incur expenditure required to be brought into that account<sup>18</sup>.

In so far as it is not so applied, it must be appropriated to the carrying out of some specific project falling within those purposes and carried forward until applied to carrying it out<sup>19</sup>. If the local authority so determines, any amount not applied in any financial year, instead of being or remaining so appropriated, may be carried forward in the account so kept<sup>20</sup> to the next financial year<sup>21</sup>.

Transport for London, the council of each London borough and the Common Council of the City of London must, after each financial year, report to the Mayor of London on any action taken by them<sup>22</sup> in respect of any deficit or surplus in their accounts for the year<sup>23</sup>. Such a report must be made as soon after the end of the financial year to which it relates as is reasonably possible<sup>24</sup>.

1 For the meaning of 'local authority' see PARA 808 note 1 ante.

2 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

3 Road Traffic Regulation Act 1984 s 55(1) (amended by the Road Traffic Act 1991 s 81, Sch 7 para 5(1), (2); and the Greater London Authority Act 1999 s 282(1), (2)). For the meaning of 'designated parking place' see PARA 808 note 4 ante. As to the modification of the Road Traffic Regulation Act 1984 s 55 (as amended) in so far as it relates to Transport for London see the Road Traffic (Special Parking Area) (GLA Roads and GLA Side Roads) Order 2004, SI 2004/2684.

4 Road Traffic Regulation Act 1984 s 55(2) (amended by the Local Government Finance Act 1988 s 137, Sch 12 para 42; and the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 38(6)(a)). As to general funds etc see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 545 et seq. In the application of the Road Traffic Regulation Act 1984 s 55 (as amended) in relation to Transport for London, any reference to its general fund is to be taken as a reference to the financial reserves for which provision is made under the Greater London Authority Act 1999 s 85(4)(c) (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 233) in calculating Transport for London's component budget for the financial year in question: Road Traffic Regulation Act 1984 s 55(9) (added by the Greater London Authority Act 1999 s 282(1), (5)).

5 Ie under the Road Traffic Regulation Act 1984 s 55(2) (as amended): see the text and note 4 supra.

6 Ibid s 55(4)(a) (amended by the Local Government Finance Act 1988 s 137, Sch 12 para 42; and the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 38(6)(a)).

7 For the meaning of 'off-street parking accommodation' see PARA 797 note 3 ante.

8 Road Traffic Regulation Act 1984 s 55(4)(b) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 46(2)).

9 Road Traffic Regulation Act 1984 s 55(4)(c) (amended by the Road Traffic Act 1991 ss 81, 83, Sch 7 para 5(1), (4), Sch 8; and the New Roads and Street Works Act 1991 Sch 8 para 46(2)).

10 For these purposes, a 'highway improvement project' means a project connected with the carrying out by the appropriate highway authority (whether the local authority or not) of any operation which constitutes the improvement (within the meaning of the Highways Act 1980: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 59) of a highway in the area of a local authority in England or Wales: Road Traffic Regulation Act 1984 s 55(4A)(a) (s 55(4A) added by the New Roads and Street Works Act 1991 Sch 8 para 46(4)).

11 For these purposes, 'environmental improvement' includes: (1) the reduction of environmental pollution (as defined in the Pollution Prevention and Control Act 1999 s 1(3): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 186); (2) improving or maintaining the appearance or amenity of a road or land in the vicinity of a road, or open land or water to which the general public has access; and (3) the provision of outdoor

recreational facilities available to the general public without charge: Road Traffic Regulation Act 1984 s 55(4B) (added by the Traffic Management Act 2004 s 95(1), (3)).

12 Regulations for the purpose of head (4)(e) in the text may: (1) prescribe all local authorities, particular authorities or particular descriptions of authority; (2) make provision by reference to whether the authority or authorities in question have been classified for the purposes of any other enactment as falling or not falling within a particular category; and (3) make provision for the continued application of that provision, in prescribed cases and to such extent as may be prescribed, where an authority that is prescribed or of a prescribed description ceases to be so: Road Traffic Regulation Act 1984 s 55(4C) (added by the Traffic Management Act 2004 s 95(3)).

13 Road Traffic Regulation Act 1984 s 55(4)(d) (substituted by the Traffic Management Act 2004 s 95(2)).

14 'London authority' means Transport for London, a London borough council or the Common Council of the City of London: Road Traffic Regulation Act 1984 s 55(10) (added by the Greater London Authority Act 1999 s 282(1), (5)). As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq. As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

15 'The London transport strategy' means the transport strategy prepared and published under the Greater London Authority Act 1999 s 142 (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 263): Road Traffic Regulation Act 1984 s 55(10) (as added: see note 14 supra).

16 Ibid s 55(4)(e) (added by the Greater London Authority Act 1999 s 282(1), (4)).

17 Ie required to be kept under the Road Traffic Regulation Act 1984 s 55(1) (as amended): see the text and notes 1-3 supra.

18 Ibid s 55(4)(f) (added by the Greater London Authority Act 1999 s 282(1), (4)). For the purpose of enabling Transport for London and any other London authorities to discharge jointly any functions conferred by virtue of the Road Traffic Regulation Act 1984 s 55(4)(f) (as added) by a joint committee established under the Local Government Act 1972 s 101(5) (see LOCAL GOVERNMENT vol 69 (2009) PARA 380), the provisions of s 101(5) and s 102 have effect as if Transport for London were a local authority: Road Traffic Regulation Act 1984 s 55(8) (added by the Greater London Authority Act 1999 s 282(1), (5)).

19 Road Traffic Regulation Act 1984 s 55(2).

20 Ie under ibid s 55(1) (as amended) (see the text and notes 1-3 supra).

21 Ibid s 55(3).

22 Ie pursuant to ibid s 55(2) or (3): see the text and notes 4, 19-21 supra.

23 Ibid s 55(3A) (added by the Road Traffic Act 1991 s 81, Sch 7 para 5(1), (3); and amended by the Greater London Authority Act 1999 s 282(1), (3)). As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

24 Road Traffic Regulation Act 1984 s 55(3B) (added by the Road Traffic Act 1991 s 81, Sch 7 para 5(1), (3)).

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### **819. Grants where a parking place is designated by the Secretary of State.**

Where<sup>1</sup> a parking place has been designated<sup>2</sup> by the Secretary of State<sup>3</sup>:

- 615 (1) he may make grants out of moneys provided by Parliament towards the cost of the provision and maintenance of off-street parking places<sup>4</sup> whether in the open or under cover, or for certain purposes<sup>5</sup>; but

616 (2) in exercising such powers he must use his best endeavours to secure that the aggregate of the amounts paid by him by way of grants does not exceed the difference between<sup>6</sup>:

97

176. (a) the aggregate of the sums received by him by way of charges made by him for vehicles left in parking places designated by him<sup>7</sup>; and

177. (b) the aggregate of the expenses incurred by him in the provision, operation and maintenance of the parking places in respect of which those charges are made<sup>8</sup>.

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1 le by virtue of the Road Traffic Regulation Act 1984 s 124(1), Sch 9 para 3 (see PARA 736 ante): see s 56.

2 le under ibid s 45 (as amended): see PARA 808 ante.

3 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 For the meaning of 'off-street parking place' see PARA 784 note 4 ante.

5 Road Traffic Regulation Act 1984 s 56(a). The purposes referred to in the text are the purposes mentioned in s 55(4)(d) (as substituted) (see PARA 818 ante): s 56(a).

6 Ibid s 56(b).

7 Ibid s 56(b)(i). The designated parking places referred to in the text are those designated under s 45 (as amended) (see PARA 808 ante): see s 56(b)(i).

8 Ibid s 56(b)(ii).

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## **(iv) Special and Permitted Parking Areas**

### **820. Permitted parking areas outside London.**

The following provisions have effect until a day to be appointed<sup>1</sup>.

Where an application for a permitted parking area order<sup>2</sup> is made to the Secretary of State<sup>3</sup>:

617 (1) with respect to the whole, or any part, of its area, by a county council in England<sup>4</sup>;

618 (2) with respect to the whole, or any part, of its area, by a county council or county borough council in Wales<sup>5</sup>;

619 (3) with respect to the whole of its area, by a metropolitan district council<sup>6</sup>;

620 (4) with respect to the whole of their areas, by two or more metropolitan district councils acting jointly<sup>7</sup>;

621 (5) with respect to the whole, or any part, of the Isles of Scilly, by the Council of the Isles of Scilly<sup>8</sup>,

he may make an order designating the whole, or any part, of the area to which the application relates as a permitted parking area<sup>9</sup>. Before making any such order, the Secretary of State must consult the appropriate chief officer of police<sup>10</sup>.

1 The provisions of the Road Traffic Act 1991 s 43, Sch 3 (as amended) are repealed, as from a day to be appointed, by the Traffic Management Act 2004 s 98, Sch 12 Pt 1. The appointed day in relation to England is 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053), but at the date at which this volume states the law no such day had been appointed in relation to Wales.

2 Any power to make an order conferred by the Road Traffic Act 1991 s 43(1), Sch 3 (as amended) is exercisable by statutory instrument: Sch 3 para 4(1). Any such statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament: Sch 3 para 4(2). Orders made under Sch 3 (as amended) are local in nature, and are not recorded in this work.

3 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 Road Traffic Act 1991 Sch 3 para 1(1)(a) (amended by the Local Government (Wales) Act 1994 ss 22(1), 66(8), Sch 7 para 43, Sch 18).

5 Road Traffic Act 1991 Sch 3 para 1(1)(aa) (added by the Local Government (Wales) Act 1994 Sch 7 para 43, Sch 18).

6 Road Traffic Act 1991 Sch 3 para 1(1)(b).

7 Ibid Sch 3 para 1(1)(c).

8 Ibid Sch 3 para 1(1)(f).

9 Ibid Sch 3 para 1(1). Where any vehicle which is stationary in a permitted parking area, in circumstances in which an offence would have been committed with respect to the vehicle but for Sch 3 para 1 (as amended), a penalty charge is payable with respect to the vehicle by the owner of the vehicle: Sch 3 para 3(1), (2). An order under Sch 3 para 1 (as amended) designating a permitted parking area may: (1) provide for such provisions of Pt II (ss 64-82) (as amended) as the Secretary of State considers appropriate to apply, with such modifications (if any) as he considers appropriate, in relation to the permitted parking area in question; and (2) make such modifications of any enactment, including any provision of the Road Traffic Act 1991, as the Secretary of State considers appropriate in consequence of the provisions of Sch 3 para 1 (as amended), Sch 3 para 3 or the order: Sch 3 para 3(3).

10 Ibid Sch 3 para 1(3). As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

While such an order is in force, the following provisions cease to apply in relation to the permitted parking area designated by the order:

1378 (1) the Road Traffic Regulation Act 1984 s 35A(1) (as added) (see PARA 791 ante), so far as it relates to the contravention of, or non-compliance with, any provision of an order made under s 35 (as amended) (use of parking places) (see PARA 790 ante) in relation to parking places provided under s 32(1)(b) (power of local authorities to provide free parking places on roads) (see PARA 784 ante) (Road Traffic Act 1991 Sch 3 para 1(4)(a));

1379 (2) the Road Traffic Regulation Act 1984 s 35A(1) (as added) (see PARA 791 ante), so far as it relates to the contravention of, or non-compliance with, any other provision of any order made under s 35 (as amended) (use of parking places) (see PARA 790 ante) applying in relation to a stationary vehicle (Road Traffic Act 1991 Sch 3 para 1(4)(ab) (added by the Road Traffic Act 1991 (Amendment of Schedule 3) (England and Wales) Order 1996, SI 1996/500, art 2(2)));

1380 (3) the Road Traffic Regulation Act 1984 s 47(1) (as amended) (see PARA 812 ante) in so far as it applies in relation to any designated parking place (Road Traffic Act 1991 Sch 3 para 1(4)(b)); and

1381 (4) the Road Traffic Regulation Act 1984 s 53(5), (6) (see PARA 817 ante) so far as it applies in relation to stationary vehicles (Road Traffic Act 1991 Sch 3 para 1(4)(c) (added by the Road Traffic Act 1991 (Amendment of Schedule 3) (England and Wales) Order 1996, SI 1996/500, art 2(2))).

The Secretary of State may by order amend the Road Traffic Act 1991 Sch 3 para 1(4) (as amended) by adding further provisions (but only in so far as they apply in relation to stationary vehicles): Sch 3 para 1(5). Before making an order under Sch 3 para 1(5), the Secretary of State must consult such representatives of chief

officers of police, and such associations of local authorities (if any), as he considers appropriate: Sch 3 para 1(6).

As to special parking areas outside London see PARA 821 post. As to special parking areas in London see PARA 822 post.

## **UPDATE**

### **820 Permitted parking areas outside London**

NOTE 1--Day appointed in relation to Wales is 31 March 2008: SI 2007/3174.

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### **821. Special parking areas outside London.**

The following provisions have effect until a day to be appointed<sup>1</sup>.

Where an application for a special parking order<sup>2</sup> under this provision is made to the Secretary of State<sup>3</sup>:

- 622 (1) with respect to the whole, or any part, of its area, by a county council in England<sup>4</sup>;
- 623 (2) with respect to the whole, or any part, of its area, by a county council or county borough council in Wales<sup>5</sup>;
- 624 (3) with respect to the whole, or any part, of its area, by a metropolitan district council<sup>6</sup>;
- 625 (4) with respect to the whole, or any part, of the Isles of Scilly, by the Council of the Isles of Scilly<sup>7</sup>,

he may make an order designating the whole, or any part, of the area to which the application relates as a special parking area<sup>8</sup>. Before making such an order, the Secretary of State must consult the appropriate chief officer of police<sup>9</sup>.

1 The provisions of the Road Traffic Act 1991 s 43, Sch 3 (as amended) are repealed, as from a day to be appointed, by the Traffic Management Act 2004 s 98, Sch 12 Pt 1. The appointed day in relation to England is 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053), but at the date at which this volume states the law no such day had been appointed in relation to Wales.

2 Any power to make an order conferred by the Road Traffic Act 1991 s 43(1), Sch 3 (as amended) is exercisable by statutory instrument: Sch 3 para 4(1). Any such statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament: Sch 3 para 4(2). Orders made under Sch 3 (as amended) are local in nature, and are not recorded in this work.

3 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 Road Traffic Act 1991 s 43, Sch 3 para 2(1)(a) (amended by the Local Government (Wales) Act 1994 ss 22(1), 66(8), Sch 7 para 43, Sch 18).

5 Road Traffic Act 1991 Sch 3 para 2(1)(aa) (added by the Local Government (Wales) Act 1994 Sch 7 para 43, Sch 18).

6 Road Traffic Act 1991 Sch 3 para 2(1)(b).

7 Ibid Sch 3 para 2(1)(d).

8 Ibid Sch 3 para 2(1). Where any vehicle which is stationary in a special parking area, in circumstances in which an offence would have been committed with respect to the vehicle but for Sch 3 para 2 (as amended), a penalty charge is payable with respect to the vehicle by the owner of the vehicle: Sch 3 para 3(1), (2).

An order under Sch 3 para 2 (as amended) designating a special parking area may: (1) provide for such provisions of Pt II (ss 64-82) (as amended) as the Secretary of State considers appropriate to apply, with such modifications (if any) as he considers appropriate, in relation to the special parking area in question; and (2) make such modifications of any enactment, including any provision of the Road Traffic Act 1991, as the Secretary of State considers appropriate in consequence of the provisions of Sch 3 para 2 (as amended), Sch 3 para 3 or the order: Sch 3 para 3(3).

9 Ibid Sch 3 para 2(3). As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

While an order under Sch 3 para 2(1) (as amended) is in force, the following provisions cease to apply in relation to the special parking area designated by the order:

1382 (1) the Road Traffic Regulation Act 1984 s 5 (as amended) (contravention of a traffic regulation order under s 1 (as amended) (see PARA 742 ante) to be an offence) (see PARA 746 ante), so far as it relates to the contravention of any provision of such an order prohibiting or restricting the waiting, or the loading and unloading, of vehicles (Road Traffic Act 1991 Sch 3 para 2(4)(a));

1383 (2) the Road Traffic Regulation Act 1984 s 11 (as amended) (contravention of, or failure to comply with, experimental traffic order under s 9 (as amended) (see PARA 751 ante) to be an offence) (see PARA 753 ante), so far as it relates to the contravention of, or failure to comply with, any provision of such an order prohibiting or restricting the waiting, or the loading and unloading, of vehicles (Road Traffic Act 1991 Sch 3 para 2(4)(b));

1384 (3) the Road Traffic Regulation Act 1984 s 16(1) (contravention of temporary orders under s 14 (as substituted) (see PARA 755 ante) to be an offence) (see PARA 758 ante) so far as it relates to the contravention of any provision of an order or notice under s 14 (as substituted) prohibiting or restricting the waiting, or the loading and unloading, of vehicles (Road Traffic Act 1991 Sch 3 para 2(4)(ba) (added by the Road Traffic Act 1991 (Amendment of Schedule 3) (England and Wales) Order 1996, SI 1996/500, art 2(3)));

1385 (4) the Road Traffic Regulation Act 1984 s 61(5) (prohibition of vehicles in loading areas) (see PARA 826 post) so far as it applies in relation to stationary vehicles (Road Traffic Act 1991 Sch 3 para 2(4)(bb) (added by the Road Traffic Act 1991 (Amendment of Schedule 3) (England and Wales) Order 1996, SI 1996/500, art 2(3)));

1386 (5) the Road Traffic Act 1988 s 19 (parking of heavy vehicles on verges, central reservations and footpaths etc to be an offence) (see PARA 997 post) (Road Traffic Act 1991 Sch 3 para 2(4)(d));

1387 (6) the Road Traffic Act 1988 s 21 (prohibition of driving or parking on cycle tracks) (see PARA 998 post), so far as it makes it an offence to park a motor vehicle wholly or partly on a cycle track (Road Traffic Act 1991 Sch 3 para 2(4)(e));

1388 (7) the Road Traffic Act 1988 s 36(1) (failure to comply with traffic signs) (see PARA 643 ante), so far as it makes it an offence to fail to comply with an indication given by a traffic sign of a prohibition on causing a vehicle to stop on part of a road in England (but not in London) demarcated by that sign as a stopping area for a bus (Road Traffic Act 1991 Sch 3 para 2(4)(f) (added by the Road Traffic Act 1991 (Special Parking Areas) (England) Order 2003, SI 2003/859, art 2(2))).

The Secretary of State may by order amend the Road Traffic Act 1991 Sch 3 para 2(4) (as amended) by adding further provisions (but only in so far as they apply in relation to stationary vehicles): Sch 3 para 2(5).

Before making an order under Sch 3 para 2(5), the Secretary of State must consult such representatives of chief officers of police, and such associations of local authorities (if any) as he considers appropriate: Sch 3 para 2(6).

As to special parking areas in London see PARA 822 post. As to permitted parking areas outside London see PARA 820 ante.

**UPDATE****821-822 Special parking areas outside London, Special parking areas in London**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

**821 Special parking areas outside London**

NOTE 1--Day appointed in relation to Wales is 31 March 2008: SI 2007/3174.

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**822. Special parking areas in London.**

The following provisions have effect until a day to be appointed<sup>1</sup>.

Where a London authority<sup>2</sup> applies to the Secretary of State<sup>3</sup> for an order<sup>4</sup> to be made, the Secretary of State may make an order designating the whole or any part of that authority's area as a special parking area<sup>5</sup>. While an order is in force certain statutory provisions cease to apply<sup>6</sup> in relation to the special parking area designated by the order<sup>7</sup>.

At any time when an order<sup>8</sup> designating the whole or any part of a London authority's area as a special parking area is in force, the Mayor of London<sup>9</sup> may by order amend the order so as to vary the area which for the time being constitutes the special parking area<sup>10</sup>.

1 The provisions of the Road Traffic Act 1991 s 76 (as amended), s 76A (as added) and s 77 are repealed, as from a day to be appointed, by the Traffic Management Act 2004 s 98, Sch 12 Pt 1. The appointed day in relation to England is 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053), but at the date at which this volume states the law no such day had been appointed in relation to Wales.

2 'London authority' means: (1) as respects parking, or any matter connected with or relating to parking, on a GLA road (except in a designated parking place for which a London borough council or the Common Council of the City of London is the local authority by virtue of the Road Traffic Regulation Act 1984 s 45(7) (see PARA 808 note 1 ante), Transport for London; (2) as respects parking, or any matter connected with or relating to parking, in a parking place such as is referred to in head (1) supra or on any road other than a GLA road or a trunk road, a council of a London borough or the Common Council of the City of London: Road Traffic Act 1991 s 82(1) (definition substituted by the Greater London Road Traffic (Various Provisions) Order 2001, SI 2001/1353, art 8). As to the meaning of 'GLA road' for these purposes see PARA 726 note 6 ante; definition applied by the Road Traffic Act 1991 s 82(1) (definition added by the Greater London Authority Act 1999 s 287(1), (3)). 'Trunk road' has the same meaning as in the Highways Act 1980 s 10 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 50): Road Traffic Act 1991 s 82(1). As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq. For these purposes, 'London' means the area comprising the areas of the London boroughs, the City of London and the Temples: s 82(1). As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq; as to the City of London and the Temples see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 31-32; and as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.



3 As to the Secretary of State see PARA 236 ante.

4 le an order under the Road Traffic Act 1991 s 76 (as amended). Before making an order under s 76 (as amended), the Secretary of State must consult the relevant Commissioner or, if appropriate, both Commissioners: s 76(2). 'Commissioner' means the Metropolitan Police Commissioner or the City of London Police Commissioner: s 82(1). As to the Commissioners see POLICE vol 36(1) (2007 Reissue) PARAS 183, 187.

An order under s 76 (as amended) designating a special parking area may make such modifications of any provision of Pt II (ss 64-82) (as amended), or any provision amended by Pt II (as amended), as the Secretary of State considers appropriate in consequence of the provisions of s 76 (as amended) or s 77 or of the order: s 77(6).

5 Ibid s 76(1). An application for an order under s 76(1) may only be made: (1) by Transport for London, to the extent that the special parking area is to consist of GLA roads or trunk roads; or (2) by a London local authority, to the extent that the special parking area is to consist of roads other than GLA roads and trunk roads: s 76(1A) (added by the Greater London Authority Act 1999 s 285). Special parking areas have been designated by the Road Traffic (Special Parking Area) (GLA Roads and GLA Side Roads) Order 2004, SI 2004/2684.

'London local authority' means any council of a London borough or the Common Council of the City of London: s 82(1) (definition added by the Greater London Authority Act 1999 s 287(1), (3)).

Orders made under the Road Traffic Act 1991 s 76(1) are local in nature, and are not recorded in this work.

Section 76 (as amended), s 76A (as added) and s 77 may by order be applied with modifications to permitted and special parking areas outside London: see PARAS 820-821 ante.

As to special parking areas outside London see PARA 821 ante. As to permitted parking areas outside London see PARA 820 ante.

6 The following provisions cease to apply:

1389 (1) the Road Traffic Regulation Act 1984 s 8 (as amended) (contravention of, or failure to comply with, an order under s 6 (as amended) (see PARA 747 ante) to be an offence) (see PARA 750 ante) so far as it relates to the contravention of, or failure to comply with, any provision of such an order prohibiting or restricting the waiting of vehicles on any road, or relating to any of the matters mentioned in Sch 1 para 7 or Sch 1 para 8 (conditions for loading, or delivery or collecting) (see PARA 748 ante) (Road Traffic Act 1991 s 76(3)(a));

1390 (2) the Road Traffic Regulation Act 1984 s 11 (as amended) (contravention of, or failure to comply with, an experimental traffic order under s 9 (as amended) (see PARA 751 ante) to be an offence) (see PARA 753 ante) so far as it relates to the contravention of, or failure to comply with, any provision of such an order prohibiting or restricting the waiting of vehicles on any road, or relating to any of the matters mentioned in Sch 1 para 7 or Sch 1 para 8 (conditions for loading, or delivery or collecting) (see PARA 748 ante) (Road Traffic Act 1991 s 76(3)(b));

1391 (3) the Road Traffic Regulation Act 1984 s 16(1) (see PARA 758 ante) so far as it relates to the contravention of any provision of an order or notice under s 14 (as substituted) (see PARA 755 ante) prohibiting or restricting the waiting of vehicles on any road, or relating to any of the matters mentioned in Sch 1 para 7 or Sch 1 para 8 (see PARA 748 ante) (Road Traffic Act 1991 s 76(3)(c) (substituted by the Road Traffic Act 1991 (Amendment of Section 76(3)) Order 1995, SI 1995/1437, art 2));

1392 (4) the Road Traffic Regulation Act 1984 s 35A(1) (as added) (contravention of parking place orders) (see PARA 791 ante) so far as it applies in relation to stationary vehicles (Road Traffic Act 1991 s 76(3)(ca) (added by the Road Traffic Act 1991 (Amendment of Section 76(3)) Order 1995, SI 1995/1437, art 2));

1393 (5) the Road Traffic Regulation Act 1984 s 61(5) (prohibition of vehicles in loading areas) (see PARA 826 post) so far as it applies in relation to stationary vehicles (Road Traffic Act 1991 s 76(3)(cb) (added by the Road Traffic Act 1991 (Amendment of Section 76(3)) Order 1995, SI 1995/1437, art 2));

1394 (6) the Greater London Council (General Powers) Act 1974 s 15 (as amended) (parking by vehicles on verges, central reservations and footpaths etc to be an offence) (Road Traffic Act 1991 s 76(3)(d));

1395 (7) the Road Traffic Act 1988 s 19 (parking of heavy vehicles on verges, central reservations and footpaths etc to be an offence) (see PARA 997 post) (Road Traffic Act 1991 s 76(3)(e));

1396 (8) the Road Traffic Act 1988 s 21 (prohibition of driving or parking on cycle tracks) (see PARA 998 post) so far as it makes it an offence to park a motor vehicle wholly or partly on a cycle track (Road Traffic Act 1991 s 76(3)(f));

1397 (9) the Road Traffic Act 1988 s 36(1) (failure to comply with traffic signs) (see PARA 643 ante) so far as it makes it an offence to fail to comply with an indication given by a traffic sign of a prohibition on causing a vehicle to stop on part of a road in London demarcated by that sign as a stopping area for a bus (Road Traffic Act 1991 s 76(3)(g) (added by the Road Traffic Act 1991 (Special Parking Areas) (England) Order 2003, SI 2003/859, art 2(1)).

The Secretary of State may by order amend the Road Traffic Act 1991 s 76(3) (as amended) by adding further provisions (but only in so far as they apply in relation to stationary vehicles): s 76(4). Before making an order under s 76(4), the Secretary of State must consult the two Commissioners, and such associations of London authorities (if any) as he thinks appropriate: s 76(5).

As to the application of the Road Traffic Act 1991 Pt II (as amended) to the armed forces and to visiting forces in relation to any vehicle see PARA 889 note 1 post.

7 Ibid s 76(3) (amended by the Road Traffic Act 1991 (Amendment of Section 76(3)) Order 1995, SI 1995/1437, art 2). Where any vehicle which is stationary in a special parking area (but which is not in a designated parking place) in circumstances in which an offence would have been committed with respect to the vehicle but for the Road Traffic Act 1991 s 76(3) (as amended), a penalty charge is payable with respect to the vehicle by the owner of the vehicle: s 77(1), (2). Section 66 (see PARA 889 post) and Sch 6 (see PARA 891 post) apply in relation to penalty charges payable by virtue of s 77(2), but subject to such modifications (if any) as the Secretary of State considers it appropriate to make in the order designating the special parking area in question: s 77(3). For the meaning of 'designated parking place' see PARA 889 note 2 post; and see PARA 809 ante. As to penalty charges see PARA 889 post.

Where a parking attendant has reason to believe that a penalty charge is payable with respect to the vehicle by virtue of s 77(2), he or another person acting under his direction may fix an immobilisation device to the vehicle: s 77(4). The provisions of s 69(2)-(8) (see PARA 892 ante) apply in relation to a device fixed to a vehicle under s 77(4), but subject to such modifications (if any) as the Secretary of State considers it appropriate to make in the order designating the special parking area in question: s 77(5). For the meaning of 'parking attendant' for these purposes see PARA 869 ante; definition applied by s 82(1). For the meaning of 'immobilisation device' see PARA 876 note 4 ante; definition applied by s 82(1).

8 le an order under ibid s 76 (as amended).

9 Any functions conferred or imposed on the Greater London Authority by or under ibid Pt II (as amended) are functions of the GLA which are exercisable by the Mayor acting on behalf of the GLA: s 82(1A) (s 82(1A), (1B) added by the Greater London Authority Act 1999 s 287(1), (4)). The Road Traffic Act 1991 s 82(1A) (as added) does not apply in relation to any function expressly conferred or imposed on, or made exercisable by, the London Assembly: s 82(1B) (as so added). As to the Greater London Authority see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq. As to the London Assembly see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 82. As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

10 Ibid s 76A(1) (s 76A added by the Greater London Authority Act 1999 s 286). No order may be made under s 76A(1) (as added) without the consent of every London local authority which is the traffic authority for a road which the order has the effect of bringing within, or removing from, the special parking area concerned: s 76A(2) (as so added). An order under s 76A(1) (as added) must not be such as to bring within a special parking area: (1) any area specified in an order under s 76A (as added) made by the Secretary of State; or (2) the whole or any part of a royal park, except with the consent of the Secretary of State: s 76A(3) (as so added). No area may be specified in an order under head (1) supra, unless the Secretary of State is satisfied that it is expedient, on grounds of national security, that no part of that area should be included in a special parking area: s 76A(4) (as so added). For these purposes, 'royal park' means any park to which the Parks Regulation Act 1872 applies (see the Parks Regulation (Amendment) Act 1926 ss 1, 3 (s 1 as amended); and see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 561); Road Traffic Act 1991 s 76A(5) (as so added).

The Greater London Highways and Road Traffic (Various Provisions) Order 2000, SI 2000/1547, has been made under the Road Traffic Act 1991 s 76A(3) (as added).

## UPDATE

## **821-822 Special parking areas outside London, Special parking areas in London**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(4) PARKING/(v) Provision of Parking Places by Parish or Community Councils/823. General powers of parish or community councils for the provision of parking places.

### **(v) Provision of Parking Places by Parish or Community Councils**

#### **823. General powers of parish or community councils for the provision of parking places.**

Where for the purposes of relieving or preventing congestion of traffic or preserving local amenities it appears to the council of a parish<sup>1</sup> in England or a community<sup>2</sup> in Wales to be necessary to do so, the council may<sup>3</sup>: (1) provide within its area and maintain suitable parking places for bicycles and motor cycles<sup>4</sup>; or (2) provide within its area and maintain suitable parking places, otherwise than on roads<sup>5</sup>, for vehicles of other descriptions or for vehicles generally<sup>6</sup>. However, no such order may authorise the use of any part of a road as a parking place so as unreasonably to prevent access to any premises adjoining the road, or the use of the road by any person entitled to use it, or so as to be a nuisance<sup>7</sup>.

For the purpose of providing and maintaining any such parking place, or for the purpose of providing means of entrance to and egress from any parking place so provided, a parish or community council may utilise and adapt any land purchased by the council for the purpose or appropriated for the purpose<sup>8</sup>, or in the case of a parking place provided under head (1) above (but subject to any provisions relating to consents<sup>9</sup>) adapt, and by order authorise the use of, any part of a road in the parish or community<sup>10</sup>. Any power<sup>11</sup> to provide and maintain parking places includes power to provide and maintain structures for use as parking places<sup>12</sup>.

Notwithstanding anything in any other enactment, a parish or community council may appropriate for the purpose of providing such a parking place<sup>13</sup>:

- 626 (a) any part of a recreation ground provided<sup>14</sup> by the council<sup>15</sup>;
- 627 (b) any part of an open space controlled or maintained by the council<sup>16</sup> other than a part which has been consecrated as a burial ground or in which burials have taken place<sup>17</sup>;
- 628 (c) any part of any land provided by the council as a playing field or for any other purpose and held by that council for the purposes of the provisions relating to recreational facilities<sup>18</sup>.

However, any part of a recreation ground, open space or other land so appropriated must not exceed one-eighth of its total area or 800 square feet, whichever is the less<sup>19</sup>.

A parish or community council may employ, with or without remuneration, such persons as may be necessary for the superintendence of parking places so provided by the council under the above provisions<sup>20</sup>.

A parish or community council may make byelaws, subject to confirmation by the Secretary of State<sup>21</sup>, as to the use of parking places provided under head (1) above, and in particular as to the conditions upon which any such parking place may be used and as to the charges to be paid to the council in connection with the use of any such parking place, not being part of a road; and a copy of any byelaws so made must be exhibited on or near every parking place to which they relate<sup>22</sup>.

A parish or community council may let for use as a parking place any parking place so provided by it (not being a part of a road); but, without prejudice to any power of a parish or community council under any other enactment to let a playing field or other land of which a parking place forms part, no single letting may be for a longer period than seven days<sup>23</sup>.

Such exercise by a parish or community council of its powers under these provisions with respect to the use as a parking place of any part of a road does not render it subject to any liability in respect of loss of or damage to any vehicle or the fittings or contents of any vehicle parked in such a parking place<sup>24</sup>.

A parish or community council may contribute towards: (i) the reasonable expenses incurred by any person in doing anything which, by virtue of the above provisions, that council has power to do<sup>25</sup>; and (ii) the expenses incurred by any other parish or community council in exercising its powers under the above provisions<sup>26</sup>.

Without prejudice to any other power of combination, a parish or community council may by agreement combine with any other parish or community council for the purpose of exercising powers under the above provisions<sup>27</sup>.

1 'Parish' or 'community', in relation to a common parish council or common community council acting for two or more grouped parishes or communities, means those parishes or communities: Road Traffic Regulation Act 1984 s 60(4). As to parishes see LOCAL GOVERNMENT vol 69 (2009) PARA 27 et seq; and as to communities see LOCAL GOVERNMENT vol 69 (2009) PARA 41 et seq. As to grouping of parishes see LOCAL GOVERNMENT vol 69 (2009) PARA 29; and as to grouping of communities see LOCAL GOVERNMENT vol 69 (2009) PARA 43.

2 See note 1 supra.

3 Road Traffic Regulation Act 1984 s 57(1). This provision is expressed to be subject to s 58 (as amended) (see PARA 824 post) and s 59 (as amended) (see PARA 825 post): see s 57(1). As to the exercise of powers under s 57(1), (2) in respect of the width of a road see PARA 730 ante.

Where before 17 July 1957 a parish council has provided anything which could be provided by a parish council under s 57, or where any other person has at any time provided anything which could be provided by a parish council under s 57, the parish or community council has the like power to maintain that thing as if it had been provided by it under s 57: s 60(3).

4 Ibid s 57(1)(a).

5 'Road' means a highway (including a public path) and any other road, lane, footway, square, court, alley or passage (whether a thoroughfare or not) to which the public has access, but does not include a road provided or to be provided in pursuance of a scheme made, or having effect as if made, under the Highways Act 1980 s 16 (which relates to special roads) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 731 et seq); Road Traffic Regulation Act 1984 s 60(4). 'Public path' has the meaning assigned to it by the National Parks and Access to the Countryside Act 1949 s 27 (repealed): Road Traffic Regulation Act 1984 s 60(4). As to public paths generally see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 582 et seq.

6 Ibid s 57(1)(b).

Subject to s 59(4)-(6) (as amended), s 35 (as amended) (see PARA 790 ante) applies in relation to a parking place provided under s 57(1)(b) as if: (1) the parish or community council were a local authority for the purposes of s 32 (as amended) (see PARA 784 ante) and s 35 (as amended) (see PARA 790 ante); and (2) the parking place were provided by the parish or community council under s 32 (as amended) (see PARA 784 ante): s 59(3). A parish or community council must not, by virtue of s 59(3), make an order under s 35(1) (as

amended) (see PARA 790 ante) without the consent of the county council or metropolitan district council; and any consent given by the county council or metropolitan district council may be subject to such conditions or restrictions as it thinks fit: s 59(4) (s 59(4)-(7) amended by the Local Government Act 1985 s 8, Sch 5 para 4(24)). Where, by virtue of the Road Traffic Regulation Act 1984 s 59(3), a parish or community council proposes to make an order under s 35(1) (as amended), the council must submit a draft of the order to the county council or metropolitan district council, who (without prejudice to its power to give or withhold consent to the making of the order) may require such modifications of the terms of the proposed order as it thinks appropriate: s 59(5) (as so amended). The powers of a county council or metropolitan district council under s 35 (as amended) apply in relation to a parking place provided by a parish or community council under s 57(1)(b) as they apply in relation to a parking place provided by a county council or metropolitan district council; and the power to vary or revoke an order made by a parish or community council under s 35(1) (as amended) is exercisable by the county council or metropolitan district council as well as by the parish or community council: s 59(6) (as so amended). If, by virtue of s 59(6) (as amended), a county council or metropolitan district council proposes to make an order under s 35(1) (as amended) in relation to a parking place provided by a parish or community council, it must send a copy of the proposed order to the parish or community council: s 59(7) (as so amended).

7 Ibid s 57(5). As to nuisance generally see NUISANCE.

8 Ie under ibid s 57(3): see the text and notes 11-13 infra.

9 Ie subject to s 58 (as amended): see PARA 824 post.

10 Ibid s 57(2). See also note 3 supra.

11 Ie under ibid s 57(1): see the text and notes 1-6 supra.

12 Ibid s 57(2). See also note 3 supra.

13 Ibid s 57(3).

14 Ie under the Local Government Act 1894 s 8 (as amended).

15 Road Traffic Regulation Act 1984 s 57(3)(a).

16 Ie under the Open Spaces Act 1906: see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 569 et seq.

17 Road Traffic Regulation Act 1984 s 57(3)(b). See CREMATION AND BURIAL.

18 Ibid s 57(3)(c). The text refers to the purposes of the Local Government (Miscellaneous Provisions) Act 1976 s 19 (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 595; OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 559.

19 Road Traffic Regulation Act 1984 s 57(4).

20 Ibid s 57(6).

21 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

22 Road Traffic Regulation Act 1984 s 57(7).

23 Ibid s 57(8).

24 Ibid s 57(9).

25 Ibid s 60(1)(a).

26 Ibid s 60(1)(b).

27 Ibid s 60(2).

Community Councils/824. Consents for provision of parking places by parish or community councils.

#### **824. Consents for provision of parking places by parish or community councils.**

A parish or community<sup>1</sup> council does not have power<sup>2</sup> to provide a parking place<sup>3</sup>:

- 629 (1) in a position obstructing or interfering with any existing access to any land or premises not forming part of a road<sup>4</sup>, except with the consent of the owner<sup>5</sup> and the occupier of the land or premises<sup>6</sup>; or
- 630 (2) in<sup>7</sup> a road which is not a highway, in a public path<sup>8</sup> or in a restricted byway<sup>9</sup>, except with the consent of the owner and the occupier of the land over which the road, path or way runs<sup>10</sup>; or
- 631 (3) in a trunk road or any other road maintained by the Secretary of State<sup>11</sup> or on land abutting on any such road, except with the consent of the Secretary of State<sup>12</sup>; or
- 632 (4) in a road which is a highway (other than a trunk road or a road maintained as mentioned in head (3) above or a public path) or on land abutting on any such road, except with the consent of the county council or metropolitan district council<sup>13</sup>; or
- 633 (5) in a road which is a highway belonging to and repairable by the persons carrying on any railway, dock, harbour, canal, inland navigation or passenger road transport undertaking and forming the approach to any station, dock, wharf or depot of theirs, except with the consent of the persons carrying on the undertaking concerned<sup>14</sup>; or
- 634 (6) on a bridge carrying a highway over a railway, dock, harbour, canal or inland navigation, or on the approaches to any such bridge, or under a bridge carrying a railway, canal or inland navigation over a highway, except with the consent of the persons carrying on the railway, dock, harbour, canal or inland navigation undertaking concerned<sup>15</sup>.

Any consent required in heads (3) to (6) above must not be unreasonably withheld, but may be given subject to any reasonable conditions, including a condition that the parish or community council must remove any thing to the provision of which the consent relates, either at any time or at or after the expiry of a period, if reasonably required to do so by the person giving the consent<sup>16</sup>.

Any dispute between a parish or community council and a person whose consent is required under heads (3) to (6) above, on the question whether that consent is unreasonably withheld or is given subject to reasonable conditions, or whether the removal<sup>17</sup> of any thing to the provision of which the consent relates in accordance with any condition of the consent is reasonably required, must<sup>18</sup>: (a) in the case of a dispute between the parish or community council and the Secretary of State, be referred to and determined by an arbitrator to be appointed, in default of agreement, by the President of the Institution of Civil Engineers<sup>19</sup>; and (b) in any other case, be referred to and determined by the Secretary of State, who may cause a public inquiry to be held for the purpose<sup>20</sup>.

1 For the meanings of 'parish' and 'community' see PARA 823 note 1 ante.

2 ie by virtue of the Road Traffic Regulation Act 1984 s 57(1): see PARA 823 ante.

3 Ibid s 58(1). The Local Government (Miscellaneous Provisions) Act 1953 s 6 (as amended) (which makes provision as to access to telegraphic lines, sewers, pipe-subways, pipes, wires, and other apparatus) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 563) applies in relation to a parking place (including a structure for use as a parking place) provided by a parish or community council under the Road Traffic

Regulation Act 1984 s 57(1) (see PARA 823 ante), and in relation to the council by which the parking place is so provided, as it applies in relation to a shelter or other accommodation provided, and in relation to the local authority by which it is provided, under the Local Government (Miscellaneous Provisions) Act 1953 s 4 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 561): Road Traffic Regulation Act 1984 s 58(4).

4 For the meaning of 'road' see PARA 823 note 5 ante.

5 For these purposes, 'owner' has the meaning assigned to it by the Public Health Act 1936 s 343 (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 116): Road Traffic Regulation Act 1984 s 60(4).

6 Ibid s 58(1)(a).

7 'In', in a context referring to things in a road, includes a reference to things under, over, across, along or upon the road: ibid s 60(4).

8 For the meaning of 'public path' see PARA 823 note 5 ante.

9 For the meaning of 'restricted byway' see PARA 742 note 4 ante.

10 Road Traffic Regulation Act 1984 s 58(1)(b) (amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, reg 2, Schedule Pt I).

11 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

12 Road Traffic Regulation Act 1984 s 58(1)(c), Table item (i).

13 Ibid s 58(1)(c), Table item (ii) (amended by the Local Government Act 1985 s 8(1), Sch 5 para 4(23)).

14 Road Traffic Regulation Act 1984 s 58(1)(c), Table item (iii).

15 Ibid s 58(1)(c), Table item (iv).

16 Ibid s 58(2).

17 In ibid s 58 (as amended), and in the Local Government (Miscellaneous Provisions) Act 1953 s 6 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 563), as they apply in relation to a parking place provided under the Road Traffic Regulation Act 1984 s 57(1)(a) (see PARA 823 ante) which forms part of a road, references to removal are to be construed as including references to the suspension or revocation of the order authorising the use of that part of the road as a parking place: s 58(5).

18 Ibid s 58(3).

19 Ibid s 58(3)(a). As to the Institution of Civil Engineers see BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS vol 4(3) (Reissue) PARA 220.

20 Ibid s 58(3)(b).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(4) PARKING/(v) Provision of Parking Places by Parish or Community Councils/825. Consents for, and provisions as to use of, certain parking places provided by parish or community councils.

## **825. Consents for, and provisions as to use of, certain parking places provided by parish or community councils.**

A parish or community<sup>1</sup> council must not exercise certain powers relating to providing and maintaining suitable parking places<sup>2</sup> without the consent of the council of the county or metropolitan district in which the parish or community is situated; and any consent given by the county council or metropolitan district council may be subject to such conditions or

restrictions as it thinks fit<sup>3</sup>. A parish or community council proposing to exercise those powers must:

- 635 (1) for the purpose of obtaining such consent of the county council or metropolitan district council, make an application in writing to that council giving details of the parking place which it proposes to provide<sup>4</sup>; and
- 636 (2) in the case of an application to a county council, send a copy of it to the council of the district in which the parish is situated<sup>5</sup>,

and, in that case, the county council, in considering whether or not to give its consent, or to make its consent subject to any conditions or restrictions, must have regard to any representations made to it by that district council<sup>6</sup>.

1 For the meanings of 'parish' and 'community' see PARA 823 note 1 ante.

2 Ie under the Road Traffic Regulation Act 1984 s 57(1)(b): see PARA 823 ante.

3 Ibid s 59(1) (s 59(1), (2) amended by the Local Government Act 1985 s 8, Sch 5 para 4(24)).

4 Road Traffic Regulation Act 1984 s 59(2)(a) (as amended: see note 3 supra).

5 Ibid s 59(2)(b) (as amended (see note 3 supra); and further amended by the Local Government (Wales) Act 1994 ss 22(1), 66(8), Sch 7 para 38(7), Sch 18). The Road Traffic Regulation Act 1984 s 59(2)(b) (as amended) (see head (2) in the text) and the words which follow it do not apply in relation to Wales: s 59(2A) (added by the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 38(7)).

6 Road Traffic Regulation Act 1984 s 59(2) (as amended: see note 3 supra).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(4) PARKING/(vi) Miscellaneous Parking Provisions/826. Loading areas.

## **(vi) Miscellaneous Parking Provisions**

### **826. Loading areas.**

If it appears to the council of a county, metropolitan district or London borough or the Common Council of the City of London that any land in its area which is not part of a highway has been set apart by the occupier of the land for use as a place where vehicles may be driven<sup>1</sup> and parked for the purpose of being loaded or unloaded in connection with a trade or business carried on or in the vicinity of the land, the council may, by an order made with the consent of the owner<sup>2</sup> and the occupier of the land<sup>3</sup>: (1) designate the land as an area to which the following provisions apply (a 'loading area')<sup>4</sup>; and (2) specify the trade or business in question<sup>5</sup>. A council which has made such an order<sup>6</sup>:

- 637 (a) may vary the order by a subsequent order made with the consent of the owner and the occupier of the land to which the order relates<sup>7</sup>;
- 638 (b) may revoke the order by a subsequent order made with the consent of the owner and the occupier of the loading area in question<sup>8</sup>; and
- 639 (c) must revoke the order by a subsequent order if requested in writing to do so by the owner and the occupier of the loading area in question<sup>9</sup>.



An order so made<sup>10</sup> may contain provisions prohibiting the parking, in the loading area to which the order relates, of vehicles of such kinds as are specified in the order, except authorised vehicles<sup>11</sup>, at all times or at times so specified, and may make different provision in pursuance of the preceding provisions for different parts of the area<sup>12</sup>.

Where an order has been made by a council<sup>13</sup> and traffic signs<sup>14</sup> are required to be placed<sup>15</sup> on the loading area to which the order relates, a person authorised in that behalf by the council may enter on the loading area for the purpose of placing any such traffic signs and for the purpose of maintaining or removing the signs<sup>16</sup>.

A person who, without reasonable excuse, causes a vehicle to be in any part of a loading area at a time when the parking of it there is prohibited by an order so made<sup>17</sup> is guilty of an offence<sup>18</sup>.

1 For the meaning of 'drive' see PARA 207 ante.

2 For these purposes, 'owner', in relation to any land, means a person who, either on his own account or as agent or trustee for another person, is receiving the rackrent of the land or would be entitled to receive it if the land were let at a rackrent: Road Traffic Regulation Act 1984 s 61(8).

3 Ibid s 61(1) (amended by the Local Government Act 1985 s 8(1), Sch 5 para 4(25)). This provision is expressed to be subject to the Road Traffic Regulation Act 1984 s 124(1), Sch 9 Pt III paras 20-26 (as amended) (see PARA 738 ante): see s 61(1). Orders made under s 61 (as amended) are local in nature, and are not recorded in this work.

4 Ibid s 61(1)(a).

5 Ibid s 61(1)(b).

6 Ie an order in pursuance of ibid s 61(1) (as amended): see the text and notes 1-5 supra. References in s 61(2)-(5) to an order made in pursuance of s 61(1) (as amended) include, in the case of such an order which has been varied in pursuance of s 61(2)(a) (see head (a) in the text), references to the order as so varied: s 61(6).

7 Ibid s 61(2)(a).

8 Ibid s 61(2)(b).

9 Ibid s 61(2)(c).

10 Ie in pursuance of ibid s 61(1) (as amended) or s 61(2)(a): see the text and notes 1-7 supra.

11 'Authorised vehicle', in relation to a loading area, means a goods vehicle (as defined by the Road Traffic Act 1988 s 192(1): see PARA 220 ante) which is in the area for the purpose of being loaded or unloaded in connection with the trade or business specified in the order designating the area: Road Traffic Regulation Act 1984 s 61(3) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 25(2)).

12 Road Traffic Regulation Act 1984 s 61(3) (as amended: see note 11 supra).

13 Ie in pursuance of ibid s 61(1) (as amended): see the text and notes 1-5 supra. See also note 6 supra.

14 Any reference to a traffic sign, in relation to any land which is not a road, includes a reference to any object, device, line or mark which would be a traffic sign (as defined by ibid s 64 (as amended): see PARA 830 post) if the land were a road: s 61(8). For the meaning of 'road' see PARA 206 ante.

15 Ie by virtue of ibid Sch 9 para 22(1)(e): see PARA 738 text and notes 19-20 ante. As to the placing of traffic signs see PARA 770 note 2 ante.

16 Ibid s 61(4).

17 See note 13 supra.

18 Road Traffic Regulation Act 1984 s 61(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1),

Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

As to the disapplication of the Road Traffic Regulation Act 1984 s 61(5) in relation to special parking areas outside London see PARA 821 ante; and in relation to special parking areas in London see PARA 822 ante.

The provisions of the Local Government (Miscellaneous Provisions) Act 1976 s 44(3)-(5) (as amended) (which contain ancillary provisions for the purposes of Pt I (ss 1-44) (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq) have effect as if the Road Traffic Regulation Act 1984 s 61 (as amended) were included in the Local Government (Miscellaneous Provisions) Act 1976 Pt I (as amended): Road Traffic Regulation Act 1984 s 61(7).

## UPDATE

### 826 Loading areas

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(4) PARKING/(vi) Miscellaneous Parking Provisions/827. Nuisance parking offences.

### 827. Nuisance parking offences.

A person is guilty of an offence if at any time: (1) he leaves two or more motor vehicles<sup>1</sup> parked within 500 metres of each other on a road<sup>2</sup> or roads where they are exposed or advertised for sale; or (2) he causes two or more motor vehicles to be so left<sup>3</sup>. A person is not to be convicted of such an offence if he proves to the satisfaction of the court that he was not acting for the purposes of a business of selling motor vehicles<sup>4</sup>. A person guilty of such an offence is liable on summary conviction to a fine<sup>5</sup>.

A person who carries out restricted works<sup>6</sup> on a motor vehicle on a road is guilty of an offence, subject as follows<sup>7</sup>. A person is not to be convicted of such an offence in relation to any works if he proves to the satisfaction of the court that the works were not carried out: (a) in the course of, or for the purposes of, a business of carrying out restricted works; or (b) for gain or reward<sup>8</sup>, unless the carrying out of the works gave reasonable cause for annoyance to persons in the vicinity<sup>9</sup>. A person is also not to be convicted of such an offence in relation to any works if he proves to the satisfaction of the court that the works carried out were works of repair which: (i) arose from an accident or breakdown in circumstances where repairs on the spot or elsewhere on the road were necessary; and (ii) were carried out within 72 hours of the accident or breakdown or were within that period authorised to be carried out at a later time by the local authority<sup>10</sup> for the area<sup>11</sup>. A person guilty of such an offence is liable on summary conviction to a fine<sup>12</sup>.

Where any of the above offences is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly<sup>13</sup>. Where the affairs of a body corporate are managed by its members, the above provision<sup>14</sup> applies in

relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body<sup>15</sup>.

1 For the meaning of 'motor vehicle' for these purposes see the Clean Neighbourhoods and Environment Act 2005 ss 3, 4; (definition applied by virtue of ss 3(4), 4(7)).

2 For the meaning of 'road' for these purposes see *ibid* ss 3, 4; and PARA 823 note 5 ante (definition applied by virtue of s 3(4), 4(7)).

3 *Ibid* s 3(1).

4 *Ibid* s 3(2).

5 *Ibid* s 3(3). The fine must not exceed level 4 on the standard scale: see s 3(3). As to the standard scale see PARA 230 note 3 ante.

6 For these purposes, 'restricted works' means: (1) works for the repair, maintenance, servicing, improvement or dismantling of a motor vehicle or of any part of or accessory to a motor vehicle; or (2) works for the installation, replacement or renewal of any such part or accessory: *ibid* s 4(2).

7 *Ibid* s 4(1).

8 *Ibid* s 4(3).

9 *Ibid* s 4(4).

10 For these purposes, 'local authority' means: (1) a district council in England; (2) a county council in England for an area for which there is no district council; (3) a London borough council; (4) the Common Council of the City of London; (5) the Council of the Isles of Scilly; (6) a county or county borough council in Wales: *ibid* s 9(2); definition applied by virtue of s 4(7). As to local government areas and authorities see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

11 *Ibid* s 4(5).

12 *Ibid* s 4(6). The fine must not exceed level 4 on the standard scale: see s 4(6).

13 *Ibid* s 5(1).

14 *Ibid* s 5(1).

15 *Ibid* s 5(2).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(4) PARKING/(vi) Miscellaneous Parking Provisions/828. Parking in royal parks.

## **828. Parking in royal parks.**

Regulations under the Parks Regulation (Amendment) Act 1926<sup>1</sup> may make provision for imposing and recovering charges for the leaving of vehicles, or vehicles of any class<sup>2</sup>, in any park to which that Act applies<sup>3</sup>.

1 *Ibid* under the Parks Regulation (Amendment) Act 1926 s 2 (as amended): see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 562.

2 As to classes of vehicle see PARA 208 ante.

3 Road Traffic Regulation Act 1984 s 62. Regulations made by virtue of s 62 may make, as respects charges and penalties recoverable under the regulations, provision corresponding to the provisions of s 47(4) (see PARA

812 ante): s 62. As to the making of regulations generally see PARA 720 ante. As to the parks to which the Parks Regulation (Amendment) Act 1926 applies see ss 1, 3 (s 1 amended by the Statute Law (Repeals) Act 1989).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(4) PARKING/(vi) Miscellaneous Parking Provisions/829. Stands and racks for bicycles.

## **829. Stands and racks for bicycles.**

The powers of any authority under the Road Traffic Regulation Act 1984 to provide parking places extend to providing, in roads<sup>1</sup> or elsewhere, stands or racks for, or devices for securing, bicycles or motor cycles<sup>2</sup>.

1 For the meaning of 'road' see PARA 206 ante.

2 Road Traffic Regulation Act 1984 s 63 (amended by the Transport Act 2000 s 271(1), (2)).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(5) TRAFFIC SIGNS/(i) In general/830. The meaning of 'traffic sign' and general provisions as to traffic signs.

## **(5) TRAFFIC SIGNS**

### **(i) In general**

#### **830. The meaning of 'traffic sign' and general provisions as to traffic signs.**

A 'traffic sign' means<sup>1</sup> any object or device (whether fixed or portable) for conveying to traffic<sup>2</sup> on roads<sup>3</sup> or any specified class of traffic<sup>4</sup>, warnings, information, requirements, restrictions or prohibitions of any description<sup>5</sup> specified by regulations<sup>6</sup> or authorised by the Secretary of State<sup>7</sup>, and any line or mark on a road for so conveying such warnings, information, requirements, restrictions or prohibitions<sup>8</sup>.

Traffic signs are to be of the size, colour and type prescribed by regulations except where the Secretary of State authorises the erection or retention of a sign of another character; and for these purposes illumination, whether by lighting or by the use of reflectors or reflective material, or the absence of such illumination, are to be part of the type or character of the sign<sup>9</sup>.

Regulations may be made to apply generally or in such circumstances only as may be specified in the regulation<sup>10</sup>.

No traffic sign may be placed<sup>11</sup> on or near a road except<sup>12</sup>: (1) a notice in respect of the use of a bridge<sup>13</sup>; (2) a traffic sign placed, in pursuance of powers conferred by a special Act of Parliament or order having the force of an Act, by the owners or operators of a tramway, light railway or trolley vehicle undertaking, a dock undertaking or a harbour undertaking<sup>14</sup>; or (3) a traffic sign placed on any land: (a) by a person authorised to place the sign on a road<sup>15</sup>; and (b) for a purpose for which he is authorised to place it on a road<sup>16</sup>.

1 le for the purposes of the Road Traffic Regulation Act 1984.

2 As to the meaning of 'traffic' see PARA 742 note 4 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 As to classes of traffic see PARA 208 ante.

5 Road Traffic Regulation Act 1984 ss 64(1), 142(1).

6 Ibid ss 64(1)(a), 142(1).

7 Ibid ss 64(1)(b), 142(1). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. As to the making of regulations generally see PARA 720 ante.

8 Ibid ss 64(1), 142(1).

9 Ibid s 64(2). Regulations under s 64, or any authorisation under s 64(2), may provide that the Road Traffic Act 1988 s 36 (as amended) (drivers to comply with traffic directions) (see PARA 643 ante) must apply to signs of a type specified in that behalf by the regulations or, as the case may be, to the sign to which authorisation relates: Road Traffic Regulation Act 1984 s 64(5) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 25(3)).

The following regulations have been made partly under the Road Traffic Regulation Act 1984 s 64 (as amended): the Zebra, Pelican and Puffin Pedestrian Crossings Regulations and General Directions 1997, SI 1997/2400 (amended by SI 1998/901; SI 2003/2155; SI 2004/3168; SI 2005/2929; SI 2006/594); the Traffic Signs (Temporary Obstructions) Regulations 1997, SI 1997/3053; and the Traffic Signs Regulations and General Directions 2002, SI 2002/3113 (amended by SI 2003/393; SI 2003/2155; SI 2004/1275; SI 2004/3168; SI 2005/1670; SI 2005/2929; SI 2005/3225; SI 2006/2083). The following regulations are to be treated as if they had been made under the Road Traffic Regulation Act 1984 s 64 (as amended): the 'Zebra' Pedestrian Crossings Regulations 1971, SI 1971/1524 (revoked with savings: see PARA 778 note 2 ante); and the 'Pelican' Pedestrian Crossings Regulations 1987 (set out in the 'Pelican' Pedestrian Crossings Regulations and General Directions 1987, SI 1987/16, Pt II) (revoked with savings: see PARA 778 note 2 ante).

10 Road Traffic Regulation Act 1984 s 64(3). Provision is made for the Road Traffic Act 1988 s 36 (as amended) to apply to traffic signs specified in the Traffic Signs Regulations 2002 (set out in the Traffic Signs Regulations and General Directions 2002, SI 2002/3113, Pt I) reg 10(1): see reg 10. Provision is also made for the specified signs to be placed on or near a road only to indicate the effect of an Act, order, regulation, byelaw or notice which prohibits or restricts the use of traffic on a road: Traffic Signs General Directions 2002 (set out in the Traffic Signs Regulations and General Directions 2002, SI 2002/3113, Pt II) direction 7.

11 le except as provided by the Road Traffic Regulation Act 1984. As to the placing of traffic signs see PARA 770 note 2 ante.

12 Ibid s 64(4).

13 Ibid s 64(4)(a).

14 Ibid s 64(4)(b).

15 Ibid s 64(4)(c)(i) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 Pt II para 47).

16 Road Traffic Regulation Act 1984 s 64(4)(c)(ii) (as amended: see note 15 supra).

## UPDATE

### 830 The meaning of 'traffic sign' and general provisions as to traffic signs

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 9--SI 2002/3113 further amended: SI 2008/2177.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(5) TRAFFIC SIGNS/(i) In general/831. Powers and duties of highway authorities as to placing of traffic signs.

### **831. Powers and duties of highway authorities as to placing of traffic signs.**

The traffic authority<sup>1</sup> may cause or permit traffic signs<sup>2</sup> to be placed<sup>3</sup> on or near a road<sup>4</sup>, subject to and in conformity with such directions as may be given by the Secretary of State<sup>5</sup>. The power to give such general directions includes power to require equipment used in connection with traffic signs to be of a type approved in accordance with the directions<sup>6</sup>.

The Secretary of State may give directions<sup>7</sup> to a local traffic authority<sup>8</sup> for the placing of a traffic sign of any prescribed type<sup>9</sup> or authorised character<sup>10</sup> specified in the directions<sup>11</sup>, or for replacing a sign so specified by, or converting it into, a sign of another prescribed type or authorised character so specified<sup>12</sup>.

No charge may be made by a highway authority<sup>13</sup> which is the council of a county, metropolitan district or London borough or the Common Council of the City of London<sup>14</sup> with respect to the exercise of its power<sup>15</sup> to permit a traffic sign to be placed on or near any road in its area if: (1) the sign conveys information of a temporary nature or is otherwise intended to be placed only temporarily<sup>16</sup>; and (2) the sign is to be placed by a body which is prescribed for these purposes as being a body appearing to the Secretary of State to be representative of the interests of road users or any class of road users<sup>17</sup>.

1 References to a traffic authority in the Road Traffic Regulation Act 1984 s 65 (as amended) (see the text and notes 2-17 infra) and ss 68-73 (as amended) (see PARAS 834-840 post) are to be construed as including references to any person who, not being a traffic authority, is responsible for the maintenance of a road: s 80 (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 Pt II para 58). As to traffic authorities in general see PARA 731 ante; and see PARA 844 post.

2 For the meaning of 'traffic sign' see PARA 830 ante.

3 As to the placing of traffic signs see PARA 770 note 2 ante.

4 For the meaning of 'road' see PARA 206 ante.

5 Road Traffic Regulation Act 1984 s 65(1) (substituted by the New Roads and Street Works Act 1991 Sch 8 para 48). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

The following directions have been made partly under the Road Traffic Regulation Act 1984 s 65 (as amended): the Zebra, Pelican and Puffin Pedestrian Crossings Regulations and General Directions 1997, SI 1997/2400 (amended by SI 1998/901; SI 2003/2155; SI 2004/3168; SI 2005/2929; SI 2006/594) (see PARA 778 note 2 ante); and the Traffic Signs Regulations and General Directions 2002, SI 2002/3113 (amended by SI 2003/393; SI 2003/2155; SI 2004/1275; SI 2004/3168; SI 2005/1670; SI 2005/2929; SI 2005/3225; SI 2006/2083). The following directions are to be treated as if they had been made under the Road Traffic Regulation Act 1984 s 65 (as amended): the 'Pelican' Pedestrian Crossings General Directions 1987 (set out in the 'Pelican' Pedestrian Crossings Regulations and General Directions 1987, SI 1987/16, Pt III) (revoked with savings).

In relation to a road for which the Secretary of State is the traffic authority, the Road Traffic Regulation Act 1984 s 65(1) (as substituted) has effect with the omission of references to directions, and the provisions of the Road Traffic Regulation Act 1984 relating to directions for the placing, replacing, conversion and removal of traffic signs, notices, objects or devices are not to apply except in relation to a bridge repairable by a person other than the Secretary of State: s 77 (substituted by the New Roads and Street Works Act 1991 Sch 8 Pt II para 56).

6 Road Traffic Regulation Act 1984 s 65(1A) (added by the Road Traffic Act 1991 s 48, Sch 4 para 29).

7 The power to give such general directions is exercisable by statutory instrument: Road Traffic Regulation Act 1984 s 65(3).

8 Ibid s 65(2) (amended by the New Roads and Street Works Act 1991 Sch 8 Pt II para 48(3)).

9 For these purposes, 'prescribed type' means a type prescribed by regulations made under the Road Traffic Regulation Act 1984 s 64(1)(a) (see PARA 830 ante): s 65(4).

10 For these purposes, 'authorised character' means a character authorised by the Secretary of State: ibid s 65(4).

11 Ibid s 65(2)(a).

12 Ibid s 65(2)(b).

13 As to highway authorities see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq.

14 Road Traffic Regulation Act 1984 s 65(3A)(a) (added by the Local Government and Housing Act 1989 s 153).

15 Re the exercise of its power under the Road Traffic Regulation Act 1984 s 65(1) (as substituted): see the text and notes 1-5 supra.

16 Ibid s 65(3A)(i) (as added: see note 14 supra).

17 Ibid s 65(3A)(ii) (as added: see note 14 supra).

## UPDATE

### 831 Powers and duties of highway authorities as to placing of traffic signs

NOTE 5--SI 2002/3113 further amended: SI 2008/2177.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(5) TRAFFIC SIGNS/(i) In general/832. Traffic signs for giving effect to local traffic regulations.

### 832. Traffic signs for giving effect to local traffic regulations.

A constable<sup>1</sup>, or a person acting under the instructions (whether general or specific) of the chief officer of police<sup>2</sup>, may place<sup>3</sup> on a road<sup>4</sup>, or on any structure on a road, traffic signs (of any size, colour and type prescribed<sup>5</sup> or authorised<sup>6</sup>) indicating prohibitions, restrictions or requirements relating to vehicular traffic, as may be requisite<sup>7</sup> for giving effect to regulations, orders or directions under certain enactments<sup>8</sup>, or for giving effect to certain directions<sup>9</sup>.

1 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

2 As to the chief officer of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

3 As to the placing of traffic signs see PARA 770 note 2 ante. For the meaning of 'traffic sign' see PARA 830 ante.

4 For the meaning of 'road' see PARA 206 ante.

5 Re prescribed by regulations under the Road Traffic Regulation Act 1984 s 64: see PARA 830 ante.

6 Re authorised under ibid s 64: see PARA 830 ante.

7 Ibid s 66(1) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 Pt II para 49). Notwithstanding anything in the Explosives Act 1875 (see EXPLOSIVES) or in any other enactment, a constable who is for the time being engaged in the regulation of traffic in a road or any person acting under his authority may, on or in the vicinity of the road, light and use a flare for the purpose of regulating the traffic: Road Traffic Act 1974 s 18(1). For the purposes of s 18, 'flare' means a firework or other device designed to produce a light by a process of combustion: s 18(2). Section 18 is repealed by the Fireworks Act 2003 s 15, Schedule, as from a day to be appointed under s 18(1). At the date at which this volume states the law no such day had been appointed.

8 Road Traffic Regulation Act 1984 s 66(1)(a). The enactments referred to in the text are:

1398 (1) the Metropolitan Police Act 1839 s 52 (as amended) (which relates to prevention of obstruction on public occasions or in the neighbourhood of public buildings in the metropolitan police district) (Road Traffic Regulation Act 1984 s 66(2)(a));

1399 (2) the City of London Police Act 1839 s 22 (which makes similar provision in relation to the City of London) (Road Traffic Regulation Act 1984 s 66(2)(b));

1400 (3) the Town Police Clauses Act 1847 s 21 (as amended) (which likewise makes similar provision for areas to which that Act is applied) (Road Traffic Regulation Act 1984 s 66(2)(c)).

9 Ibid s 66(1)(b) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 25(4)). The directions referred to in the text are those given under the Road Traffic Act 1988 s 31(4) (which enables directions to be given in consequence of the holding of an authorised race or trial of speed: see PARA 995 post): Road Traffic Regulation Act 1984 s 66(1)(b) (as so amended).

## UPDATE

### **832-833 Traffic signs for giving effect to local traffic regulations, Emergencies and temporary obstructions**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(5) TRAFFIC SIGNS/(i) In general/833. Emergencies and temporary obstructions.

### **833. Emergencies and temporary obstructions.**

A constable<sup>1</sup>, or a person acting under the instructions (whether general or specific) of the chief officer of police<sup>2</sup>, may place<sup>3</sup> on a road<sup>4</sup>, or on any structure on a road, traffic signs<sup>5</sup> (of any size, colour and type prescribed<sup>6</sup> or authorised<sup>7</sup>), indicating prohibitions, restrictions or requirements relating to vehicular traffic, as may be necessary or expedient to prevent or mitigate congestion or obstruction of traffic, or danger to or from traffic, in consequence of extraordinary circumstances<sup>8</sup>. This power to place signs includes power to maintain a sign for a period of seven days or less from the time when it was placed, but no longer<sup>9</sup>.

1 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

2 As to the chief officer of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

3 As to the placing of traffic signs see PARA 770 note 2 ante. For the meaning of 'traffic sign' see PARA 830 ante.



4 For the meaning of 'road' see PARA 206 ante.

5 For the meaning of 'traffic sign' see PARA 830 ante.

6 le prescribed by regulations under the Road Traffic Regulation Act 1984 s 64: see PARA 830 ante.

7 le authorised under ibid s 64: see PARA 830 ante.

8 Ibid s 67(1) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 Pt II para 50). For these purposes, 'extraordinary circumstances' includes terrorism or the prospect of terrorism within the meaning of the Terrorism Act 2000 s 1 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 383): Road Traffic Regulation Act 1984 s 67(1A)(a) (s 67(1A) added by the Civil Contingencies Act 2004 s 32(1), Sch 2 Pt 3 para 16(1), (3)).

9 Road Traffic Regulation Act 1984 s 67(1) (as amended: see note 8 supra). However, in the application of s 67(1) in connection with terrorism or the prospect of terrorism, the reference to seven days is to be taken as a reference to 28 days: s 67(1A)(b) (as added: see note 8 supra).

The Road Traffic Act 1988 s 36 (as amended) (drivers to comply with traffic directions: see PARA 643 ante) applies to signs placed in the exercise of the powers conferred by the Road Traffic Regulation Act 1984 s 67(1) (as amended): s 67(2) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 25(5)).

Regulations under the Road Traffic Regulation Act 1984 s 64 (as amended) prescribing any type of object or device for warning traffic of a temporary obstruction may include provisions for authorising (subject to such conditions as may be specified in the regulations) persons not otherwise authorised to do so to place an object or device of that type on or near roads, or on or near any description of road so specified, in such circumstances and for such periods as may be so specified: s 67(3). Any power which is exercisable in relation to any road under s 67(3), otherwise than by virtue of s 125 (as amended) (see PARA 415 ante), is exercisable with respect to the whole or any part of the width of the road: s 126.

The Traffic Signs (Temporary Obstructions) Regulations 1997, SI 1997/3053, have been made partly under the Road Traffic Regulation Act 1984 s 67(3).

## UPDATE

### **832-833 Traffic signs for giving effect to local traffic regulations, Emergencies and temporary obstructions**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **834. Placing of traffic signs in connection with exercise of certain powers.**

Any authority having the power to make certain orders<sup>1</sup> may<sup>2</sup> place and maintain, or cause to be placed and maintained<sup>3</sup>, such traffic signs<sup>4</sup>, of any type prescribed or character authorised<sup>5</sup>, as the authority may consider necessary in connection with any order made by the authority as respects any road<sup>6</sup> or, in the case of a traffic authority<sup>7</sup> having power to make an order<sup>8</sup>, as the authority may consider necessary in connection with any order made or notice issued by it<sup>9</sup>. However, if the order is made or, as the case may be, the notice is issued by an authority other than the traffic authority for the road, the authority by which the order is made or, as the case may be, the notice is issued<sup>10</sup> must consult with the traffic authority as to the placing of the

signs<sup>11</sup>, and unless the traffic authority is unwilling to do so, must enter into arrangements with the traffic authority for the signs to be placed and maintained by the traffic authority<sup>12</sup>.

1 The orders to which the Road Traffic Regulation Act 1984 s 68 (as amended) applies are:

1401 (1) an order under or by virtue of any of the following provisions of the Road Traffic Regulation Act 1984: ss 1-4 (as amended) (see PARAS 742-745 ante), s 14 (as substituted) (see PARA 755 ante), s 16A (as added) (see PARA 759 ante), s 19 (as amended) (see PARA 767 ante), s 29 (as substituted) (see PARA 782 ante), s 32 (as amended) (see PARA 784 ante), s 35 (as amended) (see PARA 790 ante), s 37 (as amended) (see PARA 794 ante), s 38 (as amended) (see PARA 795 ante), s 45 (as amended) (see PARA 808 ante), s 46 (as amended) (see PARA 810 ante) and s 49(2), (4) (see PARA 814 ante) (s 68(1)(a) (amended by the New Roads and Street Works Act 1991 s 168(1), (2), Sch 8 para 51(2), Sch 9; and the Road Traffic Regulation (Special Events) Act 1994 s 3(1), Schedule para 1)); or

1402 (2) an order as respects a road outside Greater London under the Road Traffic Regulation Act 1984 s 9 (as amended) (see PARA 751 ante) (s 68(1)(b)); or

1403 (3) an order to which s 68(1) applies by virtue of any provision of Pt VI (ss 81-89) (as amended) (see PARAS 846-856 post) (s 68(1)(c)).

2 Ie without prejudice to any powers conferred by or under any other provision of the Road Traffic Regulation Act 1984, but subject to s 68(3) (as amended) (see note 12 infra).

3 As to the placing of traffic signs see PARA 770 note 2 ante.

4 For the meaning of 'traffic sign' see PARA 830 ante.

5 Ie authorised under the Road Traffic Regulation Act 1984 s 64 (as amended): see PARA 830 ante. For the meaning of 'prescribed type' see PARA 831 note 9 ante. For the meaning of 'authorised character' see PARA 831 note 10 ante.

6 The order must fall within ibid s 68(1)(a)-(c) (as amended): see note 1 supra. For the meaning of 'road' see PARA 206 ante.

7 For the meaning of 'traffic authority' for these purposes see PARA 831 note 1 ante. As to traffic authorities in general see PARA 731 ante.

8 Ie under the Road Traffic Regulation Act 1984 s 14 (as substituted): see PARA 755 ante.

9 Ibid s 68(2) (amended by the Road Traffic (Temporary Restrictions) Act 1991 s 1(3); and the New Roads and Street Works Act 1991 Sch 8 para 51(3)). As to the exercise of powers in respect of the width of a road see PARA 730 ante.

10 Road Traffic Regulation Act 1984 s 68(2) (as amended: see note 9 supra).

11 Ibid s 68(2)(a) (as amended: see note 9 supra).

12 Ibid s 68(2)(b) (as amended: see note 9 supra). The power conferred by s 68(2) (as amended) on such an authority is exercisable subject to and in conformity with any general directions given under s 65(1) (as substituted) (see PARA 831 ante), whether that authority is a traffic authority or not; and any other power conferred by s 65 (as amended) to give directions to a traffic authority includes power to give the like directions to such an authority: s 68(3) (amended by the New Roads and Street Works Act 1991 Sch 8 Pt II para 51(3)).

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### 835. Removal of signs.

The traffic authority<sup>1</sup> may by notice in writing require the owner or occupier of any land on which there is an object or device (whether fixed or portable) for the guidance or direction of persons using the road<sup>2</sup> to remove it<sup>3</sup>. If a person fails to comply with such a notice, the traffic authority may itself effect the removal, doing as little damage as may be<sup>4</sup>. The expenses incurred by the traffic authority in doing so are recoverable by it from the person in default, and are so recoverable summarily as a civil debt<sup>5</sup>.

The Secretary of State<sup>6</sup> may give directions to a local traffic authority<sup>7</sup> requiring the authority to remove, or cause to be removed, any traffic sign<sup>8</sup> or any such object or device<sup>9</sup>.

1 For the meaning of 'traffic authority' for these purposes see PARA 831 note 1 ante. As to traffic authorities in general see PARA 731 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 Road Traffic Regulation Act 1984 s 69(1) (s 69(1), (2), (3) amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 Pt II para 52).

4 Road Traffic Regulation Act 1984 s 69(2) (as amended: see note 3 supra).

5 Ibid s 69(2) (as amended: see note 3 supra). As to money recoverable summarily as a civil debt see MAGISTRATES vol 29(2) (Reissue) PARA 826; and as to enforcement of civil debts see MAGISTRATES vol 29(2) (Reissue) PARA 828.

6 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 For the meaning of 'local traffic authority' see PARA 731 ante.

8 For the meaning of 'traffic sign' see PARA 830 ante.

9 Road Traffic Regulation Act 1984 s 69(3) (as amended: see note 3 supra).

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### **836. Default powers of Secretary of State as to traffic signs.**

If a local traffic authority<sup>1</sup> or an authority having power to make certain orders<sup>2</sup> fails to comply with a direction<sup>3</sup>, the Secretary of State<sup>4</sup> may himself carry out the work required by the direction, and the expenses incurred by him in doing so are recoverable by him from the authority, and are so recoverable summarily as a civil debt<sup>5</sup>. Any such direction, if relating to a road<sup>6</sup>, is enforceable on the application of the Secretary of State by a mandatory order<sup>7</sup>.

1 For the meaning of 'traffic authority' for these purposes see PARA 831 note 1 ante. For the meaning of 'local traffic authority' see PARA 731 ante. As to traffic authorities in general see PARA 731 ante.

2 Ie an authority to which the Road Traffic Regulation Act 1984 s 68 (as amended) applies: see PARA 834 ante.

3 Ie any direction given under ibid s 65(2) (as amended) (see PARA 831 ante) or s 69 (as amended) (see PARA 835 ante).

4 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 Road Traffic Regulation Act 1984 s 70(1) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 53). As to money recoverable summarily as a civil debt see MAGISTRATES vol 29(2) (Reissue) PARA 826; and as to enforcement of civil debts see MAGISTRATES vol 29(2) (Reissue) PARA 828.

6 For the meaning of 'road' see PARA 206 ante.

7 Road Traffic Regulation Act 1984 s 70(2)(a). As to mandatory orders (formerly orders of mandamus) see JUDICIAL REVIEW vol 61 (2010) PARA 703 et seq.

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### **837. Power to enter land in connection with traffic signs.**

A local traffic authority<sup>1</sup> or an authority having the power to make certain orders<sup>2</sup> or the Secretary of State<sup>3</sup> may enter any land and exercise such other powers as may be necessary for the purpose of the exercise and performance of powers and duties of placing<sup>4</sup>, replacing, converting and removing traffic signs<sup>5</sup> or powers and duties<sup>6</sup> as to the removal of signs<sup>7</sup>.

1 For the meaning of 'traffic authority' for these purposes see PARA 831 note 1 ante. For the meaning of 'local traffic authority' see PARA 731 ante. As to traffic authorities in general see PARA 731 ante.

2 I.e. an authority to which the Road Traffic Regulation Act 1984 s 68 (as amended) applies: see PARA 834 ante.

3 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 As to the placing of traffic signs see PARA 770 note 2 ante.

5 For these purposes, 'traffic signs' includes signposts for footpaths (within the meaning of the Highways Act 1980: see s 329(1); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 64) and bridleways; and 'signposts' includes other signs or notices for the same purpose: Road Traffic Regulation Act 1984 s 71(2). For the meaning of 'traffic sign' generally see PARA 830 ante. For the general meaning of 'footpath' see PARA 206 ante. For the meaning of 'bridleway' see PARA 206 ante.

6 I.e. powers and duties under the Road Traffic Regulation Act 1984 s 69 (as amended): see PARA 835 ante.

7 Ibid s 71(1) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 Pt II para 54).

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### **838. Powers exercisable by parish or community councils.**

A parish or community council may, with the permission of the highway authority<sup>1</sup> and subject to any conditions imposed by that authority, provide on or near any road<sup>2</sup> other than a footpath<sup>3</sup> or bridleway<sup>4</sup>, or may contribute, either wholly or in part, towards the cost of providing on or near any such road, traffic signs<sup>5</sup> indicating<sup>6</sup>:

640 (1) a stopping place for public service vehicles<sup>7</sup>;

- 641 (2) a warning of the existence of any danger<sup>8</sup>; or  
642 (3) the name of the parish or community or of any place in it<sup>9</sup>.

A parish or community council may provide, or may contribute, either wholly or in part, towards the cost of providing, on or near any footpath or bridleway, any object or device (not being a traffic sign) for conveying to users of that footpath or bridleway a warning of the existence of danger<sup>10</sup>. No traffic sign, object or device so provided by a parish or community council in pursuance of this provision may be placed<sup>11</sup> on any land (not being a road or part of a road) without the consent of the owner and occupier of the land<sup>12</sup>. A parish or community council may warn the public of any danger in or apprehended in its area subject to the restrictions mentioned above<sup>13</sup>.

- 1 As to highway authorities see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq.
  - 2 For the meaning of 'road' see PARA 206 ante.
  - 3 For the meaning of 'footpath' see PARA 206 ante.
  - 4 For the meaning of 'bridleway' see PARA 206 ante.
  - 5 For the meaning of 'traffic sign' see PARA 830 ante.
  - 6 Road Traffic Regulation Act 1984 s 72(1). For the meaning of 'traffic authority' for these purposes see PARA 831 ante. As to traffic authorities in general see PARA 731 ante.
  - 7 Ibid s 72(1)(a). For the meaning of 'public service vehicle' see PARA 1136 post; definition applied by virtue of s 142(1) (amended by the Transport Act 1985 s 1, Sch 1 para 15).
  - 8 Road Traffic Regulation Act 1984 s 72(1)(b).
  - 9 Ibid s 72(1)(c).
  - 10 Ibid s 72(2).
  - 11 As to the placing of traffic signs see PARA 770 note 2 ante.
  - 12 Road Traffic Regulation Act 1984 s 72(3). Nothing in s 72 prejudices the exercise by the highway authority or the Secretary of State of powers under s 69 (see PARA 835 ante); but where any such object or device as is mentioned in s 69(1) (as amended) is an object or device provided by a parish or community council in pursuance of s 72, and so provided on land which the council neither owns nor occupies, the powers conferred on the highway authority by s 69(1) (as amended) are exercisable in relation to the council and not in relation to the owner or occupier of the land: s 72(4). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- For the purpose of complying with a notice under s 69(1) (as amended) which, by virtue of s 72(4), requires a parish or community council to remove an object or device, the council may enter any land and exercise such other powers as may be necessary for that purpose: s 72(5).
- 13 Ibid s 72(6).

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### **839. Advances by Secretary of State towards expenses of traffic signs.**

The Secretary of State<sup>1</sup> may, out of moneys provided by Parliament, make advances towards any expenses incurred by a council in the discharge of any obligation imposed on it, by or under certain statutory provisions<sup>2</sup>, in relation to the erection<sup>3</sup>, maintenance, alteration or removal of traffic signs<sup>4</sup>. Such an advance may be either by way of grant or by way of loan or partly in the one way and partly in the other, and must be upon such terms and subject to such conditions as the Secretary of State thinks fit<sup>5</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 The Road Traffic Regulation Act 1984 s 79 (as amended) applies to all the provisions of the Road Traffic Regulation Act 1984 except s 72 (see PARA 838 ante), s 74 (as amended) (see PARA 841 post) and s 75 (as amended) (see PARA 845 post): s 79(2).

3 As to erection of traffic signs see PARA 770 note 2 ante. For the meaning of 'traffic sign' see PARA 830 ante.

4 Road Traffic Regulation Act 1984 s 79(1). The power of the Secretary of State under s 79 (as amended) to make advances towards expenses incurred in relation to traffic signs is to be exercisable with respect to any expenses incurred under s 68 (as amended) (see PARA 834 ante) by an authority to which s 68 (as amended) applies or by a local traffic authority: s 79(5) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 57). As to traffic authorities see PARAS 731-735 ante.

5 Road Traffic Regulation Act 1984 s 79(3).

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## **(ii) Provisions as to Greater London**

### **840. Powers and duties of authorities in Greater London in respect of traffic signs.**

In connection with certain orders<sup>1</sup> made or proposed by it, Transport for London<sup>2</sup>, the council of a London borough or the Common Council of the City of London<sup>3</sup> may, as respects any road<sup>4</sup> for which it is the traffic authority<sup>5</sup> affix any traffic sign<sup>6</sup> to any lamp post or other structure in the highway<sup>7</sup>, whether or not belonging to Transport for London or the council<sup>8</sup>. In connection with any GLA road<sup>9</sup>, Transport for London may: (1) exercise as respects any road in Greater London which is neither a trunk road<sup>10</sup> nor a GLA road, any powers exercisable by the traffic authority for that road in connection with the placing of traffic signs<sup>11</sup> on or near that road<sup>12</sup>; and (2) affix any such sign to any lamp post or other structure in the highway, whether or not belonging to Transport for London<sup>13</sup>. As respects any traffic sign lawfully in place in Greater London which is required in connection with an order<sup>14</sup>, it is the duty of the appropriate traffic authority<sup>15</sup> to take such steps to maintain, and to make such alteration of, that sign as may be necessary or expedient in connection with any relevant order<sup>16</sup>, and to remove the sign if it ceases to be required in connection with the order<sup>17</sup>.

1 I.e. an order made under the Road Traffic Regulation Act 1984 s 6 (as amended) (see PARA 747 ante) or s 9 (as amended) (see PARA 751 ante).

2 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

3 As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

4 For the meaning of 'road' see PARA 206 ante.

5 For the meaning of 'traffic authority' for these purposes see PARA 831 note 1 ante. As to traffic authorities in general see PARA 731 ante; and see PARA 844 post.

6 For the meaning of 'traffic sign' see PARA 830 ante.

7 As to highways generally see HIGHWAYS, STREETS AND BRIDGES.

8 Road Traffic Regulation Act 1984 s 73(1) (substituted by the Local Government Act 1985 ss 8(1), 102(2), Sch 5 para 4(26), Sch 17; and amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 Pt II para 55; and the Greater London Authority Act 1999 ss 273, 423, Sch 34 Pt VI). As to the exercise of powers in respect of the width of a road see PARA 730 ante.

9 As to the meaning of 'GLA road' see PARA 726 note 6 ante.

10 For the meaning of 'trunk road' see PARA 726 note 8 ante.

11 As to the placing of traffic signs see PARA 770 note 2 ante.

12 Ie in pursuance of the Road Traffic Regulation Act 1984 s 65 (as amended) (see PARA 831 ante): s 73(1A) (a) (s 73(1A)-(1C) added by the Greater London Authority Act 1999 s 273(1), (3)).

13 Road Traffic Regulation Act 1984 s 73(1A)(b) (as added: see note 12 supra). The powers conferred by s 73(1A) (as added) are exercisable: (1) in connection with any order under s 6 (as amended) (see PARA 747 ante) or s 9 (as amended) (see PARA 751 ante) made or proposed to be made by Transport for London; or (2) in any other circumstances: s 73(1B) (as so added). Before exercising the power given by s 73(1A) (as added), Transport for London must consult the traffic authority for the road on or near which Transport for London proposes to place the traffic sign: s 73(1C) (as so added).

The powers of Transport for London under s 73(1A) (as added) by virtue of s 73(1B)(b) (as added) extend to the removal or repositioning of any traffic sign on or near the road in question, whether placed by Transport for London or not: s 73(6) (s 73(6)-(8) added by the Greater London Authority Act 1999 s 273(1), (6)). On the removal or repositioning by Transport for London of any such sign placed by another authority, the traffic sign will vest in Transport of London: Road Traffic Regulation Act 1984 s 73(7) (as so added).

Except with the consent of Transport for London or in pursuance of a direction under s 65(2) (as amended) (see PARA 831 ante), the traffic authority for the road must not remove, alter or interfere with any traffic signs placed by Transport for London by virtue of s 73(1B) (as added): s 73(8) (as so added).

14 Ie an order under *ibid* s 6 (as amended) (see PARA 747 ante) or an order under s 9 (as amended) (see PARA 751 ante).

15 *Ibid* s 73(2) (amended by the Local Government Act 1985 s 8(1), Sch 5 para 4(26)(b); and the Greater London Authority Act 1999 s 273(1), (4)). For these purposes, the 'appropriate traffic authority' in the case of any traffic sign, is the authority which is the traffic authority for the road as respects which the order under s 6 (as amended) (see PARA 747 ante) or s 9 (as amended) (see PARA 751 ante) is made in connection with which the traffic sign is required: s 73(2A) (added by the Greater London Authority Act 1999 s 273(1), (5)).

16 Road Traffic Regulation Act 1984 s 73(2)(a). For these purposes, 'relevant order' in relation to a traffic sign means an order under s 6 (as amended) (see PARA 747 ante) or s 9 (as amended) (see PARA 751 ante) in connection with which the traffic sign is required: s 73(2).

17 *Ibid* s 73(2)(b). The order referred to in the text is an order under s 6 (as amended) (see PARA 747 ante) or s 9 (as amended) (see PARA 751 ante): see note 16 supra.

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## **841. Fixing of traffic signs to walls.**

For the purpose of placing<sup>1</sup> traffic signs<sup>2</sup> on or near any road<sup>3</sup> in its area<sup>4</sup>, Transport for London<sup>5</sup> and the council of a London borough each has power<sup>6</sup> to affix a traffic sign to any external wall

of a building<sup>7</sup> having a frontage to, or constructed over, any such road<sup>8</sup>. A council may not affix a traffic sign to the external wall of a building without the consent of the owner<sup>9</sup> of the building<sup>10</sup>. Where in the opinion of a London borough council any consent required<sup>11</sup> is unreasonably withheld, the council may apply to the appropriate authority<sup>12</sup>, who may either allow the affixing of the traffic sign subject to such conditions, if any, as to rent or otherwise as the appropriate authority thinks fit, or disallow the affixing of the traffic sign<sup>13</sup>.

Where any traffic sign has been so affixed by a council to a building:

- 643 (1) the council has the right, as against any person having an interest in the building, to alter or remove it, or to repair or maintain it<sup>14</sup>; but
- 644 (2) the owner of the building must give the council not less than 14 days' notice requiring it at its own expense temporarily to remove the sign where necessary during any reconstruction or repair of the building<sup>15</sup>.

If any person suffers damage by or in consequence of the affixing of a traffic sign by a council, or by or in consequence of the exercise by a council of rights mentioned in head (1) above<sup>16</sup>, he is entitled to be paid by the council such compensation as may be agreed with the council, or in default of agreement, determined by arbitration<sup>17</sup>.

1 As to the placing of traffic signs see PARA 770 note 2 ante.

2 For these purposes, 'traffic sign' includes any apparatus required for the illumination of a traffic sign which forms part of the sign: Road Traffic Regulation Act 1984 s 74(9).

3 For the meaning of 'road' see PARA 206 ante.

4 In pursuance of the Road Traffic Regulation Act 1984 s 65 (as amended) (see PARA 831 ante), s 68 (as amended) (see PARA 834 ante) or s 73 (as amended) (see PARA 840 ante).

5 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

6 This provision is stated to be subject to the provisions of the Road Traffic Regulation Act 1984 s 74(2)-(7), which apply in relation to Transport for London as they apply in relation to a London borough council (s 74(1A) (added by the Greater London Authority Act 1999 s 274(1), (3))); however, the Road Traffic Regulation Act 1984 s 74(2) has been repealed by the Local Government Act 1985 s 102, Sch 17.

7 For these purposes, 'building' includes a structure and a bridge or aqueduct over a street: Road Traffic Regulation Act 1984 s 74(9).

8 Ibid s 74(1) (amended by the Local Government Act 1985 ss 8, 102, Sch 5 para 4, Sch 17; and the Greater London Authority Act 1999 s 274(1), (2)(a), (b)). The Road Traffic Regulation Act 1984 s 74(1) (as amended) has effect subject to the Ancient Monuments and Archaeological Areas Act 1979 s 2 (as amended) (under which scheduled monument consent is required for the execution of certain works affecting scheduled monuments: see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1010 et seq): Road Traffic Regulation Act 1984 s 74(7).

Nothing in s 74 (as amended) can derogate from the powers of Transport for London or the council of a London borough to enter on land for the placing of traffic signs in pursuance of s 71 (as amended) (see PARA 837 ante) or to carry out work for the improvement of a highway in pursuance of the Highways Act 1980 s 62 (as amended) (general power of improvement: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 484): Road Traffic Regulation Act 1984 s 74(8) (amended by the Local Government Act 1985 s 102, Sch 17; and the Greater London Authority Act 1999 s 274(1), (4)).

9 For these purposes, 'owner', in relation to a building occupied under a tenancy for a term of years of which five years or more remain unexpired, means the occupier of the building; and in relation to any other building, means the person for the time being receiving the rackrent of the building, whether on his own account or as agent or trustee for any other person, or who would so receive it if the building were let at a rackrent: Road Traffic Regulation Act 1984 s 74(9).

10 Ibid s 74(3).

11 In any consent required under ibid s 74(3).



12 For these purposes, 'appropriate authority' means a magistrates' court, except that, in relation to certain buildings it means the specified minister: see *ibid* s 74(9), Sch 5 (amended by the Coal Industry Act 1987 s 1(3); the Water Act 1989 s 190(1), Sch 25 para 69; the Coal Industry Act 1994 ss 67(1), (8), 68(3), Sch 9 para 30, Sch 11 Pt IV; the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Schedule; and the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626, art 20, Sch 2 para 11). 'Magistrates' court' has the same meaning as in the Magistrates' Courts Act 1980 (see *MAGISTRATES* vol 29(2) (Reissue) PARA 583): Road Traffic Regulation Act 1984 s 142(1) (amended by the Access to Justice Act 1999 s 76(2), Sch 10 para 38). As to the Secretary of State see PARA 236 ante.

13 Road Traffic Regulation Act 1984 s 74(4) (amended by the Local Government Act 1985 s 102, Sch 17).

14 Road Traffic Regulation Act 1984 s 74(5)(a).

15 *Ibid* s 74(5)(b).

16 Ie the rights conferred by *ibid* s 74(5)(a): see the text and note 14 *supra*.

17 *Ibid* s 74(6).

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## 842. London borough councils and the London traffic control system.

If a London borough council requests Transport for London<sup>1</sup> to provide any new traffic light installations<sup>2</sup> for a road in Greater London<sup>3</sup> which is neither a GLA road<sup>4</sup> nor a trunk road<sup>5</sup>, Transport for London must approve and carry out the work unless it considers that there are reasonable grounds for refusing to do so<sup>6</sup>. If Transport for London and a London borough council so agree, Transport for London may make a scheme transferring to the council<sup>7</sup> any part of the London traffic control system<sup>8</sup> and the power to maintain and operate that part of the system<sup>9</sup>. A London borough council may, with the approval of Transport for London, buy, own, maintain and operate new traffic light installations for any road in the borough other than a trunk road<sup>10</sup>. Any exercise of such powers<sup>11</sup> is subject to the agreement of financial arrangements between Transport for London and the council concerned<sup>12</sup>.

Before Transport for London:

- 645 (1) changes the operating cycle, or the timing of the operating cycle, of any traffic light installations provided on a road in Greater London which is neither a GLA road nor a trunk road<sup>13</sup>; or
- 646 (2) provides new traffic light installations for such a road<sup>14</sup>,

it must consult the council of the London borough in which the installations are or are to be provided<sup>15</sup>.

1 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

2 For the purposes of the Road Traffic Regulation Act 1984 s 74A (as added), 'traffic light installations' means: (1) traffic signs which are light signals for controlling the movement of vehicular traffic or of pedestrians; or (2) any installations or apparatus used in connection with the operation of any such traffic signs: s 74A(7) (s 74A added by the Greater London Authority Act 1999 s 276).

3 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

4 As to the meaning of 'GLA road' see PARA 726 note 6 ante.

5 For the meaning of 'trunk road' see PARA 726 note 8 ante.

6 Road Traffic Regulation Act 1984 s 74A(1) (as added: see note 2 supra). For these purposes: (1) the City of London is to be treated as if it were a London borough (s 74A(8)(a) (as so added)); (2) the Common Council of the City of London is to be treated as if it were the council for a London borough (s 74A(8)(b) (as so added)); and (3) the Inner Temple and the Middle Temple are to be treated as forming part of the City of London (s 74A(8)(c) (as so added)).

7 Ibid s 74A(2) (as added: see note 2 supra).

8 Ibid s 74A(2)(a) (as added: see note 2 supra). For the purposes of s 74A (as added), 'London traffic control system' means the traffic control system which Transport for London has power to operate by virtue of the functions transferred to it: (1) by the Greater London Authority Act 1999 s 275 (transfer of London traffic control system to Transport for London); or (2) by a scheme under the Road Traffic Regulation Act 1984 s 74B(1) (as added) or s 74B(3) (as added) transferring functions of the Secretary of State to Transport for London: s 74A(7) (as so added). For the purposes of s 74A (as added), 'traffic control system' means a system for controlling the movement of vehicular traffic or of pedestrians by means of traffic light installations: s 74A(7) (as so added). As to the Secretary of State see PARA 236 ante.

9 Ibid s 74A(2)(b) (as added: see note 2 supra). Where the powers conferred by s 74A(2) (as added) are exercised, the London borough council concerned is to be, as respects the traffic signs comprised in the part of the London traffic control system transferred by the scheme under s 74A(2) (as added), treated (to the exclusion of Transport for London) as the traffic authority for all roads in Greater London (other than trunk roads) on or near which those traffic signs are placed: see s 74A(4)(a) (as so added). As to traffic authorities see PARAS 731-735 ante; and see PARA 844 post.

10 Ibid s 74A(3) (as added: see note 2 supra). Where the powers conferred by s 74A(3) (as added) are exercised, the London borough council concerned is to be, as respects the traffic signs comprised in the traffic light installations referred to in s 74A(3) (as added), treated (to the exclusion of Transport for London) as the traffic authority for all roads in Greater London (other than trunk roads) on or near which those traffic signs are placed: see s 74A(4)(b) (as so added).

11 Ie any exercise of powers conferred by ibid s 74A(1)-(3) (as added): see the text and notes 1-10 supra.

12 Ibid s 74A(5) (as added: see note 2 supra).

13 Ibid s 74A(6)(a) (as added: see note 2 supra).

14 Ibid s 74A(6)(b) (as added: see note 2 supra).

15 Ibid s 74A(6) (as added: see note 2 supra).

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### **843. Transfer of traffic control systems between Secretary of State and Transport for London.**

If the Secretary of State<sup>1</sup> and Transport for London<sup>2</sup> so agree, the Secretary of State may make a scheme transferring to Transport for London<sup>3</sup>: (1) the traffic control system<sup>4</sup> for a trunk road<sup>5</sup> in Greater London<sup>6</sup>; and (2) the power to maintain and operate that system<sup>7</sup>. If Transport for London and the Secretary of State so agree, Transport for London may make a scheme transferring to the Secretary of State<sup>8</sup>: (a) the London traffic control system<sup>9</sup>; and (b) the power to maintain and operate that system<sup>10</sup>. If, in a case where a traffic control system has been transferred<sup>11</sup>, the transferee and the transferor so agree, the transferee may make a scheme transferring back to the transferor the system and the power to maintain and operate it<sup>12</sup>.

Such a scheme<sup>13</sup> may make provision for the transferee to be treated (to the exclusion of the transferor), as respects the traffic signs<sup>14</sup> comprised in the traffic control system transferred, as the traffic authority<sup>15</sup> for specified roads in Greater London on or near which those traffic signs are placed<sup>16</sup>.

Any exercise of the powers conferred<sup>17</sup> is subject to the agreement of financial arrangements between the Secretary of State and Transport for London<sup>18</sup>.

- 1 As to the Secretary of State see PARA 236 ante.
- 2 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.
- 3 Road Traffic Regulation Act 1984 s 74B(1) (s 74B added by the Greater London Authority Act 1999 s 277).
- 4 For the meaning of 'traffic control system' see PARA 842 note 8 ante; definition applied by s 74B(7) (as added). Any reference in the Road Traffic Regulation Act 1984 s 74B (as added) to a traffic control system includes a reference to part of a traffic control system: s 74B(6) (as added: see note 3 supra).
- 5 For the meaning of 'trunk road' see PARA 726 note 8 ante.
- 6 Road Traffic Regulation Act 1984 s 74B(1)(a) (as added: see note 3 supra). As to the transfer to Transport for London of responsibility for the traffic control system in relation to other roads see the Greater London Authority Act 1999 s 275.
- 7 Road Traffic Regulation Act 1984 s 74B(1)(b) (as added: see note 3 supra).
- 8 Ibid s 74B(2) (as added: see note 3 supra).
- 9 Ibid s 74B(2)(a) (as added: see note 3 supra). For the meaning of 'London traffic control system' see PARA 842 note 8 ante; definition applied by s 74B(7) (as added).
- 10 Ibid s 74B(2)(b) (as added: see note 3 supra).
- 11 Ie transferred under ibid s 74B (as added).
- 12 Ibid s 74B(3) (as added: see note 3 supra).
- 13 Ie a scheme under ibid s 74B(1)-(3) (as added): see the text and notes 1-12 supra.
- 14 For the meaning of 'traffic sign' see PARA 830 ante.
- 15 As to traffic authorities see PARAS 731-735 ante; and see PARA 844 post.
- 16 Road Traffic Regulation Act 1984 s 74B(4) (as added: see note 3 supra).
- 17 Ie conferred by ibid s 74B(1)-(3) (as added).
- 18 Ibid s 74B(5) (as added: see note 3 supra).

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#### **844. The traffic authority for traffic signs.**

In the application of certain statutory provisions<sup>1</sup> to traffic signs<sup>2</sup> in Greater London which are light signals for controlling the movement of vehicular traffic or of pedestrians, Transport for London is at all times to be deemed to be the traffic authority<sup>3</sup> for all roads in Greater London other than trunk roads<sup>4</sup>.

1 The Road Traffic Regulation Act 1984 s 74C (as added) has effect for the purposes of s 65 (as amended) (see PARA 831 ante), s 73 (as amended) (see PARA 840 ante), s 74 (as amended) (see PARA 841 ante), s 74A (as added) (see PARA 842 ante), s 74B (as added) (see PARA 843 ante), s 75 (as amended) (see PARA 845 post): s 74C(1) (added by the Greater London Authority Act 1999 s 278).

2 For the meaning of 'traffic sign' see PARA 830 ante; and see PARA 842 ante.

3 As to traffic authorities see PARAS 731-735 ante.

4 Road Traffic Regulation Act 1984 s 74C(2) (as added: see note 1 supra). Without prejudice to the powers of the traffic authority for the road in question, Transport for London is also to be deemed to be the traffic authority for any road in Greater London for which it is not in fact the traffic authority for the purposes of the exercise by it as respects that road under s 73(1A) (as added) (see PARA 840 ante) of any powers exercisable by the traffic authority for that road: s 74C(3) (as so added).

The provisions of s 74C(2), (3) (as added) are subject to any provision to the contrary made by or under s 74A (as added) (see PARA 842 ante) or s 74B (as added) (see PARA 843 ante): s 74C(4) (as so added).

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#### **845. Provisions applicable in City of London.**

For the purpose of placing<sup>1</sup> traffic signs<sup>2</sup> on or near any road<sup>3</sup> in the City of London<sup>4</sup> or any apparatus required for illumination forming part of any such sign, the Corporation<sup>5</sup>, has power to affix any such sign or apparatus to the external wall of any building fronting any such road<sup>6</sup>. However, this does not authorise the Corporation, without the consent of the Secretary of State<sup>7</sup>, to affix any traffic sign or apparatus forming part of any such sign to<sup>8</sup>:

- 647 (1) any building for the time being included in a list published by the Secretary of State under any enactments for the time being in force with respect to ancient monuments<sup>9</sup>; or
- 648 (2) any building for the time being included in a list of buildings of special architectural or historic interest compiled by the Secretary of State<sup>10</sup> not being a building to which head (1) above applies<sup>11</sup>.

1 As to the placing of traffic signs see PARA 770 note 2 ante.

2 For the meaning of 'traffic sign' see PARA 830 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 Ie placing signs in pursuance of the Road Traffic Regulation Act 1984 s 65 (as amended): para 831 ante.

5 For these purposes, 'the Corporation' means the Mayor and commonalty and citizens of the City of London acting by the Common Council: *ibid* s 75(5).

6 *Ibid* s 75(1). This is expressed to be subject to s 75(2) and s 75(3) (as amended) (see the text and notes 7-11 *infra*). The City of London (Various Powers) Act 1900 s 53 (as amended) (which, in relation to things affixed for the public lighting of streets, provides for compensation for injury and makes special provision as to railway property and Crown property) applies in relation to the affixing of any traffic sign or apparatus under the Road Traffic Regulation Act 1984 s 75(1) as it applies to the affixing of brackets, wires, pipes, lamps and apparatus for the public lighting of streets, and so applies as if in the City of London (Various Powers) Act 1900 s 53 (as amended), 'street' included any road within the meaning of the Road Traffic Regulation Act 1984: s 75(2).

7 As to the Secretary of State see PARA 236 ante.

8 Road Traffic Regulation Act 1984 s 75(3).

9 Ibid s 75(3)(a).

10 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1: see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1092.

11 Ibid s 75(3)(b) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 64(1)). The Road Traffic Regulation Act 1984 s 75(3) (as amended) is without prejudice to the Ancient Monuments and Archaeological Areas Act 1979 s 2 (as amended) (under which scheduled monument consent is required for the execution of certain works affecting scheduled monuments: see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1010 et seq): Road Traffic Regulation Act 1984 s 75(4).

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## **(6) SPEED LIMITS**

### **846. In general.**

The statutory limits of the speed at which motor vehicles<sup>1</sup> may lawfully be driven on roads<sup>2</sup> are additional to limits at which vehicles may lawfully be driven as regards civil liability for negligence or driving offences under the Road Traffic Act 1988<sup>3</sup>. The statutory limits relate to different types of roads (restricted roads<sup>4</sup>, special roads<sup>5</sup> and other classes of roads<sup>6</sup>) and different types of vehicles<sup>7</sup>. Provision has been made by the Transport Act 2000 as to quiet lanes and home zones, in which the speed of motor vehicles maybe restricted<sup>8</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 Ie the Road Traffic Act 1988 Pt I (ss 1-40) (as amended).

4 For the meaning of 'restricted road' see PARA 847 post. For the speed limit on restricted roads see PARA 847 post.

5 As to the meaning of 'special road' see PARA 764 note 1 ante. For the speed limit on special roads see PARA 764 ante.

6 For the speed limit on other classes of road see PARA 848 post.

7 For speed limits relating to different types of vehicles see PARA 850 post.

8 See the Transport Act 2000 s 268; and PARA 857 post.

## **UPDATE**

### **846 In general**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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#### 847. General speed limit for restricted roads.

It is not lawful for a person to drive<sup>1</sup> a motor vehicle<sup>2</sup> on a restricted road at a speed exceeding 30 miles per hour<sup>3</sup>. For these purposes, a road is restricted<sup>4</sup> if there is provided on it a system of street lighting furnished by means of lamps placed not more than 200 yards apart<sup>5</sup>. The traffic authority<sup>6</sup> for a road<sup>7</sup> may direct that a road which is a restricted road<sup>8</sup> is to cease to be a restricted road<sup>9</sup>, or that a road which is not a restricted road<sup>10</sup> is to become a restricted road<sup>11</sup>.

A special road is not a restricted road<sup>12</sup> on or after the date declared by the traffic authority, by notice published in the prescribed manner<sup>13</sup>, to be the date on which the special road<sup>14</sup>, or the relevant part of the special road, is open for use as a special road<sup>15</sup>.

1 For the meaning of 'drive' see PARA 207 ante.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 Road Traffic Regulation Act 1984 s 81(1). The Secretary of State may by order made by statutory instrument and approved by a resolution of each House of Parliament increase or reduce the rate of speed fixed by s 81(1), either as originally enacted or as varied under s 81(2): s 81(2). At the date at which this volume states the law no such order had been made. Any power which is exercisable in relation to any road under s 81, otherwise than by virtue of s 125 (as amended) (see PARA 730 ante), is exercisable with respect to the whole or any part of the width of the road: s 126. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 I.e. subject to the provisions of *ibid* s 82 (as amended) and s 84(3) (as amended) (see PARA 848 note 5 post).

5 *Ibid* s 82(1)(a) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 59). Minor excesses over the distance of 200 yards have been held not to cause the road to be other than a restricted road: *Briere v Hailstone* (1968) 112 Sol Jo 767, [1969] Crim LR 36 (where the excess was 18 inches); *Spittle v Kent County Constabulary* [1986] RTR 142, DC (where the excess was 12 yards).

6 As to traffic authorities see PARAS 731-735 ante.

7 For the meaning of 'road' see PARA 206 ante.

8 I.e. a restricted road for the purposes of the Road Traffic Regulation Act 1984 s 81 (see the text and notes 1-3 supra).

9 *Ibid* s 82(2)(a) (s 82(2) amended by the New Roads and Street Works Act 1991 Sch 8 para 59). The text refers to a road ceasing to be a restricted road for the purposes of the Road Traffic Regulation Act 1984 s 81 (see the text and notes 1-3 supra): s 82(2)(a) (as so amended).

10 I.e. for the purposes of *ibid* s 81 (see the text and notes 1-3 supra).

11 *Ibid* s 82(2)(b) (as amended: see note 9 supra). As to the exercise of powers under s 82(2) (as amended) in respect of the width of a road see PARA 730 ante. A direction under s 82(2) (as amended) by the Secretary of State is to be given by means of an order made by the Secretary of State after giving public notice of his intention to make an order: s 83(1) (amended by the New Roads and Street Works Act 1991 Sch 8 para 60(2)).

A direction under the Road Traffic Regulation Act 1984 s 82(2) (as amended) by a local traffic authority is to be given by means of an order made by the authority: s 83(2) (substituted by the New Roads and Street Works Act 1991 Sch 8 para 60(3)). The power to make an order under the Road Traffic Regulation Act 1984 s 83(2) (as substituted) is also exercisable by the Secretary of State: see PARA 736 ante. Any power of the Secretary of State to make an order under or by virtue of s 83 (as amended) is exercisable by statutory instrument: s 124(2). Orders made under s 83(2) (as substituted) are local in nature, and are not recorded in this work. Section 68(1)

(c) (see PARA 834 note 1 ante) applies to any order made under s 83(2) (as substituted): s 83(3). For the meaning of 'local traffic authority' see PARA 731 ante.

Any power which is exercisable in relation to any road under s 83 (as amended), otherwise than by virtue of s 125 (as amended) (see PARA 730 post), is exercisable with respect to the whole or any part of the width of the road: s 126.

12 le for the purposes of the Road Traffic Regulation Act 1984 s 81 (see the text and notes 1-3 supra).

13 For the meaning of 'prescribed' see PARA 735 note 3 ante.

14 As to the meaning of 'special road' see PARA 764 note 1 ante.

15 Road Traffic Regulation Act 1984 s 82(3) (substituted by the New Roads and Street Works Act 1991 Sch 8 para 59).

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#### **848. Speed limits on roads other than restricted roads.**

An order made<sup>1</sup> as respects any road<sup>2</sup> may prohibit:

- 649 (1) the driving<sup>3</sup> of motor vehicles<sup>4</sup> on that road at a speed exceeding that specified in the order<sup>5</sup>;
- 650 (2) the driving of motor vehicles on that road at a speed exceeding that specified in the order during periods specified in the order<sup>6</sup>; or
- 651 (3) the driving of motor vehicles on that road at a speed exceeding the speed for the time being indicated by traffic signs<sup>7</sup> in accordance with the order<sup>8</sup>.

An order made by virtue of head (3) above may make provision restricting the speeds that may be indicated by traffic signs or the periods during which the indications may be given<sup>9</sup>, and provide for the indications to be given only in such circumstances as may be determined by or under the order<sup>10</sup>. However, any such order must comply with regulations made under heads (a) to (c) below<sup>11</sup>, except where the Secretary of State<sup>12</sup> authorises otherwise in a particular case<sup>13</sup>. The Secretary of State may make regulations governing the provision which may be made by orders of local authorities under head (3) above<sup>14</sup>, and any such regulations may in particular<sup>15</sup>:

- 652 (a) prescribe the circumstances in which speed limits may have effect by virtue of an order<sup>16</sup>;
- 653 (b) prescribe the speed limits which may be specified in an order<sup>17</sup>; and
- 654 (c) make transitional provision and different provision for different cases<sup>18</sup>.

1 le under the Road Traffic Regulation Act 1984 s 84(1) (as substituted): see the text and notes 2-8 infra.

The power to make an order under s 84(1) (as substituted) is exercisable by the traffic authority, who must before exercising it give public notice of its intention to do so: s 84(2) (substituted by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 61). As to traffic authorities see PARAS 731-735 ante.

Any power which is exercisable in relation to any road under the Road Traffic Regulation Act 1984 s 84 (as amended), otherwise than by virtue of s 125 (as amended) (see PARA 730 ante), is exercisable with respect to the whole or any part of the width of the road: s 126. As to the exercise of powers under s 84 (as amended) in respect of the width of a road see PARA 730 ante.

Section 68(1)(c) (see PARA 834 note 1 ante) applies to any order made under s 84(1) (as substituted): s 84(5).

Orders made under s 84(1) (as substituted) are local in nature, and are not recorded in this work.

2 For the meaning of 'road' see PARA 206 ante. Ibid s 84 (as amended) does not apply to any part of a special road which is open for use as a special road: s 84(4). Speed limits on special roads are imposed by regulations made by the Secretary of State under s 17(2) (as amended): see PARA 764 ante. As to the meaning of 'special road' see PARA 764 note 1 ante.

3 For the meaning of 'driving' see PARA 207 ante.

4 For the meaning of 'motor vehicle' see PARA 210 ante.

5 Road Traffic Regulation Act 1984 s 84(1)(a) (s 84(1) substituted by the Road Traffic Act 1991 s 45). While an order made by virtue of the Road Traffic Regulation Act 1984 s 84(1)(a) (as substituted) is in force as respects a road, that road is not a restricted road for the purposes of s 81 (see PARA 847 ante): s 84(3) (amended by the Road Traffic Act 1991 s 45(1), (3)). As to restricted roads see PARA 847 ante.

6 Road Traffic Regulation Act 1984 s 84(1)(b) (as substituted: see note 5 supra). See note 8 infra.

7 For the meaning of 'traffic sign' see PARA 830 ante.

8 Road Traffic Regulation Act 1984 s 84(1)(c) (as substituted: see note 5 supra). Any reference in a local Act to roads subject to a speed limit must, unless the contrary intention appears, be treated as not including a reference to roads subject to a speed limit imposed only by virtue of s 84(1)(b) (as substituted) (see the text and note 6 supra) or s 84(1)(c) (as substituted): s 84(6) (added by the Road Traffic Act 1991 s 45).

9 Road Traffic Regulation Act 1984 s 84(1A)(a) (s 84(1A), (1B) added by the Road Traffic Act 1991 s 45).

10 Road Traffic Regulation Act 1984 s 84(1A)(b) (as added: see note 9 ante).

11 Ie under ibid s 84(1B) (as added) (see the text and notes 14-18 infra).

12 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. Any power of the Secretary of State to make an order under or by virtue of ibid s 84 (as amended) is exercisable by statutory instrument: s 124(2). Orders made under s 84 (as amended) are local in nature, and are not recorded in this work.

13 Ibid s 84(1A) (as added: see note 9 ante).

14 Ie ibid s 84(1)(c) (as substituted) (see the text and note 8 supra).

15 Ibid s 84(1B) (as added: see note 9 supra). As to the making of regulations generally see PARA 720 ante.

16 Ibid s 84(1B)(a) (as added: see note 9 supra).

17 Ibid s 84(1B)(b) (as added: see note 9 supra).

18 Ibid s 84(1B)(c) (as added: see note 9 supra).

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### **849. Traffic signs for indicating speed restrictions.**

For the purpose of securing that adequate guidance is given to drivers<sup>1</sup> of motor vehicles<sup>2</sup> as to whether any, and if so what, limit of speed is to be observed on any road<sup>3</sup>, it is the duty of the Secretary of State<sup>4</sup>, in the case of a road for which he is the traffic authority<sup>5</sup>, to erect<sup>6</sup> and maintain traffic signs<sup>7</sup> in such positions as may be requisite for that purpose<sup>8</sup>. In the case of any other road, it is the duty of the local traffic authority<sup>9</sup> to erect and maintain traffic signs in such



positions as may be requisite in order to give effect to general or other directions given by the Secretary of State for that purpose<sup>10</sup>, and to alter or remove traffic signs as may be requisite in order to give effect to such directions, either in consequence of the making of an order by the Secretary of State or otherwise<sup>11</sup>. If a local traffic authority makes default in executing any works required for the performance of that duty<sup>12</sup>, the Secretary of State may himself execute the works; and the expense incurred by him in doing so is recoverable by him from the local authority summarily as a civil debt<sup>13</sup>.

Where by regulations made under provisions relating to traffic regulation on special roads<sup>14</sup> a limit of speed is to be observed, then, if it is to be observed<sup>15</sup>:

- 655 (1) on all special roads<sup>16</sup>; or
- 656 (2) on all special roads provided for the use of particular classes of traffic<sup>17</sup>; or
- 657 (3) on all special roads other than special roads of such description as may be specified in the regulations<sup>18</sup>; or
- 658 (4) as mentioned in head (1), (2) or (3) above, except for such lengths of special road as may be so specified<sup>19</sup>,

this provision<sup>20</sup> does not apply in relation to that limit (but without prejudice to its application in relation to any lower limit of maximum speed or, as the case may be, any higher limit of minimum speed, required by any such regulations to be observed on any specified length of any specified special road)<sup>21</sup>.

1 For the meaning of 'driver' see PARA 207 ante.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 As to traffic authorities see PARAS 731-735 ante.

6 For the meaning of 'erection of traffic signs' see PARA 770 note 2 ante.

7 For the meaning of 'traffic sign' see PARA 830 ante.

8 Road Traffic Regulation Act 1984 s 85(1) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 62; and the Road Traffic Act 1991 ss 48, 83, Sch 4 para 30, Sch 8).

9 Road Traffic Regulation Act 1984 s 85(2) (s 85(2) amended by the New Roads and Street Works Act 1991 Sch 8 para 62; and the Road Traffic Act 1991 Sch 4 para 30, Sch 8). For the meaning of 'local traffic authority' see PARA 731 ante.

10 Road Traffic Regulation Act 1984 s 85(2)(a) (as amended: see note 9 supra).

11 Ibid s 85(2)(b) (as amended: see note 9 supra). Where no such system of street or carriageway lighting as is mentioned in s 82(1) (as amended) (see PARA 847 ante) is provided on a road, but a limit of speed is to be observed on the road, a person is not to be convicted of driving a motor vehicle on the road at a speed exceeding the limit, unless the limit is indicated by means of such traffic signs as are mentioned in s 85(1) (as amended) or s 85(2) (as amended): s 85(4) (amended by the New Roads and Street Works Act 1991 Sch 8 para 62). For the meaning of 'driving' see PARA 207 ante.

In any proceedings for a contravention of the Road Traffic Regulation Act 1984 s 81 (see PARA 847 ante), where the proceedings relate to driving on a road provided with such a system of street or carriageway lighting, evidence of the absence of traffic signs displayed in pursuance of s 85 (as amended) to indicate that the road is not a restricted road for the purposes of s 81 is evidence that the road is a restricted road for those purposes: s 85(5) (amended by the New Roads and Street Works Act 1991 Sch 8 para 62). For the meaning of 'restricted roads' see PARA 847 ante.

The power to give general directions under the Road Traffic Regulation Act 1984 s 85(2) (as amended) is exercisable by statutory instrument: s 85(7). The Traffic Signs General Directions 2002 (set out in the Traffic Signs Regulations and General Directions 2002, SI 2002/3113 (amended by SI 2003/393; SI 2003/2155; SI 2004/1275; SI 2004/3168; SI 2005/1670; SI 2005/2929; SI 2005/3225; SI 2006/2083)) have been made partly under the Road Traffic Regulation Act 1984 s 85(2) (as amended).

12    Ie the duty imposed by ibid s 85(2) (as amended): see the text and notes 9-11 *supra*.

13    Ibid s 85(3) (amended by the New Roads and Street Works Act 1991 Sch 8 para 62). As to money recoverable summarily as a civil debt see MAGISTRATES vol 29(2) (Reissue) PARA 826; and as to enforcement of civil debts see MAGISTRATES vol 29(2) (Reissue) PARA 828.

14    Ie by regulations under the Road Traffic Regulation Act 1984 s 17(2) (as amended): see PARA 764 *ante*.

15    Ibid s 85(6).

16    Ibid s 85(6)(a). As to the meaning of 'special road' see PARA 764 note 1 *ante*.

17    Ibid s 85(6)(b). As to classes of traffic see PARA 208 *ante*.

18    Ibid s 85(6)(c).

19    Ibid s 85(6)(d).

20    Ie ibid s 85 (as amended).

21    Ibid s 85(6).

## UPDATE

### 849 Traffic signs for indicating speed restrictions

NOTE 11--SI 2002/3113 further amended: SI 2008/2177. See *Peake v Director of Public Prosecutions* [2010] EWHC 286 (Admin), [2010] All ER (D) 223 (Feb), DC (needed to asked whether there was compliant signing so that anyone caught speeding at point of enforcement would have been given adequate guidance of appropriate limit).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(6) SPEED LIMITS/850. Speed limits for particular classes of vehicles.

### 850. Speed limits for particular classes of vehicles.

It is not lawful for a person to drive<sup>1</sup> a motor vehicle<sup>2</sup> of any class<sup>3</sup> on a road<sup>4</sup> at a speed greater than the speed specified<sup>5</sup> as the maximum speed in relation to a vehicle of that class<sup>6</sup>. The Secretary of State does not have power under this provision to impose a speed limit, as respects driving<sup>7</sup> on roads which are not restricted roads<sup>8</sup>, on a vehicle which<sup>9</sup>:

- 659 (1) is constructed solely for the carriage of passengers and their effects<sup>10</sup>;
- 660 (2) is not adapted to carry more than eight passengers exclusive of the driver<sup>11</sup>;
- 661 (3) is neither a heavy motor car<sup>12</sup> nor an invalid carriage<sup>13</sup>;
- 662 (4) is not drawing a trailer<sup>14</sup>; and
- 663 (5) is fitted with pneumatic tyres on all its wheels<sup>15</sup>.

1 For the meaning of 'drive' see PARA 207 *ante*.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 As to classes of vehicles see PARA 208 ante.

4 For the meaning of 'road' see PARA 206 ante.

5 The speed specified in the Road Traffic Regulation Act 1984 s 86, Sch 6 (as amended): see PARA 851 et seq post. A vehicle falling in two or more classes specified in Sch 6 Pt I (as amended) (see PARA 851 post), Sch 6 Pt II (see PARA 852 post) or Sch 6 Pt III (see PARA 853 post) is to be treated as falling within the class for which the lower or lowest speed limit is specified: s 86(1), Sch 6 Pt IV para 4. Schedule 6 (as amended) does not apply to a vehicle which is being used for the purpose of experiments or trials under the Road Improvements Act 1925 s 6 (repealed) or the Highways Act 1980 s 283 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 55): Road Traffic Regulation Act 1984 Sch 6 Pt IV para 1. As to the exemption of fire and rescue authority, ambulance and police vehicles from speed limits see PARA 854 post; as to temporary speed limits see PARA 855 post; and as to speeding offences generally see PARA 856 post. The Secretary of State may by regulations vary, subject to such conditions as may be specified in the regulations, the provisions of Sch 6 (as amended) (s 86(2)), but he does not have power under s 86 to vary the speed limit imposed by s 81 (see PARA 847 ante) (s 86(5)). Regulations under s 86 may make different provision as respects the same class of vehicles in different circumstances: s 86(3). As to the making of regulations generally see PARA 720 ante. The Motor Vehicles (Variation of Speed Limits) Regulations 1986, SI 1986/1175, have been made under the Road Traffic Regulation Act 1984 s 86(2), (3).

As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 Ibid s 86(1).

7 For the meaning of 'driving' see PARA 207 ante.

8 The restricted roads for the purposes of the Road Traffic Regulation Act 1984 s 81: see PARA 847 ante. As to restricted roads see PARA 847 ante.

9 Ibid s 86(6).

10 Ibid s 86(6)(a).

11 Ibid s 86(6)(b). For the meaning of 'driver' see PARA 207 ante.

12 For the meaning of 'heavy motor car' see PARA 213 ante.

13 Road Traffic Regulation Act 1984 s 86(6)(c). For the meaning of 'invalid carriage' see PARA 215 ante.

14 Ibid s 86(6)(d). For the meaning of 'trailer' see PARA 210 ante.

15 Ibid s 86(6)(e).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(6) SPEED LIMITS/851. Speed limits for vehicles fitted with pneumatic tyres on all wheels.

### **851. Speed limits for vehicles fitted with pneumatic tyres on all wheels.**

The speed limits for motor vehicles<sup>1</sup>, not being track-laying vehicles<sup>2</sup>, every wheel<sup>3</sup> of which is fitted with a pneumatic tyre<sup>4</sup> and to such vehicles drawing one or more trailers<sup>5</sup>, not being track-laying vehicles, every wheel of which is fitted with a pneumatic tyre are as follows<sup>6</sup>:

- 664 (1) for a passenger vehicle<sup>7</sup>, motor caravan<sup>8</sup> or dual-purpose vehicle<sup>9</sup> not drawing a trailer being a vehicle with an unladen weight<sup>10</sup> exceeding 3.05 tonnes or adapted to carry more than eight passengers, and not exceeding 12 metres in overall length, the maximum speed is 70 miles per hour while the vehicle is being driven on a motorway<sup>11</sup>, 60 miles per hour if the vehicle is being driven on a dual

- carriageway road<sup>12</sup> not being a motorway and 50 miles per hour if the vehicle is being driven on any other road<sup>13</sup>; but, if exceeding 12 metres in overall length, the maximum speeds are 60 miles per hour, 60 miles per hour, and 50 miles per hour respectively<sup>14</sup>;
- 665 (2) for an invalid carriage<sup>15</sup>, the maximum speed while it is being driven on a dual carriageway road not being a motorway is 20 miles per hour and on any other road, other than a motorway, 20 miles per hour<sup>16</sup>;
- 666 (3) for a passenger vehicle, motor caravan, car-derived van<sup>17</sup> or dual-purpose vehicle drawing one trailer, the maximum speed is 60 miles per hour while the vehicle is being driven on a motorway, 60 miles per hour if the vehicle is being driven on a dual-carriageway road not being a motorway, and 50 miles per hour if the vehicle is being driven on any other road<sup>18</sup>;
- 667 (4) for a passenger vehicle, motor caravan, car-derived van or dual-purpose vehicle drawing more than one trailer, the maximum speed is 40 miles per hour while the vehicle is being driven on a motorway, 20 miles per hour if the vehicle is being driven on a dual-carriageway road not being a motorway, and 20 miles per hour if the vehicle is being driven on any other road<sup>19</sup>;
- 668 (5) for a goods vehicle<sup>20</sup> having a maximum laden weight<sup>21</sup> not exceeding 7.5 tonnes and which is not an articulated vehicle<sup>22</sup> or drawing a trailer or a car-derived van, the maximum speed is 70 miles per hour while the vehicle is being driven on a motorway, 60 miles per hour if the vehicle is being driven on a dual-carriageway road not being a motorway, and 50 miles per hour if the vehicle is being driven on any other road<sup>23</sup>;
- 669 (6) for a goods vehicle which is an articulated vehicle having a maximum laden weight not exceeding 7.5 tonnes or a motor vehicle, other than a car-derived van, which is drawing one trailer where the aggregate maximum laden weight of the motor vehicle and the trailer does not exceed 7.5 tonnes, the maximum speed is 60 miles per hour while the vehicle is being driven on a motorway, 60 miles per hour if the vehicle is being driven on a dual-carriageway road not being a motorway, and 50 miles per hour if the vehicle is being driven on any other road<sup>24</sup>;
- 670 (7) for a goods vehicle which is an articulated vehicle having a maximum laden weight exceeding 7.5 tonnes, a motor vehicle having a maximum laden weight exceeding 7.5 tonnes and not drawing a trailer, or a motor vehicle drawing one trailer where the aggregate maximum laden weight of the motor vehicle and the trailer exceeds 7.5 tonnes, the maximum speed is 60 miles per hour while the vehicle is being driven on a motorway, 50 miles per hour if the vehicle is being driven on a dual-carriageway road not being a motorway, and 40 miles per hour if the vehicle is being driven on any other road<sup>25</sup>;
- 671 (8) for a motor vehicle, other than a car-derived van, drawing more than one trailer, the maximum speed is 40 miles per hour while the vehicle is being driven on a motorway, 20 miles per hour if the vehicle is being driven on a dual-carriageway road not being a motorway, and 20 miles per hour if the vehicle is being driven on any other road<sup>26</sup>;
- 672 (9) for a motor tractor<sup>27</sup> (other than an industrial tractor<sup>28</sup>), a light locomotive<sup>29</sup> or a heavy locomotive<sup>30</sup>, if the specified provisions about springs and wings<sup>31</sup> are complied with and the vehicle is not drawing a trailer, or if those provisions are complied with and the vehicle is drawing one trailer which also complies with those provisions, the maximum speed is 40 miles per hour while the vehicle is being driven on a motorway, 30 miles per hour if the vehicle is being driven on a dual-carriageway road not being a motorway, and 30 miles per hour if the vehicle is being driven on any other road<sup>32</sup>; and, in any other case, the maximum speed is 20 miles per hour, 20 miles per hour and 20 miles per hour respectively<sup>33</sup>;
- 673 (10) for a works truck<sup>34</sup>, the maximum speed is 18 miles per hour while the vehicle is being driven on a motorway, 18 miles per hour if the vehicle is being

- driven on a dual-carriageway road not being a motorway, and 18 miles per hour if the vehicle is being driven on any other road<sup>35</sup>;
- 674 (11) for an industrial tractor, the maximum speed is 18 miles per hour if the vehicle is being driven on a dual carriageway road not being a motorway, and 18 miles per hour if the vehicle is being driven on any other road not being a motorway<sup>36</sup>;
- 675 (12) for an agricultural motor vehicle<sup>37</sup> the maximum speed is 40 miles per hour while the vehicle is being driven on a motorway, 40 miles per hour if the vehicle is being driven on a dual carriageway road not being a motorway, and 40 miles per hour if the vehicle is being driven on any other road<sup>38</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For these purposes, 'track-laying' has the same meaning as given in the Motor Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (see PARA 267 note 3 ante): Road Traffic Regulation Act 1984 s 86(1), Sch 6 Pt IV para 2; Interpretation Act 1978 ss 17(2), 23(1). As to the speed limits for track-laying vehicles see PARA 853 post.

3 For these purposes, 'wheel' has the same meaning as given in the Motor Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (see PARA 267 note 2 ante): Road Traffic Regulation Act 1984 Sch 6 Pt IV para 2; Interpretation Act 1978 ss 17(2), 23(1).

4 For these purposes, 'pneumatic tyre' has the same meaning as given in the Motor Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (see PARA 271 note 11 ante): Road Traffic Regulation Act 1984 Sch 6 Pt IV para 2; Interpretation Act 1978 ss 17(2), 23(1).

5 For the meaning of 'trailer' see PARA 210 ante.

6 Road Traffic Regulation Act 1984 Sch 6 Pt I.

7 For these purposes, 'passenger vehicle' has the same meaning as given in the Motor Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (see PARA 287 note 8 ante): Road Traffic Regulation Act 1984 Sch 6 Pt IV para 2; Interpretation Act 1978 ss 17(2), 23(1).

8 For these purposes, 'motor caravan' has the same meaning as in the Motor Vehicles (Type Approval) (Great Britain) Regulations 1984, SI 1984/981, reg 2(1): Road Traffic Regulation Act 1984 Sch 6 Pt IV para 2; Interpretation Act 1978 ss 17(2)(b), 23(1).

9 For these purposes, 'dual-purpose vehicle' has the same meaning as in the Motor Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (see PARA 271 note 28 ante): Road Traffic Regulation Act 1984 Sch 6 Pt IV para 2; Interpretation Act 1978 ss 17(2), 23(1).

10 As to the calculation of unladen weight see PARA 209 ante.

11 For these purposes, 'motorway' has the same meaning as in the Motorways Traffic (England and Wales) Regulations 1982, SI 1982/1163, reg 3(1): Road Traffic Regulation Act 1984 Sch 6 Pt IV para 2.

12 For these purposes, 'dual-carriageway road' means a road part of which consists of a central reservation to separate a carriageway to be used by vehicles proceeding in one direction from a carriageway to be used by vehicles proceeding in the opposite direction: *ibid* Sch 6 Pt IV para 2.

13 For the meaning of 'road' see PARA 206 ante.

14 Road Traffic Regulation Act 1984 Sch 6 Pt I Table Item 1. See, however, the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) Order 1977, SI 1977/6, which is continued in force indefinitely by the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) (Continuation) Order 1978, SI 1978/1548; and PARA 855 post.

15 For the meaning of 'invalid carriage' see PARA 215 ante.

16 Road Traffic Regulation Act 1984 Sch 6 Pt I Table Item 2.

17 For these purposes, 'car-derived van' means a goods vehicle which is constructed or adapted as a derivative of a passenger vehicle and which has a maximum laden weight not exceeding two tonnes: *ibid* Sch 6 Pt IV para 2.

18 Ibid Sch 6 Pt I Table Item 3 (amended by the Motor Vehicles (Variations of Speed Limits) Regulations 1986, 1986/1175, reg 2).

19 Road Traffic Regulation Act 1984 Sch 6 Pt I Table Item 4.

20 For these purposes, 'goods vehicle' has the same meaning as in the Road Traffic Act 1988 s 192(1) (see PARA 220 ante): Road Traffic Regulation Act 1984 Sch 6 Pt IV para 2 (definition substituted by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 25(10)).

21 For these purposes, 'maximum laden weight' in relation to a vehicle or a combination of vehicles means: (1) in the case of a vehicle, or combination of vehicles, in respect of which a gross weight not to be exceeded in Great Britain is specified in construction and use requirements, that weight; (2) in the case of any vehicle, or combination of vehicles, in respect of which no such weight is specified in construction and use requirements, the weight which the vehicle, or combination of vehicles, is designed or adapted not to exceed when in normal use and travelling on a road laden: Road Traffic Regulation Act 1984 Sch 6 Pt IV para 2. For these purposes, 'construction and use requirements' has the same meaning as in the Road Traffic Act 1988 s 41(7) (see PARA 261 note 1 ante): Road Traffic Regulation Act 1984 Sch 6 Pt IV para 2 (definition substituted by the Road Traffic (Consequential Provisions) Act 1988 Sch 3 para 25(10)).

22 For these purposes, 'articulated vehicle' has the same meaning as given in the Motor Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2) Table (see PARA 271 note 6 ante): Road Traffic Regulation Act 1984 Sch 6 Pt IV para 2; Interpretation Act 1978 ss 17(2), 23(1).

23 Road Traffic Regulation Act 1984 Sch 6 Pt I Table Item 5(1).

24 Ibid Sch 6 Pt I Table Item 5(2)(a) (amended by the Motor Vehicles (Variations of Speed Limits) Regulations 1986, 1986/1175, reg 2).

25 Road Traffic Regulation Act 1984 Sch 6 Pt I Table Item 5(2)(b).

26 Ibid Sch 6 Pt I Table Item 5(2)(c).

27 For the meaning of 'motor tractor' see PARA 216 ante.

28 For these purposes, 'industrial tractor' has the same meaning as in the Motor Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (see PARA 278 note 17 ante): Road Traffic Regulation Act 1984 Sch 6 Pt IV para 2; Interpretation Act 1978 ss 17(2), 23(1).

29 For the meaning of 'light locomotive' see PARA 217 ante.

30 For the meaning of 'heavy locomotive' see PARA 217 ante.

31 The specification as regards springs and wings is that the vehicle: (1) is equipped with suitable and sufficient springs between each wheel and the frame of the vehicle; and (2) unless adequate protection is afforded by the body of the vehicle, is provided with wings or other similar fittings to catch, so far as practicable, mud or water thrown up by the rotation of the wheels: Road Traffic Regulation Act 1984 Sch 6 Pt IV para 3.

32 Ibid Sch 6 Pt I Table Item 6(a).

33 Ibid Sch 6 Pt I Table Item 6(b).

34 For these purposes, 'works truck' has the same meaning as given in the Motor Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (see PARA 278 note 18 ante): Road Traffic Regulation Act 1984 Sch 6 Pt IV para 2; Interpretation Act 1978 ss 17(2), 23(1).

35 Road Traffic Regulation Act 1984 Sch 6 Pt I Table Item 7.

36 Ibid Sch 6 Pt I Table Item 8.

37 For these purposes, 'agricultural motor vehicle' has the same meaning as given in the Motor Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table (see PARA 271 note 28 ante): Road Traffic Regulation Act 1984 Sch 6 Pt IV para 2 (definition added by the Motor Vehicles (Variations of Speed Limits) Regulations 1986, 1986/1175, reg 2); Interpretation Act 1978 ss 17(2), 23(1).

38 Road Traffic Regulation Act 1984 Sch 6 Pt I Table Item 9 (added by the Motor Vehicles (Variations of Speed Limits) Regulations 1986, 1986/1175, reg 2).

## UPDATE

### **851 Speed limits for vehicles fitted with pneumatic tyres on all wheels**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(6) SPEED LIMITS/852. Speed limits for vehicles not fitted with pneumatic tyres on all wheels.

### **852. Speed limits for vehicles not fitted with pneumatic tyres on all wheels.**

The speed limits for vehicles, other than motor vehicles<sup>1</sup> which are a track-laying vehicles<sup>2</sup> or motor vehicles which are not track-laying vehicles but which are drawing one or more trailers<sup>3</sup> any one of which is a track-laying vehicle are as follows<sup>4</sup>:

- 676 (1) for a motor vehicle, or in the case of a motor vehicle drawing one or more trailers, the combination, where every wheel<sup>5</sup> is fitted with a resilient tyre<sup>6</sup>, or at least one wheel is fitted with a resilient tyre and every wheel which is not fitted with a resilient tyre is fitted with a pneumatic tyre<sup>7</sup>, the maximum speed while the vehicle is being driven on a road is 20 miles per hour<sup>8</sup>;
- 677 (2) for a motor vehicle, or in the case of a motor vehicle drawing one or more trailers, the combination, where any wheel is not fitted with either a pneumatic tyre or a resilient tyre, the maximum speed while the vehicle is being driven on a road is 5 miles per hour<sup>9</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 As to the meaning of 'track-laying' see PARA 851 note 2 ante. As to the speed limits for track-laying vehicles see PARA 853 post.

3 For the meaning of 'trailer' see PARA 210 ante.

4 Road Traffic Regulation Act 1984 s 86(1), Sch 6 Pt II.

5 As to the meaning of 'wheel' see PARA 851 note 3 ante.

6 For these purposes, 'resilient tyre' means a tyre, not being a pneumatic tyre, which is soft or elastic: Road Traffic Regulation Act 1984 Sch 6 Pt IV para 2.

7 As to the meaning of 'pneumatic tyre' see PARA 851 note 4 ante.

8 Road Traffic Regulation Act 1984 Sch 6 Pt II Table Item 1.

9 Ibid Sch 6 Pt II Table Item 2.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-

1663)/9. ROAD TRAFFIC REGULATION/(6) SPEED LIMITS/853. Speed limits for track-laying vehicles.

**853. Speed limits for track-laying vehicles.**

The speed limit for a motor vehicle<sup>1</sup> which is a track-laying vehicle<sup>2</sup> and a motor vehicle of any description which is drawing one or more trailers<sup>3</sup>, any one or more of which is a track-laying vehicle, is as follows<sup>4</sup>:

- 678 (1) for a motor vehicle being a track-laying vehicle which is fitted with springs between its frame and its weight-carrying rollers, and resilient material between the rims of its weight-carrying rollers and the surface of the road, and which is not drawing a trailer, the maximum speed while the vehicle is being driven on a road<sup>5</sup> is 20 miles per hour<sup>6</sup>;
- 679 (2) for a vehicle as specified in head (1) above drawing one or more trailers each one of which is either a track-laying vehicle fitted with springs and resilient material as mentioned in that head, or not a track-laying vehicle and each wheel of which is fitted with either a pneumatic tyre<sup>7</sup> or a resilient tyre<sup>8</sup>, the maximum speed while the vehicle is being driven on a road is 20 miles per hour<sup>9</sup>;
- 680 (3) for a vehicle as specified in head (1) above drawing one or more trailers any one of which is either a track-laying vehicle not fitted with springs and resilient material as mentioned in that head, or not a track-laying vehicle and at least one wheel of which is not fitted with either a pneumatic tyre or a resilient tyre, the maximum speed while the vehicle is being driven on a road is 5 miles per hour<sup>10</sup>;
- 681 (4) for a motor vehicle being a track-laying vehicle which is not fitted with springs and resilient material as mentioned in head (1) above, whether drawing a trailer or not, the maximum speed while the vehicle is being driven on a road is 5 miles per hour<sup>11</sup>;
- 682 (5) for a motor vehicle not being a track-laying vehicle, which is drawing one or more trailers any one or more of which is a track-laying vehicle if every wheel of the motor vehicle and of any non-track-laying trailer is fitted with a pneumatic tyre or with a resilient tyre, and every trailer which is a track-laying vehicle is fitted with springs and resilient material as mentioned in head (1) above, the maximum speed while the vehicle is being driven on a road is 20 miles per hour; and, in any other case, the maximum speed while the vehicle is being driven on a road is 5 miles per hour<sup>12</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 As to the meaning of 'track-laying' see PARA 851 note 2 ante.

3 For the meaning of 'trailer' see PARA 210 ante.

4 Road Traffic Regulation Act 1984 s 86(1), Sch 6 Pt III.

5 For the meaning of 'road' see PARA 206 ante.

6 Road Traffic Regulation Act 1984 Sch 6 Pt III Table Item 1.

7 As to the meaning of 'pneumatic tyre' see PARA 851 note 4 ante.

8 As to the meaning of 'resilient tyre' see PARA 852 note 6 ante.

9 Road Traffic Regulation Act 1984 Sch 6 Pt III Table Item 2.

10 Ibid Sch 6 Pt III Table Item 3.



11 Ibid Sch 6 Pt III Table Item 4.

12 Ibid Sch 6 Pt III Table Item 5.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(6) SPEED LIMITS/854. Exemption of fire and rescue authority, ambulance and police vehicles from speed limits.

#### **854. Exemption of fire and rescue authority, ambulance and police vehicles from speed limits.**

The following provisions apply until a day to be appointed<sup>1</sup>. No statutory provision imposing a speed limit on motor vehicles<sup>2</sup> is to apply to any vehicle on an occasion when it is being used for fire and rescue authority, ambulance or police purposes<sup>3</sup>, if the observance of that provision would be likely to hinder the use of the vehicle for the purpose for which it is being used on that occasion<sup>4</sup>.

The following provisions apply as from a day to be appointed<sup>5</sup>. No statutory provision imposing a speed limit on motor vehicles is to apply to any vehicle on an occasion when:

- 683 (1) it is being used for fire and rescue authority purposes, for ambulance purposes or for police or Serious Organised Crime Agency purposes;
- 684 (2) it is being used for other prescribed<sup>6</sup> purposes in such circumstances as may be prescribed; or
- 685 (3) it is being used for training persons to drive vehicles for use for any of the purposes mentioned in head (1) or head (2) above,

if the observance of that provision would be likely to hinder the use of the vehicle for the purpose for which it is being used on that occasion<sup>7</sup>. This does not apply unless the vehicle is being driven by a person who: (a) has satisfactorily completed a course of training in the driving of vehicles at high speed provided in accordance with regulations under these provisions; or (b) is driving the vehicle as part of such a course<sup>8</sup>. The Secretary of State<sup>9</sup> may by regulations make provision about courses of training in the driving of vehicles at high speed<sup>10</sup>. The regulations may include<sup>11</sup>:

- 686 (i) provision about the nature of courses<sup>12</sup>;
- 687 (ii) provision for the approval by the Secretary of State of persons providing courses or giving instruction on courses and the withdrawal of approvals (including provision for appeals against refusal and withdrawal of approvals)<sup>13</sup>;
- 688 (iii) provision specifying the maximum fees that a person may be required to pay for a course<sup>14</sup>;
- 689 (iv) provision for the training or assessment, or the supervision of the training or assessment, of persons providing courses or giving instruction on courses<sup>15</sup>;
- 690 (v) provision for the evidencing of the successful completion of courses<sup>16</sup>;
- 691 (vi) provision authorising the Secretary of State to make available information about persons providing courses or giving instruction on courses<sup>17</sup>; and
- 692 (vii) provision treating courses of training in the driving of vehicles at high speed which have been completed before the coming into force of the regulations as if they had been provided in accordance with the regulations<sup>18</sup>.

The regulations may include provision for the charging of reasonable fees in respect of any function conferred or imposed on the Secretary of State by the regulations<sup>19</sup>. The regulations may make different provision for different classes of vehicle, for different descriptions of persons or otherwise for different circumstances<sup>20</sup>.

1 The Road Traffic Regulation Act 1984 s 87 is substituted by the Road Safety Act 2006 s 19, as from a day to be appointed under s 61(1). At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 A police driving instructor driving a vehicle during an exercise for police purposes is within the exemption: *R v Abraham (Mansel)* [1980] RTR 471, CA. The Road Traffic Regulation Act 1984 s 87(1) (as amended) applies in relation to a vehicle being used: (1) for Serious Organised Crime Agency purposes; or (2) for training persons to drive vehicles for use for Serious Organised Crime Agency purposes, as it applies in relation to a vehicle being used for police purposes: s 87(2) (s 87(2), (3) added by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 para 42(1), (3)). However, except where it is being used for training the person by whom it is being driven, the Road Traffic Regulation Act 1984 s 87(1) (as amended) does not apply in relation to a vehicle by virtue of s 87(2) (as added) unless it is being driven by a person who has been trained in driving vehicles at high speeds: s 87(3) (as so added).

4 *Ibid* s 87(1) (amended by the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 55; and renumbered by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 para 42(1), (2)). For the meaning of 'statutory' see PARA 719 note 7 ante.

5 See note 1 *supra*.

6 For the meaning of 'prescribed' see PARA 735 note 3 ante.

7 Road Traffic Regulation Act 1984 s 87(1) (as prospectively substituted: see note 1 *supra*).

8 *Ibid* s 87(2) (as prospectively substituted: see note 1 *supra*).

9 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

10 Road Traffic Regulation Act 1984 s 87(3) (as prospectively substituted: see note 1 *supra*).

11 *Ibid* s 87(4) (as prospectively substituted: see note 1 *supra*).

12 *Ibid* s 87(4)(a) (as prospectively substituted: see note 1 *supra*).

13 *Ibid* s 87(4)(b) (as prospectively substituted: see note 1 *supra*).

14 *Ibid* s 87(4)(c) (as prospectively substituted: see note 1 *supra*).

15 *Ibid* s 87(4)(d) (as prospectively substituted: see note 1 *supra*).

16 *Ibid* s 87(4)(e) (as prospectively substituted: see note 1 *supra*).

17 *Ibid* s 87(4)(f) (as prospectively substituted: see note 1 *supra*).

18 *Ibid* s 87(4)(g) (as prospectively substituted: see note 1 *supra*).

19 *Ibid* s 87(5) (as prospectively substituted: see note 1 *supra*).

20 *Ibid* s 87(6) (as prospectively substituted: see note 1 *supra*).

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### 855. Temporary or general speed limits.

Where it appears to the Secretary of State<sup>1</sup> desirable to do so in the interests of safety or for the purpose of facilitating the movement of traffic, he may, after giving public notice of his intention to do so, by order prohibit, for a period not exceeding 18 months, the driving of motor vehicles<sup>2</sup>:

- 693 (1) on all roads<sup>3</sup>, or on all roads in any area specified in the order, or on all roads of any class so specified, or on all roads other than roads of any class so specified, or on any road so specified, at a speed greater than that specified in the order<sup>4</sup>; or
- 694 (2) on any road specified in the order, at a speed less than the speed specified in the order, subject to such exceptions as may be so specified<sup>5</sup>.

Any such prohibition may be imposed either generally, or at times, on days or during periods specified in the order<sup>6</sup>. The power of the Secretary of State to impose temporary or general speed limits does not apply to any part of a special road<sup>7</sup> which is open for use as a special road<sup>8</sup>.

If a person drives<sup>9</sup> a motor vehicle<sup>10</sup> on a road in contravention of an order under head (2) above, he is guilty of an offence, but he is not to be liable to be convicted of so driving<sup>11</sup> solely on the evidence of one witness to the effect that, in the opinion of the witness, he was driving the vehicle at a speed less than that specified in the order<sup>12</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Road Traffic Regulation Act 1984 s 88(1). For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 Road Traffic Regulation Act 1984 s 88(1)(a). For the purposes of an order under s 88(1)(a), roads may be classified by reference to any circumstances appearing to the Secretary of State to be suitable for the purpose, including their character, the nature of the traffic to which they are suited or the traffic signs provided on them: s 88(3). For the meaning of 'traffic sign' see PARA 830 ante.

5 Ibid s 88(1)(b). The first order to be made under s 88(1)(b) must not be made until a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament: s 88(8). Where by virtue of an order under s 88 a speed limit is to be observed, then:

1404 (1) if it is to be observed on all roads, on all roads of any class specified in the order or on all roads other than roads of any class so specified, s 85 (as amended) (see PARA 849 ante) does not apply in relation to that limit (s 88(5)(a));

1405 (2) if it is to be observed on all roads in any area and, at all points where roads lead into the area, is indicated as respects the area as a whole by means of such traffic signs as are mentioned in s 85(1) or (2) (as amended) (see PARA 849 ante), the limit must, for the purposes of s 85(4) (as amended) (see PARA 849 ante), be taken as so indicated with respect to all roads in the area (s 88(5)(b)).

The provisions of any order under s 88(1) may be continued, either indefinitely or for a specified period, by an order of the Secretary of State made by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament: s 88(4).

Any power which is exercisable in relation to any road under s 88, otherwise than by virtue of s 125 (as amended) (see PARA 730 ante), is exercisable with respect to the whole or any part of the width of the road: s 126.

Orders made under s 88 are local in nature, and are not recorded in this work. However, by virtue of the Interpretation Act 1978 s 17(2)(b), the following order has effect under the Road Traffic Regulation Act 1984 s 88: the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) Order 1977, SI

1977/6, continued in force indefinitely by the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) (Continuation) Order 1978, SI 1978/1548.

6 Road Traffic Regulation Act 1984 s 88(2). However, the provisions of such an order must not, except in so far as provided by the order, affect ss 81-84 (as amended) (see PARAS 846-848 ante) relating to speed limits: s 88(2).

7 As to the meaning of 'special road' see PARA 764 note 1 ante.

8 Road Traffic Regulation Act 1984 s 88(6).

9 For the meaning of 'drive' see PARA 207 ante.

10 For the meaning of 'motor vehicle' see PARA 210 ante.

11 For the meaning of 'driving' see PARA 207 ante.

12 Road Traffic Regulation Act 1984 s 88(7). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Act 1988 s 88(7) of driving a motor vehicle in contravention of an order imposing a minimum speed limit under s 88(1)(b) is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

The Secretary of State may make payments in respect of the whole or any part of the expenditure of a public authority in relation to the prevention or detection of offences under the Road Traffic Regulation Act 1984 s 88(7) or any enforcement action or proceedings in respect of such offences or any alleged such offences: Vehicles (Crime) Act 2001 s 38(1), (2)(c). As to such payments see further PARA 758 ante.

## UPDATE

### 855 Temporary or general speed limits

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### 856. Speeding offences generally.

A person who drives<sup>1</sup> a motor vehicle<sup>2</sup> on a road<sup>3</sup> at a speed exceeding a limit imposed by or under certain enactments<sup>4</sup> is guilty of an offence<sup>5</sup>. A person prosecuted for such an offence is not liable to be convicted solely on the evidence of one witness to the effect that, in the opinion of the witness, the person prosecuted was driving<sup>6</sup> the vehicle at a speed exceeding a specified limit<sup>7</sup>.

If a person who employs other persons to drive motor vehicles on roads publishes or issues any timetable or schedule, or gives any directions, under which any journey, or any stage or part of any journey, is to be completed within some specified time, and it is not practicable in the circumstances of the case for that journey (or that stage or part of it) to be completed in the specified time without the commission of such an offence<sup>8</sup>, the publication or issue of the timetable or schedule, or the giving of the directions may be produced as prima facie evidence

that the employer procured or (as the case may be) incited the persons employed by him to drive the vehicles to commit such an offence<sup>9</sup>.

1 For the meaning of 'drive' see PARA 207 ante.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 The enactments to which the Road Traffic Regulation Act 1984 s 89 applies are:

1406 (1) any enactment contained in the Road Traffic Regulation Act 1984 except s 17(2) (as amended) (see PARA 764 ante) (s 89(3)(a));

1407 (2) the Parks Regulation (Amendment) Act 1926 s 2 (as amended) (see PARA 828 ante; and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARAS 562-563) (Road Traffic Regulation Act 1984 s 89(3)(b)); and

1408 (3) any enactment not contained in the Road Traffic Regulation Act 1984, but passed after 1 September 1960, whether before or after the passing of Road Traffic Regulation Act 1984 (s 89(3)(c)).

5 Ibid s 89(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale; disqualification is discretionary; endorsement is obligatory; and 3-6 penalty points (or 3, if a fixed penalty) may be attributed: Road Traffic Offenders Act 1988 s 9, s 28 (as substituted), s 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 26, Sch 2 paras 1, 3, 4). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 s 17(b), so as to refer to '2-6 or appropriate penalty points (fixed penalty)' instead of '3-6 penalty points (or 3, if a fixed penalty)'. At the date at which this volume states the law no such day had been appointed. As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Regulation Act 1984 s 89(1) of speeding under the Road Traffic Regulation Act 1984 or other Acts is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; and as to legal proceedings generally see PARA 1023 et seq post.

The Secretary of State may make payments in respect of the whole or any part of the expenditure of a public authority in relation to the prevention or detection of offences under the Road Traffic Regulation Act 1984 s 89(1) or any enforcement action or proceedings in respect of such offences or any alleged such offences: Vehicles (Crime) Act 2001 s 38(1), (2)(d). As to such payments see further PARA 758 ante.

6 For the meaning of 'driving' see PARA 207 ante.

7 Road Traffic Regulation Act 1984 s 89(2). In *Crossland v DPP* [1988] 3 All ER 712, [1988] RTR 417, DC, a police constable reached the scene of an accident shortly after it had occurred and inspected the skid marks and damage to the defendant's car; he carried out certain tests, and deduced that the defendant had been driving at not less than 41 mph before she applied her brakes; the defendant was convicted of driving in excess of the speed limit of 30 mph, and on appeal it was held that although the constable's evidence included a significant element of expert opinion, his evidence did not amount solely to opinion, as he had also described the objectively determinable phenomena on which his opinion was based. In *Swain v Gillett* [1974] RTR 446, [1974] Crim LR 433, DC, it was held that where evidence is given on the operation of a stop-watch, speedometer or other instrument it is not necessary to prove that the instrument has been tested.

8 Is an offence as is mentioned in the Road Traffic Regulation Act 1984 s 89(1): see the text and notes 1-5 supra.

9 Ibid s 89(4).

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### 857. Quiet lanes and home zones.

A local traffic authority<sup>1</sup> may designate any road<sup>2</sup> for which it is the traffic authority as a quiet lane or a home zone<sup>3</sup>.

The appropriate national authority<sup>4</sup> may make regulations authorising local traffic authorities who have designated roads as quiet lanes or home zones to make use orders<sup>5</sup> and speed orders<sup>6</sup> of such descriptions as are prescribed by the regulations in relation to any roads designated by them as quiet lanes or home zones<sup>7</sup>.

The appropriate national authority may also make regulations specifying procedures for the making, variation and revocation of: (1) designations; and (2) use orders and speed orders, including procedures for confirmation (whether by the appropriate national authority or any other body)<sup>8</sup>. The appropriate national authority may give guidance to local traffic authorities about matters to which they must have regard in determining whether or not to designate a road as a quiet lane or home zone<sup>9</sup>.

Regulations made under these provisions must be made by statutory instrument and may make different provision for different cases or areas<sup>10</sup>. A statutory instrument containing regulations made by the Secretary of State under these provisions is subject to annulment in pursuance of a resolution of either House of Parliament<sup>11</sup>.

1 'Local traffic authority' has the same meaning as in the Road Traffic Regulation Act 1984 (see PARA 731 ante): Transport Act 2000 s 268(8).

2 'Road' has the same meaning as in the Road Traffic Regulation Act 1984 (see PARA 206 ante): Transport Act 2000 s 268(8).

3 Ibid s 268(1).

4 'The appropriate national authority' in relation to England is the Secretary of State: *ibid* s 268(8). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 A use order is an order permitting the use of a road for purposes other than passage (*ibid* s 268(3)), but a use order may not permit any person: (1) wilfully to obstruct the lawful use of a road by others; or (2) to use a road in a way which would deny reasonable access to premises situated on or adjacent to the road (s 268(4)).

6 A speed order is an order authorising the local traffic authority by which it is made to take measures with a view to reducing the speed of motor vehicles or cycles (or both) on a road to below that specified in the order: *ibid* s 268(5). 'Motor vehicle' means a mechanically propelled vehicle intended or adapted for use on roads; and 'cycle' has the same meaning as in the Road Traffic Act 1988 (see PARA 409 note 3 ante): Transport Act 2000 s 268(8).

7 Ibid s 268(2).

8 Ibid s 268(6).

9 Ibid s 268(7).

10 Ibid s 268(9). As to the regulations that have been made see the Quiet Lanes and Home Zones (England) Regulations 2006, SI 2006/2082.

11 Transport Act 2000 s 268(10).

## UPDATE

### 857 Quiet lanes and home zones

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6

(meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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## **(7) BOLLARDS AND OTHER OBSTRUCTIONS**

### **858. Bollards and other obstructions outside Greater London.**

Where the passage, or the passage in any direction, of vehicles, or of vehicles of any class<sup>1</sup>, is prohibited at any point of a road<sup>2</sup> outside Greater London<sup>3</sup> by an order<sup>4</sup>, the traffic authority<sup>5</sup> may place, or authorise or require to be placed, at or near that point such bollards or other obstructions as it considers appropriate for preventing their passage<sup>6</sup>. The bollards or other obstructions that may be so placed include obstructions of any description whatsoever<sup>7</sup> and may be either fixed or moveable<sup>8</sup>, and may be placed so as to prevent the passage of vehicles at all times or at certain times only<sup>9</sup>. The bollards or other obstructions so authorised<sup>10</sup> must generally be placed on the road by the traffic authority<sup>11</sup>. Any power under these provisions to place an obstruction includes power to maintain or light it<sup>12</sup>.

Where the above powers<sup>13</sup> have been exercised with respect to two or more points of a road, so that the passage of vehicles along a stretch of that road is prevented, those powers extend to placing, or authorising the placing of, further obstructions on that stretch of road<sup>14</sup>. However, any obstructions placed under those powers must not be so placed as to prevent at any time the passage of pedestrians past the point or along the stretch of road in question, and must not be of such a nature that the re-opening of the road to vehicles would be unreasonably difficult or so as to alter the nature of the surface of the road<sup>15</sup>.

Where by virtue of such an order the Secretary of State<sup>16</sup> has power to place bollards or other obstructions at a point on a road, he may authorise or require the traffic authority for any other road leading into or crossing that road at that point to place the bollards or other obstructions on that other road<sup>17</sup>. The Secretary of State may authorise or require a local traffic authority<sup>18</sup> which has placed bollards or other obstructions on a road<sup>19</sup> to remove them<sup>20</sup>. Any power so conferred to authorise or require an authority to place an obstruction includes power to authorise or require the authority to maintain or light it<sup>21</sup>. If a local traffic authority fails to comply with any requirement so imposed to carry out any such work, the Secretary of State may himself carry out the work, and the expense incurred by him in doing so is recoverable by him from the authority summarily as a civil debt<sup>22</sup>. Any requirement so imposed is enforceable on the application of the Secretary of State by a mandatory order<sup>23</sup>.

1 As to classes of vehicles see PARA 208 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 As to bollards and other obstructions in Greater London see PARA 859 post.

4 le by an order made under the Road Traffic Regulation Act 1984 s 1 (as amended) (see PARA 742 ante) or s 9 (as amended) (see PARA 751 ante).

5 As to traffic authorities see PARAS 731-735 ante.

6 Road Traffic Regulation Act 1984 s 92(1) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 65(2)).

- 7 Road Traffic Regulation Act 1984 s 92(2)(a).
- 8 Ibid s 92(2)(b).
- 9 Ibid s 92(2)(c).
- 10 Ie authorised by and order under ibid s 92(1): see the text and notes 1-6 supra.
- 11 Ibid s 92(4) (substituted by the New Roads and Street Works Act 1991 Sch 8 para 65(3)). The bollards or other obstruction must be placed on the road by the traffic authority, except as mentioned in the Road Traffic Regulation Act 1984 s 93 (as amended) (see the text and notes 16-23 infra): s 92(4) (as so substituted).
- 12 Ibid s 92(5). Any enactment authorising the making of grants or loans in connection with traffic signs (including s 79 (as amended): see PARA 839 ante) extends to any such obstructions as are mentioned in s 92 (as amended): s 92(6). Section 92(6) applies for the purposes of s 93 (as amended) as it applies for the purposes of s 92 (as amended): s 93(6).
- 13 Ie the powers conferred by ibid s 92(1) (as amended): see the text and notes 1-6 supra.
- 14 Ibid s 92(3).
- 15 Ibid s 92(3).
- 16 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 17 Road Traffic Regulation Act 1984 s 93(1) (substituted by the New Roads and Street Works Act 1991 Sch 8 para 66(2)).
- 18 As to local traffic authorities see PARA 731 ante.
- 19 Ie in pursuance of the Road Traffic Regulation Act 1984 s 92 (as amended) or s 93 (as amended).
- 20 Ibid s 93(2) (amended by the New Roads and Street Works Act 1991 Sch 8 para 66(3)).
- 21 Road Traffic Regulation Act 1984 s 93(5).
- 22 Ibid s 93(3) (amended by the New Roads and Street Works Act 1991 Sch 8 para 66(3)). As to money recoverable summarily as a civil debt see MAGISTRATES vol 29(2) (Reissue) PARA 826; and as to enforcement of civil debts see MAGISTRATES vol 29(2) (Reissue) PARA 828.
- 23 Road Traffic Regulation Act 1984 s 93(4)(a). As to mandatory orders (formerly orders of mandamus) see JUDICIAL REVIEW vol 61 (2010) PARA 703 et seq.

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Bollards and other obstructions in Greater London.

### **859. Bollards and other obstructions in Greater London.**

Where an order similar to traffic regulation orders<sup>1</sup> or an experimental traffic order<sup>2</sup> is made or proposed to be made by the Secretary of State<sup>3</sup>, he may, to such extent as he considers necessary in connection with the order, authorise or require any person who is responsible for the maintenance of any road<sup>4</sup> in Greater London for which he is not the traffic authority<sup>5</sup>:

- 695 (1) to place on the carriageway such bollards or other obstructions as the Secretary of State may consider appropriate for preventing the passage of vehicles, or vehicles of any class<sup>6</sup>, at any point at which their passage (whether in any



- direction or in one direction only) is prohibited by any such order, and to maintain and light those obstructions<sup>7</sup>; or
- 696 (2) to remove any obstruction placed by that person in pursuance of such an authorisation or requirement<sup>8</sup>.

Where such an order is made or proposed to be made by a London borough council<sup>9</sup>, it may, to such extent as it considers necessary in connection with the order, authorise or require any person who is responsible for the maintenance of any road in its area for which neither it nor the Secretary of State is the traffic authority<sup>10</sup>:

- 697 (a) to place on the carriageway such bollards or other obstructions as it may consider appropriate for preventing the passage of vehicles, or vehicles of any class, at any point at which their passage (whether in any direction or in one direction only) is prohibited by any such order, and to maintain and light those obstructions<sup>11</sup>; or
- 698 (b) to remove any obstruction placed by that person in pursuance of such an authorisation or requirement<sup>12</sup>.

To such extent as the Secretary of State or, as the case may be, a London borough council may consider necessary in connection with such an order, whether made or proposed to be made by the Secretary of State or that council<sup>13</sup>:

- 699 (i) the Secretary of State may do with respect to any road for which he is the traffic authority anything which he might under head (1) above require to be done with respect to any other road<sup>14</sup>; and
- 700 (ii) a London borough council may do with respect to any road in its area for which it is the traffic authority anything which it might under head (a) above require to be done with respect to a road for which it is not the traffic authority<sup>15</sup>.

If a person fails to comply with a requirement to carry out any such work, the Secretary of State or, as the case may be, the London borough council may carry out the work, and the expenses incurred by the Secretary of State or that council in doing so are recoverable summarily as a civil debt from that person<sup>16</sup>.

1    Ie an order made under the Road Traffic Regulation Act 1984 s 6 (as amended): see PARA 748 ante.

2    Ie and order made under ibid s 9 (as amended): see PARA 751 ante.

3    As to the Secretary of State see PARA 236 ante.

4    For the meaning of 'road' see PARA 206 ante.

5    Road Traffic Regulation Act 1984 s 94(1) (s 94 substituted by the Local Government Act 1985 s 8(1), Sch 5 para 4(30); and the Road Traffic Regulation Act 1984 s 94(1), (2), (4) amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 67). As to traffic authorities see PARAS 731-735 ante.

6    As to classes of vehicles see PARA 208 ante.

7    Road Traffic Regulation Act 1984 s 94(1)(a) (as substituted: see note 5 supra).

8    Ibid s 94(1)(b) (as substituted: see note 5 supra). The provisions of s 92(2), (3) (see PARA 858 ante) apply in relation to the placing of bollards or other obstructions under s 94(1), (2) (as substituted and amended) as if for any reference in them to s 92(1) (as amended) there were substituted a reference to s 94(1) or (2) (as substituted and amended): s 94(3) (as so substituted).

Section 79 (as amended) (see PARA 839 ante) applies in relation to any such obstruction as is mentioned in s 94(1) or (2) (as substituted and amended) as it applies in relation to traffic signs; and the power of the

Secretary of State under s 79 (as amended) to make advances towards expenses incurred in relation to traffic signs is to be exercisable with respect to any expenses incurred by a London borough council by virtue of s 94(4) (as substituted and amended): s 94(6) (as so substituted). For the meaning of 'traffic sign' see PARA 830 ante.

9 References to a London borough council include references to the Common Council of the City of London: *ibid* s 94(7) (as substituted: see note 5 *supra*). As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

10 *Ibid* s 94(2) (as substituted: see note 5 *supra*).

11 *Ibid* s 94(2)(a) (as substituted: see note 5 *supra*).

12 *Ibid* s 94(2)(b) (as substituted: see note 5 *supra*).

13 *Ibid* s 94(4) (as substituted: see note 5 *supra*).

14 *Ibid* s 94(4)(a) (as substituted: see note 5 *supra*).

15 *Ibid* s 94(4)(b) (as substituted: see note 5 *supra*).

16 *Ibid* s 94(5) (as substituted: see note 5 *supra*). As to money recoverable summarily as a civil debt see MAGISTRATES vol 29(2) (Reissue) PARA 826; and as to enforcement of civil debts see MAGISTRATES vol 29(2) (Reissue) PARA 828.

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## **(8) CONTROL AND ENFORCEMENT**

### **(i) In general**

#### **860. Information as to identity of driver or rider.**

Where the driver<sup>1</sup> of a vehicle is alleged to be guilty of an offence to which this provision applies<sup>2</sup>:

- 701 (1) the person keeping the vehicle must give such information as to the identity of the driver as he may be required to give by or on behalf of a chief officer of police<sup>3</sup> or, in the case of certain offences<sup>4</sup>, by or on behalf of a chief officer of police or, in writing, by or on behalf of the local authority for the parking place in question<sup>5</sup>; and
- 702 (2) any other person must, if required as mentioned in head (1) above, give any information which it is in his power to give and which may lead to the identification of the driver<sup>6</sup>.

A person who fails to comply with the requirements of head (1) above is guilty of an offence unless he shows to the satisfaction of the court that he did not know, and could not with reasonable diligence have ascertained, who was the driver of the vehicle or, as the case may be, the rider of the bicycle or tricycle; and a person who fails to comply with the requirements of head (2) above is also guilty of an offence<sup>7</sup>.

1 For the meaning of 'driver' see PARA 207 ante. For these purposes, references to the 'driver of a vehicle' include references to the person riding a bicycle or tricycle (not being a motor vehicle): see the Road Traffic Regulation Act 1984 s 112(3). For the meaning of 'motor vehicle' see PARA 210 ante.

2 Ibid s 112 (as amended) applies to any offence under ss 1-111 (as amended) except:

1409 (1) s 43 (as amended) (see PARA 797 ante), s 52 (as amended) (see PARA 816 ante), s 88(7) (see PARA 855 ante), s 104 (as amended) (see PARA 876 post), s 105 (as amended) (see PARA 877 post) and s 108 (see PARA 885 post) (s 112(1)(a));

1410 (2) the provisions of s 108(2), (3) (see PARA 885 post) as modified by s 109(2), (3) (see PARA 886 post) (s 112(1)(b)); and

1411 (3) s 35A(5) (as added) (see PARA 791 ante) (s 112(1)(c) (amended by the Parking Act 1989 s 4, Schedule para 6)).

3 Road Traffic Regulation Act 1984 s 112(2)(a)(i). As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

4 Is an offence under ibid s 35A(1) (as added) (see PARA 791 ante) or an offence against s 47 (as amended) (see PARA 812 ante).

5 Ibid s 112(2)(a)(ii) (amended by the Parking Act 1989 s 4, Schedule para 6). In relation to an offence under the Road Traffic Regulation Act 1984 s 61(5) (see PARA 826 ante), s 112(2)(a) (as amended) has effect as if, for s 112(2)(a)(i), (ii), there were substituted the words 'by a notice in writing given to him by a local authority in whose area the loading area in question is situated': s 112(3)(b). In s 112(2)(a) (as modified by s 112(3)(b)), 'local authority' means any of the following: a county council, a district council, a London borough council and the Common Council of the City of London: s 112(3) (amended by the Local Government Act 1985 102(2), Sch 17). As to local government areas and authorities see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq. As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

6 Road Traffic Regulation Act 1984 s 112(2)(b).

7 Ibid s 112(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

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## **861. Mishandling of parking documents and related offences.**

A person is guilty of an offence who, with intent to deceive:

703 (1) uses, or lends to, or allows to be used by, any other person:  
99

178. (a) any parking device<sup>1</sup> or apparatus designed to be used in connection with parking devices<sup>2</sup>;

179. (b) any ticket issued by a parking meter<sup>3</sup>, parking device or apparatus designed to be used in connection with parking devices<sup>4</sup>;

180. (c) any authorisation by way of a certificate, other means of identification or device<sup>5</sup>; or

181. (d) any permit or token<sup>6</sup>;

100

- 704 (2) makes or has in his possession anything so closely resembling any such thing as is mentioned in head (1) above as to be calculated to deceive<sup>7</sup>.

A person who knowingly makes a false statement for the purpose of procuring the grant or issue to himself or any other person of any such authorisation is guilty of an offence<sup>8</sup>.

If any person authorised in that behalf by or under a designation order<sup>9</sup> has reasonable cause to believe that a document or article carried on a vehicle, or by the driver<sup>10</sup> or person in charge of a vehicle, is a document or article in relation to which an offence has been committed<sup>11</sup>, he may detain that document or article, and may for that purpose require the driver or person in charge of the vehicle to deliver up the document or article; and if the driver or person in charge of the vehicle fails to comply with that requirement, he is guilty of an offence<sup>12</sup>. When a document or article has been so detained and:

- 705 (i) at any time after the expiry of six months from the date when that detention began no person has been charged since that date with an offence in relation to the document or article<sup>13</sup>; and  
 706 (ii) the document or article has not been returned to the person to whom the authorisation in question was issued or to the person who at the date was the driver or person in charge of the vehicle<sup>14</sup>,

then, on an application made for the purpose to a magistrates' court<sup>15</sup>, the court must make such order respecting disposal of the document or article and award such costs as the justice of the case may require<sup>16</sup>. Any of the following, but no other, persons are entitled to make such an application<sup>17</sup> with respect to a document or article<sup>18</sup>:

- 707 (A) the person to whom the authorisation was issued<sup>19</sup>;  
 708 (B) the person who, at the date when the detention of the document or article began, was the driver or person in charge of the vehicle<sup>20</sup>; and  
 709 (C) the person for the time being having possession of the document or article<sup>21</sup>.

1 For the meaning of 'parking device' see PARAS 790 note 10, 815 note 4 ante.

2 Road Traffic Regulation Act 1984 s 115(1)(a)(i) (s 115(1) substituted by the Road Traffic Regulation (Parking) Act 1986 s 2(2)).

3 For the meaning of 'parking meter' see PARA 810 ante.

4 Road Traffic Regulation Act 1984 s 115(1)(a)(ii) (as substituted: see note 2 supra).

5 I.e. such as is referred to in any of *ibid* s 4(2) (see PARA 745 text to note 6 ante), s 4(3) (see PARA 745 text to note 7 ante), s 7(2) (see PARA 749 text to note 6 ante), s 7(3) (as amended) (see PARA 749 text to note 7 ante): s 115(1)(a)(iii) (as substituted: see note 2 supra).

6 *Ibid* s 115(1)(a)(iv) (as substituted: see note 2 supra). The text refers to any such permit or token as is referred to in s 46(2)(i) (as amended) (see PARA 810 ante): s 115(1)(a)(iv) (as so substituted).

7 *Ibid* s 115(1)(b) (as substituted: see note 2 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum and a term of imprisonment not exceeding two years: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post. As to the statutory maximum see PARA 359 note 11 ante.

8 Road Traffic Regulation Act 1984 s 115(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante.

9 For the meaning of 'designation order' see PARA 808 note 4 ante.

- 10 For the meaning of 'driver' see PARA 207 ante.
- 11 le under the Road Traffic Regulation Act 1984 s 115(1) (as substituted) (so far as that provision relates to such authorisations as are referred to in it) or under s 115(2): see the text and notes 1-8 supra.
- 12 Ibid s 116(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I.
- 13 Road Traffic Regulation Act 1984 s 116(2)(a). The offence referred to in the text is an offence under s 115(1) (as substituted) or s 115(2) (see the text and notes 1-8 supra): s 116(2)(a).
- 14 Ibid s 116(2)(b).
- 15 For the meaning of 'magistrates' court' see PARA 841 note 12 ante.
- 16 Road Traffic Regulation Act 1984 s 116(2).
- 17 le under ibid s 116(2): see the text to notes 13-16 supra.
- 18 Ibid s 116(3).
- 19 Ibid s 116(3)(a).
- 20 Ibid s 116(3)(b).
- 21 Ibid s 116(3)(c).

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## **862. Wrongful use of disabled person's badge.**

A person who at any time acts in contravention of, or fails to comply with, any provision of an order relating to the parking of motor vehicles<sup>1</sup> is also guilty of an offence<sup>2</sup> if at that time<sup>3</sup>:

- 710 (1) there was displayed on the motor vehicle in question a badge purporting to be of the prescribed form<sup>4</sup>; and
- 711 (2) he was using the vehicle in circumstances where a disabled person's concession<sup>5</sup> would be available to a disabled person's vehicle<sup>6</sup>,

but he is not guilty of such an offence if the badge was issued and displayed in accordance with the regulations<sup>7</sup>.

A person who at any time acts in contravention of, or fails to comply with, any provision of an order relating to the parking of motor vehicles is also guilty of an offence<sup>8</sup> if at that time<sup>9</sup>:

- 712 (a) there was displayed on the motor vehicle in question a badge purporting to be a recognised badge<sup>10</sup>; and
- 713 (b) he was using the vehicle in circumstances where a concession would<sup>11</sup> be available to a vehicle lawfully displaying a recognised badge<sup>12</sup>,

but he is not guilty of such an offence if the badge was a recognised badge and displayed in accordance with the regulations<sup>13</sup>.

1 le an order under the Road Traffic Regulation Act 1984. For the meaning of 'motor vehicle' see PARA 210 ante.

2 le under *ibid* s 117(1) (as substituted and amended).

3 *Ibid* s 117(1) (substituted by the Road Traffic Act 1991 s 35(6); and amended by the Disability Discrimination Act 2005 s 19(1), Sch 1 paras 42, 44(1), (2)). At the date at which this volume states the law the amendment made by the Disability Discrimination Act 2005 had not been brought into force in relation to Wales.

4 Road Traffic Regulation Act 1984 s 117(1)(a) (as substituted (see note 3 *supra*); and amended by the Traffic Management Act 2004 s 94(5)). The form of badge is prescribed under the Chronically Sick and Disabled Persons Act 1970 s 21 (as amended): see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1071.

5 For these purposes, 'disabled person's concession' means an exemption from an order under the Road Traffic Regulation Act 1984 given by reference to disabled persons' vehicles (s 117(3)(a)); or a provision made in any order under the Road Traffic Regulation Act 1984 for the use of a parking place by disabled persons' vehicles (s 117(3)(b)).

6 *Ibid* s 117(1)(b) (as substituted: see note 3 *supra*). 'Disabled person's vehicle' means a vehicle lawfully displaying a disabled person's badge: s 142(1). 'Disabled person's badge' means any badge issued, or having effect as if issued, under any regulations for the time being in force under the Chronically Sick and Disabled Persons Act 1970 s 21 (as amended) (see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1071): Road Traffic Regulation Act 1984 s 142(1).

7 *Ibid* s 117(1) (as substituted and amended: see notes 3, 4 *supra*). The regulations referred to in the text are those made under the Chronically Sick and Disabled Persons Act 1970 s 21 (as amended): see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1071. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

8 le under the Road Traffic Regulation Act 1984 s 117(1A) (as added).

9 *Ibid* s 117(1A) (added by the Disability Discrimination Act 2005 Sch 1 para 44(3)). At the date at which this volume states the law this provision had not been brought into force in relation to Wales.

10 Road Traffic Regulation Act 1984 s 117(1A)(a) (as added: see note 9 *supra*). 'Recognised badge' has the meaning given in the Chronically Sick and Disabled Persons Act 1970 s 21A (as added) (display of non-GB badges) (see SOCIAL SERVICES AND COMMUNITY CARE): s 117(3) (definition added by the Disability Discrimination Act 2005 Sch 1 para 44(4)). At the date at which this volume states the law this definition had not been brought into force in relation to Wales.

11 le by virtue of the Chronically Sick and Disabled Persons Act 1970 s 21B (as added): see SOCIAL SERVICES AND COMMUNITY CARE.

12 Road Traffic Regulation Act 1984 s 117(1A)(b) (as added: see note 9 *supra*).

13 *Ibid* s 117(1A) (as added: see note 9 *supra*). The regulations referred to in the text are those made under the Chronically Sick and Disabled Persons Act 1970 s 21A (as added) (display of non-GB badges): see SOCIAL SERVICES AND COMMUNITY CARE. A person guilty of an offence under the Road Traffic Regulation Act 1984 s 117(1A) (as added) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I (amended by the Disability Discrimination Act 2005 Sch 1 para 45(4)). At the date at which this volume states the law the amendment made by the Disability Discrimination Act 2005 had not been brought into force in relation to Wales.

## UPDATE

### 862 Wrongful use of disabled person's badge

NOTES 3, 9, 10, 13--Amendments made by Disability Discrimination Act 2005 in force 30 March 2008 in relation to Wales: SI 2007/3285.

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## **(ii) Traffic Officers**

### **863. Introduction.**

Provision<sup>1</sup> has been made for the designation<sup>2</sup> of individuals as traffic officers<sup>3</sup> by, or under an authorisation given by, the Secretary of State<sup>4</sup> or the Welsh Ministers<sup>5</sup>. The duties assigned to traffic officers must be connected with, or intended to facilitate or to be conducive or incidental to: (1) the management of traffic on the relevant road network<sup>6</sup>; or (2) the performance of any other functions of the appropriate national authority<sup>7</sup> (in its capacity as a traffic authority<sup>8</sup> or highway authority<sup>9</sup>). Traffic officers have special powers<sup>10</sup> for use in connection with the performance of their duties<sup>11</sup>.

1    Ie the Traffic Management Act 2004 Pt 1 (ss 1-15).

The provisions dealt with in this paragraph have been brought into force in relation to England (see the Traffic Management Act 2004 (Commencement No 1 and Transitional Provision) (England) Order 2004, SI 2004/2380, art 2(a)), but at the date at which this volume states the law no day had been appointed for their commencement in relation to Wales.

2    'Designation' means designation as a traffic officer under the Traffic Management Act 2004 s 2 (see PARA 864 post): s 15.

3    'Traffic officer' means an individual designated under *ibid* s 2: s 15.

4    As to the Secretary of State see PARA 236 ante.

5    See the Traffic Management Act 2004 s 1(1). As to the Welsh Ministers see PARA 237 ante. As to the power to acquire land for the purpose of providing buildings or facilities needed for traffic management purposes see s 13; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 80.

6    For this purpose, 'relevant road network' means the network of relevant roads in England (in the case of traffic officers designated by, or under an authorisation given by, the Secretary of State) or the network of relevant roads in Wales (in the case of traffic officers designated by, or under an authorisation given by, the Welsh Ministers): *ibid* s 1(3). In Pt 1, 'relevant road' means a road in England for which the Secretary of State is the traffic authority or a road in Wales for which the Welsh Ministers are the traffic authority: s 1(5). 'Road' means any length of highway or of any other road to which the public has access, and includes bridges over which a road passes: s 15.

7    'The appropriate national authority' means the Secretary of State, as respects England, or the Welsh Ministers, as respects Wales: *ibid* s 15. The appropriate national authority may, at the request of any person, agree to arrange for the services of a traffic officer to be provided to that person subject to the payment of a charge: s 12.

8    'Traffic authority' has the same meaning as in the Road Traffic Regulation Act 1984 (see PARA 731 ante): Traffic Management Act 2004 s 15.

9    *Ibid* s 1(2). As to highway authorities see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 50 et seq.

10   Ie the powers referred to in *ibid* s 5(1): see PARA 866 post.

11   *Ibid* s 1(4).

## **UPDATE**

### **863-867 Traffic Officers**

These provisions in force 1 May 2009 in relation to Wales: SI 2009/1095.

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#### **864. Designation of traffic officers.**

The appropriate national authority<sup>1</sup> may: (1) designate individuals as traffic officers; and (2) authorise another person to designate individuals as traffic officers<sup>2</sup>. Such a designation or authorisation must be given (and may be varied or withdrawn) in writing, and may be given subject to such limitations and conditions as the appropriate national authority thinks appropriate<sup>3</sup>. The designation of an individual as a traffic officer must be made (and may be withdrawn) in writing<sup>4</sup>. A designation may provide that it is to remain in force (unless it is withdrawn or otherwise ceases to have effect) for a specified period<sup>5</sup>. A traffic officer designated under an authorisation must be employed by, or by a person providing services to, the authorised person<sup>6</sup>. An individual designated under an authorisation ceases to be a traffic officer if the person who appointed him either withdraws his designation or ceases to be authorised<sup>7</sup>. The appropriate national authority may direct an authorised person to withdraw immediately the designation of all or any of the individuals who have been designated by that person<sup>8</sup>.

1 For the meaning of 'appropriate national authority' see PARA 863 note 7 ante.

2 Traffic Management Act 2004 s 2(1).

The provisions dealt with in this paragraph have been brought into force in relation to England (see the Traffic Management Act 2004 (Commencement No 1 and Transitional Provision) (England) Order 2004, SI 2004/2380, art 2(a)), but at the date at which this volume states the law no day had been appointed for their commencement in relation to Wales.

The appropriate national authority may give financial assistance to an authorised person, in such form and on such terms as it considers appropriate, in respect of the traffic officers designated by that person (including financial assistance in respect of equipment, accommodation or other facilities provided for those traffic officers): Traffic Management Act 2004 s 14.

3 Ibid s 2(2).

4 Ibid s 2(3).

5 Ibid s 2(4).

6 Ie the person authorised under head (2) in the text: ibid s 2(5).

7 Ibid s 2(6).

8 Ibid s 2(7).

#### **UPDATE**

#### **863-867 Traffic Officers**

These provisions in force 1 May 2009 in relation to Wales: SI 2009/1095.



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### **865. Jurisdiction and duties of traffic officers.**

A traffic officer<sup>1</sup> has jurisdiction over any relevant road<sup>2</sup> in England<sup>3</sup> or Wales<sup>4</sup>, unless his designation provides that he does not have such jurisdiction<sup>5</sup>, in which case he has jurisdiction only over such relevant roads, or relevant roads of such descriptions, as may be specified in his designation<sup>6</sup>. A traffic officer must, when carrying out his duties, comply with any direction of a constable<sup>7</sup>. Subject to that requirement, a traffic officer designated by an authorised person<sup>8</sup> must, when carrying out his duties, comply with any direction of the appropriate national authority<sup>9</sup>.

1 For the meaning of 'traffic officer' see PARA 863 note 3 ante.

2 For the meaning of 'relevant road' see PARA 863 note 6 ante.

3 Ie if he was designated by, or under an authorisation given by, the Secretary of State.

4 Ie if he was designated by, or under an authorisation given by, the Welsh Ministers. See note 5 infra.

5 Traffic Management Act 2004 s 3(1).

The provisions dealt with in this paragraph have been brought into force in relation to England (see the Traffic Management Act 2004 (Commencement No 1 and Transitional Provision) (England) Order 2004, SI 2004/2380, art 2(a)), but at the date at which this volume states the law no day had been appointed for their commencement in relation to Wales.

6 Traffic Management Act 2004 s 3(2).

7 Ibid s 4(1). As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

8 As to authorised persons see PARA 864 ante.

9 Traffic Management Act 2004 s 4(2). For the meaning of 'appropriate national authority' see PARA 863 note 7 ante.

## **UPDATE**

### **863-867 Traffic Officers**

These provisions in force 1 May 2009 in relation to Wales: SI 2009/1095.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(ii) Traffic Officers/866. Special powers.

### **866. Special powers.**

A traffic officer<sup>1</sup> has special powers<sup>2</sup> which may only be exercised for one or more of the following purposes: (1) maintaining or improving the movement of traffic on a relevant road<sup>3</sup>

over which the traffic officer has jurisdiction<sup>4</sup>; (2) preventing or reducing the effect of anything causing (or which has the potential to cause) congestion or other disruption to the movement of traffic on such a road; (3) avoiding danger to persons or other traffic using such a road (or preventing risks of any such danger arising); and (4) preventing damage to, or to anything on or near, such a road, or for a purpose incidental to any of those purposes<sup>5</sup>. Subject to those restrictions, a traffic officer's special powers may be exercised: (a) on or in relation to any relevant road over which the traffic officer has jurisdiction to act<sup>6</sup>; or (b) provided that the traffic officer is acting at the direction of the chief officer of police for the area in which the road is situated or with the consent of the traffic authority<sup>7</sup> for the road, on or in relation to any other road in England and Wales<sup>8</sup>. A traffic officer may not exercise his special powers on a road unless he is in uniform<sup>9</sup>.

A traffic officer has the power: (i) when he is engaged in the regulation of traffic in a road, to direct a person driving or propelling a vehicle to stop the vehicle or to make it proceed in, or keep to, a particular line of traffic; (ii) for the purposes of a traffic survey of any description which is being carried out on or in the vicinity of a road, to direct a person driving or propelling a vehicle: (A) to stop the vehicle; (B) to make it proceed in, or keep to, a particular line of traffic; or (C) to proceed to a particular point on or near the road on which the vehicle is being driven or propelled<sup>10</sup>; (iii) when the traffic officer is engaged in the regulation of vehicular traffic in a road, to direct persons on foot (or such persons and other traffic) to stop; and (iv) to direct a person driving a mechanically propelled vehicle, or riding a cycle, on a road to stop the vehicle or cycle<sup>11</sup>. A traffic officer has the powers of a constable in the case of emergencies and temporary obstructions to place and temporarily maintain traffic signs on a road or on any structure on a road<sup>12</sup>.

The appropriate national authority may by order made by statutory instrument confer further special powers on traffic officers<sup>13</sup>; but the national authority may not confer a further special power on traffic officers unless it is satisfied that the power is necessary for the purpose of facilitating the performance of any duties which may be assigned to traffic officers<sup>14</sup>.

1 For the meaning of 'traffic officer' see PARA 863 note 3 ante.

2 The powers conferred: (1) by the Traffic Management Act 2004 ss 6, 7 (see the text and notes 10-12 infra); (2) by orders under s 8 (see the text and notes 13-14 infra); and (3) by or under any other Act which are expressed to be special powers for the purposes of s 5: s 5(1).

The provisions dealt with in this paragraph have been brought into force in relation to England (see the Traffic Management Act 2004 (Commencement No 1 and Transitional Provision) (England) Order 2004, SI 2004/2380, art 2(a)), but at the date at which this volume states the law they are only partly in force in relation to Wales (see the Traffic Management Act 2004 (Commencement No 1) (Wales) Order 2006, SI 2006/2826, art 2(1), (2) (a); and note 8 infra). The remaining provisions are to be brought into force in Wales as from a day to be appointed under the Traffic Management Act 2004 s 99(1). At the date at which this volume states the law no such day had been appointed.

3 For the meaning of 'relevant road' see PARA 863 note 6 ante.

4 The by virtue of the Traffic Management Act 2004 s 3: see PARA 865 text and notes 1-6 ante.

5 Ibid s 5(3).

6 The by virtue of ibid s 3: see PARA 865 text and notes 1-6 ante.

7 For the meaning of 'traffic authority' see PARA 863 note 8 ante.

8 Traffic Management Act 2004 s 5(4), (5). This provision has been brought into force in relation to both England and Wales: see note 2 supra.

9 Ibid s 5(6). The appropriate national authority is to determine the uniform for traffic officers designated by, or under an authorisation given by, that authority: s 11. For the meaning of 'appropriate national authority' see PARA 863 note 7 ante.

10 Head (2) in the text is subject to the restriction in the Road Traffic Act 1988 s 35(3) (see PARA 642 ante).

11 Traffic Management Act 2004 s 6(1).

12 le the powers under the Road Traffic Regulation Act 1984 s 67(1) (as amended) (see PARA 833 ante): Traffic Management Act 2004 s 7(1).

13 Ibid s 8(1). The order may: (1) provide for the enforcement of any special power conferred by the order (whether by the creation of a summary offence or otherwise); and (2) make supplemental, incidental, transitional or consequential provision (including provision amending any Act or subordinate legislation): s 8(3). An order under s 8 may not be made by the Secretary of State unless a draft of the order has been laid before and approved by a resolution of each House of Parliament: s 8(4).

14 Ibid s 8(2). As to the power under the Road Traffic Regulation Act 1984 s 99 (as amended) to make regulations in relation to the removal of vehicles by traffic officers see the Traffic Management Act 2004 s 9; and PARA 870 post.

## **UPDATE**

### **863-867 Traffic Officers**

These provisions in force 1 May 2009 in relation to Wales: SI 2009/1095.

### **866 Special powers**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(ii) Traffic Officers/867. Offences.

### **867. Offences.**

A person who assaults a traffic officer<sup>1</sup> in the execution of his duties is guilty of an offence and liable, on summary conviction, to imprisonment or to a fine or to both<sup>2</sup>.

A person who resists or wilfully obstructs a traffic officer in the execution of his duties is guilty of an offence and liable, on summary conviction, to imprisonment or to a fine or to both<sup>3</sup>.

A person who, with intent to deceive: (1) impersonates a traffic officer; (2) makes any statement or does any act calculated falsely to suggest that he is a traffic officer; or (3) makes any statement or does any act calculated falsely to suggest that he has powers as a traffic officer that exceed the powers he actually has, is guilty of an offence and liable, on summary conviction, to imprisonment or to a fine or to both<sup>4</sup>.

A person who: (a) a traffic officer reasonably believes to have been the driver of a vehicle at a time of a failure to comply with: (i) a direction given in relation to that vehicle under a power to stop or direct traffic<sup>5</sup>; or (ii) the indication given by a traffic sign placed under a power to place such a sign<sup>6</sup>; and (b) fails to give his name and address to a traffic officer in uniform on being required to do so by that officer, is guilty of an offence and liable, on summary conviction, to a fine<sup>7</sup>.

1 For the meaning of 'traffic officer' see PARA 863 note 3 ante.

2 Traffic Management Act 2004 s 10(1). The penalty is imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 5 on the standard scale or both: see s 10(1). As to the standard scale see PARA 230 note 3 ante. In the case of offences committed before the commencement of the Criminal Justice Act 2003 s 281(5) (which introduces a maximum term of 51 weeks for certain offences), the Traffic Management Act 2004 s 10(1) applies as if for '51 weeks' there were substituted 'six months': s 10(6). At the date at which this volume states the law no commencement date had been appointed for the Criminal Justice Act 2003 s 281(5).

The Traffic Management Act 2004 s 10 is in force in relation to both England and Wales: see the Traffic Management Act 2004 (Commencement No 1 and Transitional Provision) (England) Order 2004, SI 2004/2380, art 2(a); and the Traffic Management Act 2004 (Commencement No 1) (Wales) Order 2006, SI 2006/2826, art 2(1), (2)(a).

3 Traffic Management Act 2004 s 10(2). The penalty is imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 3 on the standard scale or both: see s 10(2). In the case of offences committed before the commencement of the Criminal Justice Act 2003 s 281(5) (see note 2 supra), the Traffic Management Act 2004 s 10(2) applies as if for '51 weeks' there were substituted 'one month': s 10(6).

4 Ibid s 10(3). The penalty is imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 5 on the standard scale or both: see s 10(3). In the case of offences committed before the commencement of the Criminal Justice Act 2003 s 281(5) (see note 2 supra), the Traffic Management Act 2004 s 10(3) applies as if for '51 weeks' there were substituted 'six months': s 10(6).

5 Ie a power under ibid s 6: see PARA 866 text and notes 10, 11 ante.

6 Ie a power under ibid s 7: see PARA 866 text and note 12 ante.

7 Ibid s 10(4), (5). The penalty is a fine not exceeding level 3 on the standard scale: see s 10(4).

## UPDATE

### 863-867 Traffic Officers

These provisions in force 1 May 2009 in relation to Wales: SI 2009/1095.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(iii) Traffic Wardens/868. Appointment of traffic wardens.

## (iii) Traffic Wardens

### 868. Appointment of traffic wardens.

A police authority<sup>1</sup> may appoint<sup>2</sup> persons to discharge, in aid of the police, functions normally undertaken by the police in connection with the control and regulation of, or the enforcement of the law relating to, traffic (including pedestrians) or stationary vehicles<sup>3</sup>. Persons so appointed are to act under the direction of the chief officer of police<sup>4</sup>, but are to be deemed to be employed by the police authority<sup>5</sup>. Persons so employed are known as 'traffic wardens'<sup>6</sup>.

A police authority employing traffic wardens for these purposes may also<sup>7</sup> employ them to act, under the direction of the chief officer of police, for other purposes connected with the control and regulation of traffic (including pedestrians) or stationary vehicles<sup>8</sup>. Where the police authority provides school crossing patrols<sup>9</sup>, whether as being the appropriate authority or by agreement with the appropriate authority, traffic wardens may be employed to act as school crossing patrols<sup>10</sup>. The police authority may, under arrangements made with a local authority or

with the Secretary of State<sup>11</sup>, employ the traffic wardens to act as parking attendants<sup>12</sup> at street parking places<sup>13</sup> provided or controlled by the local authority or, as the case may be, by the Secretary of State<sup>14</sup>.

Traffic wardens are not to be employed to discharge functions other than those prescribed as appropriate for the purpose by order of the Secretary of State made by statutory instrument<sup>15</sup>.

A police authority must not employ as a traffic warden any person who is a constable<sup>16</sup>, and must take steps to ensure that only persons adequately qualified are appointed traffic wardens, and that they are suitably trained before undertaking their duties<sup>17</sup>. Traffic wardens must wear such uniform as the Secretary of State may determine, and must not act as traffic wardens when not in uniform<sup>18</sup>.

The expenses incurred for these purposes or in connection with these functions of a police authority must be defrayed as if those expenses were expenses incurred for the purposes of the police force maintained by the authority<sup>19</sup>.

Any power to acquire, or authorise the acquisition of, land for the purposes of a police force includes power to acquire, or authorise the acquisition of, land for the purposes of the functions of the police authority under the above provisions<sup>20</sup>; and any land occupied for the purposes of those functions is deemed to be occupied for the purposes of the police force<sup>21</sup>.

1 As to police authorities see POLICE vol 36(1) (2007 Reissue) PARA 139 et seq.

2 Ie subject to the Road Traffic Regulation Act 1984 s 95(5): see the text to note 15 infra.

3 Ibid s 95(1).

4 As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

5 Road Traffic Regulation Act 1984 s 95(1).

6 Ibid s 95(3). Neither regulations under the Superannuation Act 1972 s 7 (superannuation of persons employed in local government service, etc) nor any local Act scheme within the meaning of s 8 applies to traffic wardens by virtue of the Road Traffic Regulation Act 1984 s 95 (as amended) or s 96 (as amended); but, in relation to such traffic wardens as the police authority may determine, those regulations (or, if the expenses of the police authority are paid by a local Act authority, the local Act scheme) apply, subject to such adaptations, modifications and exceptions as the Secretary of State may by regulations prescribe: s 97(1) (amended by the Greater London Authority Act 1999 ss 325, 423, Sch 27 para 48(1), (2), Sch 34 Pt VII). At the date at which this volume states the law no regulations had been made under the Road Traffic Regulation Act 1984 s 97(1) (as amended).

7 Ie subject to ibid s 95(5): see the text to note 15 infra.

8 Ibid s 95(4).

9 Ie school crossing patrols under ibid s 26 (as amended): see PARA 780 ante.

10 Ibid s 95(4)(a).

11 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

12 As to parking attendants see PARA 869 post.

13 For the meaning of 'street parking place' see PARA 752 note 10 ante.

14 Road Traffic Regulation Act 1984 s 95(4)(b). For these purposes, 'Transport for London' is a local authority: s 95(4A) (added by the Greater London Authority Act 1999 s 290).

15 Road Traffic Regulation Act 1984 s 95(5). No order may be so made unless a draft of the order has been laid before, and approved by resolution of, each House of Parliament: s 95(5). At the date at which this volume states the law no order had been made under s 95(5) but, by virtue of the Interpretation Act 1978 s 17(2)(b),

the Functions of Traffic Wardens Order 1970, SI 1970/1958 (amended by SI 1986/1328; SI 1993/1334; SI 2002/2975) has effect as if so made.

An order under the Road Traffic Regulation Act 1984 s 95(5) may provide that, for the purposes of any functions which traffic wardens are authorised by the order to discharge, but subject to the provisions of s 96(3) (as amended), references to a constable or police constable in all or any of the enactments specified below includes references to a traffic warden: s 96(1). The enactments referred to in s 96(1) are:

- 1412 (1) the Metropolitan Police Act 1839 s 52 (as amended), so far as it relates to the giving by the commissioner of directions to constables for preventing obstructions (Road Traffic Regulation Act 1984 s 96(2)(a));
- 1413 (2) the City of London Police Act 1839 s 22, so far as it makes similar provision with respect to the City of London (Road Traffic Regulation Act 1984 s 96(2)(b));
- 1414 (3) the Road Traffic Regulation Act 1984 s 100(3) (see PARA 870 post) (which relates to the interim disposal of vehicles removed under s 99 (see PARA 870 post)) (s 96(2)(bb)(i) (added by the Road Traffic Act 1991 s 48, Sch 4 para 31));
- 1415 (4) the Road Traffic Regulation Act 1984 s 104 (as amended) (see PARA 876 post) and s 105 (as amended) (see PARA 877 post) (which relate to the immobilisation of illegally parked vehicles) (s 96(2)(bb)(ii) (as so added));
- 1416 (5) the Road Traffic Act 1988 s 35(1) (see PARA 642 ante), s 36 (as amended) (see PARA 643 ante) and s 37 (see PARA 644 ante) (which relate to compliance with traffic directions given by police constables) (Road Traffic Regulation Act 1984 s 96(2)(c)(i) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 25));
- 1417 (6) the Road Traffic Act 1988 s 67(3) (see PARA 684 ante) (which relates to the power of a constable in uniform to stop vehicles for testing) (Road Traffic Regulation Act 1984 s 96(2)(c)(ia) (added by the Police Reform Act 2002 ss 44(1), (2), 108(10)(a)));
- 1418 (7) the Road Traffic Act 1988 s 163 (as amended) (see PARA 646 ante) (which relates to the power of a constable to stop vehicles) (Road Traffic Regulation Act 1984 s 96(2)(c)(ii) (amended by the Road Traffic (Consequential Provisions) Act 1988 Sch 3 para 25));
- 1419 (8) the Road Traffic Act 1988 s 164(1), (2), (6) (as amended) (see PARA 647 ante) (which relates to the power of a constable to require the production of a driving licence in certain circumstances) (Road Traffic Regulation Act 1984 s 96(2)(c)(iii) (amended by the Road Traffic (Consequential Provisions) Act 1988 Sch 3 para 25));
- 1420 (9) the Road Traffic Act 1988 s 165 (as amended) (see PARA 648 ante) and s 169 (see PARA 644 ante) (which relate to the powers of constables to obtain names and addresses of drivers and others and to require production of evidence of insurance or security and test certificates) (Road Traffic Regulation Act 1984 s 96(2)(c)(iv) (amended by the Road Traffic (Consequential Provisions) Act 1988 Sch 3 para 25(6), (7))); and
- 1421 (10) the Road Traffic Offenders Act 1988 s 11 (as amended) (see PARA 1035 post) (Road Traffic Regulation Act 1984 s 96(2)(d) (amended by the Road Traffic (Consequential Provisions) Act 1988 Sch 3 para 25)).

Where an order has been made pursuant to the Road Traffic Regulation Act 1984 s 96(2)(bb)(i) (as added), in s 100(3) (see PARA 870 post) the words 'chief officer of the police force to which the constable belongs' are deemed to include a reference to a chief officer of police under whose direction a traffic warden acts: s 96(4) (added by the Road Traffic Act 1991 Sch 4 para 31). Any order made under the Road Traffic Regulation Act 1984 s 95(5) may make different provision for different cases or classes of case, or in respect of different areas: s 96(5) (added by the Road Traffic Act 1991 Sch 4 para 31).

16 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. Any power of a constable for the purposes of the Road Traffic Act 1988 s 164(1), (2), (6) (as amended) and s 165 (as amended) is to be exercisable by a traffic warden under an order made by virtue of the Road Traffic Regulation Act 1984 s 96(1) only where:

- 1422 (1) the traffic warden is assisting a constable (s 96(3)(a) (amended by the Road Traffic (Consequential Provisions) Act 1988 Sch 3 para 25));

1423 (2) the traffic warden has reasonable cause to believe that an offence has been committed of a description specified in relation to the provision in question for the purposes of the Road Traffic Regulation Act 1984 s 96(3)(b) (as amended) by the order, and, in the case of a power for the purposes of the Road Traffic Act 1988 s 165 (as amended), the order authorises the use of that power in relation to that offence (Road Traffic Regulation Act 1984 s 96(3)(b) (as so amended; and further amended by the Police Reform Act 2002 ss 44(1), (3), 107(2), 108(10) (a), Sch 8)).

17 Road Traffic Regulation Act 1984 s 95(6).

18 Ibid s 95(7).

19 Ibid s 97(3).

20 Ie under ibid ss 95, 96 (both as amended).

21 Ibid s 97(5).

## UPDATE

### 868 Appointment of traffic wardens

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(iv) Parking Attendants/869. Parking attendants.

## (iv) Parking Attendants

### 869. Parking attendants.

A local authority<sup>1</sup> may provide for the supervision of parking places<sup>2</sup> within its area by individuals known as parking attendants<sup>3</sup>. Parking attendants also have such other functions in relation to stationary vehicles as may be conferred by or under any other enactment<sup>4</sup>. A parking attendant is an individual employed by the authority, or where the authority has made arrangements with any person for these purposes, an individual employed by that person to act as a parking attendant<sup>5</sup>. Parking attendants in an area that is a civil enforcement area<sup>6</sup> for parking contraventions<sup>7</sup>, when exercising prescribed<sup>8</sup> functions, must wear such uniform as may be determined by the enforcement authority<sup>9</sup> in accordance with guidance issued by the appropriate national authority<sup>10</sup>, and must not exercise any of those functions when not in uniform<sup>11</sup>.

1 For the meaning of 'local authority' see PARA 784 note 1 ante; definition applied by virtue of the Road Traffic Regulation Act 1984 s 63A(5) (s 63A added by the Road Traffic Act 1991 s 44(1)). For these purposes, Transport for London is also a local authority: Road Traffic Regulation Act 1984 s 63A(5) (as so added; and amended by the Greater London Authority Act 1999 s 289(1), (3)). For these purposes, the area of Transport for London is Greater London: Road Traffic Regulation Act 1984 s 63A(6) (s 63A as so added; and s 63A(6) added by the Greater London Authority Act 1999 s 289(1), (4)). As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

2 For the meaning of 'parking place' see PARA 784 note 2 ante; definition applied by virtue of the Road Traffic Regulation Act 1984 s 63A(5) (as added: see note 1 supra).

3 Ibid s 63A(1) (as added: see note 1 supra).

4 Ibid s 63A(2) (as added: see note 1 supra).

5 Ibid s 63A(3) (as added: see note 1 supra).

6 As to civil enforcement areas see the Traffic Management Act 2004 s 74, Sch 8; applied by the Road Traffic Regulation Act 1984 s 63A(4) (as added (see note 1 supra); and s 63A(4) substituted by the Traffic Management Act 2004 s 91, Sch 11 para 2). See PARA 888 post.

7 As to parking contraventions see the Traffic Management Act 2004 s 73, Sch 7 Pt 1; applied by the Road Traffic Regulation Act 1984 s 63A(4) (as substituted: see note 6 supra). See PARA 888 post.

8 For the meaning of 'prescribed' see PARA 735 note 3 ante.

9 For the meaning of 'enforcement authority' see the Traffic Management Act 2004 Sch 8; applied by the Road Traffic Regulation Act 1984 s 63A(4) (as substituted: see note 6 supra). See PARA 888 note 5 post.

10 For the meaning of 'appropriate national authority' see the Traffic Management Act 2004 s 92(1); applied by the Road Traffic Regulation Act 1984 s 63A(4) (as substituted: see note 6 supra).

11 Ibid s 63A(4) (as substituted: see note 6 supra). The Parking Attendants (Wearing of Uniforms) (London) Regulations 1993, SI 1993/1450, prescribe for the purposes of the Road Traffic Regulation Act 1984 s 63A (as added and amended) functions conferred by or under s 99 (as amended) (see PARA 870 post).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(v) Removal or Immobilisation of Vehicles/870. Removal of vehicles illegally, obstructively or dangerously parked, or abandoned or broken down.

## **(v) Removal or Immobilisation of Vehicles**

### **870. Removal of vehicles illegally, obstructively or dangerously parked, or abandoned or broken down.**

The Secretary of State<sup>1</sup> may by regulations make provision for the removal of vehicles<sup>2</sup> which have been permitted to remain at rest<sup>3</sup>:

- 714 (1) on a road<sup>4</sup> in contravention of any statutory<sup>5</sup> prohibition or restriction<sup>6</sup>; or
- 715 (2) on a road in such a position or in such condition or in such circumstances as to cause obstruction to other persons using the road or as to be likely to cause danger to such persons<sup>7</sup>; or
- 716 (3) on a road, or on any land in the open air, in such a position or in such condition or in such circumstances as to appear, to an authority empowered by the regulations to remove such vehicles, to have been abandoned without lawful authority<sup>8</sup>,

or which have broken down on a road<sup>9</sup>. Such regulations may provide: (a) in the case of a vehicle which may be removed from a road, for the moving of the vehicle from one position on a road to another position on that or another road<sup>10</sup>; and (b) for repealing byelaws dealing with the same subject matter as the regulations, and for suspending, while the regulations remain in force, any power of making such byelaws<sup>11</sup>.



Where it appears to an authority which is otherwise empowered<sup>12</sup> to remove a vehicle in pursuance of such regulations, that the vehicle is on land other than a road which is occupied by any person, the authority must give him notice in the prescribed<sup>13</sup> manner that it proposes to remove the vehicle in pursuance of the regulations, and is not entitled to remove it if he objects to the proposal in the prescribed manner and within the prescribed period<sup>14</sup>.

Any vehicle<sup>15</sup> removed by the council of a non-metropolitan district in England under such regulations is to be delivered by it to the council of the county comprising the district in accordance with such arrangements (including arrangements as to the sharing of any expenses incurred or sums received by the two councils<sup>16</sup>) as may be agreed between the two councils or, in default of agreement, as may be determined by the Secretary of State<sup>17</sup>. Any vehicle removed by a constable<sup>18</sup> in pursuance of any such regulations and appearing to him to have been abandoned may be delivered by the chief officer of the police force to which the constable belongs<sup>19</sup> to a local authority<sup>20</sup>, with the consent of that authority<sup>21</sup>. While a vehicle is in the custody of an authority in pursuance of these provisions or of such regulations<sup>22</sup>, other than a vehicle which in the opinion of that authority is in such a condition that it ought to be destroyed, it is the duty of that authority to take such steps as are reasonably necessary for the safe custody of the vehicle<sup>23</sup>.

Where a vehicle has been removed from a road in Greater London by a parking attendant<sup>24</sup> acting on behalf of Transport for London or a participating council<sup>25</sup>, an authorised officer<sup>26</sup> may, at any time after the removal of the vehicle and before the vehicle is lawfully removed from the custody of the relevant authority or is disposed of<sup>27</sup>, enter the vehicle for the purpose of removing anything in it in the interests of the safety of persons or property outside the vehicle or for the prevention of damage to or loss of the vehicle or any of its contents<sup>28</sup>. The relevant authority must retain and keep safe anything so removed and must deliver it to any person claiming it who satisfies the relevant authority that he is the owner of it or of the vehicle in question<sup>29</sup>. However, where the vehicle from which anything is so removed is disposed of<sup>30</sup> the relevant authority may also, in any manner it thinks fit, dispose of the thing removed if it has not been claimed by any person who satisfies the relevant authority that he is its owner<sup>31</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For these purposes, 'vehicle' means any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle: Road Traffic Regulation Act 1984 s 99(5).

3 Ibid s 99(1).

4 For the meaning of 'road' see PARA 206 ante.

5 For the meaning of 'statutory' see PARA 719 note 7 ante.

6 Road Traffic Regulation Act 1984 s 99(1)(a).

7 Ibid s 99(1)(b).

8 Ibid s 99(1)(c). It is the appearance of abandonment, not whether the vehicle is in fact abandoned, which is crucial: *Clarke v Chief Constable of West Midlands Police* [2001] EWCA Civ 1169, [2002] RTR 30.

9 Road Traffic Regulation Act 1984 s 99(1). As to the regulations made see the Removal and Disposal of Vehicles Regulations 1986, SI 1986/183 (amended by SI 1993/278; SI 1993/1595; SI 1993/1708; SI 1994/1503; SI 1996/1008; SI 2002/746; SI 2002/2777; SI 2005/3252). As to the modification of the Road Traffic Regulation Act 1984 s 99 (as amended) and s 100 (as amended) by regulations in relation to loading areas see PARA 875 post. As to the making of regulations generally see PARA 720 ante.

The powers to remove parked vehicles may in specified circumstances be exercised by a constable, a traffic warden, a local authority and a parking attendant: see the Removal and Disposal of Vehicles Regulations 1986, SI 1986/183, reg 4, reg 4A (as added), reg 4B (as added), reg 5 (as amended), reg 5A (as added, substituted

and amended) and reg 5B (as added). As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. As to traffic wardens see PARA 868 ante. As to parking attendants see PARA 869 ante.

The power to remove parked vehicles may now also be exercised by civilians designated or accredited by a chief officer of police for such purpose under the Police Reform Act 2002 Sch 4 para 10 (community support officers: see POLICE vol 36(1) (2007 Reissue) PARA 529 et seq) or Sch 5 para 7 (accredited persons: see POLICE vol 36(1) (2007 Reissue) PARA 533): see the Removal and Disposal of Vehicles Regulations 1986, SI 1986/183, reg 4A (added by SI 1993/278; and amended by SI 2002/2777).

The power to make regulations under the Road Traffic Regulation Act 1984 s 99 (as amended) includes, in relation to the removal of vehicles by traffic officers, power to make consequential provision: Traffic Management Act 2004 s 9(1). The provision which may be so made includes, in particular, provision: (1) amending; or (2) applying, in relation to vehicles removed by traffic officers (with or without modifications), any provision of the Road Traffic Regulation Act 1984 ss 100-102 (as amended) (see the text and notes 15-23 infra; and PARAS 871-874 post): Traffic Management Act 2004 s 9(2). As to traffic officers see PARA 863 et seq ante. Section 9 has been brought into force in relation to England (see the Traffic Management Act 2004 (Commencement No 1 and Transitional Provision) (England) Order 2004, SI 2004/2380), but at the date at which this volume states the law no day had been appointed for its commencement in relation to Wales.

10 Road Traffic Regulation Act 1984 s 99(2)(a).

11 Ibid s 99(2)(b) (amended by the Road Traffic Act 1991 s 83, Sch 8).

12 Ie apart from under the Road Traffic Regulation Act 1984 s 99(3): see the text and note 14 infra.

13 For the meaning of 'prescribed' see PARA 735 note 3 ante.

14 Road Traffic Regulation Act 1984 s 99(3) (amended by the Clean Neighbourhoods and Environment Act 2005 s 15(1), (2)).

15 For the meaning of 'vehicle' for these purposes see note 2 supra; definition applied by the Road Traffic Regulation Act 1984 s 100(5).

16 Ie under ibid s 99 (as amended), s 100 (as amended), s 101 (as amended) (see PARA 871 post), or s 102 (as amended) (see PARA 874 post).

17 Ibid s 100(2) (amended by the Local Government Act 1985 s 8, Sch 5 para 4(31)(a)).

18 For the purpose of the Road Traffic Regulation Act 1984 s 100(3) (see the text to note 21 infra), references to constables or police constables include references to traffic wardens: Functions of Traffic Wardens Order 1970, SI 1970/1958, art 3(2)(f) (added by SI 1993/1334).

19 Where an order has been made pursuant to the Road Traffic Regulation Act 1984 s 96(2)(bb)(i) (as added) (see PARA 868 ante), in s 100(3) (see the text to note 21 infra) the words 'chief officer of the police force to which the constable belongs' are deemed to include a reference to a chief officer of police under whose direction a traffic warden acts: s 96(4) (added by the Road Traffic Act 1991 s 48, Sch 4 para 31). As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

20 For these purposes, 'local authority' means:

1424 (1) in relation to England, the council of a county, metropolitan district or London borough, the Common Council of the City of London or Transport for London (Road Traffic Regulation Act 1984 s 100(5)(a) (amended by the Local Government Act 1985 s 8, Sch 5 para 4(31)(b); and by the Greater London Road Traffic (Various Provisions) Order 2001, SI 2001/1353, arts 2, 4));

1425 (2) in relation to Wales, means the council of a county or county borough (Road Traffic Regulation Act 1984 s 100(5)(b) (amended by the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 38(8))).

For the application of the Road Traffic Regulation Act 1984 to the Channel Tunnel system see the Channel Tunnel (Application of Road Traffic Enactments) (No 2) Order 1994, SI 1994/1667, which confers functions exercisable by local authorities on the Channel tunnel Concessionaires.

21 Road Traffic Regulation Act 1984 s 100(3).

22 Ie regulations under ibid s 99 (as amended): see the text and notes 1-14 supra.

23 Ibid s 100(4).

24 le under ibid s 99 (as amended) and regulations made under it: see the text and notes 1-14 supra. For the meaning of 'parking attendant' see PARA 869 ante; definition applied by virtue of the London Local Authorities Act 2000 s 3(1).

25 'Participating council' means the Common Council of the City of London in its capacity as a local authority and the council of any London borough; and 'borough', 'City' and 'council' are to be construed accordingly: London Local Authorities Act 2000 s 2 (amended by the London Local Authorities Act 2004 s 27(1)). As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

26 'Authorised officer' in relation to Transport for London means: (1) an employee of Transport for London; (2) any person by whom in pursuance of arrangements made with it any function of Transport for London under the London Local Authorities Act 2000 s 16 (as amended) falls to be discharged; or (3) any employee of such a person, who is authorised in writing by Transport for London to act in relation to s 16 (as amended): s 16(5) (added by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, art 3(1), Sch 2 paras 1, 12(1), (6)).

27 le under the Road Traffic Regulation Act 1984 s 101 (as amended): see PARA 871 post.

28 London Local Authorities Act 2000 s 16(1), (2) (amended by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, Sch 2 para 12(2), (3)).

29 London Local Authorities Act 2000 s 16(3) (amended by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, Sch 2 para 12(4)).

30 See note 27 supra.

31 London Local Authorities Act 2000 s 16(4) (amended by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, Sch 2 para 12(5)).

## UPDATE

### **870 Removal of vehicles illegally, obstructively or dangerously parked, or abandoned or broken down**

NOTE 9--SI 1986/183 further amended: SI 2007/3484 (England), SI 2008/612 (Wales). As to the power of civil enforcement officers to remove vehicles in a civil enforcement area for parking contraventions, see SI 1986/183 reg 5C (added by SI 2007/3484 (England), SI 2008/612 (Wales)). See Removal and Disposal of Vehicles (Traffic Officers) (England) Regulations 2008, SI 2008/2367.

Traffic Management Act 2004 s 9 in force 1 May 2009 in relation to Wales: SI 2009/1095.

TEXT AND NOTES 15-21--1984 Act s 100(3A) (interim disposal of vehicles removed under s 99 by traffic officers) added: SI 2008/2367 (England). As to the meaning of 'traffic officer' see 1984 Act s 100(5) (definition added by SI 2008/2367 (England)).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(v) Removal or Immobilisation of Vehicles/871. Disposal of vehicles abandoned and removable.

### **871. Disposal of vehicles abandoned and removable.**

A competent authority<sup>1</sup> may, in such manner as it thinks fit, dispose of a vehicle which appears to it to be abandoned and which has been, or could at any time be, removed in pursuance of

certain orders or certain regulations<sup>2</sup>. The time at which a competent authority may so dispose of a vehicle is as follows<sup>3</sup>:

- 717 (1) in the case of a vehicle which in its opinion is in such a condition that it ought to be destroyed, any time after its removal<sup>4</sup>;
- 718 (2) in the case of a vehicle, not falling within head (1) above, which: (a) does not display a licence<sup>5</sup> (whether current or otherwise and whether or not the vehicle is required to display a licence); and (b) does not display any registration mark (whether indicating registration within or outside the United Kingdom), at any time after its removal<sup>6</sup>;
- 719 (3) in any other case, any time after such steps as may be prescribed<sup>7</sup> have been taken by a competent authority (or partly by one competent authority and partly by the other) to find a person appearing to the authority taking such steps to be the owner<sup>8</sup> of the vehicle and either<sup>9</sup> it has failed to find such a person<sup>10</sup>, or he has failed to comply with a notice served on him in the prescribed manner by a competent authority requiring him to remove the vehicle from its custody within the prescribed period<sup>11</sup>.

If, before a vehicle found outside Greater London is disposed of by an authority in pursuance of such provisions, the vehicle is claimed by a person who satisfies the authority that he is its owner and pays such sums in respect of its removal and storage as may be prescribed to the authority entitled to those sums, the authority is to permit him to remove the vehicle from its custody within such period as may be prescribed<sup>12</sup>. If, before a vehicle found in Greater London is disposed of by an authority in pursuance of such provisions, the vehicle is claimed by a person who satisfies the authority that he is its owner and pays<sup>13</sup>:

- 720 (a) any penalty charge payable in respect of the parking of the vehicle in the place from which it was removed<sup>14</sup>; and
- 721 (b) such sums in respect of the removal and storage of the vehicle as the authority may require, or in the case of sums payable to a competent authority which is not a local authority, as may be prescribed<sup>15</sup>,

the authority must permit him to remove the vehicle from its custody within such period as it may specify or, in the case of sums payable to a competent authority which is not a local authority, as may be prescribed<sup>16</sup>.

If, before the end of the period of one year beginning with the date on which a vehicle found outside Greater London is sold by an authority in pursuance of these provisions, any person satisfies that authority that at the time of the sale he was the owner of the vehicle, that authority must pay him any sum by which the proceeds of sale exceed the aggregate of such sums in respect of the removal, storage and disposal of the vehicle as may be prescribed<sup>17</sup>. If, before the end of the period of one year beginning with the date on which a vehicle found in Greater London is sold by an authority in pursuance of these provisions, any person satisfies that authority that at the time of the sale he was the owner of the vehicle, that authority must pay him any sum by which the proceeds of sale exceed the aggregate of<sup>18</sup>:

- 722 (i) any penalty charge payable in respect of the parking of the vehicle in the place from which it was removed<sup>19</sup>; and
- 723 (ii) such sums in respect of the removal, storage and disposal of the vehicle as the authority may require, or in the case of sums payable to a competent authority which is not a local authority, as may be prescribed<sup>20</sup>.

The Secretary of State<sup>21</sup> may by regulations require an authority by which a vehicle is disposed of in pursuance of these provisions to give such information relating to the disposal as may be prescribed to such persons as may be prescribed<sup>22</sup>.

1 For these purposes, 'competent authority' in relation to a vehicle means: (1) the chief officer of the police force in whose area is the place from which the vehicle has been removed or could at any time be removed; (2) the local authority (other than Transport for London) in whose area that place is or to which the vehicle has been delivered by the chief officer of a police force; or (3) Transport for London, where the vehicle has been removed by a parking attendant on its behalf: Road Traffic Regulation Act 1984 s 101(8) (amended by the Greater London Road Traffic (Various Provisions) Order 2001, SI 2001/1353, arts 2, 5). For the meaning of 'vehicle' for these purposes see PARA 870 note 2 ante; definition applied by the Road Traffic Regulation Act 1984 s 101(8). For the meaning of 'local authority' for these purposes see PARA 870 note 20 ante; definition applied by s 101(8). For the meaning of 'parking attendant' see PARA 869 ante.

2 Ibid s 101(1) (amended by the Road Traffic Act 1991 s 67(2); and the Traffic Management Act 2004 s 91, Sch 11 para 3(1)(a)). The amendment made by the Traffic Management Act 2004, which makes the Road Traffic Regulation Act 1984 s 101(1) (as amended) subject to s 101(3) (as amended) (see the text and note 3 infra) and s 101A (as added) (see PARA 872 post), has been brought into force in relation to Wales (see the Traffic Management Act 2004 (Commencement No 1) (Wales) Order 2006, SI 2006/2826, art 2(1), (2)(c)); in relation to England the Traffic Management Act 2004 s 91, Sch 11 para 3(1)(a) is to come into force on 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053).

The Road Traffic Regulation Act 1984 s 101 (as amended) applies to the following orders: (1) any order under s 35 (as amended) (see PARA 790 ante); (2) any order relating to a parking place designated under s 45 (as amended) (see PARA 808 ante); and (3) any order containing a provision having effect by virtue of s 53(3) (see PARA 817 ante): s 101(2). The regulations referred to in the text are those made under s 99 (as amended): see PARA 870 ante.

3 Ibid s 101(3) (amended by the Clean Neighbourhoods and Environment Act 2005 ss 16(1), (4), 107, Sch 5 Pt 3). The London Local Authorities Act 1995 s 6(2) has effect with respect to the time at which a competent authority may dispose of a vehicle under the Road Traffic Regulation Act 1984 s 101 (as amended) where the place from which the vehicle has been removed or could at any time be removed is in the borough of a participating council or the vehicle has been delivered by the Commissioner to a participating council: London Local Authorities Act 1995 s 6(1). In such circumstances, the Road Traffic Regulation Act 1984 s 101(3) (as amended) has effect as though: (1) at the end of s 101(3)(b) (see the text to note 6 supra) there were added 'or after the expiry of a period of three months beginning with the removal, whichever is the sooner'; and (2) at the end of s 101(3) there were added 'or the expiry of a period of three months beginning with the removal, whichever is the sooner': London Local Authorities Act 1995 s 6(2). For the purposes of the London Local Authorities Act 1995, 'Commissioner' means the Metropolitan Police Commissioner or, in the City of London, the City of London Police Commissioner: s 2.

4 Road Traffic Regulation Act 1984 s 101(3)(a) (amended by the Clean Neighbourhoods and Environment Act 2005 ss 16(1), (2), 107, Sch 5 Pt 1).

5 For these purposes, 'licence' in relation to a vehicle means a licence issued for the vehicle under the Vehicle Excise and Registration Act 1994 (including a nil licence within the meaning of that Act) (see PARA 518 et seq ante): Road Traffic Regulation Act 1984 s 101(8) (amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 18(1); and the Clean Neighbourhoods and Environment Act 2005 s 16(1), (5)).

6 Road Traffic Regulation Act 1984 s 101(3)(b) (substituted by the Clean Neighbourhoods and Environment Act 2005 s 16(3)).

7 For the meaning of 'prescribed' see PARA 735 note 3 ante.

8 For these purposes, 'owner', in relation to a vehicle which is the subject of a hiring agreement or hire-purchase agreement, includes the person entitled to possession of the vehicle under the agreement: Road Traffic Regulation Act 1984 s 101(8). If in the case of any vehicle it appears to the authority in question that more than one person is or was its owner at the relevant time, such one of them as the authority thinks fit will be treated as its owner for the purposes of s 101(4)-(5A) (as amended): s 101(6) (amended by the Road Traffic Act 1991 s 67(7)). This provision is repealed, as from a day to be appointed, by the Traffic Management Act 2004 ss 91, 98, Sch 11 para 3(1)(b), Sch 12; this repeal has been brought into effect in relation to Wales (see the Traffic Management Act 2004 (Commencement No 1) (Wales) Order 2006, SI 2006/2826, art 2(1), (2)(c)), and is to have effect in relation to England as from 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053).

9 Road Traffic Regulation Act 1984 s 101(3)(c).

10 Ibid s 101(3)(c)(i).

11 Ibid s 101(3)(c)(ii). See note 22 *infra*.

12 Ibid s 101(4) (amended by the Road Traffic Act 1991 s 67(3)). See note 22 *infra*. This provision is repealed, as from a day to be appointed, by the Traffic Management Act 2004 ss 91, 98, Sch 11 para 3(1)(b), Sch 12; this repeal has been brought into effect in relation to Wales (see the Traffic Management Act 2004 (Commencement No 1) (Wales) Order 2006, SI 2006/2826, art 2(1), (2)(c)), and is to have effect in relation to England as from 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053).

13 Road Traffic Regulation Act 1984 s 101(4A) (added by the Road Traffic Act 1991 s 67(4)). This provision is repealed, as from a day to be appointed, by the Traffic Management Act 2004 ss 91, 98, Sch 11 para 3(1)(b), Sch 12; this repeal has been brought into effect in relation to Wales (see the Traffic Management Act 2004 (Commencement No 1) (Wales) Order 2006, SI 2006/2826, art 2(1), (2)(c)), and is to have effect in relation to England as from 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053).

14 Road Traffic Regulation Act 1984 s 101(4A)(a) (as added: see note 13 *supra*). As to the repeal of this provision see note 13 *supra*.

15 Ibid s 101(4A)(b) (as added: see note 13 *supra*). As to the repeal of this provision see note 13 *supra*.

16 Ibid s 101(4A) (as added: see note 13 *supra*). See note 22 *infra*. As to the repeal of this provision see note 13 *supra*.

17 Ibid s 101(5) (amended by the Road Traffic Act 1991 s 67(5)). See note 22 *infra*. This provision is repealed, as from a day to be appointed, by the Traffic Management Act 2004 ss 91, 98, Sch 11 para 3(1)(b), Sch 12; this repeal has been brought into effect in relation to Wales (see the Traffic Management Act 2004 (Commencement No 1) (Wales) Order 2006, SI 2006/2826, art 2(1), (2)(c)), and is to have effect in relation to England as from 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053).

18 Road Traffic Regulation Act 1984 s 101(5A) (added by the Road Traffic Act 1991 s 67(6)). This provision is repealed, as from a day to be appointed, by the Traffic Management Act 2004 ss 91, 98, Sch 11 para 3(1)(b), Sch 12; this repeal has been brought into effect in relation to Wales (see the Traffic Management Act 2004 (Commencement No 1) (Wales) Order 2006, SI 2006/2826, art 2(1), (2)(c)), and is to have effect in relation to England as from 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053).

19 Road Traffic Regulation Act 1984 s 101(5A)(a) (as added: see note 18 *supra*). As to the repeal of this provision see note 18 *supra*.

20 Ibid s 101(5A)(b) (as added and repealed: see note 18 *supra*). See note 22 *infra*. As to the repeal of this provision see note 18 *supra*.

21 As to the Secretary of State see PARA 236 *ante*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 *ante*.

22 Road Traffic Regulation Act 1984 s 101(7). The following regulations have been made partly under s 101 (as amended): the Removal and Disposal of Vehicles Regulations 1986, SI 1986/183 (amended by SI 1993/278; SI 1993/1595; SI 1993/1708; SI 1994/1503; SI 1996/1008; SI 2001/1353; SI 2002/746; SI 2002/2777; SI 2005/3252). The following regulations have been made under the Road Traffic Regulation Act 1984 s 101(4), (5) (as amended): the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc) Regulations 1989, SI 1989/744 (amended by SI 1991/366; SI 1993/550; SI 1993/1415). As to the modification of the Road Traffic Regulation Act 1984 s 101 (as amended) by regulation in relation to loading areas see PARA 875 *post*. As to the making of regulations generally see PARA 720 *ante*.

## UPDATE

### 871 Disposal of vehicles abandoned and removable

NOTE 1--Definitions of 'competent authority' and 'local authority' amended: SI 2008/2367 (England).

NOTE 22--SI 1986/183 further amended: SI 2007/3484 (England), SI 2008/612 (Wales). SI 1989/744 (as amended) replaced: Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges) Regulations 2008, SI 2008/2095 (amended by SI 2008/3013).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(v) Removal or Immobilisation of Vehicles/872. Right of owner to recover vehicle or proceeds of sale.

## **872. Right of owner to recover vehicle or proceeds of sale.**

If before a vehicle is disposed of by an authority<sup>1</sup> it is claimed by a person who: (1) satisfies the authority that he is its owner<sup>2</sup>; and (2) pays the relevant charges<sup>3</sup>, the authority must permit him to remove the vehicle from its custody within such period as it may specify or, in the case of an authority other than a local authority, as may be prescribed<sup>4</sup>. If before the end of the period of one year beginning with the date on which a vehicle is sold by an authority<sup>5</sup> a person satisfies the authority that at the time of the sale he was the owner of the vehicle, the authority must pay him any sum by which the proceeds of sale exceed the amount of the relevant charges<sup>6</sup>.

1    Ie under the Road Traffic Regulation Act 1984 s 101 (as amended): see PARA 871 ante. As to the competent authorities see PARA 871 note 1 ante.

2    For the meaning of 'owner' for these purposes see PARA 871 note 8 ante; definition applied by ibid s 101A(6) (s 101A added by the Traffic Management Act 2004 s 91, Sch 11 para 3(2)). If in the case of any vehicle it appears to the authority in question that more than one person is or was its owner at the relevant time, such one of them as the authority thinks fit is to be treated as its owner for the purposes of the Road Traffic Regulation Act 1984 s 101A (as added): s 101A(5) (as so added).

Section 101A (as added) has been brought into effect in relation to Wales (see the Traffic Management Act 2004 (Commencement No 1) (Wales) Order 2006, SI 2006/2826, art 2(1), (2)(c)), and is to have effect in relation to England as from 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053).

3    In the case of a vehicle found in an area that is a civil enforcement area for parking contraventions, the relevant charges are: (1) any penalty charge payable in respect of the parking of the vehicle in the place from which it was removed; (2) such unpaid earlier penalty charges relating to the vehicle as may be prescribed; and (3) such sums in respect of the removal and storage of the vehicle: (a) as the authority may require in accordance with the Traffic Management Act 2004 Sch 9 (setting the level of charges in relation to civil enforcement: see PARA 888 note 3 post); or (b) in the case of an authority other than a local authority, as may be prescribed: Road Traffic Regulation Act 1984 s 101A(3) (as added: see note 2 supra). In any other case, the relevant charges are such sums in respect of the removal and storage of the vehicle as may be prescribed: s 101A(4) (as so added). As to the meaning of 'civil enforcement area for parking contraventions' see PARA 810 note 2 ante; and for the meaning of 'penalty charge' see PARA 889 note 5 ante (definitions applied by s 101A(6) (as so added)).

4    Ibid s 101A(1) (as added: see note 2 supra).

5    Ie under ibid s 101 (as amended): see PARA 871 ante.

6    Ibid s 101A(2) (as added: see note 2 supra).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-

1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(v) Removal or Immobilisation of Vehicles/873. Representations and appeals.

### **873. Representations and appeals.**

The Lord Chancellor may make regulations entitling a person who in the case of a vehicle found in an area that is a civil enforcement area for parking contraventions<sup>1</sup>: (1) is required to pay an amount on recovering the vehicle<sup>2</sup>; or (2) receives a sum in respect of the vehicle<sup>3</sup> or is informed that the proceeds of sale did not exceed the aggregate amount from the proceeds of sale, to make representations to the authority concerned and to appeal to an adjudicator<sup>4</sup> if his representations are not accepted<sup>5</sup>. The regulations may make such provision in connection with the rights conferred as appears to the Lord Chancellor to be appropriate, and may in particular make provision:

- 724 (a) requiring the authority<sup>6</sup> to give a person notice of the rights conferred by the regulations;
- 725 (b) as to the grounds on which, and time within which, representations may be made;
- 726 (c) requiring supporting evidence in such circumstances as may be specified;
- 727 (d) as to the duties of the authority when representations are received;
- 728 (e) as to the circumstances in which there is a right of appeal to an adjudicator;
- 729 (f) generally as to the making, determination and effect of, and procedure in connection with, such appeals; and
- 730 (g) enabling an adjudicator to review any decision made on, or in the course of, an appeal<sup>7</sup>.

The regulations may include provision authorising an adjudicator to require a person: (i) to attend to give evidence at the hearing of an appeal; and (ii) to produce any documents in his custody or under his control relating to any matter relevant for the purposes of the appeal, and making it a criminal offence to fail to comply with such a requirement<sup>8</sup>. The regulations may include provision authorising an adjudicator to make an order for the payment of costs and expenses by a party to an appeal in such circumstances as may be specified<sup>9</sup>.

1 As to the meaning of 'civil enforcement area for parking contraventions' see PARA 810 note 2 ante.

2 Ie under the Road Traffic Regulation Act 1984 s 101A(1) (as added): see PARA 872 ante.

3 Ie under ibid s 101A(2) (as added): see PARA 872 ante.

4 As to parking adjudicators see PARAS 894-895 post. The functions of adjudicators under ibid s 101B (as added) are to be discharged by the persons appointed as adjudicators for the purposes of the Traffic Management Act 2004 Pt 6 (ss 72-93) (as amended) (civil enforcement of road traffic contraventions: see PARA 888 post), and any arrangements made for the discharge of their functions under Pt 6 (as amended) also have effect for the purposes of the Road Traffic Regulation Act 1984 s 101B (as added): s 101B(5) (s 101B added by the Traffic Management Act 2004 s 91, Sch 11 para 3(2)).

5 Road Traffic Regulation Act 1984 s 101B(1) (as added: see note 4 supra). As from the day on which the Traffic Management Act 2004 Sch 11 para 3(2) comes into force in relation to England, the provisions of s 89(1)-(3) (see PARA 888 post) apply to regulations under the Road Traffic Regulation Act 1984 s 101B (as added) as they apply to regulations under the Traffic Management Act 2004 Pt 6 (as amended) (see PARA 888 post): Road Traffic Regulation Act 1984 s 101B(6) (s 101B as so added; and s 101B(6) added by the Lord Chancellor (Modification of Functions) Order 2007, SI 2007/1756, art 2). The Traffic Management Act 2004 Sch 11 para 3 came into force in relation to England, to the extent that it inserts the Road Traffic Regulation Act 1984 s 101B (as added and amended), on 23 July 2007 and is to come into force in relation to England for remaining purposes on 31 March 2008: see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053, arts 1-3.

6 As to the competent authorities see PARA 871 note 1 ante.



7 Road Traffic Regulation Act 1984 s 101B(2) (as added: see note 4 supra).

8 Ibid s 101B(3) (as added: see note 4 supra). Such an offence is to be triable summarily and punishable with a fine not exceeding level 2 on the standard scale: see s 101B(3) (as so added). As to the standard scale see PARA 230 note 3 ante.

9 Ibid s 101B(4) (as added: see note 4 supra).

## UPDATE

### 873 Representations and appeals

TEXT AND NOTES--As to regulations made under these provisions see Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007, SI 2007/3482, which must be read in conjunction with the Civil Enforcement of Parking Contraventions (England) General Regulations 2007, SI 2007/3483 (see PARA 888); and the Civil Enforcement of Parking Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2008, SI 2008/615, which must be read in conjunction with the Civil Enforcement of Parking Contraventions (General Provisions) (Wales) Regulations 2008, SI 2008/614, the Civil Enforcement of Parking Contraventions (Representations and Appeals) (Wales) Regulations 2008, SI 2008/608, and the Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication)(Wales) Regulations 2008, SI 2008/609.

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### 874. Charges for removal, storage and disposal of vehicles.

Where a vehicle is removed<sup>1</sup> from a parking place in pursuance of an order<sup>2</sup>, or is removed from a road<sup>3</sup>, or from land in the open air, in pursuance of regulations<sup>4</sup>:

- 731 (1) the appropriate authority<sup>5</sup> is entitled to recover, from any person responsible<sup>6</sup>, such charges as may be prescribed<sup>7</sup> in respect of the removal of the vehicle<sup>8</sup>;
- 732 (2) the chief officer of a police force or a local authority other than a London authority<sup>9</sup> in whose custody any such vehicle is during any period is entitled to recover, from any person responsible, charges ascertained by reference to a prescribed scale in respect of that period<sup>10</sup>;
- 733 (3) the chief officer of a police force or a local authority other than a London authority who disposes of any such vehicle<sup>11</sup> is entitled to recover, from any person responsible, charges determined in the prescribed manner in respect of its disposal<sup>12</sup>; and
- 734 (4) a London authority is entitled to recover, from any person responsible, such charges in respect of the removal, storage and disposal of a vehicle removed from a designated parking place<sup>13</sup> or otherwise provided or controlled by that authority as it may require<sup>14</sup>.

Any sum so recoverable is recoverable as a simple contract debt in any court of competent jurisdiction or, in the case of a sum not exceeding £20, summarily as a civil debt<sup>15</sup>. Where,

however, by virtue of head (1) or head (2) above any sum is recoverable in respect of a vehicle by the chief officer of a police force or a local authority in whose custody the vehicle is, the chief officer or local authority is entitled<sup>16</sup> to retain custody of it until that sum has been paid<sup>17</sup>. Any sum so recovered by the chief officer of a police force must be paid into the police fund<sup>18</sup>.

1 For the purposes of the Road Traffic Regulation Act 1984 s 102 (as amended), a vehicle removed, as mentioned in s 102(1), by the council of a non-metropolitan district in England is to be treated as in the custody of the council of the county comprising that district while it is in the custody of the district council by which it was so removed: s 102(6) (amended by the Local Government Act 1985 s 8, Sch 5 para 4). The Road Traffic Regulation Act 1984 s 102 (as amended) does not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), (2)(a).

2 In an order to which the Road Traffic Regulation Act 1984 s 101 (as amended) applies: see PARA 871 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 Road Traffic Regulation Act 1984 s 102(1). The text refers to regulations under s 99 (as amended): see PARA 870 ante.

5 For these purposes, 'appropriate authority': (1) in relation to a vehicle removed by a constable or a person acting in aid of a police force, means the chief officer of the police force to which the constable belongs or in whose aid that person was acting; and (2) in relation to a vehicle removed (by a person other than a constable or person acting in aid of a police force) from a place outside Greater London, which is a parking place provided or controlled by a local authority, or from a place (not being a parking place) on a road or land in the open air, means the local authority in whose area that place is: *ibid* s 102(8) (definition amended by the Road Traffic Act 1991 ss 68(1), (3), 83, Sch 8). For the purposes of head (2) *supra*, a parking place provided under a letting or arrangements made by a local authority in pursuance of the Road Traffic Regulation Act 1984 s 33(4) (see PARA 785 ante) is to be treated as provided by that authority: see s 102(9) (added by the Road Traffic Act 1991 s 68(1), (4); and amended by the Traffic Management Act 2004 s 91, Sch 11 para 4(1), (4)). The amendment made by the Traffic Management Act 2004 (making reference to the purposes of the Road Traffic Regulation Act 1984 s 102(2A) (as added) (see note 8 *infra*) instead of s 102(2)(d)), has been brought into force in relation to Wales (see the Traffic Management Act 2004 (Commencement No 1) (Wales) Order 2006, SI 2006/2826, art 2(1), (2)(c)); in relation to England the provisions of the Traffic Management Act 2004 s 91, Sch 11 para 4(1), (4) are to come into force on 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053). As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

For the meaning of 'local authority' see PARA 870 note 20 ante (but note that, for these purposes, it does not include Transport for London); definition applied by the Road Traffic Regulation Act 1984 s 102(8) (amended by the Greater London Road Traffic (Various Provisions) Order 2001, SI 2001/1353, arts 2, 6(a)). As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

6 For these purposes, 'person responsible' in relation to a vehicle means: (1) the owner of the vehicle at the time when it was put in the place from which it was removed as mentioned in *ibid* s 102(1), unless he shows that he was not concerned in, and did not know of, its being put there; (2) any person by whom the vehicle was put in that place; (3) any person convicted of an offence under the Refuse Disposal (Amenity) Act 1978 s 2(1) (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 742) in consequence of the putting of the vehicle in that place: Road Traffic Regulation Act 1984 s 102(8) (definition amended by the Road Traffic Act 1991 ss 68(1), (3), 83, Sch 8). For the meaning of 'owner' see PARA 207 ante.

The court by which a person is convicted of an offence under the Refuse Disposal (Amenity) Act 1978 s 2(1) (as amended) in respect of a motor vehicle may, on the application of an authority and in addition to any other order made by the court in relation to that person, order him to pay to the authority any sum which, in the opinion of the court, the authority is entitled to recover from him under the Road Traffic Regulation Act 1984 s 102 (as amended) in respect of the vehicle: s 102(5). For the meaning of 'motor vehicle' see PARA 210 ante.

7 For the meaning of 'prescribed' see PARA 735 note 3 ante. The relevant charges are prescribed by the Removal, Storage and Disposal of Vehicles (Prescribed, Sums and Charges etc) Regulations 1989 SI 1989/744 (amended by SI 1991/366; SI 1993/550; SI 1993/1415).

8 Road Traffic Regulation Act 1984 s 102(2)(a).

Section 102(2) (as amended) is substituted, and s 102(2A) is added, by the Traffic Management Act 2004 Sch 11 para 4(1), (2), as set out below. These amendments have been brought into force in relation to Wales (see the Traffic Management Act 2004 (Commencement No 1) (Wales) Order 2006, SI 2006/2826, art 2(1), (2)(c)); in relation to England the provisions of the Traffic Management Act 2004 Sch 11 para 4(1), (2) are to come into

force on 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053). If the place from which the vehicle is removed is in an area that is not a civil enforcement area for parking contraventions: (1) the appropriate authority is entitled to recover, from any person responsible, such charges as may be prescribed in respect of the removal of the vehicle; (2) the chief officer of a police force or a local authority in whose custody the vehicle is during any period is entitled to recover, from any person responsible, charges ascertained by reference to a prescribed scale in respect of that period; and (3) the chief officer of a police force or a local authority who disposes of the vehicle in pursuance of the Road Traffic Regulation Act 1984 s 101 (as amended) is entitled to recover, from any person responsible, charges determined in the prescribed manner in respect of its disposal: s 102(2) (as so substituted). If the place from which the vehicle is removed is in an area that is a civil enforcement area for parking contraventions, the enforcement authority is entitled to recover, from any person responsible, such charges in respect of the removal, storage and disposal of the vehicle as it may require in accordance with the Traffic Management Act 2004 Sch 9 (setting the level of charges in relation to civil enforcement: see PARA 888 note 3 post): Road Traffic Regulation Act 1984 s 102(2A) (as so added). As to the meaning of 'civil enforcement area for parking contraventions' see PARA 810 note 2 ante; and as to the meaning of 'enforcement authority' see PARA 869 note 9 ante (definitions applied by s 102(8) (amended by the Traffic Management Act 2004 Sch 11 para 4(1), (3)). The amendment made by the Traffic Management Act 2004 has been brought into force in relation to Wales (see the Traffic Management Act 2004 (Commencement No 1) (Wales) Order 2006, SI 2006/2826, art 2(1), (2)(c)); in relation to England the provisions of the Traffic Management Act 2004 s 91, Sch 11 para 4(1), (3) are to come into force on 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053).

9 For these purposes, 'London authority' means any London borough council, the Common Council of the City of London or Transport for London: Road Traffic Regulation Act 1984 s 102(8) (definition added by the Road Traffic Act 1991 ss 68(1), 83, Sch 8; and amended by the Greater London Road Traffic (Various Provisions) Order 2001, SI 2001/1353, art 6(b)). This definition is repealed, in relation to England, as from 31 March 2008: see the Traffic Management Act 2004 s 98, Sch 12; and the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053. As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

10 Road Traffic Regulation Act 1984 s 102(2)(b) (amended by the Road Traffic Act 1991 ss 68(2)(a), 83, Sch 8). As to the substitution of this provision see note 8 supra.

11 Ie in pursuance of the Road Traffic Regulation Act 1984 s 101 (as amended): see PARA 871 ante.

12 Ibid s 102(2)(c) (amended by the Road Traffic Act 1991 s 68(2)(a)). As to the substitution of this provision see note 8 supra.

13 Ie designated under the Road Traffic Regulation Act 1984 s 6 (as amended) (see PARA 748 ante), s 9 (as amended) (see PARA 751 ante), or s 45 (as amended) (see PARA 808 ante).

14 Ibid s 102(2)(d) (added by the Road Traffic Act 1991 s 68(2)(b)). As to the substitution of this provision see note 8 supra.

For the purposes of the Road Traffic Regulation Act 1984 s 102(2)(d) (as added), a parking place provided under a letting or arrangements made by a local authority in pursuance of s 33(4) (see PARA 785 ante) is to be treated as provided by that authority: see s 102(9) (as added and amended: see note 5 supra). As to the modification of s 102 (as amended) by regulation in relation to loading areas see PARA 875 post. As to the modification of s 102(2)(d) (as added) in relation to designated special parking areas see the Road Traffic (Special Parking Area) (GLA Roads and GLA Side Roads) Order 2004, SI 2004/2684.

15 Road Traffic Regulation Act 1984 s 102(3). As to money recoverable summarily as a civil debt see MAGISTRATES vol 29(2) (Reissue) PARA 826; and as to enforcement of civil debts see MAGISTRATES vol 29(2) (Reissue) PARA 828.

16 Ie without prejudice to ibid s 102(3): see the text and note 15 supra.

17 Ibid s 102(4).

18 Ibid s 102(7).

## UPDATE

### 874 Charges for removal, storage and disposal of vehicles

NOTE 5--Definition of 'appropriate authority' amended: SI 2008/2367 (England).

NOTE 7--SI 1989/744 (as amended) replaced: Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges) Regulations 2008, SI 2008/2095 (amended by SI 2008/3013).

TEXT AND NOTES 9-12--1984 Act s 102(2ZA) (charges for removal, storage and disposal of vehicles by traffic officers) added: SI 2008/2367 (England).

TEXT AND NOTES 16, 17--1984 Act s 102(4A) added: SI 2008/2367 (England).

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### **875. Supplementary provisions as to the removal of vehicles.**

Regulations may provide that, in relation to any vehicle which is or was in any part of a loading area<sup>1</sup> while the parking of it in that area is or was prohibited<sup>2</sup>, the relevant statutory provisions<sup>3</sup> are to have effect with such additions, omissions and amendments as are prescribed by the regulations<sup>4</sup>. A local authority<sup>5</sup> must in exercising any of its functions in relation to the removal or immobilisation of vehicles<sup>6</sup> have regard to any guidance given to it for the purpose by: (1) the Secretary of State, in the case of a local authority in England; (2) the Welsh Ministers, in the case of a local authority in Wales<sup>7</sup>.

1 For the meaning of 'loading area' see PARA 826 ante; definition applied by the Road Traffic Regulation Act 1984 s 103(2).

2 Ie by virtue of *ibid* s 61 (as amended): see PARA 826 ante.

3 Ie *ibid* ss 99-102 (as amended): see PARAS 870-874 ante.

4 *Ibid* s 103(1). Regulations made under ss 99-102 (as amended) may make different provision for different cases or classes of case or in respect of different areas: s 103(3) (substituted by the Road Traffic Act 1991 s 48, Sch 4 para 33). The Removal and Disposal of Vehicles (Loading Areas) Regulations 1986, SI 1986/184 (amended by SI 1996/1008) have been made under the Road Traffic Regulation Act 1984 s 103 (as amended) and, by virtue of the Interpretation Act 1978 s 17(2)(b), the Removal and Disposal of Vehicles (Loading Areas) (Modification of Enactments) Regulations 1978, SI 1978/889, have effect as if so made. As to the making of regulations generally see PARA 720 ante.

5 For the meaning of 'local authority' for these purposes see PARA 870 note 20 ante; definition applied by the Road Traffic Regulation Act 1984 s 103(5) (added by the Clean Neighbourhoods and Environment Act 2005 s 17).

6 Ie under the Road Traffic Regulation Act 1984 ss 99-102 (as amended).

7 *Ibid* s 103(4) (added by the Clean Neighbourhoods and Environment Act 2005 s 17). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

The Road Traffic Regulation Act 1984 s 103 (as amended) does not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), (2)(a).

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Immobilisation of Vehicles/876. Immobilisation of vehicles illegally parked otherwise than following the issue of a penalty charge notice.

**876. Immobilisation of vehicles illegally parked otherwise than following the issue of a penalty charge notice.**

Where a constable<sup>1</sup> finds on a road<sup>2</sup> a vehicle which has been permitted to remain at rest there in contravention of any prohibition or restriction imposed by or under any enactment, he may<sup>3</sup>:

- 735 (1) fix an immobilisation device<sup>4</sup> to the vehicle while it remains in the place in which he finds it<sup>5</sup>; or
- 736 (2) move it from that place to another place on the same or another road and fix an immobilisation device to it in that other place<sup>6</sup>,

or he may authorise another person to take under his direction any action he could himself take by virtue of the above provisions<sup>7</sup>. On any occasion when an immobilisation device is fixed to a vehicle in accordance with these provisions, the constable or other person fixing the device must also affix to the vehicle a notice<sup>8</sup>:

- 737 (a) indicating that such a device has been fixed to the vehicle and warning that no attempt should be made to drive<sup>9</sup> it or otherwise put it in motion until it has been released from that device<sup>10</sup>;
- 738 (b) specifying the steps to be taken in order to secure its release<sup>11</sup>; and
- 739 (c) giving such other information as may be prescribed<sup>12</sup>.

A vehicle to which an immobilisation device has been so fixed may only be released from that device by or under the direction of a person authorised to give such a direction by the chief officer of police<sup>13</sup> within whose area the vehicle in question was found<sup>14</sup>. A vehicle to which an immobilisation device has been so fixed must be released from that device on payment in any manner specified in the notice affixed to the vehicle<sup>15</sup> of such charge in respect of the release as may be prescribed<sup>16</sup>.

A notice so affixed to a vehicle must not be removed or interfered with except by or under the authority of the person in charge of the vehicle or the person by whom it was put in the place where it was found by the constable; and any person contravening this provision is guilty of an offence<sup>17</sup>. Any person who, without being authorised to do so, removes or attempts to remove an immobilisation device so fixed to a vehicle is guilty of an offence<sup>18</sup>. Where a vehicle is so moved before an immobilisation device is fixed to it, any power of removal under regulations for the time being in force<sup>19</sup> which was exercisable in relation to that vehicle immediately before it was moved are to continue to be exercisable in relation to that vehicle while it remains in the place to which it was so moved<sup>20</sup>.

1 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. For the purpose of the Road Traffic Regulation Act 1984 s 104 (as amended), references to constable or police constable include references to traffic wardens: Functions of Traffic Wardens Order 1970, SI 1970/1958, art 3(2)(g) (added by SI 1993/1334). As to traffic wardens see PARA 868 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 Road Traffic Regulation Act 1984 s 104(1).

4 For these purposes, 'immobilisation device' means any device or appliance designed or adapted to be fixed to a vehicle for the purpose of preventing it from being driven or otherwise put in motion, being a device or appliance of a type approved by the Secretary of State for use for that purpose in accordance with ibid s 104 (as amended): s 104(9). As to the fixing of an immobilisation device following the issue of a penalty charge

notice see PARA 892 post. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 Ibid s 104(1)(a).

6 Ibid s 104(1)(b).

7 Ibid s 104(1), which is expressed to be subject to s 105 (as amended) (see PARA 877 post) and s 106 (as amended) (see PARA 878 post).

8 Ibid s 104(2).

9 For the meaning of 'drive' see PARA 207 ante.

10 Road Traffic Regulation Act 1984 s 104(2)(a).

11 Ibid s 104(2)(b).

12 Ibid s 104(2)(c). For the meaning of 'prescribed' see PARA 735 note 3 ante. See note 16 infra.

13 As to the chief officer of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

14 Road Traffic Regulation Act 1984 s 104(3) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 34(1), (2)).

15 If affixed to the vehicle under the Road Traffic Regulation Act 1984 s 104(2): see the text and notes 8-12 supra.

16 Ibid s 104(4), which is expressed to be subject to s 104(3) (as amended) (see the text and notes 13-14 supra). Any sum received by virtue of s 104(4) must be paid into the police fund: s 104(11).

Regulations under s 104(2) (see the text and notes 8-12 supra) or s 104(4) may make different provision for different cases or classes of case or in respect of different areas: s 104(12) (amended by the Road Traffic Act 1991 Sch 4 para 34(1), (3)).

17 Road Traffic Regulation Act 1984 s 104(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

18 Road Traffic Regulation Act 1984 s 104(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I.

19 If under the Road Traffic Regulation Act 1984 s 99 (as amended): see PARA 870 ante.

20 Ibid s 104(7). In relation to any vehicle which is removed in pursuance of any such regulations or under the Refuse Disposal (Amenity) Act 1978 s 3 (as amended) (duty of local authority to remove abandoned vehicles: ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 743 et seq) from a place to which it was moved in accordance with the Road Traffic Regulation Act 1984 s 104 (as amended), references in the definition of 'person responsible' in s 102(8) (see PARA 874 note 6 ante) and the Refuse Disposal (Amenity) Act 1978 s 5 (as amended) (recovery from person responsible of charges and expenses in respect of vehicles removed: ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 745) to the place from which the vehicle was removed are to be read as references to the place in which it was immediately before it was moved in accordance with the Road Traffic Regulation Act 1984 s 104 (as amended): s 104(8).

For the purposes of s 104 (as amended), the suspension under s 13A (as added) (see PARA 754 ante) or s 49 (as amended) (see PARA 814 ante) of the use of a parking place is a restriction imposed under the Road Traffic Regulation Act 1984: s 104(12A) (added by the Road Traffic Act 1991 Sch 4 para 35).

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## **877. Exemptions.**

The power of a constable<sup>1</sup> to immobilise a vehicle which is illegally parked<sup>2</sup> does not apply in relation to a vehicle found<sup>3</sup> by a constable if<sup>4</sup>:

- 740 (1) a current disabled person's badge<sup>5</sup> is displayed on the vehicle<sup>6</sup>;
- 741 (2) a current recognised badge<sup>7</sup> is displayed on the vehicle<sup>8</sup>; or
- 742 (3) the vehicle is in a meter bay<sup>9</sup> within a parking place designated<sup>10</sup> by a designation order<sup>11</sup>.

The exemption under head (3) above does not apply in the case of any vehicle found otherwise than in Greater London, if<sup>12</sup>:

- 743 (a) the meter bay in which it was found was not authorised for use<sup>13</sup> as such at the time when it was left there ('the time of parking')<sup>14</sup>; or
- 744 (b) an initial charge<sup>15</sup> was not duly paid at the time of parking<sup>16</sup>; or
- 745 (c) there has been since that time any contravention in relation to the relevant parking meter of any relevant provision<sup>17</sup>; or
- 746 (d) more than two hours have elapsed since the end of any period for which an initial charge was duly paid at the time of parking or, as the case may be, since the end of any unexpired time in respect of another vehicle available on the relevant parking meter<sup>18</sup> at the time of parking<sup>19</sup>.

The exemption under head (3) above does not apply in the case of any vehicle found in Greater London if the meter bay in which it was found was not authorised for use as such at the time when it was left there<sup>20</sup>.

1 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. For the purpose of the Road Traffic Regulation Act 1984 s 105 (as amended), references to constables or police constables include references to traffic wardens: Functions of Traffic Wardens Order 1970, SI 1970/1958, art 3(2)(g) (added by SI 1993/1334). As to traffic wardens see PARA 868 ante.

2 Ie under the Road Traffic Regulation Act 1984 s 104(1): see PARA 876 ante.

3 Ie found in the circumstances mentioned in ibid s 104(1): see PARA 876 ante.

4 Ibid 105(1) (amended by the Disability Discrimination Act 2005 s 19(2), Sch 2). At the date at which this volume states the law the amendment made by the Disability Discrimination Act 2005 had not been brought into force in relation to Wales.

5 For the meaning of 'disabled person's badge' see PARA 862 note 6 ante. See also the Disabled Persons (Badges for Motor Vehicles) Regulations 1982, SI 1982/1740 (amended by SI 1991/2708; SI 1992/200; SI 2000/682).

6 Road Traffic Regulation Act 1984 s 105(1)(a). In any case where s 104(1) (see PARA 876 ante) would apply in relation to a vehicle but for s 105(1)(a), the person guilty of contravening the prohibition or restriction mentioned in s 104(1) is also guilty of an offence if the conditions mentioned in s 105(6) (as amended) are met: s 105(5). Those conditions are that, at the time when the contravention occurred: (1) the vehicle was not being used in accordance with regulations under the Chronically Sick and Disabled Persons Act 1970 s 21 (as amended) (badges for display on motor vehicles used by disabled persons: see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1071); and (2) he was not using the vehicle in circumstances falling within the Road Traffic Regulation Act 1984 s 117(1)(b) (as substituted) (see PARA 862 ante): s 105(6)(a), (b) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 36). A person guilty of an offence under the Road Traffic Regulation Act 1984 s 105(5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

7 Ie within the meaning given by the Chronically Sick and Disabled Persons Act 1970 s 21A (as added) (display of non-GB badges): see SOCIAL SERVICES AND COMMUNITY CARE.

8 Road Traffic Regulation Act 1984 s 105(1)(aa) (added by the Disability Discrimination Act 2005 s 19(1), Sch 1 paras 42, 43(1), (2)). At the date at which this volume states the law this provision had not been brought into force in relation to Wales.

In any case where the Road Traffic Regulation Act 1984 s 104(1) (see PARA 876 ante) would apply in relation to a vehicle but for s 105(1)(aa) (as added), the person guilty of contravening the prohibition or restriction mentioned in s 104(1) is also guilty of an offence under s 105(6A) (as added) if the conditions mentioned in s 105(6B) (as added) are met: s 105(6A) (s 105(6A), (6B) added by the Disability Discrimination Act 2005 Sch 1 para 43(3)). Those conditions are that, at the time when the contravention occurred: (1) the vehicle was not being used in accordance with regulations under the Disabled Persons Act 1970 s 21A (as added) (see SOCIAL SERVICES AND COMMUNITY CARE); and (2) he was not using the vehicle in circumstances falling within the Road Traffic Regulation Act 1984 s 117(1A)(b) (as added) (see PARA 862 text to note 12 ante): s 105(6B)(a), (b) (as so added). A person guilty of an offence under s 105(6A) (as added) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I (amended by the Disability Discrimination Act 2005 Sch 1 para 45(1), (2)). At the date at which this volume states the law these provisions had not been brought into force in relation to Wales.

9 For these purposes, 'meter bay' means a parking space equipped with a parking meter: Road Traffic Regulation Act 1984 s 105(7). For the meaning of 'parking meter' see PARA 810 ante.

10 For the meaning of 'designated parking place' see PARA 808 note 4 ante.

11 Road Traffic Regulation Act 1984 s 105(1)(b). For the meaning of 'designation order' see PARA 808 note 4 ante.

12 Ibid s 105(2) (amended by the Road Traffic Act 1991 s 81, Sch 7 para 6(2)).

13 For the purposes of the Road Traffic Regulation Act 1984 s 105(2) (as amended) and s 105(2A) (as added) (see the text and note 20 infra), a meter bay in a parking place designated by a designation order is not authorised for use as such at any time when: (1) by virtue of s 49(1)(a) (see PARA 814 ante), the parking place is treated for the purposes of s 46 (as amended) (see PARA 810 ante) and s 47 (as amended) (see PARA 812 ante) as if it were not designated by that order; or (2) the use of the parking place or of any part of it that consists of or includes that particular meter bay is suspended: s 105(3) (amended by the Road Traffic Act 1991 ss 81, 83, Sch 7 para 6(4), Sch 8).

14 Road Traffic Regulation Act 1984 s 105(2)(a).

15 For the meaning of 'initial charge' see PARA 810 ante. In relation to any vehicle found in a meter bay within a parking place designated by a designation order, references in ibid s 105(2) (as amended) to an initial charge are references to an initial charge payable in respect of that vehicle under s 45 (as amended) (see PARA 808 ante) or s 50 (repealed): s 105(4).

16 Ibid s 105(2)(b).

17 Ibid s 105(2)(c). The reference to any relevant provision is a reference to any provision made by virtue of s 46(2)(c) (as added) (see PARA 810 ante): s 105(2)(c).

18 For these purposes, references to the 'relevant parking meter' are references to the parking meter relating to the meter bay in which the vehicle in question was found: ibid s 105(7).

19 Ibid s 105(2)(d).

20 Ibid s 105(2A) (added by the Road Traffic Act 1991 s 81, Sch 7 para 6(3)).

## **UPDATE**

### **877 Exemptions**

NOTES 4, 8--Amendments made by Disability Discrimination Act 2005 in force 30 March 2008 in relation to Wales: SI 2007/3285.



1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(v) Removal or Immobilisation of Vehicles/878. Initial experimental period for immobilisation of vehicles.

### **878. Initial experimental period for immobilisation of vehicles.**

The statutory provisions relating to the immobilisation of vehicles<sup>1</sup> extend only to such areas as the Secretary of State<sup>2</sup> may by order<sup>3</sup> specify; and the power of the Secretary of State to extend those provisions to any area is subject to the following restrictions<sup>4</sup>. Any such order extending the statutory provisions relating to the immobilisation of vehicles to any area may be made for a limited period or without limit of time (subject to variation or revocation by a further order)<sup>5</sup>. The Secretary of State must not by such an order (including any order varying an existing order) extend the statutory provisions relating to the immobilisation of vehicles to any area for the first time unless requested to do so by the local traffic authority<sup>6</sup>. The power of the Secretary of State to make any such order is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament<sup>7</sup>.

1    I.e. the Road Traffic Regulation Act 1984 s 104 (as amended) (see PARA 876 ante) and s 105 (as amended) (see PARA 877 ante).

2    As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3    Orders made under the Road Traffic Regulation Act 1984 s 106 (as amended) are local in nature, and are not recorded in this work.

4    Ibid s 106(1).

5    Ibid s 106(5) (amended by the Road Traffic Act 1991 s 83, Sch 8).

6    Road Traffic Regulation Act 1984 s 106(7) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 69). For the meaning of 'local traffic authority' see PARA 731 ante.

7    Road Traffic Regulation Act 1984 s 106(9) (amended by the Road Traffic Act 1991 Sch 8).

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### **879. Immobilisation of vehicles in London without experimental period.**

The statutory provisions relating to the immobilisation of vehicles<sup>1</sup> extend throughout Greater London if the Secretary of State<sup>2</sup> makes an order to that effect<sup>3</sup>. The power of the Secretary of State to make such an order is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament<sup>4</sup>.

1    I.e. the Road Traffic Regulation Act 1984 s 104 (as amended) (see PARA 876 ante) and s 105 (as amended) (see PARA 877 ante).

2    As to the Secretary of State see PARA 236 ante.

3    Road Traffic Regulation Act 1984 s 106A(1) (s 106A added by the Road Traffic Act 1991 s 75). If such an order is made, the Road Traffic Regulation Act 1984 s 106 (as amended) (see PARA 878 ante) ceases to apply in relation to Greater London when the order comes into force: s 106A(2) (as so added). Before such an order

comes into force, the Secretary of State must not by such an order (including any order varying an existing order) extend the statutory provisions relating to the immobilisation of vehicles to any area for the first time unless requested to do so by the local traffic authority or by the Traffic Director for London: s 106(7) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 69); modified by the Road Traffic Regulation Act 1984 s 106A(3) (added by the Road Traffic Act 1991 s 75). Before making such an order at the request of the Traffic Director for London, the Secretary of State must consult the appropriate local authority: Road Traffic Regulation Act 1984 s 106(7A) (added by s 106A(3) (as so added)).

4 Ibid s 106A(4) (as added: see note 3 supra).

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### **880. Unpaid charges in relation to the removal or release of vehicles in London.**

The provisions relating to unpaid charges on release or removal of a vehicle<sup>1</sup> apply in Greater London where a vehicle has been removed by a parking attendant<sup>2</sup> acting on behalf of Transport for London or a participating council<sup>3</sup> or an immobilisation device has been fixed to a vehicle by a parking attendant or another person acting under his direction<sup>4</sup> and the owner or person in charge of the vehicle<sup>5</sup> lawfully removes it from the custody of a participating council or Transport for London or secures its release from the immobilisation device but does not, at the time the vehicle is so removed or released, pay any charges allegedly incurred<sup>6</sup>.

The removal or release of a vehicle in such circumstances does not affect the liability of the owner or person in charge of the vehicle ('the relevant person') to pay the charges allegedly incurred but when the relevant person removes the vehicle or secures its release he must be informed of his right to make representations relating to unpaid charges<sup>7</sup> to the council and of the effect of the provisions concerning appeals relating to unpaid charges<sup>8</sup> and charge certificates relating to unpaid charges<sup>9</sup>. The participating council must give that information, or cause it to be given, in writing<sup>10</sup>.

A person who makes any representation under the provisions concerning representations relating to unpaid charges<sup>11</sup> or appeals relating to unpaid charges<sup>12</sup> which is false in a material particular and does so recklessly or knowing it to be false in that particular is guilty of an offence<sup>13</sup>.

1 I.e. the London Local Authorities Act 2000 ss 9, 10 (both as amended) (effect of release or removal), s 11 (as amended) (representations relating to unpaid charges), s 12 (as amended) (appeals relating to unpaid charges), s 13 (as amended) (charge certificates relating to unpaid charges), and s 14 (miscellaneous provisions relating to unpaid charges). These provisions are all repealed as from 31 March 2008: see the Traffic Management Act 2004 s 98, Sch 12 Pt 1; and the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053.

2 For the meaning of 'parking attendant' see PARA 869 ante; definition applied by virtue of the London Local Authorities Act 2000 s 3(1).

3 I.e. under the Road Traffic Regulation Act 1984 s 99 (as amended) and regulations made under it: see PARA 870 ante. For the meaning of 'participating council' see PARA 870 note 25 ante.

4 I.e. under the Road Traffic Act 1991 s 69 (see PARA 892 post) or s 77 (see PARA 822 ante).

5 For the purposes of the London Local Authorities Act 2000 Pt II (ss 3-16) (as amended), the owner of a vehicle is taken to be the person by whom the vehicle is kept: s 3(2). In determining, for the purposes Pt II (as amended), who was the owner of a vehicle at any time, it is presumed that the owner was the person in whose

name the vehicle was at that time registered under the Vehicle Excise and Registration Act 1994 (see PARA 518 et seq ante): London Local Authorities Act 2000 s 3(3).

6 Ibid s 9 (amended by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, art 3(1), Sch 2 paras 1, 7). The charges referred to in the text are charges of the kind mentioned in: (1) the Road Traffic Regulation Act 1984 s 101(4A)(a) or (b) (as added) (see PARA 871 ante); or (2) the Road Traffic Act 1991 s 69(4) (a) or (b) (see PARA 892 post); or (3) the Road Traffic Act 1991 s 77(2) or (5) (see PARA 822 note 7 ante): London Local Authorities Act 2000 s 9.

7 See ibid s 11 (amended by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, art 3(1), Sch 2 paras 1, 9).

8 See the London Local Authorities Act 2000 s 12 (amended by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, Sch 2 para 10).

9 London Local Authorities Act 2000 s 10(1) (amended by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, Sch 2 para 8). The text refers to charge certificates relating to unpaid charges under the London Local Authorities Act 2000 s 13 (as amended): see s 10.

10 Ibid s 10(2) (amended by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, Sch 2 para 8).

11 See note 7 supra.

12 See note 8 supra.

13 London Local Authorities Act 2000 s 14(2)(a). Any person convicted of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 14(2)(b). As to the standard scale see PARA 230 note 3 ante. The Road Traffic Act 1991 s 66(7), Sch 6 (which provides, among other things, for parking penalties) (see PARA 891 post) does not apply in relation to penalty charge notices issued in any case where the provisions of the London Local Authorities Act 2000 s 14 apply: s 14(1).

## UPDATE

### **880 Unpaid charges in relation to the removal or release of vehicles in London**

NOTE 1--Repeal of London Local Authorities Act 2000 ss 9-14 deferred: SI 2007/2053 (amended by SI 2008/757).

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## **(vi) Parking Charges and Penalty Charges**

### **881. Liability of vehicle owner in respect of excess parking charge.**

This provision applies where: (1) an excess charge<sup>1</sup> has been incurred in pursuance of an order<sup>2</sup>; (2) notice of the incurring of the excess charge has been given or affixed as provided in the order<sup>3</sup>; and (3) the excess charge has not been duly paid in accordance with the order<sup>4</sup>. For the purposes of the institution of proceedings in respect of the excess charge offence against any person as being the owner<sup>5</sup> of the vehicle at the relevant time<sup>6</sup>, and in any proceedings in respect of the excess charge offence brought against any person as being the owner of the vehicle at the relevant time<sup>7</sup>, it is to be conclusively presumed (notwithstanding that that person may not be an individual) that he was the driver<sup>8</sup> of the vehicle at that time and,

accordingly, that acts or omissions of the driver of the vehicle at that time were his acts or omissions<sup>9</sup>.

1 For the purposes of the Road Traffic Regulation Act 1984 ss 107-111 (ss 110, 111 as amended), 'excess charge offence' means the offence under s 47 (as amended) (see PARA 812 ante) of failing duly to pay the excess charge: see s 107(1). For the meaning of 'excess charge' in general see PARA 810 ante.

2 Ibid s 107(1)(a). The orders referred to in the text are orders made under s 45 (as amended) (see PARA 808 ante) and s 46 (as amended) (see PARA 810 ante): s 107(1)(a).

3 Ibid s 107(1)(b).

4 Ibid s 107(1)(c).

5 For the purposes of ibid ss 107-109, the owner of a vehicle is to be taken to be the person by whom the vehicle is kept; and for the purpose of determining, in the course of any proceedings brought by virtue of ss 107-109 (the 'specified sections'), who was the owner of the vehicle at any time, it is to be presumed that the owner was the person who was the registered keeper of the vehicle at that time: s 111(1), (3). References in s 111 (as amended) to the person who was or is the registered keeper of a vehicle at any time are references to the person in whose name the vehicle was or is at that time registered under the Vehicle Excise and Registration Act 1994 (see PARA 518 et seq ante): Road Traffic Regulation Act 1984 s 111(7) (amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 18(1)). Notwithstanding the presumption in the Road Traffic Regulation Act 1984 s 111(3), it is open to the defence in any proceedings to prove that the person who was the registered keeper of a vehicle at a particular time was not the person by whom the vehicle was kept at that time, and it is open to the prosecution to prove that the vehicle was kept by some other person at that time: s 111(4).

6 Ibid s 107(2)(a). For the purposes of ss 107-109, 'relevant time', in relation to an excess charge, means the time when the vehicle was left in the parking place concerned, notwithstanding that the period in respect of which the excess charge was incurred did not begin at that time: s 111(1), (2).

7 Ibid s 107(2)(b).

8 For the purposes of ibid ss 107-109, 'driver', in relation to an excess charge and in relation to an offence of failing duly to pay such a charge, means the person driving the vehicle at the time when it is alleged to have been left in the parking place concerned: s 111(1), (2). For the meaning of 'driver' in general see PARA 207 ante.

9 Ibid s 107(2). Section 107(2) does not apply in relation to any person unless, within the period of six months beginning on the day on which the notice of the incurring of the excess charge was given or affixed as mentioned in s 107(1)(b), a notice under s 108 (see PARA 885 post) has been served on him: (1) by or on behalf of the authority which is the local authority for the purposes of s 45 (as amended) (see PARA 808 ante) and s 46 (as amended) (see PARA 810 ante) in relation to the parking place concerned; or (2) by or on behalf of the chief officer of police: s 107(3). As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

The presumption in s 107(2) will not apply in any proceedings brought against any person as being the owner of the vehicle at the relevant time if, in those proceedings, it is proved:

1426 (a) that at the relevant time the vehicle was in the possession of some other person without the consent of the accused (s 107(5)(a)); or

1427 (b) that the accused was not the owner of the vehicle at the relevant time and that he has a reasonable excuse for failing to comply with the notice under s 108 (see PARA 885 post) served on him in accordance with s 107(3) (s 107(5)(b)).

If the person on whom a notice under s 108 (see PARA 885 post) is served in accordance with s 107(3) was not the owner of the vehicle at the relevant time, s 107(2) does not apply in relation to him if he furnishes a statutory statement of ownership to that effect in compliance with the notice: s 107(4). As to a statutory statement of ownership see PARA 882 post.

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## 882. Statutory statement of ownership.

A statutory statement of ownership<sup>1</sup> is a statement in the prescribed form<sup>2</sup>, signed by the person furnishing it and stating<sup>3</sup>:

- 747 (1) whether he was the owner<sup>4</sup> of the vehicle at the relevant time<sup>5</sup>; and  
 748 (2) if he was not the owner of the vehicle at the relevant time, whether he ceased to be the owner before, or became the owner after, the relevant time, and, if the information is in his possession, the name and address of the person to whom, and the date on which, he disposed of the vehicle or, as the case may be, the name and address of the person from whom, and the date on which, he acquired it<sup>6</sup>.

1 He for the purposes of the Road Traffic Regulation Act 1984 ss 107-109 (see PARA 881 ante): see s 111(1), Sch 8 paras 1, 4.

2 For the prescribed form of statement see the Road Traffic (Owner Liability) Regulations 1975, SI 1975/324, Sch 1 Form EC2.

3 Road Traffic Regulation Act 1984 Sch 8 para 1.

4 For the meaning of 'owner' see PARA 207 ante.

5 Road Traffic Regulation Act 1984 Sch 8 para 1(a). For the meaning of 'relevant time' see PARA 881 note 6 ante; definition applied by Sch 8 para 5.

6 Ibid Sch 8 para 1(b).

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## 883. Statutory statement of hiring.

A statutory statement of hiring<sup>1</sup> is a statement in the prescribed form<sup>2</sup>, signed by the person furnishing it, being the person by whom a statement of liability<sup>3</sup> was signed and stating<sup>4</sup>:

- 749 (1) whether at the relevant time<sup>5</sup> the vehicle was let to him under the hiring agreement<sup>6</sup> to which the statement of liability refers<sup>7</sup>; and  
 750 (2) if it was not, the date on which he returned the vehicle to the possession of the vehicle-hire firm<sup>8</sup> concerned<sup>9</sup>.

1 He for the purposes of the Road Traffic Regulation Act 1984 ss 107-109 (see PARAS 881-882 ante): see s 111(1), Sch 8 paras 1, 4.

2 For the prescribed form of statement see the Road Traffic (Owner Liability) Regulations 1975, SI 1975/324, Sch 1 Form EC5.

3 For the meaning of 'statement of liability' for these purposes see PARA 886 note 8 post; definition applied by the Road Traffic Regulation Act 1984 Sch 8 para 6.

4 Ibid Sch 8 para 2.

5 For the meaning of 'relevant time' for these purposes see PARA 881 note 6 ante; definition applied by ibid Sch 8 para 5.

6 For the meaning of 'hiring agreement' for these purposes see PARA 886 note 4 post; definition applied by ibid Sch 8 para 6.

7 Ibid Sch 8 para 2(a).

8 For the meaning of 'vehicle-hire firm' for these purposes see PARA 886 note 2 post; definition applied by ibid Sch 8 para 6.

9 Ibid Sch 8 paras 2(b).

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#### **884. Statutory statement of fact.**

A statutory statement of fact<sup>1</sup> is a statement which is in the prescribed form<sup>2</sup> and which<sup>3</sup> either: (1) states that the person furnishing it was the driver<sup>4</sup> of the vehicle at the relevant time<sup>5</sup> and is signed by him<sup>6</sup>; or (2) states that that person was not the driver of the vehicle at the relevant time, states the name and address at the time the statement is furnished of the person who was the driver of the vehicle at the relevant time and is signed both by the person furnishing it and by the person stated to be the driver of the vehicle at the relevant time<sup>7</sup>.

1 Ie for the purposes of the Road Traffic Regulation Act 1984 ss 107-109 (see PARA 881 et seq ante): see s 111(1), Sch 8 paras 1, 4.

2 For the prescribed form of statement see the Road Traffic (Owner Liability) Regulations 1975, SI 1975/324, Sch 1 Forms EC3, EC6.

3 Road Traffic Regulation Act 1984 Sch 8 para 3 (substituted by the Statute Law (Repeals) Act 2004 s 1(2), Sch 2 para 16).

4 For the meaning of 'driver' see PARA 207 ante.

5 For the meaning of 'relevant time' for these purposes see PARA 881 note 6 ante; definition applied by the Road Traffic Regulation Act 1984 Sch 8 para 5.

6 Ibid Sch 8 para 3(a) (as substituted: see note 3 supra).

7 Ibid Sch 8 para 3(b) (as substituted: see note 3 supra).

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#### **885. Notice in respect of excess parking charge.**

A notice in respect of an excess parking charge must be in the prescribed form<sup>1</sup>, must give particulars of the excess charge<sup>2</sup> and must provide that, unless the excess charge is paid before the expiry of the appropriate period<sup>3</sup>, the person on whom the notice is served<sup>4</sup>:

- 751 (1) is required, before the expiry of that period, to furnish to the authority or  
chief officer of police by or on behalf of whom the notice was served a statutory  
statement of ownership<sup>5</sup>; and
- 752 (2) is invited, before the expiry of that period, to furnish to that authority or chief  
officer of police a statutory statement of facts<sup>6</sup>.

If, in any case where such a notice has been served on any person, and the excess charge specified in the notice is not paid within the appropriate period, the person so served fails without reasonable excuse to comply with the notice by furnishing a statutory statement of ownership, he is guilty of an offence<sup>7</sup>. If, in compliance with or in response to such a notice any person furnishes a statement which is false in a material particular, and does so recklessly or knowing it to be false in that particular, he is guilty of an offence<sup>8</sup>.

Where such a notice has been served on any person in respect of any excess charge<sup>9</sup>:

- 753 (a) payment of the charge by any person before the date on which proceedings  
are begun for the excess charge offence, or, as the case may be, for an offence in  
respect of a failure to comply with the notice<sup>10</sup>, discharges the liability of that or any  
other person (under the Road Traffic Regulation Act 1984 or any other enactment)  
for the excess charge offence or, as the case may be, for the offence in respect of  
failure to comply with the notice<sup>11</sup>;
- 754 (b) conviction of any person of the excess charge offence discharges the liability  
of any other person (under the Road Traffic Regulation Act 1984 or any other  
enactment) for that offence and the liability of any person for an offence in respect  
of failure to comply with the notice<sup>12</sup>; and
- 755 (c) conviction of the person so served of an offence in respect of a failure to  
comply with the notice discharges the liability of any person for the excess charge  
offence<sup>13</sup>.

A notice in respect of an excess parking charge may be served on any person by delivering it to him or by leaving it at his proper address<sup>14</sup>, or by sending it to him by post<sup>15</sup>; and, where the person on whom such a notice is to be served is a body corporate, it is duly served if it is served on the secretary or clerk of that body<sup>16</sup>.

1 For the meaning of 'prescribed' see PARA 735 note 3 ante.

2 For the meaning of 'excess charge' see PARA 810 ante.

3 For the purposes of the Road Traffic Regulation Act 1984 ss 107-109, 'appropriate period', in relation to a notice under s 108, means the period of 14 days from the date on which the notice is served, or such longer period as may be specified in the notice or as may be allowed by the chief officer of police or authority by or on behalf of whom the notice is served: s 111(1), (2). As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

4 Ibid s 108(1).

5 Ibid s 108(1)(a). For the meaning of 'statutory statement of ownership' see PARA 882 ante.

6 Ibid s 108(1)(b). For the meaning of 'statutory statement of fact' see PARA 884 ante.

7 Ibid s 108(2). A person guilty of an offence under s 108(2), or that provision as modified by s 109(2), (3) (see PARA 886 post), is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

8 Road Traffic Regulation Act 1984 s 108(3). A person guilty of an offence under s 108(3), or that provision as modified by s 109(2), (3) (see PARA 886 post), is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I.

Proceedings in England or Wales for an offence under the Road Traffic Regulation Act 1984 s 108(3) may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge; but no such proceedings may be brought by virtue of s 110 (as amended) more than three years after the commission of the offence: s 110(1). For the purpose of s 110(1) a certificate signed by or on behalf of the prosecutor or the local authority, and stating the date on which evidence such as is mentioned in s 110(1) came to his or its knowledge, is conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved: s 110(3).

9 Ibid s 108(4). For the meaning of 'excess charge offence' see PARA 881 note 1 ante.

10 Ie an offence under ibid s 108(2): see the text and note 7 supra.

11 Ibid s 108(4)(a).

12 Ibid s 108(4)(b). Except as provided by s 108(4), nothing in s 107 (see PARA 881 ante) or s 108 affects the liability of any person for the excess charge offence: s 108(4).

13 Ibid s 108(4)(c).

14 Ibid s 111(5)(a).

15 Ibid s 111(5)(b).

16 Ibid s 111(5). For the purposes of s 111(5) and of the Interpretation Act 1978 s 7 (references to service by post) in its application to the Road Traffic Regulation Act 1984 s 111(5), the proper address of any person on whom such a notice is to be served is, in the case of the secretary or clerk of a body corporate, that of the registered or principal office of that body or the registered address of the person who is the registered keeper of the vehicle concerned at the time of service, and, in any other case, is the last known address of the person to be served: s 111(6). As to the registered keeper of a vehicle see PARA 881 note 5 ante.

For the purposes of the Magistrates' Courts Act 1980 ss 1(2), 2(1) (as amended) (power to issue summons or warrant and jurisdiction to try offences: see MAGISTRATES vol 29(2) (Reissue) PARA 522 et seq), any offence under the Road Traffic Regulation Act 1984 s 108(2) must be treated as committed at any address which at the time of service of the notice under s 108 to which the offence relates was the accused's proper address (in accordance with s 111(6)) for the service of any such notice as well as at the address to which any statutory statement furnished in response to that notice is required to be returned in accordance with the notice: s 111(8).

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### **886. Modifications for excess parking charge notices in relation to hired vehicles.**

Where a notice in respect of an excess parking charge<sup>1</sup> has been served on a vehicle-hire firm<sup>2</sup>, and at the relevant time<sup>3</sup> the vehicle in respect of which the notice was served was let to another person by the vehicle-hire firm under a hiring agreement to which this provision applies<sup>4</sup>. Where this provision applies, it is to be a sufficient compliance with the notice served on the vehicle-hire firm if the firm furnishes to the chief officer of police<sup>5</sup> or local authority by or on behalf of whom the notice was served a statement in the prescribed form, signed by or on behalf of the vehicle-hire firm, stating that at the relevant time the vehicle concerned was hired under a hiring agreement to which this provision applies<sup>6</sup>, together with a copy of that hiring agreement<sup>7</sup>, and a copy of a statement of liability<sup>8</sup> in the prescribed form, signed by the hirer under that hiring agreement<sup>9</sup>.



Where, in compliance with a notice in respect of an excess parking charge<sup>10</sup>, a vehicle-hire firm has furnished copies of a hiring agreement and statement of liability<sup>11</sup>, a person authorised in that behalf by the chief officer of police or local authority to whom the documents are furnished may, at any reasonable time within six months after service of that notice, and on production of his authority, require the production by the firm of the originals of those documents; and if, without reasonable excuse, a vehicle-hire firm fails to produce the original of a document when required to do so, the firm is to be treated as not having complied with the notice<sup>12</sup>.

1    Ie under the Road Traffic Regulation Act 1984 s 108: see PARA 885 ante.

2    Ibid s 109(1)(a). For these purposes, 'vehicle-hire firm' means any person engaged in hiring vehicles in the course of a business: s 109(7).

3    For the meaning of 'relevant time' see PARA 881 note 6 ante.

4    Road Traffic Regulation Act 1984 s 109(1)(b). Section 109 applies to a hiring agreement, under the terms of which the vehicle concerned is let to the hirer for a fixed period of less than six months (whether or not that period is capable of extension by agreement between the parties or otherwise); and any reference in s 109 to the currency of the hiring agreement includes a reference to any period during which, with the consent of the vehicle-hire firm, the hirer continues in possession of the vehicle as hirer, after the expiry of the fixed period specified in the agreement, but otherwise on terms and conditions specified in it: s 109(5).

For these purposes, 'hiring agreement' refers only to an agreement which contains such particulars as may be prescribed and does not include a hire-purchase agreement within the meaning of the Consumer Credit Act 1974 (see CONSUMER CREDIT vol 9(1) (Reissue) PARA 55): Road Traffic Regulation Act 1984 s 109(7). For the meaning of 'prescribed' see PARA 735 note 3 ante.

5    As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

6    Road Traffic Regulation Act 1984 s 109(2).

7    Ibid s 109(2)(a).

8    For these purposes, 'statement of liability' means a statement made by the hirer under a hiring agreement to which ibid s 109 applies to the effect that the hirer acknowledges that he will be liable, as the owner of the vehicle, in respect of any excess charge which, during the currency of the hiring agreement, may be incurred with respect to the vehicle in pursuance of an order under s 45 (as amended) (see PARA 808 ante) and s 46 (as amended) (see PARA 810 ante): s 109(6). For the meaning of 'owner' see PARA 207 ante. For the meaning of 'excess charge' see PARA 810 ante.

9    Ibid s 109(2)(b). Accordingly, in relation to the vehicle-hire firm on which the notice was served, the reference in s 108(2) (see PARA 885 text to note 7 ante) to a statutory statement of ownership is to be construed as a reference to a statement under s 109(2) together with the documents specified in s 109(2)(a), (b): s 109(2). For the meaning of 'statutory statement of ownership' see PARA 882 ante.

If, in a case where s 109 applies, the vehicle-hire firm has complied with the notice served on the firm by furnishing the statement and copies of the documents specified in s 109(2), then s 107 (see PARA 881 ante) and s 108 (see PARA 885 ante) have effect as if in those provisions: (1) any reference to the owner of the vehicle were a reference to the hirer under the hiring agreement; and (2) any reference to a statutory statement of ownership were a reference to a statutory statement of hiring: s 109(3). For the meaning of 'statutory statement of hiring' see PARA 883 ante.

10   Ie a notice under ibid s 108: see PARA 885 ante.

11   Ie as mentioned in ibid s 109(2): see the text and notes 5-9 supra.

12   Ibid s 109(4).

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### 887. Evidence in proceedings for certain offences.

Where any person is charged with the offence of failing to pay an excess charge<sup>1</sup>, and the prosecutor produces to the court any statutory statement<sup>2</sup> or a copy of a statement of liability<sup>3</sup> purporting<sup>4</sup>:

- 756 (1) to have been furnished in compliance with or in response to a notice in  
 respect of an excess parking charge<sup>5</sup>; and  
 757 (2) to have been signed by the accused<sup>6</sup>,

the statement must be presumed, unless the contrary is proved, to have been signed by the accused and is evidence in the proceedings of any facts stated in it tending to show that the accused was the owner<sup>7</sup>, the hirer or the driver<sup>8</sup> of the vehicle concerned at a particular time<sup>9</sup>.

1 For the meaning of 'excess charge' see PARA 810 ante.

2 Ie any of the statutory statements in the Road Traffic Regulation Act 1984 Sch 8: see PARAS 882-884 ante.

3 Ie a statement of liability within the meaning of *ibid* s 109 (see PARA 886 ante): s 110(4).

4 *Ibid* s 110(4).

5 *Ibid* s 110(4)(a). The notice referred in the text is one under s 108 (see PARA 885 ante): s 110(4)(a).

6 *Ibid* s 110(4)(b).

7 For the meaning of 'owner' see PARA 207 ante.

8 For the meaning of 'driver' see PARA 207 ante; and see PARA 881 note 8 ante.

9 Road Traffic Regulation Act 1984 s 110(4).

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### 888. Civil penalties for road traffic contraventions.

The appropriate national authority<sup>1</sup> may make provision by regulations<sup>2</sup> for or in connection with: (1) the imposition of penalty charges<sup>3</sup> in respect of road traffic contraventions that are subject to civil enforcement<sup>4</sup>, and are committed in an area that is a civil enforcement area<sup>5</sup> for contraventions of that description<sup>6</sup>; and (2) the payment of such penalty charges<sup>7</sup>. An enforcement authority may provide for the enforcement of road traffic by civil enforcement officers<sup>8</sup>.

Regulations may be made by the Lord Chancellor regarding the notification of penalty charges<sup>9</sup>, and by the appropriate national authority in connection with the fixing of immobilisation devices<sup>10</sup>. Further, the Lord Chancellor may make regulations as to representations to the authority and appeals to an adjudicator<sup>11</sup> against the imposition of penalty charges<sup>12</sup>.

Regulations may be made by the Lord Chancellor regarding the enforcement of penalty charges, including the creation of criminal offences, and the recovery of sums under county court orders ('traffic contravention debts')<sup>13</sup>.

Particular provision is made in relation to the prohibition of double parking<sup>14</sup>, or parking at dropped footways, etc<sup>15</sup>, in special enforcement areas<sup>16</sup>.

These provisions do not apply to vehicles used for the purposes of the armed forces or visiting forces<sup>17</sup>, but do generally apply to vehicles or persons in the service of the Crown<sup>18</sup>.

1 The appropriate national authority is, as regards England, the Secretary of State: Traffic Management Act 2004 s 92(1). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. The appropriate national authority may publish guidance to local authorities about any matter relating to their functions in connection with the civil enforcement of traffic contraventions, and local authorities must have regard to such guidance: s 87(1), (2).

2 As to the making of regulations under *ibid* Pt 6 (ss 72-93) (as amended) see s 89. The regulations must include provision specifying the person or persons by whom a penalty charge in respect of a contravention is to be paid (who may be the owner of the vehicle involved in the contravention, its driver at the time of the contravention, or any other appropriate person): s 72(2). The regulations must include provision in respect of any description of conduct for which a penalty charge may be imposed: (1) prohibiting criminal proceedings or the issuing of a fixed penalty notice in respect of conduct of that description; or (2) securing that a penalty charge is not required to be paid, or is refunded, where the conduct is the subject of criminal proceedings or of a fixed penalty notice: s 72(3). The regulations may include provision prohibiting the imposition of a penalty charge except on the basis of: (a) a record produced by an approved device; or (b) information given by a civil enforcement officer as to conduct observed by him: s 72(4). The regulations may: (i) specify exemptions from penalty charges; and (ii) make provision for discounts or surcharges, or both: s 72(5). 'Fixed penalty notice' has the meaning given by the Road Traffic Offenders Act 1988 s 52(1) (see PARA 1094 post): Traffic Management Act 2004 s 92(1). 'Approved device' means a device of a description specified in an order made by the appropriate national authority: s 92(1).

3 As to the setting of levels of penalty charges (and other associated charges) see *ibid* s 77, Sch 9.

4 As to the road traffic conventions that are subject to civil enforcement see *ibid* s 73. They are: parking contraventions (see s 73(2)(a), Sch 7 Pt 1); bus lane contraventions (s 73(2)(b), Sch 7 Pt 2); London lorry ban contraventions (s 73(2)(c), Sch 7 Pt 3); and moving traffic contraventions (s 73(2)(d), Sch 7 Pt 4).

5 As to civil enforcement areas for different descriptions of road traffic contravention, and the enforcement authorities in relation thereto, see *ibid* s 74, Sch 8. Specific provision is made in relation to Greater London by Sch 8 Pt 1 paras 1-7, and for the rest of England and Wales by Sch 8 Pt 2 paras 8-10. These provisions have been brought into force in relation to Wales (see the Traffic Management Act 2004 (Commencement No 1) (Wales) Order 2006, SI 2006/2826, art 2(1), (2)(c)); in relation to England the Traffic Management Act 2004 s 74 and Sch 8 paras 1-3, 8 are to come into force on 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053), but no day has been appointed for the commencement of the remaining provisions.

The appropriate national authority may require a local authority to make an application under the Traffic Management Act 2004 Sch 8 for an order designating the whole or part of the local authority's area as a civil enforcement area for parking contraventions: see s 75. This provision has been brought into force in relation to Wales (see the Traffic Management Act 2004 (Commencement No 1) (Wales) Order 2006, SI 2006/2826, art 2(1), (2)(c)); in relation to England the Traffic Management Act 2004 s 75 is to come into force on 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053).

As to the financial provision that may be made by regulations in respect of the exercise of enforcement authorities' functions see the Traffic Management Act 2004 s 88(1)-(4).

6 *Ibid* s 72(1)(a).

7 *Ibid* s 72(1)(b).

8 See *ibid* s 76(1). See further s 76(2)-(5). Officers may only act when in uniform: see s 76(3).

9 See *ibid* s 78(1). See further s 78(2)-(6). Regulations may not confer power to stop vehicles: s 76(4). Regulations may create criminal offences: s 78(6).

10 See *ibid* s 79(1)-(3), (6). Regulations may provide for criminal offences: s 79(4). Exceptions are provided in relation to vehicles displaying current disabled persons' badges: see s 79(5), (5A), (7) (s 79(5A) added by the Disability Discrimination Act 2005 s 19(1), Sch 1 Pt 2 para 48(1), (2)). At the date at which this volume states

the law no day had been appointed for the commencement of the Traffic Management Act 2004 s 79(5A) (as added) in relation to Wales.

11 As to the appointment, functions and funding of adjudicators see *ibid* s 81 (amended by the Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No 2) Order 2006, SI 2006/1016, art 2, Sch 1, PARAS 18, 19).

12 See the Traffic Management Act 2004 s 80.

13 See *ibid* s 82(1), (2). The Lord Chancellor may by order provide for warrants of execution in respect of traffic contravention debts to be executed by certificated bailiffs: s 82(3), (4). As to certificated bailiffs see s 83.

14 See *ibid* s 85(1)-(7). This prohibition is enforceable as if imposed by an order under the Road Traffic Regulation Act 1984 s 1 or s 6 (as amended) (see PARAS 742, 748 ante): Traffic Management Act 2004 s 85(8). Section 85 has been brought into force in relation to Wales (see the Traffic Management Act 2004 (Commencement No 1) (Wales) Order 2006, SI 2006/2826, art 2(1), (2)(c)); in relation to England it is to come into force on 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053).

15 See the Traffic Management Act 2004 s 86(1)-(8). This prohibition is enforceable as if imposed by an order under the Road Traffic Regulation Act 1984 s 1 or s 6 (as amended) (see PARAS 742, 748 ante): see the Traffic Management Act 2004 s 86(9). Section 86 has been brought into force in relation to Wales (see the Traffic Management Act 2004 (Commencement No 1) (Wales) Order 2006, SI 2006/2826, art 2(1), (2)(c)); in relation to England it is to come into force on 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053).

16 As to the designation of special enforcement areas see the Traffic Management Act 2004 s 84, Sch 10. These provisions have been brought into force in relation to Wales (see the Traffic Management Act 2004 (Commencement No 1) (Wales) Order 2006, SI 2006/2826, art 2(1), (2)(c)); in relation to England they are to come into force on 31 March 2008 (see the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053).

17 See the Traffic Management Act 2004 s 90(1).

18 See *ibid* s 90(2). However, the provisions do not apply to Crown roads unless applied by order under the Road Traffic Regulation Act 1984 s 131 (as amended) (see PARA 729 ante): Traffic Management Act 2004 s 90(3).

## UPDATE

### 888 Civil penalties for road traffic contraventions

NOTE 1--In the Traffic Management Act 2004 s 87, 'local authority' includes a non-metropolitan district council: Traffic Management Act 2004 s 87(3) (added by the Local Transport Act 2008 s 127(5)).

NOTES 2, 4--As to regulations made concerning parking contraventions that are subject to civil enforcement, see the Civil Enforcement of Parking Contraventions (England) General Regulations 2007, SI 2007/3483 (amended by SI 2008/1513, SI 2009/478), which must be read in conjunction with the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007, SI 2007/3482 (see PARA 873), and the Civil Enforcement of Parking Contraventions (General Provisions) Wales (No 2) Regulations, SI 2008/1214.

NOTE 2--See also Civil Enforcement of Parking Contraventions (Approved Devices) (England) Order 2007, SI 2007/3486; Civil Enforcement of Parking Contraventions (Approved Devices) (Wales) (No 2) Order 2008, SI 2008/1215.

NOTE 3--See also Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 2007, SI 2007/3487; Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (Wales) Order 2008, SI 2008/613.

NOTES 5, 16--Orders under the Traffic Management Act 2004 Sch 8 designating local authority areas as civil enforcement areas or under Sch 10 designating special enforcement areas, being local in nature, are not included in this work.

NOTES 8, 9--See Civil Enforcement Officers (Wearing of Uniforms) (England) Regulations 2007, SI 2007/3485; Civil Enforcement Officers (Wearing of Uniforms) (Wales) Regulations 2008, SI 2008/616.

NOTE 8--Traffic Management Act 2004 s 76(6) added: Local Transport Act 2008 s 127(2).

NOTES 9-13--See Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) Regulations 2008, SI 2008/609 (amended by SI 2008/913).

NOTE 10--Day appointed in relation to Wales is 30 March 2008: SI 2007/3285.

NOTE 11--2004 Act s 81 further amended: Tribunals, Courts and Enforcement Act 2007 Sch 10 para 39.

NOTE 12--See Civil Enforcement of Parking Contraventions (Representations and Appeals) (Wales) Regulations 2008, SI 2008/608.

NOTE 14--Traffic Management Act 2004 s 85(9) added: Local Transport Act 2008 s 127(3).

NOTE 15--Traffic Management Act 2004 s 86(10) added: Local Transport Act 2008 s 127(4).

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### **889. Parking penalties in London.**

The following provisions have effect until 31 March 2008<sup>1</sup>.

Where, in the case of a stationary vehicle<sup>2</sup> in a designated parking place<sup>3</sup>, a parking attendant<sup>4</sup> has reason to believe that a penalty charge is payable with respect to the vehicle<sup>5</sup>, he may<sup>6</sup>:

- 758 (1) fix a penalty charge notice<sup>7</sup> to the vehicle<sup>8</sup>; or
- 759 (2) give such a notice to the person appearing to him to be in charge of the vehicle<sup>9</sup>.

A penalty charge notice fixed to a vehicle must not be removed or interfered with except by or with the authority of<sup>10</sup>: (a) the owner, or person in charge, of the vehicle<sup>11</sup>; or (b) the London authority for the place in which the vehicle in question was found<sup>12</sup>.

1 The Road Traffic Act 1991 ss 66, 77, 79 (as amended), Sch 3 and the London Local Authorities Act 2000 ss 4, 5 (as amended) are repealed as from 31 March 2008: see the Traffic Management Act 2004 s 98, Sch 12 Pt 1; and the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053.

2 Nothing in the Road Traffic Act 1991 Pt II (ss 64-82) (as amended) applies in relation to any vehicle which:

1428 (1) at the relevant time is used or appropriated for use for naval, military or airforce purposes (s 79(1)(a));

1429 (2) belongs to any visiting forces (within the meaning of the Visiting Forces Act 1952: see ARMED FORCES VOL 2(2) (Reissue) PARA 140) (Road Traffic Act 1991 s 79(1)(b)); or

1430 (3) at the relevant time is used or appropriated for use, by any such forces (s 79(1)(c)).

3 'Designated parking place' means a parking place in London which is designated as a parking place under an order made under the Road Traffic Regulation Act 1984 s 6 (as amended) (see PARA 747 ante), s 9 (as amended) (see PARA 751 ante), s 45 (as amended) (see PARA 808 ante): Road Traffic Act 1991 s 82(1). See also PARA 809 ante. For the meaning of 'London' see PARA 822 note 2 ante.

4 For the meaning of 'parking attendant' for these purposes see PARA 869 ante; definition applied by ibid s 82(1).

5 A penalty charge is payable with respect to a vehicle by the owner of the vehicle if:

1431 (1) the vehicle has been left otherwise than as authorised by or under any order relating to the designated parking place or beyond the period of parking which has been paid for (ibid ss 66(2)(a), 82(1)); or

1432 (2) no parking charge payable with respect to the vehicle has been paid (ss 66(2)(b), 82(1)); or

1433 (3) there has, with respect to the vehicle, been a contravention of, or failure to comply with, any provision made by or under any order relating to the designated parking place (ss 66(2)(c), 82(1)).

The owner of a vehicle is taken to be the person by whom the vehicle is kept: s 82(2). In determining who was the owner of a vehicle at any time, it is presumed that the owner was the person in whose name the vehicle was at that time registered under the Vehicle Excise and Registration Act 1994 (see PARA 518 et seq ante): Road Traffic Act 1991 s 82(3). See *R v Parking Adjudicator, ex p Wandsworth London Borough Council* [1998] RTR 51, [1997] COD 155, CA.

In determining, for the purposes of any provision of the Road Traffic Act 1991 Pt II (as amended), whether a penalty charge has been paid before the end of a particular period, it is to be taken to be paid when it is received by the London authority concerned: s 82(5).

6 Ibid ss 66(1), 82(1).

Section 66 applies to vehicles in the public service of the Crown which are required to be registered under the Vehicle Excise and Registration Act 1994 (other than those which are exempted by virtue of the Road Traffic Act 1991 s 79(1) (see note 2 supra)) and persons in the public service of the Crown: s 79(2) (amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 29). As to the modification of the Road Traffic Act 1991 s 79(2) (as amended) in relation to a vehicle found in a special parking area see the Road Traffic (Special Parking Area) (GLA Roads and GLA Side Roads) Order 2004, SI 2004/2684.

The Road Traffic Act 1991 ss 66, 79 (as amended) may by order be applied with modifications to permitted and special parking areas outside London: see PARAS 820-821 ante.

In relation to any vehicle which is stationary in a special parking area in London (but which is not in a designated parking place) in circumstances in which an offence would have been committed with respect to the vehicle but for s 76(3) (as amended; prospectively repealed) (see PARA 822 ante), a penalty charge is payable with respect to the vehicle by the owner of the vehicle: see s 77(1), (2).

In relation to any vehicle which is stationary in a permitted parking area outside London, or special parking area outside London, in circumstances in which an offence would have been committed with respect to the vehicle but for Sch 3 para 1 (as amended) or (as the case may be) Sch 3 para 2 (as amended), a penalty charge is payable with respect to the vehicle, by the owner of the vehicle: see Sch 3 para 3(1), (2); and PARAS 820-821 ante.

7 A penalty charge notice must state:

1434 (1) the grounds on which the parking attendant believes that a penalty charge is payable with respect to the vehicle (ibid ss 66(3)(a), 82(1));

1435 (2) the amount of the penalty charge which is payable (ss 66(3)(b), 82(1));

- 1436 (3) that the penalty charge must be paid before the end of the period of 28 days beginning with the date of the notice (ss 66(3)(c), 82(1));
- 1437 (4) that, if the penalty charge is paid before the end of the period of 14 days beginning with the date of the notice, the amount of the penalty charge will be reduced by the specified proportion (ss 66(3)(d), 82(1));
- 1438 (5) that, if the penalty charge is not paid before the end of the 28 day period, a notice to the owner may be served by the London authority on the person appearing to it to be the owner of the vehicle (ss 66(3)(e), 82(1)); and
- 1439 (6) the address to which payment of the penalty charge must be sent (ss 66(3)(f), 82(1)).

For these purposes, 'specified proportion' means such proportion, applicable to all cases, as may be determined by the London authorities acting through the Joint Committee: ss 66(4), 82(1). In the borough of a participating council, if the amount to be paid after the penalty charge has been reduced by the specified proportion under s 66(3)(d) (see head (4) *supra*) is not a whole number of pounds, an authority may reduce the amount further to the nearest pound: s 66(4A) (added by the London Local Authorities Act 1995 s 8). For the meaning of 'participating council' see PARA 779 note 4 *post*.

8 Road Traffic Act 1991 ss 66(1)(a), 82(1).

9 *Ibid* ss 66(1)(b), 82(1).

In London, where a parking attendant attempts to issue a penalty charge notice in accordance with s 66(1), but is prevented from doing so by any person, Transport for London, if the parking attendant was acting on its behalf, or in any other case the council on whose behalf the attendant was acting, may serve a penalty charge notice on the person appearing to it to be the owner of the vehicle, but a penalty charge notice may not be served after the expiry of the period of 28 days beginning with the date on which the penalty charge allegedly became payable: London Local Authorities Act 2000 s 5(1), (2) (s 5(1) substituted, and s 5(2) amended, by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, art 3(1), Sch 2 paras 1, 3(1)-(3)). Such a notice may be served in the same manner as a notice to owner under the Road Traffic Act 1991 s 66(7), Sch 6 para 10 (prospectively repealed) (see PARA 891 *post*): London Local Authorities Act 2000 s 5(5). Subject to certain modifications, the provisions of the Road Traffic Act 1991 apply to a notice so served as if it had been issued under s 66(1): see the London Local Authorities Act 2000 s 5(3), (4) (s 5(4) amended by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, Sch 2 para 3(4)). For the meaning of 'parking attendant' see PARA 869 *ante*; definition applied by virtue of the London Local Authorities Act 2000 s 3(1). As to the owner of a vehicle see PARA 880 note 5 *ante*. The 'issue' of a ticket occurs at the moment a ticket is either affixed to the windscreen of a vehicle, or the moment a ticket is given to the driver; the 'attempt' starts either at the point when an attendant inserts details into his handheld computer or notebook to generate a ticket, or the point when he removes the ticket and approaches the car or the driver in question: the mere preparatory step of jotting down details of the car and/or of a driver cannot amount to attempts to issue a ticket; further, the mere fact that a driver has driven away to prevent the issue of a ticket is sufficient to satisfy the words 'prevented from doing so by any person': see *R (on the application of Transport for London) v Parking Adjudicator* [2007] All ER (D) 429 (Mar).

Where a participating council, on the basis of information provided by the use of a camera or any other device, has reason to believe that a penalty charge is payable under the Road Traffic Act 1991 Pt II (as amended) in respect of a vehicle which is stationary, in a designated parking place for which the council is the local authority within the meaning of the Road Traffic Regulation Act 1984 s 45(7) (see PARA 808 note 1 *ante*), or on a road, other than a GLA road or side road, in a special parking area in the area of the council, the council may serve a penalty charge notice on the person appearing to it to be the owner of the vehicle: London Local Authorities Act 2000 s 4(2) (s 4(2) substituted, and s 4(2A) added, by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, Sch 2 para 2(1), (2)). Where Transport for London, on the basis of information provided by the use of a camera or other device, has reason to believe that a penalty charge is payable under the Road Traffic Act 1991 Pt II (as amended) in respect of a vehicle which is stationary on a GLA road or a GLA side road in a designated parking place for which Transport for London is the local authority within the meaning of the Road Traffic Regulation Act 1984 s 45(7) or on a GLA road or GLA side road in a special parking area but not in a designated parking place, Transport for London may serve a penalty charge notice on the person appearing to it to be the owner of the vehicle: London Local Authorities Act 2000 s 4(2A) (as so added). As to the meaning of 'GLA road' see PARA 726 note 6 *ante*; and as to the meaning of 'GLA side road' see PARA 726 note 4 *ante*.

A penalty charge notice may not be served after the expiry of the period of 28 days beginning with the date on which the penalty charge allegedly became payable: s 4(3) (amended by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, Sch 2 para 2(3)). Such a notice may be served in the same manner as a notice to an owner under the Road Traffic Act 1991 Sch 6 para 10 (prospectively repealed) (see PARA 891 *post*): London Local Authorities Act 2000 s 4(6). Subject to certain modifications, the provisions of the Road Traffic Act 1991 apply to a notice so served as if it had been issued under s 66(1): see the London Local Authorities Act 2000 s 4(4), (5) (s 4(5) amended by the Transport for London (Consequential Provisions) Order

2005, SI 2005/56, Sch 2 para 2(4)). For these purposes, 'designated parking place' means a parking place in the area of a participating council which is designated as a parking place under an order made under the Road Traffic Regulation Act 1984 s 6 (as amended) (see PARA 747 ante), s 9 (as amended) (see PARA 751 ante) or s 45 (as amended) (see PARA 808 ante); London Local Authorities Act 2000 s 3(1).

10 Road Traffic Act 1991 ss 66(5), 82(1).

11 Ibid ss 66(5)(a), 82(1).

12 Ibid ss 66(5)(b), 82(1). A person who contravenes s 66(5) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale: ss 66(6), 82(1). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

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### **890. Fixing of certain parking and other charges for London.**

The following provisions have effect until 31 March 2008<sup>1</sup>.

It is the duty of Transport for London<sup>2</sup>, so far as relating to trunk roads<sup>3</sup> or GLA roads<sup>4</sup>, and it is the duty of the London local authorities<sup>5</sup>, so far as relating to other roads<sup>6</sup>, to set the levels of additional parking charges<sup>7</sup> to apply in London<sup>8</sup>. Before setting the level of any charges, Transport for London must consult the London local authorities<sup>9</sup>. Different levels may be set for different areas in London and for different cases or classes of case<sup>10</sup>. Transport for London and the London local authorities must submit to the Mayor of London, for his approval, the levels of additional parking charges which they propose to set<sup>11</sup>. However, if Transport for London or, as the case may be, the London local authorities fail to discharge this duty<sup>12</sup>, or the Mayor of London does not approve the levels of additional parking charges proposed by the London local authorities<sup>13</sup>, the levels of additional parking charges<sup>14</sup> for trunk roads or GLA roads or (as the case may be) other roads<sup>15</sup> are to be set by order made by the Mayor of London<sup>16</sup>.

It is the duty of Transport for London and the London local authorities to impose additional parking charges at the levels set in accordance with these provisions<sup>17</sup>. Transport for London and the London local authorities must publish, in such manner as the Mayor of London may determine, the levels of additional parking charges which have been so set<sup>18</sup>.

1 The Road Traffic Act 1991 s 74 (as substituted) is repealed as from 31 March 2008: see the Traffic Management Act 2004 s 98, Sch 12 Pt 1; and the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053.

2 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

3 As to the meaning of 'trunk road' see PARA 822 note 2 ante.

4 Road Traffic Act 1991 s 74(1)(a) (s 74 substituted by the Greater London Authority Act 1999 s 284). As to the meaning of 'GLA road' for these purposes see PARA 726 note 6 ante; definition applied by the Road Traffic Act 1991 s 82(1) (definition added by the Greater London Authority Act 1999 s 287(1), (3)). Any reference to a GLA road includes a reference to a GLA side road: Road Traffic Act 1991 s 82(1C) (added by the Greater London Authority Act 1999 s 287(1), (4)). The Road Traffic Act 1991 s 74 (as substituted) may by order be applied with modifications to permitted and special parking areas outside London: see PARAS 820-821 ante.

5 For the meaning of 'London local authority' see PARA 822 note 5 ante. The functions conferred on London local authorities by ibid s 74 (as substituted) or s 74A (as added; prospectively repealed) (see PARA 896 post) are to be discharged by the Joint Committee: s 74(9) (as substituted: see note 4 supra). No person who represents Transport for London or the Joint Committee is to take any part in any proceedings of the Joint



Committee so far as relating to the discharge by the Joint Committee of any functions under s 74 (as substituted) or s 74A (as added; prospectively repealed) (see PARA 896 post): s 74(10) (as so substituted). As to the Joint Committee see PARA 895 post.

The Road Traffic Regulation Act 1984 s 122 (as amended) (exercise of functions by local authorities) (see PARA 734 ante) applies in relation to Transport for London, the London local authorities, and the Mayor of London, and functions conferred on them by or under the Road Traffic Act 1991 s 74 (as substituted), as it applies to local authorities and functions conferred on them by or under the Road Traffic Regulation Act 1984: Road Traffic Act 1991 s 74(11) (as so substituted).

Any functions conferred or imposed on the Greater London Authority by or under Pt II (ss 64-82) (as amended) are functions of the Authority which are exercisable by the Mayor acting on its behalf: s 82(1A) (s 82(1A), (1B) added by the Greater London Authority Act 1999 s 287(1), (4)). The Road Traffic Act 1991 s 82(1A) (as added) does not apply in relation to any function expressly conferred or imposed on, or made exercisable by, the London Assembly: s 82(1B) (as so added). As to the Greater London Authority see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq. As to the London Assembly see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 82. As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

6 Ibid s 74(1)(b) (as substituted: see note 4 supra).

7 For these purposes, 'additional parking charges' means: (1) penalty charges (see PARA 889 ante); (2) charges made by London authorities for the removal, storage and disposal of vehicles (see PARA 874 ante); and (3) charges in respect of the release of vehicles from immobilisation devices fixed under ibid s 69 (prospectively repealed) (see PARA 892 post): s 74(12) (as substituted: see note 4 supra). As to the application of Pt II (as amended) to the armed forces and to visiting forces in relation to any vehicle see PARA 889 note 1 ante. As to the modification of s 74(12) (as substituted) in relation to special parking areas see the Road Traffic (Special Parking Area) (GLA Roads and GLA Side Roads) Order 2004, SI 2004/2684.

8 Road Traffic Act 1991 s 74(1) (as substituted: see note 4 supra). For the meaning of 'London' see PARA 822 note 2 ante.

9 Ibid s 74(2) (as substituted: see note 4 supra).

10 Ibid s 74(3) (as substituted: see note 4 supra).

11 Ibid s 74(4) (as substituted: see note 4 supra).

12 Ibid s 74(5)(a) (as substituted: see note 4 supra). The duties referred to in the text are those under s 74(1) (as substituted): s 74(5)(a) (as so substituted).

13 Ibid s 74(5)(b) (as substituted: see note 4 supra).

14 The levels of additional parking charges set in accordance with ibid s 74 (as substituted) may only come into force in accordance with s 74A (as added; prospectively repealed) (see PARA 896 post): s 74(6) (as substituted: see note 4 supra).

15 Ie the roads referred to in ibid s 74(1)(a), (b) (as substituted): see the text and notes 4-6 supra.

16 Ibid s 74(5) (as substituted: see note 4 supra). Orders made under s 74(5) (as substituted) are local in nature, and are not recorded in this work.

17 Ibid s 74(7) (as substituted: see note 4 supra).

18 Ibid s 74(8) (as substituted: see note 4 supra).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vi) Parking Charges and Penalty Charges/891. Penalty charge notices, notices to owners and charge certificates in London.

## **891. Penalty charge notices, notices to owners and charge certificates in London.**

The following provisions have effect until 31 March 2008<sup>1</sup>.

Where a penalty charge notice<sup>2</sup> has been issued with respect to a vehicle<sup>3</sup> and the period of 28 days for payment of the penalty charge has expired without that charge being paid<sup>4</sup>, the London authority<sup>5</sup> concerned may serve a notice to owner<sup>6</sup> on the person who appears to it to have been the owner of the vehicle when the alleged contravention occurred<sup>7</sup>.

Where it appears to the recipient that certain grounds<sup>8</sup> are satisfied, he may make representations<sup>9</sup> to that effect to the London authority who served the notice on him<sup>10</sup>. It is the duty of the authority to which representations are duly made<sup>11</sup>: (1) to consider them and any supporting evidence which the person making them provides<sup>12</sup>; and (2) to serve on that person notice of its decision as to whether it accepts that the ground in question has been established<sup>13</sup>.

Where such representations are made<sup>14</sup> and the London authority concerned accepts that the ground in question has been established, it must<sup>15</sup> cancel the notice to owner<sup>16</sup>; and state in the notice served<sup>17</sup> that the notice to owner has been cancelled<sup>18</sup>.

Where such representations<sup>19</sup> are made, but the London authority concerned does not accept that a ground has been established, the notice served<sup>20</sup> (the 'notice of rejection') must<sup>21</sup>:

- 760 (a) state that a charge certificate may be served<sup>22</sup> unless before the end of the period of 28 days beginning with the date of service of the notice of rejection the penalty charge is paid or the person on whom the notice is served appeals to a parking adjudicator against the penalty charge<sup>23</sup>;
- 761 (b) indicate the nature of a parking adjudicator's<sup>24</sup> power to award costs against any person appealing to him<sup>25</sup>; and
- 762 (c) describe in general terms the form and manner in which an appeal to a parking adjudicator must be made<sup>26</sup>,

and may contain such other information as the authority considers appropriate<sup>27</sup>.

Where an authority serves notice<sup>28</sup> that it does not accept that a ground on which representations were made has been established, the person making those representations may<sup>29</sup>, before the end of the period of 28 days beginning with the date of service of that notice<sup>30</sup>, or such longer period as a parking adjudicator may allow<sup>31</sup>, appeal to a parking adjudicator against the authority's decision<sup>32</sup>. A person who, in response to a notice to owner served under these provisions, makes any representation<sup>33</sup> which is false in a material particular and does so recklessly or knowing it to be false in that particular is guilty of an offence<sup>34</sup>.

1 The Road Traffic Act 1991 s 66 and Sch 6 and the London Local Authorities Act 2000 ss 7, 8 (both as amended) are repealed as from 31 March 2008: see the Traffic Management Act 2004 s 98, Sch 12 Pt 1; and the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053.

2 As to penalty charge notices see PARA 889 note 7 ante. As to penalty charges see PARA 889 ante. Any charge certificate, or notice under the Road Traffic Act 1991 Sch 6, may be served by post, and where the person on whom it is to be served is a body corporate, is duly served if it is sent by post to the secretary or clerk of that body: s 66(7), Sch 6 para 10.

3 Ibid Sch 6 para 1(1)(a). The penalty charge referred to in the text is one issued under s 66: Sch 6 para 1(1)(a). As to the application of Pt II (ss 64-82) (as amended) to the armed forces and to visiting forces in relation to any vehicle see PARA 889 note 1 ante.

4 Ibid Sch 6 para 1(1)(b).

5 For the meaning of 'London authority' see PARA 822 note 2 ante.

6 A notice to owner must state:

- 1440 (1) the amount of the penalty charge payable (Road Traffic Act 1991 Sch 6 para 1(2)(a));
- 1441 (2) the grounds on which the parking attendant who issued the penalty charge notice believed that a penalty charge was payable with respect to the vehicle (Sch 6 para 1(2)(b));
- 1442 (3) that the penalty charge must be paid before the end of the period of 28 days beginning with the date on which the notice to owner is served (Sch 6 para 1(2)(c));
- 1443 (4) that failure to pay the penalty charge may lead to an increased charge being payable (Sch 6 para 1(2)(d));
- 1444 (5) the amount of that increased charge (Sch 6 para 1(2)(e));
- 1445 (6) that the person on whom the notice is served ('the recipient') may be entitled to make representations under Sch 6 para 2 (see the text and notes 8-13 *infra*) (Sch 6 para 1(2)(f)); and
- 1446 (7) the effect of Sch 6 para 5 (appeal to parking adjudicator) (see the text and notes 28-32 *infra*) (Sch 6 para 1(2)(g)).

The Secretary of State may prescribe additional matters which must be dealt with in any notice to owner: Sch 6 para 1(3). As to the Secretary of State see PARA 236 *ante*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 *ante*.

7 Ibid Sch 6 para 1(1). Schedule 6 may by order be applied with modifications to permitted and special parking areas outside London: see PARAS 820-821 *ante*.

In London, a notice to owner under Sch 6 para 1(1) or the London Local Authorities Act 1996 Sch 1 (as amended) (see PARA 897 *post*) (which makes provision relating to the enforcement of the provisions in that Act relating to bus lanes) may not be served after the expiry of the period of six months from the date on which the relevant penalty charge notice was issued: see the London Local Authorities Act 2000 s 7(1) (s 7 amended by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, art 3(1), Sch 2 paras 1, 5). Where a notice to owner has been cancelled or is deemed to have been cancelled, a fresh notice to owner may not be served after certain time limits: see the London Local Authorities Act 2000 s 7(2) (as so amended). Where a relevant authority (ie a council or Transport for London) has, within a certain time limit, made a request to the Secretary of State for the supply of relevant particulars relating to the identity of the owner of the vehicle contained in the register of mechanically propelled vehicles maintained by him under the Vehicle Excise and Registration Act 1994 (see PARA 519 *ante*) and those particulars have not been supplied to the relevant authority before the date after which the relevant authority would not be entitled to serve a notice to owner or fresh notice to owner by virtue of the London Local Authorities Act 2000 s 7(1) or (2) (as amended), the relevant authority continues to be entitled to serve a notice to owner or fresh notice to owner for a further period of nine months beginning with that date: see s 7(3) (as so amended).

8 The grounds are that:

- 1447 (1) the recipient: (a) never was the owner of the vehicle in question (Road Traffic Act 1991 Sch 6 para 2(4)(a)(i)); (b) had ceased to be its owner before the date on which the alleged contravention occurred (Sch 6 para 2(4)(a)(ii)); or (c) became its owner after that date (Sch 6 para 2(4)(a)(iii));
- 1448 (2) the alleged contravention did not occur (Sch 6 para 2(4)(b));
- 1449 (3) the vehicle had been permitted to remain at rest in the parking place by a person who was in control of the vehicle without the consent of the owner (Sch 6 para 2(4)(c));
- 1450 (4) the relevant designation order is invalid (Sch 6 para 2(4)(d));
- 1451 (5) the recipient is a vehicle-hire firm and the vehicle in question was at the material time hired from that firm under a vehicle hiring agreement (Sch 6 para 2(4)(e)(i)), and the person hiring it had signed a statement of liability acknowledging his liability in respect of any penalty charge notice fixed to the vehicle during the currency of the hiring agreement (Sch 6 para 2(4)(e)(ii));
- 1452 (6) the penalty charge exceeded the amount applicable in the circumstances of the case (Sch 6 para 2(4)(f)).

For the meaning of 'hiring agreement' and 'vehicle-hire firm' for these purposes see PARA 1110 notes 2, 4 post; definitions applied by s 82(1).

Where the ground mentioned in Sch 6 para(2)(4)(a)(ii) (see head (1) supra) is relied on in any representations made under Sch 6 para 2, those representations must include a statement of the name and address of the person to whom the vehicle was disposed of by the person making the representations (if that information is in his possession): Sch 6 para 2(5). Where the ground mentioned in Sch 6 para 2(4)(a)(iii) (see head (1) supra) is relied on in any representations made under Sch 6 para 2, those representations must include a statement of the name and address of the person from whom the vehicle was acquired by the person making the representations (if that information is in his possession): Sch 6 para 2(6). As to the modification of Sch 6 para 2(4) in relation to a vehicle found in a special parking area see the Road Traffic (Special Parking Area) (GLA Roads and GLA Side Roads) Order 2004, SI 2004/2684. A parking adjudicator's power to consider grounds for appealing against a penalty charge is strictly confined to those laid down in the Road Traffic Act 1991 Sch 6 para 2(4): *R (on the application of Westminster City Council) v Parking Adjudicator* [2002] EWHC 1007 (Admin), [2003] RTR 1.

9 Any such representations must be made in such form as may be specified by the London authorities, acting through the Joint Committee: Road Traffic Act 1991 Sch 6 para 2(2). As to the Joint Committee see PARA 895 post. The authority may disregard any such representations which are received by it after the end of the period of 28 days beginning with the date on which the notice to owner was served: Sch 6 para 2(3).

10 Ibid Sch 6 para 2(1).

11 Ibid Sch 6 para 2(7).

12 Ibid Sch 6 para 2(7)(a).

13 Ibid Sch 6 para 2(7)(b).

14 Ie representations under ibid Sch 6 para 2: see the text and notes 8-13 supra.

15 Ibid Sch 6 para 3(1).

16 Ibid Sch 6 para 3(1)(a).

17 Ie under ibid Sch 6 para 2(7): see the text to notes 11-13 supra.

18 Ibid Sch 6 para 3(1)(b). The cancellation of a notice to owner under Sch 6 para 3(1) is not to be taken to prevent the London authority concerned serving a fresh notice to owner on another person: Sch 6 para 3(2).

Where the ground that is accepted is that mentioned in Sch 6 para 2(4)(e) (see note 8 head (5) supra), the person hiring the vehicle is deemed to be its owner for the purposes of Sch 6: Sch 6 para 3(3).

19 Ie representations under ibid Sch 6 para 2: see the text and notes 8-13 supra.

20 Ie under ibid Sch 6 para 2(7): see the text to notes 11-13 supra.

21 Ibid Sch 6 para 4(1).

22 Where a notice to owner is served on any person and the penalty charge to which it relates is not paid before the end of the relevant period, the authority serving the notice may serve on that person a charge certificate to the effect that the penalty charge in question is increased by 50%: ibid Sch 6 para 6(1). The relevant period, in relation to a notice to owner, is the period of 28 days beginning:

1453 (1) where no representations are made under Sch 6 para 2 with the date on which the notice to owner is served (Sch 6 para 6(2)(a));

1454 (2) where: (a) such representations are made (Sch 6 para 6(2)(b)(i)); (b) a notice of rejection is served by the authority concerned (Sch 6 para 6(2)(b)(ii)); and (c) no appeal against the notice of rejection is made (Sch 6 para 6(2)(b)(iii)), with the date on which the notice of rejection is served (Sch 6 para 6(2)(b)); or

1455 (3) where there has been an unsuccessful appeal against a notice of rejection, with the date on which notice of the adjudicator's decision is served on the appellant (Sch 6 para 6(2)(c)).

Where an appeal against a notice of rejection is made but is withdrawn before the adjudicator gives notice of his decision, the relevant period in relation to a notice to owner is the period of 14 days beginning with the date on which the appeal is withdrawn: Sch 6 para 6(3).

As to the procedure applicable to proceedings for the recovery of increased penalty charges provided for in parking charge certificates issued under Sch 6 para 6 see CPR Pt 75 (added by SI 2002/2058; and amended by SI 2005/3515); and *Practice Direction--Traffic Enforcement* PD 75 (as amended).

Where a charge certificate has been served on any person and the increased penalty charge provided for in the certificate is not paid before the end of the period of 14 days beginning with the date on which the certificate is served, the authority concerned may, if a county court so orders, recover the increased charge as if it were payable under a county court order: Road Traffic Act 1991 Sch 6 para 7. Where a county court makes such an order, the person against whom it is made makes a statutory declaration complying with Sch 6 para 8(2) and that declaration is, before the end of the period of 21 days beginning with the date on which notice of the county court's order is served on him, served on the county court which made the order (Sch 6 para 8(1)), the statutory declaration must state that the person making it:

1456 (i) did not receive the notice to owner in question (Sch 6 para 8(2)(a));

1457 (ii) made representations to the London authority concerned under Sch 6 para 2, but did not receive a rejection notice from that authority (Sch 6 para 8(2)(b)); or

1458 (iii) appealed to a parking adjudicator under Sch 6 para 5 against the rejection by that authority of representations made by him under Sch 6 para 2, but had no response to the appeal (Sch 6 para 8(2)(c)).

Where it appears to a district judge, on the application of a person on whom a charge certificate has been served, that it would be unreasonable in the circumstances of his case to insist on him serving his statutory declaration within the period of 21 days allowed for by Sch 6 para 8(1) (Sch 6 para 8(3)), the district judge may allow such longer period for service of the statutory declaration as he considers appropriate (Sch 6 para 8(4)). Where a statutory declaration is served under head (i) supra, the order of the court is deemed to have been revoked; the charge certificate is deemed to have been cancelled; in the case of a declaration under head (ii) supra, the notice to owner to which the charge certificate relates is deemed to have been cancelled; and the district judge must serve written notice of the effect of service of the declaration on the person making it and on the London authority concerned (Sch 6 para 8(5)).

Service of a declaration under head (ii) supra does not prevent the London authority serving a fresh notice to owner: Sch 6 para 8(6). Where a declaration has been served under head (ii) or head (iii) supra, the London authority must refer the case to the parking adjudicator who may give such direction as he considers appropriate: Sch 6 para 8(7).

In London, any charge certificate or notice under Sch 6 may be served by a participating council or Transport for London by transmission by the making of a facsimile copy of a document by the transmission of electric signals, or by certain other means of electronic data transmission: see the London Local Authorities Act 2000 s 8 (amended by the Transport for London (Consequential Provisions) Order 2005, SI 2005/56, Sch 2 para 6). For the meaning of 'participating council' see PARA 870 note 25 ante.

23 Road Traffic Act 1991 Sch 6 para 4(1)(a).

24 As to parking adjudicators see PARAS 894-895 post.

25 Road Traffic Act 1991 Sch 6 para 4(1)(b).

26 Ibid Sch 6 para 4(1)(c).

27 Ibid Sch 6 para 4(1).

28 Ie under ibid Sch 6 para 2(7): see the text to notes 11-13 supra.

29 Ibid Sch 6 para 5(1).

30 Ibid Sch 6 para 5(1)(a).

31 Ibid Sch 6 para 5(1)(b).

32 Ibid Sch 6 para 5(1). On an appeal under Sch 6 para 5, the parking adjudicator must consider the representations in question and any additional representations which are made by the appellant on any of the grounds mentioned in Sch 6 para 2(4) (see note 8 supra) and may give the London authority concerned such directions as he considers appropriate: Sch 6 para 5(2). It is the duty of any authority to which a direction is given under Sch 6 para 5(2) to comply with it forthwith: Sch 6 para 5(3).

33 Ie under ibid Sch 6 para 2 or Sch 6 para 5(2): Sch 6 para 9(1).

34 Ibid Sch 6 para 9(1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Sch 6 para 9(2). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## UPDATE

### **891 Penalty charge notices, notices to owners and charge certificates in London**

NOTE 22 CPR Pt 75 further amended: SI 2008/3327.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vi) Parking Charges and Penalty Charges/892. Immobilisation of vehicles in London following the issue of a penalty charge notice.

### **892. Immobilisation of vehicles in London following the issue of a penalty charge notice.**

The following provisions have effect until 31 March 2008<sup>1</sup>.

Where in the case of a stationary vehicle<sup>2</sup> in a designated parking place<sup>3</sup> a parking attendant<sup>4</sup> has reason to believe that the vehicle has been permitted to remain at rest there in certain circumstances<sup>5</sup> he, or another person acting under his direction, may fix an immobilisation device<sup>6</sup> to the vehicle<sup>7</sup>. On any occasion when an immobilisation device is so fixed to a vehicle in accordance with this provision, the person fixing the device must also fix to the vehicle a notice<sup>8</sup>:

- 763 (1) indicating that such a device has been fixed to the vehicle and warning that no attempt should be made to drive it or otherwise put it in motion until it has been released from that device<sup>9</sup>;
- 764 (2) specifying the steps to be taken in order to secure its release<sup>10</sup>; and
- 765 (3) giving such other information as may be prescribed<sup>11</sup>.

A vehicle to which an immobilisation device has been fixed may only be released from that device by or under the direction of a person authorised by the relevant authority<sup>12</sup> to give such a direction<sup>13</sup>. A vehicle to which an immobilisation device has been fixed will be released<sup>14</sup> from that device on payment in any manner specified in the notice fixed to the vehicle<sup>15</sup> of the penalty charge<sup>16</sup> payable in respect of the vehicle<sup>17</sup>, and such charge in respect of the release as may be required by the relevant authority<sup>18</sup>. A notice fixed to a vehicle must not be removed or interfered with except by or with the authority<sup>19</sup> of the owner<sup>20</sup> or person in charge of the vehicle<sup>21</sup>, or the relevant authority<sup>22</sup>.

However, these provisions regarding the immobilisation of vehicles do not apply in relation to a vehicle if<sup>23</sup>:

- 766 (a) a current disabled person's badge<sup>24</sup> is displayed on the vehicle<sup>25</sup>;
- 767 (b) a current recognised badge<sup>26</sup> is displayed on the vehicle<sup>27</sup>;
- 768 (c) not more than 15 minutes have elapsed since the end of any period for which the appropriate charge was duly paid at the time of parking<sup>28</sup>; or

769 (d) not more than 15 minutes have elapsed since the end of any expired time (in respect of another vehicle) which is available at the relevant parking meter<sup>29</sup> at the time of parking<sup>30</sup>.

1 The Road Traffic Act 1991 ss 69, 70, 79 (ss 70, 79 both as amended) are repealed as from 31 March 2008: see the Traffic Management Act 2004 s 98, Sch 12 Pt 1; and the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053.

2 As to the application of the Road Traffic Act 1991 Pt II (ss 64-82) (as amended) to the armed forces and to visiting forces in relation to any vehicle see PARA 889 note 1 ante.

3 For the meaning of 'designated parking place' see PARA 889 note 2 ante; and see PARA 779 ante.

4 For the meaning of 'parking attendant' for these purposes see PARA 869 ante; definition applied by the Road Traffic Act 1991 s 82(1).

5 Ie the circumstances specified in ibid s 66(2)(a), (b) or (c) (prospectively repealed): see PARA 889 ante.

6 For the meaning of 'immobilisation device' see PARA 876 note 4 ante; definition applied by ibid s 82(1).

7 Ibid s 69(1). As regards the fixing of an immobilisation device where a penalty charge notice has not been issued see PARA 876 ante. Sections 69, 70 (see the text and notes 23-30 infra) apply to vehicles in the public service of the Crown which are required to be registered under the Vehicle Excise and Registration Act 1994 (other than those which are exempted by virtue of the Road Traffic Act 1991 s 79(1) (see PARA 889 note 1 ante)) and persons in the public service of the Crown: s 79(2) (amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 29). The Road Traffic Act 1991 ss 69, 70 (as amended) may by order be applied with modifications to permitted and special parking areas outside London: see PARAS 820-821 ante.

8 Ibid s 69(2).

9 Ibid s 69(2)(a).

10 Ibid s 69(2)(b).

11 Ibid s 69(2)(c). 'Prescribed' means prescribed by regulations made by the Secretary of State: s 82(1). Any power to make an order or regulations conferred by Pt II (as amended) on a Minister of the Crown is exercisable by statutory instrument: s 82(6) (amended by the Greater London Authority Act 1999 s 287(1), (5)). Any statutory instrument so made is subject to annulment in pursuance of a resolution of either House of Parliament: Road Traffic Act 1991 s 82(7).

12 For these purposes, 'relevant authority' means the London authority for the place in which the vehicle in question was found: ibid s 69(8). For the meaning of 'London Authority' see PARA 822 note 2 ante.

13 Ibid s 69(3). Any person who, without being authorised to do so, removes or attempts to remove an immobilisation device fixed to a vehicle in accordance with s 69 is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 69(7). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

14 Ie subject to ibid s 69(3): see the text to note 13 supra.

15 Ibid s 69(4).

16 As to penalty charges see PARA 889 ante.

17 Road Traffic Act 1991 s 69(4)(a).

18 Ibid s 69(4)(b).

19 Ibid s 69(5).

20 As to the meaning of 'owner of a vehicle' see PARA 889 note 5 ante.

21 Road Traffic Act 1991 s 69(5)(a).

22 Ibid s 69(5)(b). A person contravening s 69(5) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 69(6).

23 Ibid s 70(1). See note 7 *supra*.

24 For the meaning of 'disabled person's badge' for these purposes see PARA 862 note 6 *ante*; definition applied by *ibid* s 70(3).

25 Ibid s 70(1)(a). In any case in which s 69(1) would apply to a vehicle but for s 70(1)(a) and the vehicle was not, at the time at which it was parked, being used:

1459 (1) in accordance with regulations under the Chronically Sick and Disabled Persons Act 1970 s 21 (as amended) (see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1071) (Road Traffic Act 1991 s 70(2)(a)); and

1460 (2) in circumstances falling within the Road Traffic Regulation Act 1984 s 117(1)(b) (as substituted) (use where a disabled person's concession would be available) (see PARA 862 *ante*) (Road Traffic Act 1991 s 70(2)(c)),

the person in charge of the vehicle at that time is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale (s 70(2)).

As to the modification of s 70 (as amended) in relation to a vehicle found in a special parking area see the Road Traffic (Special Parking Area) (GLA Roads and GLA Side Roads) Order 2004, SI 2004/2684.

The Chronically Sick and Disabled Persons Act 1970 s 28 (as amended) (power to define 'disability' and other expressions: see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1063) applies in relation to the Road Traffic Act 1991 Pt II (as amended) as it applies to the Chronically Sick and Disabled Persons Act 1970: Road Traffic Act 1991 s 82(4).

26 *Ie* within the meaning given by the Chronically Sick and Disabled Persons Act 1970 s 21A (as added): see SOCIAL SERVICES AND COMMUNITY CARE.

27 Road Traffic Act 1991 s 70(1)(aa) (added by the Disability Discrimination Act 2005 s 19(1), Sch 1 para 46(1), (2)). In any case in which the Road Traffic Act 1991 s 69(1) would apply to a vehicle but for s 70(1)(aa) (as added) and the vehicle was not, at the time at which it was parked, being used: (1) in accordance with regulations under the Chronically Sick and Disabled Persons Act 1970 s 21A (as added) (see SOCIAL SERVICES AND COMMUNITY CARE); and (2) in circumstances falling within the Road Traffic Regulation Act 1984 s 117(1A)(b) (as added) (see PARA 862 text to note 12 *ante*), the person in charge of the vehicle at that time is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Act 1991 s 70(2A) (added by the Disability Discrimination Act 2005 Sch 1 para 46(3)).

28 Road Traffic Act 1991 s 70(1)(b).

29 For the meaning of 'parking meter' for these purposes see PARA 810 *ante*; definition applied by *ibid* s 70(3).

30 Ibid s 70(1)(c).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vi) Parking Charges and Penalty Charges/893. Representations in relation to the removal or immobilisation of vehicles in London.

### **893. Representations in relation to the removal or immobilisation of vehicles in London.**

The following provisions have effect until 31 March 2008<sup>1</sup>.

The owner or person in charge of a vehicle<sup>2</sup> who:

770 (1) removes it from the custody of a London authority<sup>3</sup>;



- 771 (2) receives any sum<sup>4</sup> in respect of the vehicle<sup>5</sup>;  
 772 (3) is informed that the proceeds of sale of the vehicle did not exceed the  
 aggregate amount<sup>6</sup>; or  
 773 (4) secures its release from an immobilisation device<sup>7</sup>,

must be informed of his right to make representations to the relevant authority<sup>8</sup> and of the effect of an appeal to the parking adjudicator in relation to decisions under this provision<sup>9</sup>. Any such person may make representations<sup>10</sup> to the relevant authority on one or more specified grounds<sup>11</sup>. It is the duty of an authority, to which representations are duly made, before the end of the period of 56 days beginning with the date on which it receives the representations<sup>12</sup>:

- 774 (a) to consider them and any supporting evidence which the person making  
 them provides<sup>13</sup>; and  
 775 (b) to serve on that person notice<sup>14</sup> of its decision as to whether it accepts that  
 the ground in question has been established<sup>15</sup>.

A person who makes any representation<sup>16</sup> which is false in a material particular and does so recklessly or knowing it to be false in that particular is guilty of an offence<sup>17</sup>.

1 The Road Traffic Act 1991 ss 71, 79 (as amended) are repealed as from 31 March 2008: see the Traffic Management Act 2004 s 98, Sch 12 Pt 1; and the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053.

2 For the meaning of 'owner of a vehicle' see PARA 889 note 5 ante. As to the application of the Road Traffic Act 1991 Pt II (ss 64-82) (as amended) to the armed forces and to visiting forces in relation to any vehicle see PARA 889 note 1 ante. Section 71 applies to vehicles in the public service of the Crown which are required to be registered under the Vehicle Excise and Registration Act 1994 (other than those which are exempted by virtue of the Road Traffic Act 1991 s 79(1) (see PARA 889 note 1 ante)) and persons in the public service of the Crown: s 79(2) (amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 29).

3 Road Traffic Act 1991 s 71(1)(a). The reference to the removal of a vehicle is a reference to removal in accordance with the Road Traffic Regulation Act 1984 s 101(4A) (as added; prospectively repealed) (ultimate disposal of vehicles abandoned and removable under that Act) (see PARA 871 ante): Road Traffic Act 1991 s 71(1)(a). For the meaning of 'London authority' see PARA 822 note 2 ante. Section 71 may by order be applied with modifications to permitted and special parking areas outside London: see PARAS 820-821 ante.

4 I.e. a sum under the Road Traffic Regulation Act 1984 s 101(5A) (as added; prospectively repealed) (see PARA 871 ante): Road Traffic Act 1991 s 71(1)(b).

5 Ibid s 71(1)(b).

6 Ibid s 71(1)(c). The reference to the aggregate amount is a reference to the amount mentioned in the Road Traffic Regulation Act 1984 s 101(5A) (as added; prospectively repealed) (see PARA 871 ante): Road Traffic Act 1991 s 71(1)(c).

7 Ibid s 71(1)(d). The reference to the release from an immobilisation device is a reference to a release in accordance with s 69(4) (prospectively repealed): see PARA 892 ante. For the meaning of 'immobilisation device' see PARA 876 note 4 ante; definition applied by s 82(1).

8 For the meaning of 'relevant authority' for these purposes see PARA 892 note 11 ante; definition applied by ibid s 71(14).

9 Ibid s 71(1). Such appeals are made under s 72 (prospectively repealed): see PARA 894 post. The relevant authority must give that information, or must cause it to be given, in writing: s 71(2).

10 An authority may disregard any representations which are received by it after the end of the period of 28 days beginning with the date on which the person making them is informed, under ibid s 71(1), of his right to make representations: s 71(5).

11 Ibid s 71(3). The grounds are:

- 1461 (1) that there were no reasonable grounds for the parking attendant concerned to believe that the vehicle had been permitted to remain at rest in the parking place in circumstances specified in s 66(2)(a)-(c) (prospectively repealed) (see PARA 889 ante) (s 71(4)(a));
- 1462 (2) that the vehicle had been permitted to remain at rest in the parking place by a person who was in control of the vehicle without the consent of the owner (s 71(4)(b));
- 1463 (3) that the place in which the vehicle was at rest was not a designated parking place (s 71(4)(c));
- 1464 (4) in a case within s 71(1)(d) (see the text and note 7 supra), that, by virtue of an exemption given by s 70 (prospectively repealed), s 69 (prospectively repealed) did not apply to the vehicle at the time in question (s 71(4)(d)); or
- 1465 (5) that the penalty or other charge in question exceeded the amount applicable in the circumstances of the case (s 71(4)(e)).

For the meaning of 'parking attendant' for these purposes see PARA 869 ante; definition applied by s 82(1). For the meaning of 'designated parking place' see PARA 889 note 2 ante; and see PARA 809 ante.

As to the modification of s 71(4) in relation to a vehicle found in a special parking area see the Road Traffic (Special Parking Area) (GLA Roads and GLA Side Roads) Order 2004, SI 2004/2684.

12 Road Traffic Act 1991 s 71(6).

13 Ibid s 71(6)(a).

14 Any notice required to be served under ibid s 71 may be served by post: s 71(12). Where the person on whom any document is required to be served by s 71(6) is a body corporate, the document is duly served if it is sent by post to the secretary or clerk of that body: s 71(13).

15 Ibid s 71(6)(b). Where an authority serves notice under s 71(6)(b) that it accepts that a ground has been established it must (when serving that notice) refund any sums: (1) paid under the Road Traffic Regulation Act 1984 s 101(4A) (as added; prospectively repealed) (see PARA 871 ante) when the vehicle was removed from the custody of the authority; (2) deducted from the proceeds of sale of the vehicle under s 101(5A) (as added; prospectively repealed) (see PARA 871 ante); or (3) paid under the Road Traffic Act 1991 s 69(4) (prospectively repealed) (see PARA 892 ante) when the vehicle was released, except to the extent (if any) to which those sums were properly paid or deducted: s 71(7).

Where an authority serves notice under s 71(6)(b) that it does not accept that a ground has been established, that notice must: (a) inform the person on whom it is served of his right to appeal to a parking adjudicator under s 72 (prospectively repealed) (see PARA 894 post); (b) indicate the nature of a parking adjudicator's power to award costs against any person appealing to him under that provision; and (c) describe in general terms the form and manner in which such an appeal is required to be made: s 71(8).

Where an authority fails to comply with s 71(6) before the end of the period of 56 days mentioned in the text it is deemed to have accepted that the ground in question has been established and to have served notice to that effect under s 71(7); and s 71(7) will have effect as if it required any refund to be made immediately after the end of that period: s 71(9).

16 Ie under ibid s 71 or s 72 (prospectively repealed) (see PARA 894 post): s 71(10).

17 Ibid s 71(10). Any person convicted of an offence under s 71(10) is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 71(11). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

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## **894. Parking adjudicators.**

The following provisions have effect until 31 March 2008<sup>1</sup>.

Where an authority serves notice<sup>2</sup> that it does not accept that a ground on which representations were made has been established, the person making those representations may<sup>3</sup> before the end of the period of 28 days beginning with the date of service of that notice<sup>4</sup>, or before such longer period as a parking adjudicator may allow<sup>5</sup>, appeal to a parking adjudicator against the authority's decision<sup>6</sup>. On an appeal, the parking adjudicator must consider the representations in question and any additional representations which are made by the appellant on any such grounds<sup>7</sup> and, if he concludes<sup>8</sup> that any of the representations are justified<sup>9</sup>, and that the relevant authority<sup>10</sup> would have been under a duty<sup>11</sup> to refund any sum if it had served notice that it accepted that the ground in question had been established<sup>12</sup>, he must direct that authority to make the necessary refund<sup>13</sup>. It is the duty of any authority to which such a direction is given to comply with it forthwith<sup>14</sup>.

1 The Road Traffic Act 1991 s 72 is repealed as from 31 March 2008: see the Traffic Management Act 2004 s 98, Sch 12 Pt 1; and the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053.

2 le under the Road Traffic Act 1991 s 71(6)(b) (prospectively repealed): see PARA 893 ante.

3 Ibid s 72(1). Section 72 may by order be applied with modifications to permitted and special parking areas outside London: see PARAS 820-821 ante.

4 Ibid s 72(1)(a).

5 Ibid s 72(1)(b).

6 Ibid s 72(1).

7 le the grounds mentioned in ibid s 71(4) (prospectively repealed): see PARA 893 ante.

8 Ibid s 72(2).

9 Ibid s 72(2)(a).

10 For the meaning of 'relevant authority' for these purposes see PARA 892 note 11 ante; definition applied by ibid s 71(14) (prospectively repealed: see PARA 893 note 1 ante).

11 le the duty imposed by ibid s 71(7) (prospectively repealed): see PARA 893 ante.

12 Ibid s 72(2)(b).

13 Ibid s 72(2).

14 Ibid s 72(3).

## UPDATE

### 894 Parking adjudicators

NOTE 1--See also SI 2007/3174 (Wales).

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### 895. Appointment of parking adjudicators.

The following provisions have effect until 31 March 2008<sup>1</sup>.

The London local authorities<sup>2</sup> and Transport for London<sup>3</sup> ('the appointing authorities') have established a single Joint Committee<sup>4</sup>. The functions conferred on the appointing authorities in relation to the appointment of parking adjudicators are to be discharged by the Joint Committee<sup>5</sup>. The appointing authorities must<sup>6</sup>:

- 776 (1) with the consent of the Lord Chancellor, appoint persons to act as parking adjudicators<sup>7</sup> for the purposes of Part II of the Road Traffic Act 1991<sup>8</sup>;
- 777 (2) provide accommodation and administrative staff for the parking adjudicators<sup>9</sup>; and
- 778 (3) determine the places at which parking adjudicators are to sit<sup>10</sup>.

To be qualified for appointment as a parking adjudicator, a person must have a five year general qualification<sup>11</sup>. Each parking adjudicator is to be appointed for such term, not exceeding five years, as the appointing authorities may specify in relation to his appointment<sup>12</sup>. On the expiry of his term of appointment, a parking adjudicator is eligible for re-appointment<sup>13</sup>. A parking adjudicator may be removed from office only for misconduct or on the ground that he is unable or unfit to discharge his functions but is otherwise to hold and vacate office in accordance with the terms of his appointment<sup>14</sup>.

The expenses of the Joint Committee incurred in the discharge of functions conferred on the appointing authorities are to be defrayed by the appointing authorities in such proportions as they may decide or, in default of a decision by them, as may be determined by an arbitrator nominated by the Chartered Institute of Arbitrators on the application of the Joint Committee<sup>15</sup>.

The Secretary of State is required to make provision by regulations as to the procedure to be followed in relation to proceedings before parking adjudicators<sup>16</sup>. Subject to any provision made by the regulations, a parking adjudicator may regulate his own procedure<sup>17</sup>.

If any person who is required to attend a hearing held by a parking adjudicator, or to produce any document to a parking adjudicator in accordance with such regulations<sup>18</sup>, fails without reasonable excuse to do so, he is guilty of an offence<sup>19</sup>.

In accordance with such requirements as may be imposed by the Joint Committee, each parking adjudicator is to make an annual report to the Joint Committee on the discharge of his functions<sup>20</sup>. Similarly the Joint Committee is to make and publish an annual report in writing to the Secretary of State on the discharge by the parking adjudicators of its functions<sup>21</sup>.

1 The Road Traffic Act 1991 s 73 (as amended) is repealed as from 31 March 2008: see the Traffic Management Act 2004 s 98, Sch 12 Pt 1; and the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053.

2 For the meaning of 'London local authority' see PARA 822 note 5 ante.

3 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

4 Road Traffic Act 1991 s 73(1) (substituted by the Greater London Authority Act 1999 s 283(1), (2)). The Joint Committee was established on 4 September 2000 under the Local Government Act 1972 s 101(5) (see LOCAL GOVERNMENT vol 69 (2009) PARA 380): see the Road Traffic Act 1991 s 73(1) (as so substituted). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

For the purposes of s 73(1) (as substituted), the provisions of the Local Government Act 1972 ss 101(5), 102 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 371, 380) are to have effect as if Transport for London were a local authority: Road Traffic Act 1991 s 73(1A) (added by the Greater London Authority Act 1999 s 283(1), (2)).

The Road Traffic Act 1991 s 73 (as amended) may by order be applied with modifications to permitted and special parking areas outside London: see PARAS 820-821 ante.

- 5 Ibid s 73(2) (amended by the Greater London Authority Act 1999 ss 283(1), (3), (4), 423, Sch 34 Pt VI).
- 6 Road Traffic Act 1991 s 73(3) (amended by the Greater London Authority Act 1999 s 283(1), (4)).
- 7 As to parking adjudicators see PARA 894 ante.
- 8 Road Traffic Act 1991 s 73(3)(a).
- 9 Ibid s 73(3)(b).
- 10 Ibid s 73(3)(c).
- 11 Ibid s 73(4). A person has a 'general qualification' if he has a right of audience in relation to any class of proceedings in any part of the Supreme Court, or all proceedings in county courts or magistrates' courts: Courts and Legal Services Act 1990 s 71(3)(d). Any reference in any enactment, measure or statutory instrument to a person having such a qualification of a particular number of years' length is to be construed as a reference to a person who: (1) for the time being has that qualification; and (2) has had it for a period (which need not be continuous) of at least that number of years: s 71(5). Any period during which a person had a right of audience but was, as a result of disciplinary proceedings, prevented by the authorised body concerned from exercising it is not to count towards the period mentioned in head (2) supra: s 71(6) (substituted by the Access to Justice Act 1999 s 43, Sch 6 paras 4, 9).
- 12 Road Traffic Act 1991 s 73(5) (amended by the Greater London Authority Act 1999 s 283(1), (4)).
- 13 Road Traffic Act 1991 s 73(6).
- 14 Ibid s 73(7).
- 15 Ibid s 73(8) (amended by the Greater London Authority Act 1999 s 283(1), (4)). The costs of any reference to arbitration under the Road Traffic Act 1991 s 73(8) (as amended) is to be borne by the appointing authorities in equal shares: s 73(9) (amended by the Greater London Authority Act 1999 s 283(1), (4)). Where the Secretary of State is satisfied that there has been, or is likely to be, a failure on the part of the appointing authorities to agree on the proportions in which the expenses of the Joint Committee are to be defrayed by them under the Road Traffic Act 1991 s 73(8) (as amended), he may give the Joint Committee such directions as he considers appropriate in order to require it to refer the matter to arbitration: s 73(10) (amended by the Greater London Authority Act 1999 s 283(1), (4)).
- 16 Road Traffic Act 1991 s 73(11). The regulations may, in particular, include provision:
  - 1466 (1) as to the manner in which appeals to parking adjudicators are to be made or withdrawn (s 73(12)(a));
  - 1467 (2) authorising an appeal to a parking adjudicator to be disposed of on the basis of written representations unless the appellant requests an oral hearing (s 73(12)(b));
  - 1468 (3) prescribing the procedure to be followed before the hearing of an appeal by a parking adjudicator (s 73(12)(c));
  - 1469 (4) requiring any such hearing to be held in public except in prescribed circumstances (s 73(12)(d));
  - 1470 (5) as to the persons entitled to appear and be heard on behalf of the parties (s 73(12)(e));
  - 1471 (6) requiring persons to attend to give evidence and to produce documents (s 73(12)(f));
  - 1472 (7) as to evidence at the hearing (s 73(12)(g));
  - 1473 (8) as to the adjournment of hearings (s 73(12)(h));
  - 1474 (9) for the award of costs in prescribed circumstances (s 73(12)(i));
  - 1475 (10) for the settlement of costs, by taxation (and in particular by taxation in a county court) or by some other prescribed method (s 73(12)(j));

- 1476 (11) authorising decisions of parking adjudicators to be reserved (s 73(12)(k));
- 1477 (12) authorising or requiring parking adjudicators:
17. (a) to revise or set aside decisions (s 73(12)(l)(i));  
17
18. (b) to revoke or vary orders made by them (s 73(12)(l)(ii));  
18
- 1478 (13) requiring decisions of, and orders made by, parking adjudicators, to be recorded (s 73(12)(m));
- 1479 (14) as to the proof of decisions of, and orders made by, parking adjudicators (s 73(12)(n));
- 1480 (15) authorising the correction of clerical errors in records kept in accordance with the requirements of the regulations (s 73(12)(o));
- 1481 (16) requiring service of:
19. (a) notice of decisions of parking adjudicators (s 73(12)(p)(i));  
19
20. (b) copies of any orders made by such adjudicators (s 73(12)(p)(ii)); or  
20
21. (c) notice of any corrections made by parking adjudicators in their decisions or orders (s 73(12)(p)(iii)).  
21

Any power to make an order or regulations conferred by Pt II (ss 64-82) (as amended) on a Minister of the Crown is exercisable by statutory instrument: s 82(6) (amended by the Greater London Authority Act 1999 s 287(1), (5)). Any statutory instrument so made is subject to annulment in pursuance of a resolution of either House of Parliament: Road Traffic Act 1991 s 82(7). As to the regulations made under s 73(11), (12) see the Road Traffic (Parking Adjudicators) (London) Regulations 1993, SI 1993/1202 (amended by SI 1999/1205); and the Road Traffic (Parking Adjudicators) (England and Wales) Regulations 1999, SI 1999/1918.

As to the procedure applicable to proceedings for the recovery of amounts payable by a person other than an authority under an adjudication of a parking adjudicator pursuant to the Road Traffic Act 1991 s 73 (as amended) see CPR Pt 75 (added by SI 2002/2058; and amended by SI 2005/3515); and *Practice Direction--Traffic Enforcement* PD 75 (as amended).

17 Road Traffic Act 1991 s 73(13).

18 *Ie* under *ibid* s 73(11): see the text to note 16 *supra*.

19 *Ibid* s 73(14). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 73(14). As to the standard scale see PARA 230 note 3 *ante*. As to the prosecution of offences see PARA 1027 *post*; and as to legal proceedings generally see PARA 1023 *et seq post*.

Any amount which is payable under an adjudication of a parking adjudicator is, if a county court so orders, recoverable by the person to whom the amount is payable as if it were payable under a county court order: s 73(15). Section 73(15) does not apply to a penalty charge which remains payable following an adjudication under Sch 6 para 5 (see PARA 891 *ante*): s 73(16).

20 *Ibid* s 73(17).

21 *Ibid* s 73(18).

## UPDATE

### 895 Appointment of parking adjudicators

NOTE 1--See also SI 2007/3174 (Wales).

TEXT AND NOTE 11--1991 Act s 73(4) amended: Tribunals, Courts and Enforcement Act 2007 Sch 10 para 50. For effect see Sch 10 para 45.

NOTE 11--For 'Supreme Court' substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 4 (in force 1 October 2009: SI 2009/1604).

NOTE 16--SI 1993/1202 further amended, SI 1999/1918 amended: SI 2008/2683. CPR Pt 75 further amended: SI 2008/3327.

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### **896. Additional parking charges in London and reserve powers of the Secretary of State.**

The following provisions have effect until 31 March 2008<sup>1</sup>.

Where the Mayor of London<sup>2</sup> approves<sup>3</sup> any levels of additional parking charges<sup>4</sup>, or sets any such levels<sup>5</sup>, he must notify the Secretary of State<sup>6</sup> of the levels of charges so approved or set<sup>7</sup>. Where notification of any levels of charges is required to be given<sup>8</sup>, the levels of charges are not to come into force until after the expiration of<sup>9</sup> the period of one month beginning with the day on which the notification is given<sup>10</sup>, or such shorter period as the Secretary of State may allow<sup>11</sup>. If, before the expiration of that period, the Secretary of State gives notice to the Mayor of London that he objects to the levels of charges on the grounds that some or all of them are or may be excessive, those levels of charges will not come into force unless and until the objection has been withdrawn<sup>12</sup>.

If, at any time before the levels of charges required to be notified to the Secretary of State have come into force, the Secretary of State considers that some or all of them are excessive, he may make regulations setting the levels of charges<sup>13</sup>. Such regulations are without prejudice to the duties imposed on Transport for London and the London local authorities to set the level of additional parking charges<sup>14</sup>. However, where the Secretary of State makes any such regulations, Transport for London (if the regulations relate to GLA roads or trunk roads<sup>15</sup>) or the London local authorities (if the regulations relate to other roads<sup>16</sup>) must not make any further submission to the Mayor of London<sup>17</sup> until after the expiration of the period of 12 months beginning with the day on which the regulations are made<sup>18</sup>.

1 The Road Traffic Act 1991 s 74A (as added) is repealed as from 31 March 2008: see the Traffic Management Act 2004 s 98, Sch 12 Pt 1; and the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053.

2 Any functions conferred or imposed on the Greater London Authority by or under the Road Traffic Act 1991 Pt II (ss 64-82) (as amended) are functions of the Authority which are exercisable by the Mayor acting on its behalf: s 82(1A) (s 82(1A), (1B) added by the Greater London Authority Act 1999 s 287(1), (4)). The Road Traffic Act 1991 s 82(1A) (as added) does not apply in relation to any function expressly conferred or imposed on, or made exercisable by, the London Assembly: s 82(1B) (as so added). As to the Greater London Authority see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq. As to the London Assembly see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 82. As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

3 le on a submission under ibid s 74(4) (as substituted; prospectively repealed): see PARA 890 ante.

4 Ibid s 74A(1)(a) (s 74A added by the Greater London Authority Act 1999 s 284). As to additional parking charges see PARA 890 ante. The Road Traffic Act 1991 s 74A (as added) may by order be applied with modifications to permitted and special parking areas outside London: see PARAS 820-821 ante.

5 Ibid s 74A(1)(b) (as added: see note 4 supra). The levels referred to in the text are those set under s 74(5) (as substituted; prospectively repealed): see PARA 890 ante.

6 As to the Secretary of State see PARA 236 ante.

7 Road Traffic Act 1991 s 74A(1) (as added: see note 4 supra).

8 le under ibid s 74A(1) (as added): see the text to notes 4-7 supra.

9 Ibid s 74A(2) (as added: see note 4 supra).

10 Ibid s 74A(2)(a) (as added: see note 4 supra).

11 Ibid s 74A(2)(b) (as added: see note 4 supra).

12 Ibid s 74A(3) (as added: see note 4 supra).

13 Ibid s 74A(4) (as added: see note 4 supra). Levels of charges set under s 74A(4) (as added) must be no higher than those notified under s 74A(1) (as added) (see the text and notes 1-7 supra); s 74A(5) (as so added). The provisions of s 74(7), (8) (as substituted; prospectively repealed) (see PARA 890 ante) are to apply in relation to levels of charges set under s 74A(4) (as added) as if those levels of charges had been set in accordance with the provisions of s 74A(4) (as added) by Transport for London, so far as relating to GLA roads or trunk roads, or by the London local authorities, so far as relating to other roads: s 74A(6) (as so added). As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq. As to the meaning of 'GLA road' for these purposes see PARA 726 note 6 ante; definition applied by s 82(1) (definition added by the Greater London Authority Act 1999 s 287(1), (3)). As to the meaning of 'trunk road' see PARA 822 note 2 ante. For the meaning of 'London local authority' see PARA 822 note 5 ante.

The functions conferred on London local authorities by the Road Traffic Act 1991 s 74A (as added) are to be discharged by the Joint Committee: see s 74(9) (as substituted; prospectively repealed); and PARA 890 note 4 ante. Any power to make an order or regulations conferred by Pt II (as amended) on a Minister of the Crown is exercisable by statutory instrument: s 82(6) (amended by the Greater London Authority Act 1999 s 287(1), (5)). Any statutory instrument so made is subject to annulment in pursuance of a resolution of either House of Parliament: Road Traffic Act 1991 s 82(7).

14 Ibid s 74A(7) (as added: see note 4 supra).

15 Ibid s 75A(7)(a) (as added: see note 4 supra).

16 Ibid s 75A(7)(b) (as added: see note 4 supra).

17 le under ibid s 74(4) (as substituted; prospectively repealed): see the text to para 890 note 10 ante.

18 Ibid s 74A(7) (as added: see note 4 supra).

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### **897. Penalty charge notices in relation to bus lanes in London.**

The following provisions have effect until a day to be appointed<sup>1</sup>.

Where:

- 779 (1) in relation to any GLA road or GLA side road, Transport for London<sup>2</sup> or the relevant council<sup>3</sup>;
- 780 (2) in relation to any other road in Greater London, the relevant council or Transport for London<sup>4</sup>,



on the basis of information provided by the use of a prescribed device<sup>5</sup>, has reason to believe that a penalty charge<sup>6</sup> is payable<sup>7</sup> with respect to a vehicle<sup>8</sup> by the owner of the vehicle, that council or Transport for London, may serve a penalty charge notice<sup>9</sup> on the person appearing to it to be the owner of the vehicle<sup>10</sup>.

For these purposes, a penalty charge is payable with respect to a vehicle, by the owner of the vehicle, if the person in charge of the vehicle acts in contravention of or fails to comply with certain orders<sup>11</sup> or regulations<sup>12</sup> in so far as provision is made for the reservation of all or part of a carriageway of a road<sup>13</sup> as a bus lane<sup>14</sup>, and the penalty charge must be paid: (a) where the contravention or failure is in respect of a GLA road or a GLA side road, to Transport for London; (b) in any other case, to the council in whose area the contravention or failure occurs<sup>15</sup>.

The functions of traffic adjudicators<sup>16</sup> are discharged by persons appointed as parking adjudicators<sup>17</sup>. No penalty charge is payable<sup>18</sup> in respect of any conduct where: (i) a notice is given to the driver<sup>19</sup> in respect of a bus lane offence<sup>20</sup> constituted by that conduct<sup>21</sup>; or (ii) notification of an intention to prosecute the driver in respect of such an offence is given by the Metropolitan Police Commissioner or the City of London Police Commissioner, where the alleged offence took place on a GLA road or a GLA side road, to Transport for London, and in any other case, to the council of the borough<sup>22</sup> in which the alleged offence took place, before the expiry of the period of 14 days, beginning with the day on which the alleged offence takes place<sup>23</sup>.

Provision has been made for enforcement notices<sup>24</sup>, representations against enforcement notices<sup>25</sup>, cancellation of penalty charge notices or enforcement notices<sup>26</sup>, rejection of representations against enforcement notices<sup>27</sup>, adjudication by the traffic adjudicator<sup>28</sup>, admissibility of certain evidence<sup>29</sup>, charge certificates<sup>30</sup>, enforcement of charge certificates<sup>31</sup>, invalid notices<sup>32</sup>, the offence of giving false information<sup>33</sup>, service by post<sup>34</sup> and financial matters<sup>35</sup>.

1 The London Local Authorities Act 1996 Pt II (ss 3-9) (as amended) is repealed by the Transport Act 2000 s 274, Sch 31 Pt II as from a day to be appointed under s 75(1). At the date at which this volume states the law no such day had been appointed.

2 'Transport for London' means the body established by the Greater London Authority Act 1999 s 154 (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 270); London Local Authorities Act 1996 s 2 (definition added by the Transport for London (Bus Lanes) Order 2001, SI 2001/690, art 2, Schedule para 1(b)).

3 London Local Authorities Act 1996 s 4(1)(a) (s 4(1) substituted, and s 4(1A)-(1C) added, by the Transport for London (Bus Lanes) Order 2001, SI 2001/690, Schedule para 2(a)). The relevant council must not exercise the power under the London Local Authorities Act 1996 s 4(1)(a) (as substituted) unless it has obtained the consent in writing of Transport for London: s 4(1A) (as so added). For these purposes, 'relevant council' means the council in whose area the contravention or failure occurred: s 4(1C) (as so added).

As to GLA roads and GLA side roads see PARAS 725 note 5, 726 note 6 ante; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 822.

4 London Local Authorities Act 1996 s 4(1)(b) (as added: see note 3 supra). Transport for London must not exercise the power conferred by s 4(1)(b) (as added) unless it has obtained the consent in writing of the relevant council: s 4(1B) (as so added).

5 'Prescribed device' means a device prescribed under the Road Traffic Offenders Act 1988 s 20(9) (see PARA 1042 post) or a device of a description specified in regulations made for the purposes of the London Local Authorities Act 1996 s 3 by the Secretary of State: s 3(1). As to the Secretary of State see PARA 236 ante.

6 The Road Traffic Act 1991 s 74 (as substituted; prospectively repealed) (see PARA 890 ante) applies in relation to the levels of penalty charges under the London Local Authorities Act 1996 Pt II (as amended) as it applies in relation to the levels of penalty charges (among other charges) under the Road Traffic Act 1991 Pt II (ss 64-82) (as amended): London Local Authorities Act 1996 s 8 (amended by the Transport for London (Bus Lanes) Order 2001, SI 2001/690, art 2, Schedule para 3).

For provision as to civil penalties for bus lane contraventions see PARA 898 post.

7 ie payable under the London Local Authorities Act 1996 Pt II (as amended).

8 'Vehicle' means a mechanically propelled vehicle intended or adapted for use on roads: *ibid* s 3(1). No provision in Pt II (as amended) applies to any vehicle on an occasion when it is being used for fire brigade, ambulance or police purposes: s 5.

9 A penalty charge notice under *ibid* Pt II (as amended) must state:

1482 (1) the grounds on which the council or Transport for London believes that the penalty charge is payable with respect to the vehicle (s 4(3)(a) (amended by the Transport for London (Bus Lanes) Order 2001, SI 2001/690, Schedule para 2(c));

1483 (2) the amount of the penalty charge which is payable (London Local Authorities Act 1996 s 4(3)(b));

1484 (3) that the penalty charge must be paid before the end of the period of 28 days beginning with the date of the notice (s 4(3)(c) (amended by the Transport for London (Bus Lanes) Order 2001, SI 2001/690, Schedule para 2(c));

1485 (4) that if the penalty charge is paid before the end of the period of 14 days beginning with the date of the notice, the amount of the penalty charge will be reduced by the specified proportion (London Local Authorities Act 1996 s 4(3)(d));

1486 (5) that, if the penalty charge is not paid before the end of the 28 day period, an enforcement notice may be served by the council or Transport for London on the person appearing to it to be the owner of the vehicle (s 4(3)(e));

1487 (6) the address to which payment of the penalty charge must be sent (s 4(3)(f)); and

1488 (7) the effect of s 4 (as amended), s 6, Sch 1 para 2 (as amended) (s 4(3)(f)).

In head (4) *supra*, 'specified proportion' means such proportion, applicable in all cases, as may be determined for the purposes of s 4 (as amended) by the appointing authorities acting through the Joint Committee: s 4(4) (amended by the Transport for London (Bus Lanes) Order 2001, SI 2001/690, Schedule para 2(d)). 'Joint Committee' means the Joint Committee established under the Road Traffic Act 1991 s 73 (prospectively repealed) (see PARA 895 *ante*): London Local Authorities Act 1996 s 3(1).

10 *Ibid* s 4(1) (substituted by the Transport for London (Bus Lanes) Order 2001, SI 2001/690, Schedule para 2(a)). For these purposes, 'owner of a vehicle' is taken to be the person by whom the vehicle is kept: London Local Authorities Act 1996 s 3(2). In determining who the owner of a vehicle was at any time, it is presumed that the owner was the person in whose name the vehicle was at that time registered under the Vehicle Excise and Registration Act 1994 (see PARA 518 *ante*): London Local Authorities Act 1996 s 3(3).

11 *Ie* an order under the Road Traffic Regulation Act 1984 s 6 (as amended) (see PARA 747 *ante*) or s 9 (as amended) (see PARA 751 *ante*).

12 *Ie* under *ibid* s 12 (repealed).

13 For the meaning of 'road' for these purposes see PARA 206 *ante*; definition applied by the London Local Authorities Act 1996 s 3(1).

14 As to bus lanes see the Traffic Signs Regulations and General Directions 2002, SI 2002/3113, reg 23; applied by the London Local Authorities Act 1996 s 3(1).

15 *Ibid* s 4(2) (amended by the London Local Authorities Act 2000 s 48, Sch 2 para 1; and the Transport for London (Bus Lanes) Order 2001, SI 2001/690, Schedule para 2(b)).

16 *Ie* under the London Local Authorities Act 1996 Sch 1 (as amended).

17 See *ibid* s 6(1). The reference to persons appointed as parking adjudicators is a reference to persons so appointed under the Road Traffic Act 1991 s 73 (as amended; prospectively repealed) (see PARA 895 *ante*): London Local Authorities Act 1996 s 6(1). Regulations under the Road Traffic Act 1991 s 73(11) (prospectively repealed) (provision as to procedure to be followed in relation to proceedings before parking adjudicators) (see PARA 895 text to note 15 *ante*) may make provision with respect to proceedings before parking adjudicators when exercising the functions of traffic adjudicators: London Local Authorities Act 1996 s 6(2). Any regulations under the Road Traffic Act 1991 s 73(11) (prospectively repealed) in force at the coming into operation of the London Local Authorities Act 1996 Pt II (as amended) apply, with any necessary modifications, in relation to

proceedings before parking adjudicators: s 6(2). As to the regulations made see the Road Traffic (Parking Adjudicators) (London) (Amendment) Regulations 1999, SI 1999/1205.

The references to a parking adjudicator or parking adjudicators in the Road Traffic Act 1991 s 73(13)-(15), (17), (18) (prospectively repealed) include references to a parking adjudicator or parking adjudicators exercising the functions of traffic adjudicators, but s 73(15) (prospectively repealed) (see PARA 895 note 18 ante) does not apply to a penalty charge under the London Local Authorities Act 1996 Pt II (as amended), which remains payable following an adjudication under Sch 1 para 6: s 6(3).

18 Ibid under ibid Pt II (as amended).

19 Ibid under the Road Traffic Offenders Act 1988 s 54(2) or s 54(4) (as amended): see PARA 1097 post.

20 'Bus lane offence' means an offence under the Road Traffic Regulation Act 1984 s 8 (as amended) (see PARA 750 ante), s 11 (as amended) (see PARA 753 ante) or s 13 (repealed) or the Road Traffic Act 1988 s 36 (as amended) (see PARA 643 ante), which relates to the contravention of or failure to comply with an order or traffic sign, in so far as it makes provision for or indicates a reservation of all or part of a carriageway of a road as a bus lane: London Local Authorities Act 1996 s 3(1).

21 Ibid s 9(a).

22 'Borough council' means London borough council and includes the Common Council of the City of London; and 'borough' and 'council' are to be construed accordingly: ibid s 2. As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

23 Ibid s 9(b) (amended by the Transport for London (Bus Lanes) Order 2001, SI 2001/690, Schedule para 4).

24 See the London Local Authorities Act 1996 Sch 1 para 1 (amended by the London Local Authorities Act 2000 Sch 2 para 2; and the Transport for London (Bus Lanes) Order 2001, SI 2001/690, Schedule para 5(a), (b)).

25 See the London Local Authorities Act 1996 Sch 1 para 2 (amended by the London Local Authorities Act 2000 Sch 2 para 3; and the Transport for London (Bus Lanes) Order 2001, SI 2001/690, Schedule para 5(c)).

26 See the London Local Authorities Act 1996 Sch 1 para 3 (amended by the London Local Authorities Act 2000 Sch 2 paras 4, 5; and the Transport for London (Bus Lanes) Order 2001, SI 2001/690, Schedule para 5(d)).

27 See the London Local Authorities Act 1996 Sch 1 para 5 (amended by the Transport for London (Bus Lanes) Order 2001, SI 2001/690, Schedule para 5(e)).

28 See the London Local Authorities Act 1996 Sch 1 para 6 (amended by the Transport for London (Bus Lanes) Order 2001, SI 2001/690, Schedule para 5(f)). As to parking adjudicators for London see PARA 895 ante.

29 See the London Local Authorities Act 1996 Sch 1 para 7 (amended by the Transport for London (Bus Lanes) Order 2001, SI 2001/690, Schedule para 5(g)).

30 See the London Local Authorities Act 1996 Sch 1 para 8 (amended by the London Local Authorities Act 2000 Sch 2 para 7; and the Transport for London (Bus Lanes) Order 2001, SI 2001/690, Schedule para 5(h)). As to the procedure applicable to proceedings for the recovery of increased penalty charges provided for in a charge certificate issued under the London Local Authorities Act 1996 Sch 1 para 8 (as amended) see CPR Pt 75 (added by SI 2002/2058; and amended by SI 2005/3515); and *Practice Direction--Traffic Enforcement* PD 75 (as amended).

31 See the London Local Authorities Act 1996 Sch 1 para 9 (amended by the Transport for London (Bus Lanes) Order 2001, SI 2001/690, Schedule para 5(i)).

32 See the London Local Authorities Act 1996 Sch 1 para 10 (amended by the Transport for London (Bus Lanes) Order 2001, SI 2001/690, Schedule para 5(j)).

33 See the London Local Authorities Act 1996 Sch 1 para 11 (amended by the London Local Authorities Act 2000 Sch 2 para 8).

34 See the London Local Authorities Act 1996 Sch 1 para 12.

35 See ibid s 7, Sch 2 (Sch 2 amended by the Transport for London (Bus Lanes) Order 2001, SI 2001/690, Schedule para 6).

## UPDATE

## **897-898 Penalty charge notices in relation to bus lanes in London, Civil penalties for bus lane contraventions**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **897 Penalty charge notices in relation to bus lanes in London**

NOTE 30--CPR Pt 75 further amended: SI 2008/3327.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vi) Parking Charges and Penalty Charges/898. Civil penalties for bus lane contraventions.

### **898. Civil penalties for bus lane contraventions.**

The following provisions have effect until a day to be appointed<sup>1</sup>.

The relevant national authority<sup>2</sup> may by regulations make provision for or in connection with: (1) the imposition of penalty charges in respect of bus lane contraventions<sup>3</sup>; and (2) the payment of such penalty charges<sup>4</sup>. Such regulations may provide for the imposition of penalty charges: (a) by approved local authorities<sup>5</sup>; or (b) both by approved local authorities and by Transport for London<sup>6</sup> or London local authorities<sup>7</sup> or both<sup>8</sup>. The roads in relation to which regulations may authorise the imposition of penalty charges are, in the case of an approved local authority, roads in its area; in the case of Transport for London, roads in Greater London of a description prescribed by such regulations or all roads in Greater London; and in the case of a London local authority, roads in its area of a description prescribed by such regulations or all roads in its area<sup>9</sup>.

Regulations must include provision:

- 781 (i) specifying the person by whom a penalty charge in respect of any contravention is to be paid (who may be the registered keeper<sup>10</sup> of the motor vehicle involved in the contravention, its driver at the time of the contravention, or any other appropriate person);
- 782 (ii) permitting the imposition of a penalty charge only on the basis of a record produced by an approved device<sup>11</sup>;
- 783 (iii) securing that a penalty charge in respect of a contravention is not required to be paid, or is refunded, where the conduct constituting the contravention is the subject of criminal proceedings or where a fixed penalty notice<sup>12</sup> has been given in respect of that conduct; and
- 784 (iv) as to the application of sums paid by way of penalty charges<sup>13</sup>.

Regulations must include provision for the level of penalty charges in the case of approved local authorities to be set by the authorities subject to the approval of the relevant national authority<sup>14</sup>. Regulations may specify exemptions from penalty charges, make provision for discounts or surcharges (or both), and make provision about the keeping of accounts, and the

preparation and publication of statements of account, relating to sums paid by way of penalty charges<sup>15</sup>. The Lord Chancellor may make regulations about the notification, adjudication and enforcement of penalty charges<sup>16</sup>. Regulations under these provisions made by the Secretary of State or the Lord Chancellor may make provision in respect of Greater London different from that in respect of the rest of England<sup>17</sup>.

1 The Transport Act 2000 s 144 is repealed by the Traffic Management Act 2004 s 98, Sch 12 Pt 1 as from a day to be appointed under s 99(1). At the date at which this volume states the law no such day had been appointed.

2 In the Transport Act 2000 s 144, 'relevant national authority' means, as respects England, the Secretary of State: s 144(14). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 A bus lane contravention is a contravention of any such provision of: (1) a traffic regulation order; (2) an experimental traffic order; or (3) a temporary traffic restriction order, as relates to the use of an area of road which is or forms part of a bus lane: *ibid* s 144(4). 'Traffic regulation order' means an order under the Road Traffic Regulation Act 1984 s 1 or s 6 (see PARAS 742, 747 ante); Transport Act 2000 s 144(14). 'Experimental traffic order' means an order under the Road Traffic Regulation Act 1984 s 9 (see PARA 751 ante); Transport Act 2000 s 144(14). 'Temporary traffic restriction order' means an order under the Road Traffic Regulation Act 1984 s 14 or s 16A (as added) (see PARAS 755, 759 ante); Transport Act 2000 s 144(14). 'Road' has the same meaning as in the Road Traffic Regulation Act 1984 (see PARA 206 ante); Transport Act 2000 s 144(14). An area of road is or forms part of a bus lane if the order provides that it may be used: (a) only by buses (or a particular description of bus); or (b) only by buses (or a particular description of bus) and some other class or classes of vehicular traffic: s 144(5). 'Bus' includes a tramcar (within the meaning of the Road Traffic Regulation Act 1984 s 141A (as added): see PARA 1624 note 2 post) and a trolley vehicle (within the meaning of s 141A (as added): see PARA 1629 note 2 post); Transport Act 2000 s 144(14).

4 *Ibid* s 144(1). See the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005, SI 2005/2757, which apply to England exclusive of Greater London. As to regulations under the Transport Act 2000 Pt II (ss 108-162) (as amended) see generally para 1226 post.

5 An authority is an approved local authority if: (1) an order designating the whole or any part of its area has been made under the Road Traffic Act 1991 Sch 3 para 1(1) or Sch 3 para 2(1) (permitted and special parking areas outside Greater London: see PARAS 820-821 ante); and (2) the relevant national authority has made an order specifying it as an approved local authority for the purposes of the Transport Act 2000 s 144: s 144(3). See the Bus Lane Contraventions (Approved Local Authorities) (England) Order 2005, SI 2005/2755 (amended by SI 2005/3406; SI 2006/593; SI 2006/1447; SI 2006/1516; SI 2006/2632; SI 2006/2820; SI 2006/3212; SI 2006/3419; SI 2006/3425; SI 2007/551; SI 2007/647; SI 2007/1512; SI 2007/1585; SI 2007/2323; SI 2007/2536; SI 2007/2838).

6 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

7 'London local authority' means a London borough council or the Common Council of the City of London: Transport Act 2000 s 144(14). As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

8 *Ibid* s 144(2). See the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005, SI 2005/2757, regs 3-6.

9 Transport Act 2000 s 144(6). Before making any regulations by virtue of head (ii) or head (iii) in the text the Secretary of State must consult: (1) Transport for London; and (2) the London local authorities affected by the regulations: s 144(7).

10 'Registered keeper', in relation to a contravention involving a motor vehicle, means the person in whose name the motor vehicle was registered under the Vehicle Registration and Excise Act 1994 at the time of the contravention: Transport Act 2000 s 144(14). 'Motor vehicle' has the meaning given in the Road Traffic Act 1988 s 185(1) (see PARA 210 ante), except that s 189 (exception for certain pedestrian controlled vehicles and electrically assisted pedal cycles: see PARA 210 ante) applies as it applies for the purposes of the Road Traffic Acts (as to which see PARA 202 note 1 ante): Transport Act 2000 s 144(14).

11 'Approved device' means a device of a description specified in an order made by the relevant national authority: *ibid* s 144(14). See the Bus Lanes (Approved Devices) (England) Order 2005, SI 2005/2756. As to orders under the Transport Act 2000 Pt II (as amended) see generally para 1226 post.

12 'Fixed penalty notice' has the same meaning as in the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended) (see PARA 1094 post): Transport Act 2000 s 144(14).

13 Ibid s 144(8). As to the application of sums paid by way of penalty charges see the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005, SI 2005/2757, reg 36.

14 Transport Act 2000 s 144(9). See the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005, SI 2005/2757, reg 4. The Road Traffic Act 1991 s 74 (prospectively repealed) (see PARA 890 ante) and s 74A (as added; prospectively repealed) (see PARA 896 ante) apply to penalty charges in the case of Transport for London and London local authorities as they apply to additional parking charges: Transport Act 2000 s 144(9).

15 Ibid s 144(10). As to accounts see the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005, SI 2005/2757, reg 36.

16 Transport Act 2000 s 144(11). Regulations under s 144(11) may include: (1) provision creating criminal offences, to be triable summarily and punishable with a fine not exceeding level 5 on the standard scale or such lower amount as is prescribed by the regulations; and (2) provision for or in connection with permitting evidence of a fact to be given by the production of a record produced by an approved device with a certificate as to the circumstances in which the record was produced, but may not confer power to stop motor vehicles: s 144(12). As to the standard scale see PARA 230 note 3 ante.

For regulations as to notification of, and representations about, penalty charges see the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005, SI 2005/2757, regs 7-10. As to adjudication and appeals see regs 11-31, Schedule. As to enforcement see regs 32-35.

17 Transport Act 2000 s 144(13).

## **UPDATE**

### **897-898 Penalty charge notices in relation to bus lanes in London, Civil penalties for bus lane contraventions**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **898 Civil penalties for bus lane contraventions**

NOTE 1--Day appointed is 31 March 2008 in relation to Wales: SI 2007/3174.

NOTE 5--SI 2005/2755 further amended: SI 2010/99.

NOTE 16--SI 2005/2757 reg 20 amended: SI 2008/2683.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vi) Parking Charges and Penalty Charges/899. Enforcement of debts.

### **899. Enforcement of debts.**

The following provisions have effect until 31 March 2008<sup>1</sup>.

The Lord Chancellor may by order make provision:

- 785 (1) for warrants of execution in respect of Part II debts<sup>2</sup>, or such class or classes of Part II debts as may be specified in the order, to be executed by certificated bailiffs<sup>3</sup>;
- 786 (2) as to the requirements which must be satisfied before any person takes, with a view to enforcing the payment of a Part II debt<sup>4</sup>, or such class or classes of Part II debts as may be so specified<sup>5</sup>, any other step of a kind specified by the order<sup>6</sup>.

The Lord Chancellor may by regulations make provision in connection with the certification of bailiffs and the execution of warrants of execution by such bailiffs<sup>7</sup>. The regulations may, in particular, make provision<sup>8</sup>:

- 787 (a) as to the security (if any) to be required from certificated bailiffs<sup>9</sup>;
- 788 (b) as to the fees and expenses payable with respect to executions by certificated bailiffs<sup>10</sup>; and
- 789 (c) for the suspension or cancellation of certificates issued with respect to the effect of any such suspension or cancellation<sup>11</sup>.

Any person who is not a certificated bailiff but who purports to levy a distress as such a bailiff, and any person authorising him to levy it, is deemed to have committed a trespass<sup>12</sup>.

1 The Road Traffic Act 1991 s 78 is repealed as from 31 March 2008: see the Traffic Management Act 2004 s 98, Sch 12 Pt 1; and the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053.

2 For these purposes, 'Part II debt' means any sum which is: (1) payable under, or by virtue of, any provision of the Road Traffic Act 1991 Pt II (ss 64-82) (as amended); and (2) recoverable as if it were payable under a county court order: s 78(1).

3 Ibid s 78(2)(a). For these purposes, 'certificated bailiff', means any person authorised to act as such under s 78(6): s 78(1). For these purposes, a person is a certificated bailiff if he is authorised to act as such by a certificate signed: (1) by a judge assigned to a county court district; or (2) in such circumstances as may be specified in regulations made by the Lord Chancellor, by a district judge: s 78(6). As to certificated bailiffs in general see DISTRESS vol 13 (2007 Reissue) PARA 944 et seq.

4 Ibid s 78(2)(b)(i).

5 Ibid s 78(2)(b)(ii).

6 Ibid s 78(2). Any power to make an order or regulations conferred by Pt II (as amended) on a Minister of the Crown is exercisable by statutory instrument: s 82(6) (amended by the Greater London Authority Act 1999 s 287(1), (5)). Any statutory instrument so made is subject to annulment in pursuance of a resolution of either House of Parliament: Road Traffic Act 1991 s 82(7). Any such order may make such incidental and supplemental provision (including modifications of any enactment other the Road Traffic Act 1991) as the Lord Chancellor considers appropriate in consequence of the provision made by that order under s 78(2): s 78(3). The Road Traffic Debts Order 1993, SI 1993/2073 (amended by SI 2001/1386) has been made under the Road Traffic Act 1991 s 78(2).

Section 78 may by order be applied with modifications to permitted and special parking areas outside London: see PARAS 820-821 ante.

7 Ibid s 78(4).

8 Ibid s 78(5).

9 Ibid s 78(5)(a).

10 Ibid s 78(5)(b).

11 Ibid s 78(5)(c). As to the regulations made under s 78(4), (5) see the Enforcement of Road Traffic Debts (Certificated Bailiffs) Regulations 1993 SI 1993/2072 (amended by SI 1998/1351; SI 2003/1857).

12 Road Traffic Act 1991 s 78(7).

## UPDATE

### 899 Enforcement of debts

NOTE 1--See also SI 2007/3174 (Wales).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vi) Parking Charges and Penalty Charges/900. Recovery of unpaid penalty charges.

### 900. Recovery of unpaid penalty charges.

The following provisions have effect until 31 March 2008<sup>1</sup>.

The Secretary of State<sup>2</sup> may make regulations<sup>3</sup> for securing<sup>4</sup> that: (1) where a vehicle found in the borough of a participating council<sup>5</sup> is in the custody of a competent authority<sup>6</sup> and a person claiming the vehicle<sup>7</sup> is liable for the payment of any earlier penalty charge<sup>8</sup> relating to that vehicle which remains unpaid, the claimant is not entitled to remove the vehicle from the authority's custody unless, in addition to the penalty charge and other specified sums<sup>9</sup>, he also pays the earlier penalty charge<sup>10</sup>; and (2) where a vehicle to which an immobilisation device has been fixed<sup>11</sup> is in the borough of a participating council, there is no obligation to release the vehicle from that device<sup>12</sup> unless, in addition to the charges payable<sup>13</sup>, there is paid any unpaid earlier penalty charge relating to that vehicle for the payment of which the person making that payment and, if not the same person, the person in charge of the vehicle at the time the immobilisation device was fixed, is liable<sup>14</sup>.

Such regulations may: (a) make provision for appeals to the parking adjudicator<sup>15</sup> in respect of unpaid penalty charges<sup>16</sup>; and (b) contain such exemptions and exceptions as appear to the Secretary of State to be appropriate and are in any event to make provision whereby there is no requirement for the payment of an earlier penalty charge in order to permit the removal of a vehicle from the custody of a competent authority or, as the case may be, to secure the release of a vehicle from an immobilisation device if<sup>17</sup>: (i) representations have been made in relation to that charge to the relevant authority<sup>18</sup> within the relevant period of time<sup>19</sup> and have not yet been considered by that authority<sup>20</sup>; or (ii) an appeal has been made in relation to that charge to the adjudicator<sup>21</sup> within the relevant period of time<sup>22</sup> and has not yet been considered by the adjudicator<sup>23</sup>.

1 The London Local Authorities Act 1995 s 7 is repealed as from 31 March 2008: see the Traffic Management Act 2004 s 98, Sch 12 Pt 1; and the Traffic Management Act 2004 (Commencement No 5 and Transitional Provisions) (England) Order 2007, SI 2007/2053.

2 As to the Secretary of State see PARA 236 ante.

3 Regulations under the London Local Authorities Act 1995 s 7 are made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 7(3). See note 14 infra.

4 Ie subject to ibid s 7(2): see the text and notes 15-23 infra.

5 For the meaning of 'participating council' see PARA 779 note 4 ante.

6 Ie under the Road Traffic Regulation Act 1984 s 101 (as amended): see PARA 871 ante.



- 7    Ie pursuant to *ibid* s 101(4A) (as added; prospectively repealed): see PARA 871 ante.
- 8    For the meaning of 'penalty charge' for these purposes see PARA 889 note 5 ante; definition applied by the London Local Authorities Act 1995 s 2.
- 9    Ie specified in the Road Traffic Regulation Act 1984 s 101(4A) (as added; prospectively repealed): see PARA 871 ante.
- 10   London Local Authorities Act 1995 s 7(1)(a).
- 11   Ie under the Road Traffic Act 1991 s 69 (prospectively repealed): see PARA 892 ante.
- 12   Ie pursuant to *ibid* s 69(4) (prospectively repealed): see PARA 892 ante.
- 13   Ie payable under *ibid* 69(4) (prospectively repealed): see PARA 892 ante.
- 14   London Local Authorities Act 1995 s 7(1)(b). At the date at which this volume states the law no such regulations had been made.
- 15   For these purposes, 'parking adjudicator' means a parking adjudicator appointed under the Road Traffic Act 1991 s 73 (as amended; prospectively repealed) (see PARA 895 ante); London Local Authorities Act 1995 s 7(4).
- 16   *Ibid* s 7(2)(a).
- 17   *Ibid* s 7(2)(b).
- 18   Ie the relevant authority under the Road Traffic Act 1991 s 71 (prospectively repealed) (see PARA 893 ante) or s 66(7), Sch 6 (prospectively repealed) (see PARA 891 ante).
- 19   Ie within the period of time provided by *ibid* s 71(5) (prospectively repealed) (see PARA 893 ante) or Sch 6 para 2(3) (see PARA 891 note 8 ante), as the case may be.
- 20   London Local Authorities Act 1995 s 7(2)(b)(i).
- 21   Ie an appeal under the Road Traffic Act 1991 s 72 (prospectively repealed) (see PARA 894 ante) or Sch 6 (prospectively repealed) (see PARA 891 ante).
- 22   Ie within the time provided by *ibid* s 72(1) (prospectively repealed) (see PARA 894 ante) or Sch 6 para 5(1) (prospectively repealed) (see PARA 891 text to notes 27-31 ante), as the case may be.
- 23   London Local Authorities Act 1995 s 7(2)(b)(ii).

## **UPDATE**

### **900 Recovery of unpaid penalty charges**

NOTE 1--See also SI 2007/3174 (Wales).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vii) Road User Charging and Workplace Parking Levy/A. ROAD USER CHARGING/901. Charging schemes.

## **(vii) Road User Charging and Workplace Parking Levy**

### **A. ROAD USER CHARGING**

#### **901. Charging schemes.**

Charges imposed in respect of any motor vehicle<sup>1</sup> by a charging scheme<sup>2</sup> must be paid: (1) by the registered keeper<sup>3</sup> of the motor vehicle; or (2) in circumstances specified in regulations made by the appropriate national authority<sup>4</sup>, by such person as is so specified<sup>5</sup>. A charging scheme may be made: (a) by a non-metropolitan local traffic authority<sup>6</sup> ('a local charging scheme')<sup>7</sup>; (b) jointly by more than one non-metropolitan local traffic authority ('a joint local charging scheme')<sup>8</sup>; (c) jointly by one or more non-metropolitan local traffic authorities and one or more London traffic authorities<sup>9</sup> ('a joint local-London charging scheme')<sup>10</sup>; or (d) by the Secretary of State or the Welsh Ministers ('a trunk road charging scheme')<sup>11</sup>.

1 In the Transport Act 2000 Pt III (ss 163-200), 'motor vehicle' has the meaning given in the Road Traffic Act 1988 s 185(1) (see PARA 210 ante), except that s 189 (exception for certain pedestrian controlled vehicles and electrically assisted pedal cycles: see PARA 210 ante) applies as it applies for the purposes of the Road Traffic Acts (as to which see PARA 202 note 1 ante): Transport Act 2000 s 198(1).

The provisions of Pt III Ch I (ss 163-177) relating to road user charging are in force in relation to England. They are in force in relation to Wales only in respect of the powers to make specified regulations (see the Transport Act 2000 (Commencement No 1) (Wales) Order 2001, SI 2001/2788); the remaining provisions are to be brought into force in relation to Wales as from a day to be appointed under the Transport Act 2000 s 275(1). At the date at which this volume states the law no such day had been appointed.

2 In the Transport Act 2000 Pt III, 'Charging scheme' means a scheme for imposing charges in respect of the use or keeping of motor vehicles on roads: ss 163(1), 198(1). 'Road' has the same meaning as in the Road Traffic Regulation Act 1984 (see PARA 206 ante): Transport Act 2000 s 198(1). As to the interoperability of electronic road user charging and road tolling systems see the Road Tolling (Interoperability of Electronic Road User Charging and Road Tolling Systems) Regulations 2007, SI 2007/58. As to tolls generally see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 210 et seq.

3 'Registered keeper', in relation to a charge imposed in respect of motor vehicle, means the person in whose name the vehicle was registered under the Vehicle Excise and Registration Act 1994 at the time of the act, omission, event or circumstances in respect of which the charge is imposed: Transport Act 2000 s 198(1).

4 'The appropriate national authority' means: (1) the Secretary of State in relation to charging schemes and licensing schemes relating only to England; (2) the Welsh Ministers in relation to charging schemes and licensing relating only to Wales; and (3) the Secretary of State and the Welsh Ministers, acting jointly, in relation to charging schemes and licensing schemes relating to both England and Wales: ibid s 198(1). 'Licensing scheme' has the meaning given by s 178(1) (see PARA 916 note 1 post): s 198(1). As to the Secretary of State see PARA 236 ante. As to the Welsh Ministers see PARA 237 ante.

5 Ibid s 163(2).

6 In the Transport Act 2000 Pt III references to a non-metropolitan local traffic authority are to a local traffic authority for an area outside Greater London: ss 163(4), 198(1). 'Local traffic authority' has the same meaning as in the Road Traffic Regulation Act 1984 (see PARA 731 ante): Transport Act 2000 s 198(1).

7 Ibid s 163(3)(a). See PARA 902 post.

8 Ibid s 163(3)(b). See PARA 903 post.

9 'London traffic authority' means Transport for London, a London borough council or the Common Council of the City of London: ibid s 198(1). As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq. As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

10 Ibid s 163(3)(c). See PARA 904 post. The power to make joint local-London charging schemes conferred by Pt III does not limit any of the powers in the Greater London Authority Act 1999 s 295, Sch 23 (as amended) (road user charging in Greater London: see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 338 et seq): Transport Act 2000 s 163(6).

11 Ibid s 163(3)(d). As to trunk road charging schemes see PARA 905 post.

## UPDATE

### 901 Charging schemes

TEXT AND NOTES--The appropriate national authority may direct a local traffic authority, Integrated Transport Authority (see PARA 247A) or combined authority (see TRADE AND INDUSTRY vol 97 (2010) PARA 1002 et seq), to provide it, within a specified period, with specified information connected with any aspect of the performance or proposed performance of its functions under the Transport Act 2000 Pt III Ch I: Transport Act 2000 s 177A(1) (added by the Local Transport Act 2008 s 117(1), and amended by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 111). The information that may be specified in such a direction must be information which the authority has in its possession or can reasonably be expected to acquire: Transport Act 2000 s 177A(2). A direction under s 177A may be given to two or more authorities or to authorities of a description specified in the direction: s 177A(3).

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTES 6-11--A charging scheme may also be made (1) jointly by an Integrated Transport Authority (see PARA 247A), or combined authority and one or more eligible local traffic authorities; or (2) jointly by an Integrated Transport Authority, or combined authority, one or more eligible local traffic authorities and one or more London traffic authorities: Transport Act 2000 s 163(3)(bb), (cc) (added by the Local Transport Act 2008 s 103(2), and amended by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 102). 'Eligible local traffic authority' means, in relation to any Integrated Transport Authority for an integrated transport area, or combined authority, a local transport authority which is a council falling within the Transport Act 2000 s 163(4B) for (a) an area which lies within the Authority's area; (b) an area which adjoins the Authority's area; or (c) an area which adjoins an area falling within head (b): s 163(4A) (s 163(4A), (4B) added by the Local Transport Act 2008 s 103(3); Transport Act 2000 s 163(4A) amended by the Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 102). The councils are (i) a county council in England; (ii) a council for a non-metropolitan district comprised in an area for which there is no county council; and (iii) a metropolitan district council: Transport Act 2000 s 163(4B).

NOTE 10--Transport Act 2000 s 163(6) amended: Local Transport Act 2008 s 109, Sch 5 para 2.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vii) Road User Charging and Workplace Parking Levy/A. ROAD USER CHARGING/902. Local charging schemes.

## **902. Local charging schemes.**

A local charging scheme<sup>1</sup> may only be made in respect of roads<sup>2</sup> for which the charging authority<sup>3</sup> is the traffic authority<sup>4</sup>. A local charging scheme may only be made if it appears desirable for the purpose of directly or indirectly facilitating the achievement of policies in the charging authority's local transport plan<sup>5</sup>.

1 In the Transport Act 2000 Pt III (ss 163-200), 'local charging scheme' is to be construed in accordance with s 163(3)(a) (see PARA 901 ante): s 198(1). As to commencement of the provisions dealt with in this paragraph see PARA 901 note 1 ante.

2 As to the meaning of 'road' see PARA 901 note 2 ante.

3 In the Transport Act 2000 Pt III, 'the charging authority', in relation to a charging scheme under Pt III made or proposed to be made by one authority, means the authority by which the charging scheme is or is proposed to be made (ss 163(5)(a), 198(1)); and 'the charging authorities', in relation to a charging scheme under Pt III made or proposed to be made jointly by more than one authority, means the authorities by which the charging scheme is or is proposed to be made (ss 163(5)(b), 198(1)). For the meaning of 'charging scheme' see PARA 901 note 2 ante.

4 Ibid s 164(1).

5 Ibid s 164(2). Any reference in Pt III to an authority's local transport plan is, where the authority is the council of a metropolitan district, to be construed as a reference to the local transport plan made jointly by the passenger transport authority for the passenger transport area in which the district is included and the councils for the metropolitan districts comprised in that area: s 198(2). As to passenger transport authorities see PARA 247 ante. As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 336-337.

## UPDATE

### 902 Local charging schemes

TEXT AND NOTES--A local charging scheme which has effect wholly within an integrated transport area, or the area of a combined authority (see TRADE AND INDUSTRY vol 97 (2010) PARA 1002 et seq), may only be made if it appears desirable for the purpose of directly or indirectly facilitating the achievement of local transport policies of (1) the charging authority; and (2) the Integrated Transport Authority (see PARA 247A) for the integrated transport area, or, as the case may be, the combined authority: Transport Act 2000 s 164(3) (s 164(3), (4) added by the Local Transport Act 2008 s 104(3); Transport Act 2000 s 164(3) amended by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 103). A charging scheme has effect wholly outside an integrated transport area if none of the roads in respect of which it is made is in such an area, and any reference to a charging scheme which has effect wholly, or partly, within an integrated transport area is to be read accordingly: Transport Act 2000 s 164(4).

TEXT AND NOTE 5--Transport Act 2000 s 164(2) amended: Local Transport Act 2008 s 104(2); Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 103.

NOTE 5--Transport Act 2000 s 198(2) amended: Local Transport Act 2008 ss 12(6), 131, Sch 4 para 47, Sch 7 Pt 1.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vii) Road User Charging and Workplace Parking Levy/A. ROAD USER CHARGING/903. Joint local charging schemes.

### 903. Joint local charging schemes.

A joint local charging scheme<sup>1</sup> may only be made in respect of roads<sup>2</sup> for which any of the charging authorities<sup>3</sup> is the traffic authority<sup>4</sup>. A joint local charging scheme may only be made if

it appears desirable for the purpose of directly or indirectly facilitating the achievement of policies in the charging authorities' local transport plans<sup>5</sup>.

1 In the Transport Act 2000 Pt III (ss 163-200), 'joint local charging scheme' is to be construed in accordance with s 163(3)(b) (see PARA 901 ante): s 198(1). As to commencement of the provisions dealt with in this paragraph see PARA 901 note 1 ante.

2 As to the meaning of 'road' see PARA 901 note 2 ante.

3 For the meanings of 'charging authority' and 'charging authorities' see PARA 902 note 3 ante.

4 Transport Act 2000 s 165(1). As to joint schemes in Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 340.

5 Ibid s 165(2). As to references to an authority's local transport plan see PARA 902 note 5 ante.

## UPDATE

### 903 Joint local charging schemes

TEXT AND NOTES--A joint local charging scheme which has effect wholly or partly within an integrated transport area, or the area of a combined authority (see TRADE AND INDUSTRY vol 97 (2010) PARA 1002 et seq), may only be made if it appears desirable for the purpose of directly or indirectly facilitating the achievement of local transport policies of (1) the charging authorities; and (2) the Integrated Transport Authority (see PARA 247A) for the integrated transport area, or, as the case may be, the combined authority: Transport Act 2000 s 165(3) (s 165(3), (4) added by the Local Transport Act 2008 s 105(3); Transport act 2000 s 165(3) amended by the Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 104). The Transport Act 2000 s 164(4) (see PARA 902) has effect for the purposes of s 165: s 165(4). A joint local-ITA charging scheme may only be made (a) in respect of roads for which any of the charging authorities are the traffic authority; and (b) if at least one of the roads in respect of which it is made is within the integrated transport area of the Integrated Transport Authority, or, as the case may be, the combined authority (TRADE AND INDUSTRY vol 97 (2010) PARA 1002 et seq): s 165A(1) (s 165A added by the Local Transport Act 2008 s 106, and amended by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 105). A joint local-ITA charging scheme may only be made if it appears desirable for the purposes of directly or indirectly facilitating the achievement of local transport policies of the charging authorities: Transport Act 2000 s 165A(2).

TEXT AND NOTE 5--Transport Act 2000 s 165(2) amended: Local Transport Act 2008 s 105(2); Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 104.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vii) Road User Charging and Workplace Parking Levy/A. ROAD USER CHARGING/904. Joint local-London charging schemes.

### 904. Joint local-London charging schemes.

A joint local-London charging scheme<sup>1</sup> may only be made in respect of: (1) roads<sup>2</sup> for which the non-metropolitan local traffic authority<sup>3</sup>, or any of the non-metropolitan local traffic authorities, by which it is made is the traffic authority; and (2) roads in respect of which the London traffic authority<sup>4</sup>, or any of the London traffic authorities, by which it is made may impose charges by a scheme<sup>5</sup> without the consent of the Secretary of State<sup>6</sup>. A joint local-London charging scheme may only be made if it appears desirable for the purpose of directly or indirectly facilitating the achievement of: (a) policies in the local transport plan of the non-metropolitan local traffic authority, or the local transport plans of the non-metropolitan local traffic authorities, by which it is made<sup>7</sup>; and (b) policies and proposals set out in the transport strategy prepared and published by the Mayor of London<sup>8</sup>.

1 In the Transport Act 2000 Pt III (ss 163-200), 'joint local-London charging scheme' is to be construed in accordance with s 163(3)(c) (see PARA 901 ante): s 198(1). As to commencement of the provisions dealt with in this paragraph see PARA 901 note 1 ante.

2 As to the meaning of 'road' see PARA 901 note 2 ante.

3 For the meaning of 'non-metropolitan local traffic authority' see PARA 901 note 6 ante.

4 For the meaning of 'London traffic authority' see PARA 901 note 9 ante.

5 Ie under the Greater London Authority Act 1999 s 295, Sch 23 (as amended): see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 338 et seq.

6 Transport Act 2000 s 166(1). As to the Secretary of State see PARA 236 ante.

7 As to references to an authority's local transport plan see PARA 902 note 5 ante.

8 Ie under the Greater London Authority Act 1999 s 142 (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 263): Transport Act 2000 s 166(2).

## UPDATE

### 904 Joint local-London charging schemes

TEXT AND NOTES--A joint local-London charging scheme which has effect partly within an integrated transport area, or an area of a combined authority (see TRADE AND INDUSTRY vol 97 (2010) PARA 1002 et seq), may only be made if it appears desirable for the purpose of directly or indirectly facilitating the achievement of (1) local transport policies of the non-metropolitan local traffic authority, or the non-metropolitan local traffic authorities, by which the scheme is made; (2) local transport policies of the Integrated Transport Authority for the integrated transport area (see PARA 247A), or, as the case may be, the combined authority; and (3) policies and proposals set out in the transport strategy prepared and published by the Mayor of London under the Greater London Authority Act 1999 s 142 (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 263): Transport Act 2000 s 166(3) (s 166(3), (4) added by the Local Transport Act 2008 s 107(3); Transport Act 2000 s 166(3) amended by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 106). The Transport Act 2000 s 164(4) (see PARA 902) has effect for the purposes of s 166: s 166(4). A joint ITA-London charging scheme may only be made (a) in respect of roads falling within the Transport Act 2000 s 166A(2); and (b) if at least one of the roads in respect of which it is made is within the integrated transport area of the Integrated Transport Authority, or as the case may be, the area of the combined authority: s 166A(1) (s 166A added by the Local Transport Act 2008 s 108; Transport Act 2000 s 166A(1) amended by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 107). The roads are (i) roads for which the eligible local traffic authority, or any of the eligible local traffic authorities, by which the scheme is made are the traffic authority; and (ii)

roads in respect of which the London traffic authority, or any of the London traffic authorities, by which the scheme is made may impose charges by a scheme under the Greater London Authority Act 1999 Sch 23 (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 338 et seq) without the consent of the Secretary of State: Transport Act 2000 s 166A(2). A joint ITA-London charging scheme may only be made if it appears desirable for the purposes of directly or indirectly facilitating the achievement of (A) local transport policies of the eligible local traffic authority, or the eligible local traffic authorities, by which the scheme is made; (B) local transport policies of the Integrated Transport Authority, or combined authority, by which the scheme is made; and (C) policies and proposals set out in the transport strategy prepared and published by the Mayor of London under the Greater London Authority Act 1999 s 142: Transport Act 2000 s 166A(3) (amended by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 107).

TEXT AND NOTES 7, 8--Transport Act 2000 s 166(2) amended: Local Transport Act 2008 ss 107(2), 131, Sch 7 Pt 5; Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 106.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vii) Road User Charging and Workplace Parking Levy/A. ROAD USER CHARGING/905. Trunk road charging schemes.

### **905. Trunk road charging schemes.**

A trunk road charging scheme<sup>1</sup> may only be made: (1) by the Secretary of State<sup>2</sup> in respect of roads<sup>3</sup> for which he is the traffic authority; or (2) by the Welsh Ministers<sup>4</sup> in respect of roads for which it is the traffic authority<sup>5</sup>. A trunk road charging scheme may only be made in respect of a road if: (a) the road is carried by a bridge<sup>6</sup>, or passes through a tunnel, of at least 600 metres in length; or (b) a local traffic authority<sup>7</sup> or Transport for London<sup>8</sup> has requested the charging authority<sup>9</sup> to make the trunk road charging scheme in connection with a charging scheme<sup>10</sup> under the Transport Act 2000<sup>11</sup>, or a scheme under the Greater London Authority Act 1999<sup>12</sup>, made or proposed by it<sup>13</sup>.

1 In the Transport Act 2000 Pt III (ss 163-200), 'trunk road charging scheme' is to be construed in accordance with s 163(3)(d) (see PARA 901 ante): s 198(1). As to commencement of the provisions dealt with in this paragraph see PARA 901 note 1 ante.

2 As to the Secretary of State see PARA 236 ante.

3 As to the meaning of 'road' see PARA 901 note 2 ante.

4 As to the Welsh Ministers see PARA 237 ante.

5 Transport Act 2000 s 167(1).

6 'Bridge' means a bridge or viaduct and includes the abutments of a bridge: *ibid* s 198(1).

7 For the meaning of 'local traffic authority' see PARA 901 note 6 ante.

8 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

9 For the meaning of 'charging authority' see PARA 902 note 3 ante.

10 For the meaning of 'charging scheme' see PARA 901 note 2 ante.

11 le under the Transport Act 2000 Pt III.

12 le under the Greater London Authority Act 1999 s 295, Sch 23 (as amended): see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 339 et seq.

13 Transport Act 2000 s 167(2).

## **UPDATE**

### **905 Trunk road charging schemes**

NOTE 4--Information obtained by (1) any Minister of the Crown or government department; or (2) any local authority or other statutory body, may be disclosed to the Welsh Ministers for or in connection with the exercise of any of their functions with respect to a Welsh trunk road charging scheme or proposed such scheme: Local Transport Act 2008 s 123(1). Any information which has been or could be disclosed to the Welsh Ministers under s 123(1) for or in connection with the exercise of any of their functions with respect to a Welsh trunk road charging scheme may be disclosed to any person with whom the Welsh Ministers have entered into charging scheme arrangements: s 123(2). Information disclosed to a person under s 123(2) (a) may be disclosed to any other person for or in connection with the Welsh trunk road charging scheme; and (b) may not be disclosed, either by the person to whom it is disclosed under s 123(2) or by any other person to whom it is disclosed under head (a), otherwise than for or in connection with the scheme: s 123(3). The Secretary of State may charge a reasonable fee in respect of the cost of supplying information under head (1) or (2): s 123(4). Where the Welsh Ministers ask the Secretary of State to obtain overseas registration information from an overseas registration authority with a view to the Secretary of State disclosing that information under head (1) or (2), the Secretary of State may charge a reasonable fee in respect of the cost of obtaining, or seeking to obtain, the information: s 123(5).

TEXT AND NOTES 6-13--Transport Act 2000 s 167(2) amended: Local Transport Act 2008 s 109, Sch 5 para 3; Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 108.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vii) Road User Charging and Workplace Parking Levy/A. ROAD USER CHARGING/906. Charging schemes to be made by order.

### **906. Charging schemes to be made by order.**

A charging scheme<sup>1</sup> under the Transport Act 2000<sup>2</sup> is made by order of the charging authority<sup>3</sup> or of the charging authorities (acting jointly)<sup>4</sup>. The charging authority or the charging authorities (acting jointly) may by order vary a charging scheme, and the charging authority or any of the charging authorities may by order revoke such a scheme; but where a trunk road charging scheme<sup>5</sup> is made at the request of a local traffic authority<sup>6</sup> or Transport for London<sup>7</sup>, it must not be varied or revoked unless the local traffic authority, or Transport for London, has been consulted about its variation or revocation<sup>8</sup>. The appropriate national authority<sup>9</sup> may make regulations about orders making, varying or revoking charging schemes, including (in particular): (1) provision specifying the form of orders; (2) provision about the publication of proposals for orders making or varying such charging schemes and the making and



consideration of objections to such proposals; and (3) provision about the publication of notice of orders and of their effect<sup>10</sup>.

- 1 For the meaning of 'charging scheme' see PARA 901 note 2 ante.
- 2 ie under the Transport Act 2000 Pt III (ss 163-200).
- 3 For the meaning of 'charging authority' see PARA 902 note 3 ante.
- 4 Transport Act 2000 s 168(1). As to commencement of the provisions dealt with in this paragraph see PARA 901 note 1 ante. As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 339.
- 5 As to trunk road charging schemes see PARA 905 ante.
- 6 For the meaning of 'local traffic authority' see PARA 901 note 6 ante.
- 7 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.
- 8 Transport Act 2000 s 168(2).
- 9 For the meaning of 'the appropriate national authority' see PARA 901 note 4 ante.
- 10 Transport Act 2000 s 168(3). See the Trunk Road Charging Schemes (Bridges and Tunnels) (England) Procedure Regulations 2001, SI 2001/2303 (amended by SI 2004/3168). Before making regulations under the Transport Act 2000 s 168(3) which relate to joint local-London charging schemes, the Secretary of State must consult the Greater London Authority about the regulations so far as they so relate: s 168(4). As to joint local-London charging schemes see PARA 904 ante. As to the Secretary of State see PARA 236 ante. As to the Greater London Authority see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq.

## UPDATE

### 906 Charging schemes to be made by order

TEXT AND NOTES 5-8--Transport Act 2000 s 168(2) amended: Local Transport Act 2008 s 109, Sch 5 para 4(2); Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 109.

NOTE 10--Transport Act 2000 s 168(4) amended: Local Transport Act 2008 s 109, Sch 5 para 4(3).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vii) Road User Charging and Workplace Parking Levy/A. ROAD USER CHARGING/907. Confirmation of charging schemes.

### 907. Confirmation of charging schemes.

A charging scheme<sup>1</sup> under the Transport Act 2000<sup>2</sup>, other than a trunk road charging scheme<sup>3</sup>, will not come into force unless the order making it has been submitted to and confirmed by the appropriate national authority<sup>4</sup>; and a variation of such a charging scheme will not take effect until the order making the variation has been so submitted and confirmed<sup>5</sup>. A joint local-London charging scheme<sup>6</sup> will not come into force unless the order making it has been submitted to and confirmed by the Greater London Authority<sup>7</sup>; and a variation or revocation of such a charging scheme will not take effect until the order making the variation or revocation has been so submitted and confirmed<sup>8</sup>. Where confirmation of an order is required by these

provisions, the order may be confirmed with or without modifications<sup>9</sup>. Where confirmation by both the Secretary of State<sup>10</sup> and the Greater London Authority of an order making a joint local-London charging scheme, or a variation of such a charging scheme, is required by these provisions: (1) the order must not be submitted to the Secretary of State until it has been confirmed by the Greater London Authority; (2) if the order has been confirmed by the Greater London Authority with modifications it is the modified order that must be submitted to the Secretary of State; and (3) the order may not be confirmed with modifications by the Secretary of State until the modifications have been confirmed by the Greater London Authority<sup>11</sup>.

1 For the meaning of 'charging scheme' see PARA 901 note 2 ante.

2 le under the Transport Act 2000 Pt III (ss 163-200).

3 As to trunk road charging schemes see PARA 905 ante.

4 For the meaning of 'the appropriate national authority' see PARA 901 note 4 ante.

5 Transport Act 2000 s 169(1). Section 169(1) does not apply in such circumstances as may be specified in or determined in accordance with regulations made by the appropriate national authority: s 169(2). At the date at which this volume states the law no such regulations had been made. As to commencement of the provisions dealt with in this paragraph see PARA 901 note 1 ante.

6 As to joint local-London charging schemes see PARA 904 ante.

7 As to the Greater London Authority see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq.

8 Transport Act 2000 s 169(3).

9 Ibid s 169(4).

10 As to the Secretary of State see PARA 236 ante.

11 Transport Act 2000 s 169(5). As to charging schemes in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 339.

## UPDATE

### 907 Confirmation of charging schemes

TEXT AND NOTES 1-5--Transport Act 2000 s 169(1) amended: Local Transport Act 2008 s 110(2).

NOTE 5--Transport Act 2000 s 169(2) amended: Local Transport Act 2008 s 110(3).

TEXT AND NOTES 6-8--Transport Act 2000 s 169(3) amended: Local Transport Act 2008 s 109, Sch 5 para 5.

TEXT AND NOTES 10, 11--Transport Act 2000 s 169(5) repealed: Local Transport Act 2008 ss 110(4), 131, Sch 7 Pt 5.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vii) Road User Charging and Workplace Parking Levy/A. ROAD USER CHARGING/908. Charging schemes: consultation and inquiries.

### 908. Charging schemes: consultation and inquiries.

The charging authority<sup>1</sup> or the charging authorities (acting jointly) may at any time before an order making, varying or revoking a charging scheme<sup>2</sup> under the Transport Act 2000<sup>3</sup> is made, consult other persons about the charging scheme, variation or revocation<sup>4</sup>. The charging authority or the charging authorities (acting jointly): (1) may cause an inquiry to be held in relation to a charging scheme, or the variation or revocation of such a scheme; and (2) may appoint the person or persons by whom such an inquiry is to be held<sup>5</sup>. The appropriate national authority<sup>6</sup> may at any time either before an order making or varying a charging scheme (other than a trunk road charging scheme<sup>7</sup>) is made or (where such an order has to be confirmed) before it is confirmed, consult other persons, or require the charging authority or authorities to consult other persons, about the charging scheme or variation<sup>8</sup>. The appropriate national authority may cause an inquiry to be held in relation to a charging scheme (other than a trunk road charging scheme) or the variation of such a scheme, and may appoint the person or persons by whom such an inquiry is to be held<sup>9</sup>. In the case of a joint local-London charging scheme<sup>10</sup>: (a) the Greater London Authority<sup>11</sup> may, at any time before an order making, varying or revoking the charging scheme is confirmed by that Authority, consult other persons, or require the charging authorities to consult other persons, about the charging scheme, variation or revocation; and (b) the Secretary of State<sup>12</sup> must not cause an inquiry to be held in relation to the charging scheme, or the variation of the charging scheme, or appoint the person or persons by whom such an inquiry is to be held, without the consent of the Greater London Authority<sup>13</sup>. Where an inquiry is held by virtue of these provisions in relation to a charging scheme, or the variation or revocation of such a scheme, the costs of the inquiry must be paid in the case of a trunk road charging scheme<sup>14</sup> by the local traffic authority<sup>15</sup> which requested the making of the scheme (or Transport for London<sup>16</sup>, if it did), and in any other case, by the charging authority or authorities; and the parties at the inquiry must bear their own costs<sup>17</sup>.

1 For the meaning of 'charging authority' see PARA 902 note 3 ante.

2 For the meaning of 'charging scheme' see PARA 901 note 2 ante.

3 Ie under the Transport Act 2000 Pt III (ss 163-200).

4 Ibid s 170(1). As to commencement of the provisions dealt with in this paragraph see PARA 901 note 1 ante.

5 Ibid s 170(2). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 339.

6 For the meaning of 'the appropriate national authority' see PARA 901 note 4 ante.

7 As to trunk road charging schemes see PARA 905 ante.

8 Transport Act 2000 s 170(3).

9 Ibid s 170(4).

10 As to joint local-London charging schemes see PARA 904 ante.

11 As to the Greater London Authority see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq.

12 As to the Secretary of State see PARA 236 ante.

13 Transport Act 2000 s 170(5).

14 Ie made by virtue of ibid s 167(2)(b) (see PARA 905 head (b) ante).

15 For the meaning of 'local traffic authority' see PARA 901 note 6 ante.

16 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

17 Transport Act 2000 s 170(7).

The provisions of the Local Government Act 1972 s 250(2), (3) (witnesses at local inquiries: see LOCAL GOVERNMENT vol 69 (2009) PARA 105) apply in relation to any inquiry held by virtue of the Transport Act 2000 s 170: s 170(6).

## UPDATE

### 908 Charging schemes: consultation and inquiries

TEXT AND NOTES 1-4--Where the charging authority or any of the charging authorities are (1) a local traffic authority for an area in England; or (2) an Integrated Transport Authority (see PARA 247A), or a combined authority (see TRADE AND INDUSTRY vol 97 (2010) PARA 1002 et seq), that authority or those authorities, acting alone or jointly, must consult such local persons, and such representatives of local persons, as they consider appropriate about the charging scheme: Transport Act 2000 s 170(1A) (s 170(1A)-(1C) substituted for s 170(1) by the Local Transport Act 2008 s 111(2); Transport Act 2000 s 170(1A) amended by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 110). As to the meaning of 'local persons' and 'representatives', see the Transport Act 2000 s 170(1B). In any other case, the charging authority or the charging authorities, acting jointly, may, at any time before an order making, varying or revoking a charging scheme under the Transport Act 2000 Pt III (ss 163-200) is made, consult such persons as they consider appropriate about the charging scheme, variation or revocation: Transport Act 2000 s 170(1C).

TEXT AND NOTES 6-8--Transport Act 2000 s 170(3) amended: Local Transport Act 2008 s 111(3).

TEXT AND NOTE 9--Transport Act 2000 s 170(4) amended: Local Transport Act 2008 s 111(4).

TEXT AND NOTES 10-13--Transport Act 2000 s 170(5) amended: Local Transport Act 2008 ss 109, 111(5), 131, Sch 5 para 6(2), Sch 7 Pt 5.

TEXT AND NOTES 14-17--Transport Act 2000 s 170(7) amended: Local Transport Act 2008 s 109, Sch 5 para 6(3); Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 110.

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### 909. Matters to be dealt with in charging schemes.

A charging scheme<sup>1</sup> under the Transport Act 2000<sup>2</sup> must: (1) designate the roads<sup>3</sup> in respect of which charges are imposed; (2) specify or describe the events by reference to the happening of which a charge is imposed in respect of a motor vehicle<sup>4</sup> being used or kept on a road; (3) specify the classes of motor vehicles<sup>5</sup> in respect of which charges are imposed; (4) specify the charges imposed; and (5) state whether or not the charging scheme is to remain in force indefinitely and, if it is not to remain in force indefinitely, the period for which it is to remain in force<sup>6</sup>. Any charge imposed by a charging scheme in respect of the keeping of a motor vehicle on a road must also have effect in respect of the use of the motor vehicle on that road<sup>7</sup>.

A charging scheme may make provision in relation to the manner in which charges are to be made, collected, recorded and paid<sup>8</sup>. The charges that may be imposed by a charging scheme include different charges (which may be no charge) for different cases, including (in particular): (a) different days; (b) different times of day; (c) different roads; (d) different distances travelled; and (e) different classes of motor vehicles<sup>9</sup>. In setting the charges imposed by a charging scheme, regard may be had to the purposes for which any of the net proceeds of the charging scheme may be applied<sup>10</sup>. A charging scheme may contain provision requiring: (i) documents to be displayed while a motor vehicle is on a road in respect of which charges are imposed; or (ii) equipment to be carried in or fitted to a motor vehicle while it is on such a road<sup>11</sup>.

1 For the meaning of 'charging scheme' see PARA 901 note 2 ante.

2 Ie under the Transport Act 2000 Pt III (ss 163-200).

3 As to the meaning of 'road' see PARA 901 note 2 ante.

4 For the meaning of 'motor vehicle' see PARA 901 note 1 ante.

5 Any reference in the Transport Act 2000 Pt III to a class of motor vehicles is a reference to a class defined or described, by reference to any characteristics of the motor vehicles or to any other circumstances whatsoever, in regulations made by the appropriate national authority: s 198(3). For the meaning of 'the appropriate national authority' see PARA 901 note 4 ante. As to commencement of the provisions dealt with in this paragraph see PARA 901 note 1 ante. As to the regulations that have been made see the Road User Charging and Workplace Parking Levy (Classes of Motor Vehicles) (England) Regulations 2001, SI 2001/2793.

6 Transport Act 2000 s 171(1). Subject to ss 164-167 (see PARAS 902-905 ante) and to any modifications made by virtue of s 169 (see PARA 907 ante), the designation of the roads in respect of which charges are imposed by a charging scheme under Pt III is such as the charging authority or authorities may determine: s 171(2). For the meaning of 'charging authority' see PARA 902 note 3 ante. As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 341-342.

7 Ibid s 171(3).

8 Ibid s 171(4).

9 Ibid s 171(5). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 344.

10 Ie in accordance with ibid s 191, Sch 12 (financial provisions about road user charging): s 171(6). As to the determination of the net proceeds see the Road User Charging and Workplace Parking Levy (Net Proceeds) (England) Regulations 2003, SI 2003/110.

11 Transport Act 2000 s 171(7).

## UPDATE

### 909 Matters to be dealt with in charging schemes

TEXT AND NOTE 9--Head (d). Transport Act 2000 s 171(5) amended: Local Transport Act 2008 s 131, Sch 7 Pt 5. Also, head (f) different methods or means of recording, administering, collecting or paying the charge: Transport Act 2000 s 171(5)(f) (added by the Local Transport Act 2008 s 112(1)).

Charging and Workplace Parking Levy/A. ROAD USER CHARGING/910. Charging schemes: exemptions etc.

### **910. Charging schemes: exemptions etc.**

The appropriate national authority<sup>1</sup> may make regulations requiring charging schemes<sup>2</sup> under the Transport Act 2000<sup>3</sup> to contain provision for or in connection with: (1) exemptions from charges; (2) the application of reduced rates of charges; or (3) the imposition of limits on the charges payable<sup>4</sup>. A road<sup>5</sup> will not be subject to charges imposed by more than one charging scheme under the Transport Act 2000, or by such a charging scheme and a scheme under the Greater London Authority Act 1999<sup>6</sup>, at the same time<sup>7</sup>. A road will not be subject to charges under a charging scheme under the Transport Act 2000 if tolls are charged in respect of the use of the road<sup>8</sup>.

1 For the meaning of 'the appropriate national authority' see PARA 901 note 4 ante.

2 For the meaning of 'charging scheme' see PARA 901 note 2 ante.

3 Ie under the Transport Act 2000 Pt III (ss 163-200).

4 Ibid s 172(1). Subject to regulations under s 172(1) and to s 169(1) and (3) (see PARA 907 ante), a charging scheme under Pt III may contain provision of any of the descriptions specified in s 172(1): s 172(2). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 343, 345. As to commencement of the provisions dealt with in this paragraph see PARA 901 note 1 ante.

5 As to the meaning of 'road' see PARA 901 note 2 ante.

6 Ie under the Greater London Authority Act 1999: see LONDON GOVERNMENT.

7 Transport Act 2000 s 172(3).

8 Ibid s 172(4). As to toll roads see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 210 et seq.

### **UPDATE**

### **910 Charging schemes: [supplementary provision as to contents]**

TEXT AND NOTES--The appropriate national authority may by regulations (1) make provision requiring charging schemes under the Transport Act 2000 Pt III (ss 163-200) to provide that, in specified circumstances (a) persons of a specified description may pay; and (b) where those persons so choose, the charging authorities must collect, the charges imposed by such schemes in a specified manner; and (2) make provision for or in connection with the arrangements to be made by charging authorities with any person for the purpose of enabling charges to be paid, and collected, as mentioned in head (1): Transport Act 2000 s 172(2A) (added by the Local Transport Act 2008 s 113(2)). As to the suspension of charging schemes, see the Transport Act 2000 s 172A; and PARA 910A.

TEXT AND NOTES 5-7--A road will not be subject to (1) charges imposed by more than one charging scheme under the Transport Act 2000 Pt III (ss 163-200) at the same time; or (2) charges imposed by such a charging scheme and a scheme under the Greater London Authority Act 1999 Sch 23 (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 338 et seq) at the same time, except with the consent of the Authority: Transport Act 2000 s 172(3) (substituted by the Local Transport Act 2008 s 113(3)).

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### **910A. Suspension of charging schemes.**

The charging authority or the charging authorities, acting jointly, may suspend the operation of a charging scheme under the Transport Act 2000 Pt III (ss 163-200) if they consider that it is necessary to do so (1) in the event of an emergency, to enable or facilitate any action taken in response to the emergency; or (2) to enable or facilitate a temporary event to take place: Transport Act 2000 s 172A(1) (s 172A added by the Local Transport Act 2008 s 114). In the case of a suspension under head (1), the charging authority or authorities must keep under review the need for the suspension to continue, and may increase or reduce the period of the suspension, but they may not increase it so as to suspend the scheme for a period of more than 30 days: Transport Act 2000 s 172A(6). A suspension under s 172A is for such period as the charging authority or authorities consider necessary (a) in the case of an emergency, to enable or facilitate the response to the emergency, but in any event no longer than 30 days; and (b) in the case of a temporary event, to enable or facilitate the event to take place, together with any associated works undertaken before or after it: s 172A(2). A charging scheme may be suspended under s 172A in whole or in part, and if a scheme is suspended in part that suspension may be in respect of (i) any road in respect of which charges are imposed; (ii) any event by reference to the happening of which a charge is imposed; or (iii) any class of motor vehicle in respect of which charges are imposed: s 172A(3). The charging authority or authorities must publish a notice of any suspension under s 172A: s 172A(4). A notice under s 172A(4) (A) must be published in such manner as the charging authority or authorities consider appropriate to bring the suspension to the attention of all persons who are likely to be affected by it; and (B) must state the period for which the scheme is to be suspended: s 172A(5).

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### **911. Penalty charges.**

The appropriate national authority<sup>1</sup> may by regulations make provision for or in connection with the imposition and payment of charges ('charging scheme penalty charges') in respect of acts, omissions, events or circumstances relating to or connected with charging schemes<sup>2</sup> under the Transport Act 2000<sup>3</sup>. The regulations may include provision for or in connection with setting the rates of charging scheme penalty charges (which may include provision for discounts or surcharges)<sup>4</sup>. Charging scheme penalty charges in respect of any motor vehicle<sup>5</sup> must be paid: (1) by the registered keeper<sup>6</sup> of the motor vehicle; or (2) in circumstances specified in regulations made by the appropriate national authority, by such person as is so specified<sup>7</sup>. The Lord Chancellor may make regulations about the notification, adjudication and enforcement of charging scheme penalty charges<sup>8</sup>.

A person commits an offence if with intent to avoid payment of, or being identified as having failed to pay, a charge imposed by a charging scheme: (a) he interferes with any equipment used for or in connection with charging under the charging scheme; or (b) he causes or permits the registration plate of a motor vehicle to be obscured<sup>9</sup>. A person commits an offence if he

makes or uses any false document with intent to avoid payment of, or being identified as having failed to pay, charges imposed by a charging scheme or charging scheme penalty charges<sup>10</sup>. A person commits an offence if he removes a notice of a charging scheme penalty charge which has been fixed to a motor vehicle in accordance with regulations under these provisions unless: (i) he is the registered keeper of the vehicle or a person using the vehicle with his authority; or (ii) he does so under the authority of the registered keeper or such a person or of the charging authority<sup>11</sup> or any of the charging authorities<sup>12</sup>.

1 For the meaning of 'the appropriate national authority' see PARA 901 note 4 ante.

2 For the meaning of 'charging scheme' see PARA 901 note 2 ante.

3 Transport Act 2000 s 173(1), referring to charging schemes under Pt III (ss 163-200). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 346. As to commencement of the provisions dealt with in this paragraph see PARA 901 note 1 ante.

4 Ibid s 173(2).

5 For the meaning of 'motor vehicle' see PARA 901 note 1 ante.

6 For the meaning of 'registered keeper' see PARA 901 note 3 ante.

7 Transport Act 2000 s 173(3). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 347.

8 Ibid s 173(4).

9 Ibid s 173(5). See note 10 infra.

10 Ibid s 173(6). A person guilty of an offence under s 173(5) or (6) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding six months, or to both: s 173(8). As to the standard scale see PARA 230 note 3 ante.

11 For the meaning of 'charging authority' see PARA 902 note 3 ante.

12 Transport Act 2000 s 173(7). A person guilty of an offence under s 173(7) is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 173(9). As to offences in respect of road charging in Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 356.

## UPDATE

### 911 Penalty charges

TEXT AND NOTE 9--Transport Act 2000 s 173(5) amended: Local Transport Act 2008 s 115(1).

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### 912. Examination, entry, search and seizure.

The appropriate national authority<sup>1</sup> may by regulations make provision enabling or requiring charging schemes<sup>2</sup> under the Transport Act 2000<sup>3</sup> to confer powers on persons specified in, or determined in accordance with, the regulations for or in connection with examining a motor



vehicle<sup>4</sup> for ascertaining: (1) whether any document required to be displayed while the motor vehicle is on a road<sup>5</sup> in respect of which charges are imposed is so displayed; (2) whether any equipment required to be carried in or fitted to the motor vehicle while the motor vehicle is on such a road is carried or fitted, is in proper working order or has been interfered with, with intent to avoid payment of, or being identified as having failed to pay, a charge; or (3) whether any conditions relating to the use of any such equipment are satisfied<sup>6</sup>.

The appropriate national authority may by regulations make provision enabling or requiring charging schemes to confer power on any person authorised in writing by the charging authority<sup>7</sup>, or any of the charging authorities, to enter a motor vehicle where he has reasonable grounds for suspecting that: (a) any equipment required to be carried in or fitted to it while it is on a road in respect of which charges are imposed has been interfered with, with intent to avoid payment of, or being identified as having failed to pay, a charge imposed by the charging scheme; or (b) there is in the motor vehicle a false document which has been made or used with intent to avoid payment of, or being identified as having failed to pay, such a charge<sup>8</sup>. A person commits an offence if he intentionally obstructs a person exercising any power conferred on him by a charging scheme by virtue of the above provision<sup>9</sup>.

The appropriate national authority may by regulations make provision enabling or requiring charging schemes to confer power on any person authorised in writing by the charging authority, or any of the charging authorities, to seize anything (if necessary by detaching it from a motor vehicle) and detain it as evidence of the commission of an offence<sup>10</sup>. A charging scheme may not authorise an examination of, or entry into, a motor vehicle unless it is on a road<sup>11</sup>.

1 For the meaning of 'the appropriate national authority' see PARA 901 note 4 ante.

2 For the meaning of 'charging scheme' see PARA 901 note 2 ante.

3 le under the Transport Act 2000 Pt III (ss 163-200).

4 For the meaning of 'motor vehicle' see PARA 901 note 1 ante.

5 As to the meaning of 'road' see PARA 901 note 2 ante.

6 Transport Act 2000 s 174(1). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 357. As to commencement of the provisions dealt with in this paragraph see PARA 901 note 1 ante.

7 For the meaning of 'charging authority' see PARA 902 note 3 ante.

8 Transport Act 2000 s 174(2).

9 le by virtue of ibid s 174(2): s 174(3). A person guilty of an offence under s 174(3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding six months, or to both: s 174(4). As to the standard scale see PARA 230 note 3 ante.

10 le under ibid s 173(5) or (6) (see PARA 911 ante): s 174(5).

11 Ibid s 174(6).

## UPDATE

### 912 Examination, entry, search and seizure

TEXT AND NOTES 1-6--Transport Act 2000 s 174(1) amended: Local Transport Act 2008 s 115(2)(a).

TEXT AND NOTES 7, 8--Transport Act 2000 s 174(2) amended: Local Transport Act 2008 s 115(2)(b), (c).

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### **913. Immobilisation etc.**

The appropriate national authority<sup>1</sup> may by regulations make provision enabling or requiring charging schemes<sup>2</sup> under the Transport Act 2000<sup>3</sup> to make provision for or in connection with: (1) the fitting of immobilisation devices<sup>4</sup> to motor vehicles<sup>5</sup>; (2) the fixing of immobilisation notices to motor vehicles to which an immobilisation device has been fitted; (3) the removal and storage of motor vehicles; (4) the release of motor vehicles from immobilisation devices or from storage; (5) the satisfaction of conditions before the release of a motor vehicle; and (6) the sale or destruction of motor vehicles not released<sup>6</sup>.

A person commits an offence if he removes or interferes with an immobilisation notice fixed to a motor vehicle in accordance with provision included in a charging scheme<sup>7</sup> in contravention of such provision<sup>8</sup>. A person commits an offence if he removes or attempts to remove an immobilisation device fitted to a motor vehicle in accordance with provision included in a charging scheme<sup>9</sup> in contravention of such provision<sup>10</sup>. A person commits an offence if he intentionally obstructs a person exercising any power conferred on him by provision included in a charging scheme<sup>11</sup>.

A charging scheme may not authorise or require the fitting of an immobilisation device to, or the removal of, a motor vehicle unless it is on a road<sup>12</sup>.

1 For the meaning of 'the appropriate national authority' see PARA 901 note 4 ante.

2 For the meaning of 'charging scheme' see PARA 901 note 2 ante.

3 Ie under the Transport Act 2000 Pt III (ss 163-200).

4 In *ibid* s 175 'immobilisation device' has the same meaning as in the Road Traffic Regulation Act 1984 s 104 (see PARA 876 note 4 ante); Transport Act 2000 s 175(7). As to commencement of the provisions dealt with in this paragraph see PARA 901 note 1 ante.

5 For the meaning of 'motor vehicle' see PARA 901 note 1 ante.

6 Transport Act 2000 s 175(1). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 358.

7 Ie by virtue of *ibid* s 175(1): see the text and notes 1-6 supra.

8 *Ibid* s 175(2). A person guilty of an offence under s 175(2) is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 175(5). As to the standard scale see PARA 230 note 3.

9 Ie by virtue of *ibid* s 175(1): see the text and notes 1-6 supra.

10 *Ibid* s 175(3). See note 11 infra.

11 Ie by virtue of *ibid* s 175(1) (see the text and notes 1-6 supra): s 175(4). A person guilty of an offence under s 175(3) (see the text and notes 9-19 supra) or s 175(4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 175(6).

12 *Ibid* s 175(8). As to the meaning of 'road' see PARA 901 note 2 ante.

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#### **914. Equipment etc.**

The charging authority<sup>1</sup>, or any of the charging authorities, in relation to a charging scheme<sup>2</sup> under the Transport Act 2000<sup>3</sup> may: (1) install and maintain, or authorise the installation and maintenance of, any equipment; or (2) construct and maintain, or authorise the construction and maintenance of, any buildings or other structures, used or to be used for or in connection with the operation<sup>4</sup> of a charging scheme<sup>5</sup>. The appropriate national authority<sup>6</sup> may by regulations approve standards for equipment installed, or authorised to be installed, by charging authorities for or in connection with the operation of charging schemes<sup>7</sup>. No equipment may be installed for or in connection with the operation of a charging scheme if it is incompatible with an approved standard<sup>8</sup>.

1 For the meaning of 'charging authority' see PARA 902 note 3 ante.

2 For the meaning of 'charging scheme' see PARA 901 note 2 ante.

3 Ie under the Transport Act 2000 Pt III (ss 163-200).

4 'Operation' includes enforcement (related expressions being construed accordingly): ibid s 198(1). As to commencement of the provisions dealt with in this paragraph see PARA 901 note 1 ante.

5 Ibid s 176(1).

6 For the meaning of 'the appropriate national authority' see PARA 901 note 4 ante.

7 Transport Act 2000 s 176(2).

8 Ibid s 176(3), referring to s 176(2). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 359.

#### **UPDATE**

#### **914 Equipment etc**

TEXT AND NOTES 6, 7--Transport Act 2000 s 176(2) amended: Local Transport Act 2008 s 116(2).

TEXT AND NOTE 8--Transport Act 2000 s 176(3) amended: Local Transport Act 2008 s 116(3).

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#### **915. Traffic signs.**

The appropriate national authority<sup>1</sup> may direct the charging authority<sup>2</sup>, or any of the charging authorities, in relation to a charging scheme<sup>3</sup> under the Transport Act 2000<sup>4</sup> (other than a trunk road charging scheme<sup>5</sup>) to place and maintain traffic signs<sup>6</sup>, or cause traffic signs to be placed and maintained, in connection with the scheme<sup>7</sup>. The appropriate national authority may direct any local traffic authority<sup>8</sup> to place and maintain traffic signs, or cause traffic signs to be placed and maintained, in connection with a trunk road charging scheme<sup>9</sup>. An authority which is or could be given a direction under these provisions may enter any land, and exercise any other powers which may be necessary, for placing and maintaining traffic signs, or causing traffic signs to be placed and maintained, in connection with any charging scheme in respect of which a direction is or could be given<sup>10</sup>. A direction under these provisions must be given in writing and may be varied or revoked by the authority by which it was given<sup>11</sup>.

1 For the meaning of 'the appropriate national authority' see PARA 901 note 4 ante.

2 For the meaning of 'charging authority' see PARA 902 note 3 ante.

3 For the meaning of 'charging scheme' see PARA 901 note 2 ante.

4 Ie under the Transport Act 2000 Pt III (ss 163-200).

5 As to trunk road charging schemes see PARA 905 ante.

6 In the Transport Act 2000 s 177 'traffic signs' has the meaning given by the Road Traffic Regulation Act 1984 s 64 (see PARA 830 ante) but also includes signposts and other signs and notices included in that term by s 71(2) (see PARA 837 ante): Transport Act 2000 s 177(6). As to commencement of the provisions dealt with in this paragraph see PARA 901 note 1 ante.

7 Ibid s 177(1). In the case of a joint local-London charging scheme (see PARA 904 ante) the Greater London Authority may also exercise the power conferred by s 177(1); but any direction under this provision will not have effect if and to the extent that it is inconsistent with a direction under s 177(1): s 177(2). As to the Greater London Authority see PARA 246 ante. As to the equivalent provision in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 339.

8 For the meaning of 'local traffic authority' see PARA 901 note 6 ante.

9 Transport Act 2000 s 177(3).

10 Ibid s 177(4).

11 Ibid s 177(5).

## UPDATE

### 915 Traffic signs

NOTE 7--Transport Act 2000 s 177(2) amended: Local Transport Act 2008 s 109, Sch 5 para 7.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vii) Road User Charging and Workplace Parking Levy/B. WORKPLACE PARKING LEVY/916. Licensing schemes: preliminary.

## **B. WORKPLACE PARKING LEVY**

### **916. Licensing schemes: preliminary.**

Charges imposed in respect of any premises by a licensing scheme<sup>1</sup> under the Transport Act 2000 must be paid: (1) by the occupier of the premises; or (2) in circumstances specified in regulations made by the appropriate national authority<sup>2</sup>, by such person as is so specified<sup>3</sup>. A licence relating to premises must cover the provision at the premises of the number of workplace parking places requested by the applicant for the licence<sup>4</sup>. A licensing scheme may be made: (a) by a non-metropolitan local traffic authority<sup>5</sup> ('a local licensing scheme')<sup>6</sup>; (b) jointly by more than one non-metropolitan local traffic authority ('a joint local licensing scheme')<sup>7</sup>; or (c) jointly by one or more non-metropolitan local traffic authorities and one or more London traffic authorities<sup>8</sup> ('a joint local-London licensing scheme')<sup>9</sup>.

1 In the Transport Act 2000 Pt III (ss 163-200), 'licensing scheme' means a scheme for imposing charges in respect of the provision of workplace parking places at premises in the area covered by the scheme, to be paid on licences covering the provision of a maximum number of such parking places at the premises: ss 178(1), 198(1). 'Workplace parking place' is to be construed in accordance with s 182 (see PARA 920 post): s 198(1). 'Licence' means a licence under a licensing scheme under Pt III: ss 178(3), 198(1).

The provisions of Pt III Ch II (ss 178-190) relating to workplace parking levy are in force in relation to England. They are in force in relation to Wales only in respect of the powers to make specified regulations (see the Transport Act 2000 (Commencement No 1) (Wales) Order 2001, SI 2001/2788); the remaining provisions are to be brought into force in relation to Wales as from a day to be appointed under the Transport Act 2000 s 275(1). At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'the appropriate national authority' see PARA 901 note 4 ante.

3 Transport Act 2000 s 178(2).

4 Ibid s 178(4). In Pt III 'licensed unit', in relation to a licence relating to premises, means each unit comprised in the maximum number of workplace parking places which may be provided at the premises under the cover of the licence: ss 178(4), 198(1).

5 For the meaning of 'non-metropolitan local traffic authority' see PARA 901 note 6 ante.

6 Transport Act 2000 s 178(5)(a). See PARA 917 post.

7 Ibid s 178(5)(b). See PARA 918 post.

8 For the meaning of 'London traffic authority' see PARA 901 note 9 ante.

9 Transport Act 2000 s 178(5)(c). The power to make joint local-London licensing schemes conferred by Pt III does not limit any of the powers in the Greater London Authority Act 1999 s 296(2), Sch 24 (as amended) (workplace parking levy in Greater London: see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 367 et seq): Transport Act 2000 s 178(7). As to joint local-London licensing schemes see PARA 919 post.

## UPDATE

### 916 Licensing schemes: preliminary

NOTE 3--See the Workplace Parking Levy (England) Regulations 2009, SI 2009/2085.

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### 917. Local licensing schemes.

A local licensing scheme<sup>1</sup> may cover the whole or any part of the area of the licensing authority<sup>2</sup>. A local licensing scheme may only be made if it appears desirable for the purpose of directly or indirectly facilitating the achievement of policies in the licensing authority's local transport plan<sup>3</sup>.

1 In the Transport Act 2000 Pt III (ss 163-200), 'local licensing scheme' is to be construed in accordance with s 178(5)(a) (see PARA 916 head (a) ante): s 198(1). For the meaning of 'licensing scheme' see PARA 916 note 1 ante. As to commencement of the provisions dealt with in this paragraph see PARA 916 note 1 ante.

2 Ibid s 179(1). In Pt III, 'the licensing authority', in relation to a licensing scheme under Pt III made or proposed to be made by one authority, means the authority by which the licensing scheme is or is proposed to be made (ss 178(6)(a), 198(1)); and 'the licensing authorities', in relation to a licensing scheme under Pt III made or proposed to be made jointly by more than one authority, means the authorities by which the licensing scheme is or is proposed to be made (ss 178(6)(b), 198(1)).

3 Ibid s 179(2). As to references to an authority's local transport plan see PARA 902 ante. As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 336.

## **UPDATE**

### **917 Local licensing schemes**

TEXT AND NOTE 3--Transport Act 2000 s 179(2) amended: Local Transport Act 2008 Sch 1 para 5.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vii) Road User Charging and Workplace Parking Levy/B. WORKPLACE PARKING LEVY/918. Joint local licensing schemes.

### **918. Joint local licensing schemes.**

A joint local licensing scheme<sup>1</sup> may cover the whole or any part of the combined area of the licensing authorities<sup>2</sup>. A joint local licensing scheme may only be made if it appears desirable for the purpose of directly or indirectly facilitating the achievement of policies in the licensing authorities' local transport plans<sup>3</sup>.

1 In the Transport Act 2000 Pt III (ss 163-200), 'joint local licensing scheme' is to be construed in accordance with s 178(5)(b) (see PARA 916 head (b) ante): s 198(1). As to commencement of the provisions dealt with in this paragraph see PARA 916 note 1 ante.

2 Ibid s 180(1). For the meanings of 'licensing authority' and 'licensing authorities' see PARA 917 note 2 ante. As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 371.

3 Ibid s 180(2). As to references to an authority's local transport plan see PARA 902 ante.

## **UPDATE**

### **918 Joint local licensing schemes**

TEXT AND NOTE 3--Transport Act 2000 s 180(2) amended: Local Transport Act 2008 Sch 1 para 6.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vii) Road User Charging and Workplace Parking Levy/B. WORKPLACE PARKING LEVY/919. Joint local-London licensing schemes.

### **919. Joint local-London licensing schemes.**

A joint local-London licensing scheme<sup>1</sup> may cover: (1) the whole or any part of the area of the non-metropolitan local traffic authority<sup>2</sup>, or combined area of the non-metropolitan local traffic authorities, by which it is made; and (2) the whole or any part of any area to which a scheme<sup>3</sup> made by the London traffic authority<sup>4</sup>, or any of the London traffic authorities, by which it is made could apply<sup>5</sup>. A joint local-London licensing scheme may only be made if it appears desirable for the purpose of directly or indirectly facilitating the achievement of: (a) policies in the local transport plan<sup>6</sup> of the non-metropolitan local traffic authority, or the local transport plans of the non-metropolitan local traffic authorities, by which it is made; and (b) policies and proposals set out in the transport strategy prepared and published by the Mayor of London<sup>7</sup>.

1 In the Transport Act 2000 Pt III (ss 163-200), 'joint local-London licensing scheme' is to be construed in accordance with s 178(5)(c) (see PARA 916 head (c) ante): s 198(1). As to commencement of the provisions dealt with in this paragraph see PARA 916 note 1 ante.

2 For the meaning of 'non-metropolitan local traffic authority' see PARA 901 note 6 ante.

3 Ie under the Greater London Authority Act 1999 s 296(2), Sch 24 (as amended) (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 372 et seq).

4 For the meaning of 'London traffic authority' see PARA 901 note 9 ante.

5 Transport Act 2000 s 181(1).

6 As to references to an authority's local transport plan see PARA 902 ante.

7 Ie under the Greater London Authority Act 1999 s 142 (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 263): Transport Act 2000 s 181(2).

### **UPDATE**

### **919 Joint local-London licensing schemes**

TEXT AND NOTES 6, 7--Transport Act 2000 s 181(2) amended: Local Transport Act 2008 ss 7, 131, Sch 1 para 7, Sch 7 Pt 1.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vii) Road User Charging and Workplace Parking Levy/B. WORKPLACE PARKING LEVY/920. Workplace parking places.

### **920. Workplace parking places.**

For the purposes of the Transport Act 2000<sup>1</sup>, a workplace parking place is provided at any premises at any time if a parking place provided at the premises is at that time occupied by a motor vehicle<sup>2</sup> (other than an exempt vehicle<sup>3</sup>) used:

- 790 (1) by a relevant person<sup>4</sup>;
- 791 (2) by an employee<sup>5</sup>, agent, supplier<sup>6</sup>, business customer<sup>7</sup> or business visitor<sup>8</sup> of a relevant person;
- 792 (3) by a pupil or student attending a course of education or training provided by a relevant person; or
- 793 (4) where a body whose affairs are controlled by its members is a relevant person, by a member of the body engaged in the carrying on of any business of the body,

for attending a place at which the relevant person carries on business at or in the vicinity of the premises<sup>9</sup>. The appropriate national authority<sup>10</sup> may make regulations amending the preceding provisions for the purpose of adding, removing or varying cases where a workplace parking place is provided<sup>11</sup>.

1 le for the purposes of the Transport Act 2000 Pt III (ss 163-200).

2 For the meaning of 'motor vehicle' see PARA 901 note 1 ante.

3 In the Transport Act 2000 Pt III, 'exempt vehicle', in relation to a licensing scheme, means a motor vehicle exempt from licensing under the scheme by virtue of regulations under s 187(1) (see PARA 925 post) or provision included in the scheme by virtue of s 187(2): s 198(1). For the meaning of 'licensing scheme' see PARA 916 note 1 ante. As to commencement of the provisions dealt with in this paragraph see PARA 916 note 1 ante.

4 In *ibid* s 182, 'relevant person' means: (1) the person who provides the parking place in question ('the provider'); (2) any person with whom the provider has entered into arrangements to provide the parking place (whether or not for that person's own use); or (3) any person who is associated with the provider or a person within head (2) *supra*: s 182(2). For the purposes of head (3) *supra* any two persons are associated if and only if: (a) one is a company of which the other (directly or indirectly) has control; or (b) both are companies of which a third person (directly or indirectly) has control: s 182(3).

5 For the purposes of *ibid* s 182, 'employee' means a person employed under a contract of service or apprenticeship, whether express or implied, and (if express) whether oral or in writing: s 182(4).

6 For the purposes of *ibid* s 182, 'supplier', in relation to a relevant person, means: (1) a person supplying, or seeking to supply, goods or services to the relevant person for the purposes of a business carried on by the relevant person; or (2) any agent or sub-contractor of such a person: s 182(4). 'Business' includes: (a) any trade, profession, vocation or undertaking; (b) the functions of any office holder; (c) the provision of any course of education or training; and (d) the functions of, or any activities carried on by, a government department or a local authority or other statutory body: s 182(4).

7 For the purposes of *ibid* s 182, 'business customer', in relation to a relevant person, means a client or customer of the relevant person who is attending at any premises occupied by the relevant person for the purposes of a business carried on by that client or customer: s 182(4).

8 For the purposes of *ibid* s 182, 'business visitor', in relation to a relevant person, means an individual who: (1) in the course of his employment; or (2) in the course of carrying on a business or for the purposes of a business carried on by him, is visiting the relevant person or any premises occupied by the relevant person: s 182(4).

9 *Ibid* s 182(1). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 368.

10 For the meaning of 'the appropriate national authority' see PARA 901 note 4 ante.

11 Transport Act 2000 s 182(5).



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## **921. Licensing schemes to be made by order.**

A licensing scheme<sup>1</sup> under the Transport Act 2000<sup>2</sup> is made by order of the licensing authority<sup>3</sup> or of the licensing authorities (acting jointly)<sup>4</sup>. The licensing authority or the licensing authorities (acting jointly) may by order vary a licensing scheme and the licensing authority or any of the licensing authorities may by order revoke such a scheme<sup>5</sup>. The appropriate national authority<sup>6</sup> may make regulations about orders making, varying or revoking licensing schemes, including (in particular): (1) provision specifying the form of orders; (2) provision about the publication of proposals for orders making or varying such licensing schemes and the making and consideration of objections to such proposals; and (3) provision about the publication of notice of orders and of their effect<sup>7</sup>.

1 For the meaning of 'licensing scheme' see PARA 916 note 1 ante.

2 Ie under the Transport Act 2000 Pt III (ss 163-200).

3 For the meaning of 'licensing authority' see PARA 917 note 2 ante.

4 Transport Act 2000 s 183(1). As to commencement of the provisions dealt with in this paragraph see PARA 916 note 1 ante.

5 Ibid s 183(2). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 370.

6 For the meaning of 'the appropriate national authority' see PARA 901 note 4 ante.

7 Transport Act 2000 s 183(3). Before making regulations under s 183(3) which relate to joint local-London licensing schemes the Secretary of State must consult the Greater London Authority about the regulations so far as they so relate: s 183(4). As to joint local-London licensing schemes see PARA 919 ante. As to the Secretary of State see PARA 236 ante. As to the Greater London Authority see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq.

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## **922. Confirmation of licensing schemes.**

A licensing scheme<sup>1</sup> under the Transport Act 2000<sup>2</sup> does not come into force unless the order making it has been submitted to and confirmed by the appropriate national authority<sup>3</sup>; and a variation of such a licensing scheme does not take effect until the order making the variation has been so submitted and confirmed<sup>4</sup>. A joint local-London licensing scheme<sup>5</sup> does not come into force unless the order making it has been submitted to and confirmed by the Greater London Authority<sup>6</sup>; and a variation or revocation of such a licensing scheme does not take effect until the order making the variation or revocation has been so submitted and confirmed<sup>7</sup>. Where confirmation of an order is required by these provisions, the order may be confirmed with or without modifications<sup>8</sup>. Where confirmation by both the Secretary of State<sup>9</sup> and the

Greater London Authority of an order making a joint local-London licensing scheme, or a variation of such a licensing scheme, is required by these provisions: (1) the order must not be submitted to the Secretary of State until it has been confirmed by the Greater London Authority; (2) if the order has been confirmed by the Greater London Authority with modifications it is the modified order that must be submitted to the Secretary of State; and (3) the order may not be confirmed with modifications by the Secretary of State until the modifications have been confirmed by the Greater London Authority<sup>10</sup>.

1 For the meaning of 'licensing scheme' see PARA 916 note 1 ante.

2 le under the Transport Act 2000 Pt III (ss 163-200).

3 For the meaning of 'the appropriate national authority' see PARA 901 note 4 ante.

4 Transport Act 2000 s 184(1). Section 184(1) does not apply in such circumstances as may be specified in or determined in accordance with regulations made by the appropriate national authority: s 184(2). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 370. As to commencement of the provisions dealt with in this paragraph see PARA 916 note 1 ante.

5 As to joint local-London licensing schemes see PARA 919 ante.

6 As to the Greater London Authority see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq.

7 Transport Act 2000 s 184(3).

8 Ibid s 184(4).

9 As to the Secretary of State see PARA 236 ante.

10 Transport Act 2000 s 184(5).

## **UPDATE**

### **922 Confirmation of licensing schemes**

NOTE 4--See the Workplace Levy (England) Regulations 2009, SI 2009/2085.

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### **923. Licensing schemes: consultation and inquiries.**

The licensing authority<sup>1</sup> or the licensing authorities (acting jointly) may at any time before an order making, varying or revoking a licensing scheme<sup>2</sup> under the Transport Act 2000<sup>3</sup> is made, consult other persons about the licensing scheme, variation or revocation<sup>4</sup>. The licensing authority or the licensing authorities (acting jointly): (1) may cause an inquiry to be held in relation to a licensing scheme, or the variation or revocation of such a scheme; and (2) may appoint the person or persons by whom such an inquiry is to be held<sup>5</sup>. The appropriate national authority<sup>6</sup> may at any time before an order making or varying a licensing scheme is made, or (where such an order has to be confirmed) before it is confirmed, consult other persons, or require the licensing authority or authorities to consult other persons, about the licensing scheme or variation<sup>7</sup>.

The appropriate national authority may cause an inquiry to be held in relation to a licensing scheme or the variation of such a scheme, and may appoint the person or persons by whom such an inquiry is to be held<sup>8</sup>. In the case of a joint local-London licensing scheme<sup>9</sup>: (a) the Greater London Authority<sup>10</sup> may, at any time before an order making, varying or revoking the licensing scheme is confirmed by that Authority, consult other persons, or require the licensing authorities to consult other persons, about the licensing scheme, variation or revocation; and (b) the Secretary of State<sup>11</sup> must not cause an inquiry to be held in relation to the licensing scheme, or the variation of the licensing scheme, or appoint the person or persons by whom such an inquiry is to be held, without the consent of the Greater London Authority<sup>12</sup>. Where an inquiry is held by virtue of the above provisions in relation to a licensing scheme or the variation or revocation of such a scheme the costs of the inquiry must be paid by the licensing authority or authorities, and the parties at the inquiry must bear their own costs<sup>13</sup>.

1 For the meaning of 'licensing authority' see PARA 917 note 2 ante.

2 For the meaning of 'licensing scheme' see PARA 916 note 1 ante.

3 le under the Transport Act 2000 Pt III (ss 163-200).

4 Ibid s 185(1). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 370. As to commencement of the provisions dealt with in this paragraph see PARA 916 note 1 ante.

5 Ibid s 185(2).

6 For the meaning of 'the appropriate national authority' see PARA 901 note 4 ante.

7 Transport Act 2000 s 185(3).

8 Ibid s 185(4).

9 As to joint local-London licensing schemes see PARA 919 ante.

10 As to the Greater London Authority see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq.

11 As to the Secretary of State see PARA 236 ante.

12 Transport Act 2000 s 185(5).

13 Ibid s 185(7). The provisions of the Local Government Act 1972 s 250(2), (3) (witnesses at local inquiries: see LOCAL GOVERNMENT vol 69 (2009) PARA 105) apply in relation to any inquiry held by virtue of the Transport Act 2000 s 185: s 185(6).

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## **924. Matters to be dealt with in licensing schemes.**

A licensing scheme<sup>1</sup> under the Transport Act 2000<sup>2</sup> must: (1) designate the area covered by the licensing scheme ('the licensing area'); (2) state the days on which, and hours during which, a licence<sup>3</sup> is required; (3) specify the charges payable on licences (expressed as a specified sum of money for each licensed unit<sup>4</sup>); and (4) state whether or not the licensing scheme is to remain in force indefinitely and, if it is not to remain in force indefinitely, the period for which it

is to remain in force<sup>5</sup>. The designation by a licensing scheme of the boundaries of the licensing area must be such as the licensing authority<sup>6</sup> or authorities may determine<sup>7</sup>. The charges that may be imposed by a licensing scheme include different charges (which may be no charge) for different cases, including (in particular): (a) different days; (b) different times of day; (c) different parts of the licensing area; (d) different classes of motor vehicles<sup>8</sup>; and (e) different numbers of licensed units<sup>9</sup>. In setting the charges imposed by a licensing scheme, regard may be had to the purposes for which any of the net proceeds of the licensing scheme may be applied<sup>10</sup>. A licensing scheme may include provision for or in connection with: (i) the making of an application for a licence; (ii) the grant of a licence; (iii) the issue of a licence; and (iv) the variation or revocation of a licence<sup>11</sup>.

1 For the meaning of 'licensing scheme' see PARA 916 note 1 ante.

2 le under the Transport Act 2000 Pt III (ss 163-200).

3 For the meaning of 'licence' see PARA 916 note 1 ante.

4 For the meaning of 'licensed unit' see PARA 916 note 4 ante.

5 Transport Act 2000 s 186(1). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 372. As to commencement of the provisions dealt with in this paragraph see PARA 916 note 1 ante.

6 For the meaning of 'licensing authority' see PARA 917 note 2 ante.

7 Transport Act 2000 s 186(2). Section 186(2) is subject to ss 179-181 (see PARAS 917-919 ante) and to any modifications made by virtue of s 184 (see PARA 922 ante); s 186(2).

8 For the meaning of 'motor vehicle' see PARA 901 note 1 ante. See the Road User Charging and Workplace Parking Levy (Classes of Motor Vehicles) (England) Regulations 2001, SI 2001/2793.

9 Transport Act 2000 s 186(3).

10 le in accordance with ibid s 191, Sch 12 (financial provisions about workplace parking levy schemes): s 186(4). As to the determination of the net proceeds see the Road User Charging and Workplace Parking Levy (Net Proceeds) (England) Regulations 2003, SI 2003/110. As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 374.

11 Transport Act 2000 s 186(5). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 376.

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## **925. Licensing schemes: exemptions etc.**

The appropriate national authority<sup>1</sup> may make regulations requiring licensing schemes<sup>2</sup> under the Transport Act 2000<sup>3</sup> to contain provision for or in connection with: (1) exemptions from licensing<sup>4</sup>; (2) the application of reduced rates of charges payable on licences<sup>5</sup>; or (3) the imposition of limits on the charges payable on a licence<sup>6</sup>. The same premises may not be subject to more than one licensing scheme under the Transport Act 2000, or to such a licensing scheme and a scheme under the Greater London Authority Act 1999<sup>7</sup>, at the same time<sup>8</sup>.

1 For the meaning of 'the appropriate national authority' see PARA 901 note 4 ante.

2 For the meaning of 'licensing scheme' see PARA 916 note 1 ante.

3 *Ie* under the Transport Act 2000 Pt III (ss 163-200).

4 In *ibid* s 187(1) the reference to exemptions from licensing includes (as well as exemptions in respect of any description of premises, persons or motor vehicles) exemption of a specified number of parking places provided at any premises from being workplace parking places, either generally or in the case of any description of premises, persons or motor vehicles: s 187(4). For the meaning of 'motor vehicle' see PARA 901 note 1 ante. For the meaning of 'workplace parking place' see PARA 916 note 1 ante. As to commencement of the provisions dealt with in this paragraph see PARA 916 note 1 ante.

5 For the meaning of 'licence' see PARA 916 note 1 ante.

6 Transport Act 2000 s 187(1). Subject to regulations under s 187(1) and to s 184(1), (3) (see PARA 922 ante), a licensing scheme under Pt III may contain provision of any of the descriptions specified in s 187(1): s 187(2). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 377.

7 *Ie* under the Greater London Authority Act 1999 s 296(2), Sch 24 (as amended): see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 367 et seq.

8 Transport Act 2000 s 187(3). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 373.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vii) Road User Charging and Workplace Parking Levy/B. WORKPLACE PARKING LEVY/926. Licences.

## **926. Licences.**

A licence<sup>1</sup> must: (1) state the name of the person to whom it is granted; (2) identify the premises to which it relates; (3) specify the maximum number of motor vehicles<sup>2</sup> (not counting exempt vehicles<sup>3</sup>) which may be parked at those premises at any one time; and (4) state the amount of the charge paid on the licence and set out the calculation of that amount<sup>4</sup>. A licence may be granted subject to conditions<sup>5</sup>. A licence may not be granted for a period of more than one year<sup>6</sup>. A person commits an offence if he intentionally provides false or misleading information in or in connection with an application for a licence<sup>7</sup>.

1 For the meaning of 'licence' see PARA 916 note 1 ante.

2 For the meaning of 'motor vehicle' see PARA 901 note 1 ante.

3 For the meaning of 'exempt vehicle' see PARA 920 note 3 ante.

4 Transport Act 2000 s 188(1). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 375. As to commencement of the provisions dealt with in this paragraph see PARA 916 note 1 ante.

5 *Ibid* s 188(2).

6 *Ibid* s 188(3).

7 *Ibid* s 188(4). A person guilty of an offence under s 188(4) is liable: (1) on summary conviction, to a fine not exceeding the statutory maximum; or (2) on conviction on indictment, to a fine: s 188(5). As to the statutory maximum see PARA 359 note 11 ante.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vii) Road User Charging and Workplace Parking Levy/B. WORKPLACE PARKING LEVY/927. Penalty charges.

## **927. Penalty charges.**

The appropriate national authority<sup>1</sup> may by regulations make provision for or in connection with the imposition and payment of charges ('licensing scheme penalty charges') in respect of acts, omissions, events or circumstances relating to or connected with licensing schemes<sup>2</sup> under the Transport Act 2000<sup>3</sup>. The regulations may include provision for or in connection with setting the rates of licensing scheme penalty charges (which may include provision for discounts or surcharges)<sup>4</sup>. Licensing scheme penalty charges in respect of any premises must be paid: (1) by the occupier of the premises; or (2) in circumstances specified in regulations made by the appropriate national authority, by such person as is so specified<sup>5</sup>. The Lord Chancellor may make regulations about the notification, adjudication and enforcement of licensing scheme penalty charges<sup>6</sup>.

1 For the meaning of 'the appropriate national authority' see PARA 901 note 4 ante.

2 For the meaning of 'licensing scheme' see PARA 916 note 1 ante.

3 Transport Act 2000 s 189(1), referring to licensing schemes under Pt III (ss 163-200). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 378. As to commencement of the provisions dealt with in this paragraph see PARA 916 note 1 ante.

4 Ibid s 189(2).

5 Ibid s 189(3).

6 Ibid s 189(4). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 379.

## **UPDATE**

### **927 Penalty charges**

TEXT AND NOTES--See the Workplace Levy (England) Regulations 2009, SI 2009/2085.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vii) Road User Charging and Workplace Parking Levy/B. WORKPLACE PARKING LEVY/928. Rights of entry.

## **928. Rights of entry.**

Where a person duly authorised in writing by the licensing authority<sup>1</sup>, or any of the licensing authorities, in relation to a licensing scheme<sup>2</sup> under the Transport Act 2000<sup>3</sup> has reason to believe that workplace parking places<sup>4</sup> are being provided at any premises in the licensing area<sup>5</sup>, he may at any reasonable time enter the premises for ascertaining: (1) whether any workplace parking places are being provided at the premises without a licence<sup>6</sup> or a licence covering all the workplace parking places being provided; or (2) whether there is or has been any contravention of the conditions of a licence in respect of the premises<sup>7</sup>. A person duly

authorised in writing by the licensing authority, or any of the licensing authorities, in relation to a licensing scheme may at any reasonable time enter any premises for the purpose of issuing notice of a licensing scheme penalty charge<sup>8</sup>. A person authorised<sup>9</sup> to enter any premises must, if so required, produce evidence of his authority before so entering<sup>10</sup>. A person commits an offence if he intentionally obstructs a person exercising any power conferred on him by the above provisions<sup>11</sup>. Where any land is damaged in the exercise of a right of entry conferred under the provisions above<sup>12</sup>, compensation in respect of that damage may be recovered by any person interested in the land from the authority on whose behalf the entry was effected<sup>13</sup>.

1 For the meaning of 'licensing authority' see PARA 917 note 2 ante.

2 For the meaning of 'licensing scheme' see PARA 916 note 1 ante.

3 Ie under the Transport Act 2000 Pt III (ss 163-200).

4 For the meaning of 'workplace parking place' see PARA 916 note 1 ante.

5 In the Transport Act 2000 Pt III 'licensing area' is to be construed in accordance with s 186(1)(a) (see PARA 924 head (1) ante): s 198(1). As to commencement of the provisions dealt with in this paragraph see PARA 916 note 1 ante.

6 For the meaning of 'licence' see PARA 916 note 1 ante.

7 Transport Act 2000 s 190(1). As to the equivalent provisions in respect of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 387.

8 Ibid s 190(2). 'Licensing scheme penalty charges' is to be construed in accordance with s 189(1) (see PARA 927 ante): s 198(1).

9 Ie under ibid s 190(1) or (2): see the text and notes 1-8 supra.

10 Ibid s 190(3).

11 Ie conferred on him by ibid s 190(1) or (2) (see the text and notes 1-8 supra): s 190(4). A person guilty of an offence under s 190(4) is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine: s 190(5). As to the statutory maximum see PARA 359 note 11 ante.

12 Ie conferred under ibid s 190(1) or (2): see the text and notes 1-8 supra.

13 Ibid s 190(6). The provisions of the Town and Country Planning Act 1990 s 118 (see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 931) apply in relation to compensation under the Transport Act 2000 s 190(6) as they apply in relation to compensation under the Town and Country Planning Act 1990 Pt IV (ss 107-118) (as amended): Transport Act 2000 s 190(7).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vii) Road User Charging and Workplace Parking Levy/C. FINANCIAL PROVISIONS/929. Financial provisions about schemes.

## ***C. FINANCIAL PROVISIONS***

### **929. Financial provisions about schemes.**

In relation to road user charging<sup>1</sup> and workplace parking levy schemes<sup>2</sup>, provision is made with respect to financial provisions<sup>3</sup>. These include provisions as to calculating the net proceeds<sup>4</sup>, apportionment of the net proceeds between authorities<sup>5</sup>, accounts and funds<sup>6</sup>, application of

proceeds by non-metropolitan local traffic authorities<sup>7</sup>, application of proceeds by London traffic authorities<sup>8</sup>, and application of proceeds by the Secretary of State and the Welsh Ministers<sup>9</sup>.

1 See PARA 901 et seq ante.

2 As to workplace parking levy schemes see PARA 916 et seq ante.

3 Transport Act 2000 s 191, Sch 12. At the date at which this volume states the law these provisions had not been brought into force in relation to Wales. As to the equivalent provisions relating to road user charging in Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 348-355; and as to the equivalent provisions relating to workplace parking levy in Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 380-386.

The following regulations have been made under Sch 12: the Road User Charging and Workplace Parking Levy (Net Proceeds) (England) Regulations 2003, SI 2003/110; and the Trunk Road Charging Schemes (Bridges and Tunnels) (Keeping of Accounts) (England) Regulations 2003, SI 2003/298.

4 Transport Act 2000 Sch 12 para 2.

5 Ibid Sch 12 paras 3, 4.

6 Ibid Sch 12 paras 5-7.

7 Ibid Sch 12 paras 8-11.

8 Ibid Sch 12 para 12.

9 Ibid Sch 12 para 13. As to the Secretary of State see PARA 236 ante. As to the Welsh Ministers see PARA 237 ante.

## UPDATE

### 929 Financial provisions about schemes

NOTE 4--Transport Act 2000 Sch 12 para 2 amended: Local Transport Act 2008 ss 109, 131, Sch 5 para 11, Sch 7 Pt 5; Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 115.

NOTE 5--Transport Act 2000 Sch 12 para 3 amended: Local Transport Act 2008 s 109, Sch 5 para 12; Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 115.

NOTE 6--Transport Act 2000 Sch 12 para 7 amended: Local Transport Act 2008 s 109, Sch 5 para 13; Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 113.

NOTE 7--Transport Act 2000 Sch 12 para 8 amended: Local Transport Act 2008 ss 7, 109, 121, 131, Sch 1 para 8, Sch 5 para 14, Sch 6 para 2, Sch 7 Pt 5; Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 115. Transport Act 2000 Sch 12 para 9 repealed: Local Transport Act 2008 ss 121, 131, Sch 6 para 3, Sch 7 Pt 5. Transport Act 2000 Sch 12 paras 10, 11 amended: Local Transport Act 2008 s 121, Sch 6 paras 4, 5. As to provision in relation to the application of proceeds by Integrated Transport Authorities (see PARA 247A), see the Transport Act 2000 Sch 12 paras 11A-11C (added by the Local Transport Act 2008 s 109, Sch 5 para 15, and amended by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 115).

NOTE 8--Transport Act 2000 Sch 12 para 12 amended: Local Transport Act 2008 ss 121, 131, Sch 6 para 6, Sch 7 Pt 5.

NOTE 9--Transport Act 2000 Sch 12 para 13 amended: Local Transport Act 2008 ss 121, 131, Sch 6 para 7, Sch 7 Pt 5.



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### **930. Powers of authorities.**

The charging authority<sup>1</sup> or licensing authority<sup>2</sup>, or any of the charging authorities or licensing authorities, in relation to a charging scheme<sup>3</sup> or licensing scheme<sup>4</sup> under the Transport Act 2000<sup>5</sup> may: (1) incur expenditure in or in connection with the establishment or operation<sup>6</sup> of the charging scheme or licensing scheme; or (2) enter into arrangements (including arrangements for forming or participating in companies) with any person in respect of the operation of the charging scheme or licensing scheme or relating to the installation or operation of any equipment used for or in connection with the operation of the charging scheme or licensing scheme<sup>7</sup>.

1 For the meaning of 'charging authority' see PARA 902 note 3 ante.

2 For the meaning of 'licensing authority' see PARA 917 note 2 ante.

3 For the meaning of 'charging scheme' see PARA 901 note 2 ante.

4 For the meaning of 'licensing scheme' see PARA 916 note 1 ante.

5 Ie under the Transport Act 2000 Pt III (ss 163-200).

6 For the meaning of 'operation' see PARA 914 note 4 ante.

7 Transport Act 2000 s 192. As to the equivalent provisions relating to road user charging in Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 362; and as to the equivalent provisions relating to workplace parking levy in Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 390.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vii) Road User Charging and Workplace Parking Levy/D. GUIDANCE AND INFORMATION/931. Guidance.

## ***D. GUIDANCE AND INFORMATION***

### **931. Guidance.**

The appropriate national authority<sup>1</sup> may issue guidance to non-metropolitan local traffic authorities<sup>2</sup> and London traffic authorities<sup>3</sup> in relation to the discharge of their functions with respect to charging schemes<sup>4</sup> and licensing schemes<sup>5</sup> under the Transport Act 2000<sup>6</sup>; and such authorities must, in exercising those functions, have regard to any such guidance<sup>7</sup>. Before issuing guidance under these provisions which relates to joint local-London charging schemes<sup>8</sup> or joint local-London licensing schemes<sup>9</sup> the Secretary of State<sup>10</sup> must consult the Greater London Authority<sup>11</sup> about the guidance so far as it so relates<sup>12</sup>. Guidance issued under these provisions must be published in such manner as the appropriate national authority by which it is issued considers appropriate; and the appropriate national authority may at any time vary or revoke guidance issued by it under these provisions<sup>13</sup>.

- 1 For the meaning of 'the appropriate national authority' see PARA 901 note 4 ante.
- 2 For the meaning of 'non-metropolitan local traffic authority' see PARA 901 note 6 ante.
- 3 For the meaning of 'London traffic authority' see PARA 901 note 9 ante.
- 4 For the meaning of 'charging scheme' see PARA 901 note 2 ante.
- 5 For the meaning of 'licensing scheme' see PARA 916 note 1 ante.
- 6 le under the Transport Act 2000 Pt III (ss 163-200).
- 7 Ibid s 193(1).
- 8 As to joint local-London charging schemes see PARA 904 ante.
- 9 As to joint local-London licensing schemes see PARA 919 ante.
- 10 As to the Secretary of State see PARA 236 ante.
- 11 As to the Greater London Authority see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq.
- 12 Transport Act 2000 s 193(2).
- 13 Ibid s 193(3). As to the equivalent provisions relating to road user charging in Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 363-364; and as to the equivalent provisions relating to workplace parking levy in Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 391-392.

## **UPDATE**

### **931 Guidance**

TEXT AND NOTES 1-7--Transport Act 2000 s 193(1) amended: Local Transport Act 2008 s 109, Sch 5 para 8(2); Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 112.

TEXT AND NOTES 8-12--Transport Act 2000 s 193(2) amended: Local Transport Act 2008 s 109, Sch 5 para 8(3).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vii) Road User Charging and Workplace Parking Levy/D. GUIDANCE AND INFORMATION/932. Information.

### **932. Information.**

Information obtained by: (1) any Minister of the Crown or government department; (2) the Welsh Ministers<sup>1</sup>; or (3) any local authority or other statutory body, may be disclosed to the charging authority<sup>2</sup> or licensing authority<sup>3</sup>, or any of the charging authorities or licensing authorities, in relation to a charging scheme<sup>4</sup> or licensing scheme<sup>5</sup> under the Transport Act 2000<sup>6</sup> for or in connection with the exercise of any of their functions with respect to the charging scheme or licensing scheme<sup>7</sup>. Information obtained by the charging authority or licensing authority, or any of the charging authorities or licensing authorities, in relation to a charging scheme or licensing scheme for or in connection with any of their functions other than their functions with respect to the charging scheme or licensing scheme may be used by them for or in connection with the exercise of any of their functions with respect to the charging

scheme or licensing scheme<sup>8</sup>. Any information: (a) which has been or could be disclosed to an authority<sup>9</sup> for or in connection with the exercise of any of its functions with respect to the charging scheme or licensing scheme; or (b) which has been or could be used by an authority<sup>10</sup> for or in connection with the exercise of any of those functions, may be disclosed to any person with whom the authority has entered into arrangements<sup>11</sup>.

1 As to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'charging authority' see PARA 902 note 3 ante.

3 For the meaning of 'licensing authority' see PARA 917 note 2 ante.

4 For the meaning of 'charging scheme' see PARA 901 note 2 ante.

5 For the meaning of 'licensing scheme' see PARA 916 note 1 ante.

6 Ie under the Transport Act 2000 Pt III (ss 163-200). As to the equivalent provisions relating to road user charging in Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 365; and as to the equivalent provisions relating to workplace parking levy in Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 393.

7 Ibid s 194(1).

8 Ibid s 194(2).

9 Ie under ibid s 194(1).

10 Ie by virtue of ibid s 194(2).

11 Ie under ibid s 192(b) (see PARA 930 ante): s 194(3). Information disclosed to a person under s 194(3): (1) may be disclosed to any other person for or in connection with the charging scheme or licensing scheme; but (2) may not be used (by him or any other person to whom it is disclosed under head (1) supra) otherwise than for or in connection with the charging scheme or licensing scheme: s 194(4).

## UPDATE

### 932 Information

TEXT AND NOTES--The Secretary of State or the Welsh Ministers may charge a reasonable fee in respect of the cost of supplying information under the Transport Act 2000 s 194(1) or (3); Transport Act 2000 s 194(5) (s 194(5)-(7) added by the Local Transport Act 2008 s 118(5)). Where a traffic authority, Integrated Transport Authority (see PARA 247A), or a combined authority (see TRADE AND INDUSTRY vol 97 (2010) PARA 1002 et seq), asks the Secretary of State to obtain overseas registration information from an overseas registration authority with a view to the Secretary of State disclosing that information under s 194(1) or (3), the Secretary of State may charge a reasonable fee in respect of the cost of obtaining, or seeking to obtain, the information: Transport Act 2000 s 194(6) (amended by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 113. As to the meaning of 'overseas registration authority', 'overseas registration information' and 'relevant scheme' see s 194(7).

TEXT AND NOTES 1-7--Transport Act 2000 s 194(1) amended: Local Transport Act 2008 s 118(2) ; Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 113.

TEXT AND NOTE 8--Information obtained by a traffic authority, Integrated Transport Authority (see PARA 247A), or combined authority, for or in connection with any of its functions other than functions under the Transport Act 2000 Pt III (ss 163-200) may be used by it for or in connection with the performance or proposed performance of any of its functions under Pt III or with respect to a relevant scheme or proposed relevant

scheme: Transport Act 2000 s 194(2) (substituted by the Local Transport Act 2008 s 118(3), and amended by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 113).

TEXT AND NOTES 9-11--Transport Act 2000 s 194(3) amended: Local Transport Act 2008 s 118(4).

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## ***E. DISPUTES***

### **933. Determination of disputes, appeals and evidence.**

The Lord Chancellor may by regulations make provision for or in connection with: (1) appeals against decisions relating to licences<sup>1</sup> under licensing schemes<sup>2</sup> under the Transport Act 2000<sup>3</sup> or any failure to make such a decision; (2) the determination of disputes relating to charging schemes<sup>4</sup> or licensing schemes; (3) appeals against such determinations or any failure to make such a determination; and (4) the appointment of persons to hear any such appeals<sup>5</sup>. The Lord Chancellor may by regulations make provision for or in connection with permitting evidence of a fact relevant to proceedings for an offence in relation to a licensing scheme, or proceedings in respect of a failure to comply with the provisions of a charging scheme or licensing scheme, to be given by the production of: (a) a record produced by a device specified in, or determined in accordance with, the regulations; and (b) a certificate (whether in the same or another document) as to the circumstances in which the record was produced signed by a person so specified or determined<sup>6</sup>.

1 For the meaning of 'licence' see PARA 916 note 1 ante.

2 For the meaning of 'licensing scheme' see PARA 916 note 1 ante.

3 *Ie* under the Transport Act 2000 Pt III (ss 163-200).

4 For the meaning of 'charging scheme' see PARA 901 note 2 ante.

5 Transport Act 2000 s 195(1). As to the equivalent provisions relating to road user charging in Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 361; and as to the equivalent provisions relating to workplace parking levy in Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 389.

6 *Ibid* s 195(2). As to the equivalent provisions relating to road user charging in Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 360; and as to the equivalent provisions relating to workplace parking levy in Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 388.

## **UPDATE**

### **933 Determination of disputes, appeals and evidence**

NOTE 5--See the Workplace Levy (England) Regulations 2009, SI 2009/2085.

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## ***F. APPLICATION TO CROWN***

### **934. Application to Crown.**

The provisions of the Transport Act 2000 as to road user charging<sup>1</sup> apply in relation to Crown roads<sup>2</sup> as in relation to other roads<sup>3</sup>. The provisions of the Transport Act 2000 as to road user charging and workplace parking levy and of regulations and schemes under those provisions<sup>4</sup> bind the Crown<sup>5</sup>. No contravention by the Crown of any of those provisions makes the Crown criminally liable, but: (1) the High Court may, on the application of a charging authority<sup>6</sup>, declare unlawful any act or omission of the Crown which constitutes such a contravention; and (2) those provisions apply to motor vehicles<sup>7</sup> or persons in the public service of the Crown as they apply to other motor vehicles or persons<sup>8</sup>. No power of entry<sup>9</sup> is exercisable in relation to any motor vehicle in the public service of the Crown or any premises held or used by or on behalf of the Crown<sup>10</sup>. Nothing in these provisions affects Her Majesty in her private capacity<sup>11</sup>.

1    Ie the Transport Act 2000 Pt III Ch I (ss 163-177): see PARAS 901-915 ante.

2    Ie within the meaning of the Road Traffic Regulation Act 1984 s 131: see PARA 729 ante.

3    Transport Act 2000 s 196(1). As to the meaning of 'road' see PARA 901 note 2 ante. As to the equivalent provisions relating to road user charging in Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 366; and as to the equivalent provisions relating to workplace parking levy in Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 394.

4    Ie *ibid* Pt III (ss 163-200).

5    Ibid s 196(2).

6    For the meaning of 'charging authority' see PARA 902 note 3 ante.

7    For the meaning of 'motor vehicle' see PARA 901 note 1 ante.

8    Transport Act 2000 s 196(3). Head (2) in the text is subject to s 196(4) (see the text and notes 9-10 *infra*): s 196(3).

9    Ie conferred by regulations made under *ibid* s 174(2) (see PARA 912 ante) or s 190(1) or (2) (see PARA 928 ante).

10   Ibid s 196(4).

11   Ibid s 196(5). Section 196(5) is to be construed as if the Crown Proceedings Act 1947 s 38(3) (interpretation of references in that Act to Her Majesty in her private capacity: see CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 103) were contained in the Transport Act 2000: s 196(5).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/(vii) Road User Charging and Workplace Parking Levy/G. REGULATIONS AND ORDERS/935. Power to make regulations and orders.

## ***G. REGULATIONS AND ORDERS***

### 935. Power to make regulations and orders.

Any power to make regulations under the provisions of the Transport Act 2000 concerning road user charging and workplace parking levy<sup>1</sup>: (1) is exercisable by statutory instrument; (2) includes power to make different provision for different cases; and (3) may be exercised so as to make incidental, consequential, supplementary or transitional provision or savings<sup>2</sup>. The power to make an order making, varying or revoking a trunk road charging scheme<sup>3</sup> is exercisable by statutory instrument<sup>4</sup>. Regulations under certain provisions<sup>5</sup> must not be made without the consent of the Treasury<sup>6</sup>. Regulations must not be made by the Secretary of State<sup>7</sup> under certain provisions unless a draft of the regulations has been laid before, and approved by a resolution of, the House of Commons<sup>9</sup>. A statutory instrument containing regulations made by the Secretary of State or the Lord Chancellor under any other provision<sup>10</sup> is subject to annulment in pursuance of a resolution of either House of Parliament<sup>11</sup>.

1    Ie under the Transport Act 2000 Pt III (ss 163-200): see PARA 901 et seq ante.

2    Ibid s 197(1).

3    As to trunk road charging schemes see PARA 905 ante.

4    Transport Act 2000 s 197(2).

5    Ie regulations under ibid s 191, Sch 12 para 9(1) or Sch 12 para 13(2) or (5) (see PARA 929 ante).

6    Ibid s 197(3).

7    As to the Secretary of State see PARA 236 ante. See note 9 infra.

8    Ie regulations under the Transport Act 2000 s 182(5) (see PARA 920 ante) or Sch 12 para 9(1) or Sch 12 para 13(2) or (5) (see PARA 929 ante).

9    Ibid s 197(4). The references in s 197(4) and s 197(5) (see the text and notes 10-11 infra) to regulations made by the Secretary of State include regulations made by him jointly with the Welsh Ministers: s 197(6). As to the Welsh Ministers see PARA 237 ante.

10   Ie any other provision of ibid Pt III.

11   Ibid s 197(5). See note 9 supra.

### UPDATE

### 935 Power to make regulations and orders

NOTES 5, 6--Transport Act 2000 s 197(3) amended: Local Transport Act 2008 ss 121, 131, Sch 6 para 8, Sch 7 Pt 5.

NOTES 5, 8--Transport Act 2000 Sch 12 para 9 repealed: Local Transport Act 2008 ss 121, 131, Sch 6 para 3, Sch 7 Pt 5.

NOTES 7-9--Transport Act 2000 s 197(4) amended: Local Transport Act 2008 ss 121, 131, Sch 6 para 8, Sch 7 Pt 5.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/9. ROAD TRAFFIC REGULATION/(8) CONTROL AND ENFORCEMENT/ (viii) Lorry Road-user Charge/936. Lorry road-user charge.

## **(viii) Lorry Road-user Charge**

### **936. Lorry road-user charge.**

A tax, to be known as lorry road-user charge, is to be charged in respect of use of roads by lorries; and such charge is under the care and management of the Commissioners for Revenue and Customs and is administered and enforced in accordance with such provisions as Parliament may determine<sup>1</sup>. All money and securities for money collected or received for or on account of lorry road-user charge must, if collected or received in Great Britain, be placed to the general account of the Commissioners of Revenue and Customs kept at the Bank of England<sup>2</sup>.

1 Finance Act 2002 s 137(1), (4) (s 137(4) amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). The persons by whom lorry road-user charge is to be payable, the rates at which it is to be charged, and the lorries, roads and use in respect of which it is to be charged, are to be such as Parliament may determine: Finance Act 2002 s 137(2). The amount of the charge made in respect of the use of any roads by a lorry is to be calculated in such manner as Parliament may determine, by reference to the distance travelled on those roads by the lorry: s 137(3). A Minister of the Crown or a government department may: (1) incur expenditure in connection with preparations for lorry road-user charge (including any fuel credit to be paid in respect of fuelling of lorries chargeable in respect of lorry road user charge); (2) enter into contracts in respect of the development or provision of equipment, systems or services to be used in connection with lorry road-user charge (including any fuel credit): s 137(7) (substituted by the Finance Act 2005 s 100). As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq.

2 Finance Act 2002 s 137(5)(a) (s 137(5) substituted by the Finance Act 2004 s 292; and amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). For the meaning of 'Great Britain' see PARA 205 note 3 ante. As to the Bank of England see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 793 et seq. Sums collected or received in Northern Ireland must be paid into the Consolidated Fund of the United Kingdom in such manner as the Treasury may direct: Finance Act 2002 s 137(5)(b) (as so substituted). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(1) REQUIREMENT FOR INSURANCE/937. Users of motor vehicles to be insured or secured against third party risks.

## **10. INSURANCE AGAINST THIRD PARTY LIABILITIES**

### **(1) REQUIREMENT FOR INSURANCE**

#### **937. Users of motor vehicles to be insured or secured against third party risks.**

A person must not:

- 794 (1) use<sup>1</sup> a motor vehicle<sup>2</sup> on a road<sup>3</sup> or other public place unless there is in force in relation to the use of the vehicle by that person such a policy of insurance<sup>4</sup> or such a security in respect of third party risks as complies with the statutory requirements<sup>5</sup>; or
- 795 (2) cause or permit<sup>6</sup> any other person to use a motor vehicle on a road or other public place unless there is in force in relation to the use of the vehicle by that other person such a policy of insurance or such a security in respect of third party risks as complies with the statutory requirements<sup>7</sup>.

If a person acts in contravention of the requirements in head (1) or head (2) above, he is guilty of an offence<sup>8</sup>. However, a person charged with using a motor vehicle in contravention of the above provisions must not be convicted if he proves<sup>9</sup>: (a) that the vehicle did not belong to him and was not in his possession under a contract of hiring or of loan<sup>10</sup>; (b) that he was using the vehicle in the course of his employment<sup>11</sup>; and (c) that he neither knew nor had reason to believe that there was not in force in relation to the vehicle such a policy of insurance or security<sup>12</sup>.

Failure to comply is also actionable at the suit of a person injured by an uninsured vehicle<sup>13</sup>.

1 'To use' means to have the use of a motor vehicle on a road: *Williamson v O'Keefe* [1947] 1 All ER 307, 176 LT 274, DC.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 'Policy of insurance' includes a cover note: Road Traffic Act 1988 s 161(1). As to insurance generally see INSURANCE.

5 Ibid s 143(1)(a) (amended by the Motor Vehicles (Compulsory Insurance) Regulations 2000, SI 2000/726, reg 2(1), (2)(a)). The statutory requirements are contained in the Road Traffic Act 1988 Pt VI (ss 143-162) (as amended): see PARA 938 et seq post. Section 143(1)(a) (as amended) does not apply to use of an invalid carriage: s 143(4). As to the exceptions from the requirement of third party insurance or security see PARA 938 post.

6 For the meaning of 'cause or permit' see PARA 261 note 6 ante.

7 Road Traffic Act 1988 s 143(1)(b) (amended by the Motor Vehicles (Compulsory Insurance) Regulations 2000, SI 2000/726, reg 2(1), (2)(b)). As to the statutory requirements see note 5 supra. The Road Traffic Act 1988 s 143(1)(b) (as amended) does not apply to use of an invalid carriage: s 143(4).

8 Ibid s 143(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale; disqualification is discretionary; endorsement is obligatory; and 6-8 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 26, Sch 2). As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Act 1988 s 143 (as amended) is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3 (entry added by the Fixed Penalty Offences Order 2003, SI 2003/1253, art 2(3) (b)). As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; as to legal proceedings generally see PARA 1023 et seq post; as to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post.

The Secretary of State may make payments to police authorities in relation to the prevention, detection and enforcement of offences under the Road Traffic Act 1988 s 143 (as amended): see the Serious Organised Crime and Police Act 2005 s 155. As to the Secretary of State see PARA 236 ante.

As to the disclosure of information to the police about the insurance status of vehicles see PARA 939 post.

There is no such offence of using a 'motor vehicle and trailer' without having in force a policy of insurance covering the use, although the offence of using a motor vehicle while uninsured is committed if an insurance relating to the motor vehicle is invalidated by the attachment to it of a trailer: see *Rogerson v Stephens* [1950] 2 All ER 144, DC; *Kerridge v Rush* [1952] 2 Lloyd's Rep 305, DC; cf *Leggate v Brown* [1950] 2 All ER 564, DC (policy endorsed so as to enable tractor to be used with two trailers; illegal to draw two laden trailers; policy may nevertheless insure against negligent driving and thus be valid under the statute). No such offence is committed if the person who is in effective control of the vehicle is covered by insurance, even though another person is in the driving seat: see *R v Wilkins* (1951) 115 JP 443; *Langman v Valentine* [1952] 2 All ER 803, DC; cf *Evans v Walkden* [1956] 3 All ER 64, [1956] 1 WLR 1019, DC (where the person covered by insurance was not in effective control); *Thompson v Lodwick* [1983] RTR 76, DC (where a person supervising a learner driver was held not to be permitting uninsured use). Notice to produce the policy is not required, and secondary evidence may be given by a police officer of the contents of an insurance certificate: *Bracegirdle v Apter* (1951) 49 LGR 790, DC. Once it has been shown that the accused used a motor vehicle on a road, the onus is on him to prove that he was covered by insurance (*Leathley v Drummond* [1972] RTR 293, DC), even though, because he was not the owner, production of the owner's certificate or policy of insurance might be difficult (*Davey v Towle* [1973] RTR 328, DC). Cf *Howey v Bradley* [1970] RTR 112, DC (where the question was left open whether the



onus is on the prosecution to prove that use of the vehicle is not covered by insurance once the accused has produced a policy which prima facie shows that he is covered).

A local authority has power to prosecute for an offence under the Road Traffic Act 1988 s 143 (as amended): *Middlesbrough Borough Council v Safeer* [2001] EWHC 525 (Admin), [2001] 4 All ER 630, DC.

Following a conviction under the Road Traffic Act 1988 s 143 (as amended), a magistrate is entitled to find that there are so-called 'special reasons' which do not justify the imposition of penalty points: *DPP v Heritage* [2002] EWHC 2139 (Admin), 166 JP 772 (shortness of distance travelled constituted 'special reason').

9 Road Traffic Act 1988 s 143(3). Section 143(3) does not apply to use of an invalid carriage: see s 143(4); and PARA 938 post.

10 Ibid s 143(3)(a).

11 Ibid s 143(3)(b).

12 Ibid s 143(3)(c).

13 See INSURANCE vol 25 (2003 Reissue) PARA 758. As to the duty to give a claimant information relating to the policy or security see PARA 954 post.

The victim of an uninsured driver also has rights under the agreement by which the Motor Insurance Bureau has agreed to satisfy any unsatisfied judgment arising from any liability required by statute to be covered by a policy of insurance and to compensate victims of untraced drivers: see INSURANCE vol 25 (2003 Reissue) PARA 757 et seq.

It has been held that a dependant of a passenger killed in a road traffic accident may claim even if the deceased knew that the driver was uninsured: see *Phillips v Rafiq* [2007] EWCA Civ 74, [2007] 2 All ER (Comm) 484.

## UPDATE

### 937-962 Insurance against Third Party Liabilities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(1) REQUIREMENT FOR INSURANCE/938. Exceptions from requirement of third party insurance or security.

### 938. Exceptions from requirement of third party insurance or security.

The requirement of third party insurance or security<sup>1</sup> does not apply to:

796 (1) a vehicle owned by a person who has deposited and keeps deposited with the Accountant General of the Supreme Court a prescribed sum<sup>2</sup>, at a time when the vehicle is being driven under the owner's control<sup>3</sup>;

797 (2) a vehicle owned:

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182. (a) by the council of a county or district<sup>4</sup>, the Broads Authority<sup>5</sup>, the Common Council of the City of London<sup>6</sup>, the council of a London borough<sup>7</sup>, a national park authority<sup>8</sup>, the London Fire and Emergency Planning Authority<sup>9</sup>, or a joint authority (other than a police authority<sup>10</sup>) established by the Local Government Act 1985<sup>11</sup>;

183. (b) by a joint board or committee in England or Wales which is so constituted as to include among its members representatives of any such council<sup>12</sup>,  
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 798 at a time when the vehicle is being driven under the owner's control<sup>13</sup>;  
 799 (3) a vehicle owned by a police authority, at a time when it is being driven under the owner's control, or a vehicle at a time when it is being driven for police purposes by or under the direction of a constable, or by a person employed by a police authority<sup>14</sup>; or  
 800 (4) a vehicle at a time when it is being driven on a journey to or from any place undertaken for salvage purposes<sup>15</sup>;  
 801 (5) the use of a vehicle for the purpose of its being provided in pursuance of<sup>16</sup> a requisitioning order<sup>17</sup>;  
 802 (6) a vehicle owned by a health service body<sup>18</sup>, a primary care trust<sup>19</sup>, a local health board<sup>20</sup> or the Healthcare Commission<sup>21</sup>, at a time when the vehicle is being driven under the owner's control<sup>22</sup>;  
 803 (7) an ambulance owned by a National Health Service trust<sup>23</sup>, at a time when a vehicle is being driven under the owner's control<sup>24</sup>;  
 804 (8) an ambulance owned by an NHS foundation trust<sup>25</sup>, at a time when the vehicle is being driven under the owner's control<sup>26</sup>;  
 805 (9) a vehicle which is made available by the Secretary of State or the Welsh Ministers to any person, body or local authority in pursuance of the National Health Service Act 2006<sup>27</sup> or the National Health Service (Wales) Act 2006<sup>28</sup> at a time when it is being used in accordance with the terms on which it is so made available<sup>29</sup>;  
 806 (10) a vehicle owned by the Commission for Social Care Inspection<sup>30</sup>, at a time when the vehicle is being driven under the owner's control<sup>31</sup>;  
 807 (11) an invalid carriage<sup>32</sup>;  
 808 (12) vehicles in the service of visiting forces<sup>33</sup>.

1 le under the Road Traffic Act 1988 s 143 (as amended): see PARA 937 ante.

2 The prescribed sum is £500,000: see *ibid* s 144(1) (amended by the Road Traffic Act 1991 s 20). The Secretary of State may by order made by statutory instrument substitute a greater sum for the sum for the time being specified in the Road Traffic Act 1988 s 144(1) (as amended): s 144(1A) (added by the Road Traffic Act 1991 s 20(3)). However, no order may be so made unless a draft of it has been laid before and approved by resolution of each House of Parliament: Road Traffic Act 1988 s 144(1B) (added by the Road Traffic Act 1991 s 20(3)). At the date at which this volume states the law no such order had been made. As to the making of orders generally see PARA 243 ante. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 Road Traffic Act 1988 s 144(1) (as amended: see note 2 *supra*). This provision is amended, as from a day to be appointed, by the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 2 para 4(1), (3), so as to substitute for the reference to the Accountant General of the Supreme Court a reference to the Accountant General of the Senior Courts. At the date at which this volume states the law no such day had been appointed.

For these purposes, 'under the owner's control' means, in relation to a vehicle, that it is being driven by the owner or by a servant of the owner in the course of his employment or is otherwise subject to the control of the owner: Road Traffic Act 1988 s 161(1). For the meaning of 'owner' see PARA 207 ante.

4 As to local government areas and authorities see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

5 As to the Broads Authority see WATER AND WATERWAYS vol 101 (2009) PARA 734.

6 As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

7 As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq.

8 As to national park authorities see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 526.

9 As to the London Fire and Emergency Planning Authority see FIRE SERVICES vol 18(2) (Reissue) PARA 17; LONDON GOVERNMENT vol 29(2) (Reissue) PARA 217.

10 As to police authorities see POLICE vol 36(1) (2007 Reissue) PARA 139 et seq.

11 Road Traffic Act 1988 s 144(2)(a)(i) (amended by the Norfolk and Suffolk Broads Act 1988 s 21, Sch 6 para 9; the Environment Act 1995 s 78, Sch 10 para 29; and the Greater London Authority Act 1999 s 328, Sch 29 Pt I para 54). As to joint authorities established by the Local Government Act 1985 see LOCAL GOVERNMENT vol 69 (2009) PARA 47 et seq.

The Road Traffic Act 1988 also refers to the Inner London Education Authority, but this Authority has been abolished: see the Education Reform Act 1988 s 162 (repealed); and EDUCATION vol 15(1) (2006 Reissue) PARA 20.

Provision was made for the Local Government Residuary Body (England) to be included among the bodies specified in the Road Traffic Act 1988 s 144(2)(a) (as amended) (see the Local Government Residuary Body (England) Order 1995, SI 1995/401, art 18, Schedule para 6; and LOCAL GOVERNMENT vol 69 (2009) PARA 66), but this body has now been wound up (see the Local Government Residuary Body (England) (Winding Up) Order 1999, SI 1999/2890, art 3). In relation to the Residuary Body for Wales see the Local Government (Wales) Act 1994 s 39, Sch 13 para 25(d).

12 Road Traffic Act 1988 s 144(2)(a)(iii).

13 Ibid s 144(2)(a) (as amended: see note 11 supra).

14 Ibid s 144(2)(b) (amended by the Greater London Authority Act 1999 ss 325, 423, Sch 27 para 61, Sch 34 Pt VII).

15 Road Traffic Act 1988 s 144(2)(c) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 85). The text refers to a journey undertaken for salvage purposes pursuant to the Merchant Shipping Act 1995 Pt IX (ss 224-255) (as amended) (see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 883 et seq): see the Road Traffic Act 1988 s 144(2)(c) (as so amended). For these purposes, 'salvage' means the preservation of a vessel which is wrecked, stranded or in distress, or the lives of persons belonging to, or the cargo or apparel of, such a vessel: s 161(1).

16 Ie in pursuance of a direction under the Army Act 1955 s 166(2)(b) or under the corresponding provision of the Air Force Act 1955: see ARMED FORCES vol 2(2) (Reissue) PARA 130.

17 Road Traffic Act 1988 s 144(2)(d).

18 Ie a health service body as defined in the National Health Service and Community Care Act 1990 s 60(7) (as amended): see HEALTH SERVICES.

19 Ie a primary care trust established under the National Health Service Act 2006 s 18: see HEALTH SERVICES vol 54 (2008) PARA 111.

20 Ie a local health board established under the National Health Service (Wales) Act 2006 s 11.

21 The Road Traffic Act 1988 refers to the Commission for Health Improvement, but the functions of this body have been taken over by the Healthcare Commission. As to the Healthcare Commission see HEALTH SERVICES vol 54 (2008) PARA 552 et seq.

22 Road Traffic Act 1988 s 144(2)(da) (added by the National Health Service and Community Care Act 1990 s 60, Sch 8 Pt I para 4; and amended by the National Health Service Reform and Health Care Professions Act 2002 s 6(2), Sch 5 para 29; the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 121, 122(a); the Health Act 1999 (Supplementary and Consequential Provisions) Order 1999, SI 1999/2795, art 4; the Health Act 1999 (Supplementary Consequential etc Provisions) Order 2000, SI 2000/90, art 3(1), Sch 1 para 23; and the Health and Social Care (Community Health and Standards) Act 2003 (Commission for Healthcare Audit and Inspection and Commission for Social Care Inspection) (Consequential Provisions) Order 2004, SI 2004/2987, art 2(1)(f)(i)).

23 Ie a National Health Service trust established under the National Health Service Act 2006 s 25 or the National Health Service (Wales) Act 2006 s 18: see HEALTH SERVICES vol 54 (2008) PARAS 74, 155.

24 Road Traffic Act 1988 s 144(2)(db) (added by the National Health Service and Community Care Act 1990 Sch 8 Pt I para 4; and amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 para 122(b)).

25 As to NHS foundation trusts see HEALTH SERVICES vol 54 (2008) PARA 174 et seq.

26 Road Traffic Act 1988 s 4(2)(dc) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 34, Sch 4 paras 73, 74).

27 le in pursuance of the National Health Service Act 2006 s 12 or s 80: see HEALTH SERVICES vol 54 (2008) PARAS 17, 237.

28 le in pursuance of the National Health Service (Wales) Act 2006 s 10 or s 38: see HEALTH SERVICES vol 54 (2008) PARAS 17, 237.

29 Road Traffic Act 1988 s 144(2)(e) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 para 122(c)).

30 As to the Commission for Social Care Inspection see SOCIAL SERVICES AND COMMUNITY CARE.

31 Road Traffic Act 1988 s 144(2)(g) (added by the Health and Social Care (Community Health and Standards) Act 2003 (Commission for Healthcare Audit and Inspection and Commission for Social Care Inspection) (Consequential Provisions) Order 2004, SI 2004/2987, art 2(1)(f)(ii)).

32 Road Traffic Act 1988 s 143(4).

33 Ibid Pt VI (ss 143-162) (as amended) does not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), (2)(b).

## UPDATE

### 937-962 Insurance against Third Party Liabilities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 938 Exceptions from requirement of third party insurance or security

NOTE 3--Appointed day is 1 October 2009: SI 2009/1604.

TEXT AND NOTE 11--Road Traffic Act 1988 s 144(2)(a)(i) further amended: Local Government and Public Involvement in Health Act 2007 Sch 13 para 45; Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 80.

TEXT AND NOTES 16, 17--Road Traffic Act 1988 s 144(2)(d) repealed: Armed Forces Act 2006 Sch 17.

TEXT AND NOTE 22--Road Traffic Act 1988 s 144(2)(da) further amended: Health and Social Care Act 2008 Sch 5 para 61(a).

TEXT AND NOTE 31--Road Traffic Act 1988 s 144(2)(g) further amended: Health and Social Care Act 2008 Sch 5 para 61(b).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(1) REQUIREMENT FOR INSURANCE/939. Disclosure of information about insurance status of vehicles.

### 939. Disclosure of information about insurance status of vehicles.

The Secretary of State<sup>1</sup> may by regulations make provision for and in connection with requiring the Motor Insurers' Information Centre<sup>2</sup> to make available relevant vehicle insurance

information<sup>3</sup> to the National Policing Improvement Agency ('NPIA')<sup>4</sup> for it to process with a view to making the processed information available for use by constables<sup>5</sup>.

The regulations may in particular:

- 809 (1) require all relevant vehicle insurance information or any particular description of such information to be made available to NPIA;
- 810 (2) determine the purposes for which information processed from such information by NPIA may be made available for use by constables; and
- 811 (3) determine the circumstances in which any of the processed information which has been made available for use by constables may be further disclosed by them<sup>6</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 The Motor Insurers' Information Centre is a division of the Motor Insurers' Bureau. As to the Motor Insurers' Bureau see INSURANCE vol 25 (2003 Reissue) PARA 757 et seq.

3 'Relevant vehicle insurance information' means information relating to vehicles the use of which has been (but no longer is) insured under a policy of insurance, or security in respect of third party risks, complying with the requirements of the Road Traffic Act 1988 Pt VI (ss 143-162) (as amended); Serious Organised Crime and Police Act 2005 s 153(2). 'Information' means information held in any form: s 153(4). As to the exercise of the power to make regulations under the Serious Organised Crime and Police Act 2005 see s 172.

4 The Serious Organised Crime and Police Act 2005 refers to the Police Information Technology Organisation, but the functions of this body have been taken over by the National Policing Improvement Agency: see POLICE vol 36(1) (2007 Reissue) PARA 222. As to the National Policing Improvement Agency see POLICE vol 36(1) (2007 Reissue) PARA 222 et seq.

5 Ibid s 153(1).

6 Ibid s 153(3). As to regulations made under s 153 see the Disclosure of Vehicle Insurance Information Regulations 2005, SI 2005/2833.

## UPDATE

### 937-962 Insurance against Third Party Liabilities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(1) REQUIREMENT FOR INSURANCE/940. International motor insurance cards.

### 940. International motor insurance cards.

Visitors to Great Britain<sup>1</sup> bringing in motor vehicles comply with the statutory requirements relating to compulsory insurance<sup>2</sup> if they hold a valid insurance card<sup>3</sup>.

1 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

2 As to the statutory requirements relating to compulsory insurance see INSURANCE vol 25 (2003 Reissue) PARA 729 et seq.

3 See the Motor Vehicles (International Motor Insurance Card) Regulations 1971, SI 1971/792, regs 5, 6 (both as amended); and INSURANCE vol 25 (2003 Reissue) PARA 730.

## UPDATE

### 937-962 Insurance against Third Party Liabilities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(2) OFFENCES AND PENALTIES/941. Offence of keeping vehicle which does not meet insurance requirements.

## (2) OFFENCES AND PENALTIES

### 941. Offence of keeping vehicle which does not meet insurance requirements.

The following provisions are not yet in force<sup>1</sup>.

If a motor vehicle<sup>2</sup> registered under the Vehicle Excise and Registration Act 1994<sup>3</sup> does not meet the insurance requirements, the person in whose name the vehicle is registered is guilty of an offence<sup>4</sup>. For these purposes, a vehicle meets the insurance requirements if: (1) it is covered by a such a policy of insurance or such a security in respect of third party risks as complies with the statutory requirements<sup>5</sup>; and (2) either of the following conditions is satisfied<sup>6</sup>, namely: (a) the policy or security, or the certificate of insurance or security which relates to it, identifies the vehicle by its registration mark as a vehicle which is covered by the policy or security<sup>7</sup>; and (b) the vehicle is covered by the policy or security because: (i) the policy or security covers any vehicle, or any vehicle of a particular description, the owner of which is a person named in the policy or security or in the certificate of insurance or security which relates to it; and (ii) the vehicle is owned by that person<sup>8</sup>.

Where on any occasion the Secretary of State<sup>9</sup> has reason to believe that a person has committed an offence under the above provisions, the Secretary of State may give the person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty to the Secretary of State<sup>10</sup>. Where a person is given such a notice in respect of such an offence: (A) no proceedings may be instituted for that offence before the end of the period of 21 days following the date of the notice; and (B) he may not be convicted of that offence if he pays the fixed penalty before the end of that period<sup>11</sup>.

Regulations<sup>12</sup> may make provision as to any matter incidental to the operation of these provisions, and in particular as to the form of a notice, as to the information to be provided in a notice, and as to any further information to be provided in a notice<sup>13</sup>. Regulations may make provision for treating a fixed penalty payable under these provisions as having been paid if a lesser amount is paid before the end of a prescribed period<sup>14</sup>. In any proceedings a certificate which purports to be signed by or on behalf of the Secretary of State, and states that payment

of a fixed penalty was or was not received by a date specified in the certificate, is evidence of the facts stated<sup>15</sup>.

A person authorised by the Secretary of State for these purposes may on behalf of the Secretary of State conduct and appear in any proceedings by or against the Secretary of State in connection with the enforcement of an offence under the above provisions or under regulations<sup>16</sup> in a magistrates' court<sup>17</sup>.

1 The Road Traffic Act 1988 ss 144A-144D, Sch 2A (added by the Road Safety Act 2006 s 22(1), (3)) are to be brought into force as from a day to be appointed under the Road Safety Act 2006 s 61(1). At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 As to registration see PARA 518 et seq ante.

4 Road Traffic Act 1988 s 144A(1) (as added: see note 1 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry prospectively added by the Road Safety Act 2006 s 22(6), (7)). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

The Road Traffic Act 1988 Sch 2A (as added) makes provision about the immobilisation of vehicles as regards which it appears that an offence under s 144A (as added) is being committed and about their removal and disposal: s 144D(1) (as so added); and see PARAS 942-943 post. As to exceptions to the offence see PARA 944 post.

5 In the requirements of ibid Pt VI (ss 143-162) (as amended): see PARAS 937-938 ante, 945 et seq post. For the purposes of s 144A (as added), a vehicle is covered by a policy of insurance or security if the policy of insurance or security is in force in relation to the use of the vehicle: s 144A(5) (as so added).

6 Ibid s 144A(2) (as added: see note 1 supra).

7 Ibid s 144A(3) (as added: see note 1 supra).

8 Ibid s 144A(4) (as added: see note 1 supra).

9 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

10 Road Traffic Act 1988 s 144C(1) (as added: see note 1 supra). A notice under s 144C (as added) must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence: s 144C(3) (as so added). Such a notice must also state: (1) the period during which, by virtue of s 144C(2) (as added) (see the text to note 11 infra), proceedings will not be taken for the offence; (2) the amount of the fixed penalty; and (3) the person to whom and the address at which the fixed penalty may be paid: s 144C(4) (as so added).

11 Ibid s 144C(2) (as added: see note 1 supra). The fixed penalty payable under s 144C (as added) is, subject to s 144C(9) (as added), £100: s 144C(8) (as so added). Regulations may substitute a different amount for the amount for the time being specified in s 144C(8) (as added): s 144C(9) (as so added).

Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in s 144C(4)(c) (as added) (see note 10 head (3) supra) at the address so mentioned: s 144C(5) (as so added). Where a letter is sent in accordance with s 144C(5) (as added), payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post: s 144C(6) (as so added).

12 'Regulations' means regulations under ibid s 160 (see PARA 962 post): s 160(1).

13 Ibid s 144C(7) (as added: see note 1 supra).

14 Ibid s 144C(10) (as added: see note 1 supra). 'Prescribed' means prescribed by regulations under s 160 (see PARA 962 post): s 160(1).

15 Ibid s 144C(11) (as added: see note 1 supra).

16 In regulations made under ibid s 160 (see PARA 962 post) by virtue of Sch 2A (as added).

17 Ibid s 144D(2) (as added: see note 1 supra).

## **UPDATE**

### **937-962 Insurance against Third Party Liabilities**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(2) OFFENCES AND PENALTIES/942. Immobilisation, removal and disposal of vehicles.

#### **942. Immobilisation, removal and disposal of vehicles.**

The following provisions are not yet in force<sup>1</sup>.

Regulations<sup>2</sup> may make provision with respect to any case where an authorised person<sup>3</sup> has reason to believe that, on or after such date as may be prescribed<sup>4</sup>, an offence of not meeting the insurance requirements for a vehicle<sup>5</sup> is being committed as regards a vehicle which is stationary on a road<sup>6</sup> or other public place<sup>7</sup>. The regulations may provide that the authorised person or a person acting under his direction may: (1) fix an immobilisation device<sup>8</sup> to the vehicle while it remains in the place where it is stationary; or (2) move it from that place to another place on the same or another road or public place and fix an immobilisation device to it in that other place<sup>9</sup>. The regulations may provide that on any occasion when an immobilisation device is fixed to a vehicle in accordance with the regulations the person fixing the device must also fix to the vehicle a notice: (a) indicating that the device has been fixed to the vehicle and warning that no attempt should be made to drive it or otherwise put it in motion until it has been released from the device; (b) specifying the steps to be taken to secure its release; and (c) giving such other information as may be prescribed<sup>10</sup>.

The regulations may provide that a vehicle to which an immobilisation device has been fixed in accordance with the regulations may only be released from the device by or under the direction of an authorised person, but subject to that, must be released from the device if the first and second requirements specified below are met<sup>11</sup>. The first requirement is that such charge in respect of the release as may be prescribed is paid in any manner specified in the immobilisation notice<sup>12</sup>. The second requirement is that, in accordance with instructions specified in the immobilisation notice, there is produced such evidence as may be prescribed establishing that any person who proposes to drive the vehicle away will not in doing so be guilty of an offence of using, or causing or permitting the use of, a vehicle in relation to which the statutory insurance requirements are not fulfilled<sup>13</sup>, and that the person in whose name the vehicle is registered under the Vehicle Excise and Registration Act 1994 is not guilty of an offence of keeping a vehicle which does not meet the insurance requirements<sup>14</sup> as regards the vehicle<sup>15</sup>.

The regulations may provide that they do not apply in relation to a vehicle if: (i) a current disabled person's badge<sup>16</sup> is displayed on the vehicle<sup>17</sup>; or (ii) such other conditions as may be prescribed are fulfilled<sup>18</sup>.



The regulations may provide that an immobilisation notice is not to be removed or interfered with except by or on the authority of a person falling within a prescribed description<sup>19</sup>.

The regulations may make provision about the proceedings to be followed where a dispute occurs as a result of the regulations, and may in particular make provision for an application to be made to a magistrates' court or for a court to order a sum to be paid by the Secretary of State<sup>20</sup>.

As regards anything falling to be done under the regulations (such as receiving payment of a charge or other sum) the regulations may provide that it may be done either by an authorised person, or by an authorised person or a person acting under his direction<sup>21</sup>.

The regulations may make provision for the application of any or all of specified provisions of the Road Traffic Offenders Act 1988<sup>22</sup> to an offence for which provision is made by the regulations<sup>23</sup>.

1 The Road Traffic Act 1988 ss 144A-144D, Sch 2A (added by the Road Safety Act 2006 s 22(1), (3)) are to be brought into force as from a day to be appointed under the Road Safety Act 2006 s 61(1). At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'regulations' see PARA 941 note 12 ante.

3 The regulations may make provision as to the meaning in the regulations of 'authorised person': Road Traffic Act 1988 s 144D(1), Sch 2A para 9(1) (as added: see note 1 supra). In particular, the regulations may provide that: (1) references to an authorised person are to a person authorised by the Secretary of State for the purposes of the regulations; (2) an authorised person may be a local authority or an employee of a local authority or a member of a police force or some other person; and (3) different persons may be authorised for the purposes of different provisions of the regulations: Sch 2A para 9(2) (as so added).

4 For the meaning of 'prescribed' see PARA 941 note 14 ante.

5 Ie an offence under the Road Traffic Act 1988 s 144A (as added): see PARA 941 ante.

6 For the meaning of 'road' see PARA 206 ante.

7 Road Traffic Act 1988 Sch 2A para 1(1) (as added: see note 1 supra).

8 For these purposes, references to an immobilisation device are to a device or appliance which is an immobilisation device for the purposes of the Road Traffic Regulation Act 1984 s 104 (as amended) (immobilisation of vehicles illegally parked) (see PARA 876 ante): Road Traffic Act 1988 Sch 2A para 10(a) (as added: see note 1 supra).

9 Ibid Sch 2A para 1(2) (as added: see note 1 supra).

10 Ibid Sch 2A para 1(3) (as added: see note 1 supra).

11 Ibid Sch 2A para 1(4) (as added: see note 1 supra). The regulations may provide that a person who, without being authorised to do so in accordance with provision made under Sch 2A para 1 (as added), removes or attempts to remove an immobilisation device fixed to a vehicle in accordance with the regulations is guilty of an offence: Sch 2A para 2(2) (as so added). Contravention of a provision of regulations made by virtue of Sch 2A para 2(2) (as added) prohibiting the removal or attempted removal of immobilisation device (which is declared by the regulations to be an offence) is punishable on summary conviction with a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry prospectively added by the Road Safety Act 2006 s 22(6), (8)). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

12 Road Traffic Act 1988 Sch 2A para 1(5) (as added: see note 1 supra). In Sch 2A (as added), references to an immobilisation notice are to a notice fixed to a vehicle in accordance with the regulations: Sch 2A para 10(b) (as so added).

13 Ie an offence under ibid s 143 (as amended): see PARA 937 ante.

14 Ie under ibid s 144A (as added): see PARA 941 ante.

15 Ibid Sch 2A para 1(6) (as added: see note 1 supra). The regulations may provide that where: (1) a person makes a declaration with a view to securing the release of a vehicle from an immobilisation device purported to have been fixed in accordance with the regulations; (2) the declaration is that no offence under s 144A (as added) is or was being committed as regards the vehicle; and (3) the declaration is to the person's knowledge either false or in any material respect misleading, he is guilty of an offence: Sch 2A para 2(4) (as so added). Contravention of a provision of regulations made by virtue of Sch 2A para 2(4) (as added) prohibiting the making of a false or misleading declaration to secure the release of a vehicle from an immobilisation device (which is declared by the regulations to be an offence) is punishable: (a) on summary conviction with a fine not exceeding the statutory maximum; and (b) on conviction on indictment with imprisonment for a term not exceeding two years or a fine or both: Road Traffic Offenders Act 1988 Sch 2 Pt I (entry prospectively added by the Road Safety Act 2006 s 22(8)). As to the statutory maximum see PARA 359 note 11 ante.

16 'Disabled person's badge' means a badge issued, or having effect as if issued, under any regulations for the time being in force under the Chronically Sick and Disabled Persons Act 1970 s 21 (as amended) (see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1071); Road Traffic Act 1988 Sch 2A para 1(7) (as added: see note 1 supra).

17 Ibid Sch 2A para 1(7)(a) (as added: see note 1 supra). The regulations may provide that where they would apply in relation to a vehicle but for provision made under Sch 2A para 1(7)(a) (as added) and the vehicle was not, at the time it was stationary, being used: (1) in accordance with regulations under the Chronically Sick and Disabled Persons Act 1970 s 21 (as amended); and (2) in circumstances falling within the Road Traffic Regulation Act 1984 s 117(1)(b) (as substituted) (use where a disabled person's concession would be available: see PARA 862 ante), the person in charge of the vehicle at that time is guilty of an offence: Road Traffic Act 1988 Sch 2A para 2(3) (as so added). Contravention of a provision of regulations made by virtue of Sch 2A para 2(3) (as added) about the display of a disabled person's badge (which is declared by the regulations to be an offence) is punishable on summary conviction with a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I (entry prospectively added by the Road Safety Act 2006 s 22(8)).

18 Road Traffic Act 1988 Sch 2A para 1(7)(b) (as added: see note 1 supra).

19 Ibid Sch 2A para 1(8) (as added: see note 1 supra). The regulations may provide that a person contravening provision made under Sch 2A para 1(8) (as added) is guilty of an offence: Sch 2A para 2(1) (as so added). Contravention of a provision of regulations made by virtue of Sch 2A para 2(1) (as added) prohibiting the removal of or interference with an immobilisation notice (which is declared by the regulations to be an offence) is punishable on summary conviction with a fine not exceeding level 2 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I (entry prospectively added by the Road Safety Act 2006 s 22(8)).

20 Road Traffic Act 1988 Sch 2A para 5 (as added: see note 1 supra).

21 Ibid Sch 2A para 6 (as added: see note 1 supra).

22 Ie the Road Traffic Offenders Act 1988 s 1 (as amended) see PARA 1028 post, s 6 (see PARA 1031 post), s 11 (as amended) (see PARA 1035 post) and s 12(1) (see PARA 1036 post).

23 Road Traffic Act 1988 Sch 2A para 7 (as added: see note 1 supra).

## UPDATE

### 937-962 Insurance against Third Party Liabilities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(2) OFFENCES AND PENALTIES/943. Removal and disposal of vehicles.

### 943. Removal and disposal of vehicles.

The following provisions are not yet in force<sup>1</sup>.

The regulations<sup>2</sup> may make provision with respect to any case where: (1) an authorised person<sup>3</sup> has reason to believe that an offence of keeping a vehicle which does not meet the statutory insurance requirements<sup>4</sup> is being committed as regards a vehicle which is stationary on a road<sup>5</sup> or other public place, and such conditions as may be prescribed<sup>6</sup> are fulfilled; or (2) an authorised person has reason to believe that such an offence was being committed as regards a vehicle at a time when an immobilisation device<sup>7</sup> which is fixed to the vehicle was fixed to it in accordance with the regulations, and such conditions as may be prescribed are fulfilled<sup>8</sup>.

The regulations may provide that the authorised person, or a person acting under his direction, may remove the vehicle and deliver it into the custody of a person who is identified in accordance with prescribed rules, and who agrees to accept delivery in accordance with arrangements agreed between that person and the Secretary of State<sup>9</sup>; and the arrangements may include provision as to the payment of a sum to the person into whose custody the vehicle is delivered<sup>10</sup>. The regulations may provide that the person into whose custody the vehicle is delivered may dispose of it, and may in particular make provision as to the time at which the vehicle may be disposed of and the manner in which it may be disposed of<sup>11</sup>.

The regulations may make provision allowing a person to take possession of the vehicle if he claims it before it is disposed of and any prescribed conditions are fulfilled<sup>12</sup>. Such conditions may include conditions as to: (a) satisfying the person with custody that the claimant is the vehicle's owner; (b) the payment of prescribed charges in respect of the vehicle's release, removal and custody; (c) the production of such evidence as may be prescribed establishing that in driving the vehicle away the claimant will not be guilty of an offence of using, or causing or permitting the use of, a vehicle in relation to which the statutory insurance requirements are not fulfilled<sup>13</sup>; and (d) the production of such evidence as may be prescribed establishing that the person in whose name the vehicle is registered under the Vehicle Excise and Registration Act 1994 is not guilty of an offence of keeping a vehicle which does not meet the insurance requirements<sup>14</sup> as regards the vehicle<sup>15</sup>.

The regulations may provide for a sum of an amount arrived at under prescribed rules to be paid to a person if: (i) he claims after the vehicle's disposal to be or to have been its owner<sup>16</sup>; (ii) the claim is made within a prescribed time of the disposal; and (iii) any other prescribed conditions are fulfilled<sup>17</sup>.

The regulations may provide that the Secretary of State, or a person into whose custody the vehicle is delivered under the regulations, may recover from the vehicle's owner<sup>18</sup> (whether or not a claim is made for possession or for compensation after disposal of the vehicle<sup>19</sup>) such charges as may be prescribed in respect of all or any of the following, namely its release, removal, custody and disposal<sup>20</sup>.

1 The Road Traffic Act 1988 ss 144A-144D, Sch 2A (added by the Road Safety Act 2006 s 22(1), (3)) are to be brought into force as from a day to be appointed under the Road Safety Act 2006 s 61(1). At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'regulations' see PARA 941 note 12 ante.

3 As to the meaning of 'authorised person' see PARA 942 note 3 ante.

4 Ie under the Road Traffic Act 1988 s 144A (as added): see PARA 941 ante.

5 For the meaning of 'road' see PARA 206 ante.

6 For the meaning of 'prescribed' see PARA 941 note 14 ante.

7 As to the meaning of 'immobilisation device' see PARA 942 note 8 ante.

8 Road Traffic Act 1988 s 144D(1), Sch 2A para 3(1) (as added: see note 1 supra).

9 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

10 Road Traffic Act 1988 Sch 2A para 3(2) (as added: see note 1 supra).

11 Ibid Sch 2A para 3(3) (as added: see note 1 supra).

12 Ibid Sch 2A para 3(4) (as added: see note 1 supra).

13 Ie an offence under ibid s 143 (as amended): see PARA 937 ante.

14 Ie under ibid s 144A (as added): see PARA 941 ante.

15 Ibid Sch 2A para 3(7) (as added: see note 1 supra). The regulations may provide that where: (1) a person makes a declaration with a view to securing possession of a vehicle purported to have been delivered into the custody of a person in accordance with provision made under Sch 2A para 3 (as added); (2) the declaration is that no offence under s 144A (as added) is or was being committed as regards the vehicle; and (3) the declaration is to the person's knowledge either false or in any material respect misleading, he is guilty of an offence: Sch 2A para 4 (as so added). Contravention of a provision of regulations made by virtue of Sch 2A para 4 (as added) prohibiting making of false or misleading declaration to secure possession of a vehicle in a person's custody (which is declared by the regulations to be an offence) is punishable: (a) on summary conviction with a fine not exceeding the statutory maximum; and (b) on conviction on indictment with imprisonment for a term not exceeding two years or a fine or both: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry prospectively added by the Road Safety Act 2006 s 22(6), (8)). As to the statutory maximum see PARA 359 note 11 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

16 The regulations may make provision as to the meaning for the purposes of the regulations of 'owner' as regards a vehicle: Road Traffic Act 1988 Sch 2A para 8(1) (as added: see note 1 supra). In particular, the regulations may provide that for the purposes of the regulations the owner of a vehicle is taken to be the person in whose name it is then registered under the Vehicle Excise and Registration Act 1994: Road Traffic Act 1988 Sch 2A para 8(1) (as so added). For the meaning of 'owner' generally see PARA 207 ante.

17 Ibid Sch 2A para 3(5) (as added: see note 1 supra).

18 For these purposes, 'owner' means the person who was the owner when the vehicle was removed: ibid Sch 2A para 3(6) (as added: see note 1 supra).

19 Ie under provision made under ibid Sch 2A para 3(4) or (5) (as added).

20 Ibid Sch 2A para 3(6) (as added: see note 1 supra). The regulations may in particular include provision for purposes corresponding to those of the Road Traffic Regulation Act 1984 s 101(as amended) or s 102 (as amended) (disposal and charges: see PARAS 871, 874 ante) subject to such additions, omissions or other modifications as the Secretary of State thinks fit: Road Traffic Act 1988 Sch 2A para 3(8) (as so added).

## UPDATE

### 937-962 Insurance against Third Party Liabilities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(2) OFFENCES AND PENALTIES/944. Exceptions to offence of keeping vehicle not meeting insurance requirements.

#### 944. Exceptions to offence of keeping vehicle not meeting insurance requirements.

The following provisions are not yet in force<sup>1</sup>.

A person ('the registered keeper') in whose name a vehicle which does not meet the insurance requirements<sup>2</sup> is registered at any particular time ('the relevant time') does not commit an offence<sup>3</sup> at that time if any of the following conditions are satisfied<sup>4</sup>:

- 812 (1) that at the relevant time (whether or not at the relevant time it is being driven as described in the relevant statutory provision) the vehicle is owned: (a) by a person meeting the requirements as to the prescribed deposit<sup>5</sup>; or (b) by a specified<sup>6</sup> authority or body<sup>7</sup>;
- 813 (2) that at the relevant time the vehicle is owned with the intention that it should be used as described in a specified<sup>8</sup> manner<sup>9</sup>;
- 814 (3) that the registered keeper: (a) is not at the relevant time the person keeping the vehicle; and (b) if previously he was the person keeping the vehicle, he has by the relevant time complied with any requirements to furnish particulars<sup>10</sup> that he is required to have complied with by the relevant or any earlier time<sup>11</sup>;
- 815 (4) that (a) the registered keeper is at the relevant time the person keeping the vehicle; (b) at the relevant time the vehicle is not used on a road<sup>12</sup> or other public place; and (c) the registered keeper has by the relevant time complied with any requirements to furnish particulars<sup>13</sup> that he is required to have complied with by the relevant or any earlier time<sup>14</sup>;
- 816 (5) that (a) the vehicle has been stolen before the relevant time; (b) the vehicle has not been recovered by the relevant time; and (c) any requirements to furnish particulars<sup>15</sup> that, in connection with the theft, are required to have been complied with by the relevant or any earlier time have been complied with by the relevant time<sup>16</sup>.

Regulations<sup>17</sup> may make provision: (i) requiring a person in whose name a vehicle is registered to furnish such particulars and make such declarations as may be prescribed, and to do so at such times and in such manner as may be prescribed<sup>18</sup>; and (ii) as to the persons to whom, the times at which and the manner in which the theft of a vehicle is to be notified<sup>19</sup>.

Regulations may make provision amending these provisions for the purpose of providing for further exceptions to the offence of being the registered keeper of a vehicle which does not meet the insurance requirements (or varying or revoking any such further exceptions)<sup>20</sup>.

A person accused of an offence under the above provisions is not entitled to the benefit of an exception conferred by or under the provisions unless evidence is adduced that is sufficient to raise an issue with respect to that exception; but where evidence is so adduced it is for the prosecution to prove beyond reasonable doubt that the exception does not apply<sup>21</sup>.

1 The Road Traffic Act 1988 ss 144A-144D (added by the Road Safety Act 2006 s 22(1)) are to be brought into force as from a day to be appointed under the Road Safety Act 2006 s 61(1). At the date at which this volume states the law no such day had been appointed.

2 As to meeting the insurance requirements see PARA 941 ante.

3 Ie under the Road Traffic Act 1988 s 144A (as added): see PARA 941 ante.

4 Ibid s 144B(1) (as added: see note 1 supra).

5 Ie as described in ibid s 144(1) (as amended): see PARA 938 head (1) ante.

6 Ie as described in ibid s 144(2)(a) (as amended) (see PARA 938 head (2) ante), s 144(2)(b) (as amended) (see PARA 938 head (3) ante), s 144(2)(da) (as added and amended) (see PARA 938 head (6) ante), s 144(2)(db)

(as added and amended) (see PARA 938 head (7) ante), s 144(2)(dc) (as added and amended) (see PARA 938 head (8) ante) or s 144(2)(g) (as added) (see PARA 938 head (10) ante).

7 Ibid s 144B(2) (as added: see note 1 supra).

8 Ie as described in ibid s 144(2)(c) (as amended) (see PARA 938 head (4) ante), s 144(2)(d) (see PARA 938 head (5) ante) or s 144(2)(e) (as amended) (see PARA 938 head (9) ante).

9 Ibid s 144B(3) (as added: see note 1 supra).

10 Ie under ibid s 144B(7)(a) (as added): see the text to note 18 infra.

11 Ibid s 144B(4) (as added: see note 1 supra).

12 For the meaning of 'road' see PARA 206 ante.

13 Ie under the Road Traffic Act 1988 s 144B(7)(a) (as added): see the text to note 18 infra.

14 Ibid s 144B(5) (as added: see note 1 supra).

15 Ie under ibid s 144B(7)(b) (as added): see the text to note 19 infra.

16 Ibid s 144B(6) (as added: see note 1 supra).

17 For the meaning of 'regulations' see PARA 941 note 12 ante.

18 Ie for the purposes of the Road Traffic Act 1988 s 144B(4)(b) (as added) (see head (3)(b) in the text) and s 144(5)(c) (as added) (see head (4)(c) in the text): s 144B(7)(a) (as added: see note 1 supra). For the meaning of 'prescribed' see PARA 941 note 14 ante.

19 Ie for the purposes of ibid s 144B(6)(c) (as added) (see head (5)(c) in the text): s 144B(7)(b) (as added: see note 1 supra).

20 Ibid s 144B(8) (as added: see note 1 supra).

21 Ibid s 144B(9) (as added: see note 1 supra).

## UPDATE

### 937-962 Insurance against Third Party Liabilities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(3) REQUIREMENTS AS TO INSURANCE POLICIES AND SECURITIES/945. Requirements in respect of policies of insurance.

## (3) REQUIREMENTS AS TO INSURANCE POLICIES AND SECURITIES

### 945. Requirements in respect of policies of insurance.

In order to comply with the statutory requirements relating to compulsory insurance or security<sup>1</sup>, a policy of insurance<sup>2</sup> must satisfy certain conditions<sup>3</sup>.

The policy must be issued by an authorised insurer<sup>4</sup>. In addition, it must:

- 817 (1) insure such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person or damage to property caused by, or arising out of, the use of the vehicle on a road<sup>5</sup> or other public place in Great Britain<sup>6</sup>; and
- 818 (2) in the case of a vehicle normally based in the territory of another member state, insure him or them in respect of any civil liability which may be incurred by him or them as a result of an event related to the use of the vehicle in Great Britain if:
- 103 184. (a) according to the law of that territory, he or they would be required to be insured in respect of a civil liability which would arise under that law as a result of that event if the place where the vehicle was used when the event occurred were in that territory<sup>8</sup>; and
185. (b) the cover required by that law would be higher than that required by head (1) above<sup>9</sup>; and
- 104 819 (3) in the case of a vehicle normally based in Great Britain, insure him or them in respect of any liability which may be incurred by him or them in respect of the use of the vehicle and of any trailer<sup>10</sup>, whether or not coupled, in the territory other than Great Britain and Gibraltar of each of the member states of the Communities according to<sup>11</sup>:
- 105 186. (a) the law on compulsory insurance against civil liability in respect of the use of vehicles of the state in whose territory the event giving rise to the liability occurred<sup>12</sup>; or
187. (b) if it would give higher cover, the law which would be applicable if the place where the vehicle was used when that event occurred were in Great Britain<sup>13</sup>; and
- 106 820 (4) also insure him or them in respect of any liability which may be incurred by him or them<sup>14</sup> relating to payment for emergency treatment<sup>15</sup>.

The policy is not, by virtue of head (1) above, required<sup>16</sup>:

- 821 (i) to cover liability in respect of the death, arising out of and in the course of his employment, of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment<sup>17</sup>;
- 822 (ii) to provide insurance of more than a specified amount<sup>18</sup> in respect of all such liabilities as may be insured in respect of damage to property caused by, or arising out of, any one accident<sup>19</sup> involving the vehicle<sup>20</sup>;
- 823 (iii) to cover liability in respect of damage to the vehicle<sup>21</sup>;
- 824 (iv) to cover liability in respect of damage to goods<sup>22</sup> carried for hire or reward in or on the vehicle or in or on any trailer, whether or not coupled, drawn by the vehicle<sup>23</sup>;
- 825 (v) to cover any liability of a person in respect of damage to property in his custody or under his control<sup>24</sup>; or
- 826 (vi) to cover any contractual liability<sup>25</sup>.

1 le the requirements of the Road Traffic Act 1988 Pt VI (ss 143-162) (as amended).

2 As to the meaning of 'policy of insurance' see PARA 937 note 4 ante.

3 Road Traffic Act 1988 s 145(1).

4 Ibid s 145(2). For the meaning of 'authorised insurer' for these purposes see PARA 460 note 1 ante; definition applied by s 145(5) (substituted by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 313). If any person or body of persons ceases to be a member of the Motor Insurers' Bureau, that person or body does not by virtue of that cease to be treated as an authorised insurer for the purposes of Pt VI (as amended): (1) in relation to any policy issued by the insurer before ceasing to be such a member; or (2) in relation to any obligation, whether arising before or after the insurer ceased to be such a member, which the insurer may be called on to meet under or in consequence of any such policy or under the Road Traffic Act 1988 s 157 (as amended) (see PARA 957 ante) by virtue of making a payment in pursuance of such an obligation: s 145(6) (amended by the Health and Social Care (Community Health and Standards) Act 2003 s 196, Sch 14 Pt 3).

5 For the meaning of 'road' see PARA 206 ante.

6 Road Traffic Act 1988 s 145(3)(a) (amended by the Motor Vehicles (Compulsory Insurance) Regulations 2000, SI 2000/726, reg 2(1), (3)). For the meaning of 'Great Britain' see PARA 205 note 3 ante.

7 Road Traffic Act 1988 s 145(3)(aa) (s 145(3)(aa) added by the Motor Vehicles (Compulsory Insurance) Regulations 1992, SI 1992/3036, reg 2(1), (2)).

8 Road Traffic Act 1988 s 145(3)(aa)(i) (as added: see note 7 supra).

9 Ibid s 145(3)(aa)(ii) (as added: see note 7 supra).

10 For the meaning of 'trailer' see PARA 210 ante.

11 Road Traffic Act 1988 s 145(3)(b) (amended by the Motor Vehicles (Compulsory Insurance) Regulations 1992, SI 1992/3036, reg 2(1), (2)).

12 Road Traffic Act 1988 s 145(3)(b)(i) (substituted by the Motor Vehicles (Compulsory Insurance) Regulations 1992, SI 1992/3036, reg 2(1), (2)).

13 Road Traffic Act 1988 s 145(3)(b)(ii) (substituted by the Motor Vehicles (Compulsory Insurance) Regulations 1992, SI 1992/3036, reg 2(1), (2)).

14 Ie under the Road Traffic Act 1988 Pt VI (as amended).

15 Ibid s 145(3)(c). For the meaning of 'emergency treatment' see PARA 958 post.

16 Ibid s 145(4).

17 Ibid s 145(4)(a). In the case of a person carried in or on a vehicle, or entering or getting on to or alighting from a vehicle, the provisions of s 145(4)(a) do not apply unless cover in respect of the liability referred to in s 145(4)(a) is in fact provided pursuant to a requirement of the Employers' Liability (Compulsory Insurance) Act 1969 (see EMPLOYMENT vol 39 (2009) PARA 40 et seq): Road Traffic Act 1988 s 145(4A) (added by the Motor Vehicles (Compulsory Insurance) Regulations 1992, SI 1992/3036, reg 2(3)).

18 The specified amount of insurance is £1,000,000: see the Road Traffic Act 1988 s 145(4)(b) (amended by the Motor Vehicles (Compulsory Insurance) Regulations 2007, SI 2007/1426, reg 2(1), (2)).

19 For these purposes, any reference to an accident includes a reference to two or more causally related accidents: Road Traffic Act 1988 s 161(3).

20 Ibid s 145(4)(b).

21 Ibid s 145(4)(c).

22 For the meaning of 'goods' see PARA 220 note 4 ante.

23 Road Traffic Act 1988 s 145(4)(d).

24 Ibid s 145(4)(e).

25 Ibid s 145(4)(f).

## UPDATE



## **937-962 Insurance against Third Party Liabilities**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(3) REQUIREMENTS AS TO INSURANCE POLICIES AND SECURITIES/946. Requirements in respect of securities.

### **946. Requirements in respect of securities.**

In order to comply with the statutory requirements relating to compulsory insurance or security<sup>1</sup>, a security must satisfy certain conditions<sup>2</sup>.

The security must be given either by an authorised insurer<sup>3</sup> or by some body of persons which carries on in the United Kingdom<sup>4</sup> the business of giving securities of a like kind and has deposited and keeps deposited with the Accountant General of the Supreme Court a specified sum<sup>5</sup> in respect of that business<sup>6</sup>.

The security must consist of an undertaking by the giver of the security to make good, subject to any conditions specified in it, any failure by the owner<sup>7</sup> of the vehicle or such other persons or classes of persons as may be specified in the security duly to discharge any liability which may be incurred by him or them, being a liability required<sup>8</sup> to be covered by a policy of insurance<sup>9</sup>. In the case of liabilities arising out of the use of a motor vehicle on a road<sup>10</sup> or other public place in Great Britain<sup>11</sup> the amount secured need not, however, exceed, in the case of an undertaking relating to the use of public service vehicles<sup>12</sup>, £25,000, and, in any other case, £5,000<sup>13</sup>.

1    Ie the requirements of the Road Traffic Act 1988 Pt VI (ss 143-162) (as amended).

2    Ibid s 146(1). The relevant conditions are those in s 146(2), (3) and (4): see the text and notes 3-13 infra.

3    For the meaning of 'authorised insurer' see PARA 460 note 1 ante; definition applied for these purposes by ibid s 145(5) (substituted by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 313).

4    For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

5    The specified sum is £15,000: see the Road Traffic Act 1988 s 146(2).

6    Ibid s 146(2). This provision is amended, as from a day to be appointed, by the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 2 para 4(1), (3), so as to substitute for the reference to the Accountant General of the Supreme Court a reference to the Accountant General of the Senior Courts. At the date at which this volume states the law no such day had been appointed.

7    For the meaning of 'owner' see PARA 207 ante.

8    Ie under the Road Traffic Act 1988 s 145 (as amended): see PARA 945 ante.

9    Ibid s 146(3). As to the meaning of 'policy of insurance' see PARA 937 note 4 ante.

10   For the meaning of 'road' see PARA 206 ante.

11   For the meaning of 'Great Britain' see PARA 205 note 3 ante.

12 le public service vehicles within the meaning of the Public Passenger Vehicles Act 1981: see PARA 1136 post.

13 Road Traffic Act 1988 s 146(4) (amended by the Motor Vehicles (Compulsory Insurance) Regulations 2000, SI 2000/726, reg 2(1), (4)).

## **UPDATE**

### **937-962 Insurance against Third Party Liabilities**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **946 Requirements in respect of securities**

NOTE 6--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(3) REQUIREMENTS AS TO INSURANCE POLICIES AND SECURITIES/947. Issue and surrender of certificates of insurance and of security.

### **947. Issue and surrender of certificates of insurance and of security.**

A policy of insurance<sup>1</sup> is of no effect<sup>2</sup> unless and until there is delivered by the insurer to the person by whom the policy is effected a certificate of insurance in the prescribed<sup>3</sup> form and containing such particulars of any conditions subject to which the policy is issued and of any other matters as may be prescribed<sup>4</sup>.

A security is of no effect<sup>5</sup> unless and until there is delivered by the person giving the security to the person to whom it is given a certificate of security in the prescribed form and containing such particulars of any conditions subject to which the security is issued and of any other matters as may be prescribed<sup>6</sup>.

Different forms and different particulars may be prescribed for the above purposes in relation to different cases or circumstances<sup>7</sup>.

Where a certificate has been so delivered<sup>8</sup> and the policy or security to which it relates is cancelled by mutual consent or by virtue of any provision in the policy or security, the person to whom the certificate was delivered must, within seven days from the taking effect of the cancellation<sup>9</sup>:

- 827 (1) surrender the certificate to the person by whom the policy was issued or the security was given<sup>10</sup>; or
- 828 (2) if the certificate has been lost or destroyed, make a statutory declaration to that effect<sup>11</sup>.

A person who fails to comply with head (1) or head (2) above is guilty of an offence<sup>12</sup>.

- 1 As to the meaning of 'policy of insurance' see PARA 937 note 4 ante.
- 2 le for the purposes of the Road Traffic Act 1988 Pt VI (ss 143-162) (as amended).
- 3 For the meaning of 'prescribed' see PARA 941 note 14 ante.
- 4 Road Traffic Act 1988 s 147(1).
- 5 See note 2 supra.
- 6 Road Traffic Act 1988 s 147(2).
- 7 Ibid s 147(3).
- 8 le under ibid s 147.
- 9 Ibid s 147(4). In any provision of Pt VI (as amended) relating to the surrender, or the loss or destruction, of a certificate of insurance or certificate of security, references to such a certificate are: (1) in relation to policies or securities under which more than one certificate is issued, to be construed as references to all certificates; and (2) where any copy has been issued of any certificate, to be construed as including a reference to that copy: s 161(2).
- 10 Ibid s 147(4)(a).
- 11 Ibid s 147(4)(b).
- 12 Ibid s 147(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## UPDATE

### 937-962 Insurance against Third Party Liabilities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(3) REQUIREMENTS AS TO INSURANCE POLICIES AND SECURITIES/948. Avoidance of certain exceptions to policies or securities.

#### 948. Avoidance of certain exceptions to policies or securities.

Where a certificate of insurance<sup>1</sup> or certificate of security<sup>2</sup> has been delivered<sup>3</sup> to the person by whom a policy has been effected or to whom a security has been given, so much of the policy or security as purports to restrict the insurance of the persons insured by the policy or the operation of the security, as the case may be, by reference to any of the matters referred to in heads (1) to (8) below is, as respects such liabilities as are required to be covered by a policy<sup>4</sup>, of no effect<sup>5</sup>. The matters referred to above are:

- 829 (1) the age or physical or mental condition of persons driving<sup>6</sup> the vehicle<sup>7</sup>;
- 830 (2) the condition of the vehicle<sup>8</sup>;
- 831 (3) the number of persons that the vehicle carries<sup>9</sup>;

- 832 (4) the weight or physical characteristics of the goods<sup>10</sup> that the vehicle carries<sup>11</sup>;
- 833 (5) the time at which or the areas within which the vehicle is used<sup>12</sup>;
- 834 (6) the horsepower or cylinder capacity or value of the vehicle<sup>13</sup>;
- 835 (7) the carrying on the vehicle of any particular apparatus<sup>14</sup>; or
- 836 (8) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under the Vehicle Excise and Registration Act 1994<sup>15</sup>.

Any sum paid by an insurer or the giver of a security in or towards the discharge of any liability of any person which is covered by the policy or security<sup>16</sup> is recoverable by the insurer or giver of the security from that person<sup>17</sup>.

A condition in a policy or security issued or given for the purposes of the statutory provisions relating to compulsory insurance or security<sup>18</sup> providing:

- 837 (a) that no liability is to arise under the policy or security<sup>19</sup>; or
- 838 (b) that any liability so arising is to cease<sup>20</sup>,

in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy or security, is of no effect in connection with such liabilities as are required to be covered by a policy of insurance<sup>21</sup>.

Notwithstanding anything in any enactment, a person issuing a policy of insurance<sup>22</sup> is liable to indemnify the persons or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of those persons or classes of persons<sup>23</sup>.

1 For the meaning of 'certificate of insurance' see PARA 947 ante.

2 For the meaning of 'certificate of security' see PARA 947 ante.

3 Ie under the Road Traffic Act 1988 s 147: see PARA 947 ante.

4 Ie under ibid s 145 (as amended): see PARA 945 ante.

5 Ibid s 148(1). Nothing in s 148(1) requires an insurer or the giver of a security to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability: s 148(3).

6 For the meaning of 'drive' see PARA 207 ante.

7 Road Traffic Act 1988 s 148(2)(a).

8 Ibid s 148(2)(b).

9 Ibid s 148(2)(c).

10 For the meaning of 'goods' see PARA 220 note 4 ante.

11 Road Traffic Act 1988 s 148(2)(d).

12 Ibid s 148(2)(e).

13 Ibid s 148(2)(f).

14 Ibid s 148(2)(g).

15 Ibid s 148(2)(h) (amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 24(1)).

16 Ie by virtue only of the Road Traffic Act 1988 s 148(1): see the text and note 5 supra.

17 Ibid s 148(2).

18 le *ibid* Pt VI (ss 143-152) (as amended).

19 *Ibid* s 148(5)(a).

20 *Ibid* s 148(5)(b).

21 *Ibid* s 148(5). Nothing in s 148(5) is to be taken to render void any provision in a policy or security requiring the person insured or secured to pay to the insurer or the giver of the security any sums which the latter may have become liable to pay under the policy or security and which have been applied to the satisfaction of the claims of third parties: s 148(6).

22 le under *ibid* s 145 (as amended): see PARA 945 ante. As to the meaning of 'policy of insurance' see PARA 937 note 4 ante.

23 *Ibid* s 148(7).

## UPDATE

### 937-962 Insurance against Third Party Liabilities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(3) REQUIREMENTS AS TO INSURANCE POLICIES AND SECURITIES/949. Avoidance of certain agreements as to liability towards passengers.

#### 949. Avoidance of certain agreements as to liability towards passengers.

Where a person uses a motor vehicle<sup>1</sup> in circumstances such that<sup>2</sup> there is required to be in force in relation to his use of it such a policy of insurance<sup>3</sup> or such a security in respect of third party risks as complies with the statutory requirements relating to compulsory insurance or security<sup>4</sup>, if any other person is carried in or on the vehicle<sup>5</sup> while the user is using it, any antecedent agreement<sup>6</sup> or understanding between them, whether intended to be legally binding or not, is of no effect, so far as it purports or might be held<sup>7</sup>:

- 839 (1) to negative or restrict any such liability of the user in respect of persons carried in or on the vehicle as is required<sup>8</sup> to be covered by a policy of insurance<sup>9</sup>;  
or
- 840 (2) to impose any conditions with respect to the enforcement of any such liability of the user<sup>10</sup>.

The fact that a person so carried has willingly accepted as his the risk of negligence on the part of the user is not to be treated as negating any such liability of the user<sup>11</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 le under the Road Traffic Act 1988 s 143: see PARA 937 ante.

3 As to the meaning of 'policy of insurance' see PARA 937 note 4 ante.

4 Road Traffic Act 1988 s 149(1). The statutory requirements relating to compulsory insurance or security are those contained in Pt VI (ss 143-152) (as amended): see PARA 937 et seq ante.

5 For these purposes, references to a person being carried in or on a vehicle include references to a person entering or getting on to, or alighting from, the vehicle: *ibid* s 149(4)(a).

6 For these purposes, the reference to an antecedent agreement is to one made at any time before the liability arose: *ibid* s 149(4)(b).

7 *Ibid* s 149(2).

8 *Ie* required under *ibid* s 145 (as amended): see PARA 945 ante.

9 *Ibid* s 149(2)(a).

10 *Ibid* s 149(2)(b).

11 *Ibid* s 149(3). It has been held that a dependant of a passenger killed in a road traffic accident may claim even if the deceased knew that the driver was uninsured: see *Phillips v Rafiq* [2007] EWCA Civ 74, [2007] 2 All ER (Comm) 484. As to negligence generally see NEGLIGENCE.

## UPDATE

### 937-962 Insurance against Third Party Liabilities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(3) REQUIREMENTS AS TO INSURANCE POLICIES AND SECURITIES/950. Insurance or security in respect of private use of vehicle to cover use under car-sharing arrangements.

### 950. Insurance or security in respect of private use of vehicle to cover use under car-sharing arrangements.

To the extent that a policy or security issued or given for the purposes of the statutory provisions relating to compulsory insurance or security<sup>1</sup>:

841 (1) restricts the insurance of the persons insured by the policy or the operation of the security, as the case may be, to use of the vehicle for specified purposes (for example, social, domestic and pleasure purposes) of a non-commercial character<sup>2</sup>; or

842 (2) excludes from that insurance or the operation of the security, as the case may be<sup>3</sup>:

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188. (a) use of the vehicle for hire or reward<sup>4</sup>;

189. (b) business or commercial use of the vehicle<sup>5</sup>; or

190. (c) use of the vehicle for specified purposes of a business or commercial character<sup>6</sup>,

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then, for the purposes of that policy or security, so far as it relates to such liabilities as are required to be covered by a policy<sup>7</sup>, the use of a vehicle on a journey in the course of which one or more passengers are carried at separate fares<sup>8</sup> is to be treated as falling within that restriction or as not falling within that exclusion, as the case may be, if the following conditions are satisfied<sup>9</sup>:

- 843 (i) the vehicle is not adapted to carry more than eight passengers and is not a motor cycle<sup>10</sup>;
- 844 (ii) the fare<sup>11</sup> or aggregate of the fares paid in respect of the journey does not exceed the amount of the running costs of the vehicle for the journey, which for these purposes is to be taken to include an appropriate amount in respect of depreciation and general wear<sup>12</sup>; and
- 845 (iii) the arrangements for the payment of fares by the passenger or passengers carried at separate fares were made before the journey began<sup>13</sup>.

1 le for the purposes of the Road Traffic Act 1988 Pt VI (ss 143-162) (as amended).

2 Ibid s 150(1)(a).

3 Ibid s 150(1)(b).

4 Ibid s 150(1)(b)(i).

5 Ibid s 150(1)(b)(ii).

6 Ibid s 150(1)(b)(iii).

7 le under ibid s 145 (as amended): see PARA 945 ante.

8 As to the meaning of 'separate fares' see PARA 1136 text and notes 10-13 post; definition applied by ibid s 150(4).

9 Ibid s 150(1). The provisions of s 150(1), (2) apply however the restrictions or exclusions described in s 150(1) are framed or worded: s 150(3).

10 Ibid s 150(2)(a). For the meaning of 'motor cycle' see PARA 214 ante.

11 As to the meaning of 'fare' see PARA 1136 note 7 post; definition applied by ibid s 150(4).

12 Ibid s 150(2)(b).

13 Ibid s 150(2)(c).

## UPDATE

### 937-962 Insurance against Third Party Liabilities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(4) RELATIONS WITH THIRD PARTIES/951. Duty of insurers or persons giving security to satisfy judgment against persons insured or secured against third party risks.

#### **(4) RELATIONS WITH THIRD PARTIES**

##### **951. Duty of insurers or persons giving security to satisfy judgment against persons insured or secured against third party risks.**

The following provisions<sup>1</sup> apply where, after a certificate of insurance<sup>2</sup> or certificate of security<sup>3</sup> has been delivered<sup>4</sup> to the person by whom a policy has been effected or to whom a security has been given, a judgment relating to a liability with respect to any matter where liability with respect to that matter is required to be covered by a policy of insurance<sup>5</sup> is obtained<sup>6</sup>. In addition, the liability must be either:

- 846 (1) a liability covered by the terms of the policy or security<sup>7</sup> to which the certificate relates, and the judgment is obtained against any person who is insured by the policy or whose liability is covered by the security, as the case may be<sup>8</sup>; or
- 847 (2) a liability, other than an excluded liability<sup>9</sup>, which would be so covered if the policy insured all persons or, as the case may be, the security covered the liability of all persons, and the judgment is obtained against any person other than one who is insured by the policy or, as the case may be, whose liability is covered by the security<sup>10</sup>.

Notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy or security, he must<sup>11</sup> pay to the persons entitled to the benefit of the judgment<sup>12</sup>:

- 848 (a) as regards liability in respect of death or bodily injury, any sum payable under the judgment in respect of the liability, together with any sum which, by virtue of any enactment relating to interest on judgments, is payable in respect of interest on that sum<sup>13</sup>;
- 849 (b) as regards liability in respect of damage to property, any sum required to be paid<sup>14</sup>; and
- 850 (c) any amount payable in respect of costs<sup>15</sup>.

Where an insurer becomes liable<sup>16</sup> to pay an amount in respect of a liability of a person who is insured by a policy or whose liability is covered by a security, he is entitled to recover from that person that amount<sup>17</sup> or, in a case where that amount exceeds the amount for which he would, apart from these provisions<sup>18</sup>, be liable under the policy or security in respect of that liability, the excess<sup>19</sup>.

Where an insurer becomes liable<sup>20</sup> to pay an amount in respect of a liability of a person who is not insured by a policy or whose liability is not covered by a security, he is entitled to recover the amount from that person or from any person who is insured by the policy, or whose liability is covered by the security, by the terms of which the liability would be covered if the policy insured all persons or, as the case may be, the security covered the liability of all persons, and caused or permitted the use of the vehicle which gave rise to the liability<sup>21</sup>.

1 See the Road Traffic Act 1988 s 151 (as amended); and the text and notes 2-21 infra.

2 For the meaning of 'certificate of insurance' see PARA 947 ante.

3 For the meaning of 'certificate of security' see PARA 947 ante.

4 Ie under the Road Traffic Act 1988 s 147: see PARA 947 ante.



5 le under *ibid* s 145 (as amended): see PARA 945 ante. As to the meaning of 'policy of insurance' see PARA 937 note 4 ante.

6 *Ibid* s 151(1). For exceptions to s 151 (as amended) see PARA 952 post.

7 For these purposes, 'liability covered by the terms of the policy or security' means a liability which is covered by the policy or security or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy or security: *ibid* s 151(9)(c). 'Insurer' includes a person giving a security: s 151(9)(a). In deciding for the purposes of s 151(2) whether a liability is or would be covered by the terms of a policy or security, so much of the policy or security as purports to restrict, as the case may be, the insurance of the persons insured by the policy or the operation of the security by reference to the holding by the driver of the vehicle of a licence authorising him to drive it is to be treated as of no effect: s 151(3).

8 *Ibid* s 151(2)(a).

9 For these purposes, 'excluded liability' means a liability in respect of the death of, or bodily injury to, or damage to the property of, any person who, at the time of the use which gave rise to the liability, was allowing himself to be carried in or on the vehicle and knew or had reason to believe that the vehicle had been stolen or unlawfully taken, not being a person who: (1) did not know and had no reason to believe that the vehicle had been stolen or unlawfully taken until after the commencement of his journey; and (2) could not reasonably have been expected to have alighted from the vehicle: *ibid* s 151(4). The reference to a person being carried in or on a vehicle includes a reference to a person entering or getting on to, or alighting from, the vehicle: s 151(4). See *McMinn v McMinn* [2006] EWHC 827 (QB), [2006] 3 All ER 87.

10 Road Traffic Act 1988 s 151(2)(b).

11 le subject to the provisions of *ibid* s 151 (as amended).

12 *Ibid* s 151(5).

13 *Ibid* s 151(5)(a).

14 *Ibid* s 151(5)(b). The sum required to be paid is:

1489 (1) where the total of any amount paid, payable or likely to be payable under the policy or security in respect of damage to property caused by, or arising out of, the accident in question does not exceed £1,000,000, any sum payable under the judgment in respect of the liability, together with any sum which, by virtue of any enactment relating to interest on judgments, is payable in respect of interest on that sum (s 151(6)(a) (s 151(6) amended by the Motor Vehicles (Compulsory Insurance) Regulations 2007, SI 2007/1426, reg 2(1), (3)));

1490 (2) where that total exceeds £1,000,000, either such proportion of any sum payable under the judgment in respect of the liability as £1,000,000 bears to that total, together with the same proportion of any sum which, by virtue of any enactment relating to interest on judgments, is payable in respect of interest on that sum, or the difference between the total of any amounts already paid under the policy or security in respect of such damage and £1,000,000, together with such proportion of any sum which, by virtue of any enactment relating to interest on judgments, is payable in respect of interest on any sum payable under the judgment in respect of the liability as the difference bears to that sum (Road Traffic Act 1988 s 151(6)(b) (as so amended)),

whichever is the less, unless not less than £1,000,000 has already been paid under the policy or security in respect of such damage (in which case nothing is payable) (s 151(6) (as so amended)).

As to references to an accident see PARA 945 note 19 ante.

15 *Ibid* s 151(5)(c).

16 le under *ibid* s 151 (as amended).

17 le in a case where the person became liable to pay it by virtue only of *ibid* s 151(3): see note 7 supra.

18 le *ibid* s 151 (as amended).

19 *Ibid* s 151(7).

20 See note 16 supra.

21 Road Traffic Act 1988 s 151(8). See *Lloyd-Wolper v Moore* [2004] EWCA Civ 766, [2004] 3 All ER 741, [2004] 1 WLR 2350.

## UPDATE

### 937-962 Insurance against Third Party Liabilities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 951 Duty of insurers or persons giving security to satisfy judgment against persons insured or secured against third party risks

NOTE 21--See *Wilkinson v Fitzgerald* [2009] EWHC 1297 (QB), [2010] 1 All ER 198, [2009] 3 CMLR 1199.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(4) RELATIONS WITH THIRD PARTIES/952. Exceptions to the duty of insurers or persons giving security to satisfy judgment against persons insured or secured against third party risks.

### 952. Exceptions to the duty of insurers or persons giving security to satisfy judgment against persons insured or secured against third party risks.

No sum is payable by an insurer under the provisions relating to the duty of insurers or persons giving security to satisfy judgment against persons insured or secured against third party risks<sup>1</sup>:

- 851 (1) in respect of any judgment unless, before or within seven days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings<sup>2</sup>;
  - 852 (2) in respect of any judgment, so long as execution on the judgment is stayed pending an appeal<sup>3</sup>; or
  - 853 (3) in connection with any liability if, before the happening of the event which was the cause of the death or bodily injury or damage to property giving rise to the liability, the policy or security was cancelled by mutual consent or by virtue of any provision contained in it, and also<sup>4</sup>:
- 109
- 191. (a) before the happening of that event the certificate was surrendered to the insurer, or the person to whom the certificate was delivered made a statutory declaration stating that the certificate had been lost or destroyed<sup>5</sup>; or
  - 192. (b) after the happening of that event, but before the expiration of a period of 14 days from the taking effect of the cancellation of the policy or security, the certificate was surrendered to the insurer, or the person to whom it was delivered made a statutory declaration stating that the certificate had been lost or destroyed<sup>6</sup>; or
  - 193. (c) either before or after the happening of that event, but within that period of 14 days, the insurer has commenced proceedings<sup>7</sup> in respect of the failure to surrender the certificate<sup>8</sup>.

No sum is payable by an insurer<sup>9</sup> if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration<sup>10</sup>:

- 854 (i) that, apart from any provision contained in the policy or security, he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material<sup>11</sup> fact or by a representation of fact which was false in some material particular<sup>12</sup>; or
- 855 (ii) if he has avoided the policy or security on that ground, that he was entitled so to do apart from any provision contained in it<sup>13</sup>.

An insurer who has obtained a declaration<sup>14</sup> in an action does not by reason of that become entitled to benefit<sup>15</sup> as respects any judgment obtained in proceedings commenced before the commencement of that action unless before, or within seven days after, the commencement of that action he has given notice of it to the person who is the claimant in those proceedings specifying the non-disclosure or false representation on which he proposes to rely<sup>16</sup>.

A person to whom notice of such an action is given is entitled, if he thinks fit, to be made a party to it<sup>17</sup>.

1    Ie under the Road Traffic Act 1988 s 151: see PARA 951 ante.

2    Ibid s 152(1)(a). An experienced legal secretary is an appropriate person to receive notice of intention to bring proceedings, even where that intention is given incidentally during a telephone conversation requesting other information: *Nawaz v Crowe Insurance Group* [2003] EWCA Civ 316, [2003] RTR 426, [2003] Lloyd's Rep IR 471.

3    Road Traffic Act 1988 s 152(1)(b).

4    Ibid s 152(1)(c).

5    Ibid s 152(1)(c)(i).

6    Ibid s 152(1)(c)(ii).

7    Ie under the Road Traffic Act 1988.

8    Ibid s 152(1)(c)(iii).

9    See note 1 supra.

10   Road Traffic Act 1988 s 152(2).

11   For these purposes, 'material' means of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions: *ibid* s 152(2) (definition added by the Road Traffic Act 1991 s 48, Sch 4 para 66).

12   Road Traffic Act 1988 s 152(2)(a).

13   Ibid s 152(2)(b).

14   Ie such a declaration as is mentioned in *ibid* s 152(2): see the text and notes 9-10 supra.

15   Ie the benefit of *ibid* s 152(2): see the text and notes 9-10 supra.

16   Ibid s 152(3).

17   Ibid s 152(4).

## UPDATE

### **937-962 Insurance against Third Party Liabilities**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(4) RELATIONS WITH THIRD PARTIES/953. Bankruptcy etc of insured or secured persons not to affect claims by third parties.

#### **953. Bankruptcy etc of insured or secured persons not to affect claims by third parties.**

Where, after a certificate of insurance<sup>1</sup> or certificate of security<sup>2</sup> has been delivered<sup>3</sup> to the person by whom a policy has been effected or to whom a security has been given, any of the specified events<sup>4</sup> happens, the happening of that event does not affect any such liability of that person as is required to be covered by a policy of insurance<sup>5</sup>.

In the case of the person by whom the policy was effected or to whom the security was given, the specified events are:

- 856 (1) he becomes bankrupt<sup>6</sup> or makes a composition or arrangement with his creditors<sup>7</sup> or his estate is sequestrated or he grants a trust deed for his creditors<sup>8</sup>;
- 857 (2) he dies and his estate falls to be administered in accordance with an order under the Insolvency Act 1986<sup>9</sup> or an award of sequestration of his estate is made<sup>10</sup>;
- 858 (3) if that person is a company, a winding-up order<sup>11</sup> is made with respect to the company or the company enters administration<sup>12</sup>, or a resolution for a voluntary winding-up<sup>13</sup> is passed with respect to the company, or a receiver or manager of the company's business or undertaking is duly appointed<sup>14</sup>, or possession is taken, by or on behalf of the holders of any debentures<sup>15</sup> secured by a floating charge, of any property comprised in or subject to the charge<sup>16</sup>.

Nothing in the above provisions affects any rights conferred by the Third Parties (Rights Against Insurers) Act 1930<sup>17</sup> on the person to whom the liability was incurred, being rights so conferred against the person by whom the policy was issued or the security was given<sup>18</sup>.

1 For the meaning of 'certificate of insurance' see PARA 947 ante.

2 For the meaning of 'certificate of security' see PARA 947 ante.

3 Ie under the Road Traffic Act 1988 s 147: see PARA 947 ante.

4 Ie the events mentioned in ibid s 153(2) (as amended): see the text to notes 8-18 infra.

5 Ibid s 153(1). Section 153(1) applies notwithstanding anything in the Third Parties (Rights Against Insurers) Act 1930 (see INSURANCE vol 25 (Reissue) PARA 679 et seq): Road Traffic Act 1988 s 153(1). The policy of insurance mentioned in s 153(1) is a policy under s 145 (as amended): see s 153(1). As to the meaning of 'policy of insurance' see PARA 937 note 4 ante. As to the requirements in respect of policies of insurance see PARA 945 ante.

6 As to bankruptcy generally see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

7 As to compositions or arrangements with creditors see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 81 et seq.

8 Road Traffic Act 1988 s 153(2)(a).

9 Is an order under the Insolvency Act 1986 s 421: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 823.

10 Road Traffic Act 1988 s 153(2)(b).

11 As to winding-up orders see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 438 et seq.

12 As to administration orders see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 212 et seq.

13 As to voluntary winding-up see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 939 et seq.

14 As to the appointment of receivers and managers see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 391 et seq.

15 As to the taking of possession by or on behalf of the holders of any debentures see COMPANIES vol 15 (2009) PARA 1333 et seq.

16 Road Traffic Act 1988 s 153(2)(c) (amended by the Enterprise Act 2002 (Insolvency) Order 2003, SI 2003/2096, art 4, Schedule Pt 1 para 14).

17 See INSURANCE vol 25 (Reissue) PARA 679 et seq; and see also COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 673.

18 Road Traffic Act 1988 s 153(3).

## UPDATE

### 937-962 Insurance against Third Party Liabilities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(4) RELATIONS WITH THIRD PARTIES/954. Duty to give information as to insurance or security where claim is made.

#### 954. Duty to give information as to insurance or security where claim is made.

A person against whom a claim is made in respect of any such liability as is required to be covered by a policy of insurance<sup>1</sup> must, on demand by or on behalf of the person making the claim<sup>2</sup>:

859 (1) state whether or not, in respect of that liability<sup>3</sup>:

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194. (a) he was insured by a policy having effect for the purposes of the statutory provisions relating to compulsory insurance or security<sup>4</sup> or had in force a security having effect for those purposes<sup>5</sup>; or

195. (b) he would have been so insured or would have had in force such a security if the insurer or, as the case may be, the giver of the security had not avoided or cancelled the policy or security<sup>6</sup>; and
- 112
- 860 (2) if he was or would have been so insured, or had or would have had in force such a security<sup>7</sup>:
- 113
196. (a) give such particulars with respect to that policy or security as were specified in any certificate of insurance<sup>8</sup> or security<sup>9</sup> delivered<sup>10</sup> in respect of that policy or security, as the case may be<sup>11</sup>; or
197. (b) where no such certificate was so delivered<sup>12</sup>, give the following particulars, that is to say, the registration mark or other identifying particulars of the vehicle concerned, the number or other identifying particulars of the insurance policy issued in respect of the vehicle, the name of the insurer and the period of the insurance cover<sup>13</sup>.
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If without reasonable excuse, a person fails to comply with the above provisions, or wilfully makes a false statement in reply to any such demand as is referred to in the above provisions, he is guilty of an offence<sup>14</sup>.

1 le under the Road Traffic Act 1988 s 145 (as amended): see PARA 945 ante. As to the meaning of 'policy of insurance' see PARA 937 note 4 ante.

2 Ibid s 154(1).

3 Ibid s 154(1)(a).

4 le for the purposes of ibid Pt VI (ss 143-162) (as amended): see PARA 937 et seq ante.

5 Ibid s 154(1)(a)(i).

6 Ibid s 154(1)(a)(ii).

7 Ibid s 154(1)(b).

8 For the meaning of 'certificate of insurance' see PARA 947 ante.

9 For the meaning of 'certificate of security' see PARA 947 ante.

10 le under the Road Traffic Act 1988 s 147: see PARA 947 ante.

11 Ibid s 154(1)(b)(i).

12 See note 10 supra.

13 Road Traffic Act 1988 s 154(1)(b)(ii).

14 Ibid s 154(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## UPDATE

### 937-962 Insurance against Third Party Liabilities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(5) EFFECT OF DEPOSITS/955.

Deposits.

## **(5) EFFECT OF DEPOSITS**

### **955. Deposits.**

Where a person has deposited a sum with the Accountant General of the Supreme Court<sup>1</sup>, then, so long as any liabilities incurred by him, being such liabilities as are required to be covered by a policy of insurance<sup>2</sup>, have not been discharged or otherwise provided for, no part of that sum is to be applicable in discharge of any other liabilities incurred by him<sup>3</sup>.

<sup>1</sup> le under the Road Traffic Act 1988 s 144 (as amended) or s 146 (as amended): see PARAS 938, 946 ante.

<sup>2</sup> le under ibid s 145 (as amended): see PARA 945 ante. As to the meaning of 'policy of insurance' see PARA 937 note 4 ante.

<sup>3</sup> Ibid s 155(1). This provision is amended, as from a day to be appointed, by the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 2 para 4(1), (3), so as to substitute for the reference to the Accountant General of the Supreme Court a reference to the Accountant General of the Senior Courts. At the date at which this volume states the law no such day had been appointed.

Any regulations made, or having effect as if made, by the Treasury under the Insurance Companies Act 1958 s 20 (repealed) (see INDUSTRIAL ASSURANCE vol 24 (Reissue) PARA 278) which apply to deposits made by insurers carrying on motor vehicle insurance business apply (with such necessary modifications and adaptations as, after consultation with the Lord Chancellor, may be prescribed) to deposits made with the Accountant General under the Road Traffic Act 1988 s 144 (as amended) or s 146 (as amended): s 155(2) (amended by the Transfer of Functions (Insurance) Order 1997, SI 1997/2781, art 8, Schedule para 115). Such provision as might be made by the Treasury under the Insurance Companies Act 1958 s 20 (repealed) with respect to deposits under that Act may, after consultation with the Lord Chancellor, be made by regulations with respect to deposits made with the Accountant General under the Road Traffic Act 1988 s 144 (as amended) or s 146 (as amended): s 155(3) (amended by the Transfer of Functions (Insurance) Order 1997, SI 1997/2781, Schedule para 115). For the meaning of 'motor vehicle' see PARA 210 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

## **UPDATE**

### **937-962 Insurance against Third Party Liabilities**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **955 Deposits**

NOTE 3--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(6) ADMINISTRATIVE PROVISIONS/956. Power to require evidence of insurance or security on application for vehicle excise licence.

## **(6) ADMINISTRATIVE PROVISIONS**

### **956. Power to require evidence of insurance or security on application for vehicle excise licence.**

Provision may be made by regulations under the Vehicle Excise and Registration Act 1994<sup>1</sup> for requiring a person applying for a licence in respect of a motor vehicle<sup>2</sup> to produce such evidence as may be prescribed<sup>3</sup> that either<sup>4</sup>:

- 861 (1) on the date when the licence comes into operation there will be in force the necessary policy of insurance<sup>5</sup> or the necessary security in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission<sup>6</sup>; or
- 862 (2) the vehicle is a vehicle to which the statutory requirement that a motor vehicle be insured or secured against third party risks<sup>7</sup> does not apply at a time when it is being driven<sup>8</sup> under the owner's control<sup>9</sup>.

1 le under the Vehicle Excise and Registration Act 1994 s 57 (as amended): see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 801.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'prescribed' see PARA 941 note 14 ante.

4 Road Traffic Act 1988 s 156 (amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 24(5)).

5 As to the meaning of 'policy of insurance' see PARA 937 note 4 ante.

6 Road Traffic Act 1988 s 156(a).

7 le ibid 1988 s 143 (as amended): see PARA 937 ante.

8 For the meaning of 'drive' see PARA 207 ante.

9 Road Traffic Act 1988 s 156(b).

## **UPDATE**

### **937-962 Insurance against Third Party Liabilities**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(6) ADMINISTRATIVE PROVISIONS/957. Payment for hospital treatment of traffic casualties.



**957. Payment for hospital treatment of traffic casualties.**

Where:

- 863 (1) a payment, other than a payment for emergency treatment of traffic casualties<sup>1</sup>, is made, whether or not with an admission of liability, in respect of the death of, or bodily injury to, any person arising out of the use of a motor vehicle<sup>2</sup> on a road<sup>3</sup> or in a place to which the public has a right of access<sup>4</sup>; and
- 864 (2) the payment is made<sup>5</sup>:
- 115
198. (a) by an authorised insurer<sup>6</sup>, the payment being made under or in consequence of a policy issued under the statutory requirement<sup>7</sup>; or
199. (b) by the owner<sup>8</sup> of a vehicle in relation to the use of which a security<sup>9</sup> is in force<sup>10</sup>; or
200. (c) by the owner of a vehicle who has made a deposit<sup>11</sup>; and
- 116
- 865 (3) the person who has died or been bodily injured has to the knowledge of the insurer or owner, as the case may be, received treatment at a hospital<sup>12</sup>, whether as an in-patient or as an out-patient, in respect of the injury arising<sup>13</sup>,

the insurer or owner must pay the expenses reasonably incurred<sup>14</sup> by the hospital in affording the treatment, after deducting from the expenses any moneys actually received in payment of a specific charge for the treatment, which are not moneys received under any contributory scheme<sup>15</sup>. The amount to be paid must not exceed the specified amount<sup>16</sup>.

1 le under the Road Traffic Act 1988 s 158 (as amended): see PARA 958 post.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 Road Traffic Act 1988 s 157(1)(a).

5 Ibid s 157(1)(b).

6 For the meaning of 'authorised insurer' see PARA 460 note 1 ante; definition applied for these purposes by ibid s 145(5) (substituted by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 313).

7 Road Traffic Act 1988 s 157(1)(b)(i). The text refers to a policy issued under s 145 (as amended): see PARA 945 ante.

8 For the meaning of 'owner' see PARA 207 ante.

9 le a security under the Road Traffic Act 1988 Pt VI (ss 143-162) (as amended).

10 Ibid s 157(1)(b)(ii).

11 Ibid s 157(1)(b)(iii). The deposit must have been made under Pt VI (as amended): s 157(1)(b)(iii).

12 For these purposes, 'hospital' means any institution which provides medical or surgical treatment for in-patients, other than: (1) a health service hospital within the meaning of the National Health Service Act 2006 or the National Health Service (Wales) Act 2006 (see HEALTH SERVICES vol 54 (2008) PARA 21); or (2) any institution carried on for profit: Road Traffic Act 1988 s 161(1) (definition substituted by the Road Traffic (NHS Charges) Act 1999 s 18(3); and amended by the Health and Social Care (Community Health and Standards) Act 2003 ss 169(2), 196, Sch 14 Pt 3; and the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 121, 123).

13 Road Traffic Act 1988 s 157(1)(c).

14 For these purposes, 'expenses reasonably incurred' means: (1) in relation to a person who receives treatment at a hospital as an in-patient, an amount for each day he is maintained in the hospital representing the average daily cost, for each in-patient, of the maintenance of the hospital and the staff of the hospital and the maintenance and treatment of the in-patients in the hospital; and (2) in relation to a person who receives treatment at a hospital as an out-patient, reasonable expenses actually incurred: *ibid* s 157(3).

15 *Ibid* s 157(1).

16 *Ibid* s 157(2) (amended by the Road Traffic Accidents (Payment for Treatment) Order 1995, SI 1995/889, art 2). The amount to be paid may not exceed £2,949.00 for each person treated as an in-patient or £295.00 for each person treated as an out-patient: Road Traffic Act 1988 s 157(2) (as so amended).

## UPDATE

### 937-962 Insurance against Third Party Liabilities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(6) ADMINISTRATIVE PROVISIONS/958. Payment for emergency treatment of traffic casualties.

### 958. Payment for emergency treatment of traffic casualties.

Where:

- 866 (1) medical or surgical treatment or examination is immediately required as a result of bodily injury (including fatal injury) to a person caused by, or arising out of, the use of a motor vehicle<sup>1</sup> on a road<sup>2</sup>; and
- 867 (2) the treatment or examination so required ('emergency treatment') is effected by a legally qualified medical practitioner<sup>3</sup>,

the person who was using the vehicle at the time of the event out of which the bodily injury arose must, on a claim being duly made<sup>4</sup>, pay to the practitioner (or, where emergency treatment is effected by more than one practitioner, to the practitioner by whom it is first effected)<sup>5</sup>:

- 868 (a) a fee of a specified amount<sup>6</sup> in respect of each person in whose case the emergency treatment is effected by him<sup>7</sup>; and
- 869 (b) a sum, in respect of any distance in excess of two miles which he must cover in order to proceed from the place from which he is summoned to the place where the emergency treatment is carried out by him, and to return to the first mentioned place<sup>8</sup>.

Liability incurred<sup>9</sup> by the person using a vehicle is, where the event out of which it arose was caused by the wrongful act of another person, to be treated for the purposes of any claim to recover damage by reason of that wrongful act as damage sustained by the person using the vehicle<sup>10</sup>.

- 1 For the meaning of 'motor vehicle' see PARA 210 ante.
- 2 Road Traffic Act 1988 s 158(1)(a). For the meaning of 'road' see PARA 206 ante.
- 3 Ibid s 158(1)(b).
- 4 Ie in accordance with ibid s 159 (as amended): see PARA 959 post.
- 5 Ibid s 158(2). Where emergency treatment is first effected in a hospital, the provisions of s 158(1), (2) (as amended) (see the text and note 6 infra) with respect to payment of a fee have effect, so far as applicable, but subject (as regards the recipient of a payment) to s 159 (as amended) (see PARA 959 post), with the substitution of references to the hospital for references to a legally qualified medical practitioner: s 158(3). For the meaning of 'hospital' see PARA 957 note 12 ante.
- 6 The fee is £21.30: see ibid s 158(2)(a) (amended by the Road Traffic Accidents (Payments for Treatment) Order 1995, SI 1995/889, art 3).
- 7 Road Traffic Act 1988 s 158(2)(a) (as amended: see note 6 supra).
- 8 Ibid s 158(2)(b). The sum must be equal to 41 pence for every complete mile and additional part of a mile of that distance: s 158(2)(b).
- 9 Ie under ibid s 158 (as amended).
- 10 Ibid s 158(4).

## UPDATE

### 937-962 Insurance against Third Party Liabilities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(6) ADMINISTRATIVE PROVISIONS/959. Supplementary provisions as to payments for treatment.

#### 959. Supplementary provisions as to payments for treatment.

A payment falling to be made<sup>1</sup> in respect of treatment in a hospital<sup>2</sup> must be made to the hospital<sup>3</sup>.

A claim for a payment for emergency treatment of a traffic casualty<sup>4</sup> may be made at the time when the emergency treatment<sup>5</sup> is effected, by oral request to the person who was using the vehicle, and, if not so made, must be made by request in writing served on him within seven days from the day on which the emergency treatment was effected<sup>6</sup>.

Any such request in writing:

- 870 (1) must be signed by the claimant or, in the case of a hospital, by an executive officer of the hospital claiming the payment<sup>7</sup>;

- 871 (2) must state the name and address of the claimant, the circumstances in which the emergency treatment was effected, and that it was first effected by the claimant or, in the case of a hospital, in the hospital<sup>8</sup>; and
- 872 (3) may be served by delivering it to the person who was using the vehicle or by sending it in a prepaid registered letter, or the recorded delivery service, addressed to him at his usual or last known address<sup>9</sup>.

A payment made for emergency treatment of a traffic casualty operates as a discharge, to the extent of the amount paid, of any liability of the person who was using the vehicle, or of any other person, to pay any sum in respect of the expenses or remuneration of the practitioner or hospital concerned of or for effecting the emergency treatment<sup>10</sup>.

A chief officer of police must, if so requested by a person who alleges that he is entitled to claim a payment for emergency treatment of a traffic casualty, provide that person with any information at the disposal of the chief officer<sup>11</sup>:

- 873 (a) as to the identification marks of any motor vehicle<sup>12</sup> which that person alleges to be a vehicle out of the use of which the bodily injury arose<sup>13</sup>; and
- 874 (b) as to the identity and address of the person who was using the vehicle at the time of the event out of which it arose<sup>14</sup>.

1 le under the Road Traffic Act 1988 s 157 (as amended) or s 158 (as amended): see PARAS 957-958 ante.

2 For the meaning of 'hospital' see PARA 957 note 12 ante.

3 Road Traffic Act 1988 s 159(1) (amended by the Road Traffic (NHS Charges) Act 1999 s 18(2)(a)).

4 le a claim under the Road Traffic Act 1988 s 158 (as amended): see PARA 958 ante.

5 For the meaning of 'emergency treatment' see PARA 958 ante.

6 Road Traffic Act 1988 s 159(2).

7 Ibid s 159(3)(a) (amended by the Road Traffic (NHS Charges) Act 1999 s 18(2)(b)).

8 Road Traffic Act 1988 s 159(3)(b).

9 Ibid s 159(3)(c).

10 Ibid s 159(4).

11 Ibid s 159(5).

12 For the meaning of 'motor vehicle' see PARA 210 ante.

13 Road Traffic Act 1988 s 159(5)(a).

14 Ibid s 159(5)(b).

## UPDATE

### 937-962 Insurance against Third Party Liabilities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(6) ADMINISTRATIVE PROVISIONS/960. Recovery of National Health Service charges.

## **960. Recovery of National Health Service charges.**

If a person makes a compensation payment<sup>1</sup> to or in respect of any other person (the 'injured person') in consequence of any injury, whether physical or psychological, suffered by the injured person, and the injured person has: (1) received NHS treatment at a health service hospital as a result of the injury; (2) been provided with NHS ambulance services as a result of the injury for the purpose of taking him to a health service hospital for NHS treatment (unless he was dead on arrival at that hospital); or (3) received treatment as mentioned in head (1) above and been provided with ambulance services as mentioned in head (2) above, the person making the compensation payment is liable to pay the relevant NHS charges<sup>2</sup>.

1 'Compensation payment' means a payment, including a payment in money's worth, made by or on behalf of a person who is, or is alleged to be, liable to any extent in respect of the injury, or made in pursuance of a compensation scheme for motor accidents, but does not include a payment mentioned in the Health and Social Care (Community Health and Standards) Act 2003 Sch 10 (see HEALTH SERVICES vol 54 (2008) PARA 486): see s 150(3), (4); and HEALTH SERVICES vol 54 (2008) PARA 486.

2 See *ibid* s 150(1), (2); and HEALTH SERVICES vol 54 (2008) PARA 486. As to the recovery of NHS charges see Pt 3 (ss 150-169); and HEALTH SERVICES vol 54 (2008) PARA 486 *et seq*.

## **UPDATE**

### **937-962 Insurance against Third Party Liabilities**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(6) ADMINISTRATIVE PROVISIONS/961. Disclosure of information.

## **961. Disclosure of information.**

As from a day to be appointed<sup>1</sup>, regulations<sup>2</sup> may make provision for and in connection with requiring the Motor Insurers' Information Centre ('MIIC')<sup>3</sup> to make information<sup>4</sup> available to any prescribed<sup>5</sup> person for the purposes of the exercise of any of that person's functions in connection with the enforcement of an offence relating to the requirements to insure vehicles<sup>6</sup> or under regulations<sup>7</sup>.

1 The Road Traffic Act 1988 s 159A (added by the Road Safety Act 2006 s 22(2)) is to be brought into force as from a day to be appointed under the Road Safety Act 2006 s 61(1). At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'regulations' see PARA 941 note 12 ante.

3 The Motor Insurers' Information Centre is a company limited by guarantee and incorporated under the Companies Act 1985 on 8 December 1998: see the Road Traffic Act 1988 s 159A(2) (as added: see note 1 supra). The Motor Insurers' Information Centre is a division of the Motor Insurers' Bureau. As to the Motor Insurers' Bureau see INSURANCE vol 25 (2003 Reissue) PARA 757 et seq.

4 For these purposes, 'information' means information held in any form: ibid s 159A(2) (as added: see note 1 supra).

5 For the meaning of 'prescribed' see PARA 941 note 14 ante.

6 Ie under the Road Traffic Act 1988 Pt VI (ss 143-162) (as amended).

7 Ie regulations made under ibid s 160 (see PARA 962 post): s 159A(1) (as added: see note 1 supra). As to the disclosure to the police of information about the insurance status of vehicles see PARA 939 ante.

## UPDATE

### 937-962 Insurance against Third Party Liabilities

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/10. INSURANCE AGAINST THIRD PARTY LIABILITIES/(6) ADMINISTRATIVE PROVISIONS/962. Secretary of State's power to make regulations.

#### 962. Secretary of State's power to make regulations.

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> for any purpose for which regulations may be made under the statutory provisions relating to compulsory insurance and security<sup>3</sup> and for prescribing anything which may be prescribed<sup>4</sup> under those provisions and generally for the purpose of carrying those provisions into effect<sup>5</sup>.

In particular, but without prejudice to the generality of the above provisions, the regulations may make provision<sup>6</sup>:

- 875 (1) as to forms to be used for the purposes of the statutory provisions relating to compulsory insurance and security<sup>7</sup>;
- 876 (2) as to applications for and the issue of certificates of insurance<sup>8</sup> and certificates of security<sup>9</sup> and any other documents which may be prescribed, and as to the keeping of records of documents and the providing of particulars of them or the giving of information with respect to them to the Secretary of State or a chief officer of police<sup>10</sup>;
- 877 (3) as to the issue of copies of any such certificates or other documents which are lost or destroyed<sup>11</sup>;
- 878 (4) as to the custody, production, cancellation and surrender of any such certificates or other documents<sup>12</sup>; and
- 879 (5) for providing that any of the statutory provisions relating to compulsory insurance and security are, in relation to vehicles brought into Great Britain<sup>13</sup> by

persons making only a temporary stay in Great Britain, to have effect subject to such modifications and adaptations as may be prescribed<sup>14</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'regulations' see PARA 941 note 12 ante. The following regulations have partly been made under the Road Traffic Act 1988 s 160 or have effect under it by virtue of the Road Traffic (Consequential Provisions) Act 1988 s 2(2), and the Interpretation Act 1978 s 17(2)(b): the Motor Vehicles (International Motor Insurance Card) Regulations 1971, SI 1971/792 (as amended); the Motor Vehicles (Third Party Risks) Regulations 1972, SI 1972/1217 (as amended); and the Motor Vehicles (Third Party Risks Deposits) Regulations 1992, SI 1992/1284 (as amended). See further INSURANCE vol 25 (Reissue) PARAS 730, 739 et seq.

3 le under the Road Traffic Act 1988 Pt VI (ss 143-162) (as amended).

4 For the meaning of 'prescribed' see PARA 941 note 14 ante.

5 Road Traffic Act 1988 s 160(1).

6 Ibid s 160(2).

7 Ibid s 160(2)(a).

8 For the meaning of 'certificate of insurance' see PARA 947 ante.

9 For the meaning of 'certificate of security' see PARA 947 ante.

10 Road Traffic Act 1988 s 160(2)(b). As to the chief officer of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

11 Ibid s 160(2)(c).

12 Ibid s 160(2)(d).

13 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

14 Road Traffic Act 1988 s 160(2)(e).

## **UPDATE**

### **937-962 Insurance against Third Party Liabilities**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(i) Dangerous Driving and Cycling/963. Causing death by dangerous driving.

## **11. OFFENCES AND LEGAL PROCEEDINGS**

### **(1) OFFENCES AND PENALTIES**

#### **(i) Dangerous Driving and Cycling**

### 963. Causing death by dangerous driving.

A person who causes<sup>1</sup> the death of another person by driving<sup>2</sup> a mechanically propelled vehicle<sup>3</sup> dangerously<sup>4</sup> on a road or other public place<sup>5</sup> is guilty of an offence<sup>6</sup>.

1 The prosecution need not prove that the dangerous driving was the principal cause, or a substantial cause, of the death; it is sufficient to prove that the dangerous driving was a cause something more than de minimis: see *R v Hennigan* [1971] 3 All ER 133, [1971] RTR 305, CA (overruling *R v Curphey* (1957) 41 Cr App Rep 78); and cf *R v Gould* [1963] 2 All ER 847n, [1964] 1 WLR 145n.

2 For the meaning of 'drive' see PARA 207 ante. A person cannot be said to be 'driving' if he blamelessly suffers a mischance that prevents him from controlling the movements of the vehicle: *Hill v Baxter* [1958] 1 QB 277, [1958] 1 All ER 193, DC; *R v Spurge* [1961] 2 QB 205, [1961] 2 All ER 688, CCA. The defence of automatism requires, however, a total destruction of voluntary control by the defendant, so that reduced or partial control (driving without awareness) is insufficient to found the defence: *A-G's Reference (No 2 of 1992)* [1993] 4 All ER 683 at 689, [1993] RTR 337 at 348, CA, per Lord Taylor CJ. Unintentionally pressing the accelerator pedal of a vehicle when intending to press another pedal is not a defence to a charge of dangerous driving: *A-G's Reference (No 4 of 2000) (R v GC)* [2001] EWCA Crim 780, [2001] RTR 415.

3 As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.

4 For the meaning of 'driving dangerously' see PARA 965 post.

5 For the meaning of 'road' see PARA 206 ante. As to the meaning of 'other public place' see PARA 206 note 2 ante.

6 Road Traffic Act 1988 s 1 (substituted by the Road Traffic Act 1991 s 1). Disqualification until passing a test is obligatory: see PARA 1071 post. A person guilty of such an offence is liable on indictment to imprisonment for a term not exceeding 14 years; disqualification is obligatory; endorsement is obligatory; and 3-11 penalty points may be attributed if, for special reasons, the offender is not ordered to be disqualified: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (amended by the Road Traffic Act 1991 s 26, Sch 2; and the Criminal Justice Act 2003 s 285(2), (3)). As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; as to special reasons for not imposing obligatory disqualification see PARA 1059 post; and as to legal proceedings generally see PARA 1023 et seq post.

As to the disapplication of the Road Traffic Act 1988 s 1 (as substituted) for authorised motoring events see PARA 994 post.

In *R v Cooksley*, *R v Stride*, *R v Cook*, *A-G's Reference (No 152 of 2002)* [2003] EWCA Crim 996, [2003] 3 All ER 40, [2003] RTR 483, the Court of Appeal revised the guidelines on sentencing. In *R v Richardson* [2006] EWCA Crim 3186, [2007] 2 All ER 601, the guidelines were further revised to take account of the increase in the maximum sentence introduced with effect from 27 February 2004 by the Criminal Justice Act 2003 s 285. As to sentencing guidelines see further PARA 1056 post. As to sentencing generally see SENTENCING AND DISPOSITION OF OFFENDERS. For recent cases dealing with sentencing for causing death by dangerous driving see eg *R v Featherstone* [2007] EWCA Crim 208, [2007] All ER (D) (Jul); *R v Payne* [2007] EWCA Crim 157, [2007] 2 Cr App Rep (S) 287.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 963 Causing death by dangerous driving

NOTE 6--See *R v Leon* [2009] EWCA Crim 839, [2009] RTR 345, [2009] All ER (D) 53 (May) (unclear summing up of defence expert's evidence).



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## **964. Dangerous driving.**

A person who drives<sup>1</sup> a mechanically propelled vehicle<sup>2</sup> dangerously<sup>3</sup> on a road or other public place<sup>4</sup> is guilty of an offence<sup>5</sup>.

1 For the meaning of 'drive' see PARA 207 ante.

2 As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.

3 For the meaning of 'driving dangerously' see PARA 965 post.

4 For the meaning of 'road' see PARA 206 ante. As to the meaning of 'other public place' see PARA 206 note 2 ante.

5 Road Traffic Act 1988 s 2 (substituted by the Road Traffic Act 1991 s 1). A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both; disqualification is obligatory; endorsement is obligatory; and 3-11 penalty points may be attributed if, for special reasons, the offender is not ordered to be disqualified: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (amended by the Road Traffic Act 1991 s 26, Sch 2). As to the statutory maximum see PARA 359 note 11 ante. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; as to special reasons for not imposing obligatory disqualification see PARA 1059 post; and as to legal proceedings generally see PARA 1023 et seq post.

As to the disapplication of the Road Traffic Act 1988 s 2 (as substituted) for authorised motoring events see PARA 994 post.

The limited exemption of fire and rescue authority, ambulance and police vehicles from speed limits provided by the Road Traffic Regulation Act 1984 s 87 (as amended) (see PARA 854 ante) does not affect a driver's liability to prosecution for dangerous or careless driving: see *Gaynor v Allen* [1959] 2 QB 403, [1959] 2 All ER 644. See also *R v O'Toole* [1974] RTR 88, CA. However, an intention to assist in the arrest of offenders may be a defence: *R v Renouf* [1986] 2 All ER 449, [1986] 1 WLR 522, CA. It is also a defence to a charge of dangerous driving that the defendant was acting under 'duress of circumstances', ie that he was constrained by circumstances to drive as he did to avoid a threat of death or serious injury to himself or some other person: *R v Conway* [1989] QB 290, [1988] 3 All ER 1025, CA (distinguishing *R v Denton* [1987] RTR 129, CA). See also *R v Willer* [1987] RTR 22, CA. As to the distinction between duress of circumstances and self-defence see *R v Burley* (23 June 2000) Lexis, CA; *DPP v Tomkinson* [2001] EWHC 18 (Admin), [2001] RTR 583, DC (accused, who drove 72 miles in fear of violent attack by husband, not entitled to rely on defence of duress of circumstances). As to the defence of mechanical defect see PARA 971 note 6 post.

## **UPDATE**

### **963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

## **964 Dangerous driving**

NOTE 5--See *R v Stranney* [2008] EWCA Crim 2847, [2008] 1 Cr App Rep (S) 104 (sentencing judge not limited to two-year limit where offender was convicted of unlawfully inflicting grievous bodily harm by manner of his driving).

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### 965. Meaning of 'driving dangerously'.

A person is to be regarded<sup>1</sup> as driving<sup>2</sup> dangerously if, and only if<sup>3</sup>:

- 880 (1) the way he drives falls far below what would be expected of a competent and careful driver<sup>4</sup>; and
- 881 (2) it would be obvious to a competent and careful driver that driving in that way would be dangerous<sup>5</sup>.

A person is also to be regarded as driving dangerously if it would be obvious<sup>6</sup> to a competent and careful driver that driving the vehicle in its current state<sup>7</sup> would be dangerous<sup>8</sup>.

1 le for the purposes of the Road Traffic Act 1988 s 1 (as substituted) (see PARA 963 ante) and s 2 (as substituted) (see PARA 964 ante).

2 For the meaning of 'drive' see PARA 207 ante.

3 Road Traffic Act 1988 s 2A(1) (s 2A added by the Road Traffic Act 1991 s 1). This is expressed to be subject to the Road Traffic Act 1988 s 2A(2) (as added) (see the text and notes 6-8 infra).

4 Ibid s 2A(1)(a) (as added: see note 3 supra). For these purposes, in determining what would be expected of, or obvious to, a competent and careful driver in a particular case, regard is to be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused: s 2A(3) (as so added). The fact that an accused has ingested a large quantity of alcoholic drink is a circumstance within his knowledge and, accordingly, regard is to be had to it: *R v Woodward* [1995] 1 WLR 375 at 382, [1995] 2 Cr App Rep 388 at 395, CA, per Lord Taylor CJ. Evidence of drink is admissible where the amount of drink was such as adversely to affect the quality of the defendant's driving, or where the driver was in fact affected: *R v Woodward* supra, applying the principle in *R v McBride* [1962] 2 QB 167, [1961] 3 All ER 6, CCA, and *R v Thorpe* [1972] 1 All ER 929, [1972] RTR 118, CA. See further *R v Millington* [1996] RTR 80, CA; and PARA 971 text and note 10 post. Evidence of the proportion of alcohol or any drug found in a specimen of blood or urine provided by the defendant is not inadmissible, or liable to be excluded under the Police and Criminal Evidence Act 1984 s 78 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1365), if the conditions on admissibility laid down by the Road Traffic Offenders Act 1988 s 15(5) (see PARA 991 post) are not met, since s 15 (as amended) is, upon its face, limited to proceedings under the Road Traffic Act 1988 s 3A (as added) (see PARA 974 post), s 4 (as amended) (see PARA 975 post) or s 5 (see PARA 978 post): *R v Ash* [1999] RTR 347, CA. There is no difference in principle between a driver who presents a danger due to drink and a driver who is in 'a dangerously defective state' owing to his propensity to sudden hypoglycaemic attacks: *R v Marison* [1997] RTR 457, CA. The term 'circumstances shown to have been within the knowledge of the accused' is not to be confused with the belief of the accused; and 'belief', genuine or otherwise, is not a relevant factor: *R v Collins (Lezlie)* [1997] RTR 439, [1997] Crim LR 578, CA. Evidence that the driver was in breach of the legal requirements in relation to provisional licence holders (see PARA 464 ante) is inadmissible per se; it becomes admissible only if it can be shown that the breach was causally connected with the ensuing accident: *R v O'Neale* [1988] RTR 124, CA.

The Road Traffic Act 1988 s 2A (as added) emphasises the high threshold for establishing causing death by dangerous driving: *R v Conteh* [2003] EWCA Crim 962, [2004] RTR 1. Driving at very high speed is not by itself sufficient to constitute driving dangerously; it is a question of speed in all other circumstances: *DPP v Milton* [2006] EWHC 242 (Admin), [2006] RTR 264, [2006] All ER (D) 04 (Feb) (police officer driving at twice speed limit driving dangerously as not responding to emergency call or using warning siren).

5 Road Traffic Act 1988 s 2A(1)(b) (as added: see note 3 supra). For these purposes, 'dangerous' refers to danger either of injury to any person or of serious damage to property: s 2A(3) (as so added).

6 'Obvious' means obvious in the sense that it could have been seen or realised at first glance: *R v Roberts* [1997] RTR 462, [1997] Crim LR 209, CA; *R v Strong* [1995] Crim LR 428, CA. However, a person who, knowing of the dangerous state of a vehicle, procures another innocent of that state to drive, where there is no evidence that that state would have been obvious to a competent and careful driver, will escape conviction because it is not possible to procure an offence the actus reus of which has not been committed: *R v Loukes* [1996] RTR 164, CA. As to the actus reus see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 10.

7 In determining, for these purposes, the state of a vehicle, regard may be had to anything attached to or carried on or in it and to the manner in which it is attached or carried: Road Traffic Act 1988 s 2A(4) (as added: see note 3 supra).

8 Ibid s 2A(2) (as added: see note 3 supra). As to the defence of mechanical defect see PARA 971 note 6 post.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### 966. 'Motor' manslaughter.

The relevant part of the common law of manslaughter survived successive statutory offences, between 1956 and 1977<sup>1</sup> of causing death by reckless driving<sup>2</sup>, and it is submitted that it has also survived the enactment of the present statutory offence of causing death by dangerous driving<sup>3</sup>. The more grave offence should only be charged, however, where the defendant's driving created a very high risk of death<sup>4</sup>.

1 See the Road Traffic Act 1956 s 8 (repealed); and the Road Traffic 1972 s 1 (as substituted by the Criminal Law Act 1977 s 50; repealed).

2 *Government of the United States of America v Jennings* [1983] 1 AC 624, sub nom *Jennings v United States Government* [1982] 3 All ER 104, HL.

3 See PARA 963 ante.

4 *R v Pimm* [1994] RTR 391 at 395, CA, per Lord Taylor CJ; *R v Seymour* [1983] RTR 455 at 466, HL, per Lord Roskill. See also *Government of the United States of America v Jennings* [1983] 1 AC 624 at 644, sub nom *Jennings v United States Government* [1982] 3 All ER 104 at 117, HL, per Lord Roskill. The elements of 'motor' manslaughter and causing death by reckless (now dangerous) driving are, however, the same and consequently the two offences should not be joined in a single indictment: *R v Seymour* supra at 465-466 per Lord Roskill. See also *Brown (Uriah) v R* [2005] UKPC 18, [2006] 1 AC 1. As to the offence of manslaughter see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 92 et seq.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(i) Dangerous Driving and Cycling/967. Dangerous cycling.

### **967. Dangerous cycling.**

A person who rides a cycle<sup>1</sup> on a road<sup>2</sup> dangerously is guilty of an offence<sup>3</sup>. For these purposes, a person is to be regarded as riding dangerously if (and only if)<sup>4</sup>: (1) the way he rides falls far below what would be expected of a competent and careful cyclist<sup>5</sup>; and (2) it would be obvious to a competent and careful cyclist that riding in that way would be dangerous<sup>6</sup>.

1 For the meaning of 'cycle' see PARA 409 note 3 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 Road Traffic Act 1988 s 28(1) (s 28 substituted by the Road Traffic Act 1991 s 7). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (amended by the Road Traffic Act 1991 s 26, Sch 2). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

4 Road Traffic Act 1988 s 28(2) (as substituted: see note 3 supra).

5 Ibid s 28(2)(a) (as substituted: see note 3 supra).

6 Ibid s 28(2)(b) (as substituted: see note 3 supra). In s 28(2) (as substituted), 'dangerous' refers to danger either of injury to any person or of serious damage to property; and in determining for the purposes of s 28(2) (as substituted) what would be obvious to a competent and careful cyclist in a particular case, regard must be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused: s 28(3) (as so substituted).

## **UPDATE**

### **963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(i) Dangerous Driving and Cycling/968. Duty to give name and address.

## **968. Duty to give name and address.**

The driver<sup>1</sup> of a mechanically propelled vehicle<sup>2</sup> or the rider of a cycle<sup>3</sup> who is alleged to have committed the offence of dangerous driving or cycling<sup>4</sup>, or the offence of careless or inconsiderate driving or cycling<sup>5</sup>, who refuses, on being so required by any person having reasonable grounds for so doing, to give his name and address, or gives a false name or address, is guilty of an offence<sup>6</sup>.

1 For the meaning of 'driver' see PARA 207 ante.

2 As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.

3 For the meaning of 'cycle' see PARA 409 note 3 ante.

4 Is an offence under the Road Traffic Act 1988 s 2 (as substituted) (see PARA 964 ante) or s 28 (as substituted) (see PARA 967 ante).

5 Is an offence under ibid s 3 (as substituted) (see PARA 971 post) or s 29 (as amended) (see PARA 973 post).

6 Ibid s 168 (amended by the Road Traffic Act 1991 s 48, Sch 4 para 71). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## **UPDATE**

### **963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(i) Dangerous Driving and Cycling/969. Evidence of manner of driving before or after accident.

## **969. Evidence of manner of driving before or after accident.**

On a charge of manslaughter<sup>1</sup>, dangerous<sup>2</sup>, or wanton or furious driving<sup>3</sup>, evidence that the defendant's vehicle was being driven at an excessive speed or in a reckless or negligent manner a few minutes before or after, or at some distance from the site of, an accident is admissible<sup>4</sup>.

The court must be very circumspect, however, in paying regard to evidence of what might be called bad driving by a person who is accused of such an offence where that bad driving occurred some distance before the scene of the incident which gave rise to the alleged offence<sup>5</sup>.

An information is not bad for duplicity where it alleges careless driving on different roads and it is open to the court to hold that the driving was all part of one continuous activity<sup>6</sup>.

1 See PARA 966 ante.

2 See PARA 964 ante. 'Dangerous' driving was previously called 'reckless' driving: see the Road Traffic Act 1972 s 2 (repealed).

3 See PARA 1018 post.

4 *R v Dalloz* (1908) 1 Cr App Rep 258, CCA; *R v Taylor* (1927) 20 Cr App Rep 71, CCA (five miles from scene of accident); *R v Burdon* (1927) 20 Cr App Rep 80, CCA; *Hallett v Warren* (1929) 93 JP 225, DC. As to evidence generally see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1359 et seq.

5 *Coles v Underwood* (1983) 148 JP 178 at 181, DC, per Watkins LJ.

6 *Horrix v Malam* [1984] RTR 112, DC (where the evidence consisted of observations of bad driving on a motorway and, about two miles away and starting ten minutes after the conclusion of those observations, observations on other roads). It has been said, obiter, that there could be a conviction for dangerous driving only if it occurred in the road named in the warning of intended prosecution: see *R v Budd* [1962] Crim LR 49, CCA. Where a driver is warned at the time of the offence, however, and he is subsequently (and unnecessarily) sent a written warning of intended prosecution in which the wrong road is specified, he cannot claim to be misled and the prosecution may proceed: *Shield v Crighton* [1978] RTR 494n, DC.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(ii) Careless, and Inconsiderate, Driving and Cycling/970. Causing death by careless, or inconsiderate, driving.

## (ii) Careless, and Inconsiderate, Driving and Cycling

### 970. Causing death by careless, or inconsiderate, driving.

As from a day to be appointed<sup>1</sup>, a person who causes the death of another person by driving<sup>2</sup> a mechanically propelled vehicle<sup>3</sup> on a road or other public place<sup>4</sup> without due care and attention, or without reasonable consideration for other persons using the road or place<sup>5</sup>, is guilty of an offence<sup>6</sup>.

1 The Road Safety Act 2006 s 20, which adds the Road Traffic Act 1988 s 2B and amends the Road Traffic Offenders Act 1988 Sch 2, is to be brought into force as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'drive' see PARA 207 ante.

3 As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.

4 For the meaning of 'road' see PARA 206 ante. As to the meaning of 'other public place' see PARA 206 note 2 ante.

5 As to the meanings of 'without due care and attention' and 'without reasonable consideration for other persons using the road' see PARA 971 post.

6 Road Traffic Act 1988 s 2B (as added: see note 1 supra).

A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both, or on conviction on indictment to imprisonment for a term not exceeding five years or a fine or both; disqualification is obligatory; endorsement is obligatory; and 3-11 penalty points may be attributed if, for special reasons, the offender is not ordered to be disqualified: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (as amended: see note 1 supra). As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; as to special reasons for not imposing obligatory disqualification see PARA 1059 post; and as to legal proceedings generally see PARA 1023 et seq post.

As to the disapplication of the Road Traffic Act 1988 s 1 (as substituted) for authorised motoring events see PARA 994 post.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 970 Causing death by careless, or inconsiderate, driving

TEXT AND NOTE 1--Day appointed is 18 August 2008: SI 2008/1918.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(ii) Careless, and Inconsiderate, Driving and Cycling/971. Careless, and inconsiderate, driving.

### 971. Careless, and inconsiderate, driving.

If a person drives<sup>1</sup> a mechanically propelled vehicle<sup>2</sup> on a road or other public place<sup>3</sup> without due care and attention<sup>4</sup> or without reasonable consideration for other persons using the road or place<sup>5</sup> he is guilty of an offence<sup>6</sup>.

Careless driving and inconsiderate driving are distinct offences and, therefore, a conviction for driving on a road 'without due care and attention, or without reasonable consideration for other persons using the road' is bad for duplicity<sup>7</sup>.

A principle analogous to *res ipsa loquitur*<sup>8</sup> may be applied if, in the absence of a satisfactory explanation to the contrary, the facts point inferentially to carelessness beyond reasonable doubt<sup>9</sup>.

In cases of careless driving the court is entitled to consider the circumstances, including evidence that a driver was adversely affected by drink or that the amount of drink taken was such as would adversely affect a driver<sup>10</sup>.

A failure on the part of any person to observe a provision of the Highway Code does not of itself render that person liable to criminal proceedings, but any such failure may in any proceedings

(whether civil or criminal) be relied upon by any parties to the proceedings as tending to establish or negative any liability which is in question in those proceedings<sup>11</sup>.

Falling asleep while driving is careless driving<sup>12</sup>.

A person is to be regarded as driving without due care and attention if (and only if) the way he drives falls below what would be expected of a competent and careful driver<sup>13</sup>. A person is to be regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by his driving<sup>14</sup>.

1 For the meaning of 'drive' see PARA 207 ante.

2 As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.

3 For the meaning of 'road' see PARA 206 ante. As to the meaning of 'other public place' see PARA 206 note 2 ante.

4 The test as to whether a person is guilty of driving without due care and attention is an objective one and the proficiency and experience of the driver are irrelevant: *McCrone v Riding* [1938] 1 All ER 157, DC. The question is whether the defendant was exercising that degree of care and attention that a reasonable and prudent driver would exercise in the circumstances: *Simpson v Peat* [1952] 2 QB 24 at 27, [1952] 1 All ER 447 at 449, DC, per Lord Goddard CJ. The circumstances may, in a proper case, include danger, potential or actual, if those adjectives be appropriate: *Dilks v Bowman-Shaw* [1981] RTR 4 at 9, DC, per McNeill J. It is no defence that the driving was due to an error of judgment: *Simpson v Peat* supra. However, a defendant may not be convicted if he was driving prudently and, confronted with a sudden emergency, made a wrong decision in the agony of the moment: *Simpson v Peat* supra at 28 and 449 per Lord Goddard CJ. A motorist confronted with an emergency should be judged according to the test 'was it reasonable for him to act as he did?' and not according to the standard of perfection yielded by hindsight: *Jones v Chief Constable of Avon and Somerset Constabulary* [1986] RTR 259, DC. As to evidence of manner of driving before or after an accident see PARA 969 ante. See further the text and notes 13-14 infra.

5 'Other persons using the road' extends to passengers in the vehicle being driven by the defendant: *Pawley v Wharfdall* [1966] 1 QB 373, [1965] 2 All ER 757, DC. It seems to mean persons actually on the road (or other public place) at the material time and not those who might reasonably be expected to be there: see *R v Surrey Justices, ex p Witherick* (1931) as reported in 48 TLR 67 at 68 per Humphreys J.

6 Road Traffic Act 1988 s 3 (substituted by the Road Traffic Act 1991 s 2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale; disqualification is discretionary; endorsement is obligatory; and 3-9 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry amended by the Road Safety Act 2006 s 23). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; and as to legal proceedings generally see PARA 1023 et seq post.

As to police powers to seize a motor vehicle being used in a manner which contravenes the Road Traffic Act 1988 s 3 (as substituted) see PARA 972 post.

The limited exemption of fire and rescue authority, ambulance or police vehicles from speed limits provided by the Road Traffic Regulation Act 1984 s 87 (as amended) (see PARA 854 ante) does not affect a driver's liability to prosecution for dangerous or careless driving: *Gaynor v Allen* [1959] 2 QB 403, [1959] 2 All ER 644. See also *R v O'Toole* [1974] RTR 88, CA. No special standard is applicable to a police officer driving to an emergency: *Wood v Richards* [1977] RTR 201, DC. The defence of necessity, to the extent that it exists, must depend on the degree of the emergency or the alternative danger to be averted: *Wood v Richards* supra at 204 per Eveleigh J. It now seems to be established that necessity is available as a defence, in an appropriate case, to a charge of careless driving: *R v Backshall* [1998] 1 WLR 1506, [1998] RTR 423, CA; cf *DPP v Harris* [1995] 1 Cr App Rep 170, DC, per McCowan LJ. However, where an emergency vehicle drives through a red light and a charge of careless driving is brought, such defence of necessity as exists is set out in the regulations (the case refers to the Traffic Signs Regulations and General Directions 1994, SI 1994/1519, reg 33, but this has been revoked: see now the Traffic Signs Regulations and General Directions 2002, SI 2002/3113): *DPP v Harris* supra. As to the defences of assisting in the arrest of an offender and duress of circumstances see PARA 964 note 5 ante. As to the defence of automatism see PARA 963 note 2 ante. It is a defence to a charge of dangerous driving and to a charge of careless driving that the driver, without fault of his own, was deprived of control of the motor vehicle by a mechanical defect of which he did not know and which was not such that he should have discovered it if he had exercised reasonable prudence; the burden of proof of the defence is not on the accused, though it is for him to put forward the defence: *R v Spurge* [1961] 2 QB 205, [1961] 2 All ER 688, CCA.

7 *R v Surrey Justices, ex p Witherick* [1932] 1 KB 450. See also *R v Griffiths* [1998] Crim LR 348, CA.



8 As to the doctrine of res ipsa loquitur see NEGLIGENCE vol 78 (2010) PARA 64 et seq.

9 See eg *Rabjohns v Bugar* [1971] RTR 234n, DC, where the defendant's car collided with the concrete wall of a bridge on a fine day, no other vehicle was apparently involved, there were no witnesses to the accident, there were two skid marks behind the car and the defendant gave no explanation for the accident.

10 *R v Millington* [1996] RTR 80, CA (a case under the Road Traffic Act 1988 s 3A (as added): see PARA 974 post). The test of admissibility laid down in *R v McBride* [1962] 2 QB 167, [1961] 3 All ER 6, CCA (see PARA 965 note 4 ante) is not based upon any specific statutory provision but upon the test for dangerous driving: *R v Millington* supra at 84 per McKinnon J. As to offences relating to drink or drugs see PARA 974 et seq post.

11 See the Road Traffic Act 1988 s 38(7); and PARA 221 ante. However, a breach of the Highway Code is no more than evidential, and whether or not a person is guilty of careless driving must be a question of fact in every case: *Jarvis v Fuller* [1974] RTR 160, DC. As to the Highway Code see PARA 221 ante.

12 *Henderson v Jones* (1955) 119 JP 304, DC (distinguishing *Edwards v Clarke* (1951) 115 JP 426, DC). See also *Kay v Butterworth* (1945) 110 JP 75, CA; *Hill v Baxter* [1958] 1 QB 277, [1958] 1 All ER 193.

13 Road Traffic Act 1988 s 3ZA(2) (s 3ZA added by the Road Safety Act 2006 s 30). The Road Traffic Act 1988 s 3ZA (as added) has effect for the purposes of s 2B (prospectively added) (see PARA 970 ante), s 3 (as substituted) and s 3A (as added) (see PARA 974 post): s 3ZA(1) (as so added). At the date at which this volume states the law the Road Safety Act 2006 s 30, which adds the Road Traffic Act 1988 s 3ZA, had been brought into force in so far as s 3ZA (as added) has effect for the purposes of s 3 (as substituted) (see the text and notes 1-6 supra) and s 3A (as added) (see PARA 974 post), but no day had been appointed for it to come into force for remaining purposes.

In determining for the purposes of s 3ZA(2) (as added) what would be expected of a careful and competent driver in a particular case, regard is to be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused: s 3ZA(3) (as so added).

14 Ibid s 3ZA(4) (as added: see note 13 supra).

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 971 Careless, and inconsiderate, driving

NOTE 13--Road Safety Act 2006 s 30 in force 18 August 2008 for remaining purposes: SI 2008/1918.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(ii) Careless, and Inconsiderate, Driving and Cycling/972. Vehicles used in a manner causing alarm, distress or annoyance.

### 972. Vehicles used in a manner causing alarm, distress or annoyance.

Where a constable in uniform has reasonable grounds for believing that a motor vehicle<sup>1</sup> is being used on any occasion in a manner which contravenes certain provisions of the Road

Traffic Act 1988<sup>2</sup> and is causing, or is likely to cause, alarm, distress or annoyance to members of the public, he has the following powers<sup>3</sup>: (1) power, if the motor vehicle is moving, to order the person driving<sup>4</sup> it to stop the vehicle<sup>5</sup>; (2) power to seize and remove the motor vehicle; (3) power, for the purposes of exercising a power falling within head (1) or head (2) above, to enter any premises on which he has reasonable grounds for believing the motor vehicle to be<sup>6</sup>; and (4) power to use reasonable force, if necessary, in the exercise of any power conferred by any of the above provisions<sup>7</sup>.

A constable must not seize a motor vehicle in the exercise of the powers so conferred on him unless he has warned the person concerned<sup>8</sup> that he will seize it if that use continues or is repeated, and it appears to him that the use has continued or been repeated after the warning<sup>9</sup>. However, a constable is not required to give such a warning on any occasion on which he would otherwise have the power to seize a motor vehicle if: (a) the circumstances make it impracticable for him to give the warning; (b) the constable has already on that occasion given a warning in respect of any use of that motor vehicle or of another motor vehicle by that person or any other person; (c) the constable has reasonable grounds for believing that such a warning has been given on that occasion otherwise than by him; or (d) the constable has reasonable grounds for believing that the person whose use of that motor vehicle on that occasion would justify the seizure is a person to whom a warning has been given, whether or not by that constable or in respect of the same vehicle or the same or a similar use, on a previous occasion in the previous 12 months<sup>10</sup>.

The Secretary of State may by regulations make provision as to the removal and retention of motor vehicles seized under the above powers, and as to the release or disposal of such motor vehicles<sup>11</sup>.

1 'Motor vehicle' means any mechanically propelled vehicle, whether or not it is intended or adapted for use on roads: Police Reform Act 2002 s 59(9).

2 I.e. the Road Traffic Act 1988 s 3 (as substituted) (careless and inconsiderate driving: see PARA 971 ante) or s 34 (as substituted and amended) (prohibition of off-road driving: see PARA 1007 post).

3 Police Reform Act 2002 s 59(1).

4 For these purposes, 'driving' has the same meaning as in the Road Traffic Act 1988 (see PARA 207 ante): Police Reform Act 2002 s 59(9).

5 A person who fails to comply with such an order is guilty of an offence and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale: *ibid* s 59(6). As to the standard scale see PARA 230 note 3 ante.

6 For these purposes the power to enter any premises does not authorise entry into a private dwelling house: *ibid* s 59(7). 'Private dwelling house' does not include any garage or other structure occupied with the dwelling house, or any land appurtenant to the dwelling house: s 59(9).

7 *Ibid* s 59(3). A constable in uniform also has the powers set out in s 59(3) where he has reasonable grounds for believing that a motor vehicle has been used on any occasion in a manner falling within s 59(1) (see the text and notes 1-3 supra): s 59(2). A constable's powers under s 59(3) may also be exercised by a suitably designated community support officer: see s 38(6), Sch 4 para 9; and POLICE vol 36(1) (2007 Reissue) PARAS 529-530.

8 I.e. the person appearing to him to be the person whose use falls within *ibid* s 59(1) (see the text and notes 1-3 supra).

9 *Ibid* s 59(4).

10 *Ibid* s 59(5).

11 See *ibid* s 60. In exercise of this power, the Secretary of State has made the Police (Retention and Disposal of Motor Vehicles) Regulations 2002, SI 2002/3049 (amended by SI 2005/2702). The powers conferred on a constable by the Police Reform Act 2002 s 59 are exercisable only at a time when regulations under s 60 are in force: s 59(8).

**UPDATE****963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

**972 Vehicles used in a manner causing alarm, distress or annoyance**

NOTE 11--SI 2002/3049 further amended: SI 2008/2096.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(ii) Careless, and Inconsiderate, Driving and Cycling/973. Careless, and inconsiderate, cycling.

**973. Careless, and inconsiderate, cycling.**

If a person rides a cycle<sup>1</sup> on a road<sup>2</sup> without due care and attention, or without reasonable consideration for other persons using the road<sup>3</sup>, he is guilty of an offence<sup>4</sup>.

1 For the meaning of 'cycle' see PARA 409 note 3 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 As to the meanings of 'without due care and attention' and 'without reasonable consideration for other persons using the road' see PARA 971 ante.

4 Road Traffic Act 1988 s 29 (amended by the Road Traffic Act 1991 s 83, Sch 8). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 26, Sch 2). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

**UPDATE****963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(iii) Offences

relating to Drink or Drugs/A. CONDUCT UNDER THE INFLUENCE OF DRINK OR DRUGS/974.  
Causing death by careless driving when under the influence of drink or drugs.

### **(iii) Offences relating to Drink or Drugs**

#### **A. CONDUCT UNDER THE INFLUENCE OF DRINK OR DRUGS**

##### **974. Causing death by careless driving when under the influence of drink or drugs.**

If a person causes the death<sup>1</sup> of another person by driving<sup>2</sup> a mechanically propelled vehicle<sup>3</sup> on a road or other public place<sup>4</sup> without due care and attention, or without reasonable consideration for other persons using the road or place<sup>5</sup> and:

- 882 (1) he is, at the time when he is driving, unfit to drive<sup>6</sup> through drink or drugs<sup>7</sup>; or
- 883 (2) he has consumed so much alcohol that the proportion of it in his breath, blood or urine at that time exceeds the prescribed limit<sup>8</sup>; or
- 884 (3) he is, within 18 hours after that time, required to provide a specimen<sup>9</sup>, but without reasonable excuse fails<sup>10</sup> to provide it<sup>11</sup>;
- 885 (4) he is required by a constable to give his permission for a laboratory test of a specimen of blood taken from him<sup>12</sup>, but without reasonable excuse fails to do so<sup>13</sup>,

he is guilty of an offence<sup>14</sup>.

The forms of the offence under heads (2), (3) and (4) above do not apply in relation to a person driving a mechanically propelled vehicle other than a motor vehicle<sup>15</sup>.

On a charge under head (1) or head (2) above there is no need for proof of a causal connection between the drink or drugs and the death<sup>16</sup>.

1 As to the meaning of 'causes the death' see PARA 963 note 1 ante.

2 For the meaning of 'drive' see PARA 207 ante.

3 As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.

4 For the meaning of 'road' see PARA 206 ante. As to the meaning of 'other public place' see PARA 206 note 2 ante.

5 As to the meanings of 'without due care and attention' and 'without due consideration for other persons using the road' see PARA 971 ante.

6 For the purposes of this offence a person is to be taken to be unfit to drive at any time when his ability to drive is impaired: Road Traffic Act 1988 s 3A(2) (s 3A added by the Road Traffic Act 1991 s 3).

7 Road Traffic Act 1988 s 3A(1)(a) (as added: see note 6 supra). 'Drug' includes any intoxicant other than alcohol: s 11(1), (2) (s 11(1) amended by the Road Traffic Act 1991 Sch 4). For the meaning of 'unfit through drink or drugs' see PARA 975 post.

8 Road Traffic Act 1988 s 3A(1)(a) (as added: see note 6 supra). For the meaning of 'the prescribed limit' see PARA 978 note 9 post. As to the use of specimens in proceedings for an offence under s 3A (as added) see the Road Traffic Offenders Act 1988 s 15 (as amended); and PARA 991 post.

9 Ie in pursuance of the Road Traffic Act 1988 s 7 (as amended): see PARA 986 post.

10 'Fail' includes refuse: ibid s 11(2). As to the failure to provide specimens see PARA 988 post.

11 Ibid s 3A(1)(c) (as added: see note 6 supra).

12 Ie under ibid s 7A (as added): see PARA 987 post.

13 Ibid s 3A(1)(d) (s 3A as added (see note 6 supra); and s 3A(1)(d) added by the Road Safety Act 2006 s 31(1), (2)).

14 Road Traffic Act 1988 s 3A(1) (as added: see note 6 supra). A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding 14 years or a fine or both; disqualification is obligatory; endorsement is obligatory; and 3-11 penalty points may be attributed if, for special reasons, the offender is not ordered to be disqualified: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry added by the Road Traffic Act 1991 s 26, Sch 2; and amended by the Criminal Justice Act 2003 s 285(2), (4)). For an example of the appropriate sentence where there are aggravating features see eg *A-G's Reference (No 123 of 2006)* [2006] EWCA Crim 3375, [2007] 2 Cr App Rep (S) 244. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; as to special reasons for not imposing obligatory disqualification see PARA 1059 post; and as to legal proceedings generally see PARA 1023 et seq post. The requirements of the Road Traffic Offenders Act 1988 s 1 (as amended) (notice of intended prosecution) do not apply to an offence under the Road Traffic Act 1988 s 3A (as added): see PARA 1028 post.

15 Ibid s 3A(3) (as added (see note 6 supra); and amended by the Road Safety Act 2006 s 31(3)). For the meaning of 'motor vehicle' see PARA 210 ante.

16 *R v Shepherd; R v Wernet (A-G's References Nos 14 and 24 of 1993)* [1994] 2 All ER 242, [1994] RTR 49, CA. As to taking into account evidence of drink in relation to careless driving see PARA 971 text and note 10 ante.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 974 Causing death by careless driving when under the influence of drink or drugs

TEXT AND NOTES 9-13--As offences contrary to heads (3) and (4) are not driving offences connected with drink or drugs, the Road Traffic Offenders Act 1988 s 15 does not apply to them: *R v Steven* [2009] EWCA Crim 1452, [2009] All ER (D) 138 (Jul).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(iii) Offences relating to Drink or Drugs/A. CONDUCT UNDER THE INFLUENCE OF DRINK OR DRUGS/975. Driving, or being in charge, of a mechanically propelled vehicle when under the influence of drink or drugs.

### 975. Driving, or being in charge, of a mechanically propelled vehicle when under the influence of drink or drugs.

A person who, when driving<sup>1</sup> or attempting to drive<sup>2</sup> a mechanically propelled vehicle<sup>3</sup> on a road or other public place<sup>4</sup>, is unfit to drive<sup>5</sup> through drink or drugs<sup>6</sup> is guilty of an offence<sup>7</sup>.

Without prejudice to the above provisions, a person who, when in charge<sup>8</sup> of a mechanically propelled vehicle which is on a road or other public place, is unfit to drive through drink or drugs is guilty of an offence<sup>9</sup>. For these purposes<sup>10</sup>, a person is deemed not to have been in

charge of a mechanically propelled vehicle if he proves<sup>11</sup> that at the material time the circumstances were such that there was no likelihood of his driving it so long as he remained unfit to drive through drink or drugs<sup>12</sup>. The court may, in determining whether there was such a likelihood, disregard any injury to him and any damage to the vehicle<sup>13</sup>.

1 For the meaning of 'drive' see PARA 207 ante.

2 The words 'driving or attempting to drive' create two separate offences: see *R (Buck) v Londonderry County Justices* [1952] NI 1. It is submitted that 'attempting' in this context is subject to the same tests as other criminal attempts: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 79 et seq. See also *Harman v Wardrop* [1971] RTR 127, DC (attempt doubted where defendant merely asked for return of car keys with intention of driving); *R v Farrance* [1978] RTR 225, CA (defendant running car engine and unable to move off owing to burnt out clutch; held attempting to drive); *Kelly v Hogan* [1982] RTR 352, DC (defendant putting wrong key into ignition switch; held attempting to drive).

3 As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.

4 For the meaning of 'road' see PARA 206 ante. As to the meaning of 'other public place' see PARA 206 note 2 ante.

5 For the purposes of the Road Traffic Act 1988 s 4 (as amended), a person is to be taken to be unfit to drive if his ability to drive properly is for the time being impaired: s 4(5). As to the use of specimens in proceedings for an offence under s 4 (as amended), and as to the use of documentary evidence as to specimens in such proceedings, see PARA 991 post.

The testimony of a witness of his impression whether the accused had taken drink is admissible in evidence if he also states the facts on which his impression is based, although he is not an expert medical witness; but evidence of such a witness that the defendant was fit or unfit to drive a motor vehicle is not admissible: *R v Davies* [1962] 3 All ER 97, [1962] 1 WLR 1111, C-MAC. Medical evidence as to the defendant's fitness to drive is admissible, but the court in the exercise of its discretion should refuse to admit such evidence if the defendant might have refused to subject himself to examination if he had realised that the doctor would give evidence on that matter: *R v Payne* [1963] 1 All ER 848, [1963] 1 WLR 637, CCA. The evidence of any doctor, whether a police surgeon or not, is to be accepted as the evidence of a professional expert giving independent evidence with the sole desire of assisting the court unless the doctor by his own conduct shows that his evidence ought not to be accepted: *R v Nowell* [1948] 1 All ER 794, 32 Cr App Rep 173. However, in *R v Lanfear* [1968] 2 QB 77, [1968] 1 All ER 683, CA, it was explained that the court in *R v Nowell* supra was dealing with assertions that the doctor should be treated as if he were the arm of the police and that an inducement to the defendant to submit to medical examination rendered the evidence of that examination inadmissible; and what was actually meant was that the evidence should be treated, as regards admissibility and other matters of that kind, like that of any other independent witness, and the word 'accepted', if taken out of that context, might give a false impression of the weight to be given to that evidence. Where a defendant was examined by a police surgeon, justices may still convict even though the surgeon is not called as prosecution witness: *Leetham v DPP* [1999] RTR 29, DC (the evidence consisted of the defendant's admitted consumption of cannabis, the presence of cannabis in a specimen of blood supplied by the defendant, the effects of that drug, and the slurred and slow character of the defendant's speech).

The prosecution must prove not only the influence but also that the defendant was impaired in the proper control of his vehicle as a result: see *R v Hawkes* (1931) 22 Cr App Rep 172. However, impairment of ability to drive properly may be inferred where the defendant, for no apparent reason, drove into collision with a stationary vehicle; and it is common knowledge that a person with blood alcohol concentration two-and-a-half times the prescribed limit is likely to be substantially intoxicated, from which a court is entitled, without expert evidence, to infer that such intoxication was responsible for the impairment of ability to drive resulting in the accident: *R v Hunt* [1980] RTR 29, CA. For the meaning of 'the prescribed limit' see PARA 978 note 9 post.

6 As to the meaning of 'drug' see PARA 974 note 7 ante. For the purposes of the Road Traffic Act 1988 s 4 (as amended), a substance used as a medicine is a drug and an offence would be committed by, for example, a person suffering from hypoglycaemic coma due to the overaction of a usual and prescribed insulin injection: see *Armstrong v Clark* [1957] 2 QB 391, [1957] 1 All ER 433. An acquittal is justified, however, where there is reasonable doubt as to whether the injected insulin was more than a predisposing or historical cause comprised in a situation of equilibrium upon which the reduction of cortisone (due to improved liver function) operated as the effective cause of the hypoglycaemic episode: *Watmore v Jenkins* [1962] 2 QB 572, [1962] 2 All ER 868, DC. See also *R v Ealing Magistrates' Court, ex p Woodman* [1994] RTR 189, DC (conviction quashed where no evidence that injected insulin was the effective cause of the hypoglycaemic attack, or that the attack was produced by the defendant's failure to manage his drug's regime).

A substance (in this case, glue) taken in the body which is not drink or food but which affects the control of the body is capable of being a drug: *Bradford v Wilson* [1984] RTR 116, (1983) 147 JP 573, DC.

7 Road Traffic Act 1988 s 4(1) (amended by the Road Traffic Act 1991 s 4). A person guilty of an offence under the Road Traffic Act 1988 s 4(1) (as amended) is liable on summary conviction to a term of imprisonment not exceeding six months or to a fine not exceeding the statutory maximum or to both; disqualification is obligatory; endorsement is obligatory; and 3-11 penalty points may be attributed if, for special reasons, the offender is not ordered to be disqualified: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 26, Sch 2). As to the statutory maximum see PARA 359 note 11 ante. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; as to special reasons for not imposing obligatory disqualification see PARA 1059 post; and as to legal proceedings generally see PARA 1023 et seq post.

The Road Traffic Act 1988 s 4 (as amended), s 5 (see PARA 978 post), s 6 (see PARA 979 post), s 6A (as added) (see PARA 980 post), s 6B (as added) (see PARA 981 post), s 6C (as added) (see PARA 982 post), s 6D (as added) (see PARA 983 post), s 6E (as added) (see PARA 984 post), s 7 (as amended) (see PARA 986 post), s 7A (as added) (see PARA 987 post), s 8 (as amended) (see PARA 986 post), s 9 (as amended) (see PARA 989 post), s 10 (as amended) (see PARA 990 post) and s 11 (as amended) (see PARAS 978, 983, 985-986 post) do not apply, to the extent that apart from this provision they would, to vehicles on any transport system to which the Transport and Works Act 1992 Pt II Ch I (ss 26-40) (as amended) (offences involving drink or drugs on railways, tramways and certain other guided transport systems: see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 377 et seq) applies: Road Traffic Act 1988 s 192A(1) (s 192A added by the Transport and Works Act 1992 s 39). The Secretary of State may by regulations provide that the Road Traffic Act 1988 s 4 (as amended), s 5, s 6, ss 6A-6E (as added), s 7 (as amended), s 7A (as added), s 8 (as amended), s 9 (as amended), s 10 (as amended) and s 11 (as amended) apply to vehicles on a system of guided transport specified in the regulations with such modifications as he considers necessary or expedient, and such regulations may make different provision for different cases: s 192A(2), (3) (as so added). At the date at which this volume states the law no such regulations had been made. For these purposes, 'guided transport' means transport by vehicles guided by means external to the vehicles (whether or not the vehicles are also capable of being operated in some other way): s 192A(4) (as so added). For these purposes, 'vehicle' includes mobile traction unit: s 192A(4) (as so added). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

There is only one offence of driving (as opposed to attempting to drive: see note 2 supra) in a self-induced state of incapacity, whether the incapacity is due to drink or drugs, and a conviction for driving while 'under the influence of drink or a drug' is not bad for uncertainty: *Thomson v Knights* [1947] KB 336, [1947] 1 All ER 112, DC.

The defence of 'duress of circumstances' is available to a charge under the Road Traffic Act 1988 s 5(1)(a) (driving or attempting to drive with an alcohol concentration in excess of the prescribed limit: see PARA 978 post) and it is submitted that the defence is similarly available to a charge under s 4(1) (as amended). As to the defence of duress of circumstances see PARA 964 note 5 ante.

8 In general, and subject to the defence of proving no likelihood of driving while still unfit to drive (see the text and notes 11-12 infra), a person who takes a motor vehicle onto a road remains in charge of it until he puts the vehicle in the charge of another: *Haines v Roberts* [1953] 1 All ER 344, [1953] 1 WLR 309, DC. However, the person, if the owner, lawful possessor or recent driver of the vehicle, will not be in charge if in all the circumstances he has ceased to be in actual control of the vehicle and there is no realistic possibility of his resuming actual control while unfit: *DPP v Watkins* [1989] QB 821, [1989] 1 All ER 1126, DC. See also *Ellis v Smith* [1962] 3 All ER 954, [1962] 1 WLR 1486, DC (bus driver remained in charge of his bus until he handed over to a relief driver even though his spell of duty was over); *Woodage v Jones (No 2)* [1975] RTR 119, DC (no justification for conclusion that defendant had abandoned his motor vehicle where he had driven onto the forecourt of a garage, walked away and had been intercepted by the police about half a mile from the forecourt).

A person can be in charge of a vehicle rendered immobile by the application of a wheel clamp: *Drake v DPP* [1994] RTR 411, DC.

Whether a person is in charge of a motor vehicle is a question of fact and degree: *DPP v Webb* [1988] RTR 374, DC. Detailed guidance as to the correct approach was given in *DPP v Watkins* supra:

1491 (1) although there is no hard and fast all-embracing test of what constitutes being 'in charge' for the purposes of the Road Traffic 1988 s 4 (as amended) or s 5, there has to be a close connection between the defendant and control of the vehicle;

1492 (2) two broad propositions are clear: the 'in charge' offence comes below driving and attempting to drive in the scale of drink-driving offences and a defendant can therefore be in charge although neither driving nor attempting to drive; but as the mischief aimed at is to prevent driving when unfit through drink or drugs the offence of being in charge must be intended to convict those who have not yet done more than a preparatory act towards driving,

but who have already formed or may yet form the intention to drive the vehicle and may try to drive it whilst still unfit;

1493 (3) if the defendant is not the owner, lawful possessor or recent driver of the vehicle but is sitting in the vehicle or is otherwise involved with it, the question is whether he has assumed being in charge of it; and he will be in charge if, whilst unfit, he is voluntarily in de facto control of the vehicle or if, in the circumstances, including his position, his intentions and his actions, he may be expected imminently to assume control;

1494 (4) an intention to take control may be evident even though the defendant has not gained entry to the motor, eg by stealing the keys in circumstances showing that he means presently to drive it;

1495 (5) the circumstances to be taken into account will vary infinitely, but the following will be relevant: (a) whether and where the defendant is in the vehicle or how far he is from it; (b) what he is doing at the relevant time; (c) whether he is in possession of a key that fits the ignition; (d) whether there is any evidence of an intention to take or assert control of the car by driving it or otherwise; and (e) whether any other person is in, at or near the vehicle and, if so, the like particulars in respect of that person.

9 Road Traffic Act 1988 s 4(2) (amended by the Road Traffic Act 1991 s 4). A person guilty of an offence under the Road Traffic Act 1988 s 4(2) (as amended) is liable on summary conviction to a term of imprisonment not exceeding three months or to a fine not exceeding level 4 on the standard scale or to both; disqualification is discretionary; endorsement is obligatory; and the number of penalty points attributed to the offence is 10: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 26, Sch 2). As from a day to be appointed, this provision is amended so as to refer to '51 weeks' instead of 'three months': Road Traffic Offenders Act 1998 Sch 2 Pt I (entry as so amended; and prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 38(1), (2)). At the date at which this volume states the law no such day had been appointed. As to the standard scale see PARA 230 note 3 ante.

10 Ie for the purposes of the Road Traffic Act 1988 s 4(2) (as amended): see the text and notes 8-9 supra.

11 The normal balance of probabilities standard of proof applies: *Morton v Confer* [1963] 2 All ER 765, [1963] 1 WLR 763, DC. Justices are not restricted to looking only at outside circumstances; the court may also consider what the defendant's intention was: *Morton v Confer* supra. However, if the court is satisfied that the defendant did not intend to drive whilst still unfit to drive through drink or drugs, the court must be further satisfied that there was no likelihood that he would depart from that intention: *Morton v Confer* supra (defendant claimed he did not intend to drive until he felt fit to do so, but the justices did not state specifically that they were satisfied that that intent would have been carried out).

A husband supervising the driving of his wife (who held a provisional licence) may, nevertheless, be able to discharge the burden of proving there was no likelihood of him driving: *Sheldon v Jones* [1970] RTR 38, DC.

It is open to justices to conclude, without hearing expert evidence, that a defendant, who was under the influence of drink at 3 am and gave a sample of breath on an evidential breath-testing device at 3.51 am containing 97 microgram's, will not remain unfit to drive through drink at 9 am (but not to conclude on those facts, without expert evidence, that the defence in the Road Traffic Act 1988 s 5(2) is made out (see PARA 978 post)): *DPP v Frost* [1989] RTR 11, DC. The burden of proof on the defendant is legal rather than evidential, but does not go beyond reasonable limits and so does not contravene the right to presumption of innocence under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(2) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 142): *Sheldrake v DPP, A-G's Reference (No 4 of 2002)* [2004] UKHL 43, [2005] 1 AC 264, [2005] 1 All ER 237.

12 Road Traffic Act 1988 s 4(3) (amended by the Road Traffic Act 1991 s 4).

13 Road Traffic Act 1988 s 4(4). The presence of a wheel clamp may not be disregarded under this provision, since the application of such a clamp to a motor vehicle does not amount to 'any damage to the vehicle': *Drake v DPP* [1994] RTR 411, DC (defendant refused to pay a fine to release the clamp and his efforts to remove it with a claw hammer were doomed to failure).

## UPDATE

### 963-1022 Offences and Penalties



Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **975 Driving, or being in charge, of a mechanically propelled vehicle when under the influence of drink or drugs**

NOTE 2--See also *Mason v DPP* [2009] EWHC 2198 (Admin), [2010] RTR 120, DC (defendant could not be said to have driven until he did something that was part of actual process of putting car in motion, starting to open car door was not capable of that).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(iii) Offences relating to Drink or Drugs/A. CONDUCT UNDER THE INFLUENCE OF DRINK OR DRUGS/976. Cycling when under the influence of drink or drugs.

### **976. Cycling when under the influence of drink or drugs.**

A person who, when riding a cycle<sup>1</sup> on a road or other public place<sup>2</sup>, is unfit to ride through drink or drugs<sup>3</sup> (that is to say, is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the cycle) is guilty of an offence<sup>4</sup>.

1 For the meaning of 'cycle' see PARA 409 note 3 ante.

2 For the meaning of 'road' see PARA 206 ante. As to the meaning of 'other public place' see PARA 206 note 2 ante.

3 Note that the definition of 'drug' contained in the Road Traffic Act 1988 s 11(2) (see PARA 974 note 7 ante) does not apply to this offence.

4 Ibid s 30(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## **UPDATE**

### **963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(iii) Offences

relating to Drink or Drugs/A. CONDUCT UNDER THE INFLUENCE OF DRINK OR DRUGS/977.  
Other offences of drunkenness.

### **977. Other offences of drunkenness.**

Every person who is drunk while in charge, on any highway or other public place, of any carriage<sup>1</sup>, horse, cattle<sup>2</sup> or steam engine, or who is drunk while in possession of any loaded firearms, may be apprehended, and is liable to a penalty<sup>3</sup>.

Whether a person is drunk is a question of fact<sup>4</sup>. An honest, although mistaken, belief upon reasonable grounds that a person is drunk will justify his apprehension<sup>5</sup>.

1 A motor vehicle or trailer: (1) is to be deemed to be a carriage within the meaning of any Act of Parliament, whether a public general Act or a local Act, and of any rule, regulation or byelaw made under any Act of Parliament; and (2) if used as a carriage of any particular class is, for the purpose of any enactment relating to carriages of any particular class, to be deemed to be a carriage of that class: Road Traffic Act 1988 s 191. For the meanings of 'motor vehicle' and 'trailer' see PARA 210 ante. Section 191 does not apply to tramcars: Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 7. For the meaning of 'tramcar' see PARA 219 ante. As to tramcars see PARA 1532 et seq post.

2 For these purposes, 'cattle' appears to include pigs: see *Child v Hearn* (1874) LR 9 Exch 176.

3 Licensing Act 1872 s 12 (amended by the Statute Law Revision Act 1953; the Criminal Justice Act 1967 ss 103(2), 106(5), Sch 7 Pt I; the Serious Organised Crime and Police Act 2005 ss 111, 174(2), Sch 7 Pt 1 para 6, Sch 17 Pt 2; and by virtue of the Criminal Justice Act 1982 ss 38(1), (6), (8), 46(1), (4)). A person guilty of such an offence is liable to a penalty not exceeding level 1 on the standard scale or, in the discretion of the court, to imprisonment for any term not exceeding one month: Licensing Act 1872 s 12 (as so amended). As from a day to be appointed, this provision is amended so as to refer to '51 weeks' instead of 'one month': see s 12 (as so amended; and prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 2). At the date at which this volume states the law no such day had been appointed. As to the standard scale see PARA 230 note 3 ante.

Momentary and involuntary presence on the highway is sufficient for a charge under the Licensing Act 1872 s 12 (as amended) of being found drunk on the highway if the accused was perceived to be drunk there: *Winzar v Chief Constable of Kent* (1983) Times, 28 March, DC. A person liable to be charged with an offence under the Road Traffic Act 1988 s 3A (as added) (see PARA 974 ante), s 4 (as amended) (see PARA 975 ante), s 5 (see PARA 978 post), s 7 (as amended) (see PARA 986 post) or s 30 (as amended) (see PARA 976 ante) is not liable to be charged under the Licensing Act 1872 s 12 (as amended) with the offence of being drunk while in charge, on a highway or other public place, of a carriage: Road Traffic Offenders Act 1988 s 5 (amended by the Road Traffic Act 1991 s 48, Sch 4 para 82).

4 *R v Presdee* (1927) 20 Cr App Rep 95, CCA.

5 *Trebeck v Croudace* [1918] 1 KB 158, CA.

## **UPDATE**

### **963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(iii) Offences relating to Drink or Drugs/B. DRIVING OR BEING IN CHARGE OF A VEHICLE WITH EXCESS

ALCOHOL CONCENTRATION/978. Driving, or being in charge of, a motor vehicle with alcohol concentration above the prescribed limit.

## **B. DRIVING OR BEING IN CHARGE OF A VEHICLE WITH EXCESS ALCOHOL CONCENTRATION**

**978. Driving, or being in charge of, a motor vehicle with alcohol concentration above the prescribed limit.**

If a person:

- 886 (1) drives or attempts to drive<sup>1</sup> a motor vehicle<sup>2</sup> on a road<sup>3</sup> or other public place<sup>4</sup>;  
or  
887 (2) is in charge<sup>5</sup> of a motor vehicle on a road or other public place<sup>6</sup>,

after consuming<sup>7</sup> so much alcohol that the proportion of it in his breath<sup>8</sup>, blood or urine exceeds the prescribed limit<sup>9</sup> he is guilty of an offence<sup>10</sup>.

It is a defence for a person charged under head (2) above to prove<sup>11</sup> that at the time he is alleged to have committed the offence the circumstances were such that there was no likelihood of his driving the vehicle whilst the proportion of alcohol in his breath, blood or urine remained likely to exceed the prescribed limit<sup>12</sup>. The court may, in determining whether there was such a likelihood, disregard any injury to him and any damage to the vehicle<sup>13</sup>.

Duress of circumstances is a defence for a person charged under head (1) above<sup>14</sup>.

1 For the meaning of 'drive' see PARA 207 ante. As to the meaning of 'drives or attempts to drive' see PARA 975 note 2 ante.

2 For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 Road Traffic Act 1988 s 5(1)(a). As to the meaning of 'other public place' see PARA 206 note 2 ante.

5 As to the meaning of 'in charge' see PARA 975 note 8 ante.

6 Road Traffic Act 1988 s 5(1)(b).

7 'Consuming' is not limited to consumption by mouth but includes other methods of the ingestion of alcohol into the body, such as absorbing it by way of injection: *DPP v Johnson* [1995] 1 WLR 728, [1995] RTR 9, DC. Where the written statement of the analyst recorded that the defendant's urine sample contained micro-organisms capable of producing alcohol, but that any alcohol so contributed was unlikely to have contributed significantly to the alcohol found in the specimen provided by the defendant unless the defendant was diabetic, and the defendant called no evidence at the trial (with the result that there was no evidence one way or the other as to whether the defendant was a diabetic), the justices could not be satisfied beyond reasonable doubt that the defendant had committed the offence since the analyst was not discounting reasonable possibilities: *Collins v Lucking* [1983] RTR 312, DC.

8 'Breath' is not limited to deep-lung air: *Zafar v DPP* [2004] EWHC 2468 (Admin), [2005] RTR 220.

9 'The prescribed limit' means, as the case may require: (1) 35 microgram's of alcohol in 100 millilitres of breath; (2) 80 milligrams of alcohol in 100 millilitres of blood; or (3) 107 milligrams of alcohol in 100 millilitres of urine, or such other proportion as may be prescribed by regulations made by the Secretary of State: Road Traffic Act 1988 s 11(1), (2) (s 11(1) amended by the Road Traffic Act 1991 s 48, Sch 4 para 44). At the date at which this volume states the law no regulations had been made in relation to the definition of 'the prescribed limit'. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

The prosecution need only prove the proportion of alcohol exceeded the prescribed limit; it is unnecessary to prove any particular figure: *R v Coomaraswamy* [1976] RTR 21, CA; *Thomas v Henderson* [1983] RTR 293, DC;

*Gordon v Thorpe* [1986] RTR 358, DC. The line is drawn at the prescribed limit; there is no principle of de minimis: *McGarry v Chief Constable of Bedfordshire* [1983] RTR 172, DC. It is common practice to deduct 6 milligrams of alcohol from the results of blood alcohol analysis to allow a margin of error, but that approach is not necessarily appropriate where a whole range of results are produced by analysis and the court is not, in any event, obliged to make a further reduction to the nearest round figure: *Oswald v DPP* [1989] RTR 360, DC (conviction upheld where reading was 80.2 milligrams after deduction of 6 milligrams). See also *Walker v Hodgins* [1984] RTR 34, DC (prosecution analysis showed 96 milligrams, defence analysis showed 83 milligrams, justices could not choose between the two and deducted 6 milligrams from the latter as this had not already been done and acquitted: decision upheld); cf *Stephenson v Clift* [1988] RTR 171, DC (justices preferred prosecution analysis as a more accurate method of testing had been used). Where a sample is split by a laboratory into a number of sub samples for analysis it is lawful to use the average result and not necessary to use the lowest figure: *DPP v Welsh* (1996) 161 JP 57, DC. As for contamination of blood specimens due to the use of swabs containing ethanol see *R v Bolton Justices, ex p Scally* [1991] 1 QB 537, [1991] RTR 84, DC (convictions in this and other cases involving such swabs quashed even though there had been no dishonesty involved).

As to challenging the reliability of evidential breath test devices see PARA 991 note 3 post.

10 Road Traffic Act 1988 s 5(1). A person guilty of an offence under s 5(1)(a) (see head (1) in the text) is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both; disqualification is discretionary; endorsement is obligatory; and 3-11 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 26, Sch 2). A person guilty of an offence under the Road Traffic Act 1988 s 5(1)(b) (see head (2) in the text) is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 4 on the standard scale or to both; disqualification is discretionary; endorsement is obligatory; and 10 penalty points may be attributed if, for special reasons, the offender is not ordered to be disqualified: Sch 2 Pt I. As from a day to be appointed, this provision is amended so as to refer to '51 weeks' instead of 'three months': see Sch 2 Pt I (entry prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 38(1), (3)). At the date at which this volume states the law no such day had been appointed. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; as to special reasons for not imposing obligatory disqualification see PARA 1059 post; and as to legal proceedings generally see PARA 1023 et seq post. As to procedure and evidence on offences relating to drink see PARA 979 et seq post.

As to aiding and abetting the commission of an offence see *Carter v Richardson* [1974] RTR 314, [1974] Crim LR 190, DC (sufficient to be aware that the principal offender had consumed excessive alcohol even though precise amount had not been determined). The offence of aiding, abetting, counselling or procuring can be committed by a person who secretly laces a friend's drinks leading to his conviction under what is now the Road Traffic Act 1988 s 5: see *A-G's Reference (No 1 of 1975)* [1975] QB 773, [1975] 2 All ER 684, CA. As to the imposition of penalty points, and the disapplication of obligatory disqualification, for an offence of aiding, abetting, counselling, procuring or inciting the commission of an offence involving obligatory disqualification see PARA 1058 post.

As to the disapplication of the Road Traffic Act 1988 s 5 to vehicles on any transport system to which the Transport and Works Act 1992 Pt II Ch I (ss 26-40) (as amended) (offences involving drink or drugs on railways, tramways and certain other guided transport systems: see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 377 et seq) applies see PARA 975 note 7 ante.

11 As to the standard of proof see PARA 975 note 11 ante.

12 Road Traffic Act 1988 s 5(2). See also PARA 975 note 11 ante. See *DPP v Janman* [2004] EWHC 101 (Admin), (2004) Times, 29 January, DC (person supervising learner driver in charge of vehicle despite no intention of driving it).

13 Road Traffic Offenders Act 1988 s 5(3). See also PARA 975 note 13 ante.

14 *DPP v Bell* [1992] RTR 335, DC. The situation in duress by circumstances is one where the defendant gives way to the circumstances and acts in accordance with them: *DPP v Bell* supra at 339 per Mann LJ (the court found as fact that at the time the defendant drove off he was in terror of being caused serious personal injury and he drove off in that belief; the hypothetical event of what would have happened if the threats of violence had not been made was irrelevant in view of the above finding). The necessity to drive must continue for the whole, and not merely part, of the journey undertaken by the defendant: *DPP v Jones* [1990] RTR 33, DC (defendant drove in excess of 1.5 miles to his home without checking whether he was still being pursued, either on foot or in a vehicle). A person does an act under duress of circumstances if: (1) he does it because he knows or believes that it is immediately necessary to avoid death or serious injury to himself or another (the subjective limb); and (2) the danger that he knows or believes to exist is such that in all the circumstances (including any of his personal characteristics that affects its gravity) he cannot reasonably be expected to act otherwise (the

objective limb): *DPP v Rogers* [1998] Crim LR 202, DC. See also *DPP v Davis*, *DPP v Pittaway* [1994] Crim LR 600, DC; *R v Burley* (23 June 2000) Lexis, CA.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(iii) Offences relating to Drink or Drugs/C. TESTING FOR DRINK AND DRUGS/979. Power to administer preliminary tests.

## C. TESTING FOR DRINK AND DRUGS

### 979. Power to administer preliminary tests.

If any of the following circumstances apply<sup>1</sup>, a constable may require a person to co-operate with any one or more preliminary tests<sup>2</sup> administered to the person by that constable or another constable<sup>3</sup>. The circumstances are:

- 888 (1) if a constable reasonably suspects<sup>4</sup> that the person: (a) is driving<sup>5</sup>, attempting to drive<sup>6</sup> or in charge<sup>7</sup> of a motor vehicle<sup>8</sup> on a road or other public place<sup>9</sup>; and (b) has alcohol or a drug<sup>10</sup> in his body or is under the influence of a drug<sup>11</sup>;
- 889 (2) if a constable reasonably suspects that the person: (a) has been driving, attempting to drive or in charge of a motor vehicle on a road or other public place while having alcohol or a drug in his body or while unfit to drive because of a drug; and (b) still has alcohol or a drug in his body or is still under the influence of a drug<sup>12</sup>;
- 890 (3) if a constable reasonably suspects that the person: (a) is or has been driving, attempting to drive or in charge of a motor vehicle on a road or other public place; and (b) has committed a traffic offence<sup>13</sup> while the vehicle was in motion<sup>14</sup>;
- 891 (4) if (a) an accident<sup>15</sup> occurs owing to the presence of a motor vehicle<sup>16</sup> on a road or other public place; and (b) a constable reasonably believes<sup>17</sup> that the person was driving, attempting to drive or in charge of the vehicle at the time of the accident<sup>18</sup>.

1 If any of the provisions of the Road Traffic Act 1988 s 6(2)-(5) (as substituted) apply.

2 In *ibid* s 6 (as substituted) a reference to a preliminary test is to any of the tests described in ss 6A-6C (as added) (see PARAS 980-982 post): s 6(8)(a) (s 6 substituted by the Railways and Transport Safety Act 2003 s 107, Sch 7 para 1).

3 Road Traffic Act 1988 s 6(1) (as substituted: see note 2 *supra*). A constable may administer a preliminary test only if he is in uniform: s 6(7) (as so substituted). Whether or not a constable is in uniform at the relevant time is a question of fact: see *Wallwork v Giles* [1970] RTR 117, DC (constable in uniform despite not wearing a helmet). The constable need not be in uniform when his suspicion was aroused; the requirement relates to the time when the specimen of breath is required: *Taylor v Baldwin* [1976] RTR 265, [1976] Crim LR 137, DC. In the absence of evidence a court may assume that a constable acting under this provision was wearing uniform at

the time: *Cooper v Rowlands* [1971] RTR 291, [1972] Crim LR 53, DC. As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

As to the disapplication of the Road Traffic Act 1988 s 6 (as substituted) to vehicles on any transport system to which the Transport and Works Act 1992 Pt II Ch I (ss 26-40) (as amended) (offences involving drink or drugs on railways, tramways and certain other guided transport systems: see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 377 et seq) applies see PARA 975 note 7 ante.

4 Evidence must be adduced to establish that the constable had reasonable cause so to suspect: *Griffiths v Willett* [1979] RTR 195, DC. See also *Siddiqui v Swain* [1979] RTR 454, DC (the mere fact that the constable required a specimen of breath did not necessarily establish that he had a suspicion of alcohol in the defendant's body). It seems that the constable must not only have reasonable cause to suspect or believe (as the case may be); he must actually so suspect or believe: *R v Banks* [1916] 2 KB 621 (but, in relation to reasonable cause to believe that for medical reasons an evidential breath specimen cannot be provided or should not be required, see *Davis v DPP* [1988] RTR 156, DC; and PARA 986 note 12 post). A constable may form a reasonable suspicion from what another constable has told him, and in such a case the first officer when giving evidence may relate what the second officer said: *Moss v Jenkins* [1975] RTR 25, DC. A reasonable suspicion may be formed on information given, even anonymously, by a third party: *DPP v Wilson* [1991] Crim LR 284, DC. There is no need for the constable's suspicion to have arisen when the defendant was driving: *Blake v Pope* [1986] 3 All ER 185, [1986] 1 WLR 1152, DC. See also *DPP v Wilson* supra; *DPP v McGladrigan* [1991] RTR 297, DC.

Provided there is no malpractice, there is no restriction on the random stopping of motorists, but a subsequent requirement to provide a specimen of breath can only be made if the constable has reasonable cause to suspect the consumption of alcohol: *Chief Constable of Gwent v Dash* [1986] RTR 41, [1985] Crim LR 674, DC. A requirement for a specimen of breath is not a lawful requirement if at the time the constable is a trespasser, but a lawful arrest under what is now the Road Traffic Act 1988 s 6 (as substituted) is no longer a prerequisite for a conviction of an offence under what is now s 5 (see PARA 978 ante): *R v Fox* [1986] AC 281, [1985] RTR 337, HL.

As to the exclusion of admissible evidence under the Police and Criminal Evidence Act 1984 in breath test device cases see PARA 991 note 2 post.

5 For the meaning of 'drive' see PARA 207 ante.

6 As to the meaning of 'drives or attempts to drive' see PARA 975 note 2 ante.

7 As to the meaning of 'in charge' see PARA 975 note 8 ante.

8 For the meaning of 'motor vehicle' see PARA 210 ante.

9 For the meaning of 'road' see PARA 206 ante. As to the meaning of 'other public place' see PARA 206 note 2 ante.

10 As to the meaning of 'drug' see PARA 974 note 7 ante.

11 Road Traffic Act 1988 s 6(2) (as substituted: see note 2 supra).

12 Ibid s 6(3) (as substituted: see note 2 supra).

13 In ibid s 6 (as substituted), 'traffic offence' means an offence under: (1) a provision of the Public Passenger Vehicles Act 1981 Pt II (ss 6-29) (as amended) (see PARA 1141 et seq post); (2) a provision of the Road Traffic Regulation Act 1984 (see PARA 718 et seq ante); (3) a provision of the Road Traffic Offenders Act 1988 other than a provision of Pt III (ss 51-90) (as amended) (see PARA 1023 et seq post); or (4) a provision of the Road Traffic Act 1988 other than a provision of Pt V (ss 123-142) (as amended) (see PARA 411 et seq ante): s 6(8)(b) (as substituted: see note 2 supra).

14 Ibid s 6(4) (as substituted: see note 2 supra).

15 'Accident' means an unintended occurrence which has an adverse physical result: *R v Morris* [1972] 1 All ER 384, [1972] RTR 201, CA. The term should be given its ordinary popular meaning and not a technical one: *Chief Constable of West Midlands Police v Billingham* [1979] 2 All ER 182, [1979] RTR 446, DC (untoward consequence of a deliberate act may well be an accident). No other vehicle need be involved: *R v Pico* [1971] RTR 500, CA.

16 The defendant's own vehicle does not have to be physically damaged or even involved, but there must be a direct cause or connection between the motor vehicle and the occurrence of the accident: *Quelch v Phipps* [1955] 2 QB 107, [1955] 2 All ER 302.

17 See note 4 supra. There is a difference in meaning between the words 'suspect' and 'believe', but it has been held that a constable had reasonable grounds to believe that the defendant had been driving where: (1)

there was an accident; (2) one of the drivers involved in the accident did not stop, but his vehicle registration number was passed to the constable; (3) the vehicle was found abandoned nearby; (4) the defendant and another were seen running away from the place where the vehicle had been abandoned and the constable did not know which of them had been driving; (5) the constable obtained information from a police computer that showed the defendant to be the registered keeper or owner; and (6) the defendant admitted being the owner of the vehicle, though neither he nor his colleague admitted being the driver: *Baker v Oxford* [1980] RTR 315, DC.

There must be an accident before a preliminary test can be required under what is now the Road Traffic Act 1988 s 6(5) (as substituted); it is not sufficient for a constable to have reasonable cause to believe that there has been one: *R v Vardy* [1978] RTR 202, CA.

18 Road Traffic Act 1988 s 6(5) (as substituted: see note 2 supra).

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(iii) Offences relating to Drink or Drugs/C. TESTING FOR DRINK AND DRUGS/980. Preliminary breath test.

#### 980. Preliminary breath test.

A preliminary breath test is a procedure whereby the person to whom the test is administered provides a specimen of breath to be used for the purpose of obtaining, by means of a device of a type approved by the Secretary of State<sup>1</sup>, an indication whether the proportion of alcohol in the person's breath or blood is likely to exceed the prescribed limit<sup>2</sup>.

<sup>1</sup> As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. Orders made approving breath test devices are not statutory instruments and are not recorded in this work.

Approval may be given by an appropriate official on behalf of the Secretary of State: *R v Skinner* [1968] 2 QB 700, [1968] 3 All ER 124, CA. A written statement from an appropriate official that a device is of an approved type is admissible: *R v Holt* [1968] 3 All ER 802, [1968] 1 WLR 1942, CA. A consignment note relating to delivery of devices to the police is inadmissible to prove that the device is of an approved kind: *R v Gwilliam* [1968] 3 All ER 821, [1968] 1 WLR 1839, CA. A print of the order may, however, be admitted as evidence of approval: *R v Clarke* [1969] 2 QB 91, [1969] 1 All ER 924, CA. The approval of a device can be established by oral evidence from a police officer, and judicial notice may be taken of approval orders due to the large and widely reported number of cases in which that has been so proved: *R v Jones (Reginald)* [1969] 3 All ER 1559, [1970] 1 WLR 16, CA; followed in *Bentley v Chief Constable of Northumbria* [1984] RTR 276, 148 JP 266. Proof of the identity of the device is essential, although the device need not be physically produced; a constable may give evidence of identification of the device in reliance on his knowledge and experience: *Miller v Howe* [1969] 3 All ER 451, [1969] 1 WLR 1510.

Except with regard to assembly of the device, there is no requirement that the manufacturer's instructions as to breath test devices need be followed strictly, but in administering a test a constable must act in good faith for the purpose of obtaining an indication of the proportion of alcohol and must try to use the device correctly to obtain a true indication of that: *DPP v Carey* [1970] AC 1072, [1969] 3 All ER 1662, HL. As to defective and incorrectly assembled devices see *DPP v Carey* supra; *Rayner v Hampshire Chief Constable* [1971] RTR 15; *R v Coates* [1971] RTR 74, CA; *R v Parsons* [1972] RTR 425, [1972] Crim LR 565, CA; *R v Kaplan* [1978] RTR 119, [1977] Crim LR 564, CA; *Price v Davies* [1979] RTR 204; *Sparrow v Bradley* [1985] RTR 122.

A constable's bona fides will not excuse a lack of knowledge of the manufacturer's instructions: *A-G's Reference (No 2 of 1974)* [1975] 1 All ER 658, [1975] 1 WLR 328, CA. However, improper administration of a breath test, but in a manner that is not potentially prejudicial to the driver (inflating the bag of the device in two breaths and not one, contrary to the manufacturer's instructions), will not vitiate the test: *A-G's Reference (No 1 of 1978)* [1978] RTR 377, CA. As to cases relating to the manufacturer's instructions see *Sayer v Johnson* [1970] RTR 286, DC (temperature at which device stored); *Gill v Forster* [1970] RTR 372, DC (temperature at which device stored); *A-G's Reference (No 2 of 1974)* supra (smoking); *Darnell v Portal* [1972] RTR 483, DC (smoking); *R v Callum* [1975] RTR 415, CA (smoking); *R v Aspden* [1975] RTR 456, CA (time when test administered); *Butcher v Caterall* [1975] RTR 436, 61 Cr App Rep 221, DC (smoking); *R v Moore (George)* [1979] RTR 98, CA (time when test administered); *DPP v Kay* [1999] RTR 109, DC (no duty to ask when a driver had taken his last drink or smoked his last cigarette).

2 Road Traffic Act 1988 s 6A(1) (s 6A added by the Railways and Transport Safety Act 2003 s 107, Sch 7 para 1). For the meaning of 'the prescribed limit' see PARA 978 note 9 ante.

A preliminary breath test administered in reliance on the Road Traffic Act 1988 s 6(2)-(4) (as substituted) (see PARA 979 heads (1)-(3) ante) may be administered only at or near the place where the requirement to co-operate with the test is imposed: s 6A(2) (as so added). A preliminary breath test administered in reliance on s 6(5) (as substituted) (see PARA 979 head (4) ante) may be administered: (1) at or near the place where the requirement to co-operate with the test is imposed; or (2) if the constable who imposes the requirement thinks it expedient, at a police station specified by him: s 6A(3) (as so added).

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 980 Preliminary breath test

NOTE 1--Where modifications are made to the device without approval, the results obtained from it are valid provided that the essential operation of the device is not affected: *Breckon v DPP* [2007] EWHC 2013 (Admin), [2008] RTR 96.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(iii) Offences relating to Drink or Drugs/C. TESTING FOR DRINK AND DRUGS/981. Preliminary impairment test.

### 981. Preliminary impairment test.

A preliminary impairment test is a procedure whereby the constable administering the test: (1) observes the person to whom the test is administered in his performance of tasks specified by the constable; and (2) makes such other observations of the person's physical state as the constable thinks expedient<sup>1</sup>. The Secretary of State<sup>2</sup> must issue (and may from time to time revise) a code of practice about: (a) the kind of task that may be specified for the purpose of a preliminary impairment test; (b) the kind of observation of physical state that may be made in the course of a preliminary impairment test; (c) the manner in which a preliminary impairment test should be administered; and (d) the inferences that may be drawn from observations made in the course of a preliminary impairment test<sup>3</sup>. In issuing or revising the code of practice the Secretary of State must aim to ensure that a preliminary impairment test is designed to



indicate whether a person is unfit to drive and, if he is, whether or not his unfitness is likely to be due to drink or drugs<sup>4</sup>.

A preliminary impairment test may be administered: (i) at or near the place where the requirement to co-operate with the test is imposed; or (ii) if the constable who imposes the requirement thinks it expedient, at a police station specified by him<sup>5</sup>. A constable administering a preliminary impairment test must have regard to the code of practice under these provisions<sup>6</sup>. A constable may administer a preliminary impairment test only if he is approved for that purpose by the chief officer of the police force to which he belongs<sup>7</sup>.

1 Road Traffic Act 1988 s 6B(1) (s 6B added by the Railways and Transport Safety Act 2003 s 107, Sch 7 para 1).

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 Road Traffic Act 1988 s 6B(2) (as added: see note 1 supra).

4 Ibid s 6B(3) (as added: see note 1 supra). As to the meaning of 'drug' see PARA 974 note 7 ante.

5 Ibid s 6B(4) (as added: see note 1 supra).

6 Ibid s 6B(5) (as added: see note 1 supra).

7 Ibid s 6B(6) (as added: see note 1 supra). A code of practice under s 6B (as added) may include provision about: (1) the giving of approval under s 6B(6) (as added); and (2) in particular, the kind of training that a constable should have undergone, or the kind of qualification that a constable should possess, before being approved under s 6B(6) (as added): s 6B(7) (as so added).

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(iii) Offences relating to Drink or Drugs/C. TESTING FOR DRINK AND DRUGS/982. Preliminary drug test.

### 982. Preliminary drug test.

A preliminary drug test is a procedure by which a specimen of sweat or saliva is: (1) obtained; and (2) used for the purpose of obtaining, by means of a device of a type approved by the Secretary of State<sup>1</sup>, an indication whether the person to whom the test is administered has a drug<sup>2</sup> in his body<sup>3</sup>. A preliminary drug test may be administered: (a) at or near the place where the requirement to co-operate with the test is imposed; or (b) if the constable who imposes the requirement thinks it expedient, at a police station specified by him<sup>4</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. Orders made approving drug test devices are not statutory instruments and are not recorded in this work.

2 As to the meaning of 'drug' see PARA 974 note 7 ante.

3 Road Traffic Act 1988 s 6C(1) (s 6C added by the Railways and Transport Safety Act 2003 s 107, Sch 7 para 1).

4 Road Traffic Act 1988 s 6C(2) (as added: see note 3 supra).

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(iii) Offences relating to Drink or Drugs/C. TESTING FOR DRINK AND DRUGS/983. Power of arrest.

### 983. Power of arrest.

A constable may arrest a person without warrant if as a result of a preliminary breath test<sup>1</sup> the constable reasonably suspects that the proportion of alcohol in the person's breath or blood exceeds the prescribed limit<sup>2</sup>. A constable may arrest a person without warrant if: (1) the person fails to co-operate with a preliminary test<sup>3</sup> in pursuance of a requirement to do so<sup>4</sup>; and (2) the constable reasonably suspects that the person has alcohol or a drug in his body or is under the influence of a drug<sup>5</sup>. A person so arrested may, instead of being taken to a police station, be detained at or near the place where the preliminary test was, or would have been, administered, with a view to imposing on him there a requirement to provide specimens for analysis<sup>6</sup>. A person may not be arrested under the above provisions while at a hospital<sup>7</sup> as a patient<sup>8</sup>.

1 For the meaning of 'preliminary breath test' see PARA 980 ante.

2 Road Traffic Act 1988 s 6D(1) (s 6D added by the Railways and Transport Safety Act 2003 s 107, Sch 7 para 1). For the meaning of 'the prescribed limit' see PARA 978 note 9 ante.

3 As to failure to co-operate with a preliminary test see PARA 985 post.

4 Ie in pursuance of a requirement imposed under the Road Traffic Act 1988 s 6 (as substituted): see PARA 979 ante. The fact that specimens of breath have been provided under s 7 (as amended) see PARA 986 post) by the person concerned does not prevent s 6D(1) (as added) having effect if the constable who imposed on him the requirement to provide the specimens has reasonable cause to believe that the device used to analyse the specimens has not produced a reliable indication of the proportion of alcohol in the breath of the person: s 6D(1A) (s 6D as added (see note 2 supra); and s 6D(1A) added by the Serious Organised Crime and Police Act 2005 s 154(1), (2)).

5 Road Traffic Act 1988 s 6D(2) (as added: see note 2 supra). As to the meaning of 'drug' see PARA 974 note 7 ante.

6 Ibid s 6D(2A) (added by the Serious Organised Crime and Police Act 2005 s 154(3)). The text refers to the requirement to provide specimens under the Road Traffic Act 1988 s 7 (as amended): see PARA 986 post.

7 'Hospital' means an institution which provides medical or surgical treatment for in-patients or out-patients: *ibid* s 11(1), (2) (s 11(1) amended by the Road Traffic Act 1991 s 48, Sch 4 para 44).

8 Road Traffic Act 1988 s 6D(3) (as added: see note 2 *supra*).

## **UPDATE**

### **963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(iii) Offences relating to Drink or Drugs/C. TESTING FOR DRINK AND DRUGS/984. Power of entry.

#### **984. Power of entry.**

A constable may enter any place (using reasonable force if necessary) for the purpose of: (1) imposing a requirement to co-operate with any one or more preliminary tests<sup>1</sup> following an accident<sup>2</sup> in a case where the constable reasonably suspects that the accident involved injury of any person; or (2) arresting a person<sup>3</sup> following an accident in a case where the constable reasonably suspects that the accident involved injury of any person<sup>4</sup>.

1 *Ie* by virtue of the Road Traffic Act 1988 s 6(5) (as substituted): see PARA 979 *ante*. For the meaning of 'preliminary test' see PARA 979 note 2 *ante*.

2 For the meaning of 'accident' see PARA 979 note 15 *ante*.

3 *Ie* under the Road Traffic Act 1988 s 6D (as added and amended): see PARA 983 *ante*.

4 *Ibid* s 6E(1) (added by the Railways and Transport Safety Act 2003 s 107, Sch 7 para 1).

## **UPDATE**

### **963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(iii) Offences relating to Drink or Drugs/C. TESTING FOR DRINK AND DRUGS/985. Failure to co-operate with preliminary test.

## 985. Failure to co-operate with preliminary test.

A person commits an offence if without reasonable excuse<sup>1</sup> he fails<sup>2</sup> to co-operate with a preliminary test<sup>3</sup> in pursuance of a requirement to do so<sup>4</sup> imposed on him<sup>5</sup>.

1 No excuse can be adjudged reasonable unless the person from whom the specimen is required is physically or mentally unable to provide it or the provision of the specimen would entail a substantial risk to his health: *R v Lennard* [1973] 2 All ER 831, [1973] 1 WLR 483, CA.

The following have been held not to provide a reasonable excuse: a mistaken view of the law (*R v Reid* [1973] QB 299, [1972] 2 All ER 1350, CA); an assertion that a relevant traffic offence had not been committed (*R v Downey* [1970] RTR 257, CA); a genuine but mistaken belief that a constable was not acting in good faith (*McGrath v Vipas* [1984] RTR 58, 148 JP 405, DC); constable mentioning an additional and inappropriate penalty as a consequence of refusal (*Bryant v Morris* [1972] RTR 214, DC).

The following have been held to provide a reasonable excuse: a bronchitic condition (*Hirst v Wilson* [1969] 3 All ER 1566, [1970] 1 WLR 47, DC); non-comprehension, though not where that arises from self-induced intoxication (*Spalding v Paine* [1985] Crim LR 673, DC; and see also *Beck v Sager* [1979] RTR 475, [1979] Crim LR 257, DC).

While the burden of proving the offence is on the prosecution, that burden will be discharged if the defence is unable to raise the question of excuse on the evidence given: *Mallovs v Harris* [1979] RTR 404, [1979] Crim LR 320, DC. See also *Parker v Smith* [1974] RTR 500, [1974] Crim LR 426, DC; *Dawes v Taylor* [1986] RTR 81, DC.

As to the meaning of 'reasonable excuse' in relation to evidential specimens see PARA 988 post.

2 As to the meaning of 'fail' see PARA 974 note 10 ante.

3 For the meaning of 'preliminary test' see PARA 979 note 2 ante. A person does not co-operate with a preliminary test or provide a specimen of breath for analysis unless his co-operation or the specimen: (1) is sufficient to enable the test or the analysis to be carried out; and (2) is provided in such a way as to enable the objective of the test or analysis to be satisfactorily achieved: Road Traffic Act 1988 s 11(1), (3) (s 11(1) amended by the Road Traffic Act 1991 s 48, Sch 4 para 44; and the Road Traffic Act 1988 s 11(3) amended by the Railways and Transport Safety Act 2003 s 107, Sch 7 para 5(b)). Head (2) supra was introduced by the Transport Act 1982 s 59 (repealed) and should be looked at separately from the interpretation to be put on head (1) supra: *DPP v Heywood* [1998] RTR 1 at 15, DC, per Buxton J. A person, therefore, fails to provide a specimen of breath for a roadside test where he blows into a breath testing device in such a way as to illuminate light 'A' but not light 'B', when the operation of the device is such that if the 'Read' button is passed a positive result might be given which, if given, would be reliable, but a negative result might be given which, if given, might be false: *DPP v Heywood* supra (not applying *Walker v Lovell* [1975] 3 All ER 107, [1975] RTR 377, HL). In *DPP v Heywood* supra it was held that the amendment made by the Transport Act 1982 not only reversed the effect of the decision in *Corp v Dalton* [1983] RTR 160, DC (question of fact and degree whether non-compliance with manufacturer's instruction and ensuing negative result amounted to failure to provide a specimen) but also reversed the effect of the decision in *Fawcett v Tebb* [1984] Crim LR 175, (1983) 148 JP 303, DC (facts very similar to *DPP v Heywood* supra). It is submitted that the amendment has also reversed the effect of the decision in *Walker v Lovell* supra (motorist failed to inflate the bag of the device fully, but since the device indicated a positive test he had not failed to supply a specimen).

4 In pursuance of a requirement imposed under the Road Traffic Act 1988 s 6 (as substituted).

5 Ibid s 6(6) (substituted by the Railways and Transport Safety Act 2003 s 107, Sch 7 para 1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale; disqualification is discretionary; endorsement is obligatory; and 4 penalty points may be attributed if, for special reasons, the offender is not ordered to be disqualified: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (amended by the Railways and Transport Safety Act 2003 Sch 7 para 8). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; as to special reasons for not imposing obligatory disqualification see PARA 1059 post; and as to legal proceedings generally see PARA 1023 et seq post.

## UPDATE

## 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(iii) Offences relating to Drink or Drugs/C. TESTING FOR DRINK AND DRUGS/986. Power to require specimens for analysis.

### **986. Power to require specimens for analysis.**

In the course of an investigation<sup>1</sup> into whether a person has committed an offence relating to drink or drugs<sup>2</sup> a constable<sup>3</sup> may require him<sup>4</sup>:

- 892 (1) to provide two specimens of breath<sup>5</sup> for analysis by means of a device of a type approved by the Secretary of State<sup>6</sup>; or
- 893 (2) to provide a specimen of blood<sup>7</sup> or urine for a laboratory test<sup>8</sup>.

Such a requirement to provide specimens of breath can only be made: (a) at a police station; (b) at a hospital; or (c) at or near a place where a relevant breath test<sup>9</sup> has been administered to the person concerned or would have been so administered but for his failure to co-operate with it<sup>10</sup>. A requirement to provide a specimen of blood or urine can only be made at a police station or at a hospital<sup>11</sup>; and it cannot be made at a police station unless:

- 894 (i) the constable making the requirement has reasonable cause to believe<sup>12</sup> that for medical reasons<sup>13</sup> a specimen of breath cannot be provided or should not be required<sup>14</sup>;
- 895 (ii) specimens of breath have not been provided elsewhere, and at the time the requirement is made<sup>15</sup> a device or a reliable device<sup>16</sup> of the type mentioned in head (1) above is not available<sup>17</sup> at the police station or it is then for any other reason not practicable<sup>18</sup> to use such a device there<sup>19</sup>;
- 896 (iii) a device of the type mentioned in head (1) above has been used (at the police station or elsewhere) but the constable who required the specimens of breath has reasonable cause to believe that the device has not produced a reliable indication of the proportion of alcohol in the breath of the person concerned<sup>20</sup>;
- 897 (iv) as a result of the administration of a preliminary drug test<sup>21</sup>, the constable making the requirement has reasonable cause to believe that the person required to provide a specimen of blood or urine has a drug in his body<sup>22</sup>; or
- 898 (v) the suspected offence is one of causing death by careless driving when under the influence of drink or drugs<sup>23</sup>, or driving or being in charge when under the influence of drink or drugs<sup>24</sup> and the constable making the requirement has been advised by a medical practitioner<sup>25</sup> that the condition of the person required to provide the specimen might be due to some drug<sup>26</sup>,

but it may then be made notwithstanding that the person required to provide the specimen has already provided or been required to provide two specimens of breath<sup>27</sup>.

If the provision of a specimen other than a specimen of breath may be required in pursuance of this provision the question whether it is to be a specimen of blood or a specimen of urine and,

in the case of a specimen of blood, the question who is to be asked to take it, is to be decided<sup>28</sup> by the constable making the requirement<sup>29</sup>. However, where a constable decides for these purposes to require the provision of a specimen of blood, there is no requirement to provide such a specimen if the medical practitioner who is asked to take the specimen is of the opinion<sup>30</sup> that, for medical reasons, it cannot or should not be taken, or the registered health care professional who is asked to take it is of that opinion and there is no contrary opinion from a medical practitioner; and, where by virtue of this provision there can be no requirement to provide a specimen of blood, the constable may require a specimen of urine instead<sup>31</sup>. A specimen of urine must be provided within one hour of the requirement for its provision being made and after the provision of a previous specimen of urine<sup>32</sup>.

Of any two<sup>33</sup> specimens of breath provided by any person<sup>34</sup> that with the lower proportion of alcohol in the breath must be used and the other must be disregarded<sup>35</sup>. If the specimen with the lower proportion of alcohol contains no more than the specified amount<sup>36</sup>, the person who provided it may claim<sup>37</sup> that it should be replaced by such specimen of blood or urine, and if he then provides such a specimen neither specimen of breath is to be used<sup>38</sup>. If the person who makes such a claim was required to provide specimens of breath at or near a place mentioned in head (c) above, a constable may arrest him without warrant<sup>39</sup>.

1 The word 'investigation' bears its ordinary plain meaning, namely 'inquiring into': *Graham v Albert* [1985] RTR 352, DC. See also *Pearson v Metropolitan Police Comr* [1988] RTR 276, DC (a constable, who reasonably suspected that one of three men drove a car on the road and that they had consumed alcohol, was acting 'in the course of an investigation' when he required each to provide a specimen of breath for analysis).

2 le under the Road Traffic Act 1988 s 3A (as added) (see PARA 974 ante), s 4 (as amended) (see PARA 975 ante) or s 5 (see PARA 978 ante). As to the meaning of 'drug' see PARA 974 note 7 ante.

3 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

4 Road Traffic Act 1988 s 7(1) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 42). This is expressed to be subject to the Road Traffic Act 1988 s 7(2)-(7) (as amended) (see the text and notes 9-32 infra; and PARA 988 post) and s 9 (as amended) (see PARA 989 post). As to the disapplication of the Road Traffic Act 1988 s 7 (as amended) and s 8 (as amended) in relation to vehicles on any transport system to which the Transport and Works Act 1992 Pt II Ch I (ss 26-40) (as amended) (offences involving drink or drugs on railways, tramways and certain other guided transport systems: see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 377 et seq) applies see PARA 975 note 7 ante.

5 As to the provision of a specimen of breath see PARA 985 note 3 ante.

6 Road Traffic Act 1988 s 7(1)(a). As to the approval of breath devices by the Secretary of State see PARA 980 note 1 ante. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

Where the two specimens of breath provided pursuant to the Road Traffic Act 1988 s 7(1)(a) are unreliable, a further two specimens may be requested: *Stewart v DPP* [2003] EWHC 1323 (Admin), [2003] RTR 529, DC.

7 A person provides a specimen of blood if and only if: (1) he consents to the taking of such a specimen from him; and (2) the specimen is taken from him by a medical practitioner or, if it is taken in a police station, either by a medical practitioner or by a registered health care professional: Road Traffic Act 1988 s 11(1), (4) (s 11(1) amended by the Road Traffic Act 1991 Sch 4 para 44; and the Road Traffic Act 1988 s 11(4) substituted by the Police Reform Act 2002 s 55(5)). 'Registered health care professional' means a person (other than a medical practitioner) who is: (a) a registered nurse; or (b) a registered member of a health care profession which is designated for these purposes by an order made by the Secretary of State: Road Traffic Act 1988 s 11(2) (definition added by the Police Reform Act 2002 s 55(3)). A health care profession is any profession mentioned in the Health Act 1999 s 60(2) other than the profession of practising medicine and the profession of nursing: Road Traffic Act 1988 s 11(2A) (added by the Police Reform Act 2002 s 55(4)). See MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 291. An order under the Road Traffic Act 1988 s 11(2) (as amended) must be made by statutory instrument; and any such statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament: s 11(2B) (added by the Police Reform Act 2002 s 55(4)). The profession of paramedics has been designated as a health care profession for the purposes of the Road Traffic Act 1988 s 11(2) (as amended): Registered Health Care Profession (Designation No 2) Order, SI 2003/2462.

As to specimens of blood taken from persons incapable of consenting see PARA 987 post.

8 Road Traffic Act 1988 s 7(1)(b).

9 For the purposes of *ibid* s 7 (as amended), 'a relevant breath test' is a procedure involving the provision by the person concerned of a specimen of breath to be used for the purpose of obtaining an indication whether the proportion of alcohol in his breath or blood is likely to exceed the prescribed limit: s 7(2A) (s 7(2A)-(2D) added by the Serious Organised Crime and Police Act 2005 s 154(4), (5)). A requirement to provide specimens of breath under the Road Traffic Act 1988 s 7 (as amended) may not be made at or near a place mentioned in head (c) in the text unless the constable making it: (1) is in uniform (see PARA 979 note 3 ante); or (2) has imposed a requirement on the person concerned to co-operate with a relevant breath test in circumstances in which s 6(5) (as substituted) (see PARA 979 head (4) ante) applies: s 7(2B) (as so added). Where a constable has imposed a requirement on the person concerned to co-operate with a relevant breath test at any place, he is entitled to remain at or near that place in order to impose on him there a requirement under s 7 (as amended): s 7(2C) (as so added). If a requirement under s 7(1)(a) (see head (1) in the text) to provide specimens of breath has been made at a place other than at a police station, such a requirement may subsequently be made at a police station if (but only if): (a) a device or a reliable device of the type mentioned in s 7(1)(a) was not available at that place or it was for any other reason not practicable to use such a device there; or (b) the constable who made the previous requirement has reasonable cause to believe that the device used there has not produced a reliable indication of the proportion of alcohol in the breath of the person concerned: s 7(2D) (as so added).

10 *Ibid* s 7(2) (substituted by the Serious Organised Crime and Police Act 2005 s 154(5)). It appears that the requirement to provide a specimen does not have to be made at the police station at which the specimen is actually provided: see *Pascoe v Nicholson* [1981] 2 All ER 769, [1981] 1 WLR 1061, HL. The requirement is not unlawful simply because the defendant's arrest was unlawful: *Hartland v Alden* [1987] RTR 253, DC. See also *DPP v Porter* (15 February 2000) Lexis, DC (no need to prove the defendant was lawfully detained at the police station when the intoximeter procedure was carried out).

11 For the meaning of 'hospital' see PARA 983 note 7 ante. Although the requirement to provide a specimen of blood must be made at a police station or a hospital, the specimen may be taken elsewhere: *Russell (RUC Superintendent) v Devine* [2003] UKHL 24, [2003] 1 WLR 1187.

12 As to the meaning of 'reasonable cause to believe' see PARA 979 note 17 ante. What is or is not 'reasonable cause to believe' is a question of fact to be objectively determined by justices; and if there is objectively determined as a matter of fact a reasonable cause to believe, it is immaterial whether the police constable actually believes, is dubious, sceptical, or disbelieves: *Davis v DPP* [1988] RTR 156 at 162, [1988] Crim LR 249 at 250, DC, per Mann J.

13 The decision is for the constable to make as a layman: see *Dempsey v Catton* [1986] RTR 194; and see also *Davies v DPP* [1989] RTR 391, [1990] Crim LR 60, DC. Intoxication may constitute a medical reason for this purpose: *Young v DPP* [1992] RTR 328, [1992] Crim LR 893, DC. Where an offender says that he takes tablets, that is capable of being a medical reason and should be considered by the constable before requiring a specimen of blood: *Wade v DPP* [1996] RTR 177, (1995) 159 JP 555, DC. Medical advice is required only if a constable is in doubt whether there is a medical reason for not providing a breath specimen: *Steadman v DPP* [2002] EWHC 810 (Admin), [2003] RTC 10, DC (distinguishing *Wade v DPP* supra).

14 Road Traffic Act 1988 s 7(3)(a).

15 The words 'at the time the requirement is made' refer to the requirement to provide blood or urine; therefore, if before completing its analysis the device indicates that it is operating at a temperature which prevents satisfactory analysis, a constable may then require a specimen of blood: *Cotter v Kamil* [1984] RTR 371, DC. See also *Chief Constable of Kent v Berry* [1986] RTR 321, DC (device malfunctioned during test; specimen of blood required and defendant transferred to another police station, where an approved device was available, for blood to be taken; but the operative time was when the defendant was at the first police station); *Oxford v Baxendale* [1987] RTR 247, [1986] Crim LR 631, DC (device found to be unreliable 100 minutes after breath provided; specimen of blood required; justices entitled to conclude, in the absence of further evidence, that the device was unreliable at the time of the requirement to provide a specimen of blood).

16 A device that is not capable of producing the correct date on its print-out has been held to be unreliable: *Slender v Boothby* [1986] RTR 385n, 149 JP 405, DC. However, it has been held that since a constable was in a position to give oral evidence of the readings and of the results of the self-calibration checks, he was not entitled to require a specimen of blood where no print-out had been produced due to the paper becoming entangled within the machine: *Morgan v Lee* [1985] RTR 409, [1985] Crim LR 515, DC (distinguished in *Haghigat-Khon v Chambers* [1988] RTR 95n, [1987] Crim LR 340, DC, where the fault in the print-out mechanism was known at the outset and entitled the constable to require blood without any breath specimens being required or given). In *Fawcett v Gasparics* [1986] RTR 375, DC, the view was expressed that, having regard to their apparent inconsistency, the decisions in *Slender v Boothby* supra and *Morgan v Lee* supra might need to be reconsidered in an appropriate case; and that in testing reliability for the purposes of what is now the Road Traffic Act 1988 s 7(3)(b) (as amended) the court could look to what is now the Road Traffic Offenders Act 1988 s 16 (as amended) (see PARA 991 post), but in an attack upon the admissibility of the print-out the court

was not in the same way concerned with the reliability of the machine as it was in connection with the Road Traffic Act 1988 s 7(3)(b).

The question of whether a device is 'reliable' must be viewed through the eyes of the constable making the requirement for a specimen of blood or urine, and the words 'reliable device' mean 'a device which he (the constable) reasonably believes to be reliable': *Thompson v Thynne* [1986] RTR 293, [1986] Crim LR 629. There must, however, be material on which the constable can reasonably come to the conclusion that a 'reliable device' is not available: *Stokes v Sayers* [1988] RTR 89, DC. See also *DPP v Dixon* [1993] RTR 22, DC.

The insertion of the Road Traffic Offenders Act 1988 s 7(3)(bb) (see the text and note 20 infra) supports, and is not inconsistent with, the courts' interpretation of s 7(3)(b) (see the text and note 19 infra) and the test under s 7(3)(b) (as amended) remains a belief based upon reasonable grounds, although that belief may in the event be wrong: *Kneale v DPP* (15 May 2000) Lexis, DC (requirements of the Road Traffic Offenders Act 1988 s 7(3)(b) satisfied where the intoximeter clock was inaccurate by one-and-a-half minutes and the operator followed the written advice of a superior officer that in those circumstances an alternative method of testing a suspect's alcohol level should be used, even though she knew that the manufacturer's handbook suggested a tolerance of four minutes).

Where a constable mistakenly thought that the device had not been properly calibrated and required the defendant to provide a specimen of blood, and the defendant failed to comply, and it was subsequently accepted that the device was reliable, the evidence of the breath specimen was admissible even if the constable reasonably believed that the device was unreliable when he required the specimen of blood (and, thus, it had been a lawful requirement): *Hague v DPP* [1997] RTR 146, DC. However, if blood is provided and analysed, any prosecution thereafter can only be based on the analysis of the blood: *Badkin v DPP* [1988] RTR 401, DC; followed in *McLellan v DPP* [1993] RTR 401, DC. However, evidence of a previous breath test result may properly be admitted if there is some relevant and clearly identified purpose for adducing it and subject to the discretion of the court: *Slasor v DPP* [1999] RTR 432, DC (driver raised the issue of possible contamination of the blood sample and the prosecution obtained leave to adduce evidence of the breath test result to show that the reading was compatible with the blood test analysis).

17 There must be proof that a device was not available; a statement by a constable to a defendant that a device was not available, the constable having been so informed by the station sergeant, without evidence being called as to whether or not that was true, proves nothing without some response from the defendant which indicated that he accepted it as being true or was not prepared to contradict it: *Dye v Manns* [1987] RTR 90, [1986] Crim LR 337, DC. Where, however, a constable informed a defendant at the police station that no device was available, and he gives evidence at the trial that he so informed the defendant, that evidence inherently includes evidence that no device was available: *Tobi v Nicholas* [1988] RTR 343 at 351, DC, per Glidewell LJ (see, however, at 358 per McNeill J, explaining this decision not to be a ruling of law on the point but a decision purely on the facts). Where a device failed to operate and the constable informed the defendant that an alternative specimen of blood or urine would be required, the justices, though they may not use their own knowledge gained from other cases that only one device was installed at that police station, are bound to draw the inference that no approved device was available: *Jarvis v DPP* [1996] RTR 192, DC.

If a device becomes unreliable, and therefore unavailable, before completion of its analysis of two specimens of breath, the constable is not confined to requiring a specimen of blood or urine and may require the motorist to provide two further specimens for analysis by another machine of the same type: *Denny v DPP* [1990] RTR 417, DC. Two valid specimens of breath are not provided unless the motorist has blown properly into the device, the device is working properly so as to receive and analyse properly those specimens and to record truly the result: *Denny v DPP* supra at 423 per Watkins LJ.

18 If there is no police officer at the police station trained in the use of the device it is not practicable to use it and it is not practicable to telephone other police stations to ascertain whether they have a suitably qualified operator to come and operate the device: *Chief Constable of Avon and Somerset v Kelliher* [1987] RTR 305, [1986] Crim LR 635, DC. The fact that a constable has difficulty deciding whether the requirements of the Road Traffic Act 1988 s 7(3)(a) are satisfied does not mean that it is not practicable to use a device available at the police station: *Horrocks v Binns* [1986] RTR 202n, DC.

19 Road Traffic Act 1988 s 7(3)(b) (amended by the Serious Organised Crime and Police Act 2005 s 154(6)(a)).

20 Road Traffic Act 1988 s 7(3)(bb) (added by the Criminal Procedure and Investigations Act 1996 s 63(1); and amended by the Serious Organised Crime and Police Act 2005 s 154(6)(b)). This provision was added as a result of the development of new technology in devices that can detect and record in specimens substances that interfere with breath-test results. An operator had reasonable cause as required by the Road Traffic Offenders Act 1988 s 7(3)(bb) (as added and amended) where the higher and lower readings relating to the specimens provided by the defendant were, respectively, 43 and 33 microgram's (a 'blow difference' of 30.3%), and he followed written advice that, with an old generation (intoximeter) device, where there was a difference exceeding 20% the conclusion might be that the machine, though it might be operating correctly, had not produced a reliable indication: *DPP v Smith* [2000] RTR 341, DC. As to the reliability of devices generally see note 16 supra.



- 21 For the meaning of 'preliminary drugs test' see PARA 982 ante.
- 22 Road Traffic Act 1988 s 7(3)(bc) (added by the Railways and Transport Safety Act 2003 s 107, Sch 7 para 2).
- 23 Is an offence under the Road Traffic Act 1988 s 3A (as added): see PARA 974 ante.
- 24 Is an offence under *ibid* s 4 (as amended): see PARA 975 ante.
- 25 There should be a clear oral indication by the doctor to the police officer of the doctor's view found by him at the police station about the possible cause of the motorist's condition; in the absence of such an indication by the doctor of his view that the defendant's condition was due to either drugs or epilepsy, the justices are not entitled to infer from the defendant's behaviour that his condition was due to drugs: *Cole v DPP* [1988] RTR 224, DC.
- 26 Road Traffic Act 1988 s 7(3)(c) (amended by the Road Traffic Act 1991 Sch 4 para 42).
- 27 Road Traffic Act 1988 s 7(3). See *Jubb v DPP* [2002] EWHC 2317 (Admin), [2003] RTR 272.
- 28 Is subject to the Road Traffic Act 1988 s 7(4A) (as added): see the text and note 31 *infra*.
- 29 *Ibid* s 7(4) (amended by the Police Reform Act 2002 s 55(1)).

The Road Traffic Act 1988 s 7(4) (as amended) also applies to cases where there is a proposal to require a specimen of blood or urine at a hospital: *Butler v DPP* [2001] RTR 430, DC (police officer had duty to inform hospital doctor of driver's statement at police station that he was suffering from medical condition). As to the exercise of the police officer's discretion see *Joseph v DPP* [2004] EWHC 3078 (Admin), [2004] RTR 341, DC.

The constable is not required to invite the motorist to express any preference as to the type of specimen to be given: *DPP v Warren* [1993] AC 319, [1992] 4 All ER 865, HL. However, where the driver makes a representation in answer to the question about whether a specimen of blood or a specimen of urine should be taken, the constable must consider whether the statement proffered is capable in principle of being a valid medical reason and, if it is so capable, he must not usurp the functions of the medical practitioner under the Road Traffic Act 1988 s 7(4) (as amended) by holding that it is not valid: *Johnson v West Yorkshire Metropolitan Police* [1986] RTR 167, DC; followed in *R v Epping Justices, ex p Quyy* [1998] RTR 158n, [1993] Crim LR 970, DC (although in that case it was held that if the driver claimed he was afraid of needles that did not necessarily mean that a doctor had to be called; the driver had not given a reason for his fear and if the officer had questioned him about his reasons it might have been established that the fear was unfounded). See also *DPP v Wythe* [1996] RTR 137, DC; *Wade v DPP* [1996] RTR 177, (1995) 159 JP 555, DC.

The officer is entitled to change his mind as to the type of specimen to be required, and that right continues up to the time that the specimen is taken: *DPP v Garrett* [1995] RTR 302, 159 JP 561, DC. See also *Barnes v Chief Constable of Durham* [1997] 2 Cr App Rep 505, DC (constable entitled to require specimen of urine after motorist refused to provide specimen of blood). An invalid but unproductive request for a specimen of blood does not render inadmissible evidence of the analysis of a subsequently correctly taken specimen of urine: *DPP v Garrett* *supra*.

In *DPP v Warren* *supra* guidance was given that the constable should: (1) tell the motorist why specimens of breath cannot be taken or used; (2) tell him that in these circumstances he is required to give a specimen of blood or urine, but that it is for the constable to decide which; (3) warn him that a failure to provide the specimen required may render him liable to prosecution; and (4) if blood is required, ask him if there are any reasons why a specimen cannot or should not be taken from him by a doctor. As to the application of these guidelines see *Edge v DPP* [1993] RTR 146, DC; *Meade v DPP* [1993] RTR 151, DC (strict compliance with guidelines required); cf *Hayes v DPP* [1994] RTR 163, DC; *Baldwin v DPP* [1996] RTR 238, DC (guidance not to be treated or analysed as if it were statutory). The latter view was preferred in *DPP v Jackson* [1999] 1 AC 406, [1998] 3 All ER 769, HL, in which it was held that only the requirements in heads (1) and (3) *supra* were mandatory in a case under the Road Traffic Act 1988 s 7(3) (as amended), so that non-compliance should lead to an acquittal; the guidelines should continue to be used for the non-mandatory requirements, but failure to bring those matters to the attention of the driver should result in an acquittal only if he suffered prejudice as a consequence and the justices should not acquit the driver on that ground without having heard evidence from the driver raising the issue that he had suffered prejudice. It was further held in *DPP v Jackson* *supra* that neither the statutory provisions nor considerations of fairness required a police officer to ask the driver if there were any non-medical reasons why a specimen of blood could not or should not be taken; and that the matters set out in the guidelines relating to the role of the doctor should be explained to the driver at the outset before he has to make the decision to give blood (overruling, on this point, *Fraser v DPP* [1997] RTR 373, DC; *DPP v Donnelly* [1998] RTR 188, DC). The information as to why specimens of breath cannot be taken or used (see head (1) *supra*) need not come from the officer making the request for the sample of blood or urine; it can be supplied by some other officer: *Bobin v DPP* [1999] RTR 375 at 385, DC, per Smedley J.

In hospital cases, it is not necessary for the police officer to ask a separate or separately phrased 'medical question'; it is sufficient if the driver is asked simply whether there is any reason why the specimen of blood should not be taken from him: *R v Burton-upon-Trent Justices, ex p Woolley* [1995] RTR 139, 159 JP 165, DC.

30 Whether that opinion is right or wrong is irrelevant, but if a medical reason for not giving blood is irrationally rejected and the driver is required to give blood and refuses, he can then only be prosecuted under the Road Traffic Act 1988 s 7(6) (see PARA 988 post) and if he raises the medical issue as a reasonable excuse the prosecution will have to prove that the excuse was not reasonable; alternatively, in any case where the driver has been deprived of his claim under s 8(2) (see the text and notes 36-38 infra) by not being permitted to replace the breath specimen by urine because of a police officer acting on an irrational medical opinion it would be open to the driver to rely on the Police and Criminal Evidence Act 1984 s 78 (as amended) (exclusion of unfair evidence: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1365), and if he establishes that the doctor's opinion is seriously wrong it will be difficult for the court to refuse to exclude the breath-analysis evidence: *Andrews v DPP* [1992] RTR 1, DC.

31 Road Traffic Act 1988 s 7(4A) (added by the Police Reform Act 2002 s 55(2)).

32 Road Traffic Act 1988 s 7(5). It has been held that nothing in the previous legislation (ie the Road Traffic Act 1972) required either specimen to be of any particular quantity and it was, therefore, unnecessary for the driver to empty his bladder when providing the first specimen: *R v Radcliffe* [1977] RTR 99, CA. The purpose of the one hour limit is to provide the driver with a full and generous opportunity to provide the sample, and if the specimen of urine is provided outside that limit evidence of the proportion of alcohol in it will not thereby be rendered inadmissible: *Roney v Matthews* [1975] RTR 273, 61 Cr App Rep 195, DC (followed in *DPP v Baldwin* [2000] RTR 314, DC). Where the provision of urine was interrupted only momentarily by the initial specimen being discarded and the sample bottle being rinsed and immediately returned to the driver with a direction to continue urinating, and he did so and the entire procedure took no more than two minutes, the justices were entitled to conclude that there was only one specimen of urine: *Prosser v Dickeson* [1982] RTR 96, DC. See, however, *Over v Musker* [1985] RTR 84, DC (two samples provided in one-and-a-half minutes, the driver having adjusted his clothing and sat down in between; held that two specimens had been given). The specimen must be of sufficient quantity to be divided into two parts and for each part to be capable of analysis: *R v Coward* [1976] RTR 425, 63 Cr App Rep 54, CA. Once the driver has supplied a second specimen he has fulfilled his obligations and cannot be required to provide a third: *R v Hyams* [1972] 3 All ER 651, [1973] RTR 68, CA (police officer wrongly thought that the second specimen was of insufficient quantity, after being divided, to be capable of analysis). See also *Beck v Watson* [1980] RTR 90, [1979] Crim LR 533, DC; *Gabrielson v Richards* [1976] RTR 223, [1976] Crim LR 722. However, the specimen sent for analysis may be the third or even a later specimen, provided that it was supplied after the provision of a previous specimen and within an hour of the request for a specimen of urine for the purposes of the legislation: *Nugent v Ridley* [1987] RTR 412, DC.

33 Where the print-out shows identical readings for the each of the two specimens both are admissible in evidence: *R v Brentford Magistrates' Court, ex p Clarke* [1987] RTR 205, [1986] Crim LR 633.

34 Ie in pursuance of the Road Traffic Act 1988 s 7 (as amended): see the text and notes 1-32 supra; and PARA 988 post.

35 Ibid s 8(1). This is expressed to be subject to s 8(2): see the text and note 38 infra. See also note 4 supra.

36 Ie 50 micrograms of alcohol in 100 millilitres of breath: see ibid s 8(2). The Secretary of State may by regulations substitute another proportion of alcohol in the breath for that specified in s 8(2) (see the text and note 38 infra): s 8(3). At the date at which this volume states the law no such regulations had been made.

37 As to the information required to be given to the driver see note 29 supra. The guidelines in such a case to tell the driver why specimens of breath cannot be taken or used, and to warn him that failure to provide the specimen required may render him liable to prosecution, are inapplicable in a case under ibid s 8(2) (see the text and note 38 infra). Instead, the police officer: (1) should inform the driver of the nature of the option open to him and what will be involved if he exercises it; (2) must inform the driver that the specimen of breath which he has given containing the lower proportion of alcohol does not exceed 50 micrograms of alcohol in 100 millilitres of breath; (3) should inform the driver that in these circumstances he is entitled to claim to have this specimen replaced by a specimen of blood or urine if he wishes, but that, if he does so, it will be for the officer to decide whether the replacement specimen is to be of blood or urine and that if the officer requires a specimen of blood it will be taken by a doctor unless the doctor considers that there are medical reasons for not taking blood, in which case urine may be given instead; and (4) should ask the driver if there are any medical reasons why a specimen cannot or should not be taken from him by a doctor: *DPP v Jackson* [1999] 1 AC 406, [1998] 3 All ER 769, HL. If the officer complies with the mandatory requirement (see head (2) supra), but not the non-mandatory requirements (see heads (1), (3) and (4) supra), the issue for the justices to decide is whether that failure deprived the driver of the opportunity to exercise the option, or caused him to exercise it in a way which he would not have done if everything had been said; if the answer is in the affirmative then the driver should be acquitted, but if the answer is in the negative the failure by the police officer to use the full formula should not be a reason for an acquittal: *DPP v Jackson* supra. As failure to comply with the non-

mandatory requirements is directed to the question whether the driver has suffered prejudice, only in exceptional cases should the justices acquit without have heard evidence from the driver himself raising the issue that he had suffered prejudice, but if, having heard that evidence, the justices are left with a reasonable doubt as to whether or not the driver was prejudiced they should acquit: *DPP v Jackson* supra. For an example of a case of lack of prejudice where the officer failed to comply with the non-mandatory requirement in head (4) supra see *DPP v Orchard* [2000] All ER (D) 1457.

The prosecution does not have to prove that the breath-testing device was working properly when the defendant was put to his election under the Road Traffic Offenders Act 1988 s 8(2) (see the text and note 38 infra): *Branagan v DPP* [2000] RTR 235, DC.

It has been held that it did not destroy the driver's choice where the driver asked the officer whether provision of blood would make any difference and the officer replied 'Probably not': *Sharp v Spencer* [1987] Crim LR 420, DC.

As to medical reasons for not providing blood see note 30 supra. If a driver gives unconditional consent to a blood specimen being taken, but despite that the doctor declines to take a blood specimen, the justices must come to the conclusion that the procedures laid down by the Road Traffic Act 1988 s 8 (as amended) have not been carried out; but the onus is on the driver to establish to the doctor that he is consenting to a blood sample being taken and if he so behaves that the doctor is left with the impression that he is not consenting he cannot complain if the doctor does not proceed with the taking of that sample: *Rawlins v Brown* [1987] RTR 238, DC.

Whether the driver's rejection of the opportunity to claim replacement of the breath specimen has ended the statutory procedure under the Road Traffic Act 1988 s 8(2) is for the justices to decide: *Smith v DPP* [1989] RTR 159, DC (where the driver rejected the opportunity to provide blood, but changed his mind 63 minutes later and blood was taken from him; the conviction (based on the breath specimen) was upheld on the ground that the justices were entitled to decide that the statutory procedure ended when the defendant firmly rejected the option to provide blood). Where a driver exercises his right under the Road Traffic Act 1988 s 8(2) and states he is willing to provide blood, but he thereafter resiles from that, he must take the consequences, namely that the prosecution will be able to rely on the breath analysis; but whether (and with what effect) a driver has changed his mind as to whether he would provide a sample of any kind are matters that should be unequivocally resolved by the court: *Hope v DPP* [1992] RTR 305, DC.

The obligation under the Road Traffic Act 1988 s 7(7) to warn a driver that a failure to provide a specimen may render him liable to prosecution (see PARA 988 post) arises only when he can be required under s 7 (as amended) to provide a specimen and it does not apply to the procedure under s 8(2) where there is nothing to prevent a driver from changing his mind and allowing the specimen of breath to be used: *Hayes v DPP* [1994] RTR 163, DC.

A police officer is under a legal duty to take all reasonable steps to explain the driver's options; but if, by reason of his own acts, the driver frustrates the performance of that duty, he is not entitled to be acquitted: *DPP v Poole* [1992] RTR 177, DC. The prosecution must prove, however, that the statutory procedure was followed: *Rush v DPP* [1994] RTR 268, DC. Inability to comprehend the offer made to replace the breath specimen with a specimen of blood or urine will not entitle the driver to complain that he has been denied his rights if his consumption of alcohol contributed to that inability: *DPP v Berry* (1995) 160 JP 707. A driver is not entitled to legal advice before deciding whether to exercise this right: *DPP v Ward* [1999] RTR 11, (1997) 162 JP 162, DC.

38 Road Traffic Act 1988 s 8(2). This is mandatory and the use of the breath specimen is precluded even if the blood specimen is lost or is otherwise unusable (*Archbold v Jones* [1986] RTR 178, [1985] Crim LR 740, DC) or the blood specimen is inadmissible (*Wakely v Hyams* [1987] RTR 49, [1987] Crim LR 342, DC (distinguished in *DPP v Winstanley* [1993] RTR 222, 158 JP 1062, DC)). Evidence of the breath readings may not be taken into account by the justices in deciding which blood sample reading, the prosecutor's or the driver's, should be preferred; but such evidence may be admitted to establish that the proper procedure was followed and, consequently, the prosecution's right to rely on the blood sample: *Yhnell v DPP* [1989] RTR 250, (1988) 153 JP 364, DC.

Where a driver requested a replacement specimen, the officer decided it would be blood, no doctor was available to take blood and the officer changed his mind and asked for a specimen of urine instead, and the driver was then unable to provide a urine sample, the specimen of breath remained available for use: *DPP v Winstanley* supra.

39 Road Traffic Act 1988 s 8(2A) (added by the Serious Organised Crime and Police Act 2005 s 154(7)).

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

## **986 Power to require specimens for analysis**

NOTES 16-18--Where a police constable requests a urine sample from an arrested person, he is required to demonstrate a subjective belief that the breath-testing intoxilyser machine at the police station is either not reliable or not available: *Kelsey v DPP* [2008] All ER (D) 66 (Jan), DC.

NOTE 26--See *Angel v Chief Constable of South Yorkshire* [2010] EWHC 883 (Admin), [2010] All ER (D) 165 (Apr) (condition at time of driving was condition for which specimen of blood would be relevant not condition later at police station).

NOTE 37--See also *Persaud v DPP* [2010] EWHC 52 (Admin), [2010] All ER (D) 120 (Jan), DC.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(iii) Offences relating to Drink or Drugs/C. TESTING FOR DRINK AND DRUGS/987. Specimens of blood taken from persons incapable of consenting.

## **987. Specimens of blood taken from persons incapable of consenting.**

A constable<sup>1</sup> may make a request to a medical practitioner for him to take a specimen of blood from a person ('the person concerned') irrespective of whether that person consents if: (1) that person is a person from whom the constable would, in the absence of any incapacity of that person and of any objection<sup>2</sup>, be entitled<sup>3</sup> to require the provision of a specimen of blood for a laboratory test; (2) it appears to that constable that that person has been involved in an accident<sup>4</sup> that constitutes or is comprised in the matter that is under investigation or the circumstances of that matter; (3) it appears to that constable that that person is or may be incapable, whether or not he has purported to do so, of giving a valid consent to the taking of a specimen of blood; and (4) it appears to that constable that that person's incapacity is attributable to medical reasons<sup>5</sup>.

A request under the above provision must not be made to a medical practitioner who for the time being has any responsibility, apart from the request, for the clinical care of the person concerned, and must not be made to a medical practitioner other than a police medical practitioner<sup>6</sup> unless it is not reasonably practicable for the request to be made to a police medical practitioner, or it is not reasonably practicable for such a medical practitioner, assuming him to be willing to do so, to take the specimen<sup>7</sup>. It is lawful for a medical practitioner to whom such a request is made, if he thinks fit, to take a specimen of blood from the person concerned irrespective of whether that person consents, and to provide the sample to a constable<sup>8</sup>.

If a specimen is taken in pursuance of a request, the specimen must not be subjected to a laboratory test unless the person from whom it was taken has been informed that it was taken, has been required by a constable to give his permission for a laboratory test of the specimen, and has given his permission<sup>9</sup>. On requiring a person to give his permission, a constable must warn that person that a failure to give the permission may render him liable to prosecution<sup>10</sup>. A person who, without reasonable excuse, fails to give his permission for a laboratory test of a specimen of blood taken from him under the above provisions is guilty of an offence<sup>11</sup>.

- 1 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.
- 2 le under the Road Traffic Act 1988 s 9: see PARA 989 post.
- 3 le under ibid s 7 (as amended): see PARA 986 ante.
- 4 For the meaning of 'accident' see PARA 979 note 15 ante.
- 5 Road Traffic Act 1988 s 7A(1) (s 7A added by the Police Reform Act 2002 s 56(1)).
- 6 For these purposes, 'police medical practitioner' means a medical practitioner who is engaged under any agreement to provide medical services for purposes connected with the activities of a police force: Road Traffic Act 1988 s 7A(7) (as added: see note 5 supra).
- 7 Ibid s 7A(2) (as added: see note 5 supra).
- 8 Ibid s 7A(3) (as added: see note 5 supra).
- 9 Ibid s 7A(4) (as added: see note 5 supra).
- 10 Ibid s 7A(5) (as added: see note 5 supra).
- 11 Ibid s 7A(6) (as added: see note 5 supra). A person guilty of an offence under s 7A(6) (as added) is liable on summary conviction: (1) where the test would be for ascertaining ability to drive or the proportion of alcohol at the time the offender was driving or attempting to drive, to a term of imprisonment not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both; and (2) in any other case, to a term of imprisonment not exceeding three months or to a fine not exceeding level 4 on the standard scale or to both; disqualification is obligatory in a case mentioned in head (1) supra, and discretionary in any other case; endorsement is obligatory; and 3-11 penalty points may be attributed in a case mentioned in head (1) supra, or 10 in any other case: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry added by the Police Reform Act 2002 s 56(5)). As from a day to be appointed, this provision is amended so as to refer to '51 weeks' instead of 'three months': see the Road Traffic Offenders Act 1988 Sch 2 Pt I (entry as so added; and prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 38(1), (5)). At the date at which this volume states the law no such day had been appointed. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; as to special reasons for not imposing obligatory disqualification see PARA 1059 post; and as to legal proceedings generally see PARA 1023 et seq post.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(iii) Offences relating to Drink or Drugs/C. TESTING FOR DRINK AND DRUGS/988. Failure to provide specimen.

#### 988. Failure to provide specimen.

A person who, without reasonable excuse<sup>1</sup>, fails<sup>2</sup> to provide a specimen when required to do so<sup>3</sup> is guilty of an offence<sup>4</sup>.

A constable must, on requiring any person to provide a specimen<sup>5</sup>, warn him that a failure to provide it may render him liable to prosecution<sup>6</sup>.

1 See generally para 985 note 1 ante. The finding of physical or mental inability is a finding which is achievable only on evidence, which will, in almost all imaginable cases, be evidence of a medical character: *DPP v Ambrose* [1992] RTR 285, DC. See also *Smith (Nicholas) v DPP* [1992] RTR 413n, DC; *DPP v Brodzky* [1997] RTR 425n, DC. Such a finding should not be made on an assumptive basis and the justices should not embark on an investigation of their own: *DPP v Ambrose* supra. See also *DPP v Radford* [1995] RTR 86, DC. However, evidence of physical or mental inability or risk to health does not necessarily have to come from a medical practitioner and can come from other sources, even the defendant himself: *Grady v Pollard* [1988] RTR 316, DC; *DPP v Pearman* [1992] RTR 407; *DPP v Crofton* [1994] RTR 279, DC. However, simple evidence that the defendant had tried as hard as he could to provide the specimen of breath did not of itself provide, even if accepted, a reasonable excuse for the failure to provide the specimen: *Grady v Pollard* supra. See also *DPP v Eddowes* [1991] RTR 35, DC (defendant was in his mid thirties with what was described as a good pair of lungs and there was nothing to suggest that he was upset or distraught in any way; held that the justices were wrong to assume he was under some stress as a consequence of being involved in a road traffic accident and were not entitled to find that the defendant had a reasonable excuse). In *Cotgrove v Cooney* [1987] RTR 124, DC, it was held that the justices were entitled to conclude the defendant had a reasonable excuse where they found as fact that the driver was co-operative and tried as hard as he could to provide a specimen; *Cotgrove v Cooney* supra was, however, disapproved in *DPP v Eddowes* supra, and there are many cases establishing that 'doing one's best' does not suffice to avoid a conviction unless supported by evidence that at the relevant time the driver was suffering from some physical or mental inability to provide a specimen: see eg *Grady v Pollard* supra; *Anderton v Waring* [1986] RTR 74, DC; *Dawes v Taylor* [1986] RTR 81, DC; *DPP v Pearman* supra; *Smith (Nicholas) v DPP* supra; *DPP v Coyle* [1996] RTR 287, DC (in which it was also held that failure to mention the three-minute time limit for completion of the breath test could not count as a reasonable excuse for failing to provide specimens, though the court left open the possibility that reasonable excuse could be argued if there was an evidential or factual basis for concluding that the failure to mention the time limit had an actual effect on the driver's compliance with the requirement to provide a specimen); *DPP v Simpson* (19 January 2000) Lexis, DC.

See also *DPP v Mukandiwa* [2005] EWHC 2977 (Admin), [2006] RTR 304, 170 JP 17, DC (danger of falling into trance not a reasonable excuse for failure to supply blood specimen).

Justices are not entitled to act upon material which is beyond the evidence before them; thus it is wholly unreasonable for justices to find, from their own experience or knowledge of asthma, that a driver's failure to provide a specimen was due to an asthma attack when the driver made no such complaint to the police officer and was not manifesting anything more than nervousness and anxiety about the situation: *DPP v Curtis* [1993] RTR 72, DC. An asthmatic condition cannot amount to a reasonable excuse where the driver deliberately failed to provide a specimen: *Teape v Godfrey* [1986] RTR 213, DC. If a driver knows that he suffers from a medical condition that prevents him from giving sufficient breath his duty to provide a specimen includes, in those circumstances, a duty to inform the officer of the medical condition: *Teape v Godfrey* supra. See also *DPP v Furby* [2000] RTR 181, DC. *Teape v Godfrey* supra and *DPP v Furby* supra were applied in *DPP v Lonsdale* [2001] RTR 444, DC (duty to inform officer of medical condition). See *DPP v Falzarano* [2001] RTR 217, DC (no error of law where justices preferred to medical evidence defendant's evidence of panic attack causing physical inability to provide specimen).

Refusal to permit the driver under the Police and Criminal Evidence Act 1984 s 58 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 953) to consult a solicitor before providing a specimen does not give the driver a reasonable excuse: *DPP v Billington* [1988] 1 All ER 435, [1988] 1 WLR 535, DC. The position in *DPP v Billington* supra is not affected by the right, under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(3) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 142), to legal advice as art 6 does not impose a blanket right to legal advice prior to any co-operation with police requests: *Campbell v DPP* [2002] EWHC 1314 (Admin), [2004] RTR 64; followed in *Kennedy v DPP* [2002] EWHC 2297 (Admin), [2004] RTR 77; applied in *Kirkup v DPP* [2003] EWHC 2354 (Admin), (2004) 168 JP 255. See also *Law v Stephens* [1971] RTR 358, DC; *Pettigrew v Northumbria Police Authority* [1976] RTR 177, DC; *Salter v DPP* [1992] RTR 386, DC; *Myles v DPP* [2004] EWHC 594 (Admin), [2004] 2 All ER 902, [2005] RTR 1. A driver does not have a reasonable excuse where he wishes to consult the Codes of Practice made under the Police and Criminal Evidence Act 1984 before providing specimens: *DPP v Cornell* [1990] RTR 254, 153 JP 605, DC. See also *DPP v Noe* [2000] RTR 351, DC (driver asked to see officer's 'law book' before providing breath specimens). Further, it does not avail the driver in such a case to claim he was confused or misled by anything the officer might have said as to his right to see the Code of Practice, to consult a solicitor or other matters of that kind: *DPP v Whalley* [1991] RTR 161, DC. A reasonable excuse might, however, be provided if the driver were told affirmatively that he would not have to provide a specimen until after he had consulted a solicitor: *DPP v Billington* [1988] 1 All ER 435 at 441, [1988] 1 WLR 535 at 553-554 per Lloyd LJ. See also *Smith v Hand* [1986] RTR 265 (permission given to speak to a solicitor before providing specimens; no refusal); *DPP v Skinner* [1990] RTR 254 (no reasonable excuse where motorist not positively told that she could make a telephone call before providing specimens). As to the possibility of excluding under the Police and Criminal Evidence Act 1984 s 78 (as amended) (see CRIMINAL LAW,

EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1365) evidence of failure to provide a specimen in a case of alleged belief of entitlement to consult a solicitor see *Hudson v DPP* [1992] RTR 27, DC.

Whether the facts before the court are capable of constituting a reasonable excuse is a question of law, and fear of contracting a disease is not so capable: *DPP v Fountain* [1988] RTR 385, DC (distinguished in *DeFreitas v DPP* [1993] RTR 98 [1992] Crim LR 894, DC, where the driver maintained that he had a genuine fear, amounting to a phobia, of contracting AIDS from any kind of contact with a receptacle such as a glass or a mouthpiece, such as that attached to the breath test device; and there was substantial medical opinion as to the presence and genuineness of the phobia in the defendant's mind, which the court accepted; it also accepted that the only reason the defendant would not breathe into the device was because he could not use his own method of doing so and the police officer would allow no other; held that this was uniquely an occasion when the excuse was genuine and the court should have quashed the conviction). See also *DPP v Kinnersley* [1993] RTR 105, DC (justices did not find a reasonable excuse, but were entitled to find special reasons for not imposing disqualification having formed the opinion that the defendant genuinely feared contracting HIV leading to AIDS even though he had not told the police about his fear of AIDS).

Incapacity by fear of a needle from submitting to the necessary insertion to obtain a sample of blood is capable of amounting to a reasonable excuse; although such a fear must amount to a phobia recognised by medical science to be as strong and inhibiting as, for example, claustrophobia to afford a reasonable excuse: *R v Harding* [1974] RTR 325, CA. See also *Alcock v Read* [1980] RTR 71, DC (invincible repugnance to giving blood).

In addition to the cases as to reasonable excuse cited supra and in PARA 985 note 1 ante, the following circumstances have been held not to constitute a reasonable excuse for a failure to provide a specimen: where the driver provided the first specimen of breath which was found to contain less than the legal limit of alcohol and he could not, therefore, be convicted of the offence under what is now the Road Traffic Act 1988 s 5(1)(a) (see PARA 978 ante) (*Stepniewski v Metropolitan Police Comr* [1985] RTR 330, DC); where the driver did not believe he was in charge of a motor vehicle (*Williams v Osborne* [1975] RTR 181, DC); where the driver consumed alcohol after he ceased to drive (*R v Lennard* [1973] 2 All ER 831, [1973] 1 WLR 483, CA); where the driver suffered from a mere dislike of the sight of blood which did not amount to a phobia which physically prevented him from supplying a specimen (*Sykes v White* [1983] RTR 419, DC); where the driver had already provided a sample of blood to the hospital authorities and was not physically incapable of providing a further specimen (*Kemp v Chief Constable of Kent* [1987] RTR 66, DC); where the driver was not told after his second failed attempt to provide breath that he could blow again when the device was only part way through its three-minute cycle (two minutes were left) (*Cosgrove v DPP* [1997] RTR 153, DC); religious beliefs (*R v John* [1974] 2 All ER 561, [1974] RTR 332, CA); embarrassment (*Palmer v Killion* [1983] RTR 138, DC).

2 As to the meaning of 'fail' see PARA 974 note 10 ante. As to the provision of a specimen of breath see PARA 985 note 3 ante. Where a driver is required to provide specimens of breath, and he provides only one, he fails to provide a specimen (*Cracknell v Willis* [1988] AC 450, [1988] RTR 1, HL), even if the single specimen provided is found to contain less than the prescribed limit of alcohol (though in such a case the authorities should consider very carefully indeed whether it is appropriate to prosecute) (*Stepniewski v Metropolitan Police Comr* [1985] RTR 330, DC). For a quantity of urine to be a specimen it has to be large enough to be divided into two parts by the police officer and each part has to be capable of analysis: *R v Coward* [1976] RTR 425, 63 Cr App Rep 54, CA.

Where an approved evidential breath-testing device did not record any sample being provided by the driver, justices must assume that the device was in good working order in the absence of evidence to the contrary: *Anderton v Waring* [1986] RTR 74, DC. The print-out is admissible in evidence in proceedings for an offence under what is now the Road Traffic Act 1988 s 7(6) to show that the defendant failed to provide sufficient specimens (*Castle v Cross* [1985] 1 All ER 87, [1985] RTR 62, DC), but production of the print-out is not an essential prerequisite for a conviction (*Teape v Godfrey* [1986] RTR 213, DC). Evidence is not required that the breath analysis device was properly calibrated, since what is in issue is not the measurement of alcohol in the driver's breath but whether he failed to provide a specimen; however, where one but not two specimens were provided, and there is a conflict of evidence between the police officer and the driver, evidence of the proportion of alcohol in the specimen could be prejudicial and should be excluded: *Oldfield v Anderton* [1986] RTR 314, (1985) 150 JP 40, DC.

Whether or not there was failure to provide a specimen is a question of fact: *R v Reid* [1973] RTR 536 at 544, CA, per Scarman LJ (jury entitled to find failure notwithstanding the driver's repentance of his refusal and subsequent offer to provide a specimen). See also *DPP v Fountain* [1988] RTR 385, DC; *Smyth v DPP* [1996] RTR 59, DC. Refusal may be inferred from conduct: *R v Mackey* [1977] RTR 146, CA. The reason for non-provision of the specimen, if fault is not attributable to the police officer, is immaterial to the question of failure: *R v Miles* [1979] RTR 509, CA (interference by the driver's wife). In assessing whether there was refusal, relevant words and conduct should be taken into account: *Smyth v DPP* supra (driver refused when asked to provide breath specimens, but within five seconds said 'Can I change my mind?', followed by 'I want to change my mind'; conviction quashed because the justices had ignored those words). In general a person cannot fail to do something that he had no opportunity to do, but it is unnecessary actually to show the driver the device to establish that the opportunity was provided: *Campbell v DPP* [1989] RTR 256, DC (device in another room at the police station, but driver could reasonably be expected to know it was present).

Where the driver wanted to read a form of consent to the provision of a blood sample before signing it, and the officer did not permit him to read it and did not explain that if he refused to sign the form the doctor would not attend to take the sample, the justices were wrong to treat that refusal to sign as in itself tantamount to a refusal to provide a specimen of blood; the proper approach was whether or not the defendant had agreed to provide the specimen: *Hier v Head* [1978] RTR 114, DC. The imposition of a condition might amount to a refusal, but where a blood specimen was required and both the driver's own doctor and a police doctor were present, and the driver was willing for the sample to be taken by the former but not by the latter, there was no refusal: *Bayliss v Thames Valley Police Chief Constable* [1978] RTR 328, [1978] Crim LR 363, DC. There is no general right, however, to insist on a particular medical practitioner: *DPP v Smith (Alan)* (1993) Times, 1 June. If a qualified medical practitioner asks to be permitted to take a specimen in accordance with ordinary medical practice it is unreasonable for the driver to respond that he requires the specimen to be taken in a different way: *Solesbury v Pugh* [1969] 2 All ER 1171, [1969] 1 WLR 1114, DC. See also *Rushton v Higgins* [1972] RTR 456, DC (conviction upheld where a medical practitioner requested an intravenous specimen and the driver agreed only to supply a capillary specimen).

Once the driver has complied with a request, he probably cannot be required to provide a further specimen of blood or urine: *R v Hyams* [1972] 3 All ER 651, 136 JP 842, CA; *Gabrielson v Richards* [1976] RTR 223, [1975] Crim LR 722. This does not, however, prevent the police officer from changing his mind as to the kind of specimen required if he does so before there has been either compliance or refusal: *R v Paduch* (1973) 57 Cr App Rep 676, CA. A specimen of urine is not provided if it is lost, accidentally or deliberately, before a police officer has taken charge of it: *Ross v Hodges* [1975] RTR 55, [1975] Crim LR 46 (jar containing urine sample dropped before officer had hold of it). Where, however, a driver provided a specimen of blood sufficient and suitable for analysis, it did not cease to be so because the doctor dropped part of it rendering the remainder unsuitable for analysis: *Beck v Watson* [1980] RTR 90, [1979] Crim LR 533, DC. If a driver provides a specimen but, subsequent to and distinct from that provision, he steals it, he cannot be convicted of failing to provide a specimen: *R v Rothery* [1976] RTR 550, [1976] Crim LR 691, CA.

A police officer, before proceeding under what is now the Road Traffic Act 1988 s 7 (as amended), has a discretion to allow a driver to contact a solicitor, relative or doctor, but if he allows such a concession and then considers that it has to be ended he is at liberty and under a duty to end it: *Brown v Ridge* [1979] RTR 136, DC. A person who gives conditional acceptance fails to provide a specimen: *Pettigrew v Northumbria Police Authority* [1976] RTR 177, [1976] Crim LR 259, DC (see also note 1 supra).

3 le in pursuance of the Road Traffic Act 1988 s 7 (as amended): see PARA 986 ante.

4 Ibid s 7(6). An offence may be committed under s 7(6) regardless of the guilt or innocence of the person being investigated under s 7(1) (see PARA 986 ante) and thereby giving rise to the requirement to provide a specimen: *Metropolitan Police Comr v Curran* [1976] 1 All ER 162, [1976] 1 WLR 87, HL.

A person guilty of an offence under the Road Traffic Act 1988 s 7(6) is liable on summary conviction: (1) where the specimen was required to ascertain ability to drive or the proportion of alcohol at the time the offender was driving or attempting to drive, to a term of imprisonment not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both; and (2) in any other case, to a term of imprisonment not exceeding three months or to a fine not exceeding level 4 on the standard scale or to both; disqualification is obligatory in a case mentioned in head (1) supra, and discretionary in any other case; endorsement is obligatory; and 3-11 penalty points may be attributed in a case mentioned in head (1) supra, or 10 in any other case, if for special reasons, the offender is not ordered to be disqualified: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 26, Sch 2). As from a day to be appointed, this provision is amended so as to refer to '51 weeks' instead of 'three months': see the Road Traffic Offenders Act 1988 Sch 2 Pt I (entry prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 38(1), (4)). At the date at which this volume states the law no such day had been appointed. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; as to special reasons for not imposing obligatory disqualification see PARA 1059 post; and as to legal proceedings generally see PARA 1023 et seq post.

Although different penalties are provided, the Road Traffic Act 1988 s 7(6) creates only one offence and an information is not bad for duplicity if it is framed in the terms of s 7(6) alone and does not specify which, if any, of the offences was being investigated by the officer: *DPP v Butterworth* [1995] 1 AC 381, [1994] 3 All ER 289, HL (overruling *DPP v Corcoran* [1993] 1 All ER 912, [1992] RTR 289, DC). Moreover, an information is not duplicitous if it alleges failing to provide 'breath/blood/urine': *Worsley v DPP* [1995] Crim LR 572. If the prosecution is conducted on the basis that the defendant was in charge of the motor vehicle, the justices may not sentence on the basis that he was driving or attempting to drive: *George v DPP* [1989] RTR 217, DC. The converse is not, however, true; if the information alleges that the defendant had been driving or attempting to drive the prosecution must prove that allegation beyond reasonable doubt or it will not be open to the justices to disqualify mandatorily: *Crampsie v DPP* [1993] RTR 383.

An offence may be committed under the Road Traffic Act 1988 s 7(6) even though the defendant was neither driving, attempting to drive nor in charge of a motor vehicle at the relevant time: *Metropolitan Police Comr v Curran* supra. In such a case, words in the information referring to the defendant being in charge are surplus;



and if the defendant is not misled by their inclusion no formal amendment is required and the surplus words are to be wholly disregarded: *Roberts v Griffiths* [1978] RTR 362, DC.

5 le in pursuance of the Road Traffic Act 1988 s 7 (as amended): see PARA 986 ante.

6 Ibid s 7(7). The duty to warn is mandatory so that failure to warn will render ineffective the requirement to provide a specimen, even where the subject is himself a police officer: *Simpson v Spalding* [1987] RTR 221, DC; *Chief Constable of Avon and Somerset Constabulary v Singh* [1988] RTR 107, DC. It is implicit in the requirement for a warning to be given that an alleged warning must be capable of informing the person to whom it is given of the possible consequences of failing to comply, and if it is not understood as a warning by the person to whom it is given it is not a warning within what is now the Road Traffic Act 1988 s 7(7): *Chief Constable of Avon and Somerset Constabulary v Singh* supra (lack of English prevented the defendant from understanding the warning). There is a clear distinction, however, between cases where the failure to understand was due to language and cases where the failure to understand the warning was brought about by self-induced intoxication: *DPP v Beech* [1992] RTR 239, [1992] Crim LR 64, DC.

Failure to give the warning renders inadmissible the results of the breath, blood or urine test: *Murray v DPP* [1993] RTR 209, 158 JP 261, DC. However, failure to repeat the warning, where the subject voluntarily provides further specimens following an unreliable result, does not render the requirement ineffective: see *Edmond v DPP* [2006] EWHC 463 (Admin), [2006] RTR 229, [2006] All ER (D) 287 (Mar).

Where a warning was given under the Road Traffic Act 1988 s 7(7), but the breath-testing device broke down and the police officer took the defendant six miles to another police station at which he knew a device was available, and specimens of breath were provided on that device 39 minutes after the time of the first requirement without the warning being repeated, it was a question of fact and degree if the original warning continued to be sufficient and the justices were entitled to find that that was not the case and that it had ceased to operate on the mind of the defendant at the time of the second requirement: *DPP v Palmer* (21 March 1997) Lexis, DC.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 988 Failure to provide specimen

NOTE 1--Failure to communicate an excuse when attempting to provide a specimen is highly relevant in deciding whether the excuse is a reasonable one: *Piggott v DPP* [2008] EWHC 305 (Admin), [2008] RTR 199, [2008] All ER (D) 114 (Feb).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(iii) Offences relating to Drink or Drugs/C. TESTING FOR DRINK AND DRUGS/989. Protection for hospital patients.

### 989. Protection for hospital patients.

While a person is at a hospital<sup>1</sup> as a patient<sup>2</sup> he must not be required to co-operate with a preliminary test<sup>3</sup> or to provide a specimen for analysis<sup>4</sup> unless the medical practitioner in immediate charge of his case<sup>5</sup> has been notified<sup>6</sup> of the proposal to make the requirement<sup>7</sup>. If the requirement is then made, it must be for co-operation with a test administered, or for the provision of a specimen, at the hospital<sup>8</sup>; but if the medical practitioner objects on the ground

that the requirement or the provision of the specimen or (if one is required) the required warning<sup>9</sup> would be prejudicial to the proper care and treatment of the patient<sup>10</sup>, the requirement must not be made<sup>11</sup>.

While a person is at a hospital as a patient, no specimen of blood may be taken from him without his consent<sup>12</sup> and he may not be required to give his permission for a laboratory test of a specimen taken without his consent unless the medical practitioner in immediate charge of his case has been notified of the proposal to take the specimen or to make the requirement, and has not objected on the ground that the taking of the specimen, the requirement or the required warning<sup>13</sup> would be prejudicial to the proper care and treatment of the patient<sup>14</sup>.

1 For the meaning of 'hospital' see PARA 983 note 7 ante.

2 The phrase 'as a patient' means a person who is at the hospital for the purpose of receiving treatment, but that person ceases to be a patient as soon as the treatment contemplated for that visit is over: *A-G's Reference (No 1 of 1976)* [1977] 3 All ER 557, [1977] 1 WLR 646, CA.

A person at a hospital as a patient must not be required to provide a specimen unless a doctor has first been notified and has no objection: *R v Crowley* [1977] RTR 153, 64 Cr App Rep 225, CA. Evidence of non-objection is not hearsay and may be given by a witness to whom the indication of no objection was given: *R v Chapman* [1969] 2 QB 436, [1969] 2 All ER 321, CA; *Burn v Kernohan* [1973] RTR 82, DC. A requirement of a patient lawfully made under the Road Traffic Act 1988 s 9(1)(b) (see the text and notes 9-11 infra) could remain valid once that person was no longer a patient at the hospital and had been arrested under s 6(5)(b) (see PARA 979 ante): *Webber v DPP* [1998] RTR 111n, DC (driver refused to take the screening test at the hospital, and was required to provide a specimen of blood but before being able to do so was discharged from hospital; driver was then arrested in reliance on the Road Traffic Act 1988 s 6(5)(b) and provided a blood specimen at the police station; it was held that nothing in the Road Traffic Act 1988 drove the court to the view that the locus at which the specimen was taken was so vital that, if it was not provided at the hospital, a specimen and its analysis ceased to be admissible).

3 As to co-operation with a preliminary test see PARA 985 note 3 ante.

4 Ie under the Road Traffic Act 1988 s 7 (as amended): see PARA 986 ante.

5 Where a constable gives evidence that he notified the person who appeared to be in charge of the casualty ward, but he did not check any medical list to see if that person was in fact a medical practitioner, that is sufficient to raise a prima facie case that the person was a medical practitioner and was in immediate charge of the defendant's case: *Jones v Brazil* [1970] RTR 449, DC.

6 The doctor must be notified of, and not object to, both the proposal to require a specimen of breath and the proposal to require a specimen of blood or urine: see *R v Green* [1970] 1 All ER 408n. There is no reason, however, why a doctor cannot consent to both requirements at the same time: *Ratledge v Oliver* [1974] RTR 394, DC.

7 Road Traffic Act 1988 s 9(1) (amended by the Railways and Transport Safety Act 2003 s 107, Sch 7 para 3(a); and the Serious Organised Crime and Police Act 2005 s 154(8)). As to the disapplication of the Road Traffic Act 1988 s 9 (as amended) to vehicles on any transport system to which the Transport and Works Act 1992 Pt II Ch I (ss 26-40) (as amended) (offences involving drink or drugs on railways, tramways and certain other guided transport systems: see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 377 et seq) applies see PARA 975 note 7 ante.

8 Road Traffic Act 1988 s 9(1)(a) (amended by the Railways and Transport Safety Act 2003 Sch 7 para 3(b)).

9 Ie the warning required under the Road Traffic Act 1988 s 7(7): see PARA 988 text and note 6 ante.

10 Ibid s 9(2)(a) (substituted by the Police Reform Act 2002 s 56(2)).

11 Road Traffic Act 1988 s 9(1)(b).

12 Ie required under ibid s 7A (as added): see PARA 987 ante.

13 Ie the warning required under ibid s 7A(5) (as added): see PARA 987 text and note 10 ante.

14 Ibid s 9(1A), (2)(b) (s 9(1A) added, and s 9(2)(b) substituted, by the Police Reform Act 2002 s 56(2)).

**UPDATE****963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(iii) Offences relating to Drink or Drugs/C. TESTING FOR DRINK AND DRUGS/990. Detention of persons affected by alcohol or a drug.

**990. Detention of persons affected by alcohol or a drug.**

A person required<sup>1</sup> to provide a specimen of breath<sup>2</sup>, blood<sup>3</sup> or urine may afterwards be detained at a police station (or, if the specimen was provided otherwise than at a police station, arrested and taken to and detained at a police station) if a constable<sup>4</sup> has reasonable grounds for believing that, were that person then driving<sup>5</sup> or attempting to drive a mechanically propelled vehicle<sup>6</sup> on a road<sup>7</sup>, he would commit an offence<sup>8</sup>. This provision does not apply to the person if it ought reasonably to appear to the constable that there is no likelihood of his driving or attempting to drive a mechanically propelled vehicle whilst his ability to drive properly is impaired or whilst the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit<sup>9</sup>. A person who is at a hospital<sup>10</sup> as a patient<sup>11</sup> must not be arrested and taken from there to a police station in pursuance of the above provision if it would be prejudicial to his proper care and treatment as a patient<sup>12</sup>.

A constable must consult a medical practitioner on any question arising under these provisions whether a person's ability to drive properly is or might be impaired through drugs<sup>13</sup> and must act on the medical practitioner's advice<sup>14</sup>.

1    le under the Road Traffic Act 1988 s 7 (as amended) (see PARA 986 ante) or s 7A (as added) (see PARA 987 ante).

2    As to the provision of a specimen of breath see PARA 985 note 3 ante.

3    As to the provision of a specimen of blood see PARA 986 note 7 ante.

4    As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

5    For the meaning of 'drive' see PARA 207 ante.

6    As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.

7    For the meaning of 'road' see PARA 206 ante.

8    Road Traffic Act 1988 s 10(1) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 43; the Railways and Transport Safety Act 2003 s 107, Sch 7 para 4; and the Serious Organised Crime and Police Act 2005 s 154(9), (10)). This is expressed to be subject to the Road Traffic Act 1988 s 10(2), (3) (s 10(2) as amended). The offence mentioned in the text is an offence under s 4 (as amended) (see PARA 975 ante) or s 5 (see PARA 978 ante).

As to the disapplication of the Road Traffic Act 1988 s 10 (as amended) to vehicles on any transport system to which the Transport and Works Act 1992 Pt II Ch I (ss 26-40) (as amended) (offences involving drink or drugs on

railways, tramways and certain other guided transport systems: see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 377 et seq) applies see PARA 975 note 7 ante.

9 Road Traffic Act 1988 s 10(2) (amended by the Road Traffic Act 1991 Sch 4 para 43; and the Serious Organised Crime and Police Act 2005 s 154(11)). For the meaning of 'the prescribed limit' see PARA 978 note 9 ante.

10 For the meaning of 'hospital' see PARA 983 note 7 ante.

11 For the meaning of 'as a patient' see PARA 989 note 2 ante.

12 Road Traffic Act 1988 s 10(2A) (added by the Serious Organised Crime and Police Act 2005 s 154(12)).

13 As to the meaning of 'drug' see PARA 974 note 7 ante.

14 Road Traffic Act 1988 s 10(3). Once a driver has provided a specimen he is entitled to leave the police station unless he is detained under s 10 (as amended): *R v McKenzie* [1971] 1 All ER 729.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(iii) Offences relating to Drink or Drugs/C. TESTING FOR DRINK AND DRUGS/991. Evidence.

### 991. Evidence.

The following provisions apply in respect of proceedings for driving offences connected with drink or drugs<sup>1</sup>. Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by or taken from the accused must, in all cases (including cases where the specimen was not provided or taken in connection with the alleged offence), be taken into account<sup>2</sup> and it must be assumed that the proportion of alcohol in the accused's breath, blood or urine at the time of the alleged offence was not less than in the specimen<sup>3</sup>. That assumption must not be made if the accused proves:

- 899 (1) that he consumed alcohol before he provided the specimen or had it taken from him and: (a) in relation to an offence of causing death by careless driving when under the influence of drink or drugs<sup>4</sup>, after the time of the alleged offence<sup>5</sup>; and (b) otherwise, after he had ceased to drive, attempt to drive or be in charge of a vehicle on a road<sup>6</sup> or other public place<sup>7</sup>; and
- 900 (2) that had he not done so the proportion of alcohol in his breath, blood or urine would not have exceeded the prescribed limit<sup>8</sup> and, if it is alleged that he was unfit to drive through drink, would not have been such as to impair his ability to drive properly<sup>9</sup>.

A specimen of blood must be disregarded unless it was taken from the accused with his consent and either in a police station by a medical practitioner or a registered health care professional<sup>10</sup> or elsewhere by a medical practitioner, or it was taken from the accused by a

medical practitioner without his consent<sup>11</sup> and the accused subsequently gave his permission for a laboratory test of the specimen<sup>12</sup>. Where, at the time a specimen of blood or urine was provided by the accused, he asked to be provided with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the prosecution unless<sup>13</sup> the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the accused was divided at the time it was provided<sup>14</sup>, and the other part was supplied to the accused<sup>15</sup>. Where a specimen of blood was taken from the accused without his consent, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the prosecution unless the specimen in which the alcohol or drug was found is one of two parts into which the specimen taken from the accused was divided at the time it was taken, and any request to be supplied with the other part which was made by the accused at the time when he gave his permission for a laboratory test of the specimen was complied with<sup>16</sup>.

Evidence of the proportion of alcohol or a drug in a specimen of breath, blood or urine may be given by the production of a document or documents purporting to be whichever of the following is appropriate, that is to say<sup>17</sup>:

- 901 (i) a statement<sup>18</sup> automatically produced by the device by which the proportion of alcohol in a specimen of breath was measured and a certificate signed<sup>19</sup> by a constable<sup>20</sup> (which may, but need not, be contained in the same document as the statement) that the statement relates to a specimen provided by the accused at the date and time shown in the statement<sup>21</sup>; and
- 902 (ii) a certificate signed by an authorised analyst<sup>22</sup> as to the proportion of alcohol or any drug found in a specimen of blood or urine identified in the certificate<sup>23</sup>.

Evidence that a specimen of blood was taken from the accused with his consent by a medical practitioner or a registered health care professional may be given by the production of a document purporting to certify that fact and to be signed by a medical practitioner or a registered health care professional<sup>24</sup>. A document purporting to be such a statement or such a certificate (or both such a statement and such a certificate) as is mentioned in head (i) above is admissible in evidence on behalf of the prosecution in pursuance of this provision only if a copy<sup>25</sup> of it either has been handed<sup>26</sup> to the accused when the document was produced or has been served<sup>27</sup> on him not later than seven days before the hearing<sup>28</sup>, and any other document is so admissible only if a copy of it has been served on the accused not later than seven days before the hearing<sup>29</sup>. A document purporting to be a certificate (or so much of a document as purports to be a certificate) is not so admissible if the accused, not later than three days before the hearing or within such further time as the court may in special circumstances allow, has served notice on the prosecutor requiring the attendance at the hearing of the person by whom the document purports to be signed<sup>30</sup>. A copy of a certificate required by this provision to be served on the accused or a notice so required to be served on the prosecutor may be served personally or sent by registered post or recorded delivery service<sup>31</sup>.

The above provisions, in their application to persons subject to service discipline, apply outside as well as within Great Britain<sup>32</sup>.

1 The offences under the Road Traffic Act 1988 s 3A (as added) (see PARA 974 ante), s 4 (as amended) (see PARA 975 ante), s 5 (see PARA 978 ante): see the Road Traffic Offenders Act 1988 s 15(1) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 87(1), (2)). As to the meaning of 'drug' see PARA 974 note 7 ante; definition applied by the Road Traffic Offenders Act 1988 s 15(1) (as so amended).

2 Only evidence which has been obtained in accordance with the procedures prescribed by the Road Traffic Act 1988 ss 7, 8 (as amended) (see PARA 986 ante) may be taken into account: *Howard v Hallett* [1984] RTR 353, [1984] Crim LR 565, DC; *Simpson v Spalding* [1987] RTR 221, DC; *Murray v DPP* [1993] RTR 209, 158 JP 261, DC.

Proof of the offence under what is now the Road Traffic Act 1988 s 5(1)(a) (see PARA 978 ante) is not dependent on the accused being validly arrested, and there is no general principle that a conviction is invalid if the evidence by which it was proved was obtained unlawfully: *R v Fox* [1986] AC 281, sub nom *Fox v Chief Constable of Gwent* [1985] 3 All ER 392, HL. See also *DPP v Porter* (15 February 2000) Lexis, DC (no need to prove lawful detention). However, if the driver was lured to the police by some trick or deception or if the police officers behaved oppressively towards him, the justices' jurisdiction to exclude admissible evidence might come into play: *R v Fox* supra at 293 and 397 per Lord Fraser. *R v Fox* supra was decided before the Police and Criminal Evidence Act 1984 s 78 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1365) came into force, and a finding of mala fides opens the possibility of excluding the evidence of the analysis of the specimen provided by the driver under that provision: *Matto v Crown Court at Wolverhampton* [1987] RTR 337, DC. Moreover, it is not essential to establish mala fides before the Police and Criminal Evidence Act 1984 s 78 (as amended) can operate: *R v Samuel* [1988] QB 615, [1988] 2 All ER 135, CA; *DPP v McGladrigan* [1991] RTR 297 (explaining *Thomas v DPP* [1991] RTR 292n, DC); *DPP v Goodwin* [1991] RTR 303, DC; *Daniels v DPP* [1992] RTR 140, DC. Conversely, if the justices find mala fides they are not required to exercise their discretion under the Police and Criminal Evidence Act 1984 s 78 (as amended) in the driver's favour: *Sharpe v DPP* [1993] RTR 392, DC.

3 Road Traffic Offenders Act 1988 s 15(2) (amended by the Road Traffic Act 1991 Sch 4 para 87(1), (3); and the Police Reform Act 2002 s 57(1)). This is expressed to be subject to the Road Traffic Offenders Act 1988 s 15(3) (as substituted): see the text and notes 4-9 infra.

There is no requirement for the assumption under s 15(2) (as amended) to operate that the prosecution must prove that the driving, attempting to drive or being in charge occurred at a time proximate to the finding of alcohol in the driver's body: *DPP v Williams* [1989] Crim LR 382, DC.

Evidence which, if believed, provides material from which it can reasonably be inferred that an evidential breath-testing device was unreliable is admissible; the wording of what is now the Road Traffic Offenders Act 1988 s 15(2) (as amended) does not confine the challenge to the validity of the device to a particular type of evidence: *Cracknell v Willis* [1988] AC 450, [1987] 3 All ER 801, HL (overruling *Hughes v McConnell* [1986] 1 All ER 268, [1985] RTR 244, DC; *Burridge v East* [1986] RTR 328n, DC). *Cracknell v Willis* supra was concerned with evidence in relation to a particular driver which could, if accepted, cast doubt on the readings obtained from a particular machine; it was not concerned with casting doubt on all machines: *DPP v Charles* [1996] RTR 247n at 272, DC, per Kennedy LJ; and see also *R v Skegness Magistrates' Court, ex p Cardy* [1985] RTR 49, DC. To rebut the statutory presumption of reliability it is not necessary for a defendant asserting a lower consumption of alcohol than that compatible with the reading to adduce expert evidence of the reading that would be produced by the consumption, and in the circumstances claimed by the defendant; but in many cases expert evidence as to the effect of such variables as consumption and absorption rates is necessary: *DPP v Spurrier* [2000] RTR 60, DC (in which guidance was given as to the factors that justices should have in mind). See also *DPP v Hill* [1991] RTR 351, DC.

The Magistrates' Courts Act 1980 s 97(1) (as amended) (issue of witness summonses) (see MAGISTRATES vol 29(2) (Reissue) PARA 734) should not be used as a disguised attempt to obtain disclosure of documents relating to a device where the relevance of such documents was entirely speculative: *DPP v McKeown*, *DPP v Jones* [1997] RTR 162 at 170, HL, per Lord Hoffmann. See also *R v Tower Bridge Magistrates' Court, ex p DPP* [1989] RTR 118, DC; *R v Coventry Magistrates' Court, ex p Perks* [1985] RTR 74, DC; *R v Skegness Magistrates' Court, ex p Cardy* supra.

Whether or not a disparity between the readings of the two specimens of breath provided by the driver raises sufficient doubt about the reliability of the device to justify an acquittal is a question of fact and degree, but a conviction has been upheld where the disparity was 23.1%: *Lodge v Chief Constable of Greater Manchester* [1988] Crim LR 533, DC. See also *Gordon v Thorpe* [1986] RTR 358, [1986] Crim LR 61, DC; *Maharaj v Solomon* [1987] RTR 295; *Newton v Woods* [1987] RTR 41. A substantial discrepancy between the proportion of alcohol recorded by the breath-testing device and the results of a subsequent, voluntary blood analysis may cast sufficient doubt as to the accuracy of the former to justify an acquittal: *Lucking v Forbes* [1986] RTR 97, [1985] Crim LR 793.

In *Snelson v Thompson* [1985] RTR 220, DC, a specimen of breath was provided which showed that the defendant exceeded the prescribed limit, but a further breath test an hour later on a non-evidential (ie roadside) device proved negative and the defendant adduced expert evidence at his trial that the two results were inconsistent; held, having regard to the comparative accuracies of the devices, it was impossible to say that the justices were disentitled from concluding that they could safely rely on the reading of the evidential device. This decision does not, however, mean that a subsequent, negative breath sample is inadmissible or should be ignored: *Parish v DPP* [2000] RTR 143, DC. See also *O'Sullivan v DPP* (27 March 2000) Lexis, DC (specimen provided at 1 am which contained 56 micrograms of alcohol; further specimen provided between 2.30 am and 2.45 am containing 23 micrograms; the defendant adduced evidence from controlled scientific tests of the defendant as to the rate of decline of alcohol in her blood thereby seeking to show that the court could not be satisfied that the 1 am reading was reliable; held (quashing the conviction) that: (1) in most cases the accuracy and reliability of a device is not in dispute; (2) there is at least an evidential burden on the defence to raise the issue of unreliability, but in the present case that was plainly discharged; and (3) following the discharge of that burden there is no presumption of accuracy that the defence must disprove).

The assumption contained in the Road Traffic Offenders Act 1988 s 15(2) (as amended) does not preclude the prosecution from calling evidence other than the results of the analysis to show that the proportion of alcohol in the driver's blood exceeded the prescribed limit at a time when he was driving: *Gumbley v Cunningham* [1989] AC 281, [1989] 1 All ER 5, HL. The prosecution should not, however, seek to rely on evidence of back-calculation save where the evidence is both easily understood and clearly establishes the presence of excess alcohol at the time when the accused was driving: *Gumbley v Cunningham* supra. Where the issue is not the precise percentage of blood alcohol but the degree to which the driver's ability to recognise risk and drive properly, different and less stringent considerations apply: see *R v Downes* [1991] RTR 395, CA. Back-calculation does not work both ways; it is not open to justices to receive evidence designed to show that, though the analysis of the specimen provided by the driver showed alcohol in excess of the prescribed limit, a lower level of alcohol may have been present when he was driving: *Beachamp-Thompson v DPP* [1989] RTR 54n, DC.

The assumption in the Road Traffic Offenders Act 1988 s 15(2) (as amended) is compatible with the presumption of innocence guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(2) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 142): *R v Drummond* [2002] EWCA Crim 527, [2002] RTR 371, [2002] 2 Cr App Rep 352; *Parker v DPP* [2001] RTR 240, DC; *Griffiths v DPP* [2002] EWHC 792 (Admin), 166 JP 629. See also *DPP v Brown*, *DPP v Teixeira* [2001] EWHC 931 (Admin), [2002] RTR 395 (evidence intended to rebut assumption must relate directly to facts of a specific case). As to the meaning of 'breath' see *Zafar v DPP* [2004] EWHC 2468 (Admin), [2005] RTR 220; and PARA 978 note 8 ante.

4 le in relation to an offence under the Road Traffic Act 1988 s 3A (as added): see PARA 974 ante.

5 Road Traffic Offenders Act 1988 s 15(3)(a)(i) (s 15(3) substituted by the Road Traffic Act 1991 Sch 4 para 87(1), (4); and the Road Traffic Offenders Act 1988 s 15(3)(a) amended by the Police Reform Act 2002 s 57(2)).

6 For the meaning of 'road' see PARA 206 ante.

7 Road Traffic Offenders Act 1988 s 15(3)(a)(ii) (as substituted: see note 5 supra). For the meaning of 'other public place' see PARA 206 note 2 ante.

8 For the meaning of 'the prescribed limit' see PARA 978 note 9 ante; definition applied by ibid s 15(1) (as amended: see note 1 supra).

9 Ibid s 15(3)(b) (as substituted: see note 5 supra).

The burden is on the defendant to establish that he was not over the limit or unfit at the time of driving or attempting to drive or being in charge of a motor vehicle: *DPP v Williams* [1989] Crim LR 382, DC. See also *Patterson v Charlton* [1986] RTR 18, DC. As to the need for scientific evidence unless the case is an obvious one that post-driving consumption of alcohol caused the driver to exceed the limit see *Dawson v Lunn* [1986] RTR 234n, (1984) 149 JP 491; *DPP v Singh* [1988] RTR 209, DC.

10 For the meaning of 'registered health care professional' see PARA 986 note 7 ante.

11 le under the Road Traffic Act 1988 s 7A (as added): see PARA 987 ante.

12 Road Traffic Offenders Act 1988 s 15(4) (amended by the Police Reform Act 2002 s 57(3)).

13 Road Traffic Offenders Act 1988 s 15(5).

14 Ibid s 15(5)(a). The words 'at the time' mean that the taking of the specimen and its division into two must be closely linked in time and performed as part of the same event, but the driver does not have to present at the division: *DPP v Elstob* [1992] RTR 45, [1992] Crim LR 518, DC.

15 Road Traffic Offenders Act 1988 s 15(5)(b). The driver need not be supplied with his part of the specimen at the time that it is taken but only within a reasonable time thereafter: *R v Sharp* [1968] 2 QB 564, [1968] 3 All ER 182, CA. The part given to the driver must be of a quantity and quality to be capable of analysis (*Smith v Cole* [1971] 1 All ER 200n, DC); it must be in a condition enabling it to remain fit for analysis for a reasonable time (*Ward v Keene* [1970] RTR 177, DC); and it must be capable of being analysed by the use of ordinary skill and equipment by a reasonably competent analyst (*Earl v Roy* [1969] 2 All ER 684, [1968] 1 WLR 1050, DC; *R v Nixon* [1969] 2 All ER 688, [1969] 1 WLR 1055, CA; *Nugent v Hobday* [1973] RTR 41, DC). See also *Kiernan v Willcock* [1972] RTR 270, DC; *Nicholson v Watts* [1973] RTR 208, [1973] Crim LR 246, DC (defence expert's doubts as to quality are relevant only to whether the offence has been proved and not to compliance with what is now the Road Traffic Offenders Act 1988 s 15(5)); *R v Wright (John)* [1975] RTR 193, CA.

In each case the question whether a specimen or part is 'supplied' in accordance with what is now the Road Traffic Offenders Act 1988 s 15(5)(b) turns on the facts: *R v Jones (Colin)* [1974] RTR 117, CA (conviction upheld where driver's part put with the rest of his belongings).

The Road Traffic Offenders Act 1988 s 15(5) must be strictly complied with, so that where the part provided to the driver was mixed with a minimal quantity taken from him a short while earlier the analysis of the part retained by the police was inadmissible: *Dear v DPP* [1988] RTR 148, [1988] Crim LR 316, DC. The driver must not be misled by anything said or done by the prosecution into believing that the part supplied to him could not be submitted for independent analysis: *Perry v McGovern* [1986] RTR 240, DC. However, once the part of the specimen has been supplied and is capable of being analysed it is only if it was supplied in such circumstances that the driver would be expected to be deterred or prevented from having it analysed that there could be a defence: *Butler v DPP* [1990] RTR 377, DC (conviction upheld where the police doctor wrongly put the police officer's and not the driver's name on the driver's part and the analyst approached by the defendant declined, in consequence, to carry out the analysis). See also *DPP v Snook* [1993] Crim LR 883 (supply in an envelope is not part of the statutory requirement).

16 Road Traffic Offenders Act 1988 s 15(5A) (added by the Police Reform Act 2002 s 57(4)).

17 Road Traffic Offenders Act 1988 s 16(1) (amended by the Police Reform Act 2002 s 57(5)). This is expressed to be subject to the Road Traffic Act 1988 s 15(5), (5A) (as added), and s 16(3), (4).

18 The print-out of a breath test device is to be considered as a whole, as containing both a 'statement' and a 'certificate', and when so considered it is plainly intelligible; but even if to most people it is not immediately intelligible without explanation that does not prevent it from being a 'statement': *Gaimster v Marlow* [1984] QB 218, [1985] 1 All ER 82, DC. It may be unwise to alter the print-out in any way, and where it is necessary to inform the court of such a fact it should be done by oral evidence at the hearing: *Beck v Scammel* [1986] RTR 162, DC.

The Road Traffic Offenders Act 1988 s 16(1) is an enabling provision and oral evidence may be given by the police operator of the device in place of the print-out, such evidence not being hearsay; but to reach the required standard of proof such evidence must relate not only the breath test results but also that the device was properly calibrated: *Owen v Chesters* [1985] RTR 191, (1984) 149 JP 295, DC; *Denneny v Harding* [1986] RTR 350, DC; *Mayon v DPP* [1988] RTR 281, DC; *Hasler v DPP* [1989] RTR 148, [1989] Crim LR 76, DC; *DPP v Hutchings* [1991] RTR 380, DC; *Thom v DPP* [1994] RTR 11, DC; *Greenaway v DPP* [1994] RTR 17, DC. The officer giving such oral evidence must, however, be trained in the use and manner of performance of the device: *Denneny v Harding* supra. The evidence need not establish the precise calibration results, provided that the officer has considered the calibration readings, among others, and tells the court that the device was reliable: *Greenaway v DPP* supra at 21 per Buckley J; *Thom v DPP* supra. The officer does not need to give specific evidence of the 'purging' process that follows after the first calibration check and after each of the two breath analyses: *DPP v Parkin* [1989] Crim LR 379. The need to prove proper calibration does not arise where the breath test results are relied upon not as evidence of an offence but as satisfying the pre-condition for obtaining a replacement specimen under the Road Traffic Act 1988 s 8(2) (see PARA 986 ante): *Prince v DPP* [1996] Crim LR 343.

A print-out is not adduced in evidence if the officer merely states that it is available in court if the justices wish to see it, but they do not ask for it and neither the officer nor the prosecutor seeks to produce it in evidence: *Hasler v DPP* supra. Similarly, a document used to refresh memory in the course of giving evidence is not, without more, formally in evidence, even if it is plainly visible to the justices: *Greenaway v DPP* supra. Once, however, an exhibit is produced, the court has jurisdiction over it; it does not matter that the court does not formally examine it before the prosecution closes its case: *R v Pydar Justices, ex p Foster* (1995) 160 JP 87, DC.

Typographical errors or misspellings do not affect the validity of the print-out: *Reid v DPP* [1999] RTR 357, DC; *Burditt v Roberts* [1986] RTR 391n, sub nom *Burdett v Rogers* [1986] Crim LR 636, DC; *Toovey v Chief Constable of Northumbria* [1986] Crim LR 475, DC.

Where the first print-out has been lost, a second print-out produced by the same device may be adduced in evidence provided the necessary evidence of the accuracy of the device is again given: *DPP v Hutchins* [1991] RTR 380, DC.

The lawfulness of type approval of a breath-testing device may not be raised as a defence to a charge of driving with excess alcohol: *DPP v Wood*, *DPP v McGillicuddy* [2005] EWHC 2986 (Admin), (2006) 170 JP 177, DC.

19 Where the police officer conducting the test fails to sign either the copy handed to the driver or the copy retained by the police, but the justices hear that officer's evidence linking the driver to the print-out, the print-out is admissible as real evidence independently of the provisions of what is now the Road Traffic Offenders Act 1988 s 16(1)(a): *Garner v DPP* [1990] RTR 208, (1989) 154 JP 277, DC.

20 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

21 Road Traffic Offenders Act 1988 s 16(1)(a). There is nothing wrong with a statement that shows the time recorded as Greenwich mean time instead of British Summer Time (see TIME vol 97 (2010) PARAS 316-317): *Parker v DPP* [1993] RTR 283, (1992) 157 JP 218.



22 For these purposes, 'authorised analyst' means: (1) any person possessing the qualifications prescribed by regulations made under the Food Safety Act 1990 s 27 (as amended) (see FOOD vol 18(2) (Reissue) PARA 268) as qualifying persons for appointment as public analysts under that Act; and (2) any other person authorised by the Secretary of State to make analyses for the purposes of the Road Traffic Offenders Act 1988 s 16 (as amended): s 16(7) (amended by the Food Safety Act 1990 s 59(1), Sch 3 para 38). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. The requirement that an authorised analyst must sign the certificate does not import a requirement that the analysis itself must be carried out by an authorised analyst: *R v Rutter* [1977] RTR 105, CA.

23 Road Traffic Offenders Act 1988 s 16(1)(b). As to identifying the sample analysed as being the sample taken from the driver see *R v Shaw (Derek)* [1974] RTR 458, CA (conviction upheld despite absence of evidence that the police officer had labelled the specimen with the details set out in the analyst's certificate, since there was no ground for suggesting that some mistake in the labelling of the specimen had been made at the police station or there had been some mistake at the laboratory). See also *Dickson v Atkins* [1972] RTR 209, DC (typographical errors in the certificate as to driver's first name and police officer's surname, but the certificate could not have referred to anyone else and it sufficiently identified the specimen); *R v Orrell* [1972] RTR 14, CA (neither the container of the specimen nor the label need be produced since the best evidence rule does not apply). For cases where the necessary link was not, however, established see *Bentley v Northumbria Police* [1984] RTR 276, DC (no certificate in fact produced and the sample simply bore the name 'Bentley'); *Paterson v DPP* [1990] RTR 329, DC (no evidence as to what the police officer wrote on the label and the certificate of analysis stated that the police station named on the label was 'Asfordby Street' whereas the sample had in fact been taken at Charles Street police station). See also *Rawal v DPP* (21 March 2000) Lexis, DC (specimen taken at Hall Lane police station and labelled SPR1, but when collected it bore the reference JWT/1 and, following laboratory analysis, by the words 'police station' on the label was written 'Elizabeth Slinger Road'; held, despite these inconsistencies, it would have been wholly fanciful to conclude that the analysed specimen was not the specimen provided by the defendant). It has been held that on the true construction of the Road Traffic Offenders Act 1988 s 16 (as amended) there is no requirement that evidence can only be given by an authorised analyst; s 16(1) is permissive and does not stipulate any manner in which the evidence of analysis must be given: *R (on the application of the Crown Prosecution Service) v Sedgemoor Magistrates' Court* [2007] All ER (D) 24 (Jul).

24 Road Traffic Offenders Act 1988 s 16(2) (amended by the Police Reform Act 2002 s 57(6)). This is expressed to be subject to the Road Traffic Act 1988 s 16(3), (4). Section 16(2) (as amended) is simply permissive; evidence of consent may be given in another form, such as from a police officer present throughout the taking of the blood sample: *Rathbone v DPP* (20 January 1995) Lexis.

25 The copy, unlike the original, need not be signed: *Chief Constable of Surrey v Wickens* [1985] RTR 277, (1984) 149 JP 333, DC. An incorrect forename on the copy, where the error is purely formal and causes no prejudice to the defendant, does not affect its admissibility: *Toovey v Chief Constable of Northumbria* [1986] Crim LR 475.

26 A document is not 'handed to' the driver if it is left on a counter at the police station and no indication is given that it is his to take away: *Walton v Rimmer* [1986] RTR 31, DC. See also *McCormack v DPP* [2002] EWHC 173 (Admin), [2002] RTR 355 (physical transfer of document not necessary).

27 Notwithstanding the provisions of what is now the Road Traffic Offenders Act 1988 s 16(6) (see the text and note 31 infra), service may be validly effected on the defendant's authorised agent: *Anderton v Kinnard* [1986] RTR 11, DC (defendant's solicitor). The defendant's counsel, however, has a discretion to refuse to accept service: *Penman v Parker* [1986] 2 All ER 862, [1986] RTR 403, DC.

28 Road Traffic Offenders Act 1988 s 16(3)(a). If the defendant wishes to submit that service was not effected as required by this provision, he must object to the admissibility of the contents of the certificate before it is put in evidence or his right to object will be waived: *R v Banks* [1972] 1 All ER 1041, [1972] 1 WLR 346, CA. 'The hearing' is the hearing at which the document is to be adduced in evidence, and not the hearing at which the defendant first appeared on the summons: *Williams v DPP* [1991] 3 All ER 651, 93 Cr App Rep 319.

The requirements of the Road Traffic Offenders Act 1988 s 16(3) are mandatory; if they are not complied with the document as such is not admissible evidence, and if it is not admissible then no purported waiver of objection on behalf of the defendant can make it admissible: *Tobi v Nicholas* [1988] RTR 343, (1987) 86 Cr App Rep 323, DC (distinguishing *R v Banks* supra). If the certificate was served in due time, however, the defendant can waive the requirement that such service be formally proved: *Louis v DPP* [1998] RTR 354, 162 JP 287, DC.

29 Road Traffic Offenders Act 1988 s 16(3)(b). See also note 28 supra.

30 Ibid s 16(4). However, the print-out remains admissible and can be put in evidence by the police operator of the device: *Temple v Botha* [1985] Crim LR 517, DC. Where the proceedings mentioned in the Road Traffic Offenders Act 1988 s 15(1) (as amended) are proceedings before a magistrates' court inquiring into an offence as examining justices, s 16 (as amended) has effect with the omission of s 16(4): s 16(6A) (added, in relation to

alleged offences into which no criminal procedure had begun before 1 April 1997, by the Criminal Procedure and Investigations Act 1996 s 47, Sch 1 para 37). This provision is repealed, as from a day to be appointed, by the Criminal Justice Act 2003 ss 41, 332, Sch 3 Pt 2 para 61(1), (4), Sch 37, Pt 4. At the date at which this volume states the law no such day had been appointed.

31 Road Traffic Offenders Act 1988 s 16(6). Where there is prima facie evidence of service of certificates in the usual way the onus is on the defendant to show, on a balance of probabilities, that he has not been served: *Hawkins v DPP* [1988] RTR 380, DC. As to postal service see the Interpretation Act 1978 s 7; and STATUTES vol 44(1) (Reissue) PARA 1388. As to proof of service by certificate see the CrimPR r 4.11 (substituted by SI 2007/699); and MAGISTRATES.

32 The Road Traffic Offenders Act 1988 ss 15, 16 (both as amended), in their application to persons subject to service discipline apply outside as well as within Great Britain and have effect as if: (1) references to proceedings for an offence under any enactment included references to proceedings for the corresponding service offence; (2) references to the court included a reference to any naval, military, or air force authority before whom the proceedings take place; (3) references to a constable included references to a member of the provost staff; and (4) in s 15 (as amended), s 15(4) were omitted: s 93 (amended by the Road Traffic Act 1991 s 48, Sch 4 para 110). As to service discipline see ARMED FORCES. For the meaning of 'Great Britain' see PARA 205 note 3 ante.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 991 Evidence

NOTE 3--The presumption in the Road Traffic Offenders Act 1988 s 15(2) is not relevant, when guilt is established by plea or otherwise, to sentencing: *Goldsmith v DPP* [2009] EWHC 3010 (Admin), (2010) 174 JP 84, DC.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/ (iv) Motor Racing, Motoring Events and Cycling on Public Ways/992. Motor racing on public ways.

## (iv) Motor Racing, Motoring Events and Cycling on Public Ways

### 992. Motor racing on public ways.

A person who promotes or takes part in a race or trial of speed between motor vehicles<sup>1</sup> on a public way<sup>2</sup> is guilty of an offence<sup>3</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For these purposes, 'public way' means a highway: Road Traffic Act 1988 s 12(2) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 45). As to the meaning of 'highway' see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 1.

3 Road Traffic Act 1988 s 12(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale; disqualification is obligatory; endorsement is obligatory; and 3-11 penalty points may be attributed if, for special reasons, the offender is ordered not to be disqualified: Road

Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 26, Sch 2). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; as to special reasons for not imposing obligatory disqualification see PARA 1059 post; and as to legal proceedings generally see PARA 1023 et seq post.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/ (iv) Motor Racing, Motoring Events and Cycling on Public Ways/993. Regulation of motoring events on public ways.

### 993. Regulation of motoring events on public ways.

A person who promotes or takes part in a competition or trial (other than a race or trial of speed) involving the use of motor vehicles<sup>1</sup> on a public way<sup>2</sup> is guilty of an offence<sup>3</sup> unless the competition or trial is authorised, and is conducted in accordance with any conditions imposed, by or under regulations under this provision<sup>4</sup>. The Secretary of State<sup>5</sup> may by regulations authorise, or provide for authorising, the holding of competitions or trials (other than races or trials of speed) involving the use of motor vehicles on public ways either generally, or as regards any area, or as regards any class or description of competition or trial or any particular competition or trial, subject to such conditions, including conditions requiring the payment of fees, as may be imposed by or under the regulations<sup>6</sup>. Such regulations may prescribe the procedure to be followed, and the particulars to be given, in connection with applications for authorisation under the regulations<sup>7</sup>, and make different provision for different classes or descriptions of competition or trial<sup>8</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For these purposes, 'public way' means a highway: Road Traffic Act 1988 s 13(4) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 46). As to the meaning of 'highway' see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 1.

3 A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

4 Road Traffic Act 1988 s 13(1). At the date at which this volume states the law no regulations had been made under s 13 but, by virtue of the Road Traffic (Consequential Provisions) Act 1988 s 2(2) and the Interpretation Act 1978 s 17(2)(b), the Motor Vehicles (Competitions and Trials) Regulations 1969, SI 1969/414 (amended by SI 1974/1674; SI 1976/1657; SI 1982/1103; SI 1993/2233) have effect as if so made.

5 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 Road Traffic Act 1988 s 13(2). As to the regulations see note 4 supra.

7 Ibid s 13(3)(a).

8 Ibid s 13(3)(b).

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 993 Regulation of motoring events on public ways

NOTE 4--SI 1969/414 further amended: SI 2010/1005.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/ (iv) Motor Racing, Motoring Events and Cycling on Public Ways/994. Authorised motoring events.

### 994. Authorised motoring events.

A person is not guilty of an offence of causing death by dangerous driving<sup>1</sup>, of dangerous driving<sup>2</sup> or of careless or inconsiderate driving<sup>3</sup> by virtue of driving a vehicle in a public place other than a road<sup>4</sup> if he shows that he was driving in accordance with an authorisation for a motoring event given under regulations made by the Secretary of State<sup>5</sup>. Such regulations may in particular:

- 903 (1) prescribe<sup>6</sup> the persons by whom, and limit the circumstances in which and the places in respect of which, authorisations may be given under the regulations<sup>7</sup>;
- 904 (2) specify conditions which must be included among those incorporated in authorisations<sup>8</sup>;
- 905 (3) provide for authorisations to cease to have effect in prescribed circumstances<sup>9</sup>;
- 906 (4) provide for the procedure to be followed, the particulars to be given, and the amount (or the persons who are to determine the amount) of any fees to be paid, in connection with applications for authorisations<sup>10</sup>; and
- 907 (5) make different provisions for different cases<sup>11</sup>.

1 ie an offence under the Road Traffic Act 1988 s 1 (as substituted): see PARA 963 ante. For the meaning of 'drive' see PARA 207 ante.

2 ie an offence under ibid s 2 (as substituted): see PARA 964 ante.

3 ie an offence under ibid s 3 (as substituted): see PARA 971 ante.

4 For the meaning of 'road' see PARA 206 ante.

5 Road Traffic Act 1988 s 13A(1) (s 13A added by the Road Traffic Act 1991 s 5). In exercise of this power the Motor Vehicles (Off Road Events) Regulations 1995, SI 1995/1371, have been made. As to the Secretary of

State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

- 6 For the meaning of 'prescribed' see PARA 205 note 6 ante.
- 7 Road Traffic Act 1988 s 13A(2)(a) (as added: see note 5 supra).
- 8 Ibid s 13A(2)(b) (as added: see note 5 supra).
- 9 Ibid s 13A(2)(c) (as added: see note 5 supra).
- 10 Ibid s 13A(2)(d) (as added: see note 5 supra).
- 11 Ibid s 13A(2)(e) (as added: see note 5 supra).

## **UPDATE**

### **963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **994 Authorised motoring events**

NOTE 5--SI 1995/1371 amended: SI 2010/1003.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/ (iv) Motor Racing, Motoring Events and Cycling on Public Ways/995. Regulation of cycle races on public ways.

### **995. Regulation of cycle races on public ways.**

A person who promotes or takes part in a race or trial of speed on a public way<sup>1</sup> between cycles<sup>2</sup> is guilty of an offence<sup>3</sup>, unless the race or trial is authorised, and is conducted in accordance with any conditions imposed, by or under regulations made by the Secretary of State<sup>4</sup>.

The Secretary of State may by regulations authorise, or provide for authorising, for the above purposes, the holding on a public way other than a bridleway<sup>5</sup> of races or trials of speed of any class<sup>6</sup> or description, or of a particular race or trial of speed, in such cases as may be prescribed<sup>7</sup> and subject to such conditions as may be imposed by or under the regulations<sup>8</sup>. Such regulations may:

- 908 (1) prescribe the procedure to be followed, and the particulars to be given, in connection with applications for authorisation under the regulations<sup>9</sup>; and
- 909 (2) make different provision for different classes or descriptions of race or trial<sup>10</sup>.

Without prejudice to any other powers exercisable in that behalf, the chief officer of police<sup>11</sup> may give directions with respect to the movement of, or the route to be followed by, vehicular traffic during any period, being directions which it is necessary or expedient to give in relation

to that period to prevent or mitigate: (a) congesting or obstruction of traffic<sup>12</sup>; or (b) danger to or from traffic<sup>13</sup>, in consequence of the holding of a race or trial of speed authorised by or under regulations under the above provisions<sup>14</sup>. Such directions may include a direction that any road<sup>15</sup> or part of a road specified in the direction is to be closed during the period to vehicles or to vehicles of a specified class<sup>16</sup>.

1 For these purposes, 'public way' means a highway but does not include a footpath: Road Traffic Act 1988 s 31(6) (substituted by the Road Traffic Act 1991 s 48, Sch 4 para 49). For the meaning of 'footpath' see PARA 206 ante. As to the meaning of 'highway' see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 1.

2 For the meaning of 'cycle' see PARA 409 note 3 ante.

3 A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

4 Road Traffic Act 1988 s 31(1). As to the regulations see the text and note 8 infra. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 For the meaning of 'bridleway' see PARA 206 ante.

6 As to classes of vehicles see PARA 208 ante.

7 For the meaning of 'prescribed' see PARA 205 note 6 ante.

8 Road Traffic Act 1988 s 31(2). At the date at which this volume states the law no such regulations had been made but, by virtue of the Road Traffic (Consequential Provisions) Act 1988 s 2(2) and the Interpretation Act 1978 s 17(2)(b), the Cycle Racing on Highways Regulations 1960, SI 1960/250 (amended by SI 1963/929; SI 1980/1185; SI 1988/215; SI 1995/3241) have effect as if so made.

9 Road Traffic Act 1988 s 31(3)(a).

10 Ibid s 31(3)(b).

11 As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

12 Road Traffic Act 1988 s 31(4)(a).

13 Ibid s 31(4)(b).

14 Ibid s 31(4). As to the placing of signs on highways for giving effect to directions given under s 31(4) see the Road Traffic Regulation Act 1984 s 66(1)(b) (as amended); and PARA 832 ante.

15 For the meaning of 'road' see PARA 206 ante.

16 Road Traffic Act 1988 s 31(5).

## **UPDATE**

### **963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/ (iv) Motor Racing, Motoring Events and Cycling on Public Ways/996. Electrically assisted pedal cycles.

### **996. Electrically assisted pedal cycles.**

An electrically assisted pedal cycle<sup>1</sup> of a specified class<sup>2</sup> is not to be driven<sup>3</sup> on a road<sup>4</sup> by a person under the age of 14<sup>5</sup>.

A person who drives such a pedal cycle or, knowing or suspecting that another person is under the age of 14, causes or permits<sup>6</sup> him to drive such a pedal cycle, in contravention of the above prohibition is guilty of an offence<sup>7</sup>.

1 For the meaning of 'cycle' see PARA 409 note 3 ante.

2 le a class specified in regulations made for the purposes of the Road Traffic Act 1988 s 189 (see PARA 210 ante) and the Road Traffic Regulation Act 1984 s 140 (as amended) (see PARA 210 ante). The Electrically Assisted Pedal Cycles Regulations 1983, SI 1983/1168, have effect as if made under these provisions: see PARA 210 ante.

3 For the meaning of 'drive' see PARA 207 ante.

4 For the meaning of 'road' see PARA 206 ante.

5 Road Traffic Act 1988 s 32(1).

6 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

7 Road Traffic Act 1988 s 32(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## **UPDATE**

### **963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(v) Stopping on Verges or in Dangerous Positions/997. Parking heavy goods vehicles on verges, central reservations and footways.

### **(v) Stopping on Verges or in Dangerous Positions**

#### **997. Parking heavy goods vehicles on verges, central reservations and footways.**

A person who parks a heavy commercial vehicle<sup>1</sup> wholly or partly on the verge of a road<sup>2</sup>, or on any land situated between two carriageways<sup>3</sup> and which is not a footway<sup>4</sup>, or on a footway, is

guilty of an offence<sup>5</sup>. A person may not be convicted of such an offence in respect of a vehicle if he proves to the satisfaction of the court<sup>6</sup> that:

- 910 (1) it was parked in accordance with permission given by a constable in uniform<sup>7</sup>;
- 911 (2) it was parked in contravention of this provision for the purpose of saving life or extinguishing fire or meeting any other like emergency<sup>8</sup>; or
- 912 (3) it was parked in contravention of this provision but the following conditions were satisfied<sup>9</sup>, that is to say: (a) that the vehicle was parked on the verge of a road or on a footway for the purpose of loading or unloading<sup>10</sup>; (b) that the loading or unloading of the vehicle could not have been satisfactorily performed if it had not been parked on the footway or verge<sup>11</sup>; and (c) that the vehicle was not left unattended at any time while it was so parked<sup>12</sup>.

1 For the meaning of 'heavy commercial vehicle' see PARA 220 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 For these purposes, 'carriageway' has the same meaning as in the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 64); definition applied by the Road Traffic Act 1988 s 19(4).

4 For these purposes, 'footway' has the same meaning as in the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 64); definition applied by the Road Traffic Act 1988 s 19(4).

5 Ibid s 19(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. An offence of parking a heavy commercial vehicle on a verge or footway in contravention of the Road Traffic Act 1988 s 19 is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

As to the disapplication of the Road Traffic Act 1988 s 19 in relation to special parking areas outside London see PARA 821 ante, and in relation to special parking areas in London see PARA 822 ante.

6 Ibid s 19(2).

7 Ibid s 19(2)(a). As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

8 Ibid s 19(2)(b).

9 Ibid s 19(2)(c).

10 Ibid s 19(3)(a).

11 Ibid s 19(3)(b).

12 Ibid s 19(3)(c).

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.



1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(v) Stopping on Verges or in Dangerous Positions/998. Driving or parking on cycle tracks.

### **998. Driving or parking on cycle tracks.**

Any person who, without lawful authority, drives<sup>1</sup> or parks a mechanically propelled vehicle<sup>2</sup> wholly or partly on a cycle track<sup>3</sup> is guilty of an offence<sup>4</sup>. A person may not be convicted of such an offence with respect to a vehicle if he proves to the satisfaction of the court<sup>5</sup>:

- 913 (1) that the vehicle was driven or, as the case may be, parked in contravention of the above provision for the purpose of saving life, or extinguishing fire or meeting any other like emergency<sup>6</sup>; or
- 914 (2) that the vehicle was owned or operated by a highway authority<sup>7</sup> or by a person discharging functions on behalf of a highway authority and was driven or, as the case may be, parked in contravention of the above provision in connection with the carrying out by or on behalf of that authority of any of the following, that is, the cleansing, maintenance or improvement of, or the maintenance or alteration of any structure or other work situated in, the cycle track or its verges or the preventing or removing of obstructions to the cycle track, or the preventing or abating in any other way of nuisances or other interferences with the cycle track<sup>8</sup>; or
- 915 (3) that the vehicle was owned or operated by statutory undertakers<sup>9</sup> and was driven or (as the case may be) parked in contravention of that provision in connection with the carrying out by those undertakers of any works in relation to any apparatus belonging to or used by them for the purpose of their undertaking<sup>10</sup>.

1 For the meaning of 'drive' see PARA 207 ante.

2 For these purposes, 'mechanically propelled vehicle' does not include a vehicle falling within the Road Traffic Act 1988 s 189(1)(a), (b) or (c) (see PARA 210 heads (1)-(3) ante): s 21(3)(aa) (added by the Countryside and Rights of Way Act 2000 s 67, Sch 7 para 4(1), (3)).

3 For these purposes, 'cycle track' has the same meaning as in the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 64); definition applied by the Road Traffic Act 1988 s 21(3)(a).

4 Ibid s 21(1) (amended by the Countryside and Rights of Way Act 2000 Sch 7 para 4(2)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

As to the disapplication of the Road Traffic Act 1988 s 21 (as amended) in relation to special parking areas outside London see PARA 821 ante; and in relation to special parking areas in London see PARA 822 ante.

5 Ibid s 21(2).

6 Ibid s 21(2)(a).

7 As to highway authorities see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq.

8 Road Traffic Act 1988 s 21(2)(b) (amended by the Countryside and Rights of Way Act 2000 s 70(4)).

9 For these purposes, 'statutory undertakers' means any body being statutory undertakers within the meaning of the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 80), any sewerage authority within the meaning of that Act (definition repealed: see now the Water Act 1989 s 4(1)(a); and WATER AND WATERWAYS vol 100 (2009) PARA 108 et seq) or the operator of an electronic communications code network (see TELECOMMUNICATIONS vol 97 (2010) PARA 174): Road Traffic Act 1988 s 21(3)(b) (amended by the Communications Act 2003 s 406(1), Sch 17 para 95).

10 Road Traffic Act 1988 s 21(2)(c).

### **UPDATE**

## 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(v) Stopping on Verges or in Dangerous Positions/999. Leaving vehicles in dangerous positions.

### 999. Leaving vehicles in dangerous positions.

If a person in charge of a vehicle causes or permits<sup>1</sup> the vehicle or a trailer<sup>2</sup> drawn by it to remain at rest on a road<sup>3</sup> in such a position or in such condition or in such circumstances<sup>4</sup> as to involve a danger of injury to other persons using the road, he is guilty of an offence<sup>5</sup>.

1 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

2 For the meaning of 'trailer' see PARA 210 ante.

3 For the meaning of 'road' see PARA 206 ante.

4 A vehicle left unattended by the kerb, with the handbrake off on a slight gradient, which moved forward of its own weight and collided with a post and then, before the driver could stop it, injured a pedestrian, had been left 'in such circumstances as to be likely to cause danger, etc': *Maguire v Crouch* [1941] 1 KB 108, DC (decided under similarly worded previous legislation).

5 Road Traffic Act 1988 s 22 (amended by the Road Traffic Act 1991 s 48, Sch 4 para 48). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale; disqualification is discretionary if committed in respect of a motor vehicle; endorsement is obligatory if committed in respect of a motor vehicle; and 3 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Act 1988 s 22 (as amended) of leaving a vehicle in a dangerous position is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3. For the meaning of 'motor vehicle' see PARA 210 ante. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; and as to legal proceedings generally see PARA 1023 et seq post.

## UPDATE

## 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-

1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(v) Stopping on Verges or in Dangerous Positions/1000. Causing danger to road users.

### **1000. Causing danger to road users.**

A person is guilty of an offence<sup>1</sup>, if he intentionally and without lawful authority or reasonable cause causes anything to be on or over a road<sup>2</sup>, or interferes with a motor vehicle<sup>3</sup>, trailer<sup>4</sup> or cycle<sup>5</sup>, or interferes (directly or indirectly) with traffic equipment<sup>6</sup>, in such circumstances that it would be obvious to a reasonable person<sup>7</sup> that to do so would be dangerous<sup>8</sup>.

1 A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine or to both, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry added by the Road Traffic Act 1991 s 26, Sch 2). As to the statutory maximum see PARA 359 note 11 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

2 Road Traffic Act 1988 s 22A(1)(a) (s 22A added by the Road Traffic Act 1991 s 6). For these purposes, 'road' does not include a footpath or bridleway: Road Traffic Act 1988 s 22A(5) (as so added). For the meaning of 'road' generally see PARA 206 ante. For the meanings of 'footpath' and 'bridleway' see PARA 206 ante.

3 For the meaning of 'motor vehicle' see PARA 210 ante.

4 For the meaning of 'trailer' see PARA 210 ante.

5 Road Traffic Act 1988 s 22A(1)(b) (as added: see note 2 supra). For the meaning of 'cycle' see PARA 409 note 3 ante.

6 Ibid s 22A(1)(c) (as added: see note 2 supra). 'Traffic equipment' means:

1496 (1) anything lawfully placed on or near a road by a highway authority (s 22A(3)(a) (as so added));

1497 (2) a traffic sign lawfully placed on or near a road by a person other than a highway authority (s 22A(3)(b) (as so added));

1498 (3) any fence, barrier or light lawfully placed on or near a road:

22. (a) in pursuance of the Highways Act 1980 s 174 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 295), or the New Roads and Street Works Act 1991 s 65 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 451) (which provide for guarding, lighting and signing in streets where works are undertaken) (Road Traffic Act 1988 s 22A(3)(c)(i) (as so added; and amended by the New Roads and Street Works Act 1991 s 168(1), (2), Sch 8 para 121(1), (2), Sch 9)); or  
22

23. (b) by a constable or a person acting under the instructions (whether general or specific) of a chief officer of police (Road Traffic Act 1988 s 22A(3)(c)(ii) (as so added)).  
23

As to highway authorities see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq. For the meaning of 'traffic sign' see PARA 830 ante; definition applied by s 192(1). As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

For the purposes of s 22A(3) (as added and amended) anything placed on or near a road is unless the contrary is proved deemed to have been lawfully placed there: s 22A(4) (as so added).

7 'Reasonable person' means a reasonable bystander rather than a reasonable motorist: *DPP v D* [2006] EWHC 314 (Admin), 170 JP 421 (placing of metal road sign in carriageway at night contravened the Road Traffic Act 1988 s 22A(1) (as added)).

8 Road Traffic Act 1988 s 22A(1) (as added: see note 2 supra). 'Dangerous' refers to danger either of injury to any person while on or near a road, or of serious damage to property on or near a road; and in determining for the purposes of s 22A(1) (as added) what would be obvious to a reasonable person in a particular case,

regard must be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused: s 22A(2) (as so added).

## **UPDATE**

### **963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(vi) Safety Requirements/1001. Carriage of persons on motor cycles.

## **(vi) Safety Requirements**

### **1001. Carriage of persons on motor cycles.**

Not more than one person in addition to the driver<sup>1</sup> may be carried on a motor bicycle<sup>2</sup>. No person in addition to the driver may be carried on a motor bicycle otherwise than sitting astride the motor cycle<sup>3</sup> and on a proper seat securely fixed to the motor cycle behind the driver's seat<sup>4</sup>. If a person is carried on a motor cycle in contravention of this provision, the driver of the motor cycle is guilty of an offence<sup>5</sup>.

1 For the meaning of 'driver' see PARA 207 ante.

2 Road Traffic Act 1988 s 23(1) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 6).

3 For the meaning of 'motor cycle' see PARA 214 ante.

4 Road Traffic Act 1988 s 23(2) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 3 para 6).

5 Road Traffic Act 1988 s 23(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale; disqualification is discretionary; endorsement is obligatory; and 3 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 26, Sch 2). As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Act 1988 s 23 (as amended) of unlawful carrying of passengers on motor cycles is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3. As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; and as to legal proceedings generally see PARA 1023 et seq post.

## **UPDATE**

### **963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(vi) Safety Requirements/1002. Carriage of persons on bicycles.

### **1002. Carriage of persons on bicycles.**

Not more than one person may be carried on a road<sup>1</sup> on a bicycle<sup>2</sup> not propelled by mechanical power unless it is constructed or adapted for the carriage of more than one person<sup>3</sup>. If a person is carried on a bicycle in contravention of this provision, each of the persons carried is guilty of an offence<sup>4</sup>.

1 For these purposes, 'road' includes bridleway: Road Traffic Act 1988 s 24(2)(b). For the meaning of 'road' generally see PARA 206 ante. For the meaning of 'bridleway' see PARA 206 ante.

2 References to a person carried on a bicycle include references to a person riding the bicycle: *ibid* s 24(2)(a).

3 *Ibid* s 24(1).

4 *Ibid* s 24(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Act 1988 s 24 of unlawfully carrying more than one person on a pedal cycle is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3 (entry added by the Fixed Penalty Offences Order 1999, SI 1999/1851, art 3). As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## **UPDATE**

### **963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(vi) Safety Requirements/1003. Tampering with motor vehicles.

### **1003. Tampering with motor vehicles.**

If, while a motor vehicle<sup>1</sup> is on a road<sup>2</sup> or on a parking place provided by a local authority<sup>3</sup>, a person gets on to the vehicle<sup>4</sup> or tampers with the brake or other part of its mechanism<sup>5</sup>, without lawful authority or reasonable cause, he is guilty of an offence<sup>6</sup>.

- 1 For the meaning of 'motor vehicle' see PARA 210 ante.
- 2 For the meaning of 'road' see PARA 206 ante.
- 3 As to parking places see PARA 784 et seq ante.
- 4 Road Traffic Act 1988 s 25(a).
- 5 Ibid s 25(b).
- 6 Ibid s 25. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## **UPDATE**

### **963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(vi) Safety Requirements/1004. Holding or getting on to vehicles in order to be towed or carried.

#### **1004. Holding or getting on to vehicles in order to be towed or carried.**

If, for the purpose of being carried, a person without lawful authority or reasonable cause takes or retains hold of, or gets on to, a motor vehicle<sup>1</sup> or trailer<sup>2</sup> while in motion on a road<sup>3</sup>, he is guilty of an offence<sup>4</sup>.

If, for the purpose of being drawn, a person takes or retains hold of a motor vehicle or trailer while in motion on a road, he is guilty of an offence<sup>5</sup>.

- 1 For the meaning of 'motor vehicle' see PARA 210 ante.
- 2 For the meaning of 'trailer' see PARA 210 ante.
- 3 For the meaning of 'road' see PARA 206 ante.
- 4 Road Traffic Act 1988 s 26(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.
- 5 Road Traffic Act 1988 s 26(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: Road Traffic Offenders Act 1988 Sch 2 Pt I.

## **UPDATE**

### **963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(vi) Safety Requirements/1005. Control of dogs on roads.

### **1005. Control of dogs on roads.**

A person who causes or permits a dog to be on a designated road<sup>1</sup> without the dog being held on a lead is guilty of an offence<sup>2</sup>.

1 For these purposes, 'designated road' means a length of road specified by an order in that behalf of the local authority in whose area the length of road is situated: Road Traffic Act 1988 s 27(2). For the meaning of 'road' see PARA 206 ante. 'Local authority' means in relation to England and Wales, the council of a county, metropolitan district or London borough or the Common Council of the City of London: s 27(7). As to local government areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq. As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

The powers which under s 27(2) are exercisable by a local authority in England and Wales are, in the case of a road part of the width of which is in the area of one local authority and part in the area of another, exercisable by either authority with the consent of the other: s 27(3).

An order under s 27 may provide that s 27(1) is to apply subject to such limitations or exceptions as may be specified in the order, and (without prejudice to the generality of s 27(4)) s 27(1) does not apply to dogs proved: (1) to be kept for driving or tending sheep or cattle in the course of a trade or business; or (2) to have been at the material time in use under proper control for sporting purposes: s 27(4). Such an order must not be made except after consultation with the chief officer of police: s 27(5). As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq. The power conferred by s 27 to make an order includes power, exercisable in like manner and subject to the like conditions, to vary or revoke it: s 27(8).

The Secretary of State may make regulations prescribing the procedure to be followed in connection with the making of orders under s 27, and requiring the authority making such an order to publish in such manner as may be prescribed by the regulations notice of the making and effect of the order: s 27(6). At the date at which this volume states the law no regulations had been made under s 27(6) but, by virtue of the Road Traffic (Consequential Provisions) Act 1988 s 2(2) and the Interpretation Act 1978 s 17(2)(b), the Control of Dogs on Roads Orders (Procedure) (England and Wales) Regulations 1962, SI 1962/2340 (amended by SI 1965/640; and revoked by SI 1995/2767 subject to a transitional provision); and the Control of Dogs on Roads Orders (Procedure) (England and Wales) Regulations 1995, SI 1995/2767, have effect as if so made. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. For the meaning of 'prescribed' see PARA 205 note 6 ante.

2 Road Traffic Act 1988 s 27(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

## **UPDATE**

### **963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(vii) Use of Motor Vehicles away from Roads/1006. Use of footpaths and bridleways for motor vehicle trials.

## **(vii) Use of Motor Vehicles away from Roads**

### **1006. Use of footpaths and bridleways for motor vehicle trials.**

A person must not promote or take part in a trial of any description between motor vehicles<sup>1</sup> on a footpath<sup>2</sup>, bridleway<sup>3</sup> or restricted byway<sup>4</sup> unless the holding of the trial has been authorised under this provision by the local authority<sup>5</sup>. A local authority must not give such an authorisation unless satisfied that consent in writing to the use of any length of footpath, bridleway or restricted byway for the purposes of the trial has been given by the owner and by the occupier of the land over which that length of footpath, bridleway or restricted byway runs, and any such authorisation may be given subject to compliance with such conditions as the authority thinks fit<sup>6</sup>. A person who contravenes this provision, or fails to comply with any conditions subject to which such an authorisation has been granted, is guilty of an offence<sup>7</sup>. The holding of a trial so authorised is not affected by any statutory provision prohibiting or restricting the use of footpaths, bridleways or restricted byways or a specified footpath, bridleway or restricted byway; but this provision does not prejudice any right or remedy of a person as having any interest in land<sup>8</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'footpath' see PARA 206 ante.

3 For the meaning of 'bridleway' see PARA 206 ante.

4 'Restricted byway' means a way over which the public has restricted byway rights within the meaning of the Countryside and Rights of Way Act 2000 Pt II (ss 47-72) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 603), with or without a right to drive animals of any description along the way, but no other rights of way: Road Traffic Act 1988 s 33(6) (added by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, reg 2, Schedule Pt I).

5 Road Traffic Act 1988 s 33(1) (amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, Schedule Pt I). For these purposes, 'local authority' in relation to England and Wales, means the council of a county, metropolitan district or London borough: Road Traffic Act 1988 s 33(5)(a). As to local government areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq. As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq.

6 Ibid s 33(2) (amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, Schedule Pt I).

7 Ibid s 33(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

8 Road Traffic Act 1988 s 33(4) (amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, Schedule Pt I).



**UPDATE****963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(vii) Use of Motor Vehicles away from Roads/1007. Driving elsewhere than on roads.

**1007. Driving elsewhere than on roads.**

Subject to the following provisions, if without lawful authority a person drives<sup>1</sup> a mechanically propelled vehicle<sup>2</sup>: (1) on to or on any common land, moorland or land of any other description, not being land forming part of a road<sup>3</sup>; or (2) on any road being a footpath<sup>5</sup>, bridleway<sup>6</sup> or restricted byway<sup>7</sup>, he is guilty of an offence<sup>8</sup>. It is not an offence under this provision for a person with an interest<sup>9</sup> in land, or a visitor to any land, to drive a mechanically propelled vehicle on a road if, immediately before 2 May 2006 in England or 11 May 2006 in Wales<sup>10</sup>, the road was: (a) shown in a definitive map and statement as a road used as a public path; and (b) in use for obtaining access to the land by the driving of mechanically propelled vehicles by a person with an interest in the land or by visitors to the land<sup>11</sup>. It is not an offence under this provision to drive a motor vehicle on any land within 15 yards of a road, being a road on which a motor vehicle may lawfully be driven, for the purpose only of parking the vehicle on that land<sup>12</sup>. A person is not to be convicted of an offence under this provision with respect to a vehicle if he proves to the satisfaction of the court that it was driven in contravention of it for the purpose of saving life or extinguishing fire or meeting any other like emergency<sup>13</sup>.

1 For the meaning of 'drive' see PARA 207 ante.

2 For these purposes, 'mechanically propelled vehicle' does not include a vehicle falling within the Road Traffic Act 1988 s 189(1)(a), (b) or (c) (see PARA 210 heads (1)-(3) ante): s 34(7) (s 34 substituted by the Countryside and Rights of Way Act 2000 s 67, Sch 7 para 5).

3 Road Traffic Act 1988 s 34(1)(a) (as substituted: see note 2 supra). For the meaning of 'road' see PARA 206 ante. See *Massey v Boulden* [2002] EWCA Civ 1634, [2003] 2 All ER 87 ('land of any other description' not to be construed ejusdem generis with the words 'common land' and 'moorland'; thus prescriptive rights to vehicular access can never be acquired except over 'land forming part of a road').

5 For the meaning of 'footpath' see PARA 206 ante.

6 For the meaning of 'bridleway' see PARA 206 ante.

7 Road Traffic Act 1988 s 34(1)(b) (as substituted: see note 2 supra). 'Restricted byway' means a way over which the public has restricted byway rights within the meaning of the Countryside and Rights of Way Act 2000 Pt II (ss 47-72) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 603), with or without a right to drive animals of any description along the way, but no other rights of way: Road Traffic Act 1988 s 34(7) (as so substituted). For the purposes of head (2) in the text, a way shown in a definitive map and statement as a footpath, bridleway or restricted byway is, without prejudice to the Wildlife and Countryside Act 1981 s 56(1) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 592), to be taken to be a way of the kind shown, unless the contrary is proved: Road Traffic Act 1988 s 34(2) (s 34 as so substituted; and s 34(2) amended by the Natural Environment and Rural Communities Act 2006 ss 70(2), (3), 105(2), Sch 12). 'Definitive map and

statement' has the same meaning as in the Wildlife and Countryside Act 1981 Pt III (ss 53-66) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 591): Road Traffic Act 1988 s 34(7) (as so substituted).

As from a day to be appointed, the following exceptions to the presumption in s 34(2) (as substituted and amended) apply: s 34A (added by the Countryside and Rights of Way Act 2000 Sch 7 para 6). Where a person is charged with an offence under the Road Traffic Act 1988 s 34 (as substituted and amended) in respect of the driving of any vehicle, it is open to that person to prove under s 34(2) (as substituted and amended) that a way shown in a definitive map and statement as a footpath, bridleway or restricted byway is not a way of the kind shown only:

1499 (1) if he proves to the satisfaction of the court: (a) that he was a person interested in any land and that the driving of the vehicle by him was reasonably necessary to obtain access to the land; (b) that the driving of the vehicle by him was reasonably necessary to obtain access to any land, and was for the purpose of obtaining access to the land as a lawful visitor; or (c) that the driving of the vehicle by him was reasonably necessary for the purposes of any business, trade or profession (s 34A(1)(a) (as so added)); or

1500 (2) in such circumstances as may be prescribed by regulations made by the Secretary of State (and head (1) supra is without prejudice to this head) (s 34A(1)(b) (as so added)).

For these purposes, 'interest', in relation to land, includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an estate or interest in land or by virtue of a licence or agreement, and in particular includes rights of common and sporting rights, and the reference to a person interested in land is to be construed accordingly; and 'lawful visitor', in relation to land, includes any person who enters the land for any purpose in the exercise of a right conferred by law: s 34A(2) (as so added). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. At the date at which this volume states the law no such day had been appointed.

8 Ibid s 34(1) (as substituted: see note 2 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (Sch 2 amended by the Countryside and Rights of Way Act 2000 Sch 7 para 8). As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Act 1988 s 34 (as substituted and amended) of driving a motor vehicle elsewhere than on a road is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3 (amended by the Countryside and Rights of Way Act 2000 Sch 7 para 9). As to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post. As to police powers to seize a motor vehicle being used in a manner which contravenes the Road Traffic Act 1988 s 34 (as substituted and amended) see the Police Reform Act 2002 s 59; and PARA 972 ante.

9 For these purposes, 'interest', in relation to land, includes any estate in land and any right over land (whether exercisable by virtue of the ownership of an estate or interest in the land or by virtue of a licence or agreement) and, in particular, includes rights of common and sporting rights: *ibid* s 34(7) (as substituted) (see note 2 supra); definition added by the Natural Environment and Rural Communities Act 2006 s 70(6)).

10 Ie the commencement of the Countryside and Rights of Way Act 2000 s 47(2): see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 602.

11 Road Traffic Act 1988 s 34(2A) (added by the Natural Environment and Rural Communities Act 2006 s 70(4)). A person: (1) entering any land in exercise of rights conferred by virtue of the Countryside and Rights of Way Act 2000 s 2(1) (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 583); or (2) entering any land which is treated by s 15(1) as being accessible to the public apart from that Act (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 580), is not, for the purposes of the Road Traffic Act 1988 s 34(2A) (as added), a visitor to the land: s 34(8) (added by the Natural Environment and Rural Communities Act 2006 s 70(7)).

12 Road Traffic Act 1988 s 34(3) (as substituted: see note 2 supra).

13 Ibid s 34(4) (as substituted: see note 2 supra). Nothing in s 34 (as substituted and amended) prejudices the operation of the Law of Property Act 1925 s 193 (see COMMONS vol 13 (2009) PARAS 581-582) or any byelaws applying to any land, or affects the law of trespass to land or any right or remedy to which a person may by law be entitled in respect of any such trespass or in particular confers a right to park a vehicle on any land: Road Traffic Act 1988 s 34(5) (as so substituted). As to trespass see TORT vol 45(2) (Reissue) PARA 505 et seq.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(viii) Taking Conveyances without Authority; Theft/1008. Taking motor vehicle or other conveyance without authority.

## **(viii) Taking Conveyances without Authority; Theft**

### **1008. Taking motor vehicle or other conveyance without authority.**

If a person, without having the consent<sup>1</sup> of the owner<sup>2</sup> or other lawful authority takes<sup>3</sup> any conveyance<sup>4</sup> for his own or another's use or, knowing that any conveyance has been taken without such authority<sup>5</sup>, drives<sup>6</sup> it or allows himself to be carried in or on it<sup>7</sup>, he is guilty of an offence<sup>8</sup>.

The above provisions do not apply in relation to pedal cycles; but a person who, without having the consent of the owner or other lawful authority, takes a pedal cycle for his own or another's use, or rides a pedal cycle knowing it to have been taken without such authority, is guilty of an offence<sup>9</sup>.

A person does not commit any of the above offences by anything done in the belief<sup>10</sup> that he has lawful authority to do it or that he would have the owner's consent if the owner knew of his doing it and the circumstances of it<sup>11</sup>.

Possession of an article for use in committing any of the above offences is itself an offence<sup>12</sup>.

1 If consent is given to use a vehicle for a particular purpose and for a given time, the person to whom that consent is given may be convicted of the offence if he uses the vehicle for a different purpose or beyond that time: *R v Phipps* [1970] RTR 209, 54 Cr App Rep 300, CA; *McKnight v Davies* [1974] RTR 4, DC. Consent obtained by intimidation is not 'consent' for the purpose of this offence: *R v Hogdon* [1962] Crim LR 563, CCA. Consent is not, however, vitiated by the fact that it was obtained by deception: *R v Peart* [1970] 2 QB 672, [1970] 2 All ER 823, CA (false pretence as to the destination and purpose of the journey); *Whittaker v Campbell* [1984] QB 318, [1983] 3 All ER 582, DC (false representations as to the identity of the driver and the holding of a full driving licence).

2 'Owner', in relation to a conveyance which is the subject of a hiring agreement or hire-purchase agreement, means the person in possession of the conveyance under that agreement: Theft Act 1968 s 12(7) (b).

3 To constitute a taking there must be some movement, however slight, of the conveyance: *R v Bogacki* [1973] QB 832, [1973] 2 All ER 864, CA. The taking need not be accomplished by driving, but may be accomplished by removing the conveyance on a transporter: *R v Pearce* [1973] Crim LR 321, CA (inflatable dinghy taken away on a trailer). The taking must, however, be for the defendant's (or another's) use as a conveyance; thus no offence was committed when a conveyance was pushed around the corner to make its owner think (as a practical joke) that it had been stolen: *R v Stokes* [1983] RTR 59, [1982] Crim LR 695, CA. See also *R v Bow* [1977] RTR 6, CA (defendant released the handbrake and coasted downhill for 200 yards without turning the engine on; held, as the vehicle had been taken and moved in such a way as necessarily involved its use as a conveyance, the offence had been committed). Taking a conveyance with intent to use it on some future occasion as a conveyance suffices: *R v Marchant* (1984) 80 Cr App Rep 361, CA.

Using a conveyance in an unauthorised way can amount to a taking: see *R v Phipps* [1970] RTR 209, 54 Cr App Rep 300, CA; *McKnight v Davies* [1974] RTR 4, DC. In the case of an employed driver, however, not every brief, unauthorised diversion from his proper route will necessarily involve a 'taking' of the vehicle for his own use:

*McKnight v Davies* supra at 8 per Lord Widgery CJ. See also *R v Wibberley* [1966] 2 QB 214, [1965] 3 All ER 718, CCA.

Where a conveyance has been taken without the consent of its owner and abandoned, a second such taking constitutes an offence under the Theft Act 1968 s 12 (as amended): *DPP v Spriggs* [1994] RTR 1, [1993] Crim LR 622, DC (distinguishing *D (An Infant) v Parsons* [1960] 2 All ER 493, [1960] 1 WLR 797, DC; *R v Stally* [1959] 3 All ER 814, [1960] 1 WLR 79, CCA).

4 'Conveyance' means any conveyance constructed or adapted for the carriage of a person or persons whether by land, water or air, except that it does not include a conveyance constructed or adapted for use only under the control of a person not carried in or on it; and 'drive' is to be construed accordingly: Theft Act 1968 s 12(7)(a). A horse is not a conveyance within this definition: *Neal v Gribble* [1978] RTR 409, 68 Cr App Rep 9, DC.

5 This includes knowledge that the conveyance has been stolen: *Tolley v Giddings* [1964] 2 QB 354, [1964] 1 All ER 201, DC. There must be some movement of the conveyance after the defendant knew it had been unlawfully taken: *R v Diggin* [1981] RTR 83, CA.

6 In relation to the former offence of taking and driving away (ie the Road Traffic Act 1960 s 217 (repealed)) it was held that merely releasing the brake of a lorry, so that it ran away without a driver, did not constitute 'taking and driving away': *R v Roberts* [1965] 1 QB 85, [1964] 2 All ER 541, CCA.

7 There must be some movement of the conveyance for the defendant to be carried in it: *R v Diggin* [1981] RTR 83, CA. See also *R v Miller* [1976] Crim LR 147. If the driver tells a hitch-hiker that he is using his employer's van, contrary to the employer's instructions, to go to Blackpool for the day, then the hitch-hiker will be liable if he allows himself to be carried further: *Boldizar v Knight* [1980] Crim LR 653, DC (though such a requirement to dissociate from the driver upon learning that the conveyance had been taken without consent was doubted in *R v Diggin* supra at 86 per Boreham J).

8 Theft Act 1968 s 12(1). This is expressed to be subject to s 12(5) (as amended) and s 12(6). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both: s 12(2) (amended by the Criminal Justice Act 1988 s 37(1)). Disqualification is discretionary: Road Traffic Offenders Act 1988 s 34 (as amended: see PARA 1061 post), Sch 2 Pt II (entry amended by the Road Traffic Act 1991 s 83, Sch 8). As to the standard scale see PARA 230 note 3 ante. As to disqualification see PARA 1057 et seq post.

If on the trial of an indictment for theft the jury is not satisfied that the accused committed theft, but it is proved that the accused committed an offence under the Theft Act 1968 s 12(1), the jury may find him guilty of the offence under s 12(1) and if he is found guilty of it, he is liable as he would have been liable under s 12(2) (as amended) on summary conviction: s 12(4) (amended by the Criminal Justice Act 1988 s 37(1)).

Proceedings for an offence under the Theft Act 1968 s 12(1) (but not proceedings of a kind falling within s 12(4) (as amended)) in relation to a mechanically propelled vehicle: (1) must not be commenced after the end of the period of three years beginning with the day on which the offence was committed; but (2) subject to that, may be commenced at any time within the period of six months beginning with the relevant day: s 12(4A) (s 12(4A)-(4C) added by the Vehicles (Crime) Act 2001 s 37(1)). For these purposes, 'the relevant day' means: (a) in the case of a prosecution for an offence under the Theft Act 1968 s 12(1) by a public prosecutor, the day on which sufficient evidence to justify the proceedings came to the knowledge of any person responsible for deciding whether to commence any such prosecution; (b) in the case of a prosecution for an offence under s 12(1) which is commenced by a person other than a public prosecutor after the discontinuance of a prosecution falling within head (a) supra which relates to the same facts, the day on which sufficient evidence to justify the proceedings came to the knowledge of the person who has decided to commence the prosecution or (if later) the discontinuance of the other prosecution; (c) in the case of any other prosecution for an offence under s 12(1), the day on which sufficient evidence to justify the proceedings came to the knowledge of the person who has decided to commence the prosecution: s 12(4B) (as so added). For the purposes of head (2) supra a certificate of a person responsible for deciding whether to commence a prosecution of a kind mentioned in head (a) supra as to the date on which such evidence as is mentioned in the certificate came to the knowledge of any person responsible for deciding whether to commence any such prosecution is conclusive evidence of that fact: s 12(4C) (as so added).

9 Ibid s 12(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 12(5) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46).

10 The issue is whether the defendant has a genuine belief that he was driving the vehicle with the consent of the owner; it is irrelevant whether the owner did in fact consent or would have consented if he had known that the defendant was uninsured: *R v Clotworthy* [1981] RTR 477, CA. Where the issue arises, the onus of disproving belief of lawful authority is upon the prosecution: *R v McPherson* [1973] RTR 157, CA; *R v Gannon* [1988] RTR 49, CA.

11 Theft Act 1968 s 12(6).

12 See *ibid* s 25(1), (5) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 296. Disqualification is discretionary: see the Road Traffic Offenders Act 1988 Sch 2 Pt II (entry amended by the Road Traffic Act 1991 Sch 8).

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(viii) Taking Conveyances without Authority; Theft/1009. Aggravated vehicle-taking.

#### 1009. Aggravated vehicle-taking.

A person is guilty of aggravated taking of a vehicle<sup>1</sup> if, without having the consent of the owner or other lawful authority, he takes any mechanically propelled vehicle<sup>2</sup> for his own or another's use or, knowing that any conveyance has been taken without such authority, drives it or allows himself to be carried in or on it<sup>3</sup>, and it is proved that, at any time after the vehicle was unlawfully taken (whether by him or another) and before it was recovered<sup>4</sup>, the vehicle was driven, or injury or damage was caused, in any of the following circumstances<sup>5</sup>. The circumstances are that:

- 916 (1) the vehicle was driven dangerously<sup>6</sup> on a road or other public place<sup>7</sup>;
- 917 (2) owing to the driving of the vehicle, an accident occurred by which injury was caused to any person<sup>8</sup>;
- 918 (3) owing to the driving of the vehicle, an accident occurred by which damage was caused to any property, other than the vehicle<sup>9</sup>; or
- 919 (4) damage<sup>10</sup> was caused to the vehicle<sup>11</sup>.

A person does not commit an offence of aggravated taking of a motor vehicle if he proves that, as regards any proven driving, injury or damage as is referred to in heads (1) to (4) above, either the driving, accident or damage occurred before he committed the basic offence; or he was neither in nor on nor in the immediate vicinity of the vehicle when that driving, accident or damage occurred<sup>12</sup>.

A person guilty of an offence under these provisions is liable on conviction to a penalty<sup>13</sup>.

1 If a person charged with aggravated vehicle-taking under the Theft Act 1968 s 12A (as added) is found not guilty of that offence, but it is proved that he committed the basic offence under s 12(1) (see PARA 1008 ante), he may be convicted of the basic offence and is liable to the same penalties as apply on summary conviction: see s 12A(5), (6) (s 12A added by the Aggravated Vehicle-Taking Act 1992 s 1(1)).

The offence of aggravated vehicle-taking is triable either way except where the only alleged aggravating circumstance is damage, whether to the vehicle or other property or both, and the total value of the damage alleged to have been caused does not exceed £5,000: see the Magistrates Courts Act 1980 ss 17, 22 (as amended), Schs 1, 2 (as amended); and MAGISTRATES vol 29(2) (Reissue) PARAS 655, 661.

2 As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante. Cf the definition of 'conveyance' in the Theft Act 1968 s 12 (as amended) (see PARA 1008 note 4 ante).

3 Is an offence under *ibid* s 12(1): see PARA 1008 ante.

4 For these purposes a vehicle is recovered when it is restored to its owner or to other lawful possession or custody: *ibid* s 12A(8) (as added: see note 1 supra). For the meaning of 'owner' see PARA 1008 note 2 ante; definition applied by s 12A(8) (as so added).

5 *Ibid* s 12A(1) (as added: see note 1 supra). This is expressed to be subject to s 12A(3) (as added).

6 For these purposes a vehicle is driven dangerously if: (1) it is driven in a way which falls far below what would be expected of a competent and careful driver; and (2) it would be obvious to a competent and careful driver that driving the vehicle in that way would be dangerous: *ibid* s 12A(7) (as added: see note 1 supra). As to the meaning of 'dangerously' see further PARA 965 ante.

7 *Ibid* s 12A(2)(a) (as added: see note 1 supra).

8 *Ibid* s 12A(2)(b) (as added: see note 1 supra). These words do not import a requirement of fault in the driving of the vehicle; the driving need only be a cause of the accident: *R v Marsh* [1997] 1 Cr App Rep 67, [1997] RTR 195, CA.

9 Theft Act 1968 s 12A(2)(c) (as added: see note 1 supra).

10 This includes damage caused by the defendant in an attempt to escape from the vehicle: *Dawes v DPP* [1995] 1 Cr App Rep 65, [1994] RTR 209, DC. The position may be otherwise if the person attempting to escape was at the time being unlawfully detained because of the provisions of the Police and Criminal Evidence Act 1984 s 28(1) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 931): *Dawes v DPP* supra.

11 Theft Act 1968 s 12A(2)(d) (as added: see note 1 supra).

12 *Ibid* s 12A(3) (as added: see note 1 supra).

13 On conviction on indictment a person is liable to imprisonment for a term not exceeding two years or, if it is proved that, in the circumstances falling within head (2) in the text, the accident caused the death of the person concerned, 14 years: *ibid* s 12A(4) (as added (see note 1 supra); and amended by the Criminal Justice Act 2003 s 285(1)). As a result of the different maximum penalties the Theft Act 1968 s 12A (as added and amended) creates two offences: *R v Sherwood* [1995] RTR 60, CA. It is not sufficient to find that the facts necessary to establish the more serious offence have been proved if the indictment itself does not set out those facts: *R v Sherwood* supra. The offence of aggravated vehicle-taking carries obligatory disqualification and endorsement; and 3-11 penalty points may be attributed if, for special reasons, the offender is ordered not to be disqualified: Road Traffic Offenders Act 1988 s 34 (as amended) (see PARA 1061 post), Sch 2 Pt II (entry added by the Aggravated Vehicle-Taking Act 1992 s 3(1)). Where a person is convicted of an offence under the Theft Act 1968 s 12A (as added), the fact that he did not drive the vehicle in question at any particular time or at all cannot amount to a special reason for him not to be disqualified: Road Traffic Offenders Act 1988 s 34(1A) (added by the Aggravated Vehicle-Taking Act 1992 s 3(2)). It is not appropriate, in the case of a passenger, to order an extended driving test: *R v Bradshaw* (1994) Times, 31 December; *R v Wiggins* (2000) Times, 23 June, CA. The provisions of the Theft Act 1968 s 12A(4) (as added) are without prejudice to the operation of: (1) the Criminal Justice Act 2003 s 163 (under which the Crown Court has a general power to fine an offender convicted on indictment); and (2) the Magistrates' Courts Act 1980 s 17, Sch 1 (as amended) (see MAGISTRATES vol 29(2) (Reissue) PARA 655) (under which, with certain exceptions not material to the Theft Act 1968 s 12A (as added), offences under the Theft Act 1968 are triable either way): Aggravated Vehicle-Taking Act 1992 s 1(2) (amended by the Criminal Justice Act 2003 s 304, Sch 32 Pt 1 para 65). Nothing in the Theft Act 1968 s 12A (as added) applies to: (a) an offence under s 12(1) which was committed before 25 August 2000; or (b) any driving, injury or damage which occurred before that date: Aggravated Vehicle-Taking Act 1992 s 1(3).

On summary conviction a person is liable to a term of imprisonment not exceeding six months or a fine not exceeding the statutory maximum or to both: see the Magistrates' Courts Act 1980 s 32 (as amended), Sch 1; and MAGISTRATES vol 29(2) (Reissue) PARA 656. As to the statutory maximum see PARA 359 note 11 ante. Where the offence of aggravated vehicle-taking is triable only summarily (see note 1 supra) the restriction on the maximum penalty to a term of imprisonment not exceeding three months or a fine not exceeding level 4 on the standard scale or both does not apply: see s 33(1), (3) (s 33(1) amended by the Criminal Justice Act 1991 s 17(3)(b), Sch 4 Pt II; and the Magistrates' Courts Act 1980 s 33(1), (3) amended by the Aggravated Vehicle-Taking Act 1992 s 2(3)). As from a day to be appointed, the Magistrates' Courts Act 1980 s 33(1) (as amended) is further amended by the Criminal Justice Act 2003 ss 41, 304, 332, Sch 3 Pt I paras 1, 13, Sch 32 Pt 1 paras 25, 27, Sch 37 Pt 4 so as to refer to '51 weeks' instead of 'three months'. At the date at which this volume states the law no such day had been appointed. As to the standard scale see PARA 230 note 3 ante. See MAGISTRATES vol 29(2) (Reissue) PARA 661.

As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; as to special reasons for not imposing obligatory disqualification see PARA 1059 post; and as to legal proceedings generally see PARA 1023 et seq post.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(viii) Taking Conveyances without Authority; Theft/1010. Theft and attempted theft.

#### 1010. Theft and attempted theft.

A person who steals<sup>1</sup> or attempts to steal<sup>2</sup> a motor vehicle is guilty of an offence<sup>3</sup>. A person is also guilty of an offence if he interferes with a motor vehicle or trailer<sup>4</sup> or with anything carried in or on it with the intention that the offence of:

- 920 (1) theft of the motor vehicle or trailer or part of it<sup>5</sup>;
- 921 (2) theft of anything carried in or on the motor vehicle or trailer<sup>6</sup>; or
- 922 (3) taking a conveyance without authority<sup>7</sup>,

is to be committed by himself or another person<sup>8</sup>.

1 See the Theft Act 1968 s 7 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 282.

2 See the Criminal Attempts Act 1981 ss 1(1), 4(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 79 et seq.

3 Disqualification is discretionary: see the Road Traffic Offenders Act 1988 s 34 (as amended), Sch 2 Pt II (entry amended by the Road Traffic Act 1991 s 83, Sch 8). As to disqualification see PARA 1057 et seq post; and as to legal proceedings generally see PARA 1023 et seq post. A person tried on indictment on a charge of theft may be convicted in the alternative of an offence under the Theft Act 1968 s 12(1) (see PARA 1008 ante) and, if so convicted, is liable to the same penalties as apply on summary conviction for that offence: see s 12(4); and PARA 1008 ante.

4 For the meanings of 'motor vehicle' and 'trailer' see PARA 210 ante; definitions applied by the Criminal Attempts Act 1981 s 9(5) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 23).

5 Criminal Attempts Act 1981 s 9(2)(a).

6 Ibid s 9(2)(b).

7 Ibid s 9(2)(c). The offence mentioned in head (3) in the text is an offence under the Theft Act 1968 s 12(1): see PARA 1008 ante.

8 Criminal Attempts Act 1981 s 9(1). If it is shown that the accused intended that one of the offences mentioned in heads (1)-(3) in the text should be committed, it is immaterial that it cannot be shown which it

was: s 9(2). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 4 on the standard scale or to both: s 9(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As from a day to be appointed, this provision is further amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 28 so as to refer to '51 weeks' instead of 'three months'. At the date at which this volume states the law no such day had been appointed. As to the standard scale see PARA 230 note 3 ante.

## **UPDATE**

### **963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(ix) Breach of Regulations/1011. In general.

## **(ix) Breach of Regulations**

### **1011. In general.**

If a person acts in contravention of or fails to comply with:

- 923 (1) any regulations made by the Secretary of State<sup>1</sup> under the Road Traffic Act 1988<sup>2</sup> other than specified regulations<sup>3</sup>;
- 924 (2) any regulations made by the Secretary of State under the Road Traffic Regulation Act 1984<sup>4</sup>, other than specified regulations<sup>5</sup>,

and the contravention or failure to comply is not made an offence under any other provision of the Road Traffic Regulation Act 1984, the Road Traffic Act 1988, the Road Traffic (Consequential Provisions) Act 1988 or the Road Traffic Offenders Act 1988, he is for each offence liable on summary conviction to a fine<sup>6</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 See PARA 243 et seq ante.

3 Road Traffic Offenders Act 1988 s 91(a). The specified regulations are those made under the Road Traffic Act 1988 s 31 (as amended) (see PARA 995 ante), s 45 (as amended) (see PARA 660 ante) or s 132 (see PARA 422 ante). As from a day to be appointed, regulations made under s 160 by virtue of Sch 2A (as added) (see PARA 941 ante) are also included in the specified regulations: s 91(a) (amended by the Road Safety Act 2006 s 22(4)). At the date at which this volume states the law no such day had been appointed.

4 See PARA 718 et seq ante.

5 Road Traffic Offenders Act 1988 s 91(b). The specified regulations are those made under the Road Traffic Regulation Act 1984 s 28 (see PARA 781 ante), Sch 4 (as amended) (see PARA 798 ante), Sch 9 Pt III (as amended) (see PARA 738 ante) or Sch 12 (repealed: see now the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended)) (see PARA 1093 et seq post).



6 Ibid s 91. The fine must not exceed level 3 on the standard scale: s 91. As to the standard scale see PARA 230 note 3 ante.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(x) Forgery and False Statements/1012. Forgery of documents.

## (x) Forgery and False Statements

### 1012. Forgery of documents.

A person who, with intent to deceive<sup>1</sup>:

- 925 (1) forges<sup>2</sup>, alters or uses<sup>3</sup> any of the documents or other things listed in heads (a) to (n) below<sup>4</sup>; or
- 926 (2) lends to, or allows to be used by, any other person any of those documents or other things<sup>5</sup>; or
- 927 (3) makes or has in his possession any document or other thing so closely resembling any of the documents or other things listed in heads (a) to (n) below as to be calculated to deceive<sup>6</sup>,

is guilty of an offence<sup>7</sup>. The documents and other things referred to are:

- 928 (a) a licence under any part of the Road Traffic Act 1988 or, in the case of a licence to drive, any counterpart<sup>8</sup> of such a licence<sup>9</sup>;
- 929 (b) any counterpart of a Northern Ireland licence or Community licence<sup>10</sup>;
- 930 (c) any test certificate<sup>11</sup>, goods vehicle test certificate<sup>12</sup>, plating certificate<sup>13</sup>, certificate of conformity<sup>14</sup> or Minister's approval certificate<sup>15</sup>;
- 931 (d) any certificate required as a condition of any exception<sup>16</sup> to the wearing of seat belts<sup>17</sup>;
- 932 (e) any seal required by regulations made with respect to speed limiters<sup>18</sup>;
- 933 (f) any goods vehicle plate<sup>19</sup>;
- 934 (g) any document concerning the appointment of a vehicle examiner<sup>20</sup>;
- 935 (h) any operators' records required to be kept<sup>21</sup>;
- 936 (i) any document issued<sup>22</sup> as evidence of the result of a test of competence to drive<sup>23</sup>;
- 937 (j) any document evidencing the successful completion of a driver training course<sup>24</sup>;
- 938 (k) any driving instructor's badge or certificate<sup>25</sup>;
- 939 (l) specified certificates of insurance or surety<sup>26</sup>;
- 940 (m) any international road haulage permit<sup>27</sup>; and

941 (n) any certificate of successful completion of a drink-drive offenders' course<sup>28</sup>.

1 'To deceive' means to use a deceit which induces a state of mind: *Welham v DPP* [1961] AC 103, [1960] 1 All ER 805, HL. The fact that a document is invalid does not prevent its being used to deceive: *R v Cleghorn* [1938] 3 All ER 398, CCA. See also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 310.

2 In the application of this provision to England and Wales, 'forges' means makes a false document or other thing that it may be used as genuine: Road Traffic Act 1988 s 173(3).

3 A person is guilty of 'using' even if the document in question is a forgery and incomplete: *R v Pilditch* [1981] RTR 303, [1981] Crim LR 184, CA. The production and handing over of a driving licence to the police is not use with intent to deceive where the request to produce is unconnected with driving on the road: *R v Howe* [1982] RTR 45, CA.

4 Road Traffic Act 1988 s 173(1)(a). See note 8 infra. As to the documents and things see heads (a)-(n) in the text. As from a day to be appointed a new category (o) is added, referring to any document produced as evidence of the passing of an appropriate driving test within the meaning of the Road Traffic Offenders Act 1988 s 36 (as substituted and amended) (see PARA 1071 post): Road Traffic Act 1988 s 173(2)(n) (added by the Road Safety Act 2006 s 37(8)). At the date at which this volume states the law no such day had been appointed.

5 Road Traffic Act 1988 s 173(1)(b). See note 8 infra.

6 Ibid s 173(1)(c). See note 8 infra. As to the meaning of 'calculated to deceive' see *R v Cleghorn* [1938] 3 All ER 398, CCA (offence committed by use of a certificate of insurance no longer valid due to cancellation of the policy).

7 Road Traffic Act 1988 s 173(1). A person guilty of such an offence is liable on conviction on indictment to a term of imprisonment not exceeding two years, or on summary conviction to a fine not exceeding the statutory maximum: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 3, Sch 2 para (h); and prospectively amended by the Road Safety Act 2006 Sch 3 para 63(1), (4), Sch 7). As to the statutory maximum see PARA 359 note 11 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

The provisions of the Road Traffic Act 1988 s 173(1)(a), (b) and (c) create three separate offences; therefore a charge under s 173(1)(a) cannot cover a forged document which has never been an international road haulage permit, but has only resembled such a permit: *Holloway v Brown* [1978] RTR 537, DC.

8 For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Act 1988 s 173(4) (added by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, reg 2(1), Sch 1 para 11(b); and substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 32(3)). This provision is repealed, as from a day to be appointed, by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 2, 28(1), (3), Sch 7. At the date at which this volume states the law no such day had been appointed.

9 Road Traffic Act 1988 s 173(2)(a) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 1 para 11(a)). As from a day to be appointed, this provision is amended so as to remove the reference to a counterpart of a licence to drive: Road Traffic Act 1988 s 173(2)(a) (amended by the Road Safety Act 2006 Sch 3 para 28(2)(a), Sch 7). At the date at which this volume states the law no such day had been appointed.

10 Road Traffic Act 1988 s 173(2)(aa) (added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 32(2); and amended by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 17, 29(a)). This provision is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 28(2)(b), Sch 7. At the date at which this volume states the law no such day had been appointed. For the meaning of 'Community licence' see PARA 415 note 16 ante; definition applied by the Road Traffic Act 1988 s 173(4) (as added and substituted: see note 8 supra). See PARA 484 ante.

11 For the meaning of 'test certificate' see PARA 660 ante.

12 For the meaning of 'goods vehicle test certificate' see PARA 679 ante.

13 For the meaning of 'plating certificate' see PARA 679 ante.

14 For the meaning of 'certificate of conformity' see PARA 705 note 10 ante.

15 Road Traffic Act 1988 s 173(2)(b). For the meaning of 'minister's approval certificate' see PARA 706 ante.

16 le any exception prescribed under *ibid* s 14 (as amended): see PARA 626 ante.

17 *Ibid* s 173(2)(c).

18 *Ibid* s 173(2)(cc) (added by the Road Traffic Act 1991 s 48, Sch 4 para 73). Such regulations are made under the Road Traffic Act 1988 s 41 (as amended): see PARA 260 ante.

19 *Ibid* s 173(2)(d) (amended by the Road Traffic Act 1991 Sch 4 para 73). As to the particulars required to be marked by means of a plate see PARAS 716-717 ante. As to goods vehicles see PARA 1319 et seq post.

20 Road Traffic Act 1988 s 173(2)(dd) (added by the Road Traffic Act 1991 Sch 4 para 73). Vehicle examiners are appointed under the Road Traffic Act 1988 s 66A (as added and amended): see PARA 698 ante.

21 *Ibid* s 173(2)(e). Records are required to be kept under s 74: see PARA 693 ante.

22 le in pursuance of *ibid* s 89(3) (as amended): see PARA 449 ante.

23 *Ibid* s 173(2)(f) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 ss 7, 16, Sch 3 para 22, Sch 8).

24 Road Traffic Act 1988 s 173(2)(ff) (added by the Road Traffic Act 1991 Sch 4 para 73; and substituted by the Road Safety Act 2006 s 41(4)). The text refers to a driver training course provided in accordance with regulations under the Road Traffic Act 1988 s 99ZA (as added): see PARAS 485-486 ante.

25 *Ibid* s 173(2)(g) (amended by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 s 6, Schedule para 9). This provision refers to any certificate under the Road Traffic Act 1988 s 133A (as added) (see PARA 433 ante) or any badge or certificate prescribed by regulations made by virtue of s 135 (see PARA 418 ante).

As from a day to be appointed, head (k) in the text is substituted so as to refer to any document evidencing the passing of a required examination (or part of an examination) or the successful completion of training, or any certificate: Road Traffic Act 1988 s 173(2)(g), (ga), (gb) (s 173(2)(g) substituted, and s 173(2)(ga), (gb) added, by the Road Safety Act 2006 s 42, Sch 6 paras 1, 27). The examination referred to is one required by regulations under the Road Traffic Act 1988 s 132 (as prospectively substituted) (see PARA 422 ante); training is training provided in accordance with regulations under s 133ZA (as added) (see PARA 423 ante); and a certificate is one under s 133A (as added and amended) (see PARA 433 ante) or any certificate or other item prescribed under s 135(1)(a) (see PARA 418 ante). At the date at which this volume states the law no such day had been appointed.

26 See *ibid* s 173(2)(h), (j), (k). The certificates are:

1501 (1) any certificate of insurance or certificate of security under Pt VI (ss 143-162) (as amended) (see PARA 937 et seq ante) (s 173(2)(h));

1502 (2) any document produced as evidence of insurance in pursuance of the Motor Vehicles (Compulsory Insurance) (No 2) Regulations 1973, SI 1973/2143, reg 6 (as amended) (Road Traffic Act 1988 s 173(2)(j)); and

1503 (3) any document issued under regulations made by the Secretary of State in pursuance of his power under s 165(2)(a) (see PARA 648 ante) to prescribe evidence which may be produced in lieu of a certificate of insurance or a certificate of security (s 173(2)(k) (amended by the Road Traffic Act 1991 s 83, Sch 8)).

As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

27 Road Traffic Act 1988 s 173(2)(l). 'International road haulage permit' means a licence, permit, authorisation or other document issued in pursuance of a Community instrument relating to the carriage of goods by road between member states or an international agreement to which the United Kingdom is a party and which relates to the international carriage of goods by road: s 192(1). For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

28 *Ibid* s 173(2)(m) (added by the Road Traffic Act 1991 Sch 4 para 73). The text refers to such a certificate as is referred to in the Road Traffic Offenders Act 1988 s 34B(1) (as added; prospectively amended) (see PARA 1063 post).

## UPDATE

## 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(x) Forgery and False Statements/1013. False statements and withholding material information.

### 1013. False statements and withholding material information.

A person is guilty of an offence<sup>1</sup> if he knowingly makes a false statement<sup>2</sup> for the purpose of<sup>3</sup>:

- 942 (1) obtaining the grant of a licence<sup>4</sup> to himself or any other person<sup>5</sup>;
- 943 (2) preventing the grant of any such licence<sup>6</sup>;
- 944 (3) procuring the imposition of a condition or limitation in relation to any such licence<sup>7</sup>;
- 945 (4) obtaining a document evidencing the successful completion of a driver training course<sup>8</sup>;
- 946 (5) securing the entry or retention of the name of any person in the register of approved instructors<sup>9</sup>;
- 947 (6) obtaining the grant to any person of a disabled person's emergency control certificate<sup>10</sup>;
- 948 (7) obtaining the grant of an international road haulage permit<sup>11</sup> to himself or to any other person<sup>12</sup>.

A person who, in supplying information or producing documents for the purpose of obtaining certain certificates relating to the testing or marking of vehicles<sup>13</sup>, makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular<sup>14</sup>, or produces, provides, sends or otherwise makes use of a document which he knows to be false in a material particular or recklessly produces, provides, sends or otherwise makes use of a document which is false in a material particular<sup>15</sup>, is guilty of an offence<sup>16</sup>.

A person who knowingly produces false evidence in relation to the application for an excise licence<sup>17</sup> or knowingly makes a false statement in a declaration<sup>18</sup> is guilty of an offence<sup>19</sup>.

A person who wilfully makes a false entry in any record required to be made or kept by regulations relating to goods vehicles<sup>20</sup> or, with intent to deceive<sup>21</sup>, makes use of any such entry which he knows to be false<sup>22</sup> is guilty of an offence<sup>23</sup>.

Any person who makes a false statement<sup>24</sup> or withholds any material information for the purpose of obtaining the issue of certain insurance documents<sup>25</sup> is guilty of an offence<sup>26</sup>.

1 A person guilty of such an offence is liable on summary conviction to six months' imprisonment or a fine not exceeding the statutory maximum, or on conviction on indictment to two years' imprisonment or a fine or both: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry amended by the Criminal Justice Act 2003 s 286(1)). As to the statutory maximum see PARA 359 note 11 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post. As to time limits on the

commencement of proceedings for an offence under the Road Traffic Act 1988 s 174 (as amended) see PARA 1031 post.

2 It is immaterial that no gain or advantage accrues to the offender: *Jones v Meatyard* [1939] 1 All ER 140, DC.

3 Road Traffic Act 1988 s 174(1). As from a day to be appointed, a further head is to be added after head (4) in the text, referring to obtaining a document evidencing the passing of a required examination (or part of an examination) or the successful completion of training: s 174(1)(da) (added by the Road Safety Act 2006 s 42, Sch 6 paras 1, 28). The examination is one required by regulations under the Road Traffic Act 1988 s 132 (as prospectively substituted) (see PARA 422 ante); and the training is training provided in accordance with regulations under s 133ZA (as added) (see PARA 423 ante). At the date at which this volume states the law no such day had been appointed.

4 Ie under any Part of the Road Traffic Act 1988.

5 Ibid s 174(1)(a).

6 Ibid s 174(1)(b).

7 Ibid s 174(1)(c).

8 Ibid s 174(1)(ca) (added by the Road Safety Act 2006 s 41(5)). The text refers to a training course provided in accordance with regulations under the Road Traffic Act 1988 s 99ZA (as added) (see PARAS 485-486 ante).

9 Ibid s 174(1)(d). The register of approved instructors is the register maintained under Pt V (ss 123-142) (as amended): see PARA 415 ante.

10 Ibid s 174(1)(dd) (added by the Road Traffic (Driving Instruction by Disabled Persons) Act 1993 s 6, Schedule para 10). The text refers to certificates granted under the Road Traffic Act 1988 s 133A (as added): see PARA 433 ante.

11 For the meaning of 'international road haulage permit' see PARA 1012 note 27 ante.

12 Road Traffic Act 1988 s 174(1)(e).

13 Ie for the purposes either of ibid ss 53-60 (as amended) and s 63 (as amended) or of regulations made under ss 49-51 (as amended), s 61 (as amended), s 62 and s 66(3) (as amended): see PARA 657 et seq ante.

14 Ibid s 174(2)(a).

15 Ibid s 174(2)(b).

16 Ibid s 174(2). As to the punishment for this offence see note 1 supra.

17 Ie for the purposes of regulations made under ibid s 66(1) (as amended): see PARA 675 ante.

18 Ie a declaration required to be made by regulations made under ibid s 66(1) (as amended): see PARA 675 ante.

19 Ibid s 174(3). As to the punishment for this offence see note 1 supra.

20 Ibid s 174(4)(a). Such regulations are made under s 74 (as amended): see PARA 693 ante.

21 As to the meaning of 'deceive' see PARA 1012 note 1 ante.

22 Road Traffic Act 1988 s 174(4)(b).

23 Ibid s 174(4). As to the punishment for this offence see note 1 supra.

24 The offence of making a false statement under ibid s 174 (as amended) is an absolute one and it is only necessary for the statement to be for the specified purpose or purposes, but it may be that the offence of withholding information predicates a conscious withholding by the defendant: *R v Cummerson* [1968] 2 QB 534, [1968] 2 All ER 863, CA.

25 Ie (1) a certificate of insurance or certificate of security under the Road Traffic Act 1988 Pt VI (ss 143-162) (as amended) (s 174(5)(a)); or (2) any document issued under regulations made by the Secretary of State pursuant to s 165(2)(a) (see PARA 648 ante) to prescribe evidence which may be produced in lieu of a certificate

of insurance or a certificate of security (s 174(5)(b)). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

26 Ibid s 174(5). As to the punishment for this offence see note 1 supra.

An endorsement of a driving licence is not a 'disqualification, disability, prohibition or other penalty' within the meaning of the Rehabilitation of Offenders Act 1974 s 5(8) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 681); therefore the rehabilitation period applicable to an endorsement is five years as specified in s 5(2), Table A (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 671) and when that period expires the conviction need not be disclosed in an insurance proposal form: *Power v Provincial Insurance* [1998] RTR 60, CA (plaintiff did not disclose a conviction more than five years old under the Road Traffic Act 1988 for an offence of driving whilst unfit through drink or drugs; it was held, for the above reasons, that the conviction was 'spent', even though an endorsement for such an offence remains effective for 11 years under what is now the Road Traffic Offenders Act 1988 s 45(7)(a) (as substituted) (see PARA 1083 post)).

Where a defendant is charged both with making a false statement and with withholding information, he should only be convicted on one count: *R v Cummerson* [1968] 2 QB 534, [1968] 2 All ER 863, CA.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(x) Forgery and False Statements/1014. Issue of false documents.

#### 1014. Issue of false documents.

If a person issues:

- 949 (1) a certificate of insurance or certificate of security or any document issued under regulations made by the Secretary of State<sup>1</sup> as evidence which may be produced in lieu of a certificate of insurance or a certificate of security<sup>2</sup>; or
- 950 (2) a test certificate<sup>3</sup> or certificate of conformity<sup>4</sup>,

and the document or certificate so issued is to his knowledge false in a material particular, he is guilty of an offence<sup>5</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Ie any such document as is referred to in the Road Traffic Act 1988 s 174(5)(a) or (b): see PARA 1013 text and notes 24-25 ante.

3 For the meaning of 'test certificate' see PARA 660 ante.

4 For the meaning of 'certificate of conformity' see PARA 705 note 10 ante; definition applied by the Road Traffic Act 1988 s 175.

5 Ibid s 175. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry prospectively amended by the Transport Act 1982 s 24(3)). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 post; and as to legal proceedings generally see PARA 1023 et seq post.

As from a day to be appointed, the Road Traffic Act 1988 s 175 is substituted so as to provide that a person is guilty of an offence who issues any such document as is referred to in s 174(5)(a) or (b) (see PARA 1013 text and notes 24-25 ante); a test certificate, plating certificate, goods vehicle test certificate or certificate of conformity; a certificate of temporary exemption under regulations made under s 48(4) (see PARA 657 ante) or s 53(5)(b) (see PARA 676 ante); or a notice removing a prohibition under s 69 (as substituted and amended) (see PARA 688 ante) or s 70 (as amended) (see PARA 690 ante), if the document or certificate so issued is to his knowledge false in a material particular; and a person who amends a certificate of conformity is guilty of an offence if the certificate as amended is to his knowledge false in a material particular: see s 175 (substituted by the Transport Act 1982 s 24(1); and amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 Pt I para 13(a)). At the date at which this volume states the law no such day had been appointed.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(x) Forgery and False Statements/1015. Power to seize articles in respect of which offences may have been committed.

#### **1015. Power to seize articles in respect of which offences may have been committed.**

If a constable<sup>1</sup> has reasonable cause to believe that a document produced to him<sup>2</sup> is a document in relation to which an offence has been committed<sup>3</sup>, he may seize the document<sup>4</sup>. When a document is seized, the person from whom it was taken must, unless the document has been previously returned to him<sup>5</sup>, or he has been previously charged with an offence<sup>6</sup>, be summoned before a magistrates' court to account for his possession of the document<sup>7</sup>. The court must make such order respecting the disposal of the document and award such costs as the justice of the case may require<sup>8</sup>.

If a constable, an examiner<sup>9</sup> or an authorised inspector<sup>10</sup> has reasonable cause to believe that a document or plate carried on a motor vehicle<sup>11</sup> or by the driver<sup>12</sup> of the vehicle is a document or plate to which this provision applies<sup>13</sup>, he may seize it<sup>14</sup>. When a document or plate is seized, either the driver or owner<sup>15</sup> of the vehicle must, if the document or plate is still detained and neither of them has previously been charged with an offence in relation to the document or plate<sup>16</sup>, be summoned before a magistrates' court to account for his possession of, or the presence on the vehicle of, the document or plate<sup>17</sup>. The court must make such order respecting the disposal of the document or plate and award such costs as the justice of the case may require<sup>18</sup>.

1 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

2 le in pursuance of: (1) the Road Traffic Act 1988 s 137 (see PARA 438 ante) (s 176(1)(a)); or (2) any of the provisions of ss 163-175 (as amended) (see PARA 646 et seq ante) (s 176(1)(b)).

3 le under ibid s 173 (as amended) (see PARA 1012 ante), s 174 (as amended) (see PARA 1013 ante) or s 175 (as prospectively substituted and amended) (see PARA 1014 ante) or under the Road Traffic Regulation Act 1984 s 115 (as amended) (see PARA 861 ante).

4 Road Traffic Act 1988 s 176(1). Where a licence to drive or a counterpart of any such licence or of any Northern Ireland licence or Community licence may be seized by a constable under s 176(1), he may also seize the counterpart, the licence to drive or the community licence (as the case may be) produced with it: s 176(1A) (added by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(1), 3, Sch 1 para 12; substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 33(2); and amended by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 17, 30(a)). As from a day to be appointed, this provision is repealed by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 2, 29, Sch 7. At the date at which this volume states the law no such day had been appointed. For the meaning of 'counterpart' see PARA 415 note 19 ante; and for the meaning of 'Community licence' see PARA 415 note 16 ante (definitions applied by the Road Traffic Act 1988 s 176(8) (added by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 1 para 11; and substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 33(4)). The Road Traffic Act 1988 s 176(8) (as added and substituted) is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 29, Sch 7. At the date at which this volume states the law no such day had been appointed.

5 Road Traffic Act 1988 s 176(2)(a).

6 Ibid s 176(2)(b). For the relevant offences see note 3 supra.

7 Ibid s 176(2).

8 Ibid s 176(3). An order under s 176(3) respecting the disposal of any such licence or of a Northern Ireland licence or Community licence to drive or a counterpart of a licence may include an order respecting the disposal of any document seized under s 176(1A) (as added, substituted and amended; prospectively repealed) (see note 4 supra): s 176(3A) (added by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 1 para 11; and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 1 para 33(3); and the Crime (International Co-operation) Act 2003 Sch 5 para 30(b)). This provision is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 29, Sch 7. At the date at which this volume states the law no such day had been appointed.

9 le an examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended): see PARA 698 ante.

10 le an authorised inspector appointed under the Transport Act 1982 s 8 (as amended): see PARA 699 ante.

11 For the meaning of 'motor vehicle' see PARA 210 ante.

12 For the meaning of 'driver' see PARA 207 ante.

13 The Road Traffic Act 1988 s 176(4) (as amended) applies to a document or plate in relation to which an offence has been committed under s 173 (as amended) (see PARA 1012 ante), s 174 (as amended) (see PARA 1013 ante) or s 175 (prospectively substituted and amended) (see PARA 1014 ante) in so far as they apply to:

1504 (1) documents evidencing the appointment of examiners under s 66A (as added and amended) (see PARA 698 ante) (s 176(5)(a) (amended by the Road Traffic Act 1991 Sch 4 para 74));

1505 (2) goods vehicle test certificates, plating certificates, notices removing prohibitions under the Road Traffic Act 1988 s 69 (as substituted; prospectively amended) (see PARA 688 ante) or s 70 (as amended) (see PARA 690 ante), certificates of conformity or Minister's approval certificates (s 176(5)(b));

1506 (3) plates containing plated particulars or containing other particulars required to be marked on goods vehicles by ss 54-58 (as amended) (see PARA 702 et seq ante) or regulations made under them (s 176(5)(c));

1507 (4) records required to be kept by virtue of s 74 (as amended) (see PARA 693 ante) (s 176(5)(d)); or

1508 (5) international road haulage permits (s 176(5)(e)).



For the meaning of 'goods vehicle' see PARA 220 ante; for the meaning of 'goods vehicle test certificate' see PARA 679 ante; for the meaning of 'certificate of conformity' see PARA 705 note 10 ante; for the meaning of 'minister's approval certificate' see PARA 706 ante; for the meaning of 'plated particulars' see PARA 676 note 1 ante; and for the meaning of 'international road haulage permit' see PARA 1012 note 27 ante.

14 Ibid s 176(4). For the purposes of s 176(4), the power to seize includes power to detach from a vehicle: s 176(4). As from a day to be appointed, s 176(4) is amended by the Road Traffic Act 1991 s 48, Sch 4 para 74 so as to include reference to an authorised inspector appointed under the Transport Act 1982 s 8 (as amended) (see PARA 699 ante). At the date at which this volume states the law no such day had been appointed.

15 For the meaning of 'owner' see PARA 207 ante.

16 Ie under the Road Traffic Act 1988 s 173 (as amended) (see PARA 1012 ante), s 174 (as amended) (see PARA 1013 ante) or s 175 (prospectively substituted and amended) (see PARA 1014 ante).

17 Ibid s 176(6).

17 Ibid s 176(7).

## **UPDATE**

### **963-1022 Offences and Penalties**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(xi) Other Offences/1016. In general.

## **(xi) Other Offences**

### **1016. In general.**

In addition to the offences previously mentioned<sup>1</sup>, there are many offences in relation to road traffic consisting mainly of failure to observe the statutory requirements such as those relating to the wearing of seat belts<sup>2</sup>, unroadworthy vehicles<sup>3</sup>, unauthorised protective helmets for motor cyclists<sup>4</sup>, excise licences<sup>5</sup>, driving licences<sup>6</sup>, insurance<sup>7</sup>, parking<sup>8</sup>, traffic signs<sup>9</sup>, speed limits<sup>10</sup>, public service vehicle licences<sup>11</sup>, goods vehicle licensing<sup>12</sup> and wrongful use of a disabled person's badge<sup>13</sup>. These offences are referred to in this title where the relevant requirements are dealt with.

There are also a number of miscellaneous offences, some under the Road Traffic Act 1988, and others under earlier legislation<sup>14</sup>.

1 See PARA 963 et seq ante.

2 See PARA 626 et seq ante.

3 See PARA 625 ante.

4 See PARAS 639-640 ante.

5 See PARA 520 ante.

- 6 See PARA 444 ante.
- 7 See PARA 937 ante.
- 8 See PARA 791 ante.
- 9 See PARA 830 et seq ante.
- 10 See PARA 856 ante.
- 11 See PARA 1141 post.
- 12 See PARA 1329 post.
- 13 See PARA 862 ante.
- 14 See PARA 1017 et seq post.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(xi) Other Offences/1017. Causing death by driving: unlicensed, disqualified or uninsured drivers.

### **1017. Causing death by driving: unlicensed, disqualified or uninsured drivers.**

The following provisions apply as from a day to be appointed<sup>1</sup>. A person is guilty of an offence<sup>2</sup> if he causes the death of another person by driving<sup>3</sup> a motor vehicle<sup>4</sup> on a road<sup>5</sup> and, at the time when he is driving, the circumstances are such that he is committing an offence of: (1) driving otherwise than in accordance with a licence<sup>6</sup>; (2) driving while disqualified<sup>7</sup>; or (3) using a motor vehicle while uninsured or unsecured against third party risks<sup>8</sup>.

1 The Road Traffic Act 1988 s 3ZB is added by the Road Safety Act 2006 s 21(1) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 Road Traffic Act 1988 s 3ZB (as added: see note 1 supra). Such a person is liable on summary conviction to 12 months' imprisonment or a fine not exceeding the statutory maximum or both, or on conviction on indictment to two years' imprisonment or a fine or both; disqualification is obligatory; endorsement is obligatory; and 3-11 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry prospectively added by the Road Safety Act 2006 s 21(3)). As to the statutory maximum see PARA 359 note 11 ante. As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; and as to legal proceedings generally see PARA 1023 et seq post.

3 For the meaning of 'drive' see PARA 207 ante.

3 For the meaning of 'motor vehicle' see PARA 210 ante.

5 For the meaning of 'road' see PARA 206 ante.

6 le under the Road Traffic Act 1988 s 87(1) (as amended) (see PARA 444 ante): s 3ZB(a) (as added: see note 1 supra).

7 le under ibid s 103(1)(b) (as substituted) (see PARA 481 ante): s 3ZB(b) (as added: see note 1 supra).

8 le under ibid s 143 (as amended) (see PARA 937 ante): s 3ZB(a) (as added: see note 1 supra).

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 1017 Causing death by driving: unlicensed, disqualified or uninsured drivers

TEXT AND NOTE 1--Day appointed is 18 August 2008: SI 2008/1918.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(xi) Other Offences/1018. Wanton or furious racing or driving.

### 1018. Wanton or furious racing or driving.

A person who, having the charge of any carriage or vehicle<sup>1</sup>, by wanton<sup>2</sup> or furious driving or racing does or causes to be done any bodily harm to any person is guilty of an offence<sup>3</sup>.

Any person who on any highway rides any horse or beast or drives any sort of carriage<sup>4</sup> furiously, so as to endanger the life or limb of any passenger, is guilty of an offence<sup>5</sup>.

Other than in Greater London, any person who in any street<sup>6</sup> to the obstruction, annoyance or danger of the residents or passengers rides or drives furiously any horse or carriage, or drives furiously any cattle, is guilty of an offence<sup>7</sup>.

The offences of causing death by dangerous driving and of dangerous driving on the part of drivers of mechanically propelled vehicles are dealt with elsewhere in this work<sup>8</sup>. There are also specific offences in relation to the wanton or furious driving of stage carriages, hackney carriages and omnibuses<sup>9</sup>.

1 This includes a bicycle: *R v Parker* (1895) 59 JP 793.

2 The term 'wanton' does not need to be defined to a jury: *R v Crowden* (1911) 6 Cr App Rep 190.

3 Offences Against the Person Act 1861 s 35 (amended by the Criminal Justice Act 1948 s 1(2); and by virtue of the Criminal Law Act 1967 s 1; and the Powers of Criminal Courts Act 1973 s 30). A person guilty of such an offence is liable on conviction on indictment to a term of imprisonment not exceeding two years or a fine or both: Offences Against the Person Act 1861 s 35 (as so amended). Disqualification is discretionary; endorsement is obligatory if the offence is committed in respect of a mechanically propelled vehicle; and 3-9 penalty points may be attributed: Road Traffic Offenders Act 1988 s 34 (as amended) (see PARA 1061 post), Sch 2 Pt II (entry added by the Road Safety Act 2006 s 28). As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; and as to legal proceedings generally see PARA 1023 et seq post.

4 'Carriage' includes a cycle: *Taylor v Goodwin* (1879) 4 QBD 228, DC. See further PARA 977 note 1 ante.

5 See the Highway Act 1835 s 78 (amended by the Statute Law Revision (No 2) Act 1888; the Highways Act 1959 ss 311, 312(2), Schs 23, 25; the London Government Act 1963 s 16(2), Sch 6 para 70; the Statute Law (Repeals) Act 1973; the Statute Law (Repeals) Act 1975; and the Statute Law (Repeals) Act 1989). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: see the Highway Act 1835 s 78 (as so amended; and further amended by the Criminal Justice Act 1967 s 92(1), Sch 3 Pt I; and by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 230 note 3 ante. See *Chatterton v Parker* [1914] WN 206, 78 JP 399 (offence was committed when the driver and sole occupant of a horse and trap fell asleep and the horse careered off at a furious pace so that a constable on the road might have been endangered as to life or limb).

6 For the meaning of 'street' see PARA 1434 note 4 post.

7 Town Police Clauses Act 1847 s 28. A person guilty of such an offence is liable to imprisonment for a period of 14 days or to a fine not exceeding level 3 on the standard scale: s 28 (amended by virtue of the Criminal Justice Act 1982 ss 37, 39, 46, Sch 3; and by the Police and Criminal Evidence Act 1984 s 119, Sch 7 Pt I).

8 See PARAS 963-965 ante.

9 See PARA 1491 post.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(xi) Other Offences/1019. Riding or driving on roadside footways and tethering animals.

### 1019. Riding or driving on roadside footways and tethering animals.

If any person wilfully<sup>1</sup> rides upon any footpath or causeway by the side of any road<sup>2</sup> made or set apart for the use or accommodation of foot passengers, or wilfully leads or drives any horse, ass, sheep, mule, swine, or cattle, or carriage<sup>3</sup> of any description, or any truck or sledge, upon any such footpath or causeway, or tethers any horse, ass, mule, swine, or cattle on any highway, so as to suffer or permit the tethered animal to be on that highway, he is guilty of an offence<sup>4</sup>.

The use on a footway<sup>5</sup> of an invalid carriage complying with prescribed requirements and used in accordance with prescribed conditions<sup>6</sup> is not so prohibited<sup>7</sup>.

1 As to the meaning of 'wilfully' see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 348.

2 The Highway Act 1835 s 72 (as amended) applies only to footpaths (as well as to causeways) by the side of roads: *R v Pratt* (1867) LR 3 QB 64, DC. See also *Selby v DPP* (1989) 154 JP 566.

3 For the meaning of 'carriage' see PARA 977 note 1 ante.

4 Highway Act 1835 s 72. A person guilty of such an offence is liable to a fine not exceeding level 2 on the standard scale over and above the damages occasioned by his actions: s 72 (amended by virtue of the Criminal

Justice Act 1982 ss 37, 39, 46, Sch 3). As to the standard scale see PARA 230 note 3 ante. An offence under the Highway Act 1935 s 72 of driving or cycling on the footway is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3 (entry added by the Fixed Penalty Offences Order 1999, SI 1999/1851, arts 2(3)(c), 3(3)(b)). As to the prosecution of offences see PARA 1027 post; as to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post.

Anyone may prosecute: *Back v Holmes* (1887) 57 LJMC 37, DC. It is for justices to say whether the place in question is or is not a highway: *Williams v Adams* (1862) 2 B & S 312; *R v Bradley* (1894) 63 LJMC 183, DC.

For similar offences which apply in the areas where the Town Police Clauses Act 1847 s 28 (as amended) applies and in the metropolitan police district see the Town Police Clauses Act 1847 s 28 (as amended) (see PARA 1018 ante) and the Metropolitan Police Act 1839 s 54(7) (as amended). As to the offence of driving elsewhere than on roads see PARA 1007 ante. As to other offences in relation to animals on highways see ANIMALS vol 2 (2008) PARA 754.

5 'Footway' means a way which is a footway, footpath or bridleway within the meaning of the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 64) or a restricted byway within the meaning of the Countryside and Rights of Way Act 2000 Pt II (ss 47-72) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 603); Chronically Sick and Disabled Persons Act 1970 s 20(2) (amended by the Highways Act 1980 s 343(2), Sch 24 para 19; and the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, reg 2, Schedule Pt I).

6 In the requirements and conditions prescribed in regulations made under the Chronically Sick and Disabled Persons Act 1970. For the prescribed requirements and conditions see, in relation to invalid carriages manufactured before 30 January 1989, the Use of Invalid Carriages on Highways Regulations 1970, SI 1970/1391 (revoked) and, in relation to invalid carriages manufactured after 30 January 1989, the Use of Invalid Carriages on Highways Regulations 1988, SI 1988/2268.

7 Chronically Sick and Disabled Persons Act 1970 s 20(1)(a). See also SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1070.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(xi) Other Offences/1020. Failure to keep control or causing injury or obstruction.

#### 1020. Failure to keep control or causing injury or obstruction.

It is an offence<sup>1</sup> for the driver<sup>2</sup> of any carriage<sup>3</sup> whatsoever on any part of any highway by negligence<sup>4</sup> or wilful<sup>5</sup> misbehaviour to cause any hurt to any person, horse, cattle or goods conveyed in any carriage passing or being on the highway, or to quit the highway and go on the other side of the hedge or fence inclosing the highway, or negligently or wilfully to be at such a distance from the carriage, or in such a situation while the carriage is passing upon the highway<sup>6</sup>, that he cannot have control of the horses or cattle drawing the carriage, or to leave any cart or carriage on a highway so as to obstruct the passage along it<sup>7</sup>.

1 A person guilty of such an offence is liable to a fine not exceeding level 1 on the standard scale: see the Highway Act 1835 s 78 (amended by the Criminal Justice Act 1967 s 92(1) Sch 3 Pt I; and by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 230 note 3 ante.

2 'Driver' extends to a person riding on horseback: *Williams v Evans* (1876) 1 Ex D 277, DC.

3 For the meaning of 'carriage' see PARA 977 note 1 ante.

4 Negligence unconnected with driving is not within the Highway Act 1835 s 78, which relates to causing hurt to a person passing on the highway: *Shears v Matthews* [1948] 2 All ER 1064, DC (driver of a stationary lorry opened door and injured a cyclist). See also *Watson v Lowe* [1950] 1 All ER 100, DC; *Eaton v Cobb* [1950] 1 All ER 1016, DC; and cf para 1021 note 6 post.

5 As to the meaning of 'wilfully' see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 348.

6 A carriage is still 'passing upon' the highway if the driver stops it temporarily and leaves it: *Phythian v Baxendale* [1895] 1 QB 768, DC.

7 Highway Act 1835 s 78. The fact that a boy is left in charge does not necessarily preclude a justice from convicting under s 78: *Hinde v Evans* (1906) 96 LT 20, DC.

For similar offences which apply in the areas where the Town Police Clauses Act 1847 s 28 (as amended) applies and in the metropolitan police district see the Town Police Clauses Act 1847 s 28 (as amended) (see PARA 1018 ante) and the Metropolitan Police Act 1839 s 54(3), (4).

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(xi) Other Offences/1021. Non-observance of the rule of the road.

### 1021. Non-observance of the rule of the road.

It is an offence<sup>1</sup> for the driver<sup>2</sup> of any wagon, cart or other carriage<sup>3</sup> whatsoever, or of any horses, mules or other beast of draught or burden, when meeting any other wagon, cart, carriage, horses, mules or other beasts of burden, not to keep to the left or nearside<sup>4</sup> of the road, or for any person in any manner wilfully<sup>5</sup> to prevent any other person from passing him or any wagon, cart, carriage, horses, mules or other beasts of burden under his care upon a highway, or by negligence or misbehaviour to prevent, hinder or interrupt<sup>6</sup> the free passage of any person, wagon, cart, carriage, horses, mules or other beasts of burden on any highway, or not to keep his own wagon, cart, carriage, horses, mules or other beasts of burden on the left or nearside of the road for the purpose of allowing such passage<sup>7</sup>.

1 A person guilty of such an offence is liable to a fine not exceeding level 1 on the standard scale: see the Highway Act 1835 s 78 (amended by the Criminal Justice Act 1967 s 92(1), Sch 3 Pt I; and the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 230 note 3 ante.

2 As to the meaning of 'driver' see PARA 1020 note 2 ante.

3 For the meaning of 'carriage' see PARA 977 note 1 ante.

4 le, to the left side of the road, but not necessarily close to the edge or kerb: *Bolton v Everett* (1911) 75 JP 534; *Sleith v Godfrey* (1920) 85 JP 46. The driver need not keep on the nearside of a clear road (*Finegan v London and North Western Rly Co* (1889) 53 JP 663); though he should always do so at night (*Cruden v Fentham* (1798) 2 Esp 685), and if he drives on the offside he should use more care and diligence and keep a better look out (*Pluckwell v Wilson* (1832) 5 C & P 375).

5 As to the meaning of 'wilfully' for these purposes see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 348.

6 The negligence or misbehaviour contemplated in the Highway Act 1825 s 78, which deals with interruption of free passage, is not limited to acts or omissions connected with driving: *Watson v Lowe* [1950] 1 All ER 100, DC (driver who opened the door of a stationary vehicle and struck a cyclist; found guilty); *Baldwin v Pearson* (1958) 122 JP 321, DC (passenger doing the same and knocking down a passer-by; likewise guilty); cf para 1020 note 4 ante. As to negligently opening vehicle doors see now the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 105; and PARA 619 ante. It does not, however, include negligence in filling in excavations, which allowed a flagstone to protrude and to trip a foot passenger: *Midlands Electricity Board v Stephenson* [1973] Crim LR 441.

As to liability in tort for damage to a horse which was being led see *Umphray v Ganson Bros* 1917 SC 371, Ct of Sess. As to nuisance to owners of premises abutting on the highway caused by horse-drawn vehicles standing in the street see *Benjamin v Storr* (1874) LR 9 CP 400; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 327; NUISANCE vol 78 (2010) PARA 116.

7 Highway Act 1835 s 78.

## UPDATE

### 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(1) OFFENCES AND PENALTIES/(xi) Other Offences/1022. Speeding offences: offence of obstruction.

### 1022. Speeding offences: offence of obstruction.

A person who warns a driver who is exceeding a speed limit of the presence of police officers with apparatus for detecting the offence, and thereby causes the driver to reduce speed and prevents the officers from obtaining evidence, is guilty<sup>1</sup> of wilfully obstructing a constable in the execution of his duty<sup>2</sup>.

<sup>1</sup> le under the Police Act 1996 s 89(2): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 735.

<sup>2</sup> *Betts v Stevens* [1910] 1 KB 1, DC, where an AA patrol warned a driver of a speed trap, distinguishing *Bastable v Little* [1907] 1 KB 59, DC, where the facts were similar save that there was no evidence that the driver was speeding. In *Invicta Plastics Ltd v Clare* [1976] RTR 251, DC, a company advertising in a motoring magazine a device capable of intercepting transmissions from police radar traps was convicted of inciting a breach of wireless telegraphy licensing legislation even though the advertisement warned that unlicensed use of the device for that purpose would be illegal.

## UPDATE

## 963-1022 Offences and Penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(i) In general/1023. Application of the Road Traffic Offenders Act 1988 to the Crown.

## (2) LEGAL PROCEEDINGS

### (i) In general

#### 1023. Application of the Road Traffic Offenders Act 1988 to the Crown.

Certain provisions of the Road Traffic Offenders Act 1988<sup>1</sup> apply to vehicles and persons in the public service of the Crown<sup>2</sup>.

The provisions of the Road Traffic Offenders Act 1988 relating to the use of specimens<sup>3</sup>, in their application to persons subject to service discipline, apply outside as well as within Great Britain<sup>4</sup>.

Where an offence under the road traffic legislation<sup>5</sup> is alleged to have been committed in connection with a vehicle in the public service of the Crown, proceedings may be brought in respect of the offence against a person nominated for the purpose on behalf of the Crown<sup>6</sup>. Where any such offence is committed, any person so nominated is also guilty of the offence as well as any person actually responsible for the offence (but without prejudice to proceedings against any person so responsible)<sup>7</sup>. Where any person is convicted of an offence by virtue of this provision<sup>8</sup>:

- 951 (1) no order is to be made on his conviction save an order imposing a fine<sup>9</sup>;
- 952 (2) payment of any fine imposed on him in respect of that offence is not to be enforced against him<sup>10</sup>; and
- 953 (3) apart from the imposition of any such fine, the conviction is to be disregarded for all purposes other than any appeal (whether by way of case stated or otherwise)<sup>11</sup>.

1 The Road Traffic Offenders Act 1988 s 1 (as amended) (see PARA 1028 post), s 2 (as amended) (see PARA 1028 post), s 3 (as amended) (see PARA 1029 post), s 15 (as amended) (see PARA 991 ante), s 16 (as amended) (see PARA 991 ante), s 20 (as substituted and amended) (see PARA 1042 post), s 49 (see PARA 1088 post), and the provisions connected with the licensing of drivers. 'The provisions connected with the licensing of drivers' means s 7 (as amended) (see PARA 1032 post), s 8 (as amended) (see PARA 1033 post), s 22 (see PARA 1043 post), ss 25-29 (as amended) (see PARAS 1045-1050 post), s 31 (as amended) (see PARA 1054 post), s 32 (as amended; prospectively repealed), ss 34-48 (as amended) (see PARAS 1061-1087 post), ss 91ZA-91A (as added) (see PARAS 1024-1025 post), s 91B (as added) (see PARA 1084 post), s 96 (see PARA 1080 post), s 97 (see PARA 1058 post): s 98(1) (definition amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 3, Sch 2 para 6(a)(ii), (b); and the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 32, 35(a)).

As to the provisions of the Road Traffic Act 1988 (and other road traffic legislation) that apply to vehicles and persons in the employ of the Crown see PARA 205 ante. As to the commission by British servicemen of offences abroad see ARMED FORCES.



2 Road Traffic Offenders Act 1988 s 92 (amended by the Road Traffic Act 1991 s 48, Sch 4 para 109). As to the meaning of 'the public service of the Crown' see *Nottingham No 1 Area Hospital Management Committee v Owen* [1958] 1 QB 50, [1957] 3 All ER 358, DC. See also *Tamlin v Hannaford* [1950] 1 KB 18, [1949] 2 All ER 327, CA (the nationalised industries are not Crown emanations); *British Broadcasting Corp'n v Johns* [1965] Ch 32, [1964] 1 All ER 923, CA (the BBC is not a Crown department).

3 Ie the Road Traffic Offenders Act 1988 ss 15, 16 (both as amended): see PARA 991 ante.

4 See *ibid* s 93 (as amended); and PARA 991 ante. For the meaning of 'Great Britain' see PARA 205 note 3 ante.

5 Ie the Road Traffic Regulation Act 1984, the Road Traffic Act 1988, the Road Traffic (Consequential Provisions) Act 1988 and the Road Traffic Offenders Act 1988.

6 *Ibid* s 94(1). It has been suggested that the nominated person should be the fictitious John Doe: *Barnett v French* [1981] 1 WLR 848, [1981] RTR 173, DC. In *Secretary of State for the Environment v Hooper* [1981] RTR 169, DC, it was held that it was wrong to convict the Secretary of State who did not as such own or use any vehicles.

7 Road Traffic Offenders Act 1988 s 94(2). This is expressed to be subject to s 94(3).

8 *Ibid* s 94(3).

9 *Ibid* s 94(3)(a).

10 *Ibid* s 94(3)(b).

11 *Ibid* s 94(3)(c).

## UPDATE

### **1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(i) In general/1024. Community licence holders.

#### **1024. Community licence holders.**

Certain provisions of the Road Traffic Offenders Act 1988 apply to Community licence holders<sup>1</sup>.

Where a court orders the endorsement<sup>2</sup> of the counterpart of any Community licence held by a person, it must send notice of the endorsement to the Secretary of State<sup>3</sup>. Where a court orders the holder of a Community licence to be disqualified<sup>4</sup>, it must send the Community licence and its counterpart (if any), on their being produced to the court, to the Secretary of State<sup>5</sup>.

Where a Community licence held by a person who is ordered by the court to be disqualified is sent to the Secretary of State<sup>6</sup>, the Secretary of State<sup>7</sup>:

- 954 (1) must send to the licensing authority in the EEA state<sup>8</sup> in respect of which the Community licence was issued the holder's name and address and particulars of the disqualification<sup>9</sup>; and
- 955 (2) must return the Community licence to the holder on: (a) the expiry of the period of disqualification<sup>10</sup>; or (b) if earlier, on being satisfied that the holder has left Great Britain and is not normally resident there<sup>11</sup>.

Where the Secretary of State would, apart from this provision, be under a duty on the expiry of the period of disqualification to return a Community licence to a person in pursuance of head (2)(a) above<sup>12</sup>, but at that time the person would not be authorised<sup>13</sup> to drive in Great Britain a motor vehicle of any class<sup>14</sup>, the Secretary of State must send the Community licence to the licensing authority in the EEA state in respect of which it was issued and explain to it his reasons for so doing<sup>15</sup>.

1 For the meaning of 'Community licence' see PARA 415 note 16 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1) (definition added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 3, Sch 2 para 6(a)(ii)). The references in the Road Traffic Offenders Act 1988 s 7 (as amended) (see PARA 1032 post), s 26(7), (8), (9)(b) (as substituted) (see PARA 1046 post), s 27 (as amended) (see PARA 1047 post), s 29(1) (as substituted) (see PARA 1050 post), s 30 (as amended) (see PARA 1051 post), s 31(1) (as amended) (see PARA 1054 post), s 42(5) (as amended) (see PARA 1078 post), s 44(1) (as amended) (see PARA 1081 post), s 46(2) (as amended) (see PARA 1085 post), s 47(3) (as amended) (see PARA 1086 post) and s 48(1), (2) (as substituted) (see PARA 1087 post) to a licence include references to a Community licence; and accordingly the reference in s 27(3)(b) (as amended) (see PARA 1047 post) to the suspension of a licence is to be construed in relation to a Community licence as a reference to the Community licence holder ceasing to be authorised by virtue of the Road Traffic Act 1988 s 99A(1) (as added) (see PARA 473 ante) to drive in Great Britain a motor vehicle of any class: Road Traffic Offenders Act 1988 s 91A(1) (s 91A added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 3, Sch 2 para 4). As from a day to be appointed, references to a licence in the Road Traffic Offenders Act 1988 s 44(3A) (prospectively added) and s 47(3A) (prospectively added) are added (s 91A(1) (as so added; and amended by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 32)); and references to a licence in the Road Traffic Offenders Act 1988 s 27 (as amended), s 29(1) (as substituted), s 30 (as amended), s 31(1) (as amended), s 42(5) (as amended), s 44(1) (as amended), s 44(3A) (prospectively added), s 46(2) (as amended), s 47(3) (as amended), s 47(3A) (prospectively added) and s 48(1), (2) (as substituted) are omitted (s 91A(1) (as so added and amended; and further amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 59(1), (2), Sch 7)). At the date at which this volume states the law no such day or days had been appointed.

For the meaning of 'drive' see PARA 207 ante. For the meaning of 'motor vehicle' see PARA 210 ante. For the meaning of 'Great Britain' see PARA 205 note 3 ante. As to the application of certain provisions of the Road Traffic Offenders Act 1988 to Northern Ireland licence holders see PARA 1025 post.

The references in the Road Traffic Offenders Act 1988 s 26(9)(a) (as substituted) (see PARA 1046 post) and s 27(3) (as amended) (see PARA 1047 post) to a new licence include references to a counterpart of a Community licence: s 91A(2) (as so added). As from a day to be appointed, this provision is repealed by the Road Safety Act 2006 Sch 3 para 59(3), Sch 7. At the date at which this volume states the law no such day had been appointed. For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). As from a day to be appointed, this definition in s 98(1) is repealed by the Road Safety Act 2006 Sch 3 paras 30, 61(b), Sch 7. At the date at which this volume states the law no such day had been appointed.

In relation to a Community licence holder to whom a counterpart is issued under the Road Traffic Act 1988 s 99B (as added) (see PARA 474 ante), the references in the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended) (see PARA 1093 et seq post) (except s 75(12) (as substituted) (see PARA 1117 post), s 76(8) (as substituted) (see PARA 1118 post), s 77(9) (as substituted) (see PARA 1119 post)) to a licence include references to a Community licence: s 91A(3) (as so added). This provision is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 59(3), Sch 7. At the date at which this volume states the law no such day had been appointed.

2 As to endorsement see PARA 1080 et seq post.

3 Road Traffic Offenders Act 1988 s 91A(4) (as added: see note 1 supra). This provision is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 59(3), Sch 7. At the date at which this volume states the law no such day had been appointed.

As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

A notice sent by a court to the Secretary of State in pursuance of s 91A(4) (as added; prospectively repealed) must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine: s 91A(6) (as so added). This provision is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 59(3), Sch 7. At the date at which this volume states the law no such day had been appointed. As from a day to be appointed, any notice sent to the Secretary of State under the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended) must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine: s 84A (added by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 30). At the date at which this volume states the law no such day had been appointed.

4 For the meaning of 'disqualified' see PARA 1046 note 5 post. As to disqualification see PARA 1057 et seq post.

5 Road Traffic Offenders Act 1988 s 91A(5) (as added: see note 1 supra). This provision is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 59(4), Sch 7 so as to remove references to a counterpart. At the date at which this volume states the law no such day had been appointed.

Until a day to be appointed, a Community licence and its counterpart (if any) sent in pursuance of s 91A(5) (as added; prospectively amended) must be sent to such address as the Secretary of State may determine: s 91A(6) (as so added; prospectively repealed (see note 3 supra)). At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed, where a Community licence has been sent to the Secretary of State in pursuance of s 91A(5) (as added; prospectively amended), he must return the Community licence to the holder on the expiry of the period of disqualification or, if earlier, on being satisfied that the holder has left Great Britain and is not normally resident there: s 91A(7) (added by the Road Safety Act 2006 Sch 3 para 59(6)). At the date at which this volume states the law no such day had been appointed.

6 le in pursuance of the Road Traffic Offenders Act 1988 s 91A(5) (as added).

7 Ibid s 91A(7) (as added: see note 1 supra).

8 For the meaning of 'EEA state' see PARA 415 note 16 ante; definition applied by ibid s 98(1).

9 Ibid s 91A(7)(a) (as added: see note 1 supra).

10 Ibid s 91A(7)(b)(i) (as added: see note 1 supra). 'Period of disqualification' means, in relation to a Community licence holder, the period for which he is ordered by the court to be disqualified (otherwise than under s 36 (as substituted and amended) (see PARA 1071 post)): s 91A(10) (as so added). This provision is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 59(7), Sch 7. At the date at which this volume states the law no such day had been appointed.

11 Road Traffic Offenders Act 1988 s 91A(7)(b)(ii) (as added: see note 1 supra). This is expressed to be subject to s 91A(8) (as added) (see the text and notes 12-5 infra). A Community licence to be returned to any person under s 91A(7) (as added) may be returned to him by delivering it to him or by leaving it at his proper address or by sending it to him by post; and for the purposes of s 91A(9) (as added) and the Interpretation Act 1978 s 7 (see STATUTES vol 44(1) (Reissue) PARA 1388) in its application to the Road Traffic Offenders Act 1988 s 91A(9) (as added) the proper address of any person is his latest address as known to the person returning the Community licence: s 91A(9) (as so added). This provision is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 59(7), Sch 7. At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed, the Road Traffic Offenders Act 1988 s 91A(7) (as added) is substituted so as to provide that where: (1) a notice is sent to the Secretary of State under s 44A (as prospectively added) (see PARA 1082 post) for the endorsement of a person's driving record with any particulars or penalty points; and (2) the particulars contained in the notice include: (a) particulars of an offence in respect of which the holder of a Community licence, or a person normally resident in another EEA state who does not hold a licence, is disqualified by an order of a court; and (b) particulars of the disqualification, the Secretary of State must send a notice containing the particulars mentioned in head (2)(a) and head (2)(b) supra to the licensing authority in the EEA state in respect of which the Community licence was issued or, where the person disqualified is not the holder of a licence, the licensing authority in the EEA state where the person is normally resident: s 91A(7) (as so added; and substituted by the Road Safety Act 2006 Sch 3 para 59(6)). 'Driving record', in relation to a person, means a record in relation to the person maintained by the Secretary of State and designed to be endorsed with particulars relating to offences committed by the person under the Traffic Acts: Road Traffic Offenders Act 1988 s 97A(1) (s 97A added by the Road Safety Act 2006 s 8). The Secretary of State may make arrangements for the following persons to have access, by such means as the Secretary of State may determine, to information held on a person's driving record: courts, constables, fixed penalty clerks, the person in respect of whom the record is maintained and persons authorised by him, and other persons prescribed in regulations made by the Secretary of State: Road Traffic Offenders Act 1988 s 97A(2) (as so added). The power to make such regulations is exercisable by statutory instrument: s 97A(3) (as so added). No such regulations

may be made unless a draft of the instrument containing them has been laid before, and approved by a resolution of, each House of Parliament: s 97A(4) (as so added). At the date at which this volume states the law no day had been appointed for the commencement of these provisions.

12 Ibid s 91A(8)(a) (as added: see note 1 supra). This provision is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 59(7), Sch 7. At the date at which this volume states the law no such day had been appointed.

13 le by virtue of the Road Traffic Act 1988 s 99A(1) (as added): see PARA 473 ante.

14 Road Traffic Offenders Act 1988 s 91A(8)(b) (as added: see note 1 supra). This provision is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 59(7), Sch 7. At the date at which this volume states the law no such day had been appointed.

15 Road Traffic Offenders Act 1988 s 91A(8) (as added: see note 1 supra). This provision is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 59(7), Sch 7. At the date at which this volume states the law no such day had been appointed.

## UPDATE

### **1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1024 Community licence holders**

NOTES 3, 11--Day appointed in relation Road Safety Act 2006 ss 8, 9, Sch 2 is 1 April 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(i) In general/1025. Northern Ireland licence holders.

### **1025. Northern Ireland licence holders.**

Certain provisions of the Road Traffic Offenders Act 1988 apply to Northern Ireland licence holders<sup>1</sup>.

Where a court orders the endorsement<sup>2</sup> of the counterpart of any Northern Ireland licence held by a person, it must send notice of the endorsement to the Secretary of State<sup>3</sup>. The notice must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine<sup>4</sup>. Where a court orders the holder of a Northern Ireland licence to be disqualified<sup>5</sup>, it must send the Northern Ireland licence and its counterpart (if any), on their being produced to the court, to the Secretary of State<sup>6</sup>. The licence and its counterpart must be sent to such address as the Secretary of State may determine<sup>7</sup>.

Where: (1) a Northern Ireland licence held by a person who is ordered by the court to be disqualified<sup>8</sup> is sent to the Secretary of State; and (2) the particulars contained in the notice include: (a) particulars of an offence in respect of which the holder of a Northern Ireland licence is disqualified by an order of a court; and (b) particulars of the disqualification, the Secretary of

State must send a notice containing those particulars to the licensing authority in Northern Ireland<sup>9</sup>.

1 The references to a licence in the Road Traffic Offenders Act 1988 s 7 (see PARA 1032 post), s 26(7), (8), (9) (b) (see PARA 1046 post), s 27 (see PARA 1047 post), s 29(1) (see PARA 1050 post), s 30 (see PARA 1051 post), s 31(1) (see PARA 1054 post), s 42(5) (see PARA 1078 post), s 44(1) (see PARA 1081 post), s 46(2) (see PARA 1085 post), s 47(2), (3) (see PARA 1086 post) and s 48(1), (2) (see PARA 1087 post) include references to a Northern Ireland licence: s 91ZA(1) (ss 91ZA, 91ZB added by the Crime (International Co-operation) Act 2003 s 77(2)). As from a day to be appointed, references to a licence in the Road Traffic Offenders Act 1988 s 44(3A) (prospectively added) and s 47(3A) (prospectively added) are added (s 91ZA(1) (as so added; and amended by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 31)); and references to a licence in the Road Traffic Offenders Act 1988 s 26(9)(b), s 29(1), s 30, s 31(1), s 42(5), s 44(1), (3A) (prospectively added), s 46(2), s 47(3), (3A) (prospectively added) and s 48(1), (2) are omitted (s 91ZA(1) (as so added; and amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 57(1), (2), Sch 7)). At the date at which this volume states the law no such day or days had been appointed.

The reference in the Road Traffic Offenders Act 1988 s 27(3)(b) (as amended) (see PARA 1047 post) to the suspension of a licence is to be construed in relation to a Northern Ireland licence holder as a reference to his ceasing to be authorised by virtue of the Road Traffic Act 1988 s 109(1) (as amended) (see PARA 473 ante) to drive in Great Britain a motor vehicle of any class: Road Traffic Offenders Act 1988 s 91ZA(2) (as so added). This provision is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 57(3), Sch 7. At the date at which this volume states the law no such day had been appointed.

The references in the Road Traffic Offenders Act 1988 s 26(9)(a) (as substituted) (see PARA 1046 post) and s 27(3) (as amended) (see PARA 1047 post) to a new licence include references to a counterpart of a Northern Ireland licence: s 91ZA(3) (as so added). This provision is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 57(3), Sch 7. At the date at which this volume states the law no such day had been appointed. As to the meaning of 'counterpart' see PARA 484 ante.

In relation to a Northern Ireland licence holder to whom a counterpart is issued under the Road Traffic Act 1988 s 109A (as added) (see PARA 484 ante), the references in the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended) (except ss 75(12), 76(8), 77(9) (all as substituted)) to a licence include references to a Northern Ireland licence: s 91ZA(4) (as so added). This provision is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 57(3), Sch 7. At the date at which this volume states the law no such day had been appointed.

The Road Traffic Offenders Act 1988 s 91B (as added; prospectively repealed) (see PARA 1084 post) applies in relation to Northern Ireland licences as it applies in relation to Community licences: s 91ZB (as so added).

2 As to endorsement see PARA 1080 et seq post.

3 Road Traffic Offenders Act 1988 s 91ZA(5) (as added: see note 1 supra). This provision is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 57(3), Sch 7. At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 236 ante.

4 Road Traffic Offenders Act 1988 s 91ZA(6) (as added: see note 1 supra). This provision is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 57(3), Sch 7. At the date at which this volume states the law no such day had been appointed.

5 For the meaning of 'disqualified' see PARA 1046 note 5 post. As to disqualification see PARA 1057 et seq post.

6 Road Traffic Offenders Act 1988 s 91ZA(7) (as added: see note 1 supra). As from a day to be appointed, this provision is amended so as to omit the reference to the counterpart: see s 91ZA(7) (as so added; and amended by the Road Safety Act 2006 Sch 3 para 57(4), Sch 7). At the date at which this volume states the law no such day had been appointed.

7 Road Traffic Offenders Act 1988 s 91ZA(8) (as added: see note 1 supra). As from a day to be appointed, this provision is amended so as to omit the reference to the counterpart: see s 91ZA(8) (as so added; and amended by the Road Safety Act 2006 Sch 3 para 57(5), Sch 7). At the date at which this volume states the law no such day had been appointed.

8 Ie under the Road Traffic Offenders Act 1988 s 91ZA(5) (as added): see the text and notes 1-3 supra.

9 Ibid s 91ZA(9) (as added: see note 1 supra). As from a day to be appointed, s 91ZA(9) is amended to the effect that where: (1) a notice is sent to the Secretary of State under s 44A (prospectively added) (see PARA 1082 post) of an order for the endorsement of a person's driving record; and (2) the particulars contained in the notice include: (a) particulars of an offence in respect of which the holder of a Northern Ireland licence, or a

person normally resident in Northern Ireland who does not hold a licence, is disqualified by an order of a court; and (b) particulars of the disqualification, the Secretary of State must send a notice containing the particulars mentioned in head (2)(a) and head (2)(b) supra to the licensing authority in Northern Ireland: see s 91ZA(9) (as so added; and amended by the Road Safety Act 2006 Sch 3 para 57(6)). At the date at which this volume states the law no such day had been appointed. For the meaning of 'driving record' see PARA 1024 note 11 ante.

## UPDATE

### **1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1025 Northern Ireland licence holders**

NOTE 1--Day appointed in relation to Road Safety Act 2006 s 9, Sch 2 is 1 April 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(i) In general/1026. Duty to give information as to identity of driver etc in certain circumstances.

### **1026. Duty to give information as to identity of driver etc in certain circumstances.**

Where the driver<sup>1</sup> of a vehicle is alleged to be guilty of any of certain offences<sup>2</sup> then:

- 956 (1) the person keeping the vehicle must give such information as to the identity of the driver as he may be required to give by or on behalf of a chief officer of police<sup>3</sup>; and
- 957 (2) any other person<sup>4</sup> must, if required as stated above, give any information which it is in his power to give and may lead to identification of the driver<sup>5</sup>.

A person who fails to comply with such a requirement is guilty of an offence<sup>6</sup>. A person is not, however, guilty of an offence by virtue of head (1) above if he shows that he did not know, and could not with reasonable diligence have ascertained, who the driver of the vehicle was<sup>7</sup>.

Where a body corporate is guilty of such an offence and the offence is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly<sup>8</sup>.

1 For the meaning of 'driver' see PARA 207 ante. For these purposes, references to the driver of a vehicle include references to the rider of a cycle: Road Traffic Act 1988 s 172(10) (s 172 substituted by the Road Traffic Act 1991 s 21). For the meaning of 'cycle' see PARA 409 note 3 ante.

2 Road Traffic Act 1988 s 172(2) (as substituted: see note 1 supra). The provisions of s 172 (as substituted) apply to:

- 1509 (1) any offence under ss 1-171 (as amended) except: (a) an offence under Pt V (ss 123-142) (as amended); or (b) an offence under s 13 (as amended) (see PARA 993 ante), s 16 (see PARA 639 ante), s 51(2) (see PARA 679 ante), s 61(4) (see PARA 711 ante), s 67(9) (see PARA 684 ante), s 68(4) (see PARA 686 ante), s 96 (see PARA 461 ante) or s 120 (as substituted) (see PARA 488 ante) (see s 172(1)(a) (as substituted: see note 1 supra));
- 1510 (2) any offence under the Road Traffic Offenders Act 1988 s 25 (as amended), s 26 (as substituted and amended) or s 27 (as amended) (see PARAS 1045-1047 post) (see the Road Traffic Act 1988 s 172(1)(b) (as so substituted));
- 1511 (3) any offence against any other enactment relating to the use of vehicles on roads (see s 172(1)(c) (as so substituted; and amended by the Statute Law (Repeals) Act 2004)); and
- 1512 (4) manslaughter by the driver of a motor vehicle (see the Road Traffic Act 1988 s 172(1)(d) (as so substituted)).

As to manslaughter see PARA 966 ante. For the meaning of 'motor vehicle' see PARA 210 ante.

3 Ibid s 172(2)(a) (as substituted: see note 1 supra). See also note 5 infra. As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq. The obligation is a personal one, and disclosure by the defendant's solicitor may not be sufficient: see *Hodgson v Burn* (1966) 110 Sol Jo 151, DC. Although no time limit is specified, the information must be provided forthwith or within a reasonable time: *Lowe v Lester* [1987] RTR 30, DC. As long as the requirement to give information is reasonable, it is lawful: *Boss v Measures* (1989) 87 LGR 667, [1990] RTR 26, DC. See *Jones v DPP* [2004] EWHC 236 (Admin), [2004] RTR 331, DC (police stipulated form for the purposes of seeking information; defendant answered by signed letter which included all information which form had required; defendant had complied with the Road Traffic Act 1988 s 172(2)(a) (as substituted)). A chief officer of police is entitled to require that the person keeping the vehicle signs the information provided: *Francis v DPP* [2004] EWHC 591 (Admin), 168 JP 492, DC. Where applicants claimed that under the Road Traffic Act 1988 s 172(2)(a) they had been subjected to compulsion to give incriminating evidence in violation of the right to remain silent and the privilege against self-incrimination in contravention of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 142), it was held that there had been no such violation: *O'Halloran v United Kingdom* [2007] All ER (D) 07 (Jul), ECtHR (the right to remain silent and the right not to incriminate oneself are not absolute rights; the right to require an actual or potential suspect to provide information which contributed or might contribute to his conviction would not automatically result in a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms art 6; the right to a fair trial is an unqualified right, but what constitutes a fair trial depends on the circumstances).

A requirement under the Road Traffic Act 1988 s 172(2) (as substituted) may be made by written notice served by post; and, where it is so made: (1) it has effect as a requirement to give the information within the period of 28 days beginning with the day on which the notice is served; and (2) the person on whom the notice is served is not guilty of an offence under s 172 (as substituted and amended) if he shows either that he gave the information as soon as reasonably practicable after the end of that period or that it has not been reasonably practicable for him to give it: s 172(7) (as so substituted). Where the person on whom a notice under s 172(7) (as substituted) is to be served is a body corporate, the notice is duly served if it is served on the secretary or clerk of that body: s 172(8) (as so substituted).

For the purposes of the Interpretation Act 1978 s 7 (see STATUTES vol 44(1) (Reissue) PARA 1388) as it applies for the purposes of the Road Traffic Act 1988 s 172 (as substituted and amended), the proper address of any person in relation to the service on him of a notice under s 172(7) (as substituted) is: (a) in the case of the secretary or clerk of a body corporate, that of the registered or principal office of that body or (if the body corporate is the registered keeper of the vehicle concerned) the registered address; and (b) in any other case, his last known address at the time of service: s 172(9) (as so substituted). For these purposes, 'registered address', in relation to the registered keeper of a vehicle, means the address recorded in the record kept under the Vehicle Excise and Registration Act 1994 (see PARA 518 et seq ante) with respect to that vehicle as being that person's address; and 'registered keeper', in relation to a vehicle, means the person in whose name the vehicle is registered under the Vehicle Excise and Registration Act 1994 (see PARA 519 ante): Road Traffic Act 1988 s 172(10) (as so substituted; and amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 24(1)).

4 'Any other person' includes the driver (*Bingham v Bruce* [1962] 1 All ER 136, [1962] 1 WLR 70, DC) and a doctor who has obtained information in his professional capacity (*Hunter v Mann* [1974] QB 767, [1974] 2 All ER 414, DC). The police are not bound first to specify the nature of the offence: *Pulton v Leader* [1949] 2 All ER 747, DC. The use in criminal proceedings of evidence that a driver is obliged to give under the Road Traffic Act 1988 s 172 (as substituted and amended) does not infringe his privilege against self-incrimination: *DPP v Wilson* [2001] EWHC Admin 198, 165 JP 715, DC. See PARA 1036 note 7 post.

5 Road Traffic Act 1988 s 172(2)(a) (as substituted: see note 1 supra). Before the answer to a request for such information is admissible, the prosecution must prove that the person requesting the information was specifically authorised: *Foster v Farrell* 1963 SLT 182; *Osgerby v Walden* [1967] Crim LR 301, DC. There must be proof that the request for information was made by or on behalf of a chief officer of police: *Record Tower Cranes Ltd v Gisbey* [1969] 1 All ER 418, [1969] 1 WLR 148, DC (distinguished in *Nelms v Roe* [1969] 3 All ER 1379, [1970] 1 WLR 4, DC).

The Secretary of State may make payments to police authorities in relation to the prevention, detection and enforcement of offences under the Road Traffic Act 1988 s 172 (as substituted): see the Serious Organised Crime and Police Act 2005 s 155.

6 Road Traffic Act 1988 s 172(3) (as substituted: see note 1 supra). This is expressed to be subject to s 172(4)-(10) (as substituted and amended). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale; disqualification is discretionary if committed otherwise than by virtue of s 172(5) (as substituted) (see the text to note 8 infra); endorsement is obligatory if committed otherwise than by virtue of s 172(5) (as substituted); and 6 penalty points may be attributed: Road Traffic Offenders Act 1988 ss 9, 28 (as substituted) (see PARA 1049 post), s 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 26, Sch 2; and the Road Safety Act 2006 s 29). As to the standard scale see PARA 230 note 3 ante. An offence under the Road Traffic Act 1988 s 172 (as substituted) is a fixed penalty offence: Road Traffic Offenders Act 1988 s 51, Sch 3 (entry added by the Fixed Penalty Offences Order 2003, SI 2003/1253, art 2(3)(c)). As to the prosecution of offences see PARA 1027 post; as to disqualification see PARA 1057 et seq post; as to endorsement see PARA 1080 et seq post; as to penalty points see PARA 1048 et seq post; as to fixed penalty offences see PARA 1093 post; and as to fixed penalties generally see PARA 1089 et seq post. The obligation to provide information leading to the identification of a driver creates a single offence under the Road Traffic Act 1988 s 172(3) (as substituted) even though the nature of the obligation varies: *Mohindra v DPP*, *Browne v Chief Constable of Greater Manchester* [2004] EWHC 490 (Admin), 168 JP 448.

7 Road Traffic Act 1988 s 172(4) (as substituted: see note 1 supra). See also note 8 infra. Before considering this defence the justices must first be satisfied that the vehicle involved is the defendant's vehicle: see *Neal v Fior* [1968] 3 All ER 865, [1968] 1 WLR 1875, DC. The prosecution is not required to prove the commission of an offence by the driver at the time and place of the complaint: *Jacob v Garland* [1974] RTR 40 DC.

8 Road Traffic Act 1988 s 172(5) (as substituted: see note 1 supra). Where the alleged offender is a body corporate, or the proceedings are brought against him by virtue of s 172(5) (as substituted), the provisions of s 172(4) (as substituted) (see the text to note 7 supra) do not apply unless, in addition to the matters there mentioned, the alleged offender shows that no record was kept of the persons who drove the vehicle and that the failure to keep a record was reasonable: s 172(6) (as so substituted).

## UPDATE

### **1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(i) In general/1027. Pleading by post.

### **1027. Pleading by post.**

The duty of the Director of Public Prosecutions<sup>1</sup> to take over the conduct of all criminal proceedings instituted on behalf of a police force does not apply to specified proceedings<sup>2</sup> which are commenced, so as to give the accused the opportunity of pleading by post<sup>3</sup>.



1 As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

2 'Specified proceedings' means proceedings which fall within any category for the time being specified by order made by the Attorney General for these purposes: Prosecution of Offences Act 1985 s 3(3). As to the Attorney General see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1065. In exercise of this power, the Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999, SI 1999/904, has been made. The following offences are specified for the purposes of the Prosecution of Offences Act 1985 s 3 (as amended):

1513 (1) fixed penalty offences within the meaning of the Road Traffic Offenders Act 1988 s 51(1) (see PARA 1093 post) (Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999, SI 1999/904, art 3, Schedule para 1);

1514 (2) the offences under the Vehicle Excise and Registration Act 1994 s 29(1) (see CUSTOMS AND EXCISE vol 12(2) (2007 Reissue) PARA 777) (Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999, SI 1999/904, Schedule para 2);

1515 (3) the offences under the Road Traffic Act 1988 s 17(2) (see PARA 640 ante), s 18(3) (see PARA 641 ante), s 24(3) (see PARA 1002 ante), s 26(1), (2) (see PARA 1004 ante), s 29 (as amended) (see PARA 973 ante), s 31(1) (see PARA 995 ante), s 42(b) (as substituted) (see PARA 265 ante), s 47(1) (see PARA 657 ante), s 87(2) (as amended) (see PARA 444 ante), s 143 (as amended) (see PARA 937 ante), s 164(6), (9) (s 164(6) as amended) (see PARA 647 ante), s 165(3), (6) (see PARA 648 ante), s 168 (as amended) (see PARA 968 ante) and s 172(3) (as substituted) (see PARA 1026 ante) (Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999, SI 1999/904, Schedule para 3);

1516 (4) all offences under the Road Traffic Regulation Act 1984 other than those under s 35A(2) (as added) (see PARA 791 ante), s 43(5), (12) (s 43(5) as amended) (see PARAS 799-800 ante), s 47(3) (as amended) (see PARA 812 ante), s 52(1) (see PARA 816 ante), s 108(3) (see PARA 885 ante), s 115(1), (2) (s 115(1) as substituted) (see PARA 861 ante), s 116(1) (see PARA 861 ante) and s 129(3) (repealed) or those mentioned in head (1) supra (Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999, SI 1999/904, Schedule para 4); and

1517 (5) the offences arising by contravention of the Royal Parks and Other Open Spaces Regulations 1997, SI 1997/1639, reg 3(9)(a) (involving a pedal cycle), reg 3(9)(b) and reg 4(27), (28) and (30) (Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999, SI 1999/904, Schedule para 5).

Where a summons has been issued in respect of an offence mentioned in heads (1)-(5) supra, proceedings for that offence cease to be specified for the purposes of the Prosecution of Offences Act 1985 s 3 (as amended) when the summons is served on the accused unless the documents described in the Magistrates' Courts Act 1980 s 12(3)(b) (as substituted) (pleading guilty by post, etc) (see MAGISTRATES vol 29(2) (Reissue) PARA 705) are served upon the accused with the summons: Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999, SI 1999/904, reg 3(2). Proceedings for an offence also cease to be specified if at any time a magistrates' court begins to receive evidence in those proceedings; and for the purpose of this provision nothing read out before the court under the Magistrates' Courts Act 1980 s 12(7) (as substituted and amended) (see MAGISTRATES vol 29(2) (Reissue) PARA 706) is to be regarded as evidence: Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999, SI 1999/904, reg 3(3).

3 See the Prosecution of Offences Act 1985 s 3(2)(a); the Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999, SI 1999/904, reg 3; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1080.

## UPDATE

### **1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(ii) Trial/A. IN GENERAL/1028. Requirement of warning of intended prosecution.

## **(ii) Trial**

### **A. IN GENERAL**

#### **1028. Requirement of warning of intended prosecution.**

A person cannot be convicted of specified offences<sup>1</sup> unless<sup>2</sup>:

- 958 (1) he was warned<sup>3</sup> at the time the offence was committed<sup>4</sup> that the question of prosecuting him for some one or other of the specified offences would be taken into consideration<sup>5</sup>; or
- 959 (2) within 14 days of the commission of the offence a summons for the offence was served on him<sup>6</sup>; or
- 960 (3) within 14 days of the commission of the offence a notice of the intended<sup>7</sup> prosecution specifying the nature of the alleged offence<sup>8</sup>, and the time and place where it is alleged to have been committed<sup>9</sup>, was: (a) in the case of cycling offences<sup>10</sup>, served on him<sup>11</sup>; or (b) in the case of any other offence, served on him or on the person, if any, registered as the keeper of the vehicle at the time of the commission of the offence<sup>12</sup>.

A notice required by the above provisions to be served on any person may be served on that person by delivering it to him<sup>13</sup>, by addressing it to him and leaving it at his last known address<sup>14</sup>, or by sending it by registered post, recorded delivery service or first class post addressed to him at his last known address<sup>15</sup>. A notice is deemed for the purposes of head (3) above to have been served on a person if it was sent by registered post or recorded delivery service addressed to him at his last known address, notwithstanding that the notice was returned as undelivered or was for any other reason not received by him<sup>16</sup>.

The requirement to give notice of intended prosecution is in every case deemed to have been complied with unless and until the contrary is proved<sup>17</sup>.

The requirement to give notice of intended prosecution does not apply in relation to an offence if, at the time of the offence or immediately after it, an accident<sup>18</sup> occurs owing to the presence on a road<sup>19</sup> of the vehicle in respect of which the offence was committed<sup>20</sup>.

The requirement to give notice of intended prosecution also does not apply in relation to an offence in respect of which a fixed penalty notice has been given or fixed<sup>21</sup>, or a notice of an on the spot fine has been given<sup>22</sup>.

Failure to comply with the requirement to give notice of intended prosecution is not a bar to the conviction of the accused in a case where the court<sup>23</sup> is satisfied<sup>24</sup> that neither the name and address of the accused nor the name and address of the registered keeper<sup>25</sup>, if any, could with reasonable diligence<sup>26</sup> have been ascertained in time for a summons or, as the case may be, a complaint to be served or for a notice to be served or sent<sup>27</sup>, or that the accused by his own conduct contributed to the failure<sup>28</sup>.

Failure to comply with the requirement to give notice of intended prosecution is not a bar to a conviction in respect of an alternative offence<sup>29</sup>.

1 The Road Traffic Offenders Act 1988 s 1 (as amended) applies to the offences specified for that purpose in s 1(4), Sch 1 (as amended), namely:

- 1518 (1) dangerous driving (see the Road Traffic Act 1988 s 2 (as substituted); and PARA 964 ante);
- 1519 (2) careless, and inconsiderate, driving (see s 3 (as substituted); and PARA 971 ante);
- 1520 (3) leaving vehicles in dangerous positions (see s 22 (as amended); and PARA 999 ante);
- 1521 (4) dangerous cycling (see s 28 (as substituted); and PARA 967 ante);
- 1522 (5) careless, and inconsiderate, cycling (see s 29 (as amended); and PARA 973 ante);
- 1523 (6) failing to comply with traffic directions (see s 35; and PARA 642 ante); and
- 1524 (7) failing to comply with traffic signs (see s 36 (as amended); and PARA 643 ante).

The Road Traffic Offenders Act 1988 s 1 (as amended) also applies to the offences specified in Sch 1 para 1A (added by the Road Traffic Act 1991 s 22, Sch 1 para 2), namely:

- 1525 (a) an offence under the Road Traffic Regulation Act 1984 s 16 (as amended) consisting in the contravention of a temporary restriction on the speed of vehicles imposed under s 14 (as substituted) (see PARA 757 ante);
- 1526 (b) an offence under s 17(4) consisting in the contravention of a restriction on the speed of vehicles on a special road imposed under s 17 (see PARA 764 ante); and
- 1527 (c) an offence under s 88(7) (contravention of minimum speed limit) (see PARA 855 ante) or s 89(1) (exceeding the speed limit) (see PARA 856 ante).

The provisions of the Road Traffic Offenders Act 1988 s 1 (as amended) do not apply to any other offences however akin they be to any of the offences specified above: see *Sulston v Hammond* [1970] 1 WLR 1164, [1970] RTR 361, DC.

2 Road Traffic Offenders Act 1988 s 1(1) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 80).

3 The warning may be oral or written, but if given orally the warning must get through and it is open to the defendant to prove, if he can, that he did not understand or hear or appreciate the warning and therefore that he was not warned, and if the issue is raised it is a question of fact for the court to determine whether or not he was warned: *Gibson v Dalton* [1980] RTR 415, DC. See also *Offen v Ranson* [1980] RTR 484, DC. In determining the sufficiency of the content of the warning, each case will turn on its own facts: see eg *Jessopp v Clarke* (1908) 72 JP 358; *Parkes v Cole* (1922) 86 JP 122; *Alston v Nurse* (17 March 1933, unreported); *Watt v Smith* 1942 JC 109.

4 'At the time the offence was committed' is not to be limited to a particular point in time; in every case the question is one of fact and degree and the test is one of reasonableness, whether or not the chain of circumstances was unbroken and whether or not all that took place was connected with the incident: *R v Stacey* [1982] RTR 20, CA (warning given just under three hours after the offence was not unreasonable in the circumstances of that particular case). See also *Jefferies v Wells* (1936) 100 JP 406; *Jollye v Dale* [1960] 2 QB 258, [1960] 2 All ER 369; *Sinclair v Clark* [1962] Crim LR 777; *Shield v Crighton* [1974] Crim LR 605, [1978] RTR 494n, DC; *R v Okike* [1978] RTR 489, CA.

5 Road Traffic Offenders Act 1988 s 1(1)(a).

6 Ibid s 1(1)(b). The general rule in cases where an act is to be done within a specified period is that the day from which it runs is not to be counted (see STATUTES vol 44(1) (Reissue) PARA 1441) (this rule was applied in *Stewart v Chapman* [1951] 2 KB 792, [1951] 2 All ER 613 to a notice served under what is now the Road Traffic Offenders Act 1988 s 1 (as amended)) and the full period up to midnight on the last day is available (*Manorlike Ltd v Le Vitas Travel Agency and Consultancy Services Ltd* [1986] 1 All ER 573, CA). See also note 16 infra.

7 If a person is charged within 14 days and given a copy of the charge, the requirement to give notice of intended prosecution is satisfied: *Sage v Townsend* (1986) Times, 27 May. In other cases, it is sufficient if the notice states that a prosecution is being considered; it need not show an irrevocable intention to prosecute: *Milner v Allen* [1933] 1 KB 698, DC. If notice of intended prosecution has been given a prosecution may be validly brought even if, after sending the notice, the police wrote to the defendant stating that proceedings would not be instituted against him: *Lund v Thompson* [1959] 1 QB 283, [1958] 3 All ER 356.

8 A warning or a notice of an allegation of dangerous driving is a sufficient warning or notice when proceedings are later taken for driving without due care and attention; it is the 'nature' and not the 'particulars' of the offence that must be specified: *Milner v Allen* [1933] 1 KB 698, DC. The notice may identify the offence merely by reference to the section number: *Venn v Morgan* [1949] 2 All ER 562, DC. See also *Harris v Dudding* [1954] Crim LR 796. The object is to call the driver's attention to the time and circumstances in respect of which he may be charged so as to give him an opportunity in good time and while memories are still fresh to prepare his defence: *Venn v Morgan* supra; *Pope v Clarke* [1953] 2 All ER 704, [1953] 1 WLR 1060, DC.

9 Road Traffic Offenders Act 1988 s 1(1)(c). Whether the time and place are sufficiently stated is a question of fact and degree and the test appears to be whether the defendant was misled: *Pope v Clarke* [1953] 2 All ER 704, [1953] 1 WLR 1060 (notice stating 'pm' instead of 'am' valid); *Goody v Fletcher* [1962] Crim LR 324, DC (date one day out held not to invalidate the notice); *Beresford v St Albans Justices* (1905) 22 TLR 1, DC (notice valid where it gave an alleged speed between two places 20 miles apart; however, the relevant statutory provision did not require that the 'place' of the offence be specified). For examples of notices held to be deficient see *Young v Day* (1959) 123 JP 317, DC (notice specified a road that extended for four miles); *R v Rowbotham* [1960] Crim LR 429 (notice specified wrong parish). It has been stated that a notice misstating the place of the offence could be misleading: see *Shield v Crighton* [1974] Crim LR 605, [1978] RTR 494 at 497-498 obiter per Bridge J (however, in this case oral warning had been given at the time; therefore, the requirements of what is now the Road Traffic Offenders Act 1988 s 1 (as amended) had been satisfied). See also *R v Budd* [1962] Crim LR 49, CCA.

10 Is an offence under the Road Traffic Act 1988 s 28 (as substituted) (see PARA 967 ante) or s 29 (as amended) (see PARA 973 ante).

11 Road Traffic Offenders Act 1988 s 1(1)(c)(i). Service on the defendant's wife at his address is good, it being within the scope of her authority to accept letters on his behalf: *Burt v Kirkcaldy* [1965] 1 All ER 741, [1965] 1 WLR 474, DC.

12 Road Traffic Offenders Act 1988 s 1(1)(c)(ii). See note 16 infra. As to the registration of vehicles see PARA 518 et seq ante.

13 Ibid s 1(1A)(a) (s 1(1A) added by the Criminal Justice and Public Order Act 1994 s 168(1), Sch 9 para 6(3)).

14 Road Traffic Offenders Act 1988 s 1(1A)(b) (as added: see note 13 supra).

15 Ibid s 1(1A)(c) (as added: see note 13 supra). As to the meaning of 'last known address' see *Phipps v McCormick* [1972] RTR 21, DC; *Price v West London Investment Building Society Ltd* [1964] 2 All ER 318, [1964] 1 WLR 616, CA (a case based on another statute).

16 Road Traffic Offenders Act 1988 s 1(2). The effect of this provision is that a notice sent as provided by s 1(1A)(c) (as added) is deemed to have been served if posted within 14 days of the offence, even if the notice was not in fact received within that period: see *Groome v Driscoll* [1969] 3 All ER 1638n, [1970] RTR 105. As to computing the 14-day period see note 6 supra. Notice is deemed to be given at the time when it would be delivered in the ordinary course of post and this must be within 14 days: *Nicholson v Tapp* [1972] 3 All ER 245, [1972] 1 WLR 1044. See also *Stanley v Thomas* [1939] 2 KB 462, [1939] 2 All ER 636, DC. Where the notice is sent by registered post and accepted by the defendant's wife who does not show it to him, there is sufficient service: *Hosier v Goodall* [1962] 2 QB 401, [1962] 1 All ER 30, DC; cf *Layton v Shires* [1960] 2 QB 294, [1959] 3 All ER 587, DC. Notice to a firm is not notice to a particular member of that firm, even though that member in fact receives it: *Clarke v Mould* [1945] 2 All ER 551, DC. As to service on a company see *R v Bilton* (1964) 108 Sol Jo 880, CCA. A minor misdescription of the name of the company will not invalidate the notice: see *Rogerson v Edwards* (1951) 49 LGR 358, 95 Sol Jo 172, DC; *Springate v Questier* [1952] 2 All ER 21, DC.

The Road Traffic Offenders Act 1988 s 1(2) prevents that presumption from being gainsaid by proof that the notice had not in fact been received within that period: *Groome v Driscoll* supra.

17 Road Traffic Offenders Act 1988 s 1(3). The point may be raised by the defendant at any stage during the proceedings: *R v Edmonton Justices, ex p Brooks* [1960] 2 All ER 475, [1960] 1 WLR 697. It is necessary for the defendant to establish non-compliance with each of the alternatives set out in the Road Traffic Offenders Act 1988 s 1(1)(a)-(c) (see heads (1)-(3) in the text); this requires evidence from both the driver and the registered keeper (where they are different persons) that neither received notice: *Sanders v Scott* [1961] 2 QB 326, [1961] 2 All ER 403, DC; *Archer v Blacker* [1965] Crim LR 165, DC. A notice sent to the owner (now keeper) stating that he would be prosecuted, when the intention was to prosecute the driver, is good: *Taylor v Campbell* [1956] Crim LR 342, DC. As to errors in the notice see note 9 supra.

The defendant must prove non-compliance on a balance of probabilities; merely to raise a doubt in the minds of the justices is not enough: *Offen v Ranson* [1980] RTR 484.

18 As to evidence see *Metropolitan Police v Scarlett* [1978] Crim LR 234. This exemption applies only to an accident of which at the time the defendant was aware and so did not need a notice or warning to bring the circumstances likely to give rise to prosecution to mind: *Bentley v Dickinson* [1983] RTR 356, [1983] Crim LR 403, DC. *Bentley v Dickinson* supra, however, concerned a trivial accident and the rationale of the decision does not apply where the defendant was involved in a serious road traffic accident that rendered him unconscious for a number of days and without any recollection of the accident: *DPP v Pidhajeckyj* [1991] RTR 136, DC. Where there are issues of fact to be determined in order to decide whether there had been an accident for the purposes of the Road Traffic Offenders Act 1988 s 2(1), they must be determined by the judge: *R v Currie* [2007] EWCA Crim 926, [2007] All ER (D) 233 (Apr).

19 As to the meaning of 'owing to the presence on a road of the vehicle' see *Quelch v Phipps* [1955] 2 QB 107, [1955] 2 All ER 302; and PARA 645 ante. For the meaning of 'road' see PARA 206 ante.

20 Road Traffic Offenders Act 1988 s 2(1). The policy behind s 2 is that drivers who have committed an offence in which their vehicle has been concerned in an accident need not be notified because the very fact that they have been involved is sufficient indication of the risk of prosecution; if there is a sufficient causal link between the accident and the presence on the road of his vehicle the defendant does not need to be warned: *R v Myers* [2007] EWCA Crim 599, [2007] All ER (D) 241 (Feb), CA.

21 See PARA 1093 et seq post.

22 Road Traffic Offenders Act 1988 s 2(2). As to such notices see PARA 1097 post.

23 'Court' here refers to the judge and not the jury: see *R v Bolkis* (1932) 24 Cr App Rep 19, CCA; *R v Stacey* [1982] RTR 20 at 26, CA, per Woolf J.

24 Road Traffic Offenders Act 1988 s 2(3).

25 If the name and address of either has been ascertained in time but no notice has been served or sent, there is a good defence under this provision: *R v Bolkis* (1932) 24 Cr App Rep 19, CCA.

26 The reasonable diligence is diligence on the part of the officer in the case: *R v Bolkis* (1932) 24 Cr App Rep 19, CCA. See also *Clarke v Mould* [1945] 2 All ER 551, DC (no lack of diligence in seeking information by telephone and being given wrong information by the licensing authority); *Haughton v Harrison* [1976] RTR 208, DC (police acted with reasonable diligence where they were given the wrong name of the registered keeper at the relevant time and accordingly the notice was sent to the wrong person at the wrong address). See also *Carr v Harrison* [1967] Crim LR 54, DC (police acted with reasonable diligence where they approached the licensing authority in good time and the latter was slow in supplying the information).

27 Road Traffic Offenders Act 1988 s 2(3)(a).

28 Ibid s 2(3)(b). Notice addressed to a firm is not notice to every individual in that firm, and where the owner caused the vehicle to be registered in the firm's name that was not conduct on his part contributing to the failure to comply with the requirement of notice of intended prosecution: *Clarke v Mould* [1945] 2 All ER 551, DC. Merely going away on holiday with no intent to evade service of the notice is not conduct on the defendant's part within this provision: *Beer v Davies* [1958] 2 QB 187, [1958] 2 All ER 255, DC; and see also *Macleod v Anderson* 1961 JC 32. See now, however, the Road Traffic Offenders Act 1988 s 1(2), under which posting a notice now suffices: see the text and note 16 supra.

29 Failure to comply with the requirement of *ibid* s 1(1) (as amended) in relation to an offence is not a bar to the conviction of a person of that offence by virtue of the provisions of s 24 (as substituted and amended) (see PARA 1044 post) or by virtue of any of the enactments mentioned in s 24(6) (as substituted and amended) (see PARA 1044 post); but a person is not to be convicted of an offence by virtue of any of those provisions if s 1 (as amended) applies to the offence with which he was charged and the requirement of s 1(1) (as amended) was not satisfied in relation to the offence charged: s 2(4) (substituted by the Road Traffic Act 1991 Sch 4 para 81).

## UPDATE

### **1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

## 1028 Requirement of warning of intended prosecution

NOTE 17--See *Gidden v Chief Constable of Humberside* [2009] EWHC 2924 (Admin), [2010] 2 All ER 75 (presumption of compliance with requirement to give notice of intended prosecution rebutted by late service due to postal strike).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(ii) Trial/A. IN GENERAL/1029. Restriction on institution of offences.

## 1029. Restriction on institution of offences.

Proceedings for an offence with regard to notices about relevant or prospective disability<sup>1</sup> must not be instituted except by the Secretary of State<sup>2</sup> or by a constable<sup>3</sup> acting with the approval of the Secretary of State<sup>4</sup>.

1     le under the Road Traffic Act 1988 s 94(3): see PARA 457 ante. The reference to s 94(3) includes a reference to s 94 (as amended) (see PARA 457 ante) as applied by s 99D (as added) (see PARA 458 ante) or s 109C (as added) (see PARA 484 note 18 ante): Road Traffic Offenders Act 1988 s 3(2A) (added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 3, Sch 2 para 1; and amended by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 32, 33).

2     As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3     As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

4     Road Traffic Offenders Act 1988 s 3(2). There is a presumption that proceedings have been properly instituted, but where objection is taken at the proper time to a lack of authority to institute proceedings and evidence of such authority is not given, the justices may find no case to answer: *Anderton v Frost* [1984] RTR 106, [1983] Crim LR 553, DC.

## UPDATE

### 1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(ii) Trial/A. IN GENERAL/1030. Offences for which local authorities may institute proceedings.

## 1030. Offences for which local authorities may institute proceedings.

The council of a county<sup>1</sup>, metropolitan district or London borough or the Common Council of the City of London may institute proceedings for an offence with regard to safety equipment for children in motor vehicles<sup>2</sup> or for an offence with regard to helmets and other head-worn appliances for motor cyclists<sup>3</sup>.

The council of a county, metropolitan district or London borough or the Common Council of the City of London may institute proceedings for an offence with regard to dogs on roads<sup>4</sup> relating to a road in its area<sup>5</sup>.

The council of a county, district or London borough or the Common Council of the City of London may institute proceedings for offences<sup>6</sup> which are committed in connection with parking places<sup>7</sup> provided by the council, or provided under any letting arrangements made by the council<sup>8</sup>.

The council of a county, metropolitan district or London borough or the Common Council of the City of London may institute proceedings for an offence<sup>9</sup> in connection with a designated parking place<sup>10</sup> controlled by the council<sup>11</sup>.

In England, the council of a county or metropolitan district and, in Wales, the council of a county or county borough may institute proceedings for an offence<sup>12</sup> in connection with a designated parking place in the council's area<sup>13</sup>.

The above provisions extend to England and Wales only<sup>14</sup>.

1 In relation to Wales, any reference in the Road Traffic Offenders Act 1988 s 4(1)-(4) (as amended) (see the text and notes 2-11 infra) to a county are to be read as including a reference to a county borough: s 4(8) (added by the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 41(3)).

2 Ie an offence under the Road Traffic Act 1988 s 15A (as added): see PARA 638 ante. For the meaning of 'motor vehicle' see PARA 210 ante.

3 Road Traffic Offenders Act 1988 s 4(1) (amended by the Motor Vehicles (Safety Equipment for Children) Act 1991 s 3(1)). The offence mentioned in the text is an offence under the Road Traffic Act 1988 s 17 (see PARA 640 ante) or s 18 (see PARA 641 ante).

4 Ie an offence under ibid s 27: see PARA 1005 ante. For the meaning of 'road' see PARA 206 ante.

5 Road Traffic Offenders Act 1988 s 4(2).

6 Ie offences under the Road Traffic Regulation Act 1984 s 35A(1), (2) or (5) (as added): see PARA 791 ante.

7 For these purposes, 'parking place' means a place where vehicles, or vehicles of any class, may wait: Road Traffic Offenders Act 1988 s 4(6). As to the provision of parking places see PARA 784 et seq ante.

8 Ibid s 4(3) (amended by the Parking Act 1989 s 4, Schedule para 10). Letting arrangements are made under the Road Traffic Regulation Act 1984 s 33(4): see PARA 785 ante.

9 Ie under ibid s 47 (as amended) (see PARA 812 ante) or s 52 (as amended) (see PARA 816 ante).

10 For the meaning of 'designated parking place' see PARA 808 note 4 ante; definition applied by the Road Traffic Offenders Act 1988 s 4(6).

11 Ibid s 4(4).

12 Ie under the Road Traffic Regulation Act 1984 s 53 (as amended): see PARA 817 ante.

13 Road Traffic Offenders Act 1988 s 4(5) (amended by the Local Government (Wales) Act 1994 ss 22(1), 66(8), Sch 7 para 41(2), Sch 18).

14 Road Traffic Offenders Act 1988 s 4(7).

## UPDATE

## **1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(ii) Trial/A. IN GENERAL/1031. Time limits.

### **1031. Time limits.**

Summary proceedings for specified offences<sup>1</sup> may be brought<sup>2</sup> within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor<sup>3</sup> to warrant the proceedings came to his knowledge<sup>4</sup>. No such proceedings can be brought by virtue of this provision more than three years after the commission of the offence<sup>5</sup>. For these purposes, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge is conclusive evidence of that fact<sup>6</sup>. A certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved<sup>7</sup>.

<sup>1</sup> The Road Traffic Offenders Act 1988 s 6 applies to the offences specified for that purpose in s 6(6), Sch 1 (as amended and prospectively amended), namely:

1528 (1) the Road Traffic Act 1988 s 92(10) (as added) (see PARA 455 ante) (driving after making false declaration as to physical fitness);

1529 (2) s 94(3) (see PARA 457 ante) and s 94(3) as applied by s 99D (as added) (see PARA 458 ante) or s 109C (as added) (see PARA 484 note 18 ante) (failure to notify the Secretary of State of onset of, or deterioration in, relevant or prospective disability);

1530 (3) s 94(3A) (as added) (see PARA 457 ante) and s 94(3A) (as added) as applied by s 99D(b) (as added) (see PARA 458 ante) or s 109C (as added) (see PARA 484 note 18 ante) (driving after such a failure);

1531 (4) s 94A (as added and amended) (see PARA 463 ante) (driving after refusal of licence under s 92(3) (see PARA 455 ante), revocation under s 93 (as amended) (see PARA 456 ante) or service of a notice under s 99C (as added) (see PARA 475 ante) or s 109B (as added) (see PARA 484 ante));

1532 (5) as from a day to be appointed, s 98A(7) (prospectively added) (see PARA 467 ante) (driving licence holder failing to surrender licence and counterpart);

1533 (6) s 99(5) (as amended) (see PARA 471 ante) (driving licence holder failing to surrender licence and counterpart);

1534 (7) s 99B(11) (as added) (see PARA 474 ante) and s 99B(11) (as added) as applied by s 109A(5) (as added) (see PARA 484 ante) (driving after failure to comply with a requirement under s 99B(6), (7) or (10) (as added) (see PARA 474 ante) or a requirement under s 99B(6) or (7) as applied by s 109A(5) (as added));

1535 (8) s 103(1)(a) (as substituted) (see PARA 481 ante) (obtaining driving licence while disqualified);



- 1536 (9) s 103(1)(b) (as substituted) (see PARA 481 ante) (driving while disqualified);
- 1537 (10) s 143 (as amended) (see PARA 937 ante) (using motor vehicle, or causing or permitting it to be used, while uninsured or unsecured against third party risks);
- 1538 (11) as from a day to be appointed, s 144A (prospectively added) (see PARA 941 ante) (keeping vehicle which does not meet insurance requirements);
- 1539 (12) s 174(1) (as amended) or s 174(5) (see PARA 1013 ante) (making false statements in connection with licences under the Road Traffic Act 1988 and with registration as an approved driving instructor, or making false statement or withholding material information in order to obtain the issue of insurance certificates, etc); and
- 1540 (13) s 175 (prospectively substituted) (see PARA 660 ante) (issuing false documents, or falsely amending certificate of conformity).

The Road Traffic Offenders Act 1988 s 6 (as amended) also applies to the offences specified in Sch 1 para 2 (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 16, Sch 6; the Road Traffic Act 1991 s 22, Sch 1 para 3; the Road Traffic (New Drivers) Act 1995 s 10(4), Sch 2 para 7; and the Statute Law (Repeals) Act 2004), namely:

- 1541 (a) an offence under the Road Traffic Offenders Act 1988 s 67 (see PARA 1111 post); and
- 1542 (b) an offence under the Road Traffic (New Drivers) Act 1995 s 6, Sch 1 para 3(5) (see PARA 514 ante).

Where the Road Traffic Offenders Act 1988 s 6 applies, it applies also to aiding and abetting any of the specified offences: *Homolka v Osmond* [1939] 1 All ER 154. As to aiding and abetting see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 49.

2 Proceedings are 'brought' within the meaning of the Road Traffic Offenders Act 1988 s 6 when the information is laid (*Thorpe v Priestnall* [1897] 1 QB 159; *R v Manchester Stipendiary Magistrate, ex p Hill* [1983] 1 AC 328, sub nom *Hill v Anderton* [1982] 2 All ER 963, HL); or, where no information is laid and the person is arrested and charged, when the person first appears before a court (*R v Amersham Juvenile Court, ex p Wilson* [1981] QB 969, [1981] 2 All ER 315, DC). As to discounting the day from which time begins to run see PARA 1028 note 6 ante.

3 A traffic examiner employed by the vehicle inspectorate but not authorised to take the decision to prosecute is not a prosecutor for the purposes of the Road Traffic Offenders Act 1988 s 6: see *Swan v Vehicle Inspectorate* [1997] RTR 187, DC.

4 Road Traffic Offenders Act 1988 s 6(1). This is expressed to be subject to s 6(2) (see the text to note 5 infra).

5 Ibid s 6(2).

6 Ibid s 6(3). The certificate cannot be challenged unless, perhaps, it is inaccurate on its face or fraud can be shown: *T v Haringey Magistrates' Court, ex p Amvrosiou* (13 June 1996) Lexis.

7 Road Traffic Offenders Act 1988 s 6(4).

## UPDATE

### 1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(ii) Trial/A. IN GENERAL/1032. Duty of accused to provide licence.

### **1032. Duty of accused to provide licence.**

A person who is prosecuted for an offence involving obligatory<sup>1</sup> or discretionary disqualification<sup>2</sup> and who is the holder of a licence<sup>3</sup> must<sup>4</sup>:

- 961 (1) cause it to be delivered to the proper officer<sup>5</sup> of the court not later than the day before the date appointed for the hearing<sup>6</sup>; or
- 962 (2) post it, at such a time that in the ordinary course of post it would be delivered not later than that day, in a letter duly addressed to the clerk and either registered or sent by the recorded delivery service<sup>7</sup>; or
- 963 (3) have it with him at the hearing<sup>8</sup>.

Until a day to be appointed<sup>9</sup>, these obligations imposed as respects the licence also apply as respects the counterpart<sup>10</sup> to the licence<sup>11</sup>.

1 For the meaning of 'offence involving obligatory disqualification' see PARA 1058 post.

2 For the meaning of 'offence involving discretionary disqualification' see PARA 1060 post.

3 'Licence' means a licence to drive a motor vehicle granted under the Road Traffic Act 1988 Pt III (ss 87-109) (as amended) (see PARA 442 et seq ante); Road Traffic Offenders Act 1988 s 98(1). For the meaning of 'motor vehicle' see PARA 210 ante.

4 Ibid s 7(1) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 83; and renumbered by the Access to Justice Act 1999 s 90(1), Sch 13 paras 140, 141(1), (2)).

5 'Proper officer' means: (1) in relation to a magistrates' court in England and Wales, the designated officer for the court; and (2) in relation to any other court, the clerk of the court: Road Traffic Offenders Act 1988 s 7(2) (added by the Access to Justice Act 1999 Sch 13 para 141(3); and amended by the Courts Act 2003 s 109(1), Sch 8 para 310).

6 Road Traffic Offenders Act 1988 s 7(1)(a) (as renumbered (see note 4 supra); and amended by the Access to Justice Act 1999 Sch 13 para 141(2)).

7 Road Traffic Offenders Act 1988 s 7(1)(b) (as renumbered: see note 4 supra). As to the recorded delivery service see POST OFFICE vol 36(2) (Reissue) PARA 92.

8 Ibid s 7(1)(c) (as renumbered: see note 4 supra).

9 Ibid s 7(1) is amended, as from a day to be appointed, by the Road Safety Act 2006 s 10(12), 59, Sch 3 paras 30, 31, Sch 7 so as to remove the text to 11 infra. At the date at which this volume states the law no such day had been appointed.

10 For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1) (amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 3, Sch 2 para 6(a)(ii)). As from a day to be appointed, the Road Traffic Offenders Act 1988 s 98(1) is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7 so as to remove reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

11 Road Traffic Offenders Act 1988 s 7(1) (as renumbered (see note 4 supra); and amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(2), 3, Sch 2 para 1). See note 9 supra. For the consequences of failing to comply see PARA 1047 post. In the case of a newly qualified driver who holds a provisional licence, the obligation to produce his licence under the Road Traffic Offenders Act 1988 s 7 (as amended) extends to production of any certificate of passing a test of competence to drive: see the Road Traffic (New Drivers) Act 1995 s 6, Sch 1 Pt II para 3(1), (2); and PARA 514 ante.

**UPDATE****1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(ii) Trial/A. IN GENERAL/1033. Duty to include date of birth and sex in written plea of guilty.

**1033. Duty to include date of birth and sex in written plea of guilty.**

A person who gives a notification to the designated officer for a magistrates' court<sup>1</sup>, in respect of an offence involving obligatory or discretionary disqualification<sup>2</sup> or of such other offence as may be prescribed by regulations<sup>3</sup>, must include in the notification or intimation a statement of the date of birth and sex of the accused<sup>4</sup>.

<sup>1</sup> ie in pursuance of the Magistrates' Courts Act 1980 s 12(4) (written pleas of guilty): see MAGISTRATES vol 29(2) (Reissue) PARA 706.

<sup>2</sup> For the meaning of 'offence involving obligatory disqualification' see PARA 1058 post; and for the meaning of 'offence involving discretionary disqualification' see PARA 1060 post.

<sup>3</sup> ie under the Road Traffic Act 1988 s 105 (as amended). As to regulations made under this provision or having effect as if so made see the Goods Vehicles (Ascertainment of Maximum Gross Weights) Regulations 1976, SI 1976/555; the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864 (as amended); and PARA 443 ante.

<sup>4</sup> Road Traffic Offenders Act 1988 s 8 (amended by the Magistrates' Courts (Procedure) Act 1998 s 4(1)(a); the Access to Justice Act 1999 s 90(1), Sch 13 paras 140, 142; and the Courts Act 2003 s 109(1), Sch 8 para 311).

**UPDATE****1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(ii) Trial/B. PROCEDURE AND EVIDENCE/1034. Mode of trial.

## **B. PROCEDURE AND EVIDENCE**

### **1034. Mode of trial.**

Certain offences under the Road Traffic Regulation Act 1984, the Road Traffic Act 1988, the Road Traffic (Consequential Provisions) Act 1988 and the Road Traffic Offenders Act 1988<sup>1</sup> or regulations made under them are triable summarily, others are triable on indictment and others are triable either way<sup>2</sup>. The mode of trial for each offence is specified where the offence is dealt with in this title<sup>3</sup>.

1 The offences are specified in the Road Traffic Offenders Act 1988 s 9, Sch 2 Pt I col 1 (as amended). The general nature of the offence is indicated in Sch 2 Pt I col 2 (as amended).

2 See *ibid* s 9, Sch 2 Pt I col 3 (as amended).

3 As to the modes of trial see further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1098 et seq.

### **UPDATE**

#### **1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(ii) Trial/B. PROCEDURE AND EVIDENCE/1035. Evidence by certificate as to driver, user or owner.

### **1035. Evidence by certificate as to driver, user or owner.**

In any proceedings in England and Wales for specified offences<sup>1</sup>, a certificate in the prescribed<sup>2</sup> form, purporting to be signed by a constable<sup>3</sup> and certifying that a person specified in the certificate stated to the constable that:

- 964 (1) a particular mechanically propelled vehicle<sup>4</sup> was being driven<sup>5</sup> or used by, or belonged to, that person on a particular occasion<sup>6</sup>;
- 965 (2) a particular mechanically propelled vehicle on a particular occasion was used by, or belonged to, a firm and that he was, at the time of the statement, a partner in that firm<sup>7</sup>; or
- 966 (3) a particular mechanically propelled vehicle on a particular occasion was used by, or belonged to, a corporation and that he was, at the time of the statement, a director, officer or employee of that corporation<sup>8</sup>,

is admissible as evidence for the purpose of determining by whom the vehicle was being driven or used, or to whom it belonged, as the case may be, on that occasion<sup>9</sup>.

Nothing in the above provision makes a certificate admissible as evidence in proceedings for an offence except in a case where and to the like extent to which oral evidence to the like effect would have been admissible in those proceedings<sup>10</sup>; nor does anything in the above provision make a certificate admissible as evidence in proceedings for an offence unless a copy of it has, not less than seven days before the hearing or trial, been served in the prescribed manner on the person charged with the offence<sup>11</sup>, or if that person, not later than three days before the hearing or trial or within such further time as the court may in special circumstances allow, serves a notice in the prescribed form and manner on the prosecutor requiring attendance at the trial of the person who signed the certificate<sup>12</sup>.

1 The Road Traffic Offenders Act 1988 s 11 (as amended) (see the text and notes 2-12 *infra*) applies to the offences specified for that purpose in s 11(5), Sch 1 (as amended; prospectively amended), namely:

- 1543 (1) the Road Traffic Act 1988 s 1 (as substituted) (see PARA 963 ante) (causing death by dangerous driving);
- 1544 (2) s 2 (as substituted) (see PARA 964 ante) (dangerous driving);
- 1545 (3) as from a day to be appointed, s 2B (prospectively added) (see PARA 970 ante) (causing death by careless, or inconsiderate, driving);
- 1546 (4) s 3 (as substituted) (see PARA 971 ante) (careless, and inconsiderate, driving);
- 1547 (5) as from a day to be appointed, s 3ZB (prospectively added) (see PARA 1017 ante) (causing death by driving: unlicensed, disqualified or uninsured drivers);
- 1548 (6) s 3A (as added) (see PARA 974 ante) (causing death by careless driving when under the influence of drink or drugs);
- 1549 (7) s 4 (as amended) (see PARA 975 ante) (driving or attempting to drive, or being in charge of a mechanically propelled vehicle, when unfit to drive through drink or drugs);
- 1550 (8) s 5 (see PARA 978 ante) (driving or attempting to drive, or being in charge of a motor vehicle, with excess alcohol in breath, blood or urine);
- 1551 (9) s 6 (as substituted) (see PARA 985 ante) (failing to co-operate with a preliminary test);
- 1552 (10) s 7 (as amended) (see PARA 988 ante) (failing to provide a specimen for analysis or laboratory test);
- 1553 (11) s 7A (as added) (see PARA 987 ante) (failing to allow specimen of blood to be subjected to laboratory test);
- 1554 (12) s 12 (as amended) (see PARA 992 ante) (motor racing and speed trials);
- 1555 (13) s 14 (as amended) (see PARA 626 ante) (driving or riding in a motor vehicle in contravention of regulations requiring wearing of seat belts);
- 1556 (14) s 15 (as amended) (see PARA 631 ante) (driving motor vehicle with child not wearing seat belt or with child in a rear-facing child restraint in front seat with an active air bag);
- 1557 (15) s 19 (see PARA 997 ante) (prohibition of parking of heavy commercial vehicles on verges and footways);
- 1558 (16) s 22 (as amended) (see PARA 999 ante) (leaving vehicles in dangerous positions);
- 1559 (17) s 23 (as amended) (see PARA 1001 ante) (carrying passenger on motor cycle contrary to s 23 (as amended));
- 1560 (18) s 24 (see PARA 1002 ante) (carrying passenger on bicycle contrary to s 24);

- 1561 (19) s 25 (see PARA 1003 ante) (tampering with motor vehicles);
- 1562 (20) s 26(1) (see PARA 1004 ante) (holding or getting into vehicle in order to be carried);
- 1563 (21) s 26(2) (see PARA 1004 ante) (holding onto vehicle in order to be towed);
- 1564 (22) s 28 (as substituted) (see PARA 967 ante) (dangerous cycling);
- 1565 (23) s 29 (as amended) (see PARA 973 ante) (careless, and inconsiderate, cycling);
- 1566 (24) s 30 (as amended) (see PARA 976 ante) (cycling when unfit through drink or drugs);
- 1567 (25) s 31 (as amended) (see PARA 995 ante) (unauthorised or irregular cycle racing, or trials of speed);
- 1568 (26) s 33 (see PARA 1006 ante) (unauthorised motor vehicle trial on footpaths or  
bridleways);
- 1569 (27) s 34 (see PARA 1007 ante) (driving motor vehicles elsewhere than on roads);
- 1570 (28) s 35 (see PARA 642 ante) (failing to comply with traffic directions);
- 1571 (29) s 36 (as amended) (see PARA 643 ante) (failing to comply with traffic signs);
- 1572 (30) s 40A (as added) (see PARA 625 ante) (using vehicle in dangerous condition, etc);
- 1573 (31) s 41A (as added) (see PARA 261 ante) (breach of requirement as to brakes, steering-  
gear or tyres);
- 1574 (32) s 41B (as added) (see PARA 262 ante) (breach of requirement as to weight in relation  
to goods and passenger vehicles);
- 1575 (33) as from a day to be appointed, s 41C (prospectively added) (see PARA 263 ante)  
(breach of requirement as to speed assessment equipment detection device);
- 1576 (34) s 42 (as substituted) (see PARA 265 ante) (breach of other construction and use  
requirements);
- 1577 (35) s 47 (as amended) (see PARA 657 ante) (using, etc, vehicle without required test  
certificate being in force);
- 1578 (36) s 53 (prospectively amended) (see PARA 676 ante) (using, etc, vehicle without  
required plating certificate or goods vehicle test certificate being in force, or where the Secretary  
of State is required by regulations under s 49 (as amended) (see PARA 679 ante) to be notified of  
an alteration to the vehicle or its equipment but has not been notified);
- 1579 (37) s 63 (as amended) (see PARA 700 ante) (using, etc, vehicle without required  
certificate being in force showing that it, or a part fitted to it, complies with type approval  
requirements applicable to it, or using, etc, certain goods vehicles for drawing trailer when  
plating certificate does not specify maximum laden weight for vehicle and trailer, or using, etc,  
goods vehicle where the Secretary of State has not been but is required to be notified under s 48  
(as amended) (see PARA 657 ante) of alteration to it or its equipment);
- 1580 (38) s 71 (as substituted) (see PARA 691 ante) (driving, etc, vehicle in contravention of  
prohibition on driving it as being unfit for service or overloaded, or refusing, neglecting or  
otherwise failing to comply with a direction to remove a vehicle found overloaded);
- 1581 (39) s 78 (see PARA 697 ante) (failing to comply with requirement about weighing motor  
vehicle or obstructing authorised person);
- 1582 (40) s 87(1) (as amended) (see PARA 444 ante) (driving otherwise than in accordance with  
a licence);

- 1583 (41) s 87(2) (as amended) (see PARA 444 ante) (causing or permitting a person to drive otherwise than in accordance with a licence),
- 1584 (42) s 92(10) (as added) (see PARA 455 ante) (driving after making false declaration as to physical fitness);
- 1585 (43) s 94(3A) (as added) (see PARA 457 ante) and s 94(3A) (as added) as applied by s 99D(b) (as added) (see PARA 458 ante) or s 109C(c) (as added) (see PARA 484 note 18 ante) (driving after failure to notify the Secretary of State of onset of, or deterioration in, relevant or prospective disability);
- 1586 (44) s 94A (as added and amended) (see PARA 463 ante) (driving after refusal of licence under s 92(3) (see PARA 455 ante), revocation under s 93 (as amended) (see PARA 456 ante) or service of a notice under s 99C (as added) (see PARA 475 ante) or s 109B (as added) (see PARA 484 ante));
- 1587 (45) s 103(1)(b) (as substituted) (see PARA 481 ante) (driving while disqualified);
- 1588 (46) s 114(1) (as substituted and amended) (see PARA 491 ante) (failing to comply with conditions of LGV, PCV licence or LGV Community licence);
- 1589 (47) s 114(2) (as substituted) (see PARA 491 ante) (causing or permitting a person under 21 to drive LGV or PCV in contravention of conditions of that person's licence);
- 1590 (48) s 143 (as amended) (see PARA 937 ante) (using motor vehicle, or causing or permitting it to be used, while uninsured or unsecured against third party risks);
- 1591 (49) as from a day to be appointed, s 144A (prospectively added) (see PARA 941 ante) (keeping vehicle which does not meet insurance requirements);
- 1592 (50) s 163 (as amended) (see PARA 646 ante) (failing to stop vehicle when required);
- 1593 (51) s 164(6) (as amended) (see PARA 647 ante) (failing to produce driving licence and counterpart, etc, or to state date of birth);
- 1594 (52) s 165(3) (see PARA 648 ante) (failing to give constable certain names and addresses or to produce certificate of insurance or certain test and other like certificates);
- 1595 (53) s 165(6) (see PARA 648 ante) (supervisor of learner driver failing to give constable certain names and addresses);
- 1596 (54) s 168 (as amended) (see PARA 968 ante) (refusing to give, or giving false, name and address in case of reckless, careless or inconsiderate driving or cycling);
- 1597 (55) s 170 (as amended) (see PARA 645 ante) (failure by driver to stop, report accident or give information or documents); and
- 1598 (56) s 171 (see PARA 645 ante) (failure by owner of motor vehicle to give police information for verifying compliance with requirement of compulsory insurance or security).

The Road Traffic Offenders Act 1988 s 11 (as amended) also applies to the offences specified in Sch 1 para 3 (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 ss 7, 16, Sch 3 para 27, Sch 6; and the Statute Law (Repeals) Act 2004), namely:

- 1599 (a) any offence to which the Road Traffic Regulation Act 1984 s 112 (as amended) (see PARA 860 ante) (information as to identity of driver or rider) applies except an offence under s 61(5) (see PARA 826 ante);
- 1600 (b) any offence which is punishable under the Road Traffic Offenders Act 1988 s 91 (see PARA 1011 ante); and
- 1601 (c) any offence against any other enactment relating to the use of vehicles on roads.

For the meaning of 'road' see PARA 206 ante.

As from a day to be appointed, the Road Traffic Offenders Act 1988 s 11 (as amended) also applies to an offence under s 34D(12) (prospectively added) (see PARA 1066 text and notes 16-18 post) (offences in connection with alcohol ignition interlock): Sch 1 para 3 (amended by the Road Safety Act 2006 s 15(3)(a)). At the date at which this volume states the law no such day had been appointed.

2 'Prescribed' means prescribed by rules made by the Secretary of State by statutory instrument: Road Traffic Offenders Act 1988 s 11(4). At the date at which this volume states the law no such rules had been made under s 11 (as amended) but, by virtue of the Road Traffic (Consequential Provisions) Act 1988 s 2(2) and the Interpretation Act 1978 s 17(2), the Evidence by Certificate Rules 1961, SI 1961/248, rr 2, 3, Schedule (amended by SI 1962/2319) have effect as if so made. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 The powers given to a constable by this provision may also be exercised by a traffic warden: see the Functions of Traffic Wardens Order 1970, SI 1970/1958, art 3(2)(e); Interpretation Act 1978 s 17(2). As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. As to traffic wardens see PARA 868 ante.

4 As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.

5 For the meaning of 'drive' see PARA 207 ante.

6 Road Traffic Offenders Act 1988 s 11(1)(a) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 84).

7 Road Traffic Offenders Act 1988 s 11(1)(b) (amended by the Road Traffic Act 1991 Sch 4 para 84).

8 Road Traffic Offenders Act 1988 s 11(1)(c) (amended by the Road Traffic Act 1991 Sch 4 para 84).

9 Road Traffic Offenders Act 1988 s 11(1). Where the proceedings mentioned in s 11(1) (as amended) are proceedings before a magistrates' court inquiring into an offence as examining justices, then s 11 (as amended) has effect with the omission of s 11(2), and s 11(3)(b) and the word 'or' immediately preceding it: s 11(3A) (added by the Criminal Procedure and Investigations Act 1996 s 47, Sch 1 para 35). This provision is repealed, as from a day to be appointed, by the Criminal Justice Act 2003 ss 41, 332, Sch 3 Pt 2 para 61(1), (2), Sch 37 Pt 4. At the date at which this volume states the law no such day had been appointed.

10 Road Traffic Offenders Act 1988 s 11(2).

11 Ibid s 11(3)(a).

12 Ibid s 11(3)(b).

## UPDATE

### **1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(ii) Trial/B. PROCEDURE AND EVIDENCE/1036. Proof in summary proceedings of identity of driver of vehicle.

### **1036. Proof in summary proceedings of identity of driver of vehicle.**



Where on the summary trial in England and Wales of an information for specified offences<sup>1</sup>:

- 967 (1) it is proved to the satisfaction of the court, on oath or in manner prescribed by Criminal Procedure Rules<sup>2</sup>, that a requirement<sup>3</sup> to give information as to the identity of the driver<sup>4</sup> of a particular vehicle on the particular occasion to which the information relates has been served on the accused by post<sup>5</sup>; and
- 968 (2) a statement in writing is produced to the court purporting to be signed by the accused that the accused was the driver of that vehicle on that occasion<sup>6</sup>,

the court may accept that statement as evidence that the accused was the driver of that vehicle on that occasion<sup>7</sup>.

Where on the summary trial in England and Wales of an information for an offence to which certain provisions of the Road Traffic Regulation Act 1984 apply<sup>8</sup>:

- 969 (a) it is proved to the satisfaction of the court, on oath or in manner prescribed by Criminal Procedure Rules, that a requirement<sup>9</sup> to give information as to the identity of the driver of a particular vehicle on the particular occasion to which the information relates has been served on the accused by post<sup>10</sup>; and
- 970 (b) a statement in writing is produced to the court purporting to be signed by the accused that the accused was the driver of that vehicle on that occasion<sup>11</sup>,

the court may accept that statement as evidence that the accused was the driver of that vehicle on that occasion<sup>12</sup>.

1 The Road Traffic Offenders Act 1988 s 12 applies to the offences specified for that purpose in s 12(2), Sch 1 (as amended; prospectively amended), namely:

- 1602 (1) the Road Traffic Act 1988 s 2 (as substituted) (see PARA 964 ante) (dangerous driving);
- 1603 (2) as from a day to be appointed, s 2B (prospectively added) (see PARA 970 ante) (causing death by careless, or inconsiderate, driving);
- 1604 (3) s 3 (as substituted) (see PARA 971 ante) (careless, and inconsiderate, driving);
- 1605 (4) as from a day to be appointed, s 3ZB (prospectively added) (see PARA 1017 ante) (causing death by driving: unlicensed, disqualified or uninsured drivers);
- 1606 (5) s 4 (as amended) (see PARA 975 ante) (driving or attempting to drive, or being in charge of a mechanically propelled vehicle, when unfit to drive through drink or drugs);
- 1607 (6) s 5 (see PARA 978 ante) (driving or attempting to drive, or being in charge of a motor vehicle, with excess alcohol in breath, blood or urine);
- 1608 (7) s 6 (as substituted) (see PARA 985 ante) (failing to co-operate with a preliminary test);
- 1609 (8) s 7 (as amended) (see PARA 988 ante) (failing to provide a specimen for analysis or laboratory test);
- 1610 (9) s 7A (as added) (see PARA 987 ante) (failing to allow a specimen of blood to be subjected to a laboratory test);
- 1611 (10) s 12 (as amended) (see PARA 992 ante) (motor racing and speed trials);
- 1612 (11) s 14 (as amended) (see PARA 626 ante) (driving or riding in a motor vehicle in contravention of regulations requiring wearing of seat belts);

- 1613 (12) s 15 (as amended) (see PARA 631 ante) (driving motor vehicle with child not wearing seat belt or with child in a rear-facing child restraint in front seat with an active air bag);
- 1614 (13) s 19 (see PARA 997 ante) (prohibition of parking of heavy commercial vehicles on verges and footways);
- 1615 (14) s 22 (as amended) (see PARA 999 ante) (leaving vehicles in dangerous positions);
- 1616 (15) s 23 (as amended) (see PARA 1001 ante) (carrying passenger on motor cycle contrary to s 23 (as amended));
- 1617 (16) s 24 (see PARA 1002 ante) (carrying passenger on bicycle contrary to s 24);
- 1618 (17) s 26(2) (see PARA 1004 ante) (holding onto vehicle in order to be towed);
- 1619 (18) s 28 (as substituted) (see PARA 967 ante) (dangerous cycling);
- 1620 (19) s 29 (as amended) (see PARA 973 ante) (careless, and inconsiderate, cycling);
- 1621 (20) s 30 (as amended) (see PARA 976 ante) (cycling when unfit through drink or drugs);
- 1622 (21) s 31 (as amended) (see PARA 995 ante) (unauthorised or irregular cycle racing, or trials of speed);
- 1623 (22) s 33 (see PARA 1006 ante) (unauthorised motor vehicle trial on footpaths or bridleways);
- 1624 (23) s 34 (see PARA 1007 ante) (driving motor vehicles elsewhere than on roads);
- 1625 (24) s 35 (see PARA 642 ante) (failing to comply with traffic directions);
- 1626 (25) s 36 (as amended) (see PARA 643 ante) (failing to comply with traffic signs);
- 1627 (26) s 40A (as added) (see PARA 625 ante) (using vehicle in dangerous condition, etc);
- 1628 (27) s 41A (as added) (see PARA 261 ante) (breach of requirement as to brakes, steering-gear or tyres);
- 1629 (28) s 41B (as added) (see PARA 262 ante) (breach of requirement as to weight in relation to goods and passenger vehicles);
- 1630 (29) as from a day to be appointed, s 41C (prospectively added) (see PARA 263 ante) (breach of requirement as to speed assessment equipment detection device);
- 1631 (30) s 42 (as substituted) (see PARA 265 ante) (breach of other construction and use requirements);
- 1632 (31) s 47 (as amended) (see PARA 657 ante) (using, etc, vehicle without required test certificate being in force);
- 1633 (32) s 53 (prospectively amended) (see PARA 676 ante) (using, etc, vehicle without required plating certificate or goods vehicle test certificate being in force, or where the Secretary of State is required by regulations under s 49 (as amended) (see PARA 679 ante) to be notified of an alteration to the vehicle or its equipment but has not been notified);
- 1634 (33) s 63 (as amended) (using, etc, vehicle without required certificate being in force showing that it, or a part fitted to it, complies with type approval requirements applicable to it, or using, etc, certain goods vehicles for drawing trailer when plating certificate does not specify maximum laden weight for vehicle and trailer, or using, etc, goods vehicle where the Secretary of State has not been but is required to be notified under s 48 (as amended) (see PARA 657 ante) of alteration to it or its equipment);

- 1635 (34) s 71 (as substituted) (see PARA 691 ante) (driving, etc, vehicle in contravention of prohibition on driving it as being unfit for service or overloaded, or refusing, neglecting or otherwise failing to comply with a direction to remove a vehicle found overloaded);
- 1636 (35) s 78 (see PARA 697 ante) (failing to comply with requirement about weighing motor vehicle or obstructing authorised person);
- 1637 (36) s 87(1) (as amended) (see PARA 444 ante) (driving otherwise than in accordance with a licence);
- 1638 (37) s 92(10) (as added) (see PARA 455 ante) (driving after making false declaration as to physical fitness);
- 1639 (38) s 94(3A) (as added) (see PARA 457 ante) and s 94(3A) (as added) as applied by s 99D(b) (as added) (see PARA 458 ante) or s 109C(c) (as added) (see PARA 484 note 18 ante) (driving after failure to notify the Secretary of State of onset of, or deterioration in, relevant or prospective disability);
- 1640 (39) s 94A (as added and amended) (see PARA 463 ante) (driving after refusal of licence under s 92(3) (see PARA 455 ante), revocation under s 93 (as amended) (see PARA 456 ante) or service of a notice under s 99C (as added) (see PARA 475 ante) or s 109B (as added) (see PARA 484 ante));
- 1641 (40) s 103(1)(b) (as substituted) (see PARA 481 ante) (driving while disqualified);
- 1642 (41) s 114(1) (as substituted and amended) (see PARA 491 ante) (failing to comply with conditions of LGV, PCV licence or LGV Community licence);
- 1643 (42) s 143 (as amended) (see PARA 937 ante) (using motor vehicle, or causing or permitting it to be used, while uninsured or unsecured against third party risks);
- 1644 (43) as from a day to be appointed, s 144A (prospectively added) (see PARA 941 ante) (keeping vehicle which does not meet insurance requirements);
- 1645 (44) s 163 (as amended) (see PARA 646 ante) (failing to stop vehicle when required by constable);
- 1646 (45) s 164(6) (as amended) (see PARA 647 ante) (failing to produce driving licence and counterpart, etc, or to state date of birth);
- 1647 (46) s 165(3) (see PARA 648 ante) (failing to give constable certain names and addresses or to produce certificate of insurance or certain test and other like certificates);
- 1648 (47) s 168 (as amended) (see PARA 968 ante) (refusing to give, or giving false, name and address in case of reckless, careless or inconsiderate driving or cycling);
- 1649 (48) s 170 (as amended) (see PARA 645 ante) (failure by driver to stop, report accident or give information or documents); and
- 1650 (49) s 171 (see PARA 645 ante) (failure by owner of motor vehicle to give police information for verifying compliance with requirement of compulsory insurance or security).

The Road Traffic Offenders Act 1988 s 12(1) also applies to offences specified in Sch 1 para 4 (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 ss 7, 16, Sch 3 para 27, Sch 6; and the Statute Law (Repeals) Act 2004), namely:

- 1651 (a) any offence which is punishable under the Road Traffic Offenders Act 1988 s 91 (see PARA 1011 ante); and
- 1652 (b) any offence against any other enactment relating to the use of vehicles on roads.

For the meaning of 'road' see PARA 206 ante.

As from a day to be appointed, s 12(1) also applies to an offence under s 34D(12) (prospectively added) (see PARA 1066 text and notes 16-18 post) (offences in connection with alcohol ignition interlock): Sch 1 para 4

(amended by the Road Safety Act 2006 s 15(3)(b)). At the date at which this volume states the law, no such day had been appointed.

2    le the Criminal Procedure Rules 2005, SI 2005/384 (as amended) (the 'CrimPR'): see CRIMINAL LAW, EVIDENCE AND PROCEDURE; MAGISTRATES; SENTENCING AND DISPOSITION OF OFFENDERS.

3    le under the Road Traffic Act 1988 s 172(2) (as substituted): see PARA 1026 ante.

4    For the meaning of 'driver' see PARA 207 ante.

5    Road Traffic Offenders Act 1988 s 12(1)(a) (amended by the Courts Act 2003 (Consequential Amendments) Order 2004, SI 2004/2035, art 3, Schedule paras 29, 30).

6    Road Traffic Offenders Act 1988 s 12(1)(b). It cannot be inferred, from a form which requires information as to the driver of a vehicle involved in a road traffic offence, which form includes the accused's name but no signature, that the insertion of a name amounts to a statement in writing purporting to be signed by the accused: *Mawdesley v Chief Constable of Cheshire Constabulary, Yorke v DPP* [2003] EWHC 1586 (Admin), [2004] 1 All ER 58, [2004] RTR 209.

7    Road Traffic Offenders Act 1988 s 12(1). As to the compatibility of the use under this provision of evidence obtained under s 172 (as substituted and amended) (see PARA 1026 ante) with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 134 et seq) see the views expressed in Kevin Kerrigan 'Is Speeding a Human Right?' 164 JPN 298; and AJ Turner 'Proving Who Drove: Brown v Procurator Fiscal and Article 6' 164 JPN 794. It has been now been held that the use under the Road Traffic Offenders Act 1988 s 12(1) of evidence obtained under s 172 (as substituted and amended) does not breach the right of the defendant to a fair trial under the Convention for the Protection of Human Rights and Fundamental Freedoms art 6: *Brown v Stott (Procurator Fiscal, Dunfermline)* [2003] 1 AC 681, [2001] 2 All ER 97, PC. See also *O'Halloran v United Kingdom* [2007] All ER (D) 07 (Jul), ECtHR (where the applicants, both British nationals, argued that the Road Traffic Act 1988 s 172 (as substituted and amended) breached their rights under the Convention for the Protection of Human Rights and Fundamental Freedoms art 6 in compelling them to name the person driving the car caught by speed cameras; the court found in favour of the United Kingdom and concurred with the decision of the Privy Council in *Brown v Stott (Procurator Fiscal, Dunfermline)* supra).

8    le any offence to which the Road Traffic Regulation Act 1984 s 112 (as amended) applies, namely any offence under ss 1-111 (as amended) except s 43 (as amended) (see PARA 797 ante), s 52 (as amended) (see PARA 816 ante), s 88(7) (see PARA 855 ante), s 104 (as amended) (see PARA 876 ante), s 105 (as amended) (see PARA 877 ante), s 108 (see PARA 885 ante), s 108(2), (3) as modified by s 109(2), (3) (see PARA 885 note 7 ante), and s 35A(5) (as added) (see PARA 791 ante) in its application to England and Wales: see s 112(1); and PARA 860 ante.

9    le under *ibid* s 112(2) (as amended): see PARA 860 ante.

10   Road Traffic Offenders Act 1988 s 12(3)(a) (amended by the Courts Act 2003 (Consequential Amendments) Order 2004, SI 2004/2035, Schedule para 30).

11   Road Traffic Offenders Act 1988 s 12(3)(b).

12   *Ibid* s 12(3).

## UPDATE

### **1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(ii) Trial/B. PROCEDURE AND EVIDENCE/1037. Admissibility of records as evidence.

### **1037. Admissibility of records as evidence.**

A statement<sup>1</sup> contained in a document purporting to be a part of the records maintained by the Secretary of State<sup>2</sup> in connection with any functions exercisable by him in relation to the licensing of drivers of vehicles<sup>3</sup>, a copy<sup>4</sup> of a document forming part of those records<sup>5</sup>, or a note of any information contained in those records<sup>6</sup>, and purporting to be authenticated by a person authorised in that behalf by the Secretary of State<sup>7</sup>, is admissible in any proceedings as evidence of any fact stated in it to the same extent as oral evidence of that fact is admissible in those proceedings<sup>8</sup>.

In any case where a person is convicted by a magistrates' court of a summary offence<sup>9</sup>, such a statement is produced to the court in the proceedings<sup>10</sup>, the statement specifies an alleged previous conviction of the accused of an offence involving obligatory endorsement<sup>11</sup> or an order made on the conviction<sup>12</sup>, and the accused is not present in person before the court when the statement is so produced<sup>13</sup>, the court may take account of the previous conviction or order as if the accused had appeared and admitted it<sup>14</sup>.

In any case where such a statement is produced to a magistrates' court in any proceedings for an offence involving obligatory or discretionary disqualification<sup>15</sup> other than a summary offence<sup>16</sup>, the statement specifies an alleged previous conviction of an accused person of any such offence or any order made on the conviction<sup>17</sup>, it is proved to the satisfaction of the court, on oath or in such manner as may be prescribed by Criminal Procedure Rules<sup>18</sup>, that not less than seven days before the statement is so produced a notice was served on the accused, in such form and manner as may be so prescribed, specifying the previous conviction or order and stating that it is proposed to bring it to the notice of the court in the event of or, as the case may be, in view of his conviction<sup>19</sup>, and the accused is not present in person before the court when the statement is so produced<sup>20</sup>, the court may take account of the previous conviction or order as if the accused had appeared and admitted it<sup>21</sup>.

Nothing in these provisions enables evidence to be given in respect of any matter other than a matter of a description prescribed by regulations made by the Secretary of State<sup>22</sup>.

1 For these purposes, 'statement' means any representation of fact, however made: Road Traffic Offenders Act 1988 s 13(3) (substituted by the Civil Evidence Act 1995 s 15(1), Sch 1 para 15).

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 Road Traffic Offenders Act 1988 s 13(1)(a). The functions referred to in the text are functions exercisable by virtue of the Road Traffic Act 1988 Pt III (ss 87-109) (as amended): see PARA 444 et seq ante. The Road Traffic Offenders Act 1988 s 13(1)(a) is prospectively amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 2 para 20, so as to refer also to a part of any other records maintained by the Secretary of State with respect to vehicles or of any records maintained with respect to vehicles by an approved testing authority in connection with the exercise by that authority of any functions conferred on such authorities, or on that authority as such an authority, by or under any enactment. At the date at which this volume states the law this amendment had not been brought into force. As to testing authorities see PARA 699 ante.

4 For these purposes, 'copy', in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly: Road Traffic Offenders Act 1988 s 13(3) (as substituted: see note 1 supra). 'Document' means anything in which information of any description is recorded: s 13(3) (as so substituted).

5 Ibid s 13(1)(b).

6 Ibid s 13(1)(c).

7 Ibid s 13(1). Section 13(1) is prospectively amended by the Road Traffic (Consequential Provisions) Act 1988 Sch 2 para 20, so as to refer also to the approved testing authority. At the date at which this volume states the law this amendment had not been brought into force.

8 Road Traffic Offenders Act 1988 s 13(2). Where the proceedings mentioned in s 13(2) are proceedings before a magistrates' court inquiring into an offence as examining justices, s 13 (as amended) has effect as if:

1653 (1) in s 13(2) the words 'to the same extent as oral evidence of that fact is admissible in those proceedings' were omitted (s 13(7)(a) (s 13(7) added, in relation to alleged offences into which no criminal procedure has begun before 1 April 1997, by the Criminal Procedure and Investigations Act 1996 s 47, Sch 1 para 36));

1654 (2) in the Road Traffic Offenders Act 1988 s 13(4) (as amended) the word 'and' were inserted at the end of s 13(4)(a) (as amended) (s 13(7)(b) (as so added));

1655 (3) in s 13(4) (as amended), s 13(4)(c), (d) and the words 'as if the accused had appeared and admitted it' were omitted (s 13(7)(c) (as so added)).

Section 13(7) is repealed by the Criminal Justice Act 2003 ss 41, 332, Sch 3 Pt 2 para 61(1), (3), Sch 37 Pt 4, as from a day to be appointed under s 336(3). At the date at which this volume states the law no such day had been appointed.

9 Road Traffic Offenders Act 1988 s 13(3A)(a) (s 13(3A) added by the Magistrates' Courts (Procedure) Act 1998 s 2(1)). A person may be convicted for these purposes under the Road Traffic Regulation Act 1984, the Road Traffic Act 1988, the Road Traffic (Consequential Provisions) Act 1988, the Road Traffic Offenders Act 1988 or the Road Traffic (Driver Licensing and Information Systems) Act 1989.

10 Road Traffic Offenders Act 1988 s 13(3A)(b) (as added: see note 9 supra).

11 As to endorsement see PARA 1080 et seq post.

12 Road Traffic Offenders Act 1988 s 13(3A)(c) (as added: see note 9 supra).

13 Ibid s 13(3A)(d) (as added: see note 9 supra).

14 Ibid s 13(3A) (as added: see note 9 supra). The Magistrates' Courts Act 1980 s 104 (as amended) (see MAGISTRATES vol 29(2) (Reissue) PARA 764) (under which previous convictions may be adduced in the absence of the accused after giving him seven days' notice of them) does not limit the effect of the Road Traffic Offenders Act 1988 s 13(3A) (as added): s 13(3B) (added by the Magistrates' Courts (Procedure) Act 1998 s 2(1)).

15 For the meanings of 'offence involving obligatory disqualification' and 'offence involving discretionary disqualification' see PARAS 1058, 1060 post.

16 Road Traffic Offenders Act 1988 s 13(4)(a) (amended by the Magistrates' Courts (Procedure) Act 1998 s 2(2)). As to the summary offences referred to in the text see note 9 supra.

17 Road Traffic Offenders Act 1988 s 13(4)(b).

18 In the Criminal Procedure Rules 2005, SI 2005/384 (as amended) (the 'CrimPR'): see CRIMINAL LAW, EVIDENCE AND PROCEDURE; MAGISTRATES; SENTENCING AND DISPOSITION OF OFFENDERS.

19 Road Traffic Offenders Act 1988 s 13(4)(c) (amended by the Courts Act 2003 (Consequential Amendments) Order 2004, SI 2004/2035, art 3, Schedule paras 29, 30).

20 Road Traffic Offenders Act 1988 s 13(4)(d).

21 Ibid s 13(4).

22 Ibid s 13(5). The power to make regulations under s 13 (as amended) is exercisable by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament: s 13(6). At the date at which this volume states the law no such regulations had been made under s 13(5) but, by virtue of the Road Traffic (Consequential Provisions) Act 1988 s 2(2), the Vehicle and Driving Licences Records (Evidence) Regulations 1970, SI 1970/1997, have effect as if so made.

## UPDATE

### **1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(ii) Trial/B. PROCEDURE AND EVIDENCE/1038. Use of records kept by operators of goods vehicles.

#### **1038. Use of records kept by operators of goods vehicles.**

In any proceedings for an offence concerning the use of a vehicle in a dangerous condition<sup>1</sup> or for a contravention of or failure to comply with construction and use requirements<sup>2</sup> or regulations relating to the duty to inspect and keep records of inspections of goods vehicles<sup>3</sup>, any record purporting to be made and authenticated in accordance with those regulations<sup>4</sup> is evidence of the matters stated in the record and of its due authentication<sup>5</sup>.

1    le under the Road Traffic Act 1988 s 40A (as added): see PARA 625 ante.

2    For the meaning of 'construction and use requirements' see PARA 261 note 1 ante; definition applied by the Road Traffic Offenders Act 1988 s 14 (as amended: see note 5 infra).

3    le regulations made under the Road Traffic Act 1988 s 74 (as amended): see PARA 693 ante.

4    See note 3 supra.

5    Road Traffic Offenders Act 1988 s 14 (amended by the Road Traffic Act 1991 s 48, Sch 4 para 86).

#### **UPDATE**

### **1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(ii) Trial/B. PROCEDURE AND EVIDENCE/1039. Use of specimens in proceedings and documentary evidence as to specimens.

#### **1039. Use of specimens in proceedings and documentary evidence as to specimens.**

The provisions relating to the use of specimens in proceedings<sup>1</sup> and documentary evidence as to specimens<sup>2</sup> in breathalyser cases are dealt with elsewhere in this title<sup>3</sup>.

1 le the Road Traffic Offenders Act 1988 s 15 (as amended).

2 le ibid s 16 (as amended).

3 See PARA 991 ante.

## UPDATE

### **1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(ii) Trial/B. PROCEDURE AND EVIDENCE/1040. Proceedings for offences relating to the construction and use of vehicles and equipment.

### **1040. Proceedings for offences relating to the construction and use of vehicles and equipment.**

If in any proceedings for an offence of using a vehicle in a dangerous condition or in contravention of the construction and use regulations<sup>1</sup> any question arises as to a weight of any description specified in the plating certificate for a goods vehicle<sup>2</sup>, and a weight of that description is marked on the vehicle<sup>3</sup>, it must be assumed, unless the contrary is proved, that the weight marked on the vehicle is the weight so specified<sup>4</sup>.

If, in any proceedings for an offence relating to the construction and use of vehicles and equipment<sup>5</sup>, or for an offence relating to false statements and deception<sup>6</sup>, any question arises as to the date of manufacture of a vehicle, a date purporting to be such a date and marked on the vehicle in pursuance of regulations duly made<sup>7</sup> is to be evidence that the vehicle was manufactured on the date so marked<sup>8</sup>.

If in any proceedings for the offence of driving<sup>9</sup> a vehicle on a road<sup>10</sup>, or causing or permitting a vehicle to be so driven, in contravention of a prohibition on driving an overloaded goods vehicle<sup>11</sup>, any question arises whether a weight of any description has been reduced to a limit imposed by construction and use requirements, or so that it has ceased to be excessive, the burden of proof lies on the accused<sup>12</sup>.

1 Road Traffic Offenders Act 1988 s 17(1) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 88(1), (2)). The offences mentioned in the text are those under the Road Traffic Act 1988 s 40A (as added) (see PARA 625 ante), s 41A (as added) (see PARA 261 ante), s 41B (as added) (see PARA 262 ante) or s 42 (as substituted) (see PARA 265 ante). As to the construction and use regulations see PARAS 267 et seq, 583 et seq ante.

2 Road Traffic Offenders Act 1988 s 17(1)(a). As to plating certificates for goods vehicles see PARAS 716-717 ante.



3 Ibid s 17(1)(b).

4 Ibid s 17(1).

5 Ibid s 17(2)(a). The offences mentioned in the text are those under the Road Traffic Act 1988 Pt II (ss 40A-86) (as amended) (see PARA 625 et seq ante), except s 47 (as amended) (see PARA 657 ante) and s 75 (as amended) (see PARA 694 ante).

6 Road Traffic Offenders Act 1988 s 17(2)(b). The offences mentioned in the text are those under the Road Traffic Act 1988 s 174(2) or (5): see PARA 1013 ante.

7 Ie under ibid Pt II (as amended).

8 Road Traffic Offenders Act 1988 s 17(2).

9 For the meaning of 'drive' see PARA 207 ante.

10 For the meaning of 'road' see PARA 206 ante.

11 Ie a prohibition under the Road Traffic Act 1988 s 70(2) (as amended): see PARA 690 ante.

12 Road Traffic Offenders Act 1988 s 17(3) (amended by the Road Traffic Act 1991 ss 48, 83, Sch 4 para 88(1), (3), Sch 8). As to the burden of proof see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1368 et seq.

## UPDATE

### **1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(ii) Trial/B. PROCEDURE AND EVIDENCE/1041. Evidence by certificate as to registration of driving instructors and licences to give instruction.

### **1041. Evidence by certificate as to registration of driving instructors and licences to give instruction.**

A certificate signed by the Registrar<sup>1</sup> and stating that, on any date:

- 971 (1) a person's name was, or was not, in the register<sup>2</sup>;
- 972 (2) the entry of a person's name was made in the register or a person's name was removed from it<sup>3</sup>;
- 973 (3) a person was, or was not, the holder of a current licence<sup>4</sup>; or
- 974 (4) such a licence granted to a person came into force or ceased to be in force<sup>5</sup>,

is evidence of the facts stated in the certificate<sup>6</sup>. A certificate so stating and purporting to be signed by the Registrar is deemed to be so signed unless the contrary is proved<sup>7</sup>.

- 1 For the meaning of 'the Registrar' see PARA 415 ante; definition applied by the Road Traffic Offenders Act 1988 s 18(3).
- 2 Ibid s 18(1)(a). For the meaning of 'register' see PARA 413 ante; definition applied by s 18(3). This definition in s 18(3) is repealed, as from a day to be appointed, by the Road Safety Act 2006 s 42, Sch 6 paras 31, 32(1), (3). At the date at which this volume states the law no such day had been appointed.
- 3 Road Traffic Offenders Act 1988 s 18(1)(b).
- 4 Ibid s 18(1)(c). The text refers to a current licence held under the Road Traffic Act 1988 s 129 (as amended); see PARA 430 ante. For the meaning of 'current licence' see PARA 413 note 1 ante; definition applied by the Road Traffic Offenders Act 1988 s 18(3). This definition in s 18(3) is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 6 paras 31, 32(1), (3). At the date at which this volume states the law no such day had been appointed.
- 5 Road Traffic Offenders Act 1988 s 18(1)(d). As from a day to be appointed, s 18(1)(a)-(d) is substituted so as to provide that a certificate stating that: (1) a person was, or was not, registered; (2) a person became registered or a person's registration was terminated; or (3) a person was, or was not, exempt from the prohibitions imposed by the Road Traffic Act 1988 s 123 (as amended) (requirement of registration) (see PARA 413 ante) by virtue of provision made by regulations under s 124 (as amended) (see PARA 413 ante), is evidence of the facts stated in the certificate: Road Traffic Offenders Act 1988 s 18(1)(a)-(c) (substituted by the Road Safety Act 2006 Sch 6 para 32(2)). At the date at which this volume states the law no such day had been appointed.
- 6 Road Traffic Offenders Act 1988 s 18(1).
- 7 Ibid s 18(2).

## UPDATE

### **1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(ii) Trial/B. PROCEDURE AND EVIDENCE/1042. Admissibility of evidence in relation to speeding offences etc.

#### **1042. Admissibility of evidence in relation to speeding offences etc.**

Evidence of a fact relevant to proceedings for specified offences<sup>1</sup> may be given by the production of<sup>2</sup>: (1) a record produced by a prescribed device<sup>3</sup>; and (2) in the same or another document, a certificate as to the circumstances in which the record was produced signed by a constable<sup>4</sup> or by a person authorised by or on behalf of the chief officer of police for the police area<sup>5</sup> in which the offence is alleged to have been committed<sup>6</sup>.

A record produced or measurement made by a prescribed device is not admissible as evidence of a fact relevant to proceedings for the specified offences<sup>7</sup> unless<sup>8</sup> the device is of a type approved by the Secretary of State<sup>9</sup>, and any conditions subject to which the approval was given are satisfied<sup>10</sup>.

In proceedings for specified offences<sup>11</sup>, evidence of a measurement made by a device, or of the circumstances in which it was made<sup>12</sup>, or that a device was of a type approved for these purposes, or that any conditions subject to which an approval was given were satisfied<sup>13</sup>, may be given by the production of a document which is signed as mentioned in head (2) above and which, as the case may be, gives particulars of the measurement or of the circumstances in which it was made, or states that the device was of such a type or that, to the best of the knowledge and belief of the person making the statement, all such conditions were satisfied<sup>14</sup>.

For these purposes a document purporting to be a record of the kind mentioned in head (1) above, or to be a signed certificate or other document<sup>15</sup>, is deemed to be such a record, or to be so signed, unless the contrary is proved<sup>16</sup>.

1 The Road Traffic Offenders Act 1988 s 20 (as substituted and amended) (see the text and notes 2-16 infra) applies to the offences specified in s 20(2) (s 20 substituted by the Road Traffic Act 1991 s 23; and the Road Traffic Offenders Act 1988 s 20(2) amended by the Road Traffic Offenders (Additional Offences and Prescribed Devices) Order 1997, SI 1997/384, art 2; and the Road Traffic Offenders (Additional Offences and Prescribed Devices) Order 2001, SI 2001/1814, art 3), namely:

- 1656 (1) an offence under the Road Traffic Regulation Act 1984 s 16 (as amended) (see PARA 758 ante) consisting in the contravention of a restriction on the speed of vehicles imposed under s 14 (as substituted) (see PARA 755 ante);
- 1657 (2) an offence under s 17(4) (see PARA 764 ante) consisting in the contravention of a restriction on the speed of vehicles imposed under s 17 (as amended) (see PARA 764 ante);
- 1658 (3) an offence under s 88(7) (see PARA 855 ante) (temporary minimum speed limits);
- 1659 (4) an offence under s 89(1) (see PARA 856 ante) (speeding offences generally);
- 1660 (5) an offence under the Road Traffic Act 1988 s 36(1) (as substituted) (see PARA 643 ante) consisting in the failure to comply with an indication given by a light signal that vehicular traffic is not to proceed;
- 1661 (6) an offence under the Road Traffic Regulation Act 1984 Pt I (ss 1-13A) (as amended) (see PARA 742 et seq ante) or Pt II (ss 14-22) (as amended) (see PARA 755 et seq ante) of contravening or failing to comply with an order or regulations made under either of those Parts relating to the use of an area of road which is described as a bus lane or a route for use by buses only; and
- 1662 (7) an offence under the Vehicle Excise and Registration Act 1994 s 29(1) (using or keeping an unlicensed vehicle on a public road: see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 777).

The Secretary of State may by order amend the Road Traffic Offenders Act 1988 s 20(2) (as substituted and amended) by making additions to or deletions from the list of offences for the time being set out there; and an order under s 20(3) (as substituted) may make such transitional provision as appears to the Secretary of State to be necessary or expedient: s 20(3) (as so substituted). The powers to make orders under s 20(3), (9) (as substituted) are exercisable by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament: s 20(10) (as so substituted). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Ibid s 20(1) (as substituted: see note 1 supra). This is expressed to be subject to s 20(2)-(10) (as substituted and amended). See also note 14 infra.

3 Ibid s 20(1)(a) (as substituted: see note 1 supra). For these purposes, 'prescribed device' means a device of a description specified in an order made by the Secretary of State: s 20(9) (as so substituted). As to the power to make orders see note 1 supra. The following orders have been made under s 20(9) (as substituted): the Road Traffic Offenders (Prescribed Devices) Order 1992, SI 1992/1209; the Road Traffic Offenders (Prescribed Devices) (No 2) Order 1992, SI 1992/2843; the Road Traffic Offenders (Prescribed Devices) Order 1993, SI 1993/1698; the Road Traffic Offenders (Additional Offences and Prescribed Devices) Order 1997, SI 1997/384; the Road Traffic Offenders (Prescribed Devices) Order 1999, SI 1999/162; and the Road Traffic Offenders (Additional Offences and Prescribed Devices) Order 2001, SI 2001/1814.

There is a presumption that a device was in order when used: *R v Skegness Magistrates' Court, ex p Cardy* [1985] RTR 49, [1985] Crim LR 237, DC. However, in relation to an approved automatic camera set up on a gantry on the M25, justices were entitled to acquit where the prosecution witness was mistaken as to where that gantry was on the M25 and he had no knowledge of how the manual system worked and what effect it had, if any, on the displays on the overhead gantry: *DPP v Underwood* (4 June 1997) Lexis, DC. See also *Darby v DPP* [1995] RTR 294, 159 JP 533, DC.

As to the offence committed by a person who warns a driver of the presence of police officers with apparatus for detecting the speed of vehicles see PARA 1022 ante.

4 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

5 As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq; and as to police areas see POLICE vol 36(1) (2007 Reissue) PARA 136.

6 Road Traffic Offenders Act 1988 s 20(1)(b) (as substituted: see note 1 supra).

7 See note 1 supra.

8 Road Traffic Offenders Act 1988 s 20(4) (as substituted: see note 1 supra).

9 Ibid s 20(4)(a) (as substituted: see note 1 supra). Any approval given by the Secretary of State for these purposes may be given subject to conditions as to the purposes for which, and the manner and other circumstances in which, any device of the type concerned is to be used: s 20(5) (as so substituted).

Justices may not take judicial notice of the approval of a device solely on the basis that the officer concerned regularly used the device in question; if no point is expressly taken proof will not normally be necessary, but where the prosecution has been given notice that a serious issue is being raised in relation to the evidence based on the device it is a simple matter to establish approval either by the production of the relevant schedule or by evidence from the police operator that the device he used was an approved device: *Roberts v DPP* [1994] RTR 31, DC.

10 Road Traffic Offenders Act 1988 s 20(4)(b) (as substituted: see note 1 supra).

11 See note 1 supra.

12 Road Traffic Offenders Act 1988 s 20(6)(a) (as substituted: see note 1 supra).

13 Ibid s 20(6)(b) (as substituted: see note 1 supra).

14 Ibid s 20(6) (as substituted: see note 1 supra). Nothing in s 20(1) or (6) (as substituted) makes a document admissible as evidence in proceedings for an offence unless a copy of it has, not less than seven days before the hearing or trial, been served on the person charged with the offence; and nothing in s 20(1) or (6) (as substituted) makes a document admissible as evidence of anything other than the matters shown on a record produced by a prescribed device if that person, not less than three days before the hearing or trial or within such further time as the court may in special circumstances allow, serves a notice on the prosecutor requiring attendance at the hearing or trial of the person who signed the document: s 20(8) (as so substituted). Where the proceedings for an offence to which s 20 (as substituted and amended) applies are proceedings before a magistrates' court inquiring into an offence as examining justices, s 20 (as substituted and amended) has effect as if in s 20(8) (as substituted) the words from 'and nothing' to the end of s 20(8) (as substituted) were omitted: s 20(8A) (added, in relation to alleged offences into which no criminal procedure has begun before 1 April 1997, by the Criminal Procedure and Investigations Act 1996 s 47, Sch 1 para 38). The Road Traffic Offenders Act 1988 s 20(8A) (as added) is repealed, as from a day to be appointed, by the Criminal Justice Act 2003 ss 41, 332, Sch 3 Pt 2 para 61(1), (5), Sch 37 Pt 4. At the date at which this volume states the law no such day had been appointed.

15 Ie as mentioned in the Road Traffic Offenders Act 1988 s 20(1) or (6) (as substituted).

16 Ibid s 20(7) (as substituted: see note 1 supra).

## UPDATE

### **1023-1042 Application of the Road Traffic Offenders Act 1988 to the Crown ... Admissibility of evidence in relation to speeding offences etc**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

## **1042 Admissibility of evidence in relation to speeding offences etc**

NOTE 3--See also Road Traffic Offenders (Prescribed Devices) Order 2008, SI 2008/1332, made under Road Traffic Offenders Act 1988 s 20(9). See *The Pict v Crown Prosecution Service* [2009] All ER (D) 185 (Apr) (device approved under SI 1992/2843).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(ii) Trial/B. PROCEDURE AND EVIDENCE/1043. Notification of disability.

## **1043. Notification of disability.**

If in any proceedings for an offence committed in respect of a motor vehicle<sup>1</sup> it appears to the court<sup>2</sup> that the accused may be suffering from any relevant disability<sup>3</sup> or prospective disability<sup>4</sup> the court must notify the Secretary of State<sup>5</sup>. A notice so sent by a court to the Secretary of State must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine<sup>6</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 There must be material before the court, though that may consist only of something said in mitigation, suggesting that the defendant suffers from a relevant disability or a prospective disability, before the court can properly refer the matter to the Secretary of State: *R v Chichester Justices, ex p Crouch* (1981) 146 JP 26.

3 For the meaning of 'relevant disability' see PARA 417 note 1 ante; definition applied by the Road Traffic Offenders Act 1988 s 22(1).

4 For the meaning of 'prospective disability' see PARA 417 note 2 ante; definition applied by *ibid* s 22(1).

5 *Ibid* s 22(1). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 *Ibid* s 22(2).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(ii) Trial/C. VERDICTS/1044. Alternative verdicts.

## **C. VERDICTS**

### **1044. Alternative verdicts.**

Where a person charged with an offence under the Road Traffic Act 1988 specified in heads (1) to (6) below is found not guilty of that offence, but the allegations in the indictment or information amount to or include an allegation of an offence under one or more of the alternatives specified in each head, he may be convicted of that offence or of one or more of

those offences<sup>1</sup>. The offences (which are indicated by their general nature) and alternative provisions are as follows:

- 975 (1) in the case of a person charged with an offence of causing death by dangerous driving<sup>2</sup>, he may be convicted in the alternative of an offence of dangerous driving<sup>3</sup> or of an offence of careless, or inconsiderate, driving<sup>4</sup>;
- 976 (2) in the case of a person charged with an offence of dangerous driving<sup>5</sup>, he may be convicted in the alternative of an offence of careless, or inconsiderate, driving<sup>6</sup>;
- 977 (3) in the case of a person charged with an offence of causing death by careless driving when under the influence of drink or drugs<sup>7</sup>, he may be convicted in the alternative of an offence of careless, or inconsiderate, driving<sup>8</sup>, of driving when unfit to drive through drink or drugs<sup>9</sup>, of driving with excess alcohol in breath, blood or urine<sup>10</sup>, of failing to provide a specimen<sup>11</sup>, or of failing to give permission for a laboratory test<sup>12</sup>;
- 978 (4) in the case of a person charged with an offence of driving when unfit to drive through drink or drugs<sup>13</sup>, he may be convicted in the alternative of an offence of being in charge of a vehicle when unfit to drive through drink or drugs<sup>14</sup>;
- 979 (5) in the case of a person charged with an offence of driving, or attempting to drive with excess alcohol in his breath, blood or urine<sup>15</sup>, he may be convicted in the alternative of an offence of being in charge of a vehicle with excess alcohol in breath, blood or urine<sup>16</sup>; and
- 980 (6) in the case of a person charged with an offence of dangerous cycling<sup>17</sup>, he may be convicted in the alternative of an offence of careless, and inconsiderate, cycling<sup>18</sup>.

Where the offence with which a person is charged is an offence of causing death by careless driving when under the influence of drink or drugs<sup>19</sup>, the above provisions do not authorise his conviction of any offence of attempting to drive<sup>20</sup>.

Where a person is charged with having committed an offence of driving when unfit to drive through drink or drugs<sup>21</sup>, or of driving or attempting to drive with excess alcohol in his breath, blood or urine<sup>22</sup>, he may be convicted of having committed an offence under the provision in question by attempting to drive<sup>23</sup>.

Where, by virtue of the above provisions, a person is convicted before the Crown Court of an offence triable only summarily, the court has the same powers and duties as a magistrates' court would have had on convicting him of that offence<sup>24</sup>.

1 Road Traffic Offenders Act 1988 s 24(1) (s 24 substituted by the Road Traffic Act 1991 s 24). The Road Traffic Offenders Act 1988 s 24 (as substituted) has effect without prejudice to the Criminal Law Act 1967 s 6(3) (alternative verdicts on trial on indictment) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1335): Road Traffic Offenders Act 1988 s 24(6) (as so substituted).

As to the circumstances in which there is an obligation on a judge to direct the jury on the possibility of an alternative verdict see *R v Fairbanks* [1986] 1 WLR 1202, [1986] RTR 309, CA; *R v Maxwell* [1988] 1 WLR 1265, CA; *R v Jeavons* [1990] RTR 263, DC. The judge's task is to see that the issues are laid before the jury as clearly as possible and that the indictment covers the offence or offences which the facts disclose; it is equally his task to see that irrelevant allegations and irrelevant charges are excluded: *R v Jeavons* supra at 266 per Lord Lane CJ. Where a judge proposes to introduce the possibility of an alternative conviction under the Road Traffic Offenders Act 1988 s 24 (as substituted), and that possibility has not previously been canvassed in the course of the hearing, he should give ample warning to counsel: *R v Hazell* [1985] RTR 369, [1985] Crim LR 513, CA; *R v Cristini* [1987] Crim LR 504, CA; *R v White* [1987] Crim LR 505; *R v Hammett* [1993] RTR 275, CA. This duty is not discharged merely by giving defence counsel an opportunity to address the jury further if counsel's hands are by then tied in a way that can only be seen as having been grossly unfair to the defendant: *R v Hammett* supra at 278 per Owen J.

In the absence of a verdict of not guilty on the count of dangerous driving there is no power under the Road Traffic Offenders Act 1988 s 24(1) (as substituted) for the jury to return a verdict of guilty of careless driving: *R*

*v Griffiths* [1998] Crim LR 348, CA. As to the separateness of the offences of careless driving and inconsiderate driving see PARA 971 ante.

The six-month time limit imposed by the Magistrates' Courts Act 1980 s 127 (see MAGISTRATES vol 29(2) (Reissue) PARA 589) does not apply to the alternative offence: *R v Coventry Justices, ex p Sayers* [1979] RTR 22, DC. Where justices convict of dangerous driving and dismiss a charge of inconsiderate driving arising from the same incident (the prosecution offering no evidence on that charge), in any appeal against conviction the possibility of a conviction on the lesser offence is no longer available in view of the express acquittal: *DPP v Khan* [1997] RTR 82, DC.

Where justices heard separate summonses alleging dangerous driving and careless driving arising from the same incident, and they acquitted on the former and convicted on the latter, but it was then discovered that the careless driving summons was defective (out of time) and that conviction was therefore quashed under the Magistrates' Courts Act 1980 s 142, the justices were entitled to return to the dangerous driving summons and to return a conviction for careless driving as an alternative verdict: *R v Haywards Heath Justices, ex p White* (2000) 164 JP 629, DC.

2    le an offence under the Road Traffic Act 1988 s 1 (as substituted): see PARA 963 ante.

3    le an offence under *ibid* s 2 (as substituted): see PARA 964 ante.

4    Road Traffic Offenders Act 1988 s 24(1), Table entry 1 (as substituted: see note 1 supra). The offence of careless, and inconsiderate, driving is an offence under the Road Traffic Act 1988 s 3 (as substituted): see PARA 971 ante. An offence under s 2B (as added) (causing death by careless, or inconsiderate, driving) (see PARA 970 ante) is added, as from a day to be appointed, as a further alternative: Table entry 1 (as so substituted; and amended by the Road Safety Act 2006 s 20(2)). At the date at which this volume states the law no such day had been appointed.

5    See note 3 supra.

6    Road Traffic Offenders Act 1988 s 24(1), Table entry 2 (as substituted: see note 1 supra). As to the offence of careless, and inconsiderate, driving see note 4 supra. As from a day to be appointed, where an offence under s 2B (as added) (causing death by careless, or inconsiderate, driving) is charged, an offence under s 3 (as substituted) is an alternative: Table entry 2A (added by the Road Safety Act 2006 s 20(2)). At the date at which this volume states the law no such day had been appointed.

7    le an offence under the Road Traffic Act 1988 s 3A (as added and amended): see PARA 974 ante.

8    See note 4 supra. An offence under *ibid* s 2B (as added) (causing death by careless, or inconsiderate, driving) is added, as from a day to be appointed, as a further alternative: Table entry 3 (as substituted (see note 1 supra); and amended by the Road Safety Act 2006 s 20(2)). At the date at which this volume states the law no such day had been appointed.

9    le an offence under the Road Traffic Act 1988 s 4(1) (as amended): see PARA 975 ante.

10   le an offence under *ibid* s 5(1)(a): see PARA 978 ante.

11   le an offence under *ibid* s 7(6): see PARA 988 ante.

12   Road Traffic Offenders Act 1988 s 24(1), Table entry 3 (as substituted (see note 1 supra); and amended by the Road Safety Act 2006 s 31(4)). The text refers to an offence of failing to give permission for a laboratory test under s 7A(6) (as added): see PARA 987 ante.

13   See note 9 supra.

14   Road Traffic Offenders Act 1988 s 24(1), Table entry 4 (as substituted: see note 1 supra). The offence of being in charge of a vehicle when unfit to drive through drink or drugs is an offence under the Road Traffic Act 1988 s 4(2) (as amended): see PARA 975 ante.

15   See note 10 supra.

16   Road Traffic Offenders Act 1988 s 24(1), Table entry 5 (as substituted: see note 1 supra). The offence of being in charge of a vehicle with excess alcohol in breath, blood or urine is an offence under the Road Traffic Act 1988 s 5(1)(b): see PARA 978 ante.

17   le an offence under *ibid* s 28 (as substituted): see PARA 967 ante.

18 Road Traffic Offenders Act 1988 s 24(1), Table entry 6 (as substituted: see note 1 supra). The offence of careless, and inconsiderate, cycling is an offence under the Road Traffic Act 1988 s 29 (as amended): see PARA 973 ante.

19 See note 7 supra.

20 Road Traffic Offenders Act 1988 s 24(2) (as substituted: see note 1 supra).

21 See note 9 supra.

22 See note 10 supra.

23 Road Traffic Offenders Act 1988 s 24(3) (as substituted: see note 1 supra).

24 Ibid s 24(4) (as substituted: see note 1 supra).

Where: (1) a person charged with manslaughter in connection with the driving of a mechanically propelled vehicle by him is found not guilty of that offence; but (2) the allegations in the indictment amount to or include an allegation of any of the relevant offences, he may be convicted of that offence: s 24(A1) (added by the Road Safety Act 2006 s 33). For these purposes, the following are the relevant offences: (a) an offence under the Road Traffic Act 1988 s 1 (as substituted) (causing death by dangerous driving); (b) an offence under s 2 (as substituted) (dangerous driving); (c) an offence under s 3A (as added) (causing death by careless driving when under influence of drink or drugs); and (d) an offence under the Offences against the Person Act 1861 s 35 (as amended) (furious driving) (see PARA 1018 ante): Road Traffic Offenders Act 1988 s 24(A2) (added by the Road Safety Act 2006 s 33).

## **UPDATE**

### **1044-1046 Alternative verdicts ... Interim disqualification**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1044 Alternative verdicts**

NOTE 4--Day appointed is 18 August 2008: SI 2008/1918.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(ii) Trial/D. PROCEDURE AFTER CONVICTION/1045. Information as to date of birth and sex.

## ***D. PROCEDURE AFTER CONVICTION***

### **1045. Information as to date of birth and sex.**

If on convicting a person of an offence involving obligatory<sup>1</sup> or discretionary disqualification<sup>2</sup> or of such other offence as may be prescribed by regulations<sup>3</sup> the court does not know his date of birth, the court must order him to give that date to the court in writing<sup>4</sup>.

If a court convicting a person of such an offence in a case where notification has been given to the designated officer for a magistrates' court<sup>5</sup>, and the notification or intimation did not include a statement of the person's sex<sup>6</sup>, does not know the person's sex, the court must order the person to give that information to the court in writing<sup>7</sup>.



A person who knowingly fails to comply with an order under the above provisions is guilty of an offence<sup>8</sup>.

Where a person has given his date of birth<sup>9</sup>, the Secretary of State<sup>10</sup> may serve on that person a notice in writing requiring him to provide the Secretary of State<sup>11</sup>: (1) with such evidence in that person's possession or obtainable by him as the Secretary of State may specify for the purpose of verifying that date<sup>12</sup>; and (2) if his name differs from his name at the time of his birth, with a statement in writing specifying his name at that time<sup>13</sup>. A person who knowingly fails to comply with such a notice is guilty of an offence<sup>14</sup>.

1 For the meaning of 'offence involving obligatory disqualification' see PARA 1058 post.

2 For the meaning of 'offence involving discretionary disqualification' see PARA 1060 post.

3 The regulations made under the Road Traffic Act 1988 s 105 (as amended). As to regulations made under this provision or having effect as if so made see the Goods Vehicles (Ascertainment of Maximum Gross Weights) Regulations 1976, SI 1976/555; the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864 (as amended); and PARA 443 ante.

4 Road Traffic Offenders Act 1988 s 25(1). Nothing in the Powers of Criminal Courts (Sentencing) Act 2000 s 7 (where a magistrates' court commits a person to the Crown Court to be dealt with, certain powers and duties are transferred to that court) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 17) applies to any duty imposed upon a magistrates' court by the Road Traffic Offenders Act 1988 s 25(1), (2) (as amended): s 25(4) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 118). Where a magistrates' court makes an order that an offender inform the court of his date of birth or sex or both and the offender is not present in court, the court officer must service notice in writing of the order on the offender: CrimPR r 7.5(1).

5 Road Traffic Offenders Act 1988 s 25(2)(a) (amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 140, 142; and the Courts Act 2003 s 109(1), Sch 8 para 311). Notification is given in pursuance of the Magistrates' Courts Act 1980 s 12(4) (as substituted) (written pleas of guilty): see MAGISTRATES vol 29(2) (Reissue) PARA 706.

6 Road Traffic Offenders Act 1988 s 25(2)(b).

7 Ibid s 25(2). See also note 4 supra.

8 Ibid s 25(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 ante.

9 The under ibid s 25 (as amended) or s 8 (as amended) (see PARA 1033 ante).

10 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

11 Road Traffic Offenders Act 1988 s 25(5). A notice to be served on any person under s 25(5) may be served on him by delivering it to him or by leaving it at his proper address or by sending it to him by post; and for the purposes of s 25(7) and the Interpretation Act 1978 s 7 (see STATUTES vol 44(1) (Reissue) PARA 1388) in its application to the Road Traffic Offenders Act 1988 s 25(7) the proper address of any person is his latest address as known to the person serving the notice: s 25(7).

12 Ibid s 25(5)(a).

13 Ibid s 25(5)(b).

14 Ibid s 25(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Sch 2 Pt I.

## UPDATE

### 1044-1046 Alternative verdicts ... Interim disqualification

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

#### **1045 Information as to date of birth and sex**

NOTE 4--CrimPR 7.5 now CrimPR 37.10 (added by SI 2008/2076).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(ii) Trial/D. PROCEDURE AFTER CONVICTION/1046. Interim disqualification.

#### **1046. Interim disqualification.**

Where a magistrates' court commits an offender to the Crown Court<sup>1</sup>, or remits an offender to another magistrates' court<sup>2</sup>, to be dealt with for an offence involving obligatory<sup>3</sup> or discretionary disqualification<sup>4</sup>, it may order him to be disqualified<sup>5</sup> until he has been dealt with in respect of the offence<sup>6</sup>.

Where a court defers passing sentence on an offender<sup>7</sup> in respect of an offence involving obligatory or discretionary disqualification<sup>8</sup>, or adjourns after convicting an offender of such an offence but before dealing with him for the offence<sup>9</sup>, it may order the offender to be disqualified until he has been dealt with in respect of the offence<sup>10</sup>.

An order for interim disqualification<sup>11</sup> ceases to have effect at the end of the period of six months beginning with<sup>12</sup> the day on which it is made, if it has not ceased to have effect before that time<sup>13</sup>.

Where a court makes an order for interim disqualification ('the first order'), no court can make a further order for interim disqualification in respect of the same offence or any offence in respect of which an order could have been made at the time the first order was made<sup>14</sup>.

Where a court makes an order for interim disqualification in respect of any person it must require him to produce to the court any licence<sup>15</sup> held by him and its counterpart<sup>16</sup>, and retain the licence and counterpart until it deals with him or (as the case may be) cause them to be sent to the proper officer of the court which is to deal with him<sup>17</sup>. If the holder of the licence has not caused it and its counterpart to be delivered, or has not posted them<sup>18</sup>, and does not produce the licence and counterpart as so required, then he is guilty of an offence<sup>19</sup>.

Where on any occasion a court deals with an offender for an offence in respect of which an order for interim disqualification was made<sup>20</sup>, or for two or more offences in respect of any of which such an order was made<sup>21</sup>, any period of obligatory disqualification which is on that occasion imposed<sup>22</sup> is to be treated as reduced by any period during which he was disqualified by reason only of an order for interim disqualification made in respect of any of those offences<sup>23</sup>.

Any statutory reference<sup>24</sup> to the length of a period of disqualification, unless the context otherwise requires, is to be construed as a reference to its length before any reduction under this provision<sup>25</sup>.

1 Road Traffic Offenders Act 1988 s 26(1)(a) (s 26 substituted by the Road Traffic Act 1991 s 25; and the Road Traffic Offenders Act 1988 s 26(1)(a) amended by the Powers of Criminal Courts (Sentencing) Act 2000 s

165(1), Sch 9 para 119(1), (2)(a)). An offender is committed to the Crown Court under the Powers of Criminal Courts (Sentencing) Act 2000 s 6 or any enactment mentioned in s 6(4): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1129.

2 Road Traffic Offenders Act 1988 s 26(1)(b) (as substituted (see note 1 supra); and amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 119(1), (2)(b)). An offender is remitted to another magistrates' court under the Powers of Criminal Courts (Sentencing) Act 2000 s 10: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1130; MAGISTRATES.

3 For the meaning of 'offence involving obligatory disqualification' see PARA 1058 post.

4 For the meaning of 'offence involving discretionary disqualification' see PARA 1060 post.

5 'Disqualified' means disqualified for holding or obtaining a licence; and 'disqualification' is to be construed accordingly: Road Traffic Offenders Act 1988 s 98(1).

6 Ibid s 26(1) (as substituted: see note 1 supra). Where a court makes an order under s 26 (as substituted and amended) in respect of any person, s 44(1) (as amended) (see PARA 1081 post), s 47(2) (as amended) (see PARA 1086 post), s 91ZA(7) (as added) (see PARA 1025 ante), s 91A(5) (as added) (see PARA 1024 ante) and the Road Traffic Act 1988 s 109(3) (as amended) (see PARA 484 ante) (Northern Ireland drivers' licences) do not apply in relation to the order, but: (1) the court must send notice of the order to the Secretary of State; and (2) if the court which deals with the offender determines not to order him to be disqualified under the Road Traffic Offenders Act 1988 s 34 (as amended) (see PARA 1061 post) or s 35 (as amended) (see PARA 1070 post), it must send notice of the determination to the Secretary of State: s 26(10) (as so substituted; and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 3, Sch 2 para 2; and the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 32, 34). A notice sent by a court to the Secretary of State in pursuance of the Road Traffic Offenders Act 1988 s 26(10) (as substituted and amended) must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine: s 26(11) (as so substituted). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 1: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 22.

8 Road Traffic Offenders Act 1988 s 26(2)(a) (as substituted (see note 1 supra); and amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 119(1), (3)).

9 Road Traffic Offenders Act 1988 s 26(2)(b) (as substituted: see note 1 supra).

10 Ibid s 26(2) (as substituted: see note 1 supra).

11 Ie an order under ibid s 26 (as substituted and amended).

12 The use of the words 'beginning with' makes it clear that in computing this period the day from which it runs is to be included: see *Hare v Gocher* [1962] 2 QB 641, [1962] 2 All ER 763; *Trow v Ind Coope (West Midlands) Ltd* [1967] 2 QB 899, [1967] 2 All ER 900, CA; and TIME vol 97 (2010) PARA 329.

13 Road Traffic Offenders Act 1988 s 26(4) (as substituted: see note 1 supra).

14 Ibid s 26(6) (as substituted: see note 1 supra).

15 For the meaning of 'licence' see PARA 1032 note 3 ante.

16 Road Traffic Offenders Act 1988 s 26(7)(a) (as substituted: see note 1 supra). For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by s 98(1). In relation to licences which came into force before 1 June 1990, the references in s 26 (as substituted and amended) to counterparts of licences must be disregarded: s 26(14) (as so substituted). As from a day to be appointed, s 26(7)(a), (b) (as substituted) and s 98(1) are amended so as to remove the references to counterparts, and s 26(14) is repealed, by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 32(1), (2), (5), 61(b), Sch 7. At the date at which this volume states the law no such day had been appointed.

17 Road Traffic Offenders Act 1988 s 26(7)(b) (as substituted (see note 1 supra); and amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 140, 143(1), (2)). As to the prospective amendment of this provision see note 16 supra.

For these purposes, 'proper officer' means: (1) in relation to a magistrates' court in England and Wales, the designated officer for the court; and (2) in relation to any other court, the clerk of the court: Road Traffic

Offenders Act 1988 s 26(7A) (added by the Access to Justice Act 1999 Sch 13 paras 140, 143(1), (3); and amended by the Courts Act 2003 s 109(1), Sch 8 para 312).

18 Ie in accordance with the Road Traffic Offenders Act 1988 s 7 (as amended): see PARA 1032 ante.

19 Ibid s 26(8) (as substituted: see note 1 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: ss 9, 33(1), Sch 2 Pt I (entry amended by the Road Traffic Act 1991 s 83, Sch 8; and the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, reg 2(2), Sch 2 para 27(d)). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 ante. As from a day to be appointed, the Road Traffic Offenders Act 1988 s 26(8) (as substituted) and the related entry in Sch 2 (as amended) are amended, so as to remove the references to counterparts, by the Road Safety Act 2006 Sch 3 paras 32(3), 63(1), (2)(f), Sch 7. At the date at which this volume states the law no such day had been appointed.

The Road Traffic Offenders Act 1988 s 26(8) (as substituted) does not apply to a person who: (1) satisfies the court that he has applied for a new licence and has not received it; or (2) surrenders to the court a current receipt for his licence and its counterpart issued under s 56 (as amended) (see PARA 1099 post), and produces the licence and counterpart to the court immediately on their return: s 26(9) (as so substituted). This provision is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 32(4), Sch 7, so as to remove the reference to counterparts. At the date at which this volume states the law no such day had been appointed.

20 Road Traffic Offenders Act 1988 s 26(12)(a) (as substituted: see note 1 supra).

21 Ibid s 26(12)(b) (as substituted: see note 1 supra).

22 Ie under ibid s 34 (as amended) (see PARA 1061 post) or s 35 (as amended) (see PARA 1070 post).

23 Ibid s 26(12) (as substituted: see note 1 supra).

24 Ie any reference in the Road Traffic Offenders Act 1988 or any other Act (including any Act passed after the Road Traffic Offenders Act 1988).

25 Ibid s 26(13) (as substituted: see note 1 supra).

## UPDATE

### 1044-1046 Alternative verdicts ... Interim disqualification

Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/A. IN GENERAL/1047. Production of licence.

## (iii) Sentence

### A. IN GENERAL

#### 1047. Production of licence.

Where a person who is the holder of a licence<sup>1</sup> is convicted of an offence involving obligatory<sup>2</sup> or discretionary disqualification<sup>3</sup>, and a court proposes to make an order disqualifying him or an order relating to the endorsement of licences<sup>4</sup>, the court must, unless it has already received

them, require the licence and its counterpart<sup>5</sup> to be produced to it<sup>6</sup>. If the holder of the licence has not caused it and its counterpart to be delivered, or posted them<sup>7</sup>, and does not produce them as required<sup>8</sup> then, unless he satisfies the court that he has applied for a new licence and has not received it he is guilty of an offence<sup>9</sup>, and the licence must be suspended from the time when its production was required until it and its counterpart are produced to the court and, while suspended, are of no effect<sup>10</sup>.

The above provision does not apply where the holder of the licence:

- 981 (1) has caused a current receipt for the licence and its counterpart<sup>11</sup> to be delivered to the clerk of the court not later than the day before the date appointed for the hearing<sup>12</sup>;
- 982 (2) has posted such a receipt, at such time that in the ordinary course of post it would be delivered not later than that day, in a letter duly addressed to the clerk and either registered or sent by the recorded delivery service<sup>13</sup>; or
- 983 (3) surrenders such a receipt to the court at the hearing<sup>14</sup>,

and produces the licence and its counterpart to the court immediately on their return<sup>15</sup>.

1 For the meaning of 'licence' see PARA 1032 note 3 ante.

2 For the meaning of 'offence involving obligatory disqualification' see PARA 1058 post.

3 For the meaning of 'offence involving discretionary disqualification' see PARA 1060 post.

4 Ie under the Road Traffic Offenders Act 1988 s 44 (as amended): see PARA 1081 post.

5 For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by *ibid* s 98(1). As from a day to be appointed, s 98(1) is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7 so as to remove reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

6 Road Traffic Offenders Act 1988 s 27(1) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 91(1), (2); and the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(2), 3, Sch 2 para 3(a)). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 Sch 3 para 33, Sch 7 so as to remove reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

On appeal against sentence only it is the duty of the Crown Court to require production of the appellant's licence: *Dyson v Ellison* [1975] 1 All ER 276, [1975] 1 WLR 150. When determining what orders to make in relation to sentence and disqualification, justices are entitled to consider the defendant's record of convictions, whether or not evidenced by endorsements no longer effective due to the provisions of what is now the Road Traffic Offenders Act 1988 s 45 (as amended) (see PARA 1083 post): *Chief Constable of West Mercia Police v Williams* [1987] RTR 188, DC.

7 Ie in accordance with the Road Traffic Offenders Act 1988 s 7 (as amended): see PARA 1032 ante.

8 Ie under *ibid* s 27 (as amended), the Crime Sentences Act 1997 s 40 (as amended) (see MAGISTRATES vol 29(2) (Reissue) PARA 873), the Powers of Criminal Courts (Sentencing) Act 2000 ss 146, 147 (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 313-314) or the Child Support Act 1991 s 40B (as added) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 559). As from a day to be appointed, a reference to the Criminal Justice Act 2003 s 301 (prospectively amended) is substituted for the reference to the Crime (Sentences) Act 1997 s 40 (as amended): Road Traffic Offenders Act 1988 s 27(3) (amended by the Criminal Justice Act 2003 s 304, Sch 32 Pt 1 paras 52, 53). At the date at which this volume states the law no such day had been appointed.

9 A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I (entry amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(2), 3, Sch 2 para 27(e)). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 Sch 3 para 63(1), (2)(g), Sch 7 so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 ante.

10 Road Traffic Offenders Act 1988 s 27(3) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 91(1), (4); the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 120; the Child Support, Pensions and Social Security Act 2000 s 16(5); and the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 3(b)). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 Sch 3 paras 30, 33, Sch 7 so as to remove reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

11 le a receipt issued under the Road Traffic Offenders Act 1988 s 56 (as amended): see PARA 1099 post.

12 Ibid s 27(4)(a) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 3(c); and the Access to Justice Act 1999 s 90(1), Sch 13 paras 140, 144(1), (2)). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 Sch 3 paras 30, 33, Sch 7 so as to remove reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

13 Road Traffic Offenders Act 1988 s 27(4)(b) (amended by the Access to Justice Act 1999 Sch 13 para 144(2)).

14 Road Traffic Offenders Act 1988 s 27(4)(c).

15 Ibid s 27(4) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 3(c)). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 Sch 3 paras 30, 33, Sch 7 so as to remove reference to the counterpart. At the date at which this volume states the law no such day had been appointed. For these purposes, 'proper officer' means: (1) in relation to a magistrates' court in England and Wales, the designated officer for the court; and (2) in relation to any other court, the clerk of the court: Road Traffic Offenders Act 1988 s 27(5) (added by the Access to Justice Act 1999 Sch 13 para 144(3); and amended by the Courts Act 2003 s 109(1), Sch 8 para 313).

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### **1048. Penalty points generally.**

Where a person is convicted of an offence involving obligatory endorsement<sup>1</sup>, and he is not ordered to be disqualified<sup>2</sup>, the court must order there to be endorsed on the counterpart<sup>3</sup> of any licence<sup>4</sup> held by him particulars of the conviction and also the penalty points to be attributed<sup>5</sup> to the offence unless there are special reasons for not endorsing his licence<sup>6</sup>.

Where there are 12 or more penalty points to be taken into account<sup>7</sup>, the court must disqualify the offender for the minimum period<sup>8</sup> unless the court is satisfied, on the basis of non-excluded circumstances<sup>9</sup>, that there are grounds for mitigating the normal consequences of the conviction<sup>10</sup>.

There are three different three-year rules<sup>11</sup> in relation to:

- 984 (1) the aggregation of penalty points for different offences<sup>12</sup>;
- 985 (2) determining the minimum length of points' disqualification<sup>13</sup>; and
- 986 (3) excluded circumstances for mitigating the normal consequences of the conviction<sup>14</sup>.

Points' disqualification 'wipes the slate clean' of any penalty points previously imposed<sup>15</sup>.

1 As to offences involving obligatory endorsement see PARA 1080 post.

- 2 As to offences involving obligatory disqualification see PARA 1058 post; and as to discretionary disqualification see PARA 1060 post.
- 3 For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). As from a day to be appointed, s 98(1) is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7 so as to remove reference to the counterpart. The endorsement with thereafter be made on the driving record. At the date at which this volume states the law no such day had been appointed.
- 4 For the meaning of 'licence' see PARA 1032 note 3 ante.
- 5 As to the penalty points to be attributed to an offence see PARA 1049 post.
- 6 As to endorsement of licences and special reasons for not so endorsing the licence see PARA 1081 post.
- 7 As to penalty points to be taken into account on conviction see PARA 1050 post.
- 8 This will be six months, one year or two years depending upon the existence, number and length of any previous disqualifications of at least 56 days imposed within the three years immediately preceding the commission of the latest offence in respect of which penalty points are taken into account under the Road Traffic Offenders Act 1988 s 29 (as substituted): see PARA 1050 post.
- 9 As to the excluded circumstances see PARA 1070 post.
- 10 In such a case the court may order the offender to be disqualified for a shorter period or not at all: see PARA 1070 post.
- 11 See note 8 supra.
- 12 The offences must be committed within three years of each other: see PARA 1050 post.
- 13 See note 8 supra.
- 14 Circumstances are excluded if they have been taken into account within the three years immediately preceding the current conviction: see PARA 1070 post.
- 15 See PARA 1050 post.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/A. IN GENERAL/1049. Penalty points to be attributed to an offence.

#### **1049. Penalty points to be attributed to an offence.**

Where a person is convicted of an offence involving obligatory endorsement<sup>1</sup>, then, subject to the following provisions, the number of penalty points to be attributed to the offence is the number shown in relation to the offence in heads (1) to (38) below or, where a range of numbers is shown, a number within that range<sup>2</sup>. Where both a range of numbers and a number followed by the words '(fixed penalty)' appears in relation to an offence<sup>3</sup>, that number is the number of penalty points to be attributed<sup>4</sup> to the offence if it is dealt with by way of a fixed penalty; and, where only a range of numbers is shown there, the lowest number in the range is the number of penalty points to be attributed to the offence for those purposes<sup>5</sup>. The penalty points to be attributed to the following offences are:

- 987 (1) contravening a temporary prohibition or restriction, 3 to 6 penalty points or 3 penalty points (fixed penalty)<sup>6</sup>;
- 988 (2) using a special road contrary to a scheme or regulations, 3 to 6 penalty points or 3 penalty points (fixed penalty) if committed in respect of a speed restriction, or 3 penalty points in any other case<sup>7</sup>;

- 989 (3) contravening pedestrian crossing regulations, 3 penalty points<sup>8</sup>;
- 990 (4) not stopping at a school crossing, 3 penalty points<sup>9</sup>;
- 991 (5) contravening an order relating to a street playground, 2 penalty points<sup>10</sup>;
- 992 (6) exceeding a speed limit, 3 to 6 penalty points or 3 penalty points (fixed penalty)<sup>11</sup>;
- 993 (7) causing death by dangerous driving<sup>12</sup>, 3 to 11 penalty points<sup>13</sup>;
- 994 (8) dangerous driving, 3 to 11 penalty points<sup>14</sup>;
- 995 (9) (as from a day to be appointed) causing death by careless, or inconsiderate, driving, 3 to 11 penalty points<sup>15</sup>;
- 996 (10) careless, and inconsiderate, driving, 3 to 9 penalty points<sup>16</sup>;
- 997 (11) (as from a day to be appointed) causing death by driving (unlicensed, disqualified or uninsured drivers), 3 to 11 penalty points<sup>17</sup>;
- 998 (12) causing death by careless driving when under the influence of drink or drugs, 3 to 11 penalty points<sup>18</sup>;
- 999 (13) driving, or attempting to drive, when unfit to drive through drink or drugs, 3 to 11 penalty points<sup>19</sup>;
- 1000 (14) being in charge of a mechanically propelled vehicle<sup>20</sup> when unfit to drive through drink or drugs, 10 penalty points<sup>21</sup>;
- 1001 (15) driving, or attempting to drive, with excess alcohol in the breath, blood or urine, 3 to 11 penalty points<sup>22</sup>;
- 1002 (16) being in charge of a motor vehicle<sup>23</sup> with excess alcohol in the breath, blood or urine, 10 penalty points<sup>24</sup>;
- 1003 (17) failing to co-operate with a preliminary test, 4 penalty points<sup>25</sup>;
- 1004 (18) failing to provide a specimen for analysis or laboratory test, 3 to 11 penalty points where the specimen was required to ascertain ability to drive or the proportion of alcohol at the time the offender was driving or attempting to drive, or 10 penalty points in any other case<sup>26</sup>;
- 1005 (19) failing to allow a specimen to be subjected to a laboratory test, 3 to eleven points where the test would be for ascertaining ability to drive or the proportion of alcohol at the time offender was driving or attempting to drive, or 10 penalty points in any other case<sup>27</sup>;
- 1006 (20) motor racing and speed trials on public ways, 3 to 11 penalty points<sup>28</sup>;
- 1007 (21) leaving a vehicle in a dangerous position, 3 penalty points<sup>29</sup>;
- 1008 (22) unlawfully carrying a passenger on a motor cycle<sup>30</sup>, 3 penalty points<sup>31</sup>;
- 1009 (23) failing to comply with traffic directions, 3 penalty points<sup>32</sup>;
- 1010 (24) failing to comply with traffic signs, 3 penalty points<sup>33</sup>;
- 1011 (25) using a vehicle in a dangerous condition etc, 3 penalty points<sup>34</sup>;
- 1012 (26) breach of a requirement as to brakes, steering-gear or tyres, 3 penalty points<sup>35</sup>;
- 1013 (27) driving otherwise than in accordance with a licence, 3 to 6 penalty points<sup>36</sup>;
- 1014 (28) driving after making a false declaration as to physical fitness, 3 to 6 penalty points<sup>37</sup>;
- 1015 (29) driving after failure to notify the Secretary of State<sup>38</sup> of the onset of, or deterioration in, a relevant or prospective disability, 3 to 6 penalty points<sup>39</sup>;
- 1016 (30) driving after the refusal of a licence, revocation of a licence or service of a notice, 3 to 6 penalty points<sup>40</sup>;
- 1017 (31) driving with uncorrected defective eyesight or refusing to submit to a test of eyesight, 3 penalty points<sup>41</sup>;
- 1018 (32) driving while disqualified, 6 penalty points<sup>42</sup>;
- 1019 (33) using a motor vehicle while uninsured or unsecured against third party risks, 6 to 8 penalty points<sup>43</sup>;
- 1020 (34) failing to stop after an accident and give particulars or report an accident, 5 to 10 penalty points<sup>44</sup>;



- 1021 (35) failure of a person keeping a vehicle and others to give the police information as to the identity of the driver etc in the case of certain offences, 6 penalty points<sup>45</sup>;
- 1022 (36) manslaughter, 3 to 11 penalty points<sup>46</sup>;
- 1023 (37) furious driving, 3 to 9 penalty points<sup>47</sup>;
- 1024 (38) aggravated vehicle-taking, 3 to 11 penalty points<sup>48</sup>.

Where a person is convicted of an offence committed by aiding, abetting, counselling or procuring, or inciting to the commission of, an offence involving obligatory disqualification<sup>49</sup>, the number of penalty points to be attributed to the offence is 10<sup>50</sup>.

Where a person is convicted, whether on the same occasion or not, of two or more offences committed on the same occasion<sup>51</sup> and involving obligatory endorsement, the total number of penalty points to be attributed to them is the number or highest number that would be attributed on a conviction of one of them, so that, if the convictions are on different occasions, the number of penalty points to be attributed to the offences on the later occasion or occasions is to be restricted accordingly<sup>52</sup>. In a case where that provision would otherwise apply to two or more offences, the court may, if it thinks fit, determine that that provision is not to apply to the offences or, where three or more offences are concerned, to any one or more of them<sup>53</sup>. Where a court makes such a determination, it must state its reasons in open court and, if it is a magistrates' court, must cause them to be entered in the register of its proceedings<sup>54</sup>.

1 For the meaning of 'offence involving obligatory endorsement' see PARA 1080 post.

2 Road Traffic Offenders Act 1988 s 28(1) (s 28 substituted by the Road Traffic Act 1991 s 27). The offences and penalty points are set out in the Road Traffic Offenders Act 1988 s 28, Sch 2 (as amended). The Secretary of State may by order made by statutory instrument: (1) alter a number or range of numbers shown in relation to an offence in the last column of Sch 2 Pt I (as amended) or Pt II (as amended) (by substituting one number or range for another, a number for a range, or a range for a number); (2) where a range of numbers is shown in relation to an offence in the last column of Pt I (as amended), add or delete a number together with the words '(fixed penalty)'; and (3) alter the number of penalty points shown in s 28(2) (as substituted) (see the text and note 47 *infra*); and an order so made may provide for different numbers or ranges of numbers to be shown in relation to the same offence committed in different circumstances: s 28(7) (as so substituted). Where the Secretary of State exercises his power under s 28(7) (as substituted) by substituting or adding a number which appears together with the words '(fixed penalty)', that number must not exceed the lowest number in the range shown in the same entry: s 28(8) (as so substituted). No order may be made under s 28(7) (as substituted) unless a draft of it has been laid before and approved by resolution of each House of Parliament: s 28(9) (as so substituted). As to penalty points where a fixed penalty is also in question see PARA 1051 post.

As from a day to be appointed, s 28(7) (as substituted) is amended so that head (2) provides that the Secretary of State may, where a range of numbers is shown in relation to an offence in the last column of Pt I (as amended), add or delete a number together with the words '(fixed penalty)' or the words 'or appropriate penalty points (fixed penalty)'; and so that a new head is added, providing that the Secretary of State may substitute the words 'or appropriate penalty points (fixed penalty)' for a number together with the words '(fixed penalty)', or substitute a number together with the words '(fixed penalty)' for the words 'or appropriate penalty points (fixed penalty)', in relation to an offence in the last column of P 1 (as amended) or Pt 2 (as amended): s 28(7) (s 28 as so substituted; and s 28(7)(b) amended, and s 28(7)(ba) added, by the Road Safety Act 2006 s 4(1), (3), (4)). The Road Traffic Offenders Act 1988 s 28(9) (as substituted) is amended so as to refer to 's 28' instead of 's 28(7)': see s 28(9) (as so substituted; and amended by the Road Safety Act 2006 s 4(6)). At the date at which this volume states the law no such day had been appointed.

3 *Ie* appears in the Road Traffic Offenders Act 1988 Sch 2 Pt I col 7 (as amended).

4 *Ie* for the purposes of *ibid* s 57(5) (see PARA 1100 post) and s 77(5) (see PARA 1119 post).

5 *Ibid* s 28(3) (as substituted: see note 2 *supra*). As from a day to be appointed, s 28(3) is substituted and s 28(3A), (3B) added, as follows. For the purposes of s 57(5) and s 77(5), the number of penalty points to be attributed to an offence is: (1) where both a range of numbers and a number followed by the words '(fixed penalty)' is shown in the last column of Sch 2 Pt 1 (as amended) in relation to the offence, that number; (2) where a range of numbers followed by the words 'or appropriate penalty points (fixed penalty)' is shown there in relation to the offence, the appropriate number of penalty points for the offence; and (3) where only a range of numbers is shown there in relation to the offence, the lowest number in the range: s 28(3) (substituted, as

from a day to be appointed, by the Road Safety Act 2006 s 4(3)). For the purposes of head (2) above the appropriate number of penalty points for an offence is such number of penalty points as the Secretary of State may by order made by statutory instrument prescribe: Road Traffic Offenders Act 1988 s 28(3A) (s 28(3A), (3B) added by the Road Safety Act 2006 s 4(3)). An order made under the Road Traffic Offenders Act 1988 s 28(3A) (as added) in relation to an offence may make provision for the appropriate number of penalty points for the offence to be different depending on the circumstances, including (in particular): (a) the nature of the contravention or failure constituting the offence; (b) how serious it is; (c) the area, or sort of place, where it takes place; and (d) whether the offender appears to have committed any offence or offences of a description specified in the order during a period so specified: s 28(3B) (as so added). Before making any order under s 28(3A) (as added) the Secretary of State must consult with such representative organisations as he thinks fit: s 28(8A) (added by the Road Safety Act 2006 s 4(5)). At the date at which this volume states the law no such day had been appointed.

The Road Traffic Offenders Act 1988 s 28(3) (as substituted) is amended, as from a day to be appointed, by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 3, so that it also applies for the purposes of the Road Traffic Offenders Act 1988 s 57A(6) (as added) (see PARA 1101 post) and s 77A(8) (prospectively added) (see PARA 1119 note 23 post); and s 28(3) (as substituted) is also amended, as from a day to be appointed, by the Road Safety Act 2006 s 10(12), Sch 3 paras 30, 34, so that it applies only for the purposes of s 57A(6) (prospectively added) and s 77A(8) (prospectively added). At the date at which this volume states the law no such day had been appointed.

6 See PARA 758 ante. The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 16(1).

7 See PARA 764 ante. The offence referred to is an offence under *ibid* s 17(4). The number of penalty points is amended, as from a day to be appointed, by the Road Safety Act 2006 s 17, to 2-6 or appropriate penalty points (fixed penalty) if the offence is committed in respect of a speed limit, and 3 in any other case. At the date at which this volume states the law no such day had been appointed.

8 See PARA 778 ante. The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 25(5).

9 See PARA 781 ante. The offence referred to is an offence under *ibid* s 28(3) (as substituted).

10 See PARA 782 ante. The offence referred to is an offence under *ibid* s 29(3) (as substituted).

11 See PARA 856 ante. The offence referred to is an offence under *ibid* s 89(1). The number of penalty points is amended, as from a day to be appointed, by the Road Safety Act 2006 s 17, to 2-6 or appropriate penalty points (fixed penalty). At the date at which this volume states the law no such day had been appointed.

12 For the meaning of 'driving' see PARA 207 ante.

13 See PARA 963 ante. The offence referred to is an offence under the Road Traffic Act 1988 s 1 (as substituted).

14 See PARA 964 ante. The offence referred to is an offence under *ibid* s 2 (as substituted).

15 See PARA 970 ante. The offence referred to is an offence under *ibid* s 2B (prospectively added).

16 See PARA 971 ante. The offence referred to is an offence under *ibid* s 3 (as substituted).

17 See PARA 1017 ante. The offence referred to is an offence under *ibid* s 3ZB (prospectively added).

18 See PARA 974 ante. The offence referred to is an offence under *ibid* s 3A (as added).

19 See PARA 975 ante. The offence referred to is an offence under *ibid* s 4(1) (as amended).

20 As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.

21 See PARA 975 ante. The offence referred to is an offence under the Road Traffic Act 1988 s 4(2) (as amended).

22 See PARA 978 ante. The offence referred to is an offence under *ibid* s 5(1)(a).

23 For the meaning of 'motor vehicle' see PARA 210 ante.

24 See PARA 978 ante. The offence referred to is an offence under the Road Traffic Act 1988 s 5(1)(b).

25 See PARA 985 ante. The offence referred to is an offence under *ibid* s 6 (as substituted).

- 26 See PARA 988 ante. The offence referred to is an offence under *ibid* s 7 (as amended).
- 27 See PARA 987 ante. The offence referred to is an offence under *ibid* s 7A (as added).
- 28 See PARA 992 ante. The offence referred to is an offence under *ibid* s 12 (as amended).
- 29 See PARA 999 ante. The offence referred to is an offence under *ibid* s 22 (as amended).
- 30 For the meaning of 'motor cycle' see PARA 214 ante.
- 31 See PARA 1001 ante. The offence referred to is an offence under the Road Traffic Act 1988 s 23 (as amended).
- 32 See PARA 642 ante. The offence referred to is an offence under *ibid* s 35.
- 33 See PARA 643 ante. The offence referred to is an offence under *ibid* s 36 (as amended).
- 34 See PARA 625 ante. The offence referred to is an offence under *ibid* s 40A (as added).
- 35 See PARA 261 ante. The offence referred to is an offence under *ibid* s 41A (as added).
- 36 See PARA 444 ante. The offence referred to is an offence under *ibid* s 87(1) (as amended).
- 37 See PARA 455 ante. The offence referred to is an offence under *ibid* s 92(10) (as added).
- 38 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 39 See PARA 457 ante. The offence referred to is an offence under the Road Traffic Act 1988 s 94(3A) (as added).
- 40 See PARA 463 ante. The offence referred to is an offence under *ibid* s 94A (as added and amended).
- 41 See PARA 461 ante. The offence referred to is an offence under *ibid* s 96.
- 42 See PARA 481 ante. The offence referred to is an offence under *ibid* s 103(1)(b) (as substituted).
- 43 See PARA 937 ante. The offence referred to is an offence under *ibid* s 143 (as amended).
- 44 See PARA 645 ante. The offence referred to is an offence under *ibid* s 170(4).
- 45 See PARA 1026 ante. The offence referred to is an offence under *ibid* s 172 (as substituted and amended).
- 46 As to manslaughter see PARA 966 ante.
- 47 See PARA 1018 ante. The offence referred to is an offence under the Offences Against the Person Act 1861 s 35 (as amended).
- 48 See PARA 1009 ante. The offence referred to is an offence under the Theft Act 1968 s 12A (as added).
- 49 For the meaning of 'offence involving obligatory disqualification' see PARA 1058 post.
- 50 Road Traffic Offenders Act 1988 s 28(2) (as substituted: see note 2 *supra*), which is expressed to be subject to s 28(3)-(9) (as substituted).
- 51 Failure to stop after an accident and subsequent failure to report that accident (see PARA 645 ante) are offences 'committed on the same occasion' for the purpose of this provision since they arise from the same incident: *Johnson v Finbow* [1983] 1 WLR 879, [1983] RTR 363, DC. Whether or not offences are 'committed on the same occasion' is a question of fact: *Johnston v Over* [1985] RTR 240, 149 JP 286, DC (offences committed on the same occasion where two uninsured vehicles were used by the defendant by leaving them parked in the road outside his house).
- 52 Road Traffic Offenders Act 1988 s 28(4) (as substituted: see note 2 *supra*).
- 53 *Ibid* s 28(5) (as substituted: see note 2 *supra*).
- 54 *Ibid* s 28(6) (as substituted: see note 2 *supra*).

**UPDATE****1049 Penalty points to be attributed to an offence**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTES 2, 5--Day appointed in relation to Road Safety Act 2006 s 4 is 31 March 2009 and in relation to s 9, Sch 2 is 1 April 2009: SI 2008/3164.

TEXT AND NOTE 50--See further Serious Crime Act 2007 Sch 6 para 15(a) (references to common law offence of incitement).

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**1050. Penalty points to be taken into account on conviction.**

Where a person is convicted of an offence involving obligatory endorsement<sup>1</sup>, the penalty points to be taken into account on that occasion<sup>2</sup> are<sup>3</sup>:

- 1025 (1) any that are to be attributed to the offence or offences of which he is convicted, disregarding any offence in respect of which a disqualification order is made<sup>4</sup>; and
- 1026 (2) any that were on a previous occasion ordered to be endorsed on the counterpart<sup>5</sup> of any licence held by him, unless the offender has since that occasion and before the conviction been disqualified for repeated offences<sup>6</sup>.

If any of the offences was committed more than three years before another, the penalty points in respect of that offence must not be added to those in respect of the other<sup>7</sup>.

1 For the meaning of 'offence involving obligatory endorsement' see PARA 1080 post.

2 'On that occasion' refers to the occasion of sentencing, and 'conviction' for the purposes of the Road Traffic Offenders Act 1988 s 29 (as substituted) bears the wider meaning of the date of sentence: *R v Brentwood Justices, ex p Richardson* [1993] RTR 374, 95 Cr App Rep 187, DC.

3 Road Traffic Offenders Act 1988 s 29(1) (s 29 substituted by the Road Traffic Act 1991 s 28), which is expressed to be subject to the Road Traffic Offenders Act 1988 s 29(2) (as substituted) (see the text and note 7 infra).

4 Ibid s 29(1)(a) (as substituted: see note 3 supra). A disqualification order is made under s 34 (as amended): see PARA 1061 post.

For the problem of circularity that arises from the provisions of s 29(1)(a) (as substituted) and s 34(2) (as substituted) in the case of offences involving discretionary disqualification where the number of penalty points to be taken into account depends on whether or not the court exercises its power to impose discretionary disqualification see PARA 1061 note 4 post.

5 For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by *ibid* s 98(1). In relation to licences which came into force before 1 June 1990, the reference in s 29(1) (as substituted) to the counterpart

of a licence is to be construed as a reference to the licence itself: s 29(3) (as substituted: see note 3 supra). For the meaning of 'licence' see PARA 1032 note 3 ante. The reference to the meaning of 'counterpart' in s 98(1) is removed, and s 29(3) is repealed, by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 35(3), 61(b), Sch 7, as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

6 Road Traffic Offenders Act 1988 s 29(1)(b) (as substituted: see note 3 supra). An offender is so disqualified under s 35 (as amended): see PARA 1070 post. As from a day to be appointed, s 29(1)(b) is amended: (1) by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 4, to add after the reference to any penalty points endorsed on the counterpart of any licence held by the convicted person, a reference to, alternatively, any points endorsed on his driving record; and (2) by the Road Safety Act 2006 Sch 3 para 35(2), Sch 7 to remove the reference to the counterpart of any licence held by the convicted person. The Road Traffic Offenders Act 1988 s 29(1)(b) is made subject to s 30A(4) (prospectively added): s 29(2A) (added by the Road Safety Act 2006 s 34(1), (2)). As to the Road Traffic Offenders Act 1988 s 30A (prospectively added) (reduced penalty points for attendance on course) see PARA 1052 post. For the meaning of 'driving record' see PARA 1024 note 11 ante. At the date at which this volume states the law no such day had been appointed.

7 Ibid s 29(2) (as substituted: see note 3 supra).

## UPDATE

### 1050 Penalty points to be taken into account on conviction

NOTE 6--Head (1). Day appointed in relation to Road Safety Act 2006 s 9, Sch 2 is 1 April 2009: SI 2008/3164.

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### 1051. Penalty points where fixed penalty also in question.

The provisions relating to penalty points<sup>1</sup> have effect subject to the following provisions in any case where<sup>2</sup>: (1) a person is convicted of an offence involving obligatory endorsement<sup>3</sup>; and (2) the court is satisfied that the counterpart<sup>4</sup> of his licence<sup>5</sup> has been or is liable to be endorsed<sup>6</sup> in respect of an offence (the 'connected offence') committed on the same occasion as the offence of which he is convicted<sup>7</sup>. The number of penalty points to be attributed to the offence of which he is convicted is<sup>8</sup> the number of penalty points to be attributed to that offence<sup>9</sup>, less the number of penalty points required to be endorsed on the counterpart of his licence<sup>10</sup> in respect of the connected offence, except so far as they have already been deducted by virtue of this provision<sup>11</sup>.

1 In the Road Traffic Offenders Act 1988 s 28 (as substituted; prospectively amended) (see PARA 1049 ante), s 29 (as substituted; prospectively amended) (see PARA 1050 ante).

2 Ibid s 30(1).

3 Ibid s 30(1)(a) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 92(1), (2)). For the meaning of 'offence involving obligatory endorsement' see PARA 1080 post.

4 For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). The reference to the meaning of 'counterpart' in s 98(1) is removed by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7, as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

5 For the meaning of 'licence' see PARA 1032 note 3 ante.

6 le under the Road Traffic Offenders Act 1988 s 57 (as amended; prospectively repealed) (see PARA 1100 post) or s 77 (as substituted and amended) (see PARA 1119 post). As from a day to be appointed, there are added references to driving records liable to be endorsed under s 57A (prospectively added) (see PARA 1101 post) or s 77A (prospectively added) (see PARA 1119 post): s 30(1)(b), (2)(b) (amended by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 5). At the date at which this volume states the law no such day had been appointed. As from a day to be appointed, the references to the Road Traffic Offenders Act 1988 ss 57, 77 are removed: s 30(1)(b), (2)(b) (amended by the Road Safety Act 2006 Sch 3 paras 30, 36, Sch 7). At the date at which this volume states the law no such day had been appointed.

7 Road Traffic Offenders Act 1988 s 30(1)(b) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(2), 3, Sch 2 para 5). As from a day to be appointed, the Road Traffic Offenders Act 1988 s 30(1)(b) (as amended) is further amended: (1) by the Road Safety Act 2006 Sch 2 para 5, to add after 'the counterpart of his licence' the words 'or his driving record'; and (2) by the Road Safety Act 2006 Sch 3 para 36, Sch 7 to remove the words 'the counterpart of his licence'. At the date at which this volume states the law no such day had been appointed. For the meaning of 'driving record' see PARA 1024 note 11 ante.

8 Road Traffic Offenders Act 1988 s 30(2) (amended by the Road Traffic Act 1991 s 83, Sch 8).

9 Road Traffic Offenders Act 1988 s 30(2)(a) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 92(1), (3)). The points referred to in the text are those attributed under the Road Traffic Offenders Act 1988 s 28 (as substituted) (see PARA 1049 ante), apart from s 30 (as amended).

10 See note 6 supra.

11 Road Traffic Offenders Act 1988 s 30(2)(b) (amended by the Road Traffic Act 1991 Sch 4 para 92(1), (3); and the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 5). As from a day to be appointed, the Road Traffic Offenders Act 1988 s 30(2)(b) (as amended) is further amended: (1) by the Road Safety Act 2006 Sch 2 para 5, to add after 'the counterpart of his licence' the words 'or on his driving record'; and (2) by the Road Safety Act 2006 Sch 3 para 36, Sch 7 to remove the words 'on the counterpart of his licence'. At the date at which this volume states the law no such day had been appointed.

## UPDATE

### 1051 Penalty points where fixed penalty also in question

NOTES 6, 11--Day appointed in relation to Road Safety Act 2006 s 9, Sch 2 is 1 April 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/A. IN GENERAL/1052. Reduced penalty points for attendance on course.

### 1052. Reduced penalty points for attendance on course.

The following provisions take effect as from a day to be appointed<sup>1</sup>.

The provisions will apply<sup>2</sup> where: (1) a person is convicted of a specified offence<sup>3</sup> by or before a court<sup>4</sup>; (2) penalty points<sup>5</sup> are to be attributed to the offence and the court does not order him to be disqualified<sup>6</sup>; and (3) at least seven but no more than eleven penalty points are to be taken into account on the occasion of the conviction<sup>7</sup>. Where these provisions apply, the court may make an order that three of the penalty points attributed to the offence (or all of them if three or fewer are so attributed) are not to be taken into account<sup>8</sup> on the occasion of any conviction of an offence after the end of the period of 12 months beginning with the date of the order if, by the relevant date<sup>9</sup>, the offender completes an approved course<sup>10</sup> specified in the order<sup>11</sup>.

A court may not make an order under these provisions in the case of an offender convicted of an offence<sup>12</sup> if: (a) the offender has, during the period of three years ending with the date on

which the offence was committed, committed a specified offence and successfully completed an approved course pursuant to an order made<sup>13</sup> on conviction of that offence<sup>14</sup>; or (b) the offence was committed during his probationary period<sup>15</sup>.

A court may not make an order under these provisions in the case of an offender<sup>16</sup> unless: (i) the court is satisfied that a place on the course specified in the order will be available for the offender<sup>17</sup>; (ii) the offender appears to the court to be of or over the age of 17<sup>18</sup>; (iii) the court has informed the offender (orally or in writing and in ordinary language) of the effect of the order and of the amount of the fees which he is required to pay for the course and when he must pay them<sup>19</sup>; and (iv) the offender has agreed that the order should be made<sup>20</sup>.

If an application is made to the appropriate national authority for the approval of a course for these purposes, the appropriate national authority must decide whether to grant or refuse the application<sup>21</sup>. In reaching that decision the appropriate national authority must have regard to the nature of the course<sup>22</sup> and to whether the course provider<sup>23</sup> is an appropriate person to provide the course and administer its provision efficiently and effectively<sup>24</sup>, and may take into account any recommendations made by any persons appointed to consider the application<sup>25</sup>. A course may be approved subject to conditions specified by the appropriate national authority<sup>26</sup>. An approval of a course is for the period specified by the appropriate national authority (which must not exceed seven years), subject to withdrawal of approval<sup>27</sup>.

Regulations made by the appropriate national authority may make provision in relation to the approval of courses and may, in particular, include provision: (A) in relation to the making of applications for approval; (B) for the payment in respect of applications for approval, or of approvals, (or of both) of fees of such amounts as are prescribed by the regulations; (C) specifying the maximum fees that a person may be required to pay for a course and by when they are to be paid; (D) for the monitoring of courses and course providers; (E) in relation to withdrawing approval; (F) for an appeal to lie to the Transport Tribunal<sup>28</sup> against a refusal of an application for approval, the imposition of conditions on the grant of such an application or the withdrawal of approval; and (G) authorising the appropriate national authority to make available (with or without charge) information about courses and course providers<sup>29</sup>.

The appropriate national authority may issue guidance to course providers, or to any category of course provider, as to the conduct of courses approved for these purposes<sup>30</sup>. Course providers must have regard to any such guidance given to them<sup>31</sup>, and in determining<sup>32</sup> whether any instructions or requirements of a course provider were reasonable, a court must have regard to any such guidance given<sup>33</sup>.

1 The Road Traffic Offenders Act 1988 ss 30A, 30C, 30D are added by the Road Safety Act 2006 s 34(1), (3), as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 Road Traffic Offenders Act 1988 s 30A(1) (as added: see note 1 supra).

3 For these purposes, 'specified offence' means: (1) an offence under the Road Traffic Act 1988 s 3 (as substituted) (careless, and inconsiderate, driving: see PARA 971 ante); (2) an offence under s 36 (as amended) (failing to comply with traffic signs: see PARA 643 ante); (3) an offence under the Road Traffic Regulation Act 1984 s 17(4) (use of special road contrary to scheme or regulations: see PARA 764 ante); or (4) an offence under s 89(1) (exceeding speed limit: see PARA 856 ante): Road Traffic Offenders Act 1988 s 30A(2) (as added: see note 1 supra). The Secretary of State may, however, by regulations amend s 30A(2) (as added) by adding other offences or removing offences: s 30A(3) (as so added). As to the Secretary of State see PARA 236 ante.

Any power to make regulations under ss 30A-30D (as added) includes power to make different provision for different cases, and to make such incidental or supplementary provision as appears to the appropriate national authority to be necessary or appropriate: s 30D(4) (as so added). Any such power to make regulations is exercisable by statutory instrument: s 30D(5) (as so added). No regulations may be made under s 30A (as added) or s 30D (as added) unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament: s 30D(6) (as so added).

4 Ibid s 30A(1)(a) (as added: see note 1 supra).

5 As to penalty points see PARA 1048 ante.

6 Road Traffic Offenders Act 1988 s 30A(1)(b) (as added: see note 1 supra). As to disqualification see PARA 1057 et seq post.

7 Ibid s 30A(1)(c) (as added: see note 1 supra). The Secretary of State may by regulations make provision amending s 30A(1)(c) (as added) by substituting for the lower number of penalty points for the time being specified there a different number of penalty points: s 30D(2)(a) (as so added).

8 Ie under ibid s 29(1)(b) (as substituted): see PARA 1050 ante.

9 For these purposes, 'the relevant date' means such date, no later than ten months after the day on which the order is made, as is specified in the order: ibid s 30A(5) (as added: see note 1 supra).

10 For these purposes, 'an approved course' means a course approved by the appropriate national authority for the purposes of ibid s 30A (as added) in relation to the description of offence of which the offender is convicted: s 30A(5) (as added: see note 1 supra). 'Appropriate national authority' means (as respects Wales) the Welsh Ministers and (otherwise) the Secretary of State: s 30D(3) (as added: see note 1 supra). As to the Welsh Ministers see PARA 237 ante.

11 Ibid s 30A(4) (as added: see note 1 supra). As to the requirements for completing a course see PARA 1053 post.

12 Ibid s 30A(6) (as added: see note 1 supra).

13 Ie under ibid s 30A(as added) or s 34A (prospectively added) ( see PARA 1064 post).

14 Ibid s 30A(6)(a) (as added: see note 1 supra). The Secretary of State may by regulations make provision amending s 30A(6)(a) (as added) by substituting for the period for the time being specified there a different period: s 30D(2)(b) (as so added).

15 Ibid s 30A(6)(b) (as added: see note 1 supra). For the meaning of 'probationary period' see PARA 513 ante; definition applied by s 30D(3) (as so added).

16 Ibid s 30A(7) (as added: see note 1 supra).

17 Ibid s 30A(7)(a) (as added: see note 1 supra).

18 Ibid s 30A(7)(b) (as added: see note 1 supra).

19 Ibid s 30A(7)(c) (as added: see note 1 supra).

20 Ibid s 30A(7)(d) (as added: see note 1 supra).

21 Ibid s 30C(1) (as added: see note 1 supra).

22 Ibid s 30C(2)(a) (as added: see note 1 supra).

23 'Course provider', in relation to a course, means the person by whom it is, or is to be, provided: ibid s 30D(3) (as added: see note 1 supra).

24 Ibid s 30C(2)(b) (as added: see note 1 supra).

25 Ibid s 30C(2) (as added: see note 1 supra).

26 Ibid s 30C(3) (as added: see note 1 supra).

27 Ibid s 30C(4) (as added: see note 1 supra).

28 As to the constitution, powers and proceedings of the Transport Tribunal see PARAS 253-258 ante.

29 Road Traffic Offenders Act 1988 s 30C(5) (as added: see note 1 supra). As to the making of regulations see note 3 supra. A statutory instrument containing regulations made under s 30C (as added) by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament: s 30D(7) (as so added).

30 Ibid s 30D(1) (as added: see note 1 supra).

31 Ibid s 30D(1)(a) (as added: see note 1 supra).



32 le for the purposes of *ibid* s 30B (as added): see PARA 1053 post.

33 *Ibid* s 30D(1)(b) (as added: see note 1 *supra*).

## UPDATE

### 1052 Reduced penalty points for attendance on course

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTE 28--Reference to Transport Tribunal is now to First-tier Tribunal: Road Traffic Offenders Act 1988 s 30C(5) (amended by SI 2009/1885).

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### 1053. Certificate of completion of course.

The following provisions take effect as from a day to be appointed<sup>1</sup>.

An offender is to be regarded for the purposes of the provisions as to the reduction of the penalty points attributed to his offence<sup>2</sup> as having completed a course satisfactorily if (and only if) a certificate that he has done so is received by the proper officer<sup>3</sup> of the supervising court<sup>4</sup>. A course provider<sup>5</sup> must give a certificate<sup>6</sup> to the offender not later than 14 days after the date specified in the order as the latest date for the completion of the course<sup>7</sup> unless the offender: (1) fails to make due payment of fees for the course<sup>8</sup>; (2) fails to attend the course in accordance with the course provider's reasonable instructions<sup>9</sup>; or (3) fails to comply with any other reasonable requirement of the course provider<sup>10</sup>.

Where a course provider decides not to give a certificate to the offender, he must give written notice of the decision to the offender as soon as possible, and in any event not later than 14 days after the date specified in the order as the latest date for completion of the course<sup>11</sup>. An offender to whom such a notice is given may, within such period as may be prescribed by rules of court, apply to the supervising court, or (if the supervising court is not the Crown Court or the relevant local court<sup>12</sup>) to either the supervising court or the relevant local court, for a declaration that the course provider's decision not to give a certificate was contrary to the statutory requirements<sup>13</sup> above<sup>14</sup>. If the court grants the application, the provisions as to the reduction of penalty points will have effect as if the certificate had been duly received by the proper officer of the supervising court<sup>15</sup>.

If, 14 days after the date specified in the order as the latest date for completion of the course, the course provider has given neither the certificate nor a notice, the offender may, within such period as may be prescribed by rules of court, apply to the supervising court, or (if the supervising court is not the Crown Court or the relevant local court) to either the supervising court or the relevant local court, for a declaration that the course provider is in default<sup>16</sup>. If the court grants the application, the provisions as to the reduction of penalty points will have effect as if the certificate had been duly received by the proper officer of the supervising court<sup>17</sup>.

Where the proper office of a court receives a certificate of the completion of a course<sup>18</sup>, or a court grants an application for a declaration<sup>19</sup>, the proper officer or court must send notice of that fact to the Secretary of State; and the notice must be sent in such manner and to such address, and must contain such particulars, as the Secretary of State may determine<sup>20</sup>.

1 The Road Traffic Offenders Act 1988 ss 30B, 30D are added by the Road Safety Act 2006 s 34(1), (3), as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 Ie for the purposes of the Road Traffic Offenders Act 1988 s 30A (prospectively added): see PARA 1052 ante.

3 For these purposes, 'proper officer' means: (1) in relation to a magistrates' court in England and Wales, the designated officer for the court; and (2) otherwise, the clerk of the court: *ibid* s 30D(3) (as added: see note 1 *supra*).

4 *Ibid* s 30B(1) (as added: see note 1 *supra*). 'Supervising court', in relation to an order under s 30A (prospectively added), means, if the Crown Court made the order, the Crown Court and, otherwise, a magistrates' court acting for the same local justice area as the court which made the order: s 30D(3) (as so added).

5 For the meaning of 'course provider' see PARA 1052 note 23 ante.

6 A certificate is to be given by the course provider and must be in such form, and contain such particulars, as may be prescribed by, or determined in accordance with, regulations made by the appropriate national authority: Road Traffic Offenders Act 1988 s 30B(3) (as added: see note 1 *supra*). For the meaning of 'appropriate national authority' see PARA 1052 note 10 ante. As to the making of regulations see PARA 1052 note 3 ante. A statutory instrument containing regulations made under s 30B (as added) by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament: s 30D(7) (as so added). As to the Secretary of State see PARA 236 ante.

7 *Ibid* s 30B(2) (as added: see note 1 *supra*).

8 *Ibid* s 30B(2)(a) (as added: see note 1 *supra*).

9 *Ibid* s 30B(2)(b) (as added: see note 1 *supra*).

10 *Ibid* s 30B(2)(c) (as added: see note 1 *supra*).

11 *Ibid* s 30B(4) (as added: see note 1 *supra*). A notice under s 30B(4) (as added) must specify the ground on which it is given; and the appropriate national authority may by regulations make provision as to the form of notices under that subsection and as to the circumstances in which they are to be treated as given: s 30B(9) (as so added). See note 6 *supra*.

12 'Relevant local court', in relation to an order made under *ibid* s 30A (prospectively added) in the case of an offender, means a magistrates' court acting for the local justice area in which the offender resides: s 30D(3) (as added: see note 1 *supra*).

13 Ie contrary to *ibid* s 30B(2) (prospectively added).

14 *Ibid* s 30B(5) (as added: see note 1 *supra*).

15 *Ibid* s 30B(6) (as added: see note 1 *supra*).

16 *Ibid* s 30B(7) (as added: see note 1 *supra*).

17 *Ibid* s 30B(8) (as added: see note 1 *supra*).

18 Ie under *ibid* s 30B(1) (as added).

19 Ie under *ibid* s 30B(5) or (7) (as added).

20 *Ibid* s 30B(10) (as added: see note 1 *supra*).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/A. IN GENERAL/1054. Particulars endorsed on licence which may be taken into consideration.

#### **1054. Particulars endorsed on licence which may be taken into consideration.**

Where a person is convicted of an offence involving obligatory<sup>1</sup> or discretionary disqualification<sup>2</sup> and his licence<sup>3</sup> and its counterpart<sup>4</sup> are produced to the court<sup>5</sup>, any existing endorsement on the counterpart of his licence is prima facie evidence<sup>6</sup> of the matters endorsed<sup>7</sup>, and the court may, in determining what order to make in pursuance of the conviction, take those matters into consideration<sup>8</sup>.

1 For the meaning of 'offence involving obligatory disqualification' see PARA 1058 post.

2 For the meaning of 'offence involving discretionary disqualification' see PARA 1060 post.

3 For the meaning of 'licence' see PARA 1032 note 3 ante.

4 For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). The reference to the meaning of 'counterpart' in s 98(1) is removed by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7, as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

5 Road Traffic Offenders Act 1988 s 31(1) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 93; and the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(2), 3, Sch 2 para 6).

6 The purpose of this provision is only to enable justices to obtain an account of the defendant's record before he is sentenced; it does not prescribe a method of proof of conviction or disqualification superseding that provided by a certificate under the Police and Criminal Evidence Act 1984 s 73 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1347, 1500): *Stone v Bastick* [1967] 1 QB 74, [1965] 3 All ER 713.

7 Road Traffic Offenders Act 1988 s 31(1)(a) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 6).

8 Road Traffic Offenders Act 1988 s 31(1)(b).

As from a day to be appointed, s 31(1) is substituted, to the following effect. Where a person is convicted of an offence involving obligatory or discretionary disqualification, any existing endorsement on the counterpart of his licence or on his driving record is prima facie evidence of the matters endorsed, and the court may, in determining what order to make in pursuance of the conviction, take those matters into consideration: s 31(1) (substituted by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 6). At the date at which this volume states the law no such day had been appointed. For the meaning of 'driving record' see PARA 1024 note 11 ante. The words 'on the counterpart of his licence or' are repealed as from a day to be appointed: Road Traffic Offenders Act 1988 s 31 (amended by the Road Safety Act 2006 Sch 3 paras 30, 37, Sch 7). At the date at which this volume states the law no such day had been appointed.

#### **UPDATE**

#### **1054 Particulars endorsed on licence which may be taken into consideration**

NOTE 8--Day appointed in relation to Road Safety Act 2006 s 9, Sch 2 is 1 April 2009: SI 2008/3164.

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## **B. FINE AND IMPRISONMENT**

### **1055. In general.**

Where a person is convicted of a road traffic offence<sup>1</sup>, the maximum punishment by way of fine or imprisonment which may be imposed on him is that provided for by the Road Traffic Offenders Act 1988<sup>2</sup>.

1     le an offence against a provision of the Road Traffic Regulation Act 1984, the Road Traffic Act 1988, the Road Traffic (Consequential Provisions) Act 1988 and the Road Traffic Offenders Act 1988, specified in s 33, Sch 2 Pt I col 1 (as amended), or regulations made under any such provision.

2     Ibid s 33(1). The fine or imprisonment is that shown in Sch 2 Pt I col 4 (as amended) against the offence and (where appropriate) the circumstances or the mode of trial there specified: see s 33(1). Any reference in Sch 2 Pt I col 4 (as amended) to a period of years or months is to be construed as a reference to a term of imprisonment of that duration: s 33(2). The punishment for each offence is set out where the offence is dealt with in this title.

Where multiple road traffic offences are committed on the same occasion the problem is one of determining what sentence is appropriate for the offences taken as a whole and it is immaterial whether the length of the sentence is determined by imposing shorter, but consecutive, terms or by imposing longer terms to run concurrently: *R v Lawrence (Justin)* [1990] RTR 45, CA.

### **UPDATE**

#### **1055-1066 In general ... Reduced disqualification period: alcohol ignition interlock programme orders**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/B. FINE AND IMPRISONMENT/1056. Sentencing guidelines.

### **1056. Sentencing guidelines.**

Guidelines for sentencing in respect of the offence of causing death by dangerous driving<sup>1</sup>, have been laid down as follows.

Factors that tend to aggravate the offence include:

- 1027 (1) the consumption of drugs (including legal medication known to cause drowsiness) or of alcohol;
- 1028 (2) greatly excessive speed; racing, or competitive driving against another vehicle; and 'showing off';
- 1029 (3) disregard of warnings from fellow passengers;
- 1030 (4) a prolonged, persistent and deliberate course of very bad driving;
- 1031 (5) aggressive driving (such as driving much too close to the vehicle in front, persistent inappropriate attempts to overtake, or cutting in after overtaking);

- 1032 (6) driving while the driver's attention is avoidably distracted (for example, by reading or by use of a mobile phone);
- 1033 (7) driving when knowingly suffering from a medical condition which significantly impairs the offender's driving skills;
- 1034 (8) driving when knowingly deprived of adequate sleep or rest;
- 1035 (9) driving a poorly maintained or dangerously loaded vehicle, especially where this has been motivated by commercial concerns;
- 1036 (10) other offences committed at the same time (such as driving without ever having held a licence, driving while disqualified, driving without insurance, driving while a learner without supervision, taking a vehicle without consent, or driving a stolen vehicle);
- 1037 (11) previous convictions for motoring offences, particularly offences which involve bad driving or the consumption of excessive alcohol before driving;
- 1038 (12) the death of more than one person as a result of the offence (especially if the offender knowingly put more than one person at risk or the occurrence of multiple deaths was foreseeable);
- 1039 (13) serious injury to one or more victims, in addition to the death or deaths;
- 1040 (14) behaviour at the time of the offence (such as failing to stop, falsely claiming that one of the victims was responsible for the crash, or trying to throw the victim off the bonnet of the car by swerving in order to escape);
- 1041 (15) causing death in the course of dangerous driving in an attempt to avoid detection or apprehension;
- 1042 (16) offence committed while the offender was on bail<sup>2</sup>.

Mitigating features include:

- 1043 (a) a good driving record;
- 1044 (b) the absence of previous convictions;
- 1045 (c) a timely plea of guilty;
- 1046 (d) genuine remorse or shock (which may be greater if the victim is either a close relation or a friend);
- 1047 (e) the offender's age (but only in cases where lack of driving experience has contributed to the commission of the offence);
- 1048 (f) the fact that the offender has also been seriously injured as a result of the accident caused by the dangerous driving<sup>3</sup>.

It has been held that where an aggravating feature is present a custodial sentence is generally necessary<sup>4</sup>. In considering the appropriate sentence for the offence of causing death by dangerous driving, four categories have been devised, depending on the degree of culpability: (i) where there were no aggravating circumstances; (ii) where there was intermediate culpability; (iii) where there was higher culpability; (iv) where there was most serious culpability<sup>5</sup>. Similar principles have been applied in relation to the offence of causing death by careless driving under the influence of drink or drugs<sup>6</sup>. Where consumption of alcohol or drugs is not in point, the broad range of sentences that has been upheld or substituted illustrates the many factors and combinations of sentences that can be considered<sup>7</sup>. Length of disqualification in cases of bad driving is considered elsewhere in this title<sup>8</sup>.

It has been held that, in relation to the offence of aggravated vehicle taking<sup>9</sup>, the most important circumstance in judging gravity is the fact (where it is present) that the vehicle was driven dangerously, as that affects the culpability of the driver, whereas the incidence and severity of any injury or damage caused are to some extent a matter of chance, although the higher maximum penalty provided for in a case where death results shows that the extent of the physical harm done is an aggravating feature<sup>10</sup>; a guilty plea showing contrition is a mitigating feature, but the youth of the defendant is less significant in relation to this offence

than others<sup>11</sup>. A custodial sentence may not be wrong in principle where the defendant was only a passenger in the vehicle<sup>12</sup>.

1 See the Road Traffic Act 1988 s 1 (as substituted); and PARA 963 ante. The maximum term of imprisonment for the offences of causing death by dangerous driving (see s 1 (as substituted)) and causing death by careless driving when under the influence of drink or drugs (see s 3A (as added); and PARA 974 ante) was increased from five to ten years (see the Road Traffic Offenders Act 1988 s 33, Sch 2 Pt I (amended by the Criminal Justice Act 1993 s 67)), and has subsequently been increased from ten years to 14 years (see the Road Traffic Offenders Act 1988 s 33, Sch 2 Pt I (amended by the Criminal Justice Act 2003 s 285)). Those changes came into effect on 16 August 1993 and 27 February 2004 respectively, and older authorities must be viewed accordingly.

For sentencing guidelines for causing death by dangerous driving or for causing death by careless driving when under the influence of drink or drugs see *R v Richardson* [2006] EWCA Crim 3186, [2007] 2 All ER 601, updating *R v Cooksley*, *R v Stride*, *R v Cook*, *A-G's Reference (No 152 of 2002)* [2003] EWCA Crim 996, [2003] 3 All ER 40, [2003] RTR 483; *A-G's Reference (No 10 of 2004) (Simon Walker Teesdale)* [2004] EWCA Crim 1530, [2005] 1 Cr App Rep (S) 91. See also the Sentencing Advisory Panel consultation paper *Causing Death by Driving Offences* (January 2007).

2 *R v Richardson* [2006] EWCA Crim 3186, [2007] 2 All ER 601, updating *R v Cooksley*, *R v Stride*, *R v Cook*, *A-G's Reference (No 152 of 2002)* [2003] EWCA Crim 996, [2003] 3 All ER 40, [2003] RTR 483. See also *R v Boswell* (1984) 6 Cr App Rep (S) 257, CA.

3 *R v Richardson* [2006] EWCA Crim 3186, [2007] 2 All ER 601, updating *R v Cooksley*, *R v Stride*, *R v Cook*, *A-G's Reference (No 152 of 2002)* [2003] EWCA Crim 996, [2003] 3 All ER 40, [2003] RTR 483. See also *R v Boswell* (1984) 6 Cr App Rep (S) 257, CA.

4 *R v Boswell* (1984) 6 Cr App Rep (S) 257, CA. See also *R v Smith (Gary)* [1991] RTR 109 at 111, CA, per Drake J (where it was held that the 'Boswell' aggravating factors were examples, and that it was a wrong approach to try exactly and precisely to fit the circumstances of any individual piece of driving into one of the 'Boswell' categories).

5 *R v Richardson* [2006] EWCA Crim 3186, [2007] 2 All ER 601, updating *R v Cooksley*, *R v Stride*, *R v Cook*, *A-G's Reference (No 152 of 2002)* [2003] EWCA Crim 996, [2003] 3 All ER 40, [2003] RTR 483. In *R v Richardson* supra it was suggested that for an offence of causing death by dangerous driving falling within the first category, the starting point should be a sentence of 12 months to two years; for an offence in the second category, the starting point should be a sentence of two years to four and a half years; for an offence in the third category, the starting point should be a sentence of four and a half to seven years; and for an offence in the fourth category, the starting point should be a sentence of seven to 14 years. In this case it was also said that at the lowest levels of seriousness, the guidance in *R v Cooksley*, *R v Stride*, *R v Cook*, *A-G's Reference (No 152 of 2002)* supra might remain appropriate (namely, for the first category, 12 to 18 months; for the second category, two to three years; for the third category, four or five years; and for the fourth category, six years or over). However, it should be noted that the Sentencing Advisory Panel consultation paper *Causing Death by Driving Offences* (January 2007) has proposed that for the first category there should be a range of 12 months to two years (with a starting point of 18 months); for the second category there should be a range of two to five years (with a starting point of three years); for the third category there should be a range of four to seven years (with a starting point of five years); and for the fourth category there should be a range of seven to 14 years (with a starting point of eight years).

6 Ie under the Road Traffic Act 1988 s 3A (as added): see PARA 974 ante. See *R v Cooksley*, *R v Stride*, *R v Cook*, *A-G's Reference (No 152 of 2002)* [2003] EWCA Crim 996, [2003] 3 All ER 40, [2003] RTR 483; *R v Richardson* [2006] EWCA Crim 3186, [2007] 2 All ER 601; and see the text and notes 2-5 supra. In relation to the offence of causing death by careless driving under the influence of drink or drugs, the four categories are: (1) circumstances where there is impairment just in excess of the limit; (2) circumstances where the alcohol intake is up to double the legal limit; (3) circumstances where the alcohol level is over twice the limit and there are one or more aggravating features; (4) circumstances where the alcohol level is three times or over the limit. Note, however, that the Sentencing Advisory Panel consultation paper *Causing Death by Driving Offences* (January 2007) has proposed that the third category should be abolished, and that for such offences falling within the first category there should be a range of 12 months to four years (with a starting point of two years); for the second category there should be a range of four to seven years (with a starting point of five years); and for the fourth category there should be a range of seven to 14 years (with a starting point of eight years).

Note that the Road Safety Act 2006 creates two new offences: causing death by careless driving, without having consumed excess alcohol (with a maximum sentence of five years' imprisonment); and causing death when the driver is unlicensed, disqualified or uninsured (with a maximum sentence of two years' imprisonment). It was suggested in *R v Richardson* supra that when the relevant provisions of the Road Safety Act 2006 come into force it will no longer be appropriate for the difference between dangerous and careless driving to be elided.

The following case law is illustrative of previous sentencing decisions, but must now be read in the light of *R v Richardson* supra.

It has been held that the offence of causing death by careless driving under the influence of drink or drugs may not require a custodial sentence if the circumstances are exceptional, the alcohol level is just over the borderline, the carelessness is momentary, and there is strong personal mitigation: *A-G's References (Nos 14 and 24 of 1993)* (*R v Shephard*; *R v Wernet*) (1993) 15 Cr App Rep (S) 640, CA. See also *R v Brown* (13 June 2000) Lexis, CA (sentenced reduced from 24 to 12 months' detention where the defendant was 17, had just passed the driving test, he was only 10% over the limit, the accident was perhaps more due to inexperience as a driver than to the effect of alcohol, he was of exemplary character and he had been remorseful and devastated by the consequences of the accident (the death of a friend)); *A-G's Reference (No 56 of 2002)* [2002] EWCA Crim 2292, [2003] 1 Cr App Rep (S) 476 (two years' imprisonment unduly lenient where offence resulted in two deaths and permanent serious injury); *HM Advocate v Macpherson* 2005 SLT 397, HCJ (18 months' imprisonment unduly lenient where offender, who had been disqualified from driving, had temporarily taken over driving while under the influence of cannabis; sentence increased to four years' imprisonment). However, four years' imprisonment was held not to be excessive where the offence consisted of erratic driving by an unqualified and uninsured driver, when he was under the influence of drugs, and this resulted in multiple collisions, one death and serious injuries to two other drivers: *R v Suddaby* (1995) 16 Cr App Rep (S) 853, CA. See also *R v Zanardelli* (5 October 2000) Lexis, CA (five years' imprisonment not manifestly excessive, despite a guilty plea, where the defendant was driving in the wrong lane and collided with an oncoming car, killing the driver of that car and injuring the defendant and his passenger; the defendant was substantially over the legal limit of alcohol; and the defendant has just completed a disqualification for driving with excess alcohol, which showed that his remorse was not as complete as it might have been).

Where the charge is causing death by careless driving and failing without reasonable excuse to provide an evidential specimen, it has been held that a court should approach a submission with caution that only a limited amount of alcohol was consumed; the ordinary inference to be drawn, unless the court is convinced it should not do so, is that the defendant refused to provide the specimen because he knew he had consumed alcohol well in excess of the prescribed limit: *A-G's Reference (No 21 of 2000)* (*R v Hartwell*) [2001] 1 Cr App Rep (S) 173, CA (30 months substituted for 12 months' imprisonment despite guilty plea, long friendship with the deceased, absence of animosity towards the defendant by those who knew the deceased, good driving record and the element of double jeopardy).

It has been held that in cases of careless driving (ie under the Road Traffic Act 1988 s 3 (as substituted): see PARA 971 ante), although culpability or criminality remains the primary consideration, where the driving causes death that consequence may be taken into account: *R v Simmonds* [1999] RTR 257, CA (distinguishing *R v Krawec* [1985] RTR 1, CA, on the ground that that case, though valid in its time, had been overtaken by various statutory changes that envisaged causing death as a factor leading to an enhanced sentencing bracket). See also *R v Morling* [1998] 1 Cr App Rep (S) 421, CA. See also *R v King* [2001] EWCA Crim 709, [2002] RTR 1 (multiple deaths readily foreseeable as consequence of lack of care).

7 See, by way of example of a case towards the top of the range, *A-G's Reference (No 67 of 1995)* (*R v Lloyd*) [1996] 2 Cr App Rep (S) 373, CA (seven years' imprisonment substituted for five years where the offender was convicted of causing death by dangerous driving, and pleaded guilty to aggravated vehicle taking; the facts were that he took a car from a car park and was later seen driving it, apparently in convoy with another car, at high speed, overtaking in a dangerous manner, and eventually he crossed a junction and collided with another car, killing a passenger; the defendant ran away from the scene and was arrested some weeks later; and he was on bail for aggravated vehicle taking at the time of the offence). See also *A-G's Reference (No 69 of 1996)* (*R v Jackson*) [1996] 2 Cr App Rep (S) 360, CA (where, after allowing for the element of double jeopardy involved in references by the Attorney General, a term of three years' imprisonment was increased to five years due to the aggregate of aggravating factors (which did not include evidence of excessive alcohol consumption or racing)). In *R v Kyle* (7 July 2000) Lexis, a term of seven years was upheld for causing death by dangerous driving where the defendant was convicted after a trial and the aggravating factors were not just the death of one passenger, but causing another to be so afraid that he wanted to leave the vehicle; the amount of drink taken and the conduct of the defendant in the public houses concerned; the factor of speed and horseplay or lack of control, the weather conditions (thick fog); leaving the scene to avoid the possibility of being breathalysed; and a poor driving record. A sentence that would have been near the maximum if the case had been contested is not appropriate for an offence that is by no means the worst of its kind: *R v McGowan* [1998] 2 Cr App Rep (S) 219, CA (seven years' imprisonment reduced to five). A case towards the other extreme is *R v Carr* [1996] 1 Cr App Rep (S) 107, CA, where the offender was driving at about 90 mph on the motorway and failed to see a car in front of him until immediately before colliding with it; the case crossed the custody threshold and a sentence of six months' imprisonment was upheld. See also *R v Bailey* [1996] 1 Cr App Rep (S) 129, CA (offender pulled out to overtake just before overtaking was prohibited by signs and collided head on with a motorcyclist; 12 months' imprisonment reduced to three to reflect the offender's excellent driving record, good employment, genuine and deep remorse, co-operation with the police and early guilty plea). For an example of a case of falling asleep while driving see *R v de Meersman* [1997] 1 Cr App Rep (S) 106, CA; and for an example of a case of driving for excessive periods see *R v Kallaway* [1998] 2 Cr App Rep (S) 228, CA. Where the danger arises from the defective state of the vehicle, and the vehicle is a heavy goods vehicle, thus enhancing the risk to the public arising from defective maintenance, an element of deterrence is required in the

sentence: *R v Balvinder Singh Kang* [1997] 1 Cr App Rep (S) 306, CA (30 months' imprisonment upheld where a trailer had a braking efficiency of only 7% and the offender knew the brakes required attention). A deterrent element is similarly necessary where a person drives in defiance of medical warnings that it may be unsafe for him to drive due to a medical condition: *R v Lowe* [1997] 2 Cr App Rep (S) 324, CA (offender had had a number of epileptic fits over a period of years and his doctor had warned him against driving, but the sentence was reduced from three years' imprisonment to 18 months having regard to 'very strong mitigating factors').

8 See PARA 1057 et seq post.

9 See PARA 1009 ante.

10 See the guidelines laid down in *R v Bird* (1993) 14 Cr App Rep (S) 343, [1993] RTR 1, CA. See also *R v Marron* (1993) 14 Cr App Rep (S) 615, CA (defendant driving too fast and knocked down, and injured, a three-year-old child who had run into the road, but sentence reduced from 12 to six months because the consequences might have ensued in any event).

11 It is because the Aggravated Vehicle Taking Act 1992 (see PARA 1009 ante) was primarily aimed at young offenders among whom the offence was prevalent: *R v Bird* (1993) 14 Cr App Rep (S) 343, [1993] RTR 1, CA. See also *R v Bradshaw*, *R v Waters* (1994) Times, 31 December, CA.

12 *R v Bradshaw*, *R v Waters* (1994) Times, 31 December, CA. However, it is not appropriate to order a passenger to take an extended driving test in addition to an order of obligatory disqualification: *R v Bradshaw*, *R v Waters* (1994) Times, 31 December, CA; followed in *R v Wiggins* (2000) Times, 23 June, CA.

## UPDATE

### **1055-1066 In general ... Reduced disqualification period: alcohol ignition interlock programme orders**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1056 Sentencing guidelines**

TEXT AND NOTES--As to guidelines on causing death by driving see now the Sentencing Guidelines Council Guideline *Causing Death by Driving* (2008) and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 643.

NOTE 2--See also *A-G's Reference (No 17 of 2009)*; *R v Curtis* [2009] EWCA Crim 1003, [2010] RTR 1, [2009] All ER (D) 236 (Apr) (use of hand-held mobile phone).

NOTE 5--See also *A-G's Reference (No 142 of 2006)* [2007] EWCA Crim 662, [2007] 2 Cr App Rep (S) 524; *A-G's Reference (No 1 of 2009)*; *R v Booth* [2009] EWCA Crim 657, [2009] 2 Cr App Rep (S) 742.

NOTE 6--See also *A-G's Reference (No 16 of 2009)*; *R v Yates* [2009] All ER (D) 18 (Oct), CA.

NOTE 7--See also *R v Akinyeme* [2007] EWCA Crim 3290, [2008] RTR 241; *R v Clarke (Trevor)* [2009] EWCA Crim 921, [2009] RTR 397, [2009] All ER (D) 135 (May) (12 months' imprisonment for causing death by dangerous driving caused by offender's hypoglycaemic attack; offender's awareness of onset of hypoglycaemic attack might have been only momentary; impact of imprisonment on offender's health and his imminent need for surgery also considered).



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### ***C. DISQUALIFICATION***

#### **1057. Disqualification generally.**

The most serious road traffic offences carry obligatory disqualification<sup>1</sup> and the minimum period of such disqualification is increased where there are relevant previous disqualifications<sup>2</sup>. Some of these offences further require the court to disqualify the offender until he has passed an extended driving test<sup>3</sup>.

Where a person is convicted of an offence involving discretionary disqualification<sup>4</sup> and the number of penalty points to be taken into account<sup>5</sup> on that occasion is 12 or more, the court must order the offender to be disqualified for the minimum period<sup>6</sup> unless there are grounds<sup>7</sup> for mitigating the normal consequences of the conviction<sup>8</sup>.

Where a person is convicted of an offence involving discretionary disqualification, and the number of penalty points to be taken into account on that occasion is less than 12<sup>9</sup>, the court may order the offender to be disqualified<sup>10</sup>.

Where an offender is convicted of an offence involving obligatory endorsement<sup>11</sup>, the court may, whether or not it imposes any other form of disqualification, disqualify the offender until he passes a test of competence to drive<sup>12</sup>.

There are other powers of disqualification from driving that are available in particular circumstances<sup>13</sup>.

1 As to offences involving obligatory disqualification see PARA 1058 post.

2 See PARA 1058 note 14 post.

3 See PARA 1071 post.

4 As to offences involving discretionary disqualification see PARA 1060 post.

5 As to penalty points to be taken into account on conviction see PARA 1050 ante.

6 This will be six months, one year or two years depending upon the existence, number and length of any previous disqualifications of at least 56 days imposed within the three years immediately preceding the commission of the latest offence in respect of which penalty points are taken into account under the Road Traffic Offenders Act 1988 s 29 (as substituted): see PARA 1070 post.

7 No account may be taken of certain circumstances: see PARA 1070 post.

8 In such a case the court may order the offender to be disqualified for a shorter period or not at all: see PARA 1070 post.

9 This may depend on whether the court imposes discretionary disqualification for the current offence; for the procedure to be followed where liability to points' disqualification so depends see PARA 1061 note 4 post.

10 As to the procedure and general principles in relation to disqualification see PARA 1061 post.

11 As to offences involving obligatory endorsement see PARA 1080 post.

12 See PARA 1080 post.

13 See PARA 1060 post.

**UPDATE****1055-1066 In general ... Reduced disqualification period: alcohol ignition interlock programme orders**

Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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**1058. Offences involving obligatory disqualification.**

An offence involves obligatory disqualification if it is an offence under the road traffic legislation<sup>1</sup>, and either the word 'obligatory' without qualification appears in the schedule of offences<sup>2</sup> against the offence or that word appears there qualified by conditions or circumstances relating to the offence which are satisfied or obtain<sup>3</sup>.

The following offences involve obligatory disqualification:

- 1049 (1) causing death by dangerous driving<sup>4</sup>;
- 1050 (2) dangerous driving<sup>5</sup>;
- 1051 (3) causing death by careless driving when under the influence of drink or drugs<sup>6</sup>;
- 1052 (4) driving or attempting to drive when unfit through drink or drugs<sup>7</sup>;
- 1053 (5) driving or attempting to drive with excess alcohol in breath, blood or urine<sup>8</sup>;
- 1054 (6) failing to provide a specimen for analysis or laboratory test where the specimen was required to ascertain ability to drive or the proportion of alcohol at the time the offender was driving or attempting to drive<sup>9</sup>;
- 1055 (7) failing to allow specimen to be subjected to laboratory test where the test would be for ascertaining ability to drive or the proportion of alcohol at the time the offender was driving or attempting to drive<sup>10</sup>;
- 1056 (8) motor racing and speed trials on public ways<sup>11</sup>;
- 1057 (9) manslaughter by the driver of a motor vehicle<sup>12</sup>; and
- 1058 (10) aggravated vehicle-taking<sup>13</sup>.

Where a person is convicted of an offence involving obligatory disqualification, the court must order him to be disqualified for such period not less than 12 months<sup>14</sup> as the court thinks fit unless the court for special reasons<sup>15</sup> thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified<sup>16</sup>.

1    Ie an offence specified under a provision of the Road Traffic Regulation Act 1984, the Road Traffic Act 1988, the Road Traffic (Consequential Provisions) Act 1988 or the Road Traffic Offenders Act 1988 specified in s 97, Sch 2 Pt I col 1 (as amended), or an offence specified in Sch 2 Pt II col 1 (as amended).

2    Ie in *ibid* Sch 2 Pt I col 5 (as amended), or Sch 2 Pt II col 2 (as amended).

3    *Ibid* s 97(1). For the meaning of 'disqualification' see PARA 1046 note 5 ante.

- 4 See PARA 963 ante. The offence referred to is an offence under the Road Traffic Act 1988 s 1 (as substituted).
- 5 See PARA 964 ante. The offence referred to is an offence under *ibid* s 2 (as substituted).
- 6 See PARA 974 ante. The offence referred to is an offence under *ibid* s 3A (as added).
- 7 See PARA 975 ante. The offence referred to is an offence under *ibid* s 4(1) (as amended).
- 8 See PARA 978 ante. The offence referred to is an offence under *ibid* s 5(1)(a).
- 9 See PARA 988 ante. The offence referred to is an offence under *ibid* s 7 (as amended).
- 10 See PARA 987 ante. The offence referred to is an offence under *ibid* s 7A (as added).
- 11 See PARA 992 ante. The offence referred to is an offence under *ibid* s 12 (as amended).
- 12 See PARA 966 ante.
- 13 See PARA 1009 ante. The offence referred to is an offence under the Theft Act 1968 s 12A (as added).
- 14 Where a person convicted of any of the following offences:
  - 1663 (1) causing death by careless driving when under the influence of drink or drugs (see the Road Traffic Act 1988 s 3A (as added); and PARA 974 ante);
  - 1664 (2) driving or attempting to drive while unfit (see s 4(1) (as amended); and PARA 975 ante);
  - 1665 (3) driving or attempting to drive with excess alcohol (see s 5(1)(a); and PARA 978 ante);
  - 1666 (4) failing to provide a specimen where that is an offence involving obligatory disqualification (see s 7(6); and PARA 988 ante);
  - 1667 (5) failing to allow a specimen to be subjected to laboratory test where that is an offence involving obligatory disqualification (see s 7A(6) (as added); and PARA 987 ante),

has within the ten years immediately preceding the commission of the offence been convicted of any such offence, the Road Traffic Offenders Act 1988 s 34(1) applies in relation to him as if the reference to 12 months were a reference to three years: s 34(3) (amended by the Road Traffic Act 1991 s 29(1), (3); and the Police Reform Act 2002 ss 56(3), 107(2), Sch 8). In the circumstances described above, the court is bound to disqualify for a minimum of three years even if the defendant escaped disqualification for the earlier offence on the ground of special reasons: *Bolliston v Gibbons* [1985] RTR 176, DC.

Subject to the Road Traffic Offenders Act 1988 s 34(3) (as amended), s 34(1) applies as if the reference to 12 months were a reference to two years in relation to a person convicted of:

- 1668 (a) manslaughter, an offence under the Road Traffic Act 1988 s 1 (as substituted) (see PARA 963 ante) (causing death by dangerous driving) or an offence under s 3A (as added) (see PARA 974 ante) (causing death by careless driving while under the influence of drink or drugs) (Road Traffic Offenders Act 1988 s 34(4)(a) (s 34(4) substituted by the Road Traffic Act 1991 s 29(1), (4))); and
- 1669 (b) in relation to a person on whom more than one disqualification for a fixed period of 56 days or more has been imposed within the three years immediately preceding the commission of the offence (Road Traffic Offenders Act 1988 s 34(4)(b) (as so substituted)).

Two disqualifications imposed for the same offence (which is no longer possible) count as one for the purpose of s 34(4)(b) (as substituted), but the question as to whether two disqualifications imposed on the same occasion for different offences count as one remains open: *Learmont v DPP* [1994] RTR 286, DC. For the purposes of the Road Traffic Offenders Act 1988 s 34(4)(b) (as substituted) there must be disregarded any disqualification imposed under s 26 (as substituted and amended) (see PARA 1046 ante) or the Powers of Criminal Courts (Sentencing) Act 2000 s 147 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 314) or the Criminal Procedure (Scotland) Act 1975 s 223A (as added) or s 436A (as added) (offences committed by using vehicles) and any disqualification imposed in respect of an offence of stealing a motor vehicle, an offence under the Theft Act 1968 s 12 or s 25 (see PARA 1008 ante), an offence under the Road Traffic Act 1988 s 178, or an attempt to commit such an offence: Road Traffic Offenders Act 1988 s 34(4A) (added by the Road Traffic Act 1991 s 29(1),

(4); and amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 121). For the meaning of 'motor vehicle' see PARA 210 ante.

Where a person convicted of an offence under the Road Traffic Act 1988 s 40A (as added) (using vehicle in dangerous condition etc) (see PARA 625 ante) has within the three years immediately preceding the commission of the offence been convicted of any such offence, s 34(1) applies in relation to him as if the reference to 12 months were a reference to six months: s 34(4B) (added by the Road Safety Act 2006 s 25(1)).

The provisions of the Road Traffic Offenders Act 1988 s 34(1)-(4A) (as amended) apply in relation to a conviction of an offence committed by aiding, abetting, counselling or procuring, or inciting to the commission of, an offence involving obligatory disqualification as if the offence were an offence involving discretionary disqualification: s 34(5). For the meaning of 'offence involving discretionary disqualification' see PARA 1060 post. No other concession is made in respect of the liability to punishment of a secondary party: see *Ullah v Luckhurst* [1977] RTR 401, DC; and PARA 1080 note 42 post. Where a person convicted of aiding and abetting a drink-driving offence commits within ten years another such offence he is liable to a minimum of three years' disqualification: *Makeham v Donaldson* [1981] RTR 511, [1981] Crim LR 570.

The Road Traffic Offenders Act 1988 s 34 (as amended) is subject to s 48 (as substituted) (see PARA 1087 post): s 34(6).

15 As to the special reasons see PARA 1059 post.

16 Road Traffic Offenders Act 1988 s 34(1). Where a person is convicted of an offence under the Theft Act 1968 s 12A (as added) (aggravated vehicle-taking) (see PARA 1009 ante), the fact that he did not drive the vehicle in question at any particular time or at all is not to be regarded as a special reason for the purposes of the Road Traffic Offenders Act 1988 s 34(1): s 34(1A) (added by the Aggravated Vehicle-Taking Act 1992 s 3(2)). For the meaning of 'drive' see PARA 207 ante.

## UPDATE

### **1055-1066 In general ... Reduced disqualification period: alcohol ignition interlock programme orders**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1058 Offences involving obligatory disqualification**

NOTE 14--See further Serious Crime Act 2007 Sch 6 para 15(b) (references to common law offence of incitement).

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### **1059. Special reasons for not imposing obligatory disqualification.**

An offender convicted of an offence involving obligatory disqualification<sup>1</sup> must be disqualified for at least the prescribed minimum period<sup>2</sup> unless the court for special reasons thinks fit to disqualify him for a shorter period or not to disqualify him at all<sup>3</sup>.

To constitute special reasons the matter in question must meet the following requirements:

- 1059 (1) it must be a mitigating or extenuating circumstance;
- 1060 (2) it must not amount in law to a defence to the charge;

- 1061 (3) it must be directly connected with the commission of the offence; and  
 1062 (4) it must be a matter that the court ought properly to take into consideration when imposing punishment<sup>4</sup>.

The onus is upon the defendant to establish special reasons on a balance of probabilities<sup>5</sup>. For this purpose it is necessary for him to adduce evidence<sup>6</sup>.

It is a question of law whether, on the facts, it is open to the court to conclude that special reasons exist<sup>7</sup>. There are general considerations<sup>8</sup>, and there are reasons that apply more specifically to drink-driving offences<sup>9</sup>, including medical and other emergencies<sup>10</sup>, mistakes<sup>11</sup>, laced drinks<sup>12</sup>, failure to provide specimens<sup>13</sup> and other cases<sup>14</sup>. If the court finds special reasons, it is not bound to disqualify the offender, but it has a discretion to do so which it must exercise judicially. If the court finds special reasons a number of penalty points<sup>15</sup> will be attributed to the offence unless the court also finds special reasons for not endorsing the offender's driving licence<sup>16</sup>.

If the court refrains from imposing obligatory disqualification for special reasons it must state those reasons in open court and, if it is a magistrates' court, cause them to be entered in the register of its proceedings<sup>17</sup>.

1 See PARA 1058 ante.

2 ie 12, 24 or 36 months: see PARA 1058 note 14 ante.

3 See the Road Traffic Offenders Act 1988 s 34(1); and PARA 1058 ante.

4 *Whittall v Kirby* [1947] KB 194, [1946] 2 All ER 552; *R v Wickens* (1958) 42 Cr App Rep 236, 122 JP 518, CCA; *Nicholson v Brown* [1974] RTR 177, DC; *DPP v O'Meara* [1989] RTR 24, DC. The special reason exception applies only to circumstances peculiar to the offence in question and not to the offender: *Jarvis v DPP* (2000) 165 JP 15, DC (the offender, a diabetic suffering hypoglycaemia at time of offence, not eligible for exception).

5 *Pugsley v Hunter* [1973] 2 All ER 10, [1973] 1 WLR 578, DC.

6 *Jones v English* [1951] 2 All ER 853, 115 JP 609, DC.

7 See *Knowler v Rennison* [1947] KB 488, sub nom *Rennison v Knowler* [1947] 1 All ER 302.

8 The effect of a finding of special reasons is that the court is no longer bound to disqualify; however, it may in its discretion do so and in certain circumstances should do so: see eg *Agnew v DPP* [1991] RTR 144, DC, where a police officer engaged in police driver training was convicted of careless driving, and the court held that where there were competing considerations, namely the need for realistic police driver training and the safety of road users, the second must always be paramount. Where, however, special reasons are found to exist and there is no suggestion that the driving undertaken or contemplated could have posed any appreciable risk of danger to anyone at all it is hard to justify a period of disqualification in excess of the mandatory 12 months: *R v St Albans Crown Court, ex p O'Donovan* [2000] 1 Cr App Rep (S) 344 (a drink-driving case where the special reason was shortness of distance driven and intended to be driven).

Factors special to the offender and unconnected with the offence cannot give rise to special reasons; eg considerations of financial hardship, previous good character and many years of driving without complaint: see *Whittall v Kirby* [1947] KB 194, [1946] 2 All ER 552; *R v Wickens* (1958) 42 Cr App Rep 236, 122 JP 518; *Nicholson v Brown* [1974] RTR 177, DC; *DPP v O'Meara* [1989] RTR 24, DC. See also *Jarvis v DPP* (2000) 165 JP 15, DC (no special reasons for not imposing disqualification for an offence of dangerous driving, where the offence was the result of the defendant suffering a hypoglycaemic episode for which she was not culpable, since this was a circumstance peculiar to the offender).

The mere fact that the offence was a minor one cannot constitute special reasons: *Nicholson v Brown* supra (a case on the offence of careless driving); *Delaroy-Hall v Tadman* [1969] 2 QB 208, [1969] 1 All ER 25 (blood-alcohol level only slightly over the prescribed limit). However, unintentional commission of the offence can be a special reason if combined with some other factor: *Marks v West Midlands Police* [1981] RTR 471 at 475, DC, per Donaldson LJ (a speeding case).

Where an offender is liable to an enhanced minimum obligatory period of disqualification as a result of a relevant previous conviction (see PARA 1058 note 14 ante), it is not a special reason for not imposing that period that special reasons were found in relation to the previous offence or that the conviction in respect of it was

only just within the relevant ten-year period and the offence itself was not within that period: *Bolliston v Gibbons* [1985] RTR 176, DC.

For cases involving driving offences by members of the emergency or rescue services or police officers and the need for a balance to be struck between effective response and not exposing road users to risk see *R v Lundt-Smith* [1964] 2 QB 167, [1964] 3 All ER 225n; *R v O'Toole* [1974] RTR 88, (1971) 55 Cr App R 206, CA; *R v Collins (Lezlie)* [1997] RTR 439, CA.

9 Where the shortness of distance driven is the basis of a submission of special reasons the following factors, of which the last is the most important, should be taken into account: (1) how far the vehicle was driven; (2) the manner in which it was driven; (3) the state of the vehicle; (4) whether it was the driver's intention to go further; (5) the prevalent road and traffic conditions; (6) whether there was a possibility of danger by coming into contact with other road users or pedestrians; and (7) the reason why the vehicle was being driven: *Chatters v Burke* [1986] 3 All ER 168, [1986] RTR 396, DC; applied in *DPP v Conroy* [2003] EWHC 1674 (Admin), [2004] 1 Cr App Rep (S) 244 (short distance travelled, passenger's condition and no intention to drive when consuming alcohol not giving rise to special reasons). See also *James v Hall* [1968] Crim LR 507; *R v Agnew* [1969] Crim LR 152, CA; *R v Mullarkey* [1970] Crim LR 406; *Coombs v Kehoe* [1972] 2 All ER 55, [1972] RTR 224, DC; *Redmond v Parry* [1986] RTR 146, DC; *DPP v Rose* (1988) 156 JP 733. In a case of attempt, the court must look not only at what the defendant achieved but also at what he had intended: *DPP v Humphries* [2000] RTR 52, DC (defendant pushed vehicle only a very short distance, but was very drunk and intended to drive the vehicle some considerable distance).

As to factors that complement the above in so-called emergency cases see *DPP v Bristow* [1998] RTR 100, DC.

10 A medical emergency is capable of amounting to a special reason: *Brown v Dyerson* [1969] 1 QB 45, [1968] 3 All ER 39. A genuine medical emergency may now, however, give rise to a complete defence, namely the defence of necessity or as it is sometimes called 'duress of circumstances', and it has been stated that the interrelation between special reasons and the defence may be a matter for future consideration: *DPP v Whittle* [1996] RTR 154 at 159, DC, per Simon Brown LJ. See further PARA 978 note 9 ante.

'Medical emergency' here refers to an unexpected situation arising in which a motorist who has been drinking but not intending to drive is impelled to drive by a sudden medical necessity: *Brown v Dyerson* supra. If the evidence of emergency is nebulous special reasons will not be established: *Jacobs v Reed* [1974] RTR 81, DC; *Park v Hicks* [1979] RTR 259, DC. The test which justices must apply is objective and not subjective: *Jacobs v Reed* supra.

The emergency must be such as to necessitate driving by the defendant: *R v Baines* [1970] Crim LR 590, CA; *Evans v Bray* [1977] RTR 24, DC. It will generally be very much more difficult to justify driving after an emergency has been dealt with as opposed to driving on an outward journey to deal with an emergency (*Taylor v Rajan* [1974] QB 424, [1974] 1 All ER 1087), and justices erred in finding special reasons in relation to a journey away from an emergency where there must have been means other than driving available to the defendant (*DPP v Waller* [1989] RTR 112, DC). See also *DPP v Feeney* (1988) 89 Cr App Rep 173; *DPP v Goddard* [1998] RTR 463. Special reasons may, however, extend within reasonable limits after the emergency has ceased to exist: *Jacobs v Reed* supra; followed in *Williams v Tierney* [1988] RTR 118, DC.

Driving as a result of a crisis occasioned by irresponsible planning on the defendant's part cannot amount to special reasons: *Powell v Gliha* [1979] RTR 126, DC. It is also very doubtful whether going to see a near relative because an emotional need is felt to make the journey can ever amount to a special reason: *Thompson v Diamond* [1985] RTR 316, DC.

It is not open to justices to find special reasons where a driver decides to drink knowing he will or will probably have to drive: *DPP v Doyle* [1993] RTR 369, DC. Neither may justices find special reasons where the emergency has no bearing on the offence of which the defendant is convicted: *Anderton v Anderton* [1977] RTR 424, DC (driving to hospital with cut hand, but convicted of refusing to supply a specimen).

The key question justices should ask themselves in so-called emergency cases is would a sober, reasonable and responsible friend of the defendant present at the time, but himself a non-driver and thus unable to help, have advised in the circumstances to drive or not to drive: *DPP v Bristow* [1998] RTR 100, DC. The most critical circumstances influencing that advice would be how much the defendant had had to drink; what threat he would pose to others driving in that condition; given the distance proposed, likely state of the roads and condition of the vehicle, how acute a problem there was; and what, if any, alternatives were open to the defendant: *DPP v Bristow* supra. Those four circumstances complement the seven listed in *Chatters v Burke* [1986] 3 All ER 168, [1986] RTR 396, DC (see note 9 heads (1) to (7) supra).

Even where the facts disclose special reasons, there is a serious burden upon justices to decide whether in the exercise of their discretion they should not disqualify; they should have very much in mind that a person who deliberately drives knowing that he has consumed a considerable quantity of drink presents a potential source of danger to the public that no private crisis can lightly excuse: *Taylor v Rajan* supra. Justices should consider the whole of the circumstances including the nature and degree of the crisis or emergency; whether there were alternative means of transport or alternative methods of dealing with the crisis other than the defendant's use of his own car; the manner in which the defendant drove; generally whether the defendant acted responsibly or

otherwise; and the alcohol content in the defendant's body: *Taylor v Rajan* supra. Rarely, if ever, should justices exercise their discretion in favour of a defendant whose alcohol level exceeded by more than 25% the prescribed limit of alcohol: *Taylor v Rajan* supra. As to the prescribed limit see PARA 978 ante.

For examples of cases in which special reasons were found to exist see *DPP v Upchurch* [1994] RTR 366, DC (driving injured friends to hospital when no ambulances were available and no taxi would come to the scene); *DPP v Knight* [1994] RTR 374, DC (driving home after being implored to do so by 14-year-old babysitter who had received a number of very threatening telephone calls); *DPP v Enston* [1996] RTR 324, DC (defendant blackmailed into driving by woman threatening to cry rape); *DPP v Cox* [1996] RTR 123, DC (club steward driving 300 yards, but only using 150 yards of road, following activation of intruder alarm).

11 A mere mistake as to the amount of alcohol consumed cannot constitute a special reason (*Newnham v Trigg* [1970] RTR 107); neither can ignorance of the long term effect of alcohol (*DPP v O'Meara* [1989] RTR 24, DC); nor a mistake or miscalculation as to whether a particular quantity of beer could result in a reading in excess of the prescribed limit (*Knight v Baxter* [1971] RTR 270, DC); nor driving after a first, negative roadside test follow by a later positive one where the defendant was ignorant of the delayed effect of alcohol and his consequent risk in driving, but his decision to continue driving was not made by reason of the result of the first test (*DPP v White* [1988] RTR 267, DC). Special reasons may be found, however, where the act or default of a third party contributed to the defendant's mistake: *R v Messom* [1973] RTR 140, CA (motorist asked for a large ginger ale topped up with a small whisky, but was given a small ginger ale topped up with a large brandy); *Alexander v Latter* [1972] RTR 441, DC (publican not warning defendant that a particular beer was of extra strength; although the case was described as borderline and was distinguished in *Adams v Bradley* [1975] RTR 233, DC, where the defendant gave no attention to the type or strength of lager that another had bought for him). Special reasons may also be found where the defendant's breath reading (40 micrograms) was only just at the figure justifying prosecution and that included 1.7 micrograms attributable to cough linctus that the defendant had taken in ignorance of the fact that it contained alcohol: *R v Cambridge Magistrates' Court, ex p Wong* [1992] RTR 382, DC. See also *Robinson v DPP* [2003] EWHC 2718 (Admin), (2004) 168 JP 522, DC (special reasons not established where person who did not consume alcohol for religious reasons drank punch mistakenly believed to be non-alcoholic, as there was duty to inquire whether drink contained alcohol).

The fact that a motorist had no idea that a combination of sleeping tablets and drink would produce a greater reaction in terms of her ability to drive than drink alone cannot be a special reason: *R v Scott* [1970] 1 QB 661, [1969] 2 All ER 450, CA. However, an injured motorist who took drugs not knowing he would be more susceptible to the effect of alcohol (see *Chapman v O'Hagan* [1949] 2 All ER 690, DC), and a motorist ignorant of the fact that prolonged exposure to trichloroethylene fumes would heighten the effect of later drinks (see *Brewer v Metropolitan Police Comr* [1969] 1 All ER 513, [1969] 1 WLR 267, DC) could plead special reasons.

12 If a motorist establishes that: (1) his drink was laced; (2) he did not know or suspect that it was laced; and (3) he would not have been over the prescribed limit but for the alcohol he unwittingly consumed, the court may find special reasons: *Pugsley v Hunter* [1973] 2 All ER 10, [1973] RTR 284, DC. The defendant cannot discharge the burden of proving special reasons in a laced drink case without calling medical evidence, unless a layman could reliably and confidently say that the lacing was responsible for the excess alcohol in the defendant's blood: *Pugsley v Hunter* supra at 291 per Lord Widgery CJ. See also *Smith v DPP* [1990] RTR 17, DC; *DPP v Younas* [1990] RTR 22n, DC; *DPP v O'Connor* [1992] RTR 66, DC. In responding to a submission of special reasons in a laced drink case, the prosecutor is entitled, if this can be done by straightforward and relatively simple evidence, to show that at the time of the offence the defendant's blood-alcohol concentration was higher than that shown in his certified analysis presented to the court: *Smith v Geraghty* [1986] RTR 222, DC.

Even if a court finds special reasons due to laced drinks, it may still in its discretion impose disqualification: *R v Newton* [1974] RTR 451, CA; *DPP v O'Connor* supra. In this respect it is relevant to consider whether the defendant should have realised that he was unfit to drive: *Pridige v Grant* [1985] RTR 196, DC; *DPP v Barker* [1990] RTR 1, DC; *Donahue v DPP* [1993] RTR 156, DC.

13 A genuine fear of contracting HIV as a result of blowing into the mouthpiece of an evidential breath-testing device is capable of amounting to special reasons, and while the failure to give that explanation at the time of the refusal will usually be a factor in the court's deliberations and may bear upon the bona fides of the defendant it does not exclude as a matter of law the possibility of a finding of special reasons: *DPP v Kinnersley* [1993] RTR 105, DC.

Special reasons existed where the defendant helped another to 'bump start' a motor cycle, drove it only 35 yards, was arrested on suspicion of theft, the owner went to the police station to exculpate the defendant but the latter was not told that the charge of theft was no longer being explored, the defendant was required to provide a specimen of breath for analysis and was warned of the consequences of failure but he was still focusing on the allegation of theft, and if the defendant had known the charge of theft was no longer being explored he might have taken a different view of the request for a specimen: *Daniels v DPP* [1992] RTR 140, DC.

Post-accident consumption of alcohol (which is no longer a defence to a drink-driving charge) cannot amount to a special reason for not supplying a specimen for analysis: *Courtman v Masterson* [1978] RTR 457, DC.

The fact that the defendant was not driving at the material time can amount to special reasons: *McCormick v Hitchins* [1988] RTR 182n, DC; *Bunyard v Hayes* [1985] RTR 348n, DC. However, where the defendant intended to drive and would have done so but for the intervention of another, justices may either conclude that there are no special reasons or find special reasons but decline to exercise their discretion not to endorse the defendant's licence: *R v Ashford and Tenterden Magistrates' Court, ex p Wood* [1988] RTR 178, DC.

14 Where a defendant was informed that he was not going to be prosecuted and consequently destroyed the sample of blood he had been given for analysis, but was then prosecuted on a prosecution analysis showing only marginal excess alcohol, there were special reasons for not ordering disqualification in that the defendant had been deprived of a possible defence: *R v Anderson* [1972] RTR 113, CA. Where, however, a defendant was informed six weeks after the incident that he would not be prosecuted and he destroyed his part specimen as a result, and he was then prosecuted on a prosecution analysis showing that he was more than twice the limit, the special reason was not such as to justify not imposing the normal disqualification: *Doyle v Leroux* [1981] RTR 438, DC. See, however, *Harding v Oliver* [1973] RTR 497, DC (held that *R v Anderson* supra was not to be extended beyond its own very special facts and loss of the defendant's part of the specimen was incapable of amounting to a special reason); *Lodwick v Brow* [1984] RTR 394, DC (held that the decision in *Doyle v Leroux* supra was per incuriam as *Harding v Oliver* supra had not been cited and it was not, therefore, to be looked upon as authority for the proposition that loss of a specimen can be treated as a special reason).

A mistaken, but genuine, belief that a constable, aware of the defendant's consumption of alcohol, wanted the defendant to move his car (because it was blocking a side turning), is capable of amounting to a special reason: *R v McIntyre* [1976] RTR 330, CA (distinguished in *De Munthe v Stewart* [1982] RTR 27, DC, where the defendant drove with excess alcohol before being asked to re-park his vehicle by the constable).

15 See the Road Traffic Offenders Act 1988 Sch 2 Pt I (as amended); and PARA 1049 ante.

16 As to the endorsement of licences see PARA 1080 et seq post.

17 Road Traffic Offenders Act 1988 s 47(1). The requirement to state the grounds is discretionary, not mandatory, and non-compliance does not provide grounds of appeal: *Barnes v Gevaux* [1981] RTR 236.

## UPDATE

### **1055-1066 In general ... Reduced disqualification period: alcohol ignition interlock programme orders**

Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/C. DISQUALIFICATION/1060. Offences involving discretionary disqualification and other powers of disqualification.

### **1060. Offences involving discretionary disqualification and other powers of disqualification.**

An offence involves discretionary disqualification if it is an offence under the road traffic legislation<sup>1</sup>, and either the word 'discretionary' without qualification appears in the schedule of offences<sup>2</sup> against the offence or that word appears there qualified by conditions or circumstances relating to the offence which are satisfied or obtain<sup>3</sup>.

The following offences involve discretionary disqualification:

1063 (1) contravening a temporary prohibition or restriction<sup>4</sup>;



- 1064 (2) using a special road contrary to a scheme or regulations if committed in respect of a motor vehicle otherwise than by unlawfully stopping or allowing the vehicle to remain at rest on a part of a special road on which vehicles are in certain circumstances permitted to remain at rest<sup>5</sup>;
- 1065 (3) contravening pedestrian crossing regulations if committed in respect of a motor vehicle<sup>6</sup>;
- 1066 (4) not stopping at a school crossing if committed in respect of a motor vehicle<sup>7</sup>;
- 1067 (5) contravening an order relating to a street playground if committed in respect of a motor vehicle<sup>8</sup>;
- 1068 (6) exceeding a speed limit<sup>9</sup>;
- 1069 (7) careless, and inconsiderate, driving<sup>10</sup>;
- 1070 (8) being in charge of a mechanically propelled vehicle<sup>11</sup> when unfit to drive through drink or drugs<sup>12</sup>;
- 1071 (9) being in charge of a motor vehicle with excess alcohol in the breath, blood or urine<sup>13</sup>;
- 1072 (10) failing to provide a specimen of breath for a breath test<sup>14</sup>;
- 1073 (11) failing to provide a specimen for analysis or laboratory test, except where the specimen was required to ascertain ability to drive or the proportion of alcohol at the time the offender was driving or attempting to drive<sup>15</sup>;
- 1074 (12) failing to allow a specimen to be subjected to laboratory test, except where the test would be for ascertaining the ability to drive or the proportion of alcohol at the time offender was driving or attempting to drive<sup>16</sup>;
- 1075 (13) leaving a vehicle in a dangerous position if committed in respect of a motor vehicle<sup>17</sup>;
- 1076 (14) unlawfully carrying a passenger on a motor cycle<sup>18</sup>;
- 1077 (15) failing to comply with traffic directions if committed in respect of a motor vehicle by failure to comply with a direction of a constable or traffic warden<sup>19</sup>;
- 1078 (16) failing to comply with traffic signs if committed in respect of a motor vehicle by failure to comply with an indication given by a sign specified for these purposes<sup>20</sup>;
- 1079 (17) using a vehicle in a dangerous condition etc<sup>21</sup>;
- 1080 (18) breach of a requirement as to brakes, steering-gear or tyres<sup>22</sup>;
- 1081 (19) driving otherwise than in accordance with a licence in a case where the offender's driving would not have been in accordance with any licence that could have been granted to him<sup>23</sup>;
- 1082 (20) driving after making a false declaration as to physical fitness<sup>24</sup>;
- 1083 (21) driving after failure to notify the Secretary of State<sup>25</sup> of the onset of, or deterioration in, a relevant or prospective disability<sup>26</sup>;
- 1084 (22) driving after the refusal of a licence, revocation of a licence or service of a notice<sup>27</sup>;
- 1085 (23) driving with uncorrected defective eyesight or refusing to submit to a test of eyesight<sup>28</sup>;
- 1086 (24) driving while disqualified<sup>29</sup>;
- 1087 (25) using a motor vehicle while uninsured or unsecured against third party risks<sup>30</sup>;
- 1088 (26) failing to stop after an accident and give particulars or report an accident<sup>31</sup>;
- 1089 (27) failure of a person keeping a vehicle and others to give the police information as to the identity of the driver etc in the case of certain offences<sup>32</sup>;
- 1090 (28) stealing or attempting to steal a motor vehicle<sup>33</sup>;
- 1091 (29) taking a conveyance without the consent of the owner or, knowing it has been so taken, driving it or allowing oneself to be carried in it<sup>34</sup>; and
- 1092 (30) going equipped for stealing committed with reference to the theft or taking of motor vehicles<sup>35</sup>.

Where a person is convicted of an offence involving discretionary disqualification and either: (a) the penalty points to be taken into account on that occasion number fewer than 12<sup>36</sup>; or (b) the offence is not one involving obligatory endorsement<sup>37</sup>, the court may order him to be disqualified for such period as it thinks fit<sup>38</sup>. This provision applies in relation to a conviction of an offence committed by aiding, abetting, counselling or procuring, or inciting to the commission of an offence involving obligatory disqualification<sup>39</sup>.

Disqualification may also be imposed in respect of:

- 1093 (i) certain offences where the court is satisfied that a motor vehicle was used (by the person convicted or by anybody else) for the purpose of committing, or facilitating the commission of, the offence<sup>40</sup>;
- 1094 (ii) common assault or any other offence involving an assault, including aiding, abetting, counselling or procuring, or inciting any such offence, where the court is satisfied that the assault was committed by driving a motor vehicle<sup>41</sup>;
- 1095 (iii) any offence instead of or in addition to dealing with the offender in any other way<sup>42</sup>; and
- 1096 (iv) default in payment of a sum adjudged to be paid by a conviction of a magistrates' court<sup>43</sup>.

1    Ie an offence under a provision of the Road Traffic Regulation Act 1984, the Road Traffic Act 1988, the Road Traffic (Consequential Provisions) Act 1988 or the Road Traffic Offenders Act 1988 specified in s 97, Sch 2 Pt I col 1 (as amended), or an offence specified in Sch 2 Pt II col 1 (as amended): see heads (1)-(30) in the text.

2    Ie in *ibid* Sch 2 Pt I col 5 (as amended), or Sch 2 Pt II col 2 (as amended).

3    *Ibid* s 97(2). For the meaning of 'disqualification' see PARA 1046 note 5 *ante*.

4    See PARA 758 *ante*. The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 16(1).

5    See PARA 764 *ante*. The offence referred to is an offence under *ibid* s 17(4). For the meaning of 'motor vehicle' see PARA 210 *ante*.

6    See PARA 778 *ante*. The offence referred to is an offence under *ibid* s 25(5).

7    See PARA 781 *ante*. The offence referred to is an offence under *ibid* s 28(3).

8    See PARA 782 *ante*. The offence referred to is an offence under *ibid* s 29(3) (as substituted).

9    See PARA 856 *ante*. The offence referred to is an offence under *ibid* s 89(1).

10   See PARA 971 *ante*. The offence referred to is an offence under the Road Traffic Act 1988 s 3 (as substituted).

11   As to the meaning of 'mechanically propelled vehicle' see PARA 211 *ante*.

12   See PARA 975 *ante*. The offence referred to is an offence under the Road Traffic Act 1988 s 4(2) (as amended).

13   See PARA 978 *ante*. The offence referred to is an offence under *ibid* s 5(1)(b).

14   See PARA 985 *ante*. The offence referred to is an offence under *ibid* s 6.

15   See PARA 986 *ante*. The offence referred to is an offence under *ibid* s 7 (as amended).

16   See PARA 987 *ante*. The offence referred to is an offence under *ibid* s 7A (as added).

17   See PARA 999 *ante*. The offence referred to is an offence under *ibid* s 22 (as amended).

18   See PARA 1001 *ante*. The offence referred to is an offence under *ibid* s 23 (as amended). For the meaning of 'motor cycle' see PARA 214 *ante*.

- 19 See PARA 642 ante. The offence referred to is an offence under *ibid* s 35. As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. As to traffic wardens see PARA 868 ante.
- 20 See PARA 643 ante. The offence referred to is an offence under *ibid* s 36 (as amended). A sign is specified for these purposes by regulations made under s 36 (as amended): see PARA 643 ante.
- 21 See PARA 625 ante. The offence referred to is an offence under *ibid* s 40A (as added).
- 22 See PARA 261 ante. The offence referred to is an offence under *ibid* s 41A (as added).
- 23 See PARA 444 ante. The offence referred to is an offence under *ibid* s 87(1) (as amended).
- 24 See PARA 455 ante. The offence referred to is an offence under *ibid* s 92(10) (as added).
- 25 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 26 See PARA 457 ante. The offence referred to is an offence under the Road Traffic Act 1988 s 94(3A) (as added).
- 27 See PARA 463 ante. The offence referred to is an offence under *ibid* s 94A (as added and amended).
- 28 See PARA 461 ante. The offence referred to is an offence under *ibid* s 96.
- 29 See PARA 481 ante. The offence referred to is an offence under *ibid* s 103(1)(b) (as substituted).
- 30 See PARA 937 ante. The offence referred to is an offence under *ibid* s 143 (as amended).
- 31 See PARA 645 ante. The offence referred to is an offence under *ibid* s 170(4).
- 32 See PARA 1026 ante. The offence referred to is an offence under *ibid* s 172 (as substituted and amended). Disqualification is discretionary for this offence if committed otherwise than by virtue of s 172(5) or (11) (as substituted): see PARA 1026 ante.
- 33 See PARA 1010 ante.
- 34 See PARA 1008 ante. The offence referred to is an offence under the Theft Act 1968 s 12 (as amended).
- 35 See PARA 1008 ante. The offence referred to is an offence under *ibid* s 25.
- 36 Road Traffic Offenders Act 1988 s 34(2)(a) (s 34(2) substituted by the Road Traffic Act 1991 s 29(1), (2)). As to the penalty points to be taken into account for an offence see PARA 1050 ante.
- 37 Road Traffic Offenders Act 1988 s 34(2)(b) (as substituted: see note 36 supra). For the meaning of 'offence involving obligatory endorsement' see PARA 1080 post.
- 38 *Ibid* s 34(2) (as substituted: see note 36 supra).
- 39 *Ibid* s 34(5). For the meaning of 'offence involving obligatory disqualification' see PARA 1058 ante.
- 40 Powers of Criminal Courts (Sentencing) Act 2000 s 147. This provision is amended, as from a day to be appointed, by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 71, 73, Sch 7. At the date at which this volume states the law no such day had been appointed.

This power is exercisable only by the Crown Court and is limited to offences punishable on indictment with imprisonment for a term of at least two years (including any such offence committed to the Crown Court for sentence by a magistrates' court): Powers of Criminal Courts (Sentencing) Act 2000 s 147(1). Facilitating the commission of an offence for the purposes of s 147 is taken to include the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection: s 147(6). Facilitating the commission of an offence also includes using a motor vehicle to pursue another car prior to assaulting its driver: *R v Rajesh Patel* (1994) 16 Cr App Rep (S) 756, CA. See also *R v Mathews* [1975] RTR 32, CA; *R v Brown (Edward)* [1975] RTR 36, CA; *R v Thomas (Derek)* [1975] RTR 38, CA; *R v Devine* (1990) 12 Cr App Rep (S) 235, CA; *R v Riley* [1984] Crim LR 40, CA; *R v Arif* (1985) 7 Cr App Rep (S) 92, CA. As to the length of disqualification where a vehicle was used, on a regular basis over a sustained period, to carry goods in the fraudulent evasion of duty see *R v Long* (9 December 1999) Lexis, CA (three years' disqualification upheld). A court which disqualifies an offender under this provision must require him to produce any driving licence he holds together with its counterpart or, in the case where he holds a Northern Ireland licence or a Community licence, his Northern Ireland licence or Community licence and its counterpart (if any): Powers of Criminal Courts (Sentencing) Act 2000 s 147(5) (amended by the Crime (International Co-operation)

Act 2003 s 91(1), Sch 5 paras 72, 74, Sch 6). For the meaning of 'Northern Ireland licence' see PARA 443 note 7 ante; for the meaning of 'counterpart' see PARA 415 note 19 ante; and for the meaning of 'Community licence' see PARA 415 note 16 ante (definitions applied by ss 146(5), 147(7)).

References to counterpart in s 147(5) and to the definition of 'counterpart' are repealed as from a day to be appointed: ss 146(5), 147(5), (7) (amended by the Road Safety Act 2006 Sch 3 paras 72, 73, Sch 7). At the date at which this volume states the law no such day had been appointed.

41 Powers of Criminal Courts (Sentencing) Act 2000 s 147(2), (4). A court which disqualifies an offender under this provision must require him to produce any driving licence he holds together with its counterpart or, in the cases where he holds a Community licence, his Community licence and its counterpart (if any): see note 40 supra.

42 Ibid s 146(1). Where the sentence for the offence is fixed by a law, or is a minimum mandatory sentence under s 109(2), s 110(2) or s 111(2), s 146(1) has effect as if the words 'instead of or' were omitted. A court may not make an order under this provision unless it has been notified by the Secretary of State that the power to make such orders is exercisable by the court and the notice has not been withdrawn: s 146(3). A court which disqualifies an offender under this provision must require him to produce any driving licence he holds together with its counterpart: s 146(4) (amended by the Crime (International Co-operation) Act 2003 Sch 5 para 73, Sch 6). As from a day to be appointed, the references to counterpart in the Powers of Criminal Courts (Sentencing) Act 2000 s 146(4) (as amended) are repealed: s 146(4) (amended by the Road Safety Act 2006 Sch 3 para 72, Sch 7). At the date at which this volume states the law no such day had been appointed. The power to disqualify under the Powers of Criminal Courts (Sentencing) Act 2000 s 146 (as amended) is not limited to a particular offence; nor is it necessary that the offence is connected with the use of a motor vehicle: *R v Cliff* [2004] EWCA Crim 3139, [2005] RTR 147. See also *R v Waring* [2005] EWCA Crim 1080, [2006] 1 Cr App Rep (S) 56.

43 Crime (Sentences) Act 1997 s 40 (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9, PARA 185 and the Proceeds of Crime Act 2002 s 456, Sch 11 paras 1, 32(1), (3)). This provision is repealed, as from a day to be appointed, by the Criminal Justice Act 2003 ss 303(b)(iii), 332, Sch 37 Pt 7. At the date at which this volume states the law no such day had been appointed.

A court may not make an order under this provision unless it has been notified by the Secretary of State that the power to make such orders is exercisable by the court and the notice has not been withdrawn: Crime (Sentences) Act 1997 s 40(3). Section 40 (as amended) applies only to offences committed on or after 1 January 1998: see the Crime (Sentences) Act 1997 (Commencement No 2 and Transitional Provisions Order 1997, SI 1997/2200, art 3. It does not apply to sums ordered to be paid under the Criminal Justice Act 1988 s 71 (as amended), the Drug Trafficking Act 1994 s 2 (as amended) or the Proceeds of Crime Act 2002 s 6: Crime (Sentences) Act 1997 s 40(1)(a) (amended by the Proceeds of Crime Act 2002 s 456, Sch 11 paras 1, 32(1), (3)). The power to disqualify under this provision is exercisable where a magistrates' court would, but for the Powers of Criminal Courts (Sentencing) Act 2000 s 89 have power under the Magistrates' Courts Act 1980 Pt III (ss 75-96A) (as amended) (see MAGISTRATES) to issue a warrant of commitment for default: Crime (Sentences) Act 1997 s 40(1)(b) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 185). As from a day to be appointed, this provision is further amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II paras 135, 140. At the date at which this volume states the law no such day had been appointed. The court may then, instead of issuing a warrant of commitment or proceeding under the Magistrates' Courts Act 1980 s 81 (as amended) (enforcement of fines imposed on young offenders), disqualify the defaulter for up to 12 months: Crime (Sentences) Act 1997 s 40(2). The Secretary of State may by order made by statutory instrument vary the aforementioned period, provided a draft of the order has been laid before and approved by resolution of each House of Parliament: s 40(5). On payment of the whole of the outstanding sum the order ceases to have effect: s 40(4)(a). Part payment reduces the period of disqualification proportionately, rounded down to the nearest number of complete weeks or months: s 40(4)(b). A court which disqualifies an offender under this provision must require him to produce any driving licence he holds together with its counterpart: s 40(6) (substituted by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 185(1), (3)).

## UPDATE

### **1055-1066 In general ... Reduced disqualification period: alcohol ignition interlock programme orders**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

## **1060 Offences involving discretionary disqualification and other powers of disqualification**

TEXT AND NOTE 41--See further Serious Crime Act 2007 Sch 6 para 39 (references to common law offence of incitement).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/C. DISQUALIFICATION/1061. Procedure and general principles in relation to disqualification.

### **1061. Procedure and general principles in relation to disqualification.**

An order for disqualification does not need to be attached to a separate sentence of the court<sup>1</sup>.

If a court is considering the imposition of a period of disqualification which the defendant or his counsel might not be anticipating, it should in fairness warn the defendant and afford him an opportunity to make representations as to why he should not be disqualified<sup>2</sup>.

A magistrates' court may not in a person's absence impose any disqualification upon him except on resumption of the hearing; and where a trial is adjourned in pursuance of this provision the notice of the time and place of the resumed hearing must include notice of the reason for the adjournment<sup>3</sup>.

It is not possible to impose discretionary disqualification unless the penalty points to be taken into account on that occasion number fewer than 12, or the offence is not one involving obligatory endorsement<sup>4</sup>.

Subject to the minimum periods prescribed for offences involving obligatory disqualification<sup>5</sup> and for disqualification for repeated offences<sup>6</sup>, the court may disqualify for such period as it thinks fit<sup>7</sup>.

Disqualification commences from the moment that it is announced<sup>8</sup> and runs concurrently with any other order of disqualification imposed on that or a previous occasion<sup>9</sup>.

Offences for which disqualification or endorsement is a proper penalty should not be taken into consideration when an offender is being sentenced for another offence<sup>10</sup>.

1 *R v Bignell* (1967) 52 Cr App Rep 10, CA. See, however, *R v Surrey Quarter Sessions, ex p Metropolitan Police Comr* [1963] 1 QB 990, [1962] 1 All ER 825, DC, in which it was held that an order of disqualification is not a sentence except where it falls to be so regarded by virtue of particular statutory provisions.

2 *R v Ireland* [1989] Crim LR 458; *R v Scott* [1989] Crim LR 920, CA.

3 Magistrates' Courts Act 1980 s 11(4). A person may not be convicted in his absence and disqualified in the same proceedings; there must be an adjournment under what is now s 11(4): *R v Afan Justices, ex p Chaplin* [1983] RTR 168, DC. See also *R v Totton Justices, ex p McDiarmant* [1958] Crim LR 543; *R v Llandrindod Wells Justices, ex p Gibson* [1968] 2 All ER 20, [1968] 1 WLR 598, DC; *R v Mason* [1965] 2 All ER 308, DC. See, however, *R v Macclefield Justices, ex p Jones* [1983] RTR 143, DC (application for judicial review refused where the defendant had been given an ample opportunity to defend himself over a long period and had deliberately elected to go abroad on business; the only effect of his absence was that the justices would have had to adjourn the hearing yet again to deal with the question of disqualification; the defendant was liable to a minimum period of three years disqualification in the absence of special reasons; there was no indication or possibility of raising special reasons; therefore, it was futile to send the case back to the justices to consider the question of disqualification in the defendant's presence).

Where an order for disqualification is invalid because the defendant is not given an opportunity to be heard on the question of disqualification and the defendant, ignorant of its invalidity, subsequently pleads guilty to

driving in contravention of that disqualification, a quashing order (formerly known as an order of certiorari) may be made to quash the latter as well as the former conviction: *R v Middleton, Bromley and Bexley Justices, ex p Collins* [1970] 1 QB 216, [1969] 3 All ER 800, DC.

4 Road Traffic Offenders Act 1988 s 34(2) (substituted by the Road Traffic Act 1991 s 29(1), (2)). As to the number of penalty points to be taken into account see PARA 1050 ante. In *Jones v Chief Constable West Mercia Police Authority* [2000] All ER (D) 1344, (2000) 165 JP 6, DC, the court resolved the circular difficulty arising from the fact that discretionary disqualification cannot be imposed unless the penalty points to be taken into account on that occasion number fewer than 12 (ie under the Road Traffic Offenders Act 1988 s 34(2) (as substituted)), but the number of penalty points to be taken into account on that occasion will not include any (normally) attributable to any offence in respect of which a disqualification order is made (ie under s 29(1)(a) (as substituted) (see PARA 1050 ante)), by holding: (1) the regimes under s 34 (as amended) and s 35 (as amended) ran in parallel and were not mutually exclusive; (2) when faced with a choice between the two, justices should first consider their powers under s 34 (as amended) and should only consider the current offence; (3) the discretion whether or not to disqualify should, however, be exercised in the light of the offender's entire record; and (4) therefore, if the justices concluded that the defendant was a repeat offender and a longer period of disqualification was appropriate, they had the discretion not to disqualify under s 34 (as amended) and to impose penalty points.

5 For offences involving obligatory disqualification see PARA 1058 ante. As to reduced disqualification for attendance at a course see PARA 1062 post; as to suspension of disqualification pending appeal see PARA 1074 post; as to removal of disqualification see PARA 1078 post; and as to the effect of orders of disqualification see PARA 1072 post.

6 As to disqualification for repeated offences see PARA 1070 post.

7 The court cannot disqualify for an indefinite period: *R v Fowler* [1937] 2 All ER 380, 26 Cr App Rep 80, CCA. Disqualification for life is, however, for a certain period and is therefore permissible: *R v Tunde-Orlarinde* [1967] 2 All ER 491n, [1967] 1 WLR 911, CA. Disqualification for life is wrong, however, unless there are unusual circumstances: *R v North* [1971] RTR 366, CA. See also *R v Tantrum* (1989) 11 Cr App Rep (S) 348, CA; *R v Devall* (1992) 13 Cr App Rep (S) 598, CA; *R v Lark* (1993) 14 Cr App Rep (S) 196, CA; *R v Rivano* (1993) 14 Cr App Rep (S) 578, CA; *R v Fazal* [1999] 1 Cr App Rep (S) 152, CA.

Where a defendant is shown by his bad driving to be a menace, a sufficiently long period of disqualification is necessary to allow him to mature: *R v Gibbons* (1987) 9 Cr App Rep (S) 21, CA. Multiple drink-driving convictions may also justify a very long period of disqualification: *R v McClaughlin* [1978] RTR 452, [1978] Crim LR 300, CA (20 years upheld on a driver with a drink problem convicted of four drink-driving offences committed on three different occasions, who had three previous drink-driving convictions); *R v Ealing Justices, ex p Scrafield* [1994] RTR 195, DC (ten years' disqualification not irrational, harsh or oppressive for a third drink-driving conviction within two years). It is accepted sentencing policy, however, that with persons who seem incapable of leaving motor vehicles alone periods of disqualification that extend substantially beyond their release from prison may well invite them to commit further offences and thus be counter-productive and contrary to the public interest: *R v Thomas* [1983] 3 All ER 756, 5 Cr App Rep (S) 354, CA; followed in *R v Matthews* (1987) 9 Cr App Rep (S) 1, CA. See also *R v Shirley* [1969] 3 All ER 678, [1969] 1 WLR 1357, CA; *R v Pashley* [1974] RTR 149, CA; *R v West* (1986) 8 Cr App Rep (S) 266, CA; *R v Russell (Ian)* [1993] RTR 249n, CA. This principle has been followed in respect of a defendant who might in future want to earn his living from driving, even though he had not previously done so: *R v King* [1993] RTR 245, (1992) 13 Cr App Rep (S) 668, CA.

Where the complaint is solely as to the length of disqualification, the appropriate course is to appeal to the Crown Court; the Divisional Court will only interfere and grant judicial review if the length of the order was 'truly astonishing': *R v Croydon Crown Court, ex p Miller* (1986) 85 Cr App Rep 152 at 155 per Watkins LJ; *R v Ealing Justices, ex p Scrafield* supra at 202 per Evans LJ. The same test applies to appeals by way of case stated: *Universal Salvage Ltd v Boothby* [1984] RTR 289; *Tucker v DPP* [1992] 4 All ER 901, [1994] RTR 203n, DC. See also *R v St Alban's Crown Court, ex p O'Donovan* [2000] 1 Cr App Rep (S) 344, DC (20 month's disqualification wholly disproportionate to the gravity of a drink-driving offence in which special reasons had been found not to impose obligatory disqualification).

8 *R v Phillips* [1955] 3 All ER 273n, [1955] 1 WLR 1103, CCA; *R v Bradley* [1961] 1 All ER 669, [1961] 1 WLR 398, CCA; *R v Meese* [1973] 2 All ER 1103, [1973] 1 WLR 675, CA; *R v Kent* [1983] 3 All ER 1, [1983] 1 WLR 794, CA.

9 *R v Kent* [1983] 3 All ER 1, [1983] 1 WLR 794, CA; *R v Sandwell* [1985] RTR 45.

10 *R v Collins* [1947] KB 560, [1947] 1 All ER 147, CCA; *R v Simons* [1953] 2 All ER 599, sub nom *R v Simons and Simons* [1953] 1 WLR 1014, CCA. However, a court may take into consideration another offence of a similar kind: *R v Jones* [1970] 3 All ER 815, [1970] 1 WLR 1494, CA. If such an offence is so taken into consideration it does not entitle the court to impose disqualification if the offence for which sentence is being passed is not disqualifiable: *R v Williams* [1962] 3 All ER 639, [1962] 1 WLR 1268, CCA.

**UPDATE****1055-1066 In general ... Reduced disqualification period: alcohol ignition interlock programme orders**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

**1061 Procedure and general principles in relation to disqualification**

TEXT AND NOTE 3--1980 Act s 11(4) amended, s 11(5) added: Criminal Justice and Immigration Act 2008 s 54(4), (6).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/C. DISQUALIFICATION/1062. Reduced disqualification period for attendance at courses.

**1062. Reduced disqualification period for attendance at courses.**

The following provisions apply until a day to be appointed<sup>1</sup>.

Where a person is convicted of an offence of causing death by careless driving when under the influence of drink or drugs<sup>2</sup>, driving or being in charge when under the influence of drink or drugs<sup>3</sup>, driving or being in charge with excess alcohol<sup>4</sup> or failing to provide a specimen<sup>5</sup> and the court makes an order<sup>6</sup> disqualifying him for a period of not less than 12 months<sup>7</sup>, the court may make an order that the period of disqualification imposed<sup>8</sup> must be reduced if, by a date specified in the order, the offender satisfactorily completes a course approved by the Secretary of State<sup>9</sup> for these purposes and specified in the order<sup>10</sup>.

The reduction made by such an order in a period of disqualification<sup>11</sup> must be a period specified in the order of not less than three months and not more than one quarter of the unreduced period<sup>12</sup>.

The court may not make an order under this provision unless:

- 1097 (1) it is satisfied that a place on the course specified in the order will be available for the offender<sup>13</sup>;
- 1098 (2) the offender appears to the court to be of or over the age of 17<sup>14</sup>;
- 1099 (3) the court has explained the effect of the order to the offender in ordinary language, and has informed him of the amount of the fees for the course and of the requirement that he must pay them before beginning the course<sup>15</sup>; and
- 1100 (4) the offender has agreed that the order should be made<sup>16</sup>.

The date specified in such an order as the latest date for completion of a course must be at least two months before the last day of the period of disqualification as reduced by the order<sup>17</sup>. The order must name the petty sessions area in which the offender resides or will reside<sup>18</sup>.

- 1 The Road Traffic Offenders Act 1988 s 34A (as added) is substituted by the Road Safety Act 2006 s 35, as from a day to be appointed: see PARA 1064 post. At the date at which this volume states the law no such day had been appointed.
- 2 le an offence under the Road Traffic Act 1988 s 3A (as added): see PARA 974 ante.
- 3 le an offence under ibid s 4 (as amended): see PARA 975 ante.
- 4 le an offence under ibid s 5: see PARA 978 ante.
- 5 le an offence under ibid s 7 (as amended): see PARA 988 ante.
- 6 le an order under ibid s 34 (as amended): see PARA 1058 ante.
- 7 Road Traffic Offenders Act 1988 s 34A(1) (s 34A added by the Road Traffic Act 1991 s 30).
- 8 le imposed under the Road Traffic Offenders Act 1988 s 34 (as amended): see PARA 1058 ante. For the meaning of 'disqualification' see PARA 1046 note 5 ante.
- 9 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 10 Road Traffic Offenders Act 1988 s 34A(2) (as added: see note 7 supra).
- 11 le imposed under ibid s 34 (as amended): see PARA 1058 ante.
- 12 Ibid s 34A(3) (as added: see note 7 supra). Accordingly, where the period imposed under s 34 (as amended) is 12 months, the reduced period is nine months: s 34A(3) (as so added).
- 13 Ibid s 34A(4)(a) (as added: see note 7 supra).
- 14 Ibid s 34A(4)(b) (as added: see note 7 supra).
- 15 Ibid s 34A(4)(c) (as added: see note 7 supra).
- 16 Ibid s 34A(4)(d) (as added: see note 7 supra).
- 17 Ibid s 34A(5) (as added: see note 7 supra).
- 18 Ibid s 34A(6) (as added: see note 7 supra).

## UPDATE

### **1055-1066 In general ... Reduced disqualification period: alcohol ignition interlock programme orders**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/C. DISQUALIFICATION/1063. Certificates of completion of courses.

### **1063. Certificates of completion of courses.**

The following provisions apply until a day to be appointed<sup>1</sup>.



An offender is to be regarded<sup>2</sup> as having completed a course satisfactorily if, and only if, a certificate that he has done so is received by the proper officer of the supervising court<sup>3</sup> before the end of the period of disqualification<sup>4</sup>. If the certificate referred to above is received by the proper officer of the supervising court before the end of the period of disqualification<sup>4</sup> but after the end of the period as it would have been reduced by the order, the order has effect as if the reduced period ended with the day on which the certificate is received by the proper officer<sup>5</sup>. The certificate must be in such form, containing such particulars, and given by such person, as may be prescribed by, or determined in accordance with, regulations made by the Secretary of State<sup>6</sup>. A course organiser<sup>7</sup> must give the certificate to the offender not later than 14 days after the date specified in the order as the latest date for completion of the course, unless the offender fails to make due payment of the fees for the course, fails to attend the course in accordance with the organiser's reasonable instructions, or fails to comply with any other reasonable requirements of the organiser<sup>8</sup>. Where a course organiser decides not to give the certificate, he must give written notice of his decision to the offender as soon as possible, and in any event not later than 14 days after the date specified in the order as the latest date for completion of the course<sup>9</sup>. If 14 days after the date specified in the order as the latest date for completion of the course the course organiser has given neither the certificate of completion nor such a notice, the offender may, within such period as may be prescribed by rules of court, apply to the supervising court for a declaration that the course organiser is in default<sup>10</sup>. Where the proper officer of a court receives a certificate, or a court grants an application<sup>11</sup>, the proper officer or court must send notice of that fact to the Secretary of State; and the notice must be sent in such manner and to such address, and must contain such particulars, as the Secretary of State may determine<sup>12</sup>.

1 The Road Traffic Offenders Act 1988 ss 34A-34C (as added) are substituted by the Road Safety Act 2006 s 35, as from a day to be appointed: see PARA 1064 et seq post. At the date at which this volume states the law no such day had been appointed.

2 le for the purposes of the Road Traffic Offenders Act 1988 s 34A (as added): see PARA 1062 ante.

3 'Proper officer' in relation to a magistrates' court in England and Wales, means the justices' chief executive for the court: *ibid* s 34C(2) (s 34C added by the Road Traffic Act 1991 s 30; definition added by the Access to Justice Act 1999 s 90(1), Sch 13 paras 140, 146). 'Supervising court', in relation to an order under the Road Traffic Offenders Act 1988 s 34A (as added and amended) (see PARA 1062 ante), means in England and Wales, a magistrates' court acting for the petty sessions area named in the order as the area where the offender resides or will reside: s 34C(2) (as so added; definition amended by the Access to Justice Act 1999 s 106, Sch 15 Pt V Table (7)).

4 Road Traffic Offenders Act 1988 s 34B(1) (s 34B added by the Road Traffic Act 1991 s 30; and the Road Traffic Offenders Act 1988 s 34B(1) amended by the Access to Justice Act 1999 Sch 13 para 145(1), (2)). The period of disqualification referred to is that imposed under the Road Traffic Offenders Act 1988 s 34 (as amended): see PARA 1058 ante. For the meaning of 'disqualification' see PARA 1046 note 5 ante.

5 le imposed under *ibid* s 34 (as amended): see PARA 1058 ante.

6 *Ibid* s 34B(2) (as added: see note 4 supra).

7 *Ibid* s 34B(3) (as added: see note 4 supra). The Road Traffic (Courses for Drink-Drive Offenders) Regulations 1992, SI 1992/3013, are made under the Road Traffic Offenders Act 1988 s 34B(3) (as added).

Any power to make regulations under ss 34B, 34C (as added and amended): (1) includes power to make different provision for different cases, and to make such incidental or supplemental provision as appears to the Secretary of State to be necessary or expedient; and (2) is exercisable by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament: s 34C(3) (as added: see note 3 supra). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

8 'Course organiser', in relation to a course, means the person who, in accordance with regulations made by the Secretary of State, is responsible for giving the certificates mentioned in *ibid* s 34B(1) (as added) in respect of the completion of the course: s 34C(2) (as added: see note 3 supra). The Road Traffic (Courses for Drink-Drive Offenders) Regulations 1992, SI 1992/3013, are made under the Road Traffic Offenders Act 1988 s 34C(2) (as added).

The Secretary of State may issue guidance to course organisers, or to any category of course organiser as to the conduct of courses approved for the purposes of s 34A (as added); and: (1) course organisers must have regard to any such guidance; and (2) in determining for the purposes of s 34B(6) (as added) (see note 10 *infra*) whether any instructions or requirements of an organiser were reasonable, a court must have regard to any guidance given to him under this provision: s 34C(1) (as so added).

9 Ibid s 34B(4) (as added: see note 4 *supra*).

10 Ibid s 34B(5) (as added: see note 4 *supra*). Such a notice must specify the ground on which it is given, and the Secretary of State may by regulations make provision as to the form of notices and as to the circumstances in which they are to be treated as given: s 34B(8) (as so added). The Road Traffic (Courses for Drink-Drive Offenders) Regulations 1992, SI 1992/3013, are made under the Road Traffic Offenders Act 1988 s 34B(8) (as so added). An offender to whom a notice is given under s 34B(5) (as added) may, within such period as may be prescribed by rules of court, apply to the supervising court for a declaration that the course organiser's decision not to give a certificate was contrary to s 34B(4) (as added); and if the court grants the application s 34A (as added) (see PARA 1062 *ante*) has effect as if the certificate had been duly received by the clerk of the court: s 34B(6) (as so added).

An application to the supervising court under s 34B(6), (7) (as added) must be served on the clerk of that court within 28 days after the date specified in an order under s 34A(2) (as added) (see PARA 1062 *ante*): see CrimPR r 55.3(1). An application under the Road Traffic Offenders Act 1988 s 34B(6) (as added) must be accompanied by the notice under s 34B(5) (as added): CrimPR r 55.3(2). On being served with such an application, the clerk of the court must: (1) fix a date and time for the hearing of the application; (2) serve a copy of the application on the course organiser; and (3) serve notice of the hearing on the applicant and course organiser: CrimPR r 55.3(3). If the course organiser fails to appear or be represented at the hearing of the application without reasonable excuse, the court may proceed to decide the application in his absence: CrimPR r 55.3(4).

11 Road Traffic Offenders Act 1988 s 34B(7) (as added: see note 4 *supra*). If the court grants the application, s 34A (as added) (see PARA 1062 *ante*) has effect as if the certificate had been duly received by the clerk of the court: s 34B(7) (as so added). As to references to the clerk see note 2 *supra*.

12 *Ie* under ibid s 34B(6) or (7) (as added).

13 Ibid s 34B(9) (as added: see note 4 *supra*).

## UPDATE

### **1055-1066 In general ... Reduced disqualification period: alcohol ignition interlock programme orders**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/C. DISQUALIFICATION/1064. Reduced disqualification period for attendance at courses: replacement provisions.

### **1064. Reduced disqualification period for attendance at courses: replacement provisions.**

The following provisions take effect as from a day to be appointed<sup>1</sup>.

Where: (1) a person is convicted of a relevant drink offence<sup>2</sup> or a specified offence<sup>3</sup> by or before a court; and (2) the court makes an order<sup>4</sup> disqualifying him for a period of not less than 12 months<sup>5</sup>, the court may make an order that the period of disqualification ('the unreduced

period') is to be reduced if, by the relevant date<sup>6</sup>, the offender satisfactorily completes an approved course<sup>7</sup> specified in the order<sup>8</sup>. The reduction made in a period of disqualification by an order under these provisions is a period specified in the order of not less than three months and not more than one quarter of the unreduced period (and, accordingly, where the unreduced period is 12 months, the reduced period is nine months)<sup>9</sup>.

A court may not make an order in the case of an offender convicted of a specified offence if<sup>10</sup>: (a) the offender has, during the period of three years ending with the date on which the offence was committed, committed a specified offence and successfully completed an approved course<sup>11</sup> on conviction of that offence<sup>12</sup>; or (b) the specified offence was committed during his probationary period<sup>13</sup>.

A court may not make an order under these provisions in the case of an offender unless<sup>14</sup>: (i) the court is satisfied that a place on the course specified in the order will be available for the offender<sup>15</sup>; (ii) the offender appears to the court to be of or over the age of 17<sup>16</sup>; (iii) the court has informed the offender (orally or in writing and in ordinary language) of the effect of the order and of the amount of the fees which he is required to pay for the course and when he must pay them<sup>17</sup>; and (iv) the offender has agreed that the order should be made<sup>18</sup>.

If an application is made to the appropriate national authority for the approval of a course for the above purposes, the appropriate national authority must decide whether to grant or refuse the application<sup>19</sup>. In reaching that decision the appropriate national authority must have regard to the nature of the course and to whether the course provider<sup>20</sup> is an appropriate person to provide the course and administer its provision efficiently and effectively, and may take into account any recommendations made by any persons appointed to consider the application<sup>21</sup>.

A course may be approved subject to conditions specified by the appropriate national authority<sup>22</sup>. An approval of a course is for the period specified by the appropriate national authority (which must not exceed seven years), subject to withdrawal of approval<sup>23</sup>.

Regulations made by the appropriate national authority may make provision in relation to the approval of courses and may, in particular, include provision: (A) in relation to the making of applications for approval; (B) for the payment in respect of applications for approval, or of approvals (or of both), of fees of such amounts as are prescribed by the regulations; (C) specifying the maximum fees that a person may be required to pay for a course and by when they are to be paid; (D) for the monitoring of courses and course providers; (E) in relation to withdrawing approval; (F) for an appeal to lie to the Transport Tribunal<sup>24</sup> against a refusal of an application for approval, the imposition of conditions on the grant of such an application or the withdrawal of approval; and (G) authorising the appropriate national authority to make available (with or without charge) information about courses and course providers<sup>25</sup>.

The appropriate national authority may issue guidance to course providers, or to any category of course provider, as to the conduct of courses approved for the above purposes<sup>26</sup>. Course providers must have regard to any such guidance given to them<sup>27</sup>; and in determining<sup>28</sup> whether any instructions or requirements of a course provider were reasonable, a court must have regard to any guidance given to him under this provision<sup>29</sup>.

1 The Road Traffic Offenders Act 1988 ss 34A, 34B, 34C (as added) (see PARA 1062 ante) are substituted, and s 34BA is added, by the Road Safety Act 2006 s 35 as from a day to be appointed by order under s 61(1). At the date at which this volume states the law no such day had been appointed.

2 'Relevant drink offence' means: (1) an offence under the Road Traffic Act 1988 s 3A(1)(a) (as added) (causing death by careless driving when unfit to drive through drink) committed when unfit to drive through drink (see PARA 974 ante); (2) an offence under s 3A(1)(b) (as added) (causing death by careless driving with excess alcohol) (see PARA 974 ante); (3) an offence under s 3A(1)(c) (as added) (failing to provide a specimen) where the specimen is required in connection with drink or consumption of alcohol (see PARA 974 ante); (4) an offence under s 4 (as amended) (driving or being in charge when under influence of drink) committed by reason of unfitness through drink (see PARA 975 ante); (5) an offence under s 5(1) (driving or being in charge with excess alcohol) (see PARA 978 ante); (6) an offence under s 7(6) (failing to provide a specimen) committed in the

course of an investigation into an offence within any of heads (1)-(5) supra (see PARA 988 ante); or (7) an offence under s 7A(6) (as added) (failing to allow a specimen to be subjected to a laboratory test) in the course of an investigation into an offence within any of heads (1)-(6) supra (see PARA 987 ante): Road Traffic Offenders Act 1988 s 34A(2) (as substituted: see note 1 supra).

3 'Specified offence' means: (1) an offence under the Road Traffic Act 1988 s 3 (as substituted) (careless, and inconsiderate, driving: see PARA 971 ante); (2) an offence under s 36 (as amended) (failing to comply with traffic signs: see PARA 643 ante); (3) an offence under the Road Traffic Regulation Act 1984 s 17(4) (use of special road contrary to scheme or regulations: see PARA 764 ante); or (4) an offence under s 89(1) (exceeding speed limit: see PARA 856 ante): Road Traffic Offenders Act 1988 s 34A(3) (as substituted: see note 1 supra). The Secretary of State may by regulations amend s 34A(3) (as substituted) by adding other offences or removing offences: s 34A(4) (as so substituted).

4 le under ibid s 34 (as amended): see PARA 1058 ante.

5 Ibid s 34A(1) (as substituted: see note 1 supra). The Secretary of State may by regulations make provision amending s 34A(1)(b) (as substituted) (see head (2) in the text) by substituting for the period for the time being specified there a different period: s 34C(2)(a) (as so substituted). Any power to make regulations under s 34A (as substituted), s 34B (as substituted), s 34BA (as added) or s 34C (as substituted) includes power to make different provision for different cases, and to make such incidental or supplementary provision as appears necessary or appropriate: s 34C(4) (as so substituted). Any power to make regulations under s 34A (as substituted), s 34B (as substituted), s 34BA (as added) or s 34C (as substituted) is exercisable by statutory instrument: s 34C(5) (as so substituted). No regulations may be made under s 34A (as substituted) or s 34C (as substituted) unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament: s 34C(6) (as so substituted).

6 For these purposes, 'the relevant date' means such date, at least two months before the last day of the period of disqualification as reduced by the order, as is specified in the order: ibid s 34A(6) (as substituted: see note 1 supra).

7 'An approved course' means a course approved by the appropriate national authority for the purposes of ibid s 34A (as substituted) in relation to the description of offence of which the offender is convicted: s 34A(6) (as substituted: see note 1 supra). 'Appropriate national authority' means (as respects Wales) the Welsh Ministers and (otherwise) the Secretary of State: s 34C(3) (as so substituted). As to the Secretary of State see PARA 236 ante. As to the Welsh Ministers see PARA 237 ante.

8 Ibid s 34A(5) (as substituted: see note 1 supra).

9 Ibid s 34A(7) (as substituted: see note 1 supra). The Secretary of State may by regulations make provision amending s 34A(7) (as substituted) by substituting for the period for the time being specified there a different period, or by substituting for the fraction of the unreduced period for the time being specified there a different fraction of that period, (or by doing both): s 34C(2)(b) (as so substituted). As to the making of regulations see note 5 supra.

10 Ibid s 34A(8) (as substituted: see note 1 supra).

11 le pursuant to an order made under ibid s 34A (as substituted) or s 30A (as added) (see PARA 1052 ante).

12 Ibid s 34A(8)(a) (as substituted: see note 1 supra). The Secretary of State may by regulations make provision amending s 34A(8)(a) (as substituted) by substituting for the period for the time being specified there a different period: s 34C(2)(c) (as so substituted). As to the making of regulations see note 5 supra.

13 Ibid s 34A(8)(b) (as substituted: see note 1 supra). For the meaning of 'probationary period' see PARA 513 ante; definition applied by s 34C(3) (as so substituted).

14 Ibid s 34A(9) (as substituted: see note 1 supra).

15 Ibid s 34A(9)(a) (as substituted: see note 1 supra).

16 Ibid s 34A(9)(b) (as substituted: see note 1 supra).

17 Ibid s 34A(9)(c) (as substituted: see note 1 supra).

18 Ibid s 34A(9)(d) (as substituted: see note 1 supra).

19 Ibid s 34BA(1) (as added: see note 1 supra).

- 20 'Course provider', in relation to a course, means the person by whom it is, or is to be, provided: *ibid* s 34C(3) (as substituted: see note 1 *supra*).
- 21 *Ibid* s 34BA(2) (as added: see note 1 *supra*).
- 22 *Ibid* s 34BA(3) (as added: see note 1 *supra*).
- 23 *Ibid* s 34BA(4) (as added: see note 1 *supra*).
- 24 As to the constitution, powers and proceedings of the Transport Tribunal see PARAS 253-258 *ante*.
- 25 Road Traffic Offenders Act 1988 s 34BA(5) (as added: see note 1 *supra*). As to the making of regulations see note 5 *supra*. A statutory instrument containing regulations made under s 34BA (as added) by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament: s 34C(7) (as substituted: see note 1 *supra*).
- 26 *Ibid* s 34C(1) (as substituted: see note 1 *supra*).
- 27 *Ibid* s 34C(1)(a) (as substituted: see note 1 *supra*).
- 28 *Ie* for the purposes of *ibid* s 34B (as substituted): see PARA 1065 *post*.
- 29 *Ibid* s 34C(1)(b) (as substituted: see note 1 *supra*).

## UPDATE

### **1055-1066 In general ... Reduced disqualification period: alcohol ignition interlock programme orders**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1064 Reduced disqualification period for attendance at courses: replacement provisions**

TEXT AND NOTE 24--Reference to Transport Tribunal is now to First-tier Tribunal: Road Traffic Offenders Act 1988 s 34BA(5) (amended by SI 2009/1885).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/C. DISQUALIFICATION/1065. Certificates of completion of courses: replacement provisions.

### **1065. Certificates of completion of courses: replacement provisions.**

The following provisions take effect as from a day to be appointed<sup>1</sup>.

An offender is to be regarded<sup>2</sup> as having completed a course satisfactorily if (and only if) a certificate<sup>3</sup> that he has done so is received by the proper officer<sup>4</sup> of the supervising court<sup>5</sup> before the end of the unreduced period<sup>6</sup>. If a certificate is so received before the end of the unreduced period but after the end of the period which would (apart from this provision) be the reduced period, the reduced period is to be taken to end with the day on which the certificate is so received<sup>7</sup>.

A course provider must give a certificate to the offender not later than 14 days after the date specified in the order as the latest date for the completion of the course<sup>8</sup> unless the offender: (1) fails to make due payment of fees for the course<sup>9</sup>; (2) fails to attend the course in accordance with the course provider's reasonable instructions<sup>10</sup>; or (3) fails to comply with any other reasonable requirement of the course provider<sup>11</sup>.

Where a course provider decides not to give a certificate to the offender, he must give written notice of the decision to the offender as soon as possible, and in any event not later than 14 days after the date specified in the order as the latest date for completion of the course<sup>12</sup>. An offender to whom such a notice is given may, within such period as may be prescribed by rules of court, apply to the supervising court, or (if the supervising court is not the Crown Court or the relevant local court<sup>13</sup>) to either the supervising court or the relevant local court, for a declaration that the course provider's decision not to give a certificate was contrary to the statutory requirements<sup>14</sup> above<sup>15</sup>. If the court grants the application, the provisions as to reduced disqualification<sup>16</sup> will have effect as if the certificate had been duly received by the proper officer of the supervising court<sup>17</sup>.

If, 14 days after the date specified in the order as the latest date for completion of the course, the course provider has given neither a certificate nor a notice, the offender may, within such period as may be prescribed by rules of court, apply to the supervising court, or (if the supervising court is not the Crown Court or the relevant local court) to either the supervising court or the relevant local court, for a declaration that the course provider is in default<sup>18</sup>. If the court grants the application, the provisions as to reduced disqualification will have effect as if the certificate had been duly received by the proper officer of the supervising court<sup>19</sup>.

Where the proper officer of a court receives a certificate,<sup>20</sup> or a court grants an application for a declaration<sup>21</sup>, the proper officer or court must send notice of that fact to the Secretary of State; and the notice must be sent in such manner and to such address, and must contain such particulars, as the Secretary of State may determine<sup>22</sup>.

1 The Road Traffic Offenders Act 1988 ss 34B, 34C (as added) (see PARA 1063 ante) are substituted by the Road Safety Act 2006 s 35 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 le for the purposes of the Road Traffic Offenders Act 1988 s 34A (prospectively substituted): see PARA 1064 ante.

3 A certificate under *ibid* s 34B(1) (as added and substituted) is to be given by the course provider and must be in such form, and contain such particulars, as may be prescribed by, or determined in accordance with, regulations made by the appropriate national authority: s 34B(3) (as substituted: see note 1 supra). For the meaning of 'course provider' see PARA 1064 note 20 ante. For the meaning of 'appropriate national authority' see PARA 1064 note 7 ante.

As to the making of regulations see PARA 1064 note 5 ante. A statutory instrument containing regulations made under s 34B (as substituted) by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament: s 34C(7) (as so substituted). As to the Secretary of State see PARA 236 ante.

4 For these purposes, 'proper officer' means: (1) in relation to a magistrates' court in England and Wales, the designated officer for the court; and (2) otherwise, the clerk of the court: *ibid* s 34C(3) (as substituted: see note 1 supra).

5 'Supervising court', in relation to an order under *ibid* s 34A (as substituted), means, in England and Wales, if the Crown Court made the order, the Crown Court and otherwise a magistrates' court acting for the same local justice area as the court which made the order: s 34C(3) (as substituted: see note 1 supra).

6 *Ibid* s 34B(1) (as substituted: see note 1 supra).

7 *Ibid* s 34B(2) (as substituted: see note 1 supra).

8 *Ibid* s 34B(4) (as substituted: see note 1 supra).

9 *Ibid* s 34B(4)(a) (as substituted: see note 1 supra).

- 10 Ibid s 34B(4)(b) (as substituted: see note 1 supra).
- 11 Ibid s 34B(4)(c) (as substituted: see note 1 supra).
- 12 Ibid s 34B(5) (as substituted: see note 1 supra). A notice under s 34B(5) (as substituted) must specify the ground on which it is given; and the appropriate national authority may by regulations make provision as to the form of notices under that provision and as to the circumstances in which they are to be treated as given: s 34B(10) (as so substituted). As to the making of regulations see note 3 supra.
- 13 'Relevant local court', in relation to an order under ibid s 34A (as substituted) in the case of an offender, means, in England and Wales, a magistrates' court acting for the local justice area in which the offender resides: s 34C(3) (as substituted: see note 1 supra).
- 14 Ie ibid s 34B(1) (as substituted).
- 15 Ibid s 34B(6) (as substituted: see note 1 supra).
- 16 Ie ibid s 34A (as substituted): see PARA 1064 ante.
- 17 Ibid s 34B(7) (as substituted: see note 1 supra).
- 18 Ibid s 34B(8) (as substituted: see note 1 supra).
- 19 Ibid s 34B(9) (as substituted: see note 1 supra).
- 20 Ie under ibid s 34B(1) (as substituted).
- 21 Ie under ibid s 34B(6) or (8) (as substituted).
- 22 Ibid s 34B(11) (as substituted: see note 1 supra).

## UPDATE

### **1055-1066 In general ... Reduced disqualification period: alcohol ignition interlock programme orders**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/C. DISQUALIFICATION/1066. Reduced disqualification period: alcohol ignition interlock programme orders.

### **1066. Reduced disqualification period: alcohol ignition interlock programme orders.**

The following provisions take effect as from a day to be appointed<sup>1</sup>.

Where:

- 1101 (1) a person is convicted of a relevant drink offence<sup>2</sup> by or before a court;
- 1102 (2) he has committed another relevant drink offence at any time during the period of ten years ending with the date of the conviction;

- 1103 (3) the court makes an order disqualifying him<sup>3</sup> but does not make an order under reducing the period of disqualification<sup>4</sup>; and
- 1104 (4) the period stated by the court as that for which, apart from these provisions, he would be disqualified ('the unreduced period') is not less than two years,

the court may specify a lesser period of disqualification ('the reduced period') if it also makes an order (an 'alcohol ignition interlock programme order') requiring the offender to comply with the alcohol ignition interlock conditions<sup>5</sup>. The difference between the unreduced period and the reduced period is to be a period specified in the order of not less than 12 months and not more than one half of the unreduced period<sup>6</sup>. If the offender contravenes the alcohol ignition interlock conditions, a further order disqualifying him for the rest of the unreduced period is to be treated as having been made by the court immediately before the contravention<sup>7</sup>.

'The alcohol ignition interlock conditions' are that the offender: (a) must participate fully in an approved alcohol ignition interlock programme<sup>8</sup> specified in the order during such part of the unreduced period as is so specified; and (b) during the part of that period following the reduced period, must not drive a motor vehicle<sup>9</sup> unless it is fitted with an alcohol ignition interlock in good working order and must not drive a motor vehicle which is so fitted when not using the alcohol ignition interlock properly<sup>10</sup>.

A court may not make an alcohol ignition interlock programme order in the case of an offender<sup>11</sup> unless: (i) the court is satisfied that a place on the approved alcohol ignition interlock programme specified in the order will be available for the offender<sup>12</sup>; (ii) the offender appears to the court to be of or over the age of 17<sup>13</sup>; (c) the court has informed the offender (orally or in writing and in ordinary language) of the effect of the order and the amount of the fees which he is required to pay for the programme and when he must pay them<sup>14</sup>; and (d) the offender has agreed that the order should be made<sup>15</sup>.

Where an alcohol ignition interlock is fitted to a motor vehicle as part of an approved alcohol ignition interlock programme relating to an offender, a person commits an offence<sup>16</sup> if: (A) he interferes with the alcohol ignition interlock with intent to cause it not to function or not to function properly<sup>17</sup>; or (B) he is a person other than the offender and provides or attempts to provide a specimen of breath for the purposes of the alcohol ignition interlock with intent to enable the driving (or continued driving) of the vehicle by the offender<sup>18</sup>.

1 The Road Traffic Offenders Act 1988 ss 34D, 34F, 34G are added by the Road Safety Act 2006 s 15(1), and the entry in the Road Traffic Offenders Act 1988 Sch 2 Pt 1 is added by the Road Safety Act 2006 s 15(4), as from a day to be appointed by order under s 61(1). At the date at which this volume states the law no such day had been appointed.

2 For these purposes, 'relevant drink offence' means: (1) an offence under the Road Traffic Act 1988 s 3A(1) (a) (as added) (causing death by careless driving when unfit to drive through drink) committed when unfit to drive through drink (see PARA 974 ante); (2) an offence under s 3A(1)(b) (as added) (causing death by careless driving with excess alcohol) (see PARA 974 ante); (3) an offence under s 3A(1)(c) (as added) (failing to provide a specimen) where the specimen is required in connection with drink or consumption of alcohol (see PARA 974 ante); (4) an offence under s 4 (as amended) (driving or being in charge when under influence of drink) committed by reason of unfitness through drink (see PARA 975 ante); (5) an offence under s 5(1) (driving or being in charge with excess alcohol) (see PARA 978 ante); (6) an offence under s 7(6) (failing to provide a specimen) committed in the course of an investigation into an offence within any of heads (1)-(5) supra (see PARA 988 ante); or (7) an offence under s 7A(6) (as added) (failing to allow a specimen to be subjected to a laboratory test) in the course of an investigation into an offence within any of heads (1)-(6) supra (see PARA 987 ante); Road Traffic Offenders Act 1988 s 34D(2) (as added: see note 1 supra).

3 *Ie* under *ibid* s 34 (as amended): see PARA 1058 ante.

4 *Ie* under *ibid* s 34A (prospectively substituted): see PARA 1064 ante.

5 *Ibid* s 34D(1), (3) (as added: see note 1 supra). The Secretary of State may by regulations make provision amending s 34D(1)(b) or (d) (as added) (see heads (2), (4) in the text) by substituting for the period for the time



being specified there a different period: s 34G(2)(a), (b) (as so added). As to the Secretary of State see PARA 236 ante.

Any power to make regulations under ss 34D-34G (as added) includes power to make different provision for different cases, and to make such incidental or supplementary provision as appears to the appropriate national authority to be necessary or appropriate: s 34G(4) (as so added). Any power to make such regulations is exercisable by statutory instrument: s 34G(5) (as so added). A statutory instrument containing regulations made under s 34D, 34E or 34F (as added) by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament: s 34G(6) (as so added). No regulations may be made under s 34G (as added) unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament: s 34G(7) (as so added). 'Appropriate national authority' means (as respects Wales) the Welsh Ministers and (otherwise) the Secretary of State: s 34G(3) (as so added).

6 Ibid s 34D(4) (as added: see note 1 supra). The Secretary of State may by regulations make provision amending s 34D(4) (as added) by substituting for the period for the time being specified there a different period, or by substituting for the fraction of the unreduced period for the time being specified there a different fraction of that period, (or by doing both): s 34G(2)(c) (as so added).

7 Ibid s 34D(5) (as added: see note 1 supra). 'Contravention' includes failure to comply: s 34G(3) (as so added).

8 For these purposes, an 'approved alcohol ignition interlock programme' is a programme approved by the appropriate national authority and involving the provision of an alcohol ignition interlock for use by the offender, training in its use and other education and counselling relating to the consumption of alcohol and driving: ibid s 34D(8) (as added: see note 1 supra). 'Alcohol ignition interlock' means a device of a type approved by the Secretary of State and designed to be fitted to a motor vehicle with the purpose of preventing the driving of the vehicle by a person who does not, both before starting driving the vehicle and at regular intervals while driving it, provide specimens of breath in which the proportion of alcohol is likely not to exceed the specified limit: s 34D(9) (as so added). That limit is 9 micrograms of alcohol in 100 millilitres of breath or such other proportion of alcohol to breath as the Secretary of State may by regulations prescribe: s 34D(10) (as so added).

9 For the meaning of 'motor vehicle' see PARA 210 ante.

10 Road Traffic Offenders Act 1988 s 34D(6) (as added: see note 1 supra). For the purposes of this provision an offender uses an alcohol ignition interlock properly if (and only if) he is complying with all the instructions given to him about its use as part of the approved alcohol ignition interlock programme: s 34D(11) (as so added).

11 Ibid s 34D(7) (as added: see note 1 supra).

12 Ibid s 34D(7)(a) (as added: see note 1 supra).

13 Ibid s 34D(7)(b) (as added: see note 1 supra).

14 Ibid s 34D(7)(c) (as added: see note 1 supra).

15 Ibid s 34D(7)(d) (as added: see note 1 supra).

16 Ibid s 34D(12) (as added: see note 1 supra). A person guilty of an offence under s 34D(12) (as added) is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale if the motor vehicle to which the alcohol ignition interlock is fitted is a goods vehicle or a vehicle adapted to carry more than eight passengers, or to a fine not exceeding level 3 on the standard scale in any other case: ss 9, 28 (as substituted) (see PARA 1049 ante), s 33(1), Sch 2 Pt I (entry prospectively added by the Road Safety Act 2006 s 15(4)). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 ante; and as to legal proceedings generally see PARA 1023 et seq ante.

17 Road Traffic Offenders Act 1988 s 34D(12)(a) (as added: see note 1 supra).

18 Ibid s 34D(12)(b) (as added: see note 1 supra).

## UPDATE

### **1055-1066 In general ... Reduced disqualification period: alcohol ignition interlock programme orders**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/C. DISQUALIFICATION/1067. Approval of alcohol ignition interlock programmes.

### **1067. Approval of alcohol ignition interlock programmes.**

The following provisions take effect as from a day to be appointed<sup>1</sup>.

If an application is made to the appropriate national authority<sup>2</sup> for the approval of an alcohol ignition interlock programme<sup>3</sup>, the appropriate national authority must decide whether to grant or refuse the application<sup>4</sup>. In reaching that decision the appropriate national authority must have regard to the nature of the programme and to whether the programme provider<sup>5</sup> is an appropriate person to provide the programme and administer its provision efficiently and effectively, and may take into account any recommendations made by any persons appointed to consider the application<sup>6</sup>. A programme may be approved subject to conditions specified by the appropriate national authority<sup>7</sup>. An approval of a programme is for the period specified by the appropriate national authority (which must not exceed seven years), subject to withdrawal of approval<sup>8</sup>.

Regulations made by the appropriate national authority may make provision in relation to the approval of programmes and may, in particular, include provision: (1) in relation to the making of applications for approval; (2) for the payment in respect of applications for approval or of approvals (or of both) of fees of such amounts as are prescribed by the regulations; (3) specifying the maximum fees that a person may be required to pay for a programme and by when they are to be paid; (4) for the monitoring of programmes and programme providers; (5) in relation to withdrawing approval; (6) for an appeal to lie to the Transport Tribunal<sup>9</sup> against a refusal of an application for approval, the imposition of conditions on the grant of such an application or the withdrawal of approval; and (7) authorising the appropriate national authority to make available (with or without charge) information about programmes and programme providers<sup>10</sup>.

The appropriate national authority may issue guidance to programme providers, or to any category of programme provider, as to the conduct of programmes approved for the purposes of the statutory provisions<sup>11</sup> as to alcohol ignition interlock programmes<sup>12</sup>. Programme providers must have regard to any guidance given to them under this provision<sup>13</sup>; and in determining<sup>14</sup> whether any instructions or requirements of a programme provider were reasonable, a court must have regard to any guidance given to him under this provision<sup>15</sup>.

1 The Road Traffic Offenders Act 1988 ss 34F, 34G are added by the Road Safety Act 2006 s 15(1), as from a day to be appointed by order under s 61(1). At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'appropriate national authority' see PARA 1066 note 5 ante.

3 le for the purposes of the Road Traffic Offenders Act 1988 s 34D (as added); see PARA 1066 ante.

4 Ibid s 34F(1) (as added: see note 1 supra).

5 'Programme provider', in relation to an alcohol ignition interlock programme, means the person by whom it is, or is to be, provided: *ibid* s 34G(3) (as added: see note 1 *supra*).

6 *Ibid* s 34F(2) (as added: see note 1 *supra*).

7 *Ibid* s 34F(3) (as added: see note 1 *supra*).

8 *Ibid* s 34F(4) (as added: see note 1 *supra*).

9 As to the constitution, powers and proceedings of the Transport Tribunal see PARAS 253-258 *ante*.

10 Road Traffic Offenders Act 1988 s 34F(5) (as added: see note 1 *supra*). As to the making of regulations see PARA 1066 note 5 *ante*.

11 *Ie* *ibid* s 34A (as substituted): see PARA 1064 *ante*.

12 *Ibid* s 34G(1) (as added: see note 1 *supra*).

13 *Ibid* s 34G(1)(a) (as added: see note 1 *supra*).

14 *Ie* for the purposes of *ibid* s 34E (as added): see PARA 1068 *post*.

15 *Ibid* s 34G(1)(b) (as added: see note 1 *supra*).

## UPDATE

### 1067 Approval of alcohol ignition interlock programmes

TEXT AND NOTE 9--Reference to Transport Tribunal is now to First-tier Tribunal: Road Traffic Offenders Act 1988 s 34F(5) (amended by SI 2009/1885).

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### 1068. Certificates of failing fully to participate in programmes.

The following provisions take effect as from a day to be appointed<sup>1</sup>.

An offender is to be regarded<sup>2</sup> as not fully participating in an approved alcohol ignition interlock programme<sup>3</sup> if (and only if) a certificate<sup>4</sup> that that is so is received by the proper officer<sup>5</sup> of the supervising court<sup>6</sup>. A certificate may be given if (and only if) the offender has failed<sup>7</sup>: (1) to make due payment of fees for the programme<sup>8</sup>; (2) to attend for training, education or counselling forming part of the programme in accordance with the programme provider's reasonable instructions<sup>9</sup>; (3) to attend at a place specified by the programme provider for the monitoring and maintenance of the alcohol ignition interlock, at a time specified by the programme provider or a person with whom the programme provider has made arrangements for its monitoring and maintenance<sup>10</sup>; or (4) to comply with any other reasonable requirement of the programme provider<sup>11</sup>.

Where a programme provider decides to give a certificate of failure fully to participate in a programme, he must give written notice of the decision to the offender as soon as possible<sup>12</sup>. An offender to whom such a notice is given may, within such period as may be prescribed by rules of court, apply to the supervising court, or (if the supervising court is not the Crown Court or the relevant local court<sup>13</sup>) to either the supervising court or the relevant local court, for a declaration that the programme provider has given the certificate in contravention of the

statutory requirements<sup>14</sup>. If the court grants the application, the provision for reducing the disqualification period<sup>15</sup> will have effect as if the certificate had not been duly received by the proper officer of the supervising court<sup>16</sup>.

Where the proper office of a court receives a certificate<sup>17</sup>, or a court grants an application for a declaration<sup>18</sup>, the proper officer or court must send notice of that fact to the Secretary of State; and the notice must be sent in such manner and to such address, and must contain such particulars, as the Secretary of State may determine<sup>19</sup>.

1 The Road Traffic Offenders Act 1988 ss 34E, 34G are added by the Road Safety Act 2006 s 15(1), as from a day to be appointed by order under s 61(1). At the date at which this volume states the law no such day had been appointed.

2 le for the purposes of the Road Traffic Offenders Act 1988 s 34D (as added): see PARA 1066 ante.

3 For the meaning of 'approved alcohol ignition interlock programme' see PARA 1066 note 8 ante.

4 A certificate under the Road Traffic Offenders Act 1988 s 34E(1) (as added) is to be given by the programme provider and must be in such form, and contain such particulars, as may be prescribed by, or determined in accordance with, regulations made by the appropriate national authority: s 34E(3) (as added: see note 1 supra). For the meaning of 'appropriate national authority' see PARA 1066 note 5 ante. As to the making of regulations see PARA 1066 note 5 ante.

5 For these purposes, 'proper officer' means: (1) in relation to a magistrates' court in England and Wales, the designated officer for the court; and (2) otherwise, the clerk of the court: *ibid* s 34G(3) (as added: see note 1 supra).

6 *Ibid* s 34E(1) (as added: see note 1 supra). 'Supervising court', in relation to an alcohol ignition interlock programme order, means, in England and Wales, if the Crown Court made the order, the Crown Court and otherwise a magistrates' court acting for the same local justice area as the court which made the order: s 34G(3) (as added: see note 1 supra).

7 *Ibid* s 34E(2) (as added: see note 1 supra).

8 *Ibid* s 34E(2)(a) (as added: see note 1 supra).

9 *Ibid* s 34E(2)(b) (as added: see note 1 supra).

10 *Ibid* s 34E(2)(c) (as added: see note 1 supra).

11 *Ibid* s 34E(2)(d) (as added: see note 1 supra).

12 *Ibid* s 34E(4) (as added: see note 1 supra). A notice under s 34E(4) (as added) must specify the ground on which it is given; and the appropriate national authority may by regulations make provision as to the form of notices under that provision and as to the circumstances in which they are to be treated as given: s 34E(7) (as so added).

13 'Relevant local court', in relation to an alcohol ignition interlock programme order in the case of an offender, means, in England and Wales, a magistrates' court acting for the local justice area in which the offender resides: s 34G(3) (as added: see note 1 supra).

14 *Ibid* s 34E(5) (as added: see note 1 supra).

15 le *ibid* s 34A (as added): see PARA 1064 ante.

16 *Ibid* s 34E(6) (as added: see note 1 supra).

17 le under *ibid* s 34E(1) (as added).

18 le under *ibid* s 34E(5) (as added).

19 *Ibid* s 34E(8) (as added: see note 1 supra).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/C. DISQUALIFICATION/1069. Experimental period for alcohol ignition interlock programme orders.

### **1069. Experimental period for alcohol ignition interlock programme orders.**

The following provisions take effect as from a day to be appointed<sup>1</sup>.

No alcohol ignition interlock programme order<sup>2</sup> is to be made after the end of 2010 or such later time as may be specified in an order made by the Secretary of State<sup>3</sup>. However, at any time before the above restriction has taken effect, the Secretary of State may by order provide that it is not to do so<sup>4</sup>.

During the experimental period<sup>5</sup>: (1) no alcohol ignition interlock programme order may be made by virtue of a person's conviction of causing death by careless driving when under the influence of drink or drugs<sup>6</sup>; and (2) no alcohol ignition interlock programme order may be made except by a magistrates' court acting for a local justice area which is for the time being designated for these purposes<sup>7</sup>. The power to designate an area or district for these purposes is exercisable by the Secretary of State by order, and includes power to revoke a designation previously made<sup>8</sup>.

1 The Road Safety Act 2006 s 16 is to be brought into force as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 Ie an order under the Road Traffic Offenders Act 1988 s 34D (as added): see PARA 1066 ante.

3 Road Safety Act 2006 s 16(1). As to the Secretary of State see PARA 236 ante. The power to make an order under s 16(1) is not exercisable after the end of 2010, and no more than one order may be made under s 16(1): s 16(8). Any power of the Secretary of State to make orders under s 16 is exercisable by statutory instrument, and no order is to be made under s 16(1) or (2) unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament: s 16(9)(a).

4 Ibid s 16(2).

5 'The experimental period' means the period beginning when ibid s 15 comes into force (see PARA 1066 note 1 ante) and ending: (1) when the restriction imposed by s 16(1) takes effect; or (2) if the Secretary of State makes an order under s 16(2), on a date specified in the order: s 16(3).

6 Ie under the Road Traffic Act 1988 s 3A (as added): see PARA 974 ante.

7 Road Safety Act 2006 s 16(4). In relation to orders made under the Road Traffic Offenders Act 1988 s 34D (as added) during the experimental period, s 34E(5) (as added) (see PARA 1068 text and notes 13-14 ante) is to have effect with the omission of the references to the relevant local court: Road Safety Act 2006 s 16(5).

8 Ibid s 16(6). An order under s 16(6) must specify the period for which an area or district is designated, and may: (1) specify different periods for different areas or districts; and (2) extend or shorten any period previously specified: s 16(7). As to the making of orders see note 3 supra. Any statutory instrument containing an order under s 16(6) is subject to annulment in pursuance of a resolution of either House of Parliament: s 16(9)(b).

## **UPDATE**

### **1069-1072 Experimental period for alcohol ignition interlock programme orders ... Effect of order of disqualification**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/C. DISQUALIFICATION/1070. Disqualification for repeated offences.

### **1070. Disqualification for repeated offences.**

Where a person is convicted of: (1) an offence involving discretionary disqualification<sup>1</sup> and obligatory endorsement<sup>2</sup>; or (2) an offence involving obligatory disqualification<sup>3</sup> in respect of which no order has been made<sup>4</sup>, and the penalty points to be taken into account on the occasion number 12 or more<sup>5</sup>, the court must order him to be disqualified<sup>6</sup> for not less than the minimum period unless the court is satisfied, having regard to all the circumstances, that there are grounds for mitigating the normal consequences of the conviction and thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified<sup>7</sup>.

The minimum period referred to above is:

- 1105 (a) six months if no previous disqualification imposed on the offender is to be taken into account<sup>8</sup>; and
- 1106 (b) one year if one such disqualification is to be taken into account, and two years if more than one such disqualification is to be taken into account<sup>9</sup>.

Where an offender is convicted on the same occasion of more than one offence mentioned in heads (1) and (2) above<sup>10</sup>, not more than one disqualification may be imposed on him under those heads<sup>11</sup>, in determining the period of the disqualification the court must take into account all the offences<sup>12</sup>, and for the purposes of any appeal any disqualification imposed under heads (1) and (2) above are to be treated as an order made on the conviction of each of the offences<sup>13</sup>.

No account is to be taken<sup>14</sup> of any of the following circumstances<sup>15</sup>:

- 1107 (i) any circumstances that are alleged to make the offence or any of the offences not a serious one<sup>16</sup>;
- 1108 (ii) hardship, other than exceptional hardship<sup>17</sup>; or
- 1109 (iii) any circumstances which, within the three years immediately preceding the conviction, have been taken into account<sup>18</sup> in ordering the offender to be disqualified for a shorter period or not ordering him to be disqualified<sup>19</sup>.

The above provisions apply in relation to a conviction of an offence committed by aiding, abetting, counselling, procuring, or inciting to the commission of, an offence involving obligatory disqualification as if the offence were an offence involving discretionary disqualification<sup>20</sup>.

1 For the meaning of 'offence involving discretionary disqualification' see PARA 1060 ante.

2 Road Traffic Offenders Act 1988 s 35(1)(a), (1A)(a) (s 35(1)(a) amended, and s 35(1A) added, by the Road Traffic Act 1991 s 48, Sch 4 para 95(1), (2), (3)). For the meaning of 'offence involving obligatory endorsement' see PARA 1080 post.

3 For the meaning of 'offence involving obligatory disqualification' see PARA 1058 ante.

4 Road Traffic Offenders Act 1988 s 35(1)(a) (as amended: see note 2 supra), s 35(1A)(b) (as added: see note 2 supra). An order for disqualification is made under s 34 (as amended): see PARA 1061 ante.

5 Ibid s 35(1)(b). As to the penalty points to be taken into account on conviction see PARA 1050 ante. Where a court sentences a person to obligatory disqualification for an offence it cannot impose penalty points in respect of other offences of which he has been convicted on the same occasion: *Martin v DPP* [2000] RTR 188, [2000] Crim LR 320, DC. It is submitted that any such imposition of points that appears on a defendant's driving record is of no effect.

The court has now resolved the circular difficulty arising from the potential conflict between the Road Traffic Offenders Act 1988 s 34 (as amended) and s 35 (as amended): see *Jones v Chief Constable West Mercia Police Authority* [2000] All ER (D) 1344, (2000) 165 JP 6, DC; and PARA 1061 note 4 ante.

6 For the meaning of 'disqualified' see PARA 1046 note 5 ante. References in the Road Traffic Offenders Act 1988 s 35 (as amended) to disqualification do not include a disqualification imposed under s 26 (as substituted and amended) (see PARA 1046 ante), the Powers of Criminal Courts (Sentencing) Act 2000 s 147 (see PARA 1060 ante), the Criminal Procedure (Scotland) Act 1975 s 223A (as added) or s 436A (as added) (offences committed by using vehicles) or a disqualification imposed in respect of an offence of stealing a motor vehicle, an offence under the Theft Act 1968 s 12 (as amended) or s 25 (see PARA 1008 ante), an offence under the Road Traffic Act 1988 s 178, or an attempt to commit such an offence: Road Traffic Offenders Act 1988 s 35(5) (amended by the Road Traffic Act 1991 Sch 4 para 95(1), (6); and the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 122). For the meaning of 'motor vehicle' see PARA 210 ante.

7 Road Traffic Offenders Act 1988 s 35(1). In any case where a court exercises its power under s 35 (as amended) not to order any disqualification or endorsement or to order disqualification for a shorter period than would otherwise be required, it must state the grounds for doing so in open court and, if it is a magistrates' court, must cause them to be entered in the register of its proceedings: s 47(1).

8 Ibid s 35(2)(a). A previous disqualification imposed on an offender is to be taken into account if it was for a fixed period of 56 days or more and was imposed within the three years immediately preceding the commission of the latest offence in respect of which penalty points are taken into account under s 29 (as substituted) (see PARA 1050 ante): s 35(2) (amended by the Road Traffic Act 1991 Sch 4 para 95(1), (3)). 'Imposed' means by a court after conviction and, therefore, does not include for this purpose disqualification by reason of age: *R v Scurry* (1992) 13 Cr App Rep (S) 517, CA. Two disqualifications imposed for the same offence (which is no longer possible) count as one for the purpose of the Road Traffic Offenders Act 1988 s 34(4)(b) (as substituted) (see PARA 1061 ante), but the question as to whether two disqualifications imposed on the same occasion for different offences count as one remains open: *Learmont v DPP* [1994] RTR 286, DC (see PARA 1058 note 14 ante). It is submitted that the position is the same in relation to the Road Traffic Offenders Act 1988 s 35(2) (as amended).

9 Ibid s 35(2)(b). See also note 8 supra.

10 Ibid s 35(3) (amended by the Road Traffic Act 1991 Sch 4 para 95(1), (4)).

11 Road Traffic Offenders Act 1988 s 35(3)(a).

12 Ibid s 35(3)(b).

13 Ibid s 35(3)(c).

14 Ie for the purposes of ibid s 35(1) (as amended).

15 Ibid s 35(4).

16 Ibid s 35(4)(a).

17 Ibid s 35(4)(b). Evidence will normally be necessary to support a submission of exceptional hardship; but on rare occasions justices when considering the existence of exceptional hardship will be entitled to rely on their own knowledge, gathered from past events and experience, to satisfy themselves that exceptional hardship is established: *Owen v Jones* [1988] RTR 102, 9 Cr App Rep (S) 34, DC.

A sentencing policy that a term of disqualification extending substantially beyond an offender's release from prison is counter-productive and contrary to the public interest can constitute grounds for mitigation here: *R v Thomas* [1983] 3 All ER 756, [1983] 1 WLR 1490, CA.

18 Ie under the Road Traffic Offenders Act 1988 s 35(1) (as amended).

19 Ibid s 35(4)(c). It is for the defendant to establish that the mitigating circumstance now being advanced is different from that put forward on an earlier occasion: *R v Sandbach Justices, ex p Pescud* (1983) 5 Cr App Rep (S) 177, DC.

20 Road Traffic Offenders Act 1988 s 35(5A) (added by the Road Traffic Act 1991 Sch 4 para 95(1), (7)). The Road Traffic Offenders Act 1988 s 35 (as amended) is subject to s 48 (as substituted) (see PARA 1087 post): see s 35(7).

## UPDATE

### **1069-1072 Experimental period for alcohol ignition interlock programme orders ... Effect of order of disqualification**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1070 Disqualification for repeated offences**

TEXT AND NOTE 20--See further Serious Crime Act 2007 Sch 6 para 15(c) (references to common law offence of incitement).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/C. DISQUALIFICATION/1071. Disqualification until test is passed.

### **1071. Disqualification until test is passed.**

Where:

- 1110 (1) a person is disqualified<sup>1</sup> on conviction of manslaughter by the driver of a motor vehicle<sup>2</sup>, or an offence of causing death by dangerous driving<sup>3</sup> or dangerous driving<sup>4</sup>;
- 1111 (2) a person is disqualified<sup>5</sup> in such circumstances or for such period as the Secretary of State<sup>6</sup> may by order prescribe<sup>7</sup>; or
- 1112 (3) a person is convicted of such offences involving obligatory endorsement<sup>8</sup> as may be so prescribed<sup>9</sup>,

the court must order him to be disqualified until he passes the appropriate driving test<sup>10</sup>.

Where a person to whom the above provisions do not apply is convicted of an offence involving obligatory endorsement, the court may<sup>11</sup> order him to be disqualified until he passes the appropriate driving test (whether or not he has previously passed any test)<sup>12</sup>. In determining whether to make such an order, the court must have regard to the safety of road users<sup>13</sup>.

A disqualification by virtue of an order under this provision is deemed to have expired on production to the Secretary of State of evidence, in such form as may be prescribed by regulations<sup>14</sup>, that the person disqualified has passed the test in question since the order was made<sup>15</sup>.

Where there is issued to a person a licence<sup>16</sup> on the counterpart<sup>17</sup> of which are endorsed particulars of a disqualification under this provision, there must also be endorsed the



particulars of any test of competence to drive that he has passed since the order of disqualification was made<sup>18</sup>.

1     Ie under the Road Traffic Offenders Act 1988 s 34 (as amended): see PARA 1061 ante. For the meaning of 'disqualified' see PARA 1046 note 5 ante.

2     Ibid s 36(2)(a) (s 36 substituted by the Road Traffic Act 1991 s 32). As to manslaughter see PARA 966 ante. For the meaning of 'driver' see PARA 207 ante; and for the meaning of 'motor vehicle' see PARA 210 ante.

3     Ie an offence under the Road Traffic Act 1988 s 1 (as substituted): see PARA 963 ante.

4     Road Traffic Offenders Act 1988 s 36(2)(b) (as substituted: see note 2 supra).

5     Ie under ibid s 34 (as amended) (see PARA 1061 ante) or s 35 (as amended) (see PARA 1070 ante).

6     As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7     Road Traffic Offenders Act 1988 s 36(3)(a) (as substituted: see note 2 supra). The power to make an order under s 36(3) (as substituted) is exercisable by statutory instrument; and no such order may be made unless a draft of it has been laid before and approved by resolution of each House of Parliament: s 36(13) (as so substituted). The Secretary of State must not make an order under s 36(3) (as substituted) after the end of 2001 if he has not previously made such an order: s 36(14) (as so substituted). The Driving Licences (Disqualification until Test Passed) (Prescribed Offence) Order 2001, SI 2001/4051, was made under the Road Traffic Offenders Act 1988 s 36(3) (as substituted).

The Road Traffic Offenders Act 1988 s 36(3)(a) (as substituted) is amended, as from a day to be appointed, by the Road Safety Act 2006 s 37(1), (2), with the effect that head (1) in the text will read 'a person is disqualified for such period, in such circumstances or for such period and in such circumstances as the Secretary of State may by order specify'. The following provision is added. Before making an order under the Road Traffic Offenders Act 1988 s 36(3) (as substituted and amended) the Secretary of State must consult with such representative organisations as he thinks fit: s 36(13A) (added, as from a day to be appointed, by the Road Safety Act 2006 s 37(6)). The Road Traffic Offenders Act 1988 s 36(14) is repealed by the Road Safety Act 2006 ss 37(7), 59, Sch 7, as from a day to be appointed. At the date at which this volume states the law no such day or days had been appointed.

8     For the meaning of 'offence involving obligatory endorsement' see PARA 1080 post.

9     Road Traffic Offenders Act 1988 s 36(3)(b) (as substituted: see note 2 supra). See note 7 supra. See the Driving Licences (Disqualification until Test Passed) (Prescribed Offence) Order 2001, SI 2001/4051, which prescribes, for the purposes of the Road Traffic Offenders Act 1988 s 36(1) (as substituted), an offence under the Road Traffic Act 1988 s 3A (as added) (causing death by careless driving when under the influence of drink or drugs: see PARA 974 ante) which is committed on or after 31 January 2002, and any person committing such an offence.

10    Road Traffic Offenders Act 1988 s 36(1) (as substituted: see note 2 supra). For these purposes, 'appropriate driving test' means: (1) an extended driving test, where a person is convicted of an offence involving obligatory disqualification (see PARA 1058 ante) or is disqualified under s 35 (as amended) (see PARA 1070 ante); or (2) a test of competence to drive, other than an extended driving test, in any other case: s 36(5) (as so substituted). 'Extended driving test' means a test of competence to drive prescribed for the purposes of s 36 (as substituted and amended): s 36(5) (as so substituted). 'Test of competence to drive' means a test prescribed by virtue of the Road Traffic Act 1988 s 89(3) (as amended) (see PARA 449 ante): Road Traffic Offenders Act 1988 s 36(5) (as so substituted). For the meaning of 'offence involving obligatory disqualification' see PARA 1058 ante.

The definitions of 'appropriate driving test' is substituted as follows: 'appropriate driving test' means: (a) in such circumstances as the Secretary of State may prescribe, an extended driving test; and (b) otherwise, a test of competence to drive which is not an extended driving test: s 36(5) (as so substituted; definition substituted, as from a day to be appointed, by the Road Safety Act 2006 s 37(3)). The definition of 'extended driving test' is amended to read as follows: 'extended driving test' means a test of competence to drive prescribed for the purposes of the Road Traffic Offenders Act 1988 s 36 (as substituted and amended) by regulations made by the Secretary of State: s 36(5) (as so substituted; definition amended, as from a day to be appointed, by the Road Safety Act 2006 s 37(3)).

Where a person is disqualified until he passes the extended driving test any earlier order under the Road Traffic Offenders Act 1988 s 36 (as substituted and amended) ceases to have effect, and a court must not make a further order under s 36 (as substituted and amended) while he is so disqualified: s 36(7) (as so substituted).

For the effect of an order of disqualification under s 36 (as substituted and amended) see PARA 1072 post. If a person while so disqualified obtains a provisional licence but fails to comply with the conditions of that licence he commits the offence of driving whilst disqualified: *Scott v Jelf* [1974] RTR 256, DC (applying the dictum of Atkinson J in *Hunter v Coombs* [1962] 1 All ER 904 at 908, [1962] 1 WLR 573 at 579, DC); *Stewart v Paterson* [1960] Crim LR 196. The burden on the driver to prove that he is entitled to drive when he is seen driving is proportionate: *DPP v Barker* [2004] EWHC 2502 (Admin), (2004) 168 JP 617.

11 This power is not intended to be punitive, but is largely confined to cases involving drivers who are growing old or infirm or show some incompetence in the offence which requires looking into: see eg *R v Donnelly* [1975] 1 All ER 785, [1975] 1 WLR 390, CA; *R v Banks* [1978] RTR 535, CA; *R v Peat* [1985] Crim LR 110, CA. Incompetence may take the form of not showing proper regard for other road users (*R v Bannister* [1991] RTR 1, [1991] Crim LR 71, CA); but an offender whose offence arose out of a temporary condition of his mind due to an illness who, but for that illness, was competent to drive, should not be disqualified until passing a test (though whether he should be allowed to hold a driving licence is another matter) (*Hughes v Challes* [1984] RTR 283, 148 JP 170, DC). Where an inexperienced driver has his driving career interrupted for a long period by disqualification it is in the public interest that his driving skill should be checked again before he returns to driving as an occupation: *R v Guilfoyle* [1973] 2 All ER 844, [1973] RTR 272, CA.

12 Road Traffic Offenders Act 1988 s 36(4) (as substituted: see note 2 supra).

13 Ibid s 36(6) (as substituted: see note 2 supra). See also the cases cited in note 11 supra.

14 The regulations made under the Road Traffic Act 1988 s 105 (as amended): see PARA 443 ante.

15 Road Traffic Offenders Act 1988 s 36(8) (as substituted: see note 2 supra). A disqualification is deemed to have expired only in relation to vehicles of such classes as may be prescribed in relation to the test passed by regulations under the Road Traffic Act 1988 s 105 (as amended) (see PARA 443 ante): Road Traffic Offenders Act 1988 s 36(9) (as so substituted).

Section 36(8) (as substituted) is amended by the Road Safety Act 2006 s 37(4), to the effect that instead of referring to regulations made under the Road Traffic Act 1988 s 105 (as amended) it refers to regulations made by the Secretary of State, and s 36(9) (as substituted) is correspondingly amended by the Road Safety Act 2006 s 37(5), as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

16 For the meaning of 'licence' see PARA 1032 note 3 ante.

17 For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). The reference to the meaning of 'counterpart' in s 98(1) is removed by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7, as from a day to be appointed.

18 Road Traffic Offenders Act 1988 s 36(10) (as substituted: see note 2 supra). For the purposes of an order under s 36 (as substituted and amended), a person is to be treated as having passed a test of competence to drive other than an extended driving test if he passes a corresponding test conducted: (1) under the law of Northern Ireland, the Isle of Man, any of the Channel Islands, another EEA state, Gibraltar or a designated country or territory; or (2) for the purposes of obtaining a British Forces licence; and accordingly the provisions of s 36(8)-(10) (as substituted) apply in relation to such a test as they apply in relation to a test prescribed by virtue of the Road Traffic Act 1988 s 89(3) (as amended) (see PARA 449 ante): Road Traffic Offenders Act 1988 s 36(11) (as so substituted; and amended by the Driving Licence (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 3, Sch 2 para 3(a), (b)). For the purposes of the Road Traffic Offenders Act 1988 s 36(11) (as substituted and amended), 'designated country or territory' means a country or territory designated by order under the Road Traffic Act 1988 s 108(2) (as substituted) (see PARA 446 ante) but a test conducted under the law of such a country or territory is not to be regarded as a corresponding test unless a person passing such a test would be entitled to an exchangeable licence (see PARA 445 note 26 ante): Road Traffic Offenders Act 1988 s 36(11A) (added by the Driving Licence (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 2 para 3(3)).

The Road Traffic Offenders Act 1988 s 36 (as substituted and amended) is subject to s 48 (as substituted) (see PARA 1087 post): s 36(12) (as so substituted).

Section 36(10) (as substituted) is repealed by the Road Safety Act 2006 Sch 3 paras 30, 39, Sch 7, as from a day to be appointed. As from such day, where a person's driving record is endorsed with particulars of a disqualification under the Road Traffic Offenders Act 1988 s 36 (as substituted and amended), it must also be endorsed with the particulars of any test of competence to drive that he has passed since the order of disqualification was made: s 36(10A) (amended, as from a day to be appointed, by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 7). At the date at which this volume states the law no such day had been appointed. For the meaning of 'driving record' see PARA 1024 note 11 ante.

## UPDATE

## **1069-1072 Experimental period for alcohol ignition interlock programme orders ... Effect of order of disqualification**

Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1071 Disqualification until test is passed**

NOTE 18--Day appointed in relation to Road Safety Act 2006 s 9, Sch 2 is 1 April 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/C. DISQUALIFICATION/1072. Effect of order of disqualification.

### **1072. Effect of order of disqualification.**

Where the holder of a licence<sup>1</sup> is disqualified<sup>2</sup> by an order of a court, the licence is to be treated as being revoked with effect from the beginning of the period of disqualification<sup>3</sup>. Where the holder of the licence appeals against the order and the disqualification is suspended<sup>4</sup>, the period of disqualification is to be treated for these purposes as beginning on the day on which the disqualification ceases to be suspended<sup>5</sup>. Notwithstanding anything in the provisions relating to the licensing of drivers<sup>6</sup>, a person disqualified by an order of a court<sup>7</sup> is (unless he is also disqualified otherwise than by virtue of such an order) entitled to obtain and to hold a provisional licence<sup>8</sup> and to drive<sup>9</sup> a motor vehicle<sup>10</sup> in accordance with the conditions subject to which the provisional licence is granted<sup>11</sup>.

1 For the meaning of 'licence' see PARA 1032 note 3 ante.

2 For the meaning of 'disqualified' see PARA 1046 note 5 ante.

3 Road Traffic Offenders Act 1988 s 37(1). This does not render the licence ineffective for the period before disqualification: *Crawley Borough Council v Crann* [1996] RTR 201, DC.

Where the disqualification is for a fixed period shorter than 56 days in respect of an offence involving obligatory endorsement, or the order is made under the Road Traffic Offenders Act 1988 s 26 (as substituted and amended) (see PARA 1046 ante), s 37(1) does not prevent the licence from again having effect at the end of the period of disqualification: s 37(1A) (added by the Road Traffic Act 1991 s 33). For the meaning of 'offence involving obligatory endorsement' see PARA 1080 post.

4 Ie under the Road Traffic Offenders Act 1988 s 39: see PARA 1074 post.

5 Ibid s 37(2).

6 Ie the Road Traffic Act 1988 Pt III (ss 87-109) (as amended): see PARA 442 et seq ante.

7 Ie under the Road Traffic Offenders Act 1988 s 36 (as substituted and amended): see PARA 1071 ante.

8 'Provisional licence' means a licence granted by virtue of the Road Traffic Act 1988 s 97(2) (see PARA 464 ante): Road Traffic Offenders Act 1988 s 98(1).

9 For the meaning of 'drive' see PARA 207 ante.

10 For the meaning of 'motor vehicle' see PARA 210 ante.

11 Road Traffic Offenders Act 1988 s 37(3) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 96).

## **UPDATE**

### **1069-1072 Experimental period for alcohol ignition interlock programme orders ... Effect of order of disqualification**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/C. DISQUALIFICATION/1073. Appeal against disqualification.

#### **1073. Appeal against disqualification.**

A person disqualified<sup>1</sup> by an order of a magistrates' court<sup>2</sup> may appeal against the order in the same manner as against a conviction<sup>3</sup>.

1 For the meaning of 'disqualified' see PARA 1046 note 5 ante.

2 Ie under the Road Traffic Offenders Act 1988 s 34 (as amended) (see PARA 1061 ante) or s 35 (as amended) (see PARA 1070 ante).

3 Ibid s 38(1). As to appeal against conviction see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1837 et seq.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/C. DISQUALIFICATION/1074. Suspension of disqualification pending appeal.

#### **1074. Suspension of disqualification pending appeal.**

Any court in England and Wales (whether a magistrates' court or another) which makes an order disqualifying a person may, if it thinks fit, suspend the disqualification<sup>1</sup> pending an appeal against the order<sup>2</sup>. Where a court exercises its power, it must send notice of the suspension to the Secretary of State<sup>3</sup>. The notice must be sent in such manner and to such address and must contain such particulars as the Secretary of State may determine<sup>4</sup>.

1 For the meaning of 'disqualification' see PARA 1046 note 5 ante.

2 Road Traffic Offenders Act 1988 s 39(1). In default of suspension, the order of disqualification operates from the day of conviction; disqualification is not suspended by notice of appeal alone: *Kidner v Daniels* (1910)

102 LT 132, 74 JP 127. At least in theory, what is now the Road Traffic Offenders Act 1988 s 39 seems to empower a magistrates' court of its own volition to suspend an order of disqualification, but it is sensible and proper practice not to suspend unless a driver makes an application to that effect: *Taylor v Metropolitan Police Comr* [1987] RTR 118 at 123, DC, per Glidewell LJ.

3 Road Traffic Offenders Act 1988 s 39(3). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 Ibid s 39(4).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/C. DISQUALIFICATION/1075. Appellate court's power to suspend disqualification.

### **1075. Appellate court's power to suspend disqualification.**

Where a person has been convicted by or before a court in England and Wales of an offence involving obligatory<sup>1</sup> or discretionary disqualification<sup>2</sup> and has been ordered to be disqualified<sup>3</sup>, appeals to the Crown Court<sup>4</sup>, or appeals or applies for leave to appeal to the Court of Appeal<sup>5</sup>, against his conviction or his sentence<sup>6</sup>, the Crown Court or, as the case may require, the Court of Appeal may, if it thinks fit, suspend the disqualification<sup>7</sup>.

Where a person ordered to be disqualified has appealed or applied for leave to appeal to the House of Lords<sup>8</sup>, the Divisional Court or, as the case may require, the Court of Appeal may, if it thinks fit, suspend the disqualification<sup>9</sup>. Where a person ordered to be disqualified makes an application in respect of the decision of the court in question<sup>10</sup> the High Court may, if it thinks fit, suspend the disqualification<sup>11</sup>.

Where a person ordered to be disqualified applies to the High Court for a quashing order<sup>12</sup> to remove into the High Court any proceedings of a magistrates' court or of the Crown Court, being proceedings in or in consequence of which he was convicted or his sentence was passed<sup>13</sup>, or applies to the High Court for leave to make such an application<sup>14</sup>, the High Court may, if it thinks fit, suspend the disqualification<sup>15</sup>.

Any power of a court under the preceding provisions to suspend the disqualification of any person is a power to do so on such terms as the court thinks fit<sup>16</sup>.

Where, by virtue of the above provisions, a court suspends the disqualification of any person, it must send notice of the suspension to the Secretary of State<sup>17</sup>.

1 For the meaning of 'offence involving obligatory disqualification' see PARA 1058 ante.

2 For the meaning of 'offence involving discretionary disqualification' see PARA 1060 ante.

3 Road Traffic Offenders Act 1988 s 40(1). For the meaning of 'disqualified' see PARA 1046 note 5 ante. Any reference to a person ordered to be disqualified is to be construed as a reference to a person so convicted and so ordered to be disqualified: s 40(1)(a).

4 Ibid s 40(2)(a).

5 Ibid s 40(2)(b).

6 Any reference to a person's sentence includes a reference to the order of disqualification and to any other order made on his conviction and, accordingly, any reference to an appeal against his sentence includes a reference to an appeal against any order forming part of his sentence: ibid s 40(1)(b).

7 Ibid s 40(2).

8 le under the Administration of Justice Act 1960 s 1 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2020) from any decision of a Divisional Court of the Queen's Bench Division which is material to his conviction or sentence, or under the Criminal Appeal Act 1968 s 33 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1966) from any decision of the Court of Appeal which is material to his conviction or sentence: Road Traffic Offenders Act 1988 s 40(3)(a), (b). The reference to the House of Lords is replaced with a reference to the Supreme Court: s 40(3) (amended, as from a day to be appointed, by the Constitutional Reform Act 2005 s 40(4), Sch 9 Pt 1 para 50). At the date at which this volume states the law no such day had been appointed.

9 Road Traffic Offenders Act 1988 s 40(3).

10 le under the Magistrates' Courts Act 1980 s 111 (see MAGISTRATES vol 29(2) (Reissue) PARA 885 et seq) (statement of case by magistrates' court) or the Supreme Court Act 1981 s 28 (as amended) (see COURTS vol 10 (Reissue) PARA 309) (statement of case by Crown Court). The reference to the Supreme Court Act 1981 is replaced with a reference to the Senior Courts Act 1981: Road Traffic Offenders Act 1988 s 40(4) (amended, as from a day to be appointed, by the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 1 para 1(2)).

11 Road Traffic Offenders Act 1988 s 40(4).

12 As to quashing orders see JUDICIAL REVIEW vol 61 (2010) PARA 693 et seq.

13 Road Traffic Offenders Act 1988 s 40(5)(a).

14 Ibid s 40(5)(b).

15 Ibid s 40(5). A quashing order was formerly known as an order of certiorari.

16 Ibid s 40(6).

17 Ibid s 40(7). The notice must be sent in such manner and to such address and must contain such particulars as the Secretary of State may determine: s 40(8). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

## UPDATE

### 1075 Appellate court's power to suspend disqualification

NOTES 8, 10--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/C. DISQUALIFICATION/1076. Suspension of disqualification pending determination of application relating to certificate of completion of course.

### 1076. Suspension of disqualification pending determination of application relating to certificate of completion of course.

Where a person makes an application to a court in relation to a certificate of completion of a course<sup>1</sup>, the court may suspend the disqualification<sup>2</sup> to which the application relates pending the determination of the application<sup>3</sup>. Where a court exercises its power it must send notice of the suspension to the Secretary of State<sup>4</sup>.

1 le under the Road Traffic Offenders Act 1988 s 34B (as added and amended): see PARA 1063 ante.

2 For the meaning of 'disqualification' see PARA 1046 note 5 ante.

3 Road Traffic Offenders Act 1988 s 41A(1) (s 41A added by the Road Traffic Act 1991 s 48, Sch 4 para 97).

4 Road Traffic Offenders Act 1988 s 41A(2) (as added: see note 3 supra). The notice must be sent in such manner and to such address, and must contain such particulars, as the Secretary of State may determine: s 41A(3) (as so added). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

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### **1077. Suspension of certificate pending determination of application relating to certificate of failing fully to participate in approved alcohol ignition interlock programme.**

The following provisions take effect as from a day to be appointed<sup>1</sup>.

Where a person given a certificate of failing fully to participate in approved alcohol ignition interlock programme<sup>2</sup> makes an application to a court<sup>3</sup>, the court may suspend the effect of the certificate pending the determination of the application<sup>4</sup>. Where a court exercises its power under these provisions it must send notice of the suspension to the Secretary of State<sup>5</sup>. The notice must be sent in such manner and to such address and must contain such particulars as the Secretary of State may determine<sup>6</sup>.

1 The Road Traffic Offenders Act 1988 s 41B is added by the Road Safety Act 2006 s 15(2), as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 Ie under the Road Traffic Offenders Act 1988 s 34E(1) (as added): see PARA 1068 text and notes 2-6 ante.

3 Ie under ibid s 34E(5) (as added): see PARA 1068 text and notes 13-14 ante.

4 Ibid s 41B(1) (as added: see note 1 supra).

5 Ibid s 41B(2) (as added: see note 1 supra). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 Ibid s 41B(3) (as added: see note 1 supra).

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### **1078. Removal of disqualification.**

A person who by an order of a court is disqualified<sup>1</sup> may apply to the court by which the order was made<sup>2</sup> to remove the disqualification<sup>3</sup>.

On any such application the court may, as it thinks proper having regard to the character of the person disqualified and his conduct subsequent to the order<sup>4</sup>, the nature of the offence<sup>5</sup>, and

any other circumstances of the case<sup>6</sup>, either by order remove the disqualification as from such date as may be specified in the order or refuse the application<sup>7</sup>.

No such application can be made for the removal of a disqualification before the expiration of whichever is relevant of the following periods from the date of the order by which the disqualification was imposed, that is:

- 1113 (1) two years, if the disqualification is for less than four years<sup>8</sup>;
- 1114 (2) one half of the period of disqualification, if it is for less than ten years but not less than four years<sup>9</sup>; and
- 1115 (3) five years in any other case<sup>10</sup>,

and in determining the expiration of the period after which under this provision a person may apply for the removal of a disqualification, any time after the conviction during which the disqualification was suspended or he was not disqualified must be disregarded<sup>11</sup>.

Where such an application is refused, a further application cannot be entertained if made within three months after the date of the refusal<sup>12</sup>.

If under this provision a court orders a disqualification to be removed, the court must cause particulars of the order to be endorsed on the counterpart<sup>13</sup> of the licence<sup>14</sup>, if any, previously held by the applicant<sup>15</sup>, and may in any case order the applicant to pay the whole or any part of the costs of the application<sup>16</sup>.

1 For the meaning of 'disqualified' see PARA 1046 note 5 ante.

2 Where the disqualification was imposed by the Crown Court the application should be made to the same Crown Court location: *Practice Note* [2001] 4 All ER 635, CA. Where the disqualification was varied on appeal to the Crown Court it is submitted that the application may be made to the magistrates' court against whose decision the appeal was brought: see the Magistrates' Courts Act 1980 s 110; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2004. Where the disqualification was imposed by a magistrates' court the application may be made to any magistrates' court sitting for the same place: *McIntyre v Henderson* 1911 SC (J) 73, 48 Sc LR 588.

An application to a magistrates' court is brought by way of complaint and where such a complaint is made a summons must be issued to the chief officer of police to show cause why an order should not be made: see CrimPR r 55.2.

Legal aid may be granted for an application to remove disqualification: *R v Liverpool Crown Court, ex p McCann* [1995] RTR 23, DC. See generally LEGAL AID.

There is no distinction under what is now the Road Traffic Offenders Act 1988 s 42 (as amended) between discretionary disqualification and mandatory disqualification and justices can, therefore, remove a minimum mandatory disqualification of three years: *Damer v Davison* [1976] RTR 44, DC. However, justices may, if they think fit, regard a mandatory disqualification as one which they are less ready to remove than a discretionary disqualification: *Damer v Davison* supra at 49 per Lord Widgery CJ.

3 Road Traffic Offenders Act 1988 s 42(1), which is expressed to be subject to s 42(2)-(6) (as amended). Section 42(1)-(5B) (as amended) does not apply where the disqualification was imposed by order under s 36(1) (as substituted) (see PARA 1071 ante): s 42(6).

4 Ibid s 42(2)(a).

5 Ibid s 42(2)(b).

6 Ibid s 42(2)(c).

7 Ibid s 42(2). A disqualification cannot be removed in part: *R v Cottrell* [1955] 3 All ER 817, [1956] 1 WLR 70. Neither can a court, when removing a disqualification, tack on an additional requirement, for example to pass a driving test, to so much of the disqualification that it was ordering to survive: *R v Bentham* [1982] RTR 357, CA; *R v Wintoure* [1982] RTR 361n, CA. Where, however, a court has order the removal of a disqualification as from a future date it has jurisdiction to hear a second application for the immediate removal of the disqualification on grounds of hardship: *R v Manchester Justices, ex p Gaynor* [1956] 1 All ER 610n, [1956] 1 WLR 280, DC.



8 Road Traffic Offenders Act 1988 s 42(3)(a).

9 Ibid s 42(3)(b).

10 Ibid s 42(3)(c).

11 Ibid s 42(3).

12 Ibid s 42(4).

13 For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by ibid s 98(1). The reference to the meaning of 'counterpart' in s 98(1) is removed by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7, as from a day to be appointed.

14 For the meaning of 'licence' see PARA 1032 note 3 ante.

15 Road Traffic Offenders Act 1988 s 42(5)(a) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(2), 3, Sch 2 para 9). The Road Traffic Offenders Act 1988 s 42(5)(a) (as amended) applies only where the disqualification was imposed in respect of an offence involving obligatory endorsement; and in any other case the court must send notice of the order made under s 42 (as amended) to the Secretary of State: s 42(5A) (added by the Road Traffic Act 1991 s 48, Sch 4 para 98). For the meaning of 'offence involving obligatory endorsement' see PARA 1080 post. A notice under the Road Traffic Offenders Act 1988 s 42(5A) (as added) must be sent in such manner and to such address, and must contain such particulars, as the Secretary of State may determine: s 42(5B) (added by the Road Traffic Act 1991 Sch 4 para 98). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

The Road Traffic Offenders Act 1988 s 42(5)(a) (as amended) is substituted, as from a day to be appointed, by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 8(1), (2), to the effect that the court must: (1) if particulars of the disqualification were previously endorsed on the counterpart of any licence previously held by the applicant, cause particulars of the order to be endorsed on that counterpart; and (2) if particulars of the disqualification were previously endorsed on the driving record of the applicant, send notice of the order to the Secretary of State: s 42(5)(a)(i), (ii) (as so substituted). For the meaning of 'driving record' see PARA 1024 note 11 ante. The Road Traffic Offenders Act 1988 s 42(5A) (as added) is amended to refer to s 42(5)(a)(i) (as substituted) and in s 42(5B) (as added) a reference to s 42(5)(a)(ii) (as substituted) is added, as from a day to be appointed, by the Road Safety Act 2006 Sch 2 para 8(3), (5). The following provision is added. If the disqualification was imposed in respect of an offence involving obligatory endorsement, the Secretary of State must, on receiving notice of an order under the Road Traffic Offenders Act 1988 s 45(5)(a)(ii) (as substituted), make any necessary adjustments to the endorsements on the person's driving record to reflect the order: s 42(5AA) (added, as from a day to be appointed, by the Road Safety Act 2006 Sch 2 para 8(4)). At the date at which this volume states the law no such day had been appointed.

The Road Traffic Offenders Act 1988 s 42(5)(a) (as amended and substituted) is substituted, as from a day to be appointed, by the Road Safety Act 2006 s 10(12), Sch 3 paras 30, 40(1), (2), to the effect that the court must send notice of the order to the Secretary of State. The Road Traffic Offenders Act 1988 s 42(5A) (as added and amended) is repealed, as from a day to be appointed, by the Road Safety Act 2006 ss 10(12), 59, Sch 3 para 40(3), Sch 7. In the Road Traffic Offenders Act 1988 s 42(5AA) (as added), for the reference to s 42(5)(a)(ii) there is substituted a reference to s 42(5)(a); and in s 42(5B) (as added and amended), for the references to s 42(5)(a)(ii) and (5A) there is substituted a reference to s 42(5)(a), as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 40(4), (5). At the date at which this volume states the law no such day had been appointed.

16 Road Traffic Offenders Act 1988 s 42(5)(b).

## UPDATE

### 1078 Removal of disqualification

NOTE 15--Day appointed in relation to Road Safety Act 2006 s 9, Sch 2 is 1 April 2009: SI 2008/3164.

1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/C. DISQUALIFICATION/1079. Rule for determining end of period of disqualification.

### **1079. Rule for determining end of period of disqualification.**

In determining the expiration of the period for which a person is disqualified<sup>1</sup> by an order of a court made in consequence of a conviction, any time after the conviction during which the disqualification was suspended or he was not disqualified must be disregarded<sup>2</sup>.

1 For the meaning of 'disqualified' see PARA 1046 note 5 ante.

2 Road Traffic Offenders Act 1988 s 43.

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## ***D. ENDORSEMENT***

### **1080. Offences involving obligatory endorsement.**

An offence involves obligatory endorsement if it is an offence under the road traffic legislation<sup>1</sup> and either the word 'obligatory', without qualification, appears against the offence<sup>2</sup>, or that word appears there qualified by conditions relating to the offence which are satisfied<sup>3</sup>.

The following offences involve obligatory endorsement:

- 1116 (1) contravening a temporary prohibition or restriction<sup>4</sup>;
- 1117 (2) using a special road contrary to a scheme or regulations if committed in respect of a motor vehicle otherwise than by unlawfully stopping or allowing the vehicle to remain at rest on a part of a special road on which vehicles are in certain circumstances permitted to remain at rest<sup>5</sup>;
- 1118 (3) contravening pedestrian crossing regulations if committed in respect of a motor vehicle<sup>6</sup>;
- 1119 (4) not stopping at a school crossing if committed in respect of a motor vehicle<sup>7</sup>;
- 1120 (5) contravening an order relating to a street playground if committed in respect of a motor vehicle<sup>8</sup>;
- 1121 (6) exceeding a speed limit<sup>9</sup>;
- 1122 (7) causing death by dangerous driving<sup>10</sup>;
- 1123 (8) dangerous driving<sup>11</sup>;
- 1124 (9) careless, and inconsiderate, driving<sup>12</sup>;
- 1125 (10) causing death by careless driving when under the influence of drink or drugs<sup>13</sup>;
- 1126 (11) driving or attempting to drive when unfit through drink or drugs<sup>14</sup>;
- 1127 (12) being in charge of a mechanically propelled vehicle<sup>15</sup> when unfit to drive through drink or drugs<sup>16</sup>;
- 1128 (13) driving or attempting to drive with excess alcohol in breath, blood or urine<sup>17</sup>;
- 1129 (14) being in charge of a motor vehicle with excess alcohol in breath blood or urine<sup>18</sup>;
- 1130 (15) failing to provide a specimen of breath for a breath test<sup>19</sup>;
- 1131 (16) failing to provide a specimen for analysis or laboratory test<sup>20</sup>;

- 1132 (17) failing to allow a specimen to be subjected to laboratory test<sup>21</sup>;
- 1133 (18) motor racing and speed trials on public ways<sup>22</sup>;
- 1134 (19) leaving a vehicle in a dangerous position if committed in respect of a motor vehicle<sup>23</sup>;
- 1135 (20) unlawfully carrying a passenger on a motor cycle<sup>24</sup>;
- 1136 (21) failing to comply with traffic directions if committed in respect of a motor vehicle by failure to comply with a direction of a constable or traffic warden<sup>25</sup>;
- 1137 (22) failing to comply with traffic signs if committed in respect of a motor vehicle by failure to comply with an indication given by a sign specified for these purposes<sup>26</sup>;
- 1138 (23) using a vehicle in a dangerous condition etc<sup>27</sup>;
- 1139 (24) breach of a requirement as to brakes, steering-gear or tyres<sup>28</sup>;
- 1140 (25) driving otherwise than in accordance with a licence in a case where the offender's driving would not have been in accordance with any licence that could have been granted to him<sup>29</sup>;
- 1141 (26) driving after making a false declaration as to physical fitness<sup>30</sup>;
- 1142 (27) driving after failure to notify the Secretary of State<sup>31</sup> of the onset of, or deterioration in, a relevant or prospective disability<sup>32</sup>;
- 1143 (28) driving after the refusal of a licence, revocation of a licence or service of a notice<sup>33</sup>;
- 1144 (29) driving with uncorrected defective eyesight or refusing to submit to a test of eyesight<sup>34</sup>;
- 1145 (30) driving while disqualified<sup>35</sup>;
- 1146 (31) using a motor vehicle while uninsured or unsecured against third party risks<sup>36</sup>;
- 1147 (32) failing to stop after an accident and give particulars or report an accident<sup>37</sup>;
- 1148 (33) failure of a person keeping a vehicle and others to give the police information as to the identity of the driver etc in the case of certain offences<sup>38</sup>;
- 1149 (34) manslaughter by the driver of a motor vehicle<sup>39</sup>; and
- 1150 (35) aggravated vehicle-taking<sup>40</sup>.

A person who attempts to commit any of the above offences which is an indictable or either way offence<sup>41</sup> or who commits an offence of aiding, abetting, counselling or procuring any of the above offences<sup>42</sup> is also liable to obligatory endorsement.

1    le an offence specified under a provision of the Road Traffic Regulation Act 1984, the Road Traffic Act 1988, the Road Traffic (Consequential Provisions) Act 1988 or the Road Traffic Offenders Act 1988 specified in the Road Traffic Offenders Act 1988 s 96, Sch 2 Pt I col 1 (as amended), or an offence specified in Sch 2 Pt II col 1 (as amended): see heads (1)-(35) in the text.

2    le appears in *ibid* Sch 2 Pt I col 6 (as amended) or Sch 2 Pt II col 3 (as amended).

3    *Ibid* s 96.

4    See PARA 758 ante. The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 16(1).

5    See PARA 764 ante. The offence referred to is an offence under *ibid* s 17(4). For the meaning of 'motor vehicle' see PARA 210 ante.

6    See PARA 778 ante. The offence referred to is an offence under *ibid* s 25(5).

7    See PARA 781 ante. The offence referred to is an offence under *ibid* s 28(3).

8    See PARA 782 ante. The offence referred to is an offence under *ibid* s 29(3) (as substituted).

9    See PARA 856 ante. The offence referred to is an offence under *ibid* s 89(1).

- 10 See PARA 963 ante. The offence referred to is an offence under the Road Traffic Act 1988 s 1 (as substituted).
- 11 See PARA 964 ante. The offence referred to is an offence under *ibid* s 2 (as substituted).
- 12 See PARA 971 ante. The offence referred to is an offence under *ibid* s 3 (as substituted).
- 13 See PARA 974 ante. The offence referred to is an offence under *ibid* s 3A (as added).
- 14 See PARA 975 ante. The offence referred to is an offence under *ibid* s 4(1) (as amended).
- 15 As to the meaning of 'mechanically propelled vehicle' see PARA 211 ante.
- 16 See PARA 975 ante. The offence referred to is an offence under the Road Traffic Act 1988 s 4(2) (as amended).
- 17 See PARA 978 ante. The offence referred to is an offence under *ibid* s 5(1)(a).
- 18 See PARA 978 ante. The offence referred to is an offence under *ibid* s 5(1)(b).
- 19 See PARA 979 ante. The offence referred to is an offence under *ibid* s 6.
- 20 See PARA 986 ante. The offence referred to is an offence under *ibid* s 7 (as amended).
- 21 See PARA 987 ante. The offence referred to is an offence under *ibid* s 7A (as added).
- 22 See PARA 992 ante. The offence referred to is an offence under *ibid* s 12 (as amended).
- 23 See PARA 999 ante. The offence referred to is an offence under *ibid* s 22 (as amended).
- 24 See PARA 1001 ante. The offence referred to is an offence under *ibid* s 23 (as amended). For the meaning of 'motor cycle' see PARA 214 ante.
- 25 See PARA 642 ante. The offence referred to is an offence under *ibid* s 35. As to constables see *POLICE* vol 36(1) (2007 Reissue) PARA 101 et seq. As to traffic wardens see PARA 868 ante.
- 26 See PARA 643 ante. The offence referred to is an offence under *ibid* s 36 (as amended). A sign is specified for these purposes by regulations made under s 36 (as amended): see PARA 643 ante.
- 27 See PARA 625 ante. The offence referred to is an offence under *ibid* s 40A (as added).
- 28 See PARA 261 ante. The offence referred to is an offence under *ibid* s 41A (as added).
- 29 See PARA 444 ante. The offence referred to is an offence under *ibid* s 87(1) (as amended).
- 30 See PARA 455 ante. The offence referred to is an offence under *ibid* s 92(10) (as added).
- 31 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 32 See PARA 457 ante. The offence referred to is an offence under the Road Traffic Act 1988 s 94(3A) (as added).
- 33 See PARA 463 ante. The offence referred to is an offence under *ibid* s 94A (as added and amended).
- 34 See PARA 461 ante. The offence referred to is an offence under *ibid* s 96.
- 35 See PARA 481 ante. The offence referred to is an offence under *ibid* s 103(1)(b) (as substituted).
- 36 See PARA 937 ante. The offence referred to is an offence under *ibid* s 143 (as amended).
- 37 See PARA 645 ante. The offence referred to is an offence under *ibid* s 170(4).
- 38 See PARA 1026 ante. The offence referred to is an offence under *ibid* s 172 (as substituted and amended). Disqualification is discretionary for this offence if committed otherwise than by virtue of s 172(5) or (11) (as substituted): see PARA 1026 ante.
- 39 See PARA 966 ante.

40 See PARA 1009 ante. The offence referred to is an offence under the Theft Act 1968 s 12A (as added).

41 An attempt to commit an indictable or either way offence is punishable in the same way as the full offence: see the Criminal Attempts Act 1981 ss 1(1), 4(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 79 et seq.

42 A person who aids, abets, counsels or procures the commission of any indictable offence is liable to be tried, indicted and punished as a principal offender: see the Accessories and Abettors Act 1861 s 8 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 49, 51. A person who aids, abets, counsels or procures the commission by another person of a summary offence is guilty of the like offence and may be tried (whether or not he is charged as a principal) either by a court having jurisdiction to try that other person or by a court having, by virtue of his own offence, jurisdiction to try him: see the Magistrates' Courts Act 1980 s 44(1); and MAGISTRATES vol 29(2) (Reissue) PARA 588. The only concession made in respect of an aider, abettor, counsellor or procurer is that which is now set out in the Road Traffic Offenders Act 1988 s 34(5) (see PARA 1058 note 14 ante): *Ullah v Luckhurst* [1977] RTR 401, DC.

## UPDATE

### 1080 Offences involving obligatory endorsement

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### 1081. Endorsement of licences and special reasons.

Where a person is convicted of an offence involving obligatory endorsement<sup>1</sup>, the court must order there to be endorsed on the counterpart<sup>2</sup> of any licence<sup>3</sup> held by him particulars of the conviction and also<sup>4</sup>:

- 1151 (1) if the court orders him to be disqualified<sup>5</sup>, particulars of the disqualification<sup>6</sup>;  
or
- 1152 (2) if the court does not order him to be disqualified<sup>7</sup>, particulars of the offence, including the date when it was committed<sup>8</sup>, and the penalty points to be attributed to the offence<sup>9</sup>.

Where the court does not order the person convicted to be disqualified, it need not make such an order if for special reasons it thinks fit not to do so<sup>10</sup>.

1 For the meaning of 'offence involving obligatory endorsement' see PARA 1080 ante.

2 For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). As from a day to be appointed, where a person who is not the holder of a licence is convicted of an offence involving obligatory endorsement, s 44(1) applies as if the reference to the counterpart of any licence held by him were a reference to his driving record: s 44(3A) (added by the Road Safety Act 2006 s 9(1), (2)(a)). As from a day to be appointed, the reference to the meaning of 'counterpart' in the Road Traffic Offenders Act 1988 s 98(1) is removed by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7; and the Road Traffic Offenders Act 1988 s 44(3A) (as added) is repealed by the Road Safety Act 2006 ss 10(1),

(2)(b), 59, Sch 7. At the date at which this volume states the law no such day had been appointed. For the meaning of 'driving record' see PARA 1024 note 11 ante. See also PARA 1082 post.

3 For the meaning of 'licence' see PARA 1032 note 3 ante.

4 Road Traffic Offenders Act 1988 s 44(1) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(2), 3, Sch 2 para 10). As from a day to be appointed, the Road Traffic Offenders Act 1988 s 44(1) (as amended) is amended by the Road Safety Act 2006 s 10(2), substituting 'his driving record' for 'the counterpart of any licence held by him'. At the date at which this volume states the law no such day had been appointed.

5 For the meaning of 'disqualified' see PARA 1046 note 5 ante.

6 Road Traffic Offenders Act 1988 s 44(1)(a).

7 In any case where a court exercises its power under *ibid* s 44 (as amended) not to order any disqualification or endorsement or to order disqualification for a shorter period than would otherwise be required, it must state the grounds for doing so in open court and, if it is a magistrates' court, must cause them to be entered in the register of its proceedings: s 47(1).

8 *Ibid* s 44(1)(b)(i).

9 *Ibid* s 44(1)(b)(ii). As to the penalty points to be attributed to an offence see PARA 1049 ante. If the court orders disqualification in respect of an offence it cannot at the same time impose penalty points, whether in relation to that offence or any other offence: *R v Kent (Peter)* [1983] 3 All ER 1, [1983] 1 WLR 794, CA; *R v Preston* [1986] RTR 136, CA. This remains the position despite the absence after the word 'disqualified' of the words 'whether on that or any other conviction' which appeared in parenthesis after the word 'disqualified' in the Transport Act 1981 s 19(1) (repealed), which was the predecessor to this provision: *Martin v DPP* [2000] RTR 188, [2000] Crim LR 320, DC.

10 Road Traffic Offenders Act 1988 s 44(2). Section 44 (as amended) is subject to s 48 (as substituted) (see PARA 1087 post): s 44(4). For the criteria for special reasons, the onus and standard of proof and the residual discretion to endorse if special reasons are found see PARA 1059 ante. Ignorance of the law cannot amount to a special reason (*Swell v McKechnie* [1956] Crim LR 423, DC); neither can lack of intention to break the law (*Surtees v Benewith* [1954] 3 All ER 261, [1954] 1 WLR 1335, DC). Where, however, on unusual facts a defendant acted reasonably in not regarding himself as being under an obligation to have insurance or to display 'L' plates the justices were entitled to find special reasons in relation to those offences (but not careless driving): *DPP v Powell* [1993] RTR 266, DC (test drive of a toy motor cycle at no more than 2 mph across a narrow road with engine on).

A driver's belief that he was insured cannot be regarded as a special reason unless it was based on reasonable grounds: *Knowler v Rennison* [1947] KB 488, sub nom *Rennison v Knowler* [1947] 1 All ER 302 (distinguished in *East v Bladen* [1987] RTR 291, DC, where injuries to the defendant reduced his ability to behave with the standard of prudence normally expected of an insurance policy holder in checking the conditions of his insurance). For further cases on lack of insurance see *Labrum v Wilkinson* [1947] KB 816, [1947] 1 All ER 824, DC; *Lyons v May* [1948] 2 All ER 1062; *Blows v Chapman* [1947] 2 All ER 576, DC; *Boss v Kingston* [1963] 1 All ER 177, [1963] 1 WLR 99, DC; *Carlton v Garrity* [1964] Crim LR 146, DC.

It is not a special reason to exceed a speed limit only slightly (*Marks v West Midlands Police* [1981] RTR 471, DC); nor to be mistaken as to the speed limit in force on a particular road or to be the last in a line of vehicles travelling at the same, excess speed (*Jones v Nicks* [1977] RTR 72, DC). See also *Walker v Robinson* [1976] RTR 94, DC. Where, however, a motorist came from a 40 mph area to a 30 mph area, there was no 30 mph sign and he believed he was still in a 40 mph area, the justices were entitled to find special reasons: *Burgess v West* [1982] RTR 269, DC.

On special facts, justices were entitled to find special reasons for not endorsing the licences of several motorists who had performed U-turns across the central reservation of a motorway: *DPP v Fruer*, *DPP v Siba*, *DPP v Ward* [1989] RTR 29, DC.

## UPDATE

### 1081 Endorsement of licences and special reasons

NOTE 2--Day appointed in relation to Road Safety Act 2006 s 9 is 1 April 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/D. ENDORSEMENT/1082. Endorsement of driving record in accordance with order.

### **1082. Endorsement of driving record in accordance with order.**

The following provisions take effect as from a day to be appointed<sup>1</sup>.

Where the court orders the endorsement of a person's driving record<sup>2</sup> with any particulars or penalty points it must send notice of the order to the Secretary of State<sup>3</sup>. On receiving the notice, the Secretary of State must endorse those particulars or penalty points on the person's driving record<sup>4</sup>. A notice sent by the court to the Secretary of State in pursuance of these provisions must be sent in such manner and to such address and contain such particulars as the Secretary of State may require<sup>5</sup>.

1 The Road Traffic Offenders Act 1988 s 44A is added by the Road Safety Act 2006 s 9(1), (3) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'driving record' see PARA 1024 note 11 ante.

3 Road Traffic Offenders Act 1988 s 44A(1) (as added: see note 1 supra). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 Ibid s 44A(2) (as added: see note 1 supra).

5 Ibid s 44A(3) (as added: see note 1 supra).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/D. ENDORSEMENT/1083. Effect of endorsement.

### **1083. Effect of endorsement.**

The following provisions apply until a day to be appointed<sup>1</sup>.

An order that any particulars or penalty points are to be endorsed on the counterpart of any licence<sup>2</sup> held by the person convicted, whether he is at the time the holder of a licence or not, operates as an order that the counterpart of any licence he may then hold or may subsequently obtain is to be so endorsed until he becomes entitled<sup>3</sup> to have a licence issued to him with its counterpart free from the particulars or penalty points<sup>4</sup>.

On the issue of a new licence to a person, any particulars or penalty points ordered to be endorsed on the counterpart of any licence held by him must be entered on the counterpart of the licence unless he has become entitled<sup>5</sup> to have a licence issued to him with its counterpart free from those particulars or penalty points<sup>6</sup>.

A person the counterpart of whose licence has been ordered to be endorsed is entitled to have issued to him with effect from the end of the period for which the endorsement remains effective a new licence with a counterpart free from the endorsement if he applies for a new licence<sup>7</sup>, surrenders any subsisting licence and its counterpart, pays the prescribed fee<sup>8</sup> and satisfies certain other requirements<sup>9</sup>.

An endorsement ordered on a person's conviction of an offence remains effective<sup>10</sup>:

- 1153 (1) if an order is made for the disqualification<sup>11</sup> of the offender, until four years have elapsed since the conviction<sup>12</sup>; and
- 1154 (2) if no such order is made, until either four years have elapsed since the commission of the offence<sup>13</sup>, or an order is made for the disqualification of the offender<sup>14</sup>.

The following provisions take effect as from a day to be appointed<sup>15</sup>.

An order that any particulars or penalty points are to be endorsed on a person's driving record operates as an order that his driving record is to be so endorsed until the end of the period for which the endorsement remains effective<sup>16</sup>. At the end of the period for which the endorsement remains effective the Secretary of State must remove the endorsement from the person's driving record<sup>17</sup>. On the issue of a new licence to a person, any particulars ordered to be endorsed on his driving record must be entered on the counterpart of the licence unless he has become entitled<sup>18</sup> to have a licence issued to him with its counterpart free from those particulars or penalty points<sup>19</sup>.

A person the counterpart of whose licence has been endorsed under the above provision is entitled to have issued to him with effect from the end of the period for which the endorsement remains effective a new licence with a counterpart free from the endorsement if he applies for a new licence<sup>20</sup>, surrenders any subsisting licence and its counterpart, pays the fee prescribed<sup>21</sup> and satisfies the other statutory<sup>22</sup> requirements<sup>23</sup>.

1 The Road Traffic Offenders Act 1988 s 45 is repealed, as from a day to be appointed, by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 41, Sch 7. At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'licence' see PARA 1032 note 3 ante. For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). The reference to the meaning of 'counterpart' in s 98(1) is removed by the Road Safety Act 2006 Sch 3 paras 30, 61(b), Sch 7, as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

3 Ie under the Road Traffic Offenders Act 1988 s 45(4) (as amended): see the text and note 9 infra.

4 Ibid s 45(1) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(2), 3, Sch 2 para 11(a)). The Road Traffic Offenders Act 1988 s 45(1) (as amended) is further amended, as from a day to be appointed, by the Road Safety Act 2006 ss 9(6), 59, Sch 2 paras 2, 9(1), (2), Sch 7, by deleting the words ', whether he is at the time the holder of a licence or not'. At the date at which this volume states the law no such day had been appointed.

5 See note 3 supra.

6 Road Traffic Offenders Act 1988 s 45(2) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 11(b)).

7 Ie in pursuance of the Road Traffic Act 1988 s 97(1) (as amended): see PARA 1058 ante.

8 Ie the fee prescribed by regulations under ibid Pt III (ss 87-109) (as amended): see PARA 442 et seq ante.

9 Road Traffic Offenders Act 1988 s 45(4) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 11(d)). The requirements referred to in the text are the other requirements of the Road Traffic Act 1988 s 97(1) (as amended): see PARA 1058 ante.

10 Road Traffic Offenders Act 1988 s 45(5), which is expressed to be subject to s 45(6), (7) (as amended).

11 For the meaning of 'disqualification' see PARA 1046 note 5 ante.

12 Road Traffic Offenders Act 1988 s 45(5)(a).

13 Ibid s 45(5)(b)(i).



14 Ibid s 45(5)(b)(ii) (substituted by the Road Traffic Act 1991 s 48, Sch 4 para 99(1), (2)). An order for disqualification is made under the Road Traffic Offenders Act 1988 s 35 (as amended): see PARA 1070 ante. Where the offence was one under the Road Traffic Act 1988 s 1 (as substituted) (see PARA 963 ante) or s 2 (as substituted) (see PARA 964 ante) (causing death by dangerous driving and dangerous driving), the endorsement remains in any case effective until four years have elapsed since the conviction: Road Traffic Offenders Act 1988 s 45(6) (amended by the Road Traffic Act 1991 Sch 4 para 99(1), (3); and the Road Safety Act 2006 s 58(3)(a)). Where the offence was one under the Road Traffic Act 1988 s 3A (as added) (see PARA 974 ante), s 4(1) (as amended) (see PARA 975 ante), s 5(1)(a) (see PARA 978 ante) (driving offences connected with drink or drugs), or under s 7(6) (see PARA 988 ante) (failing to provide specimen) involving obligatory disqualification, or under s 7A(6) (as added) (see PARA 987 ante) (failing to allow a specimen to be subjected to laboratory test), the endorsement remains effective until 11 years have elapsed since the conviction: Road Traffic Offenders Act 1988 s 45(7) (amended by Road Traffic Act 1991 Sch 4 para 99(1), (4); and the Road Safety Act 2006 ss 14, s 58(3)(b)). For the meaning of 'offence involving obligatory disqualification' see PARA 1058 ante.

15 The Road Traffic Offenders Act 1988 s 45A is added by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 10 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

16 Road Traffic Offenders Act 1988 s 45A(1) (as added: see note 15 supra). The period for which an endorsement remains effective is determined in accordance with s 45(5)-(7) (as amended): s 45A(5) (as so added). For the meaning of 'driving record' see PARA 1024 note 11 ante.

17 Ibid s 45A(2) (as added: see note 15 supra).

18 Ie under ibid s 45A(4) (as added).

19 Ibid s 45A(3) (as added: see note 15 supra).

20 Ie in pursuance of the Road Traffic Act 1988 s 97(1) (as amended): see PARA 462 ante.

21 Ie by regulations under ibid Pt III (ss (ss 87-109) (as amended)).

22 Ie the requirements of ibid s 97(1) (as amended).

23 Road Traffic Offenders Act 1988 s 45A(4) (as added: see note 15 supra).

As from a day to be appointed, the provisions of s 45A(3)-(5) (as added) are substituted. At the date at which this volume states the law no such day had been appointed. An endorsement ordered on a person's conviction of an offence remains effective (subject to s 45A(4), (5) (as added and substituted)): (1) if an order is made for the disqualification of the offender, until four years have elapsed since the conviction; and (2) if no such order is made, until either four years have elapsed since the commission of the offence or an order is made for the disqualification of the offender for repeated offences under s 35 (as amended) (see PARA 1070 ante): s 45A(3) (s 45A(3)-(5) as so added; and substituted by the Road Safety Act 2006 s 10(12), Sch 2 paras 30, 42). Where the offence was one under the Road Traffic Act 1988 s 1 (as substituted) or s 2 (as substituted) (causing death by dangerous driving and dangerous driving), the endorsement remains in any case effective until four years have elapsed since the conviction: Road Traffic Offenders Act 1988 s 45A(4) (as so added and substituted). Where the offence was one: (a) under s 3A (as added) (see PARA 974 ante), s 4(1) (as amended) (see PARA 975 ante) or s 5(1)(a) (see PARA 978 ante) (driving offences connected with drink or drugs); (b) under s 7(6) (failing to provide specimen) involving obligatory disqualification (see PARA 988 ante); or (c) under s 7A(6) (as added) (failing to allow a specimen to be subjected to laboratory test) (see PARA 987 ante), the endorsement remains effective until 11 years have elapsed since the conviction: s 45A(5) (as so added and substituted).

## UPDATE

### **1083-1084 Effect of endorsement, Effect of endorsement on Community or Northern Ireland licence holders**

Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1083 Effect of endorsement**

NOTES 4, 15--Day appointed is 1 April 2009: SI 2008/3164..

NOTE 23--Reference to Road Safety Act 2006 Sch 2 paras 30, 42 should be to Sch 3 paras 30, 42.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/D. ENDORSEMENT/1084. Effect of endorsement on Community or Northern Ireland licence holders.

#### **1084. Effect of endorsement on Community or Northern Ireland licence holders.**

An order that any particulars or penalty points are to be endorsed on the counterpart<sup>1</sup> of any Community licence<sup>2</sup> or Northern Ireland licence<sup>3</sup> held by the person convicted operates as an order that: (1) the counterpart of any Community licence which he may then hold<sup>4</sup>; or (2) the counterpart of any licence<sup>5</sup> or Community licence which he may subsequently obtain<sup>6</sup>, is to be so endorsed until he becomes entitled<sup>7</sup> to have a counterpart of his Community licence, or a licence and its counterpart, issued to him free from the particulars or penalty points<sup>8</sup>.

On the issue of a new counterpart of a Community licence or a new licence to a person, any particulars or penalty points ordered to be endorsed on the counterpart of any Community licence held by him must be entered on the new counterpart or the counterpart of the new licence (as the case may be) unless he has become entitled under the following provision to have a new counterpart of his Community licence or a new licence issued to him free from those particulars or penalty points<sup>9</sup>.

A person the counterpart of whose Community licence has been ordered to be endorsed is entitled to have issued to him with effect from the end of the period for which the endorsement remains effective<sup>10</sup>:

- 1155 (a) a new counterpart of any Community licence then held by him free from the endorsement if he makes an application to the Secretary of State<sup>11</sup> for that purpose in such manner as the Secretary of State may determine<sup>12</sup>; or
- 1156 (b) a new licence with a counterpart free from the endorsement if he applies for a new licence<sup>13</sup>, surrenders any subsisting licence and its counterpart, pays the prescribed fee<sup>14</sup> and satisfies specified requirements<sup>15</sup>.

1 For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). The reference to the meaning of 'counterpart' in s 98(1) is removed by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7, as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'Community licence' see PARA 415 note 16 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). As to the application of the Road Traffic Offenders Act 1988 to Community licences see PARA 1024 ante.

3 The provisions of *ibid* s 91B (as added) apply in relation to Northern Ireland licences (see PARA 1025 ante) as they apply in relation to Community licences: s 91ZB (added by the Crime (International Co-operation) Act 2003 s 77(2)). This provision is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 paras 30, 58, Sch 7. At the date at which this volume states the law no such day had been appointed.

4 Road Traffic Offenders Act 1988 s 91B(1)(a) (s 91B added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 3, Sch 2 para 5).

The Road Traffic Offenders Act 1988 s 91B (as added) is repealed by the Road Safety Act 2006 Sch 3 para 60, Sch 7, as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

5 For the meaning of 'licence' see PARA 1032 note 3 ante.

6 Road Traffic Offenders Act 1988 s 91B(1)(b) (as added: see note 3 supra).

7 le under ibid s 91B(3) (as added).

8 Ibid s 91B(1) (as added: see note 3 supra).

9 Ibid s 91B(2) (as added: see note 3 supra).

10 Ibid s 91B(3) (as added: see note 3 supra). The endorsement remains effective as determined in accordance with s 45(5) (as amended): see PARA 1083 ante.

11 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

12 Road Traffic Offenders Act 1988 s 91B(3)(a) (as added: see note 3 supra).

13 le in pursuance of the Road Traffic Act 1988 s 97(1) (as amended): see PARA 462 ante.

14 le the fee prescribed by regulations under ibid Pt III (ss 87-109) (as amended): see PARA 442 et seq ante.

15 Road Traffic Offenders Act 1988 s 91B(3)(b) (as added: see note 3 supra). The requirements are those of the Road Traffic Act 1988 s 97(1) (as amended): see PARA 462 ante.

## UPDATE

### **1083-1084 Effect of endorsement, Effect of endorsement on Community or Northern Ireland licence holders**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iii) Sentence/E. GENERAL PROVISIONS RELATING TO DISQUALIFICATION AND ENDORSEMENT/1085. Combination of disqualification and endorsement with probation orders and orders for discharge.

## ***E. GENERAL PROVISIONS RELATING TO DISQUALIFICATION AND ENDORSEMENT***

### **1085. Combination of disqualification and endorsement with probation orders and orders for discharge.**

Notwithstanding anything in the Powers of Criminal Courts (Sentencing) Act 2000<sup>1</sup>, a court which on convicting a person of an offence involving obligatory<sup>2</sup> or discretionary disqualification<sup>3</sup> makes an order discharging him absolutely or conditionally, may on that occasion also exercise certain powers conferred, and must also discharge certain duties imposed, on the court<sup>4</sup>.

A conviction in respect of which a court has ordered a person to be disqualified<sup>5</sup>, or of which particulars have been endorsed on the counterpart<sup>6</sup> of any licence<sup>7</sup> held by him<sup>8</sup>, is to be taken into account, notwithstanding anything in the Powers of Criminal Courts (Sentencing) Act 2000<sup>9</sup>, in determining his liability to punishment or disqualification for any offence involving obligatory or discretionary disqualification committed subsequently<sup>10</sup>.

1    In the Powers of Criminal Courts (Sentencing) Act 2000 s 14(3) (conviction of offender discharged to be disregarded for the purposes of enactments relating to disqualification): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 41.

2    For the meaning of 'offence involving obligatory disqualification' see PARA 1058 ante.

3    For the meaning of 'offence involving discretionary disqualification' see PARA 1060 ante.

4    Road Traffic Offenders Act 1988 s 46(1) (amended by the Criminal Justice Act 1991 ss 100, 101(2), Sch 11 para 38, Sch 13; the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 123(1), (2); and the Criminal Justice Act 2003 ss 304, 332, Sch 32 Pt 1 paras 52, 54, Sch 37 Pt 7). The powers and duties referred to in the text are those under the Road Traffic Offenders Act 1988 s 34 (as amended) (see PARA 1058 ante), s 35 (as amended) (see PARA 1070 ante), s 36 (as substituted and amended) (see PARA 1071 ante) or s 44 (as amended) (see PARA 1081 ante). As from a day to be appointed, reference to the duty under s 44A (as added) (see PARA 1082 ante) is added: s 46(1) (amended by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 11(1), (2)). At the date at which this volume states the law no such day had been appointed.

5    Road Traffic Offenders Act 1988 s 46(2)(a). For the meaning of 'disqualified' see PARA 1046 note 5 ante.

6    For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by *ibid* s 98(1). The reference to the meaning of 'counterpart' in s 98(1) is removed by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7, as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

7    For the meaning of 'licence' see PARA 1032 note 3 ante.

8    Road Traffic Offenders Act 1988 s 46(2)(b) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(2), 3, Sch 2 para 12). The Road Traffic Offenders Act 1988 s 46(2)(b) (as amended) is further amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 2 para 11(3), by adding the words 'or on his driving record' after the words 'held by him'. At the date at which this volume states the law no such day had been appointed. For the meaning of 'driving record' see PARA 1024 note 11 ante. The words 'the counterpart of any licence held by him or on' in the Road Traffic Offenders Act 1988 s 46(2)(b) (as amended) are repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 paras 30, 43, Sch 7. At the date at which this volume states the law no such day had been appointed.

9    In the Powers of Criminal Courts (Sentencing) Act 2000 s 14(1) (conviction of offender discharged to be disregarded for the purposes of subsequent proceedings): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 41.

10   Road Traffic Offenders Act 1988 s 46(2) (amended by the Criminal Justice Act 1991 ss 100, 101(2), Sch 11 para 38, Sch 13; the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 123(3); and the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(2), 3, Sch 2 para 12).

## UPDATE

### **1085 Combination of disqualification and endorsement with probation orders and orders for discharge**

NOTES 4, 8--Day appointed in relation to Road Safety Act 2006 s 9, Sch 2 is 1 April 2009: SI 2008/3164.

GENERAL PROVISIONS RELATING TO DISQUALIFICATION AND ENDORSEMENT/1086. Court's supplementary powers on disqualification or endorsement.

### **1086. Court's supplementary powers on disqualification or endorsement.**

In any case where a court exercises its power<sup>1</sup> not to order any disqualification<sup>2</sup> or endorsement or to order disqualification for a shorter period than would otherwise be required, it must state<sup>3</sup> the grounds for doing so in open court and, if it is a magistrates' court, must cause them to be entered in the register of its proceedings<sup>4</sup>.

Where a court orders the endorsement of the counterpart<sup>5</sup> of any licence<sup>6</sup> held by a person it may, and where a court orders the holder of a licence to be disqualified for a period of 56 days or more it must, send the licence and its counterpart, on their being produced to the court, to the Secretary of State<sup>7</sup>; and if the court orders the endorsement but does not send the licence and its counterpart to the Secretary of State it must send him notice of the endorsement<sup>8</sup>.

Where on an appeal against an order for the endorsement of a licence or the disqualification of a person the appeal is allowed, the court by which the appeal is allowed must send notice of that fact to the Secretary of State<sup>9</sup>.

A notice sent by a court to the Secretary of State in pursuance of the above provisions must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine, and a licence and the counterpart of a licence so sent in pursuance of this provision must be sent to such address as the Secretary of State may determine<sup>10</sup>.

1    le under the Road Traffic Offenders Act 1988 s 34 (as amended) (see PARA 1058 ante), s 35 (as amended) (see PARA 1070 ante) or s 44 (as amended) (see PARA 1081 ante).

2    For the meaning of 'disqualification' see PARA 1046 note 5 ante.

3    This requirement is directory, not mandatory, so that failure to comply does not provide a ground of appeal: *Barnes v Gevaux* [1981] RTR 236, DC.

4    Road Traffic Offenders Act 1988 s 47(1).

5    For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by *ibid* s 98(1). The reference to the meaning of 'counterpart' in s 98(1) is removed by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7, as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

6    For the meaning of 'licence' see PARA 1032 note 3 ante.

7    As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

8    Road Traffic Offenders Act 1988 s 47(2) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 100(1), (2); and the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(2), 3, Sch 2 para 13(a)). The Road Traffic Offenders Act 1988 s 47(2) (as amended) is subject to the Road Traffic (New Drivers) Act 1995 s 2(2), Sch 1 para 7(2) (see PARA 514 ante) (obligation of court to send licence and its counterpart to the Secretary of State): Road Traffic Offenders Act 1988 s 47(2A) (added by the Road Traffic (New Drivers) Act 1995 s 10(4), Sch 2 para 4;). This provision is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 paras 30, 44(1), (3), Sch 7 to remove the words 'and its counterpart'. At the date at which this volume states the law no such day had been appointed.

The Road Traffic Offenders Act 1988 s 47(2) (as amended) is substituted, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 44(2). As from such day, where a court orders the endorsement of a person's driving record it may, and where a court orders a person to be disqualified for a period of 56 days or more it must, send any licence of the person that is produced to the court, to the Secretary of State. For the meaning of 'driving record' see PARA 1024 note 11 ante.

9    Road Traffic Offenders Act 1988 s 47(3) (amended by the Road Traffic Act 1991 Sch 4 para 100(1), (3)). As from a day to be appointed, the Road Traffic Offenders Act 1988 s 47(3) (as amended) is further amended by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 12(1), (2), to add the words 'or a driving record' after 'licence';

and the Road Traffic Offenders Act 1988 s 47(3A) is added by the Road Safety Act 2006 Sch 2 para 12(3), to provide that, on receiving such a notice in relation to a person who is not the holder of a licence, the Secretary of State must make any necessary adjustments to the endorsements on the person's driving record to reflect the outcome of the appeal. At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed, the Road Traffic Offenders Act 1988 s 47(3) (as amended) is further amended by the Road Safety Act 2006 Sch 3 para 44(4), Sch 7, so as to remove the words 'a licence or'; and the Road Traffic Offenders Act 1988 s 47(3A) (as added) is amended by the Road Safety Act 2006 Sch 3 para 44(5), Sch 7, so as to remove the words 'in relation to a person who is not the holder of a licence'. At the date at which this volume states the law no such day had been appointed.

10 Road Traffic Offenders Act 1988 s 47(4) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 13(b)). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 Sch 3 para 44(6), Sch 7, to remove the words 'and the counterpart of a licence'. At the date at which this volume states the law no such day had been appointed.

## UPDATE

### 1086 Court's supplementary powers on disqualification or endorsement

NOTE 9--Day appointed in relation to Road Safety Act 2006 s 9, Sch 2 is 1 April 2009: SI 2008/3164.

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### 1087. Exemptions from disqualification and endorsement for certain construction and use offences.

Where a person is convicted of an offence of using a vehicle in a dangerous condition<sup>1</sup> the court must not order him to be disqualified<sup>2</sup>, or order any particulars or penalty points to be endorsed on the counterpart<sup>3</sup> of any licence<sup>4</sup> held by him<sup>5</sup>, if he proves that he did not know, and had no reasonable cause to suspect, that the use of the vehicle involved a danger of injury to any person<sup>6</sup>.

Where a person is convicted of an offence of breaching the requirement as to brakes, steering-gear or tyres<sup>7</sup> the court must not order him to be disqualified<sup>8</sup>, or order any particulars or penalty points to be endorsed on the counterpart of any licence held by him<sup>9</sup>, if he proves that he did not know, and had no reasonable cause to suspect, that the facts of the case were such that the offence would be committed<sup>10</sup>.

1    Ie under the Road Traffic Act 1988 s 40A (as added): see PARA 625 ante.

2    Road Traffic Offenders Act 1988 s 48(1)(a) (s 48 substituted by the Road Traffic Act 1991 s 48, Sch 4 para 101). For the meaning of 'disqualified' see PARA 1046 note 5 ante.

3    For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). In relation to licences which came into force before 1 June 1990, the references in s 48(1), (2) (as substituted) to the counterpart of a licence are to be construed as references to the licence itself: s 48(3) (as so substituted). As from a day to be appointed, this provision is repealed by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 45(1), (3), Sch 7; and the reference to the meaning of 'counterpart' in the Road Traffic Offenders Act 1988 s 98(1) is removed by the Road Safety Act 2006 Sch 3 paras 30, 61(b), Sch 7. At the date at which this volume states the law no such day had been appointed.

4 For the meaning of 'licence' see PARA 1032 note 3 ante.

5 Road Traffic Offenders Act 1988 s 48(1)(b) (as substituted: see note 2 supra). Section 48(1)(b) (as substituted) is amended, as from a day to be appointed, by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 13, to add the words 'or on his driving record' after 'licence held by him'. For the meaning of 'driving record' see PARA 1024 note 11 ante. The Road Traffic Offenders Act 1988 s 48(1)(b) (as substituted) is also amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 45(2), Sch 7, to remove the words 'the counterpart of any licence held by him or on'. At the date at which this volume states the law no such day had been appointed.

6 Road Traffic Offenders Act 1988 s 48(1) (as substituted: see note 2 supra).

7 le under the Road Traffic Act 1988 s 41A (as added): see PARA 261 ante.

8 Road Traffic Offenders Act 1988 s 48(2)(a) (as substituted: see note 2 supra).

9 Ibid s 48(2)(b) (as substituted: see note 2 supra). See also note 3 supra. Section 48(2)(b) (as substituted) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 2 para 13, to add the words 'or on his driving record' after 'licence held by him'. The Road Traffic Offenders Act 1988 s 48(2)(b) (as substituted) is also amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 45(2), Sch 7, to remove the words 'the counterpart of any licence held by him or on'. At the date at which this volume states the law no such day had been appointed.

10 Road Traffic Offenders Act 1988 s 48(2) (as substituted: see note 2 supra).

## UPDATE

### **1087 Exemptions from disqualification and endorsement for certain construction and use offences**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTES 5, 9--Day appointed in relation to Road Safety Act 2006 s 9, Sch 2 is 1 April 2009: SI 2008/3164.

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### **1088. Offender escaping consequences of endorseable offences by deception.**

Where, in dealing with a person convicted of an offence involving obligatory endorsement<sup>1</sup>, a court was deceived regarding any circumstances that were or might have been taken into account in deciding whether or for how long to disqualify him<sup>2</sup>, if the deception constituted or was due to an offence committed by that person<sup>3</sup>, and he is convicted of that offence<sup>4</sup>, the court by or before which he is convicted has the same powers and duties regarding an order for disqualification<sup>5</sup> as had the court which dealt with him for the offence involving obligatory endorsement but must, in dealing with him, take into account any order made on his conviction of the offence involving obligatory endorsement<sup>6</sup>.

1 For the meaning of 'offence involving obligatory endorsement' see PARA 1080 ante.

- 2 Road Traffic Offenders Act 1988 s 49(1).
- 3 Ibid s 49(2)(a).
- 4 Ibid s 49(2)(b).
- 5 For the meaning of 'disqualification' see PARA 1046 note 5 ante.
- 6 Road Traffic Offenders Act 1988 s 49(2).

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## **(iv) Fixed Penalties**

### **A. IN GENERAL**

#### **1089. Fixed penalties generally.**

Many road traffic offences, including some which are endorseable<sup>1</sup>, may be dealt with by way of a fixed penalty<sup>2</sup> rather than by way of prosecution. Payment of the amount<sup>3</sup> of the fixed penalty discharges any liability to conviction of the offence to which a fixed penalty notice<sup>4</sup> relates. A fixed penalty notice may be given to a person<sup>5</sup> or affixed to a vehicle<sup>6</sup>.

In relation to a fixed penalty notice given to a person:

- 1157 (1) where a constable in uniform<sup>7</sup> has reason to believe that a person he finds is committing or has on that occasion committed a fixed penalty offence the constable may give him a fixed penalty notice in respect of the offence<sup>8</sup>;
- 1158 (2) if the fixed penalty offence is an offence involving obligatory endorsement<sup>9</sup> a fixed penalty notice may be given on the spot, provided the offender would not be liable to points' disqualification if he were convicted of that offence<sup>10</sup> and he surrenders his licence<sup>11</sup> and its counterpart<sup>12</sup> to the constable<sup>13</sup>;
- 1159 (3) if the offender does not produce his licence and its counterpart to the constable for inspection, the constable may issue a 'provisional' fixed penalty notice, and if the licence and its counterpart are then surrendered at the police station specified in the notice within seven days and the offender would not be liable to points' disqualification for the offence concerned, the offer of a fixed penalty must be confirmed<sup>14</sup>;
- 1160 (4) the fixed penalty notice acts as a bar to any criminal proceedings against that person for the fixed penalty offence unless he requests a hearing in respect of the offence before the end of the suspended enforcement period<sup>15</sup>;
- 1161 (5) failure to request a hearing or to pay the fixed penalty within the suspended enforcement period enables an sum equal to 150 per cent of the value of the fixed penalty to be registered for enforcement against the recipient as a fine<sup>16</sup>.

In relation to a fixed penalty notice affixed to a vehicle:

- 1162 (a) provided that the offence does not involve obligatory endorsement, a fixed penalty notice may, instead of being given to a person, be affixed to the vehicle in respect of which the fixed penalty offence is being, or has on that occasion been, committed<sup>17</sup>;



- 1163 (b) during the subsequent suspended enforcement period only the driver of the vehicle on the occasion in question may request a court hearing<sup>18</sup> and, if he does not do so, and the fixed penalty remains unpaid at the end of the suspended enforcement period, a notice to owner may be served on the person who appears to be the owner of the vehicle<sup>19</sup>, and that person may then, within the period allowed for responding to the notice: (i) pay the fixed penalty; (ii) give notice requesting a hearing; (iii) if somebody else was the driver on the relevant occasion and that person wishes to give notice requesting a hearing, furnish a statutory statement of ownership<sup>20</sup> and a statutory statement of facts<sup>21</sup>, and this renders ineffective any notice requesting a hearing that he purports to give on his own account<sup>22</sup>; or (iv) provide a statutory statement of ownership to the effect that he was not the owner of the vehicle at the time of the alleged offence<sup>23</sup>;
- 1164 (c) subject to heads (d), (e) and (f) below, where the fixed penalty remains unpaid by the end of the period allowed for response to the notice to owner a sum equal to 150 per cent of the value of the fixed penalty may be registered for enforcement against the person on whom the notice to owner was served<sup>24</sup>;
- 1165 (d) where the recipient of the notice responds as in head (b)(ii) above (and in no other circumstances), he may be prosecuted for the offence and it must conclusively be presumed that he was the driver of the vehicle on the occasion in question unless he proves that at that time the vehicle was in the possession of some other person without his consent<sup>25</sup>;
- 1166 (e) where the recipient of the notice responds as in head (b)(iii) above, the person identified as the driver of the vehicle may be prosecuted (but in no other circumstances may proceedings for the offence be brought against any person other than the person on whom the notice to owner was served)<sup>26</sup>, but if no summons is served on that person within the period of two months immediately following the period allowed for response to the notice to owner, a sum equal to 150 per cent of the value of the fixed penalty may be registered for enforcement against the person on whom the notice to owner was served<sup>27</sup>; and
- 1167 (f) where the recipient of the notice responds as in head (b)(iv) above he is not liable in respect of the alleged offence and a penalty may not be registered against him for enforcement as a fine<sup>28</sup>.

There are separate provisions in relation to hired vehicles<sup>29</sup>.

There are provisions to deal with cases of invalid registration of a fixed penalty for enforcement as a fine and invalid endorsements<sup>30</sup>.

The above summary does not mention every procedural aspect of the fixed penalty system.

1 As to endorsement see PARAS 1080-1084 ante.

2 As to fixed penalty offences see PARA 1093 post.

3 As to the amount of the fixed penalty see PARA 1095 post.

4 As to fixed penalty notices see PARA 1094 post.

5 See PARA 1097 et seq post.

6 See PARA 1104 et seq post.

7 As to constables, and as to traffic wardens exercising the functions of constables in relation to fixed penalties, see PARA 1097 note 1 post. As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

8 See PARA 1097 post.

9 As to offences involving obligatory endorsement see PARA 1080 ante.

- 10 As to liability to points' disqualification see PARA 1070 ante.
- 11 For the meaning of 'licence' see PARA 1032 note 3 ante.
- 12 For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). As from a day to be appointed, s 98(1) is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7 so as to remove reference to the counterpart. At the date at which this volume states the law no such day had been appointed.
- 13 See PARA 1097 et seq post.
- 14 See PARA 1097 post.
- 15 See PARA 1094 post. For the meaning of 'suspended enforcement period' see PARA 1094 head (1) post.
- 16 See PARA 1098 post.
- 17 As to fixing notices to vehicles see PARA 1104 post.
- 18 See PARA 1105 post.
- 19 As to the content of the notice see PARA 1105 post.
- 20 For the meaning of 'statutory statement of ownership' see PARA 1106 post.
- 21 For the meaning of 'statutory statement of facts' see PARA 1107 post.
- 22 See PARA 1105 post.
- 23 See PARA 1105 post.
- 24 See PARA 1108 post.
- 25 See PARA 1108 post.
- 26 See PARA 1109 post.
- 27 See PARA 1108 post.
- 28 See PARA 1108 post.
- 29 See PARA 1110 post.
- 30 See PARAS 1115-1116 post.

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### **1090. Power to make regulations and orders and duty to issue guidance.**

The Secretary of State<sup>1</sup> may by regulations make provision as to any matter incidental to the operation of the provisions relating to fixed penalties<sup>2</sup>. Any power conferred on the Secretary of State<sup>3</sup> to make any order or regulations is exercisable by statutory instrument<sup>4</sup>. As from a day to be appointed, the Secretary of State may by regulations provide that where: (1) a conditional offer has been issued<sup>5</sup>; (2) the amount of the penalty stated in the offer is not the higher amount applicable in a case where the offender was disqualified from driving or had penalty points endorsed<sup>6</sup>; and (3) it subsequently appears that that higher amount is in fact

applicable, the fixed penalty clerk may issue a further notice (a 'surcharge notice') requiring payment of the difference between the two amounts<sup>7</sup>.

The Secretary of State must issue guidance to chief officers of police<sup>8</sup> for police areas and to the chief constable of the British Transport Police<sup>9</sup> in respect of the operation of the provisions relating to fixed penalties<sup>10</sup> with the objective so far as possible of working towards uniformity<sup>11</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Road Traffic Offenders Act 1988 s 84 (prospectively renumbered as s 84(1) by the Domestic Violence, Crime and Victims Act 2004 s 16(1), (3)). The provisions relating to fixed penalties are contained in the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended): see PARA 1093 et seq post. In particular the Secretary of State may make provision:

1670 (1) for prescribing any information or further information to be provided in any notice, notification, certificate or receipt under s 52(1) (see PARA 1094 post), s 54(4) (as amended) (see PARA 1097 post), s 56 (as amended) (see PARA 1099 post), s 59(1) (repealed), s 63(2) (see PARA 1105 post), s 70(2), (3)(b) (see PARA 1113 post), s 73(4)(b) (see PARA 1116 post), s 75(2), (3) (as substituted) (see PARA 1118 post) or s 76(5), (6) (as substituted) (see PARA 1118 post), or in any official form for a statutory statement mentioned in Sch 4 (see PARAS 1106-1107 post), or a statement under s 66(2) (see PARA 1110 post) (s 84(a) (amended by the Road Safety Act 2006 s 59, Sch 7));

1671 (2) for requiring any such official form to be served with any notice served under the Road Traffic Offenders Act 1988 s 63 (see PARA 1105 post) or 73(4) (see PARA 1116 post) (s 84(b)); and

1672 (3) for prescribing the duties of designated officers or clerks of courts of summary jurisdiction and the information to be supplied to them (s 84(c) (amended by the Courts Act 2003 s 109(1), Sch 8 para 322)).

The Road Traffic (Owner Liability) Regulations 2000, SI 2000/2546 (amended by SI 2001/1222), have been made under the Road Traffic Offenders Act 1988 s 84 (as amended), and, by virtue of the Road Traffic (Consequential Provisions) Act 1988 s 2(2), the Fixed Penalty (Procedure) Regulations 1986, SI 1986/1330 (amended by SI 2001/926; SI 2005/617) have effect as if so made.

The Road Traffic Offenders Act 1988 s 84 is amended, as from a day to be appointed, by the Road Safety Act 2006 s 5, Sch 1 paras 1, 22, to substitute for the references to the Road Traffic Offenders Act 1988 s 75(2), (3) or s 76(5), (6) references to s 75(1), (1A), (2), (3) or (3B) or s 76(3)(c) or (4)(b). Section 84 is further prospectively amended by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 29, to add a reference to the Road Traffic Offenders Act 1988 s 54(5C) (prospectively added) (see PARA 1097 note 20 post). At the date at which this volume states the law no day had been appointed for the commencement of these amendments.

3 Ie by *ibid* Pt III (as amended).

4 *Ibid* s 88(1). Before making an order under s 51 (see PARA 1093 post), s 53 (as substituted) (see PARA 1095 post) or s 75 (as substituted and amended) (see PARA 1117 post), or regulations under s 84 (as amended), the Secretary of State must consult with such representative organisations as he thinks fit: s 88(2). A statutory instrument containing regulations or an order under any provision of Pt III (as amended) is subject to annulment in pursuance of a resolution of either House of Parliament: s 88(3). Regulations under Pt III (as amended) may make different provision for different cases, and contain such incidental and supplemental provisions as the Secretary of State considers expedient for the purposes of the regulations: s 88(4).

5 Ie under *ibid* s 75 (as substituted and amended): see PARA 1117 post.

6 Ie by virtue of *ibid* s 53(3) (prospectively added): see PARA 1095 post.

7 *Ibid* s 84(2). The provisions of s 84(2), (3) are added, as from a day to be appointed, by the Domestic Violence, Crime and Victims Act 2004 s 16(1), (3). At the date at which this volume states the law no such day had been appointed. The regulations may: (1) provide for the Road Traffic Offenders Act 1988 Pt III (as amended) to have effect, in cases to which the regulations apply, with such modifications as may be specified; (2) make provision for the collection and enforcement of amounts due under surcharge notices: s 84(3) (as so added).

Section 84(2) (as added) is amended, as from a day to be appointed, by the Road Safety Act 2006 s 3(1), (3) so as to substitute for heads (2), (3) in the text a new head, providing 'the amount of the penalty stated in the

offer is less than the fixed penalty applicable in the circumstances'. At the date at which this volume states the law no such day had been appointed.

8 'Chief officer of police' (except in the definition of 'authorised person' (see PARA 1097 note 15 post)) means, in relation to any fixed penalty notice, notice to owner or conditional offer, the chief officer of police for the police area in which the fixed penalty offence in question is alleged to have been committed: *ibid* s 89(1) (definition amended by the Road Traffic Act 1991 s 48, Sch 4 para 107). As to the chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq; and as to police areas see POLICE vol 36(1) (2007 Reissue) PARA 136 et seq.

9 As to the British Transport Police see PARA 1097 post.

10 The provisions relating to fixed penalties are contained in the Road Traffic Offenders Act 1988 Pt III (as amended): see PARA 1091 et seq post.

11 *Ibid* s 87 (amended by the Police Reform Act 2002 s 76(5)).

## UPDATE

### 1090 Power to make regulations and orders and duty to issue guidance

NOTE 2--Day appointed in relation to Road Safety Act 2006 s 5, Sch 1 is 31 March 2009 and in relation to s 9, Sch 2 is 1 April 2009: SI 2008/3164. SI 1986/1330 further amended: SI 2009/494.

NOTE 7--Day appointed in relation to Road Safety Act 2006 s 3 is 5 January 2009: SI 2008/3164.

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### 1091. Service of documents.

Subject to any requirement in the provisions relating to fixed penalties<sup>1</sup> with respect to the manner in which a person may be provided with any such document, he may be provided with certain statutory statements<sup>2</sup> and documents<sup>3</sup> by post, but this is without prejudice to any other method of providing him with them<sup>4</sup>.

A notice to owner may be served on any person by delivering it to him or by leaving it at his proper address<sup>5</sup>, or by sending it to him by post<sup>6</sup>, and where the person on whom such a notice is to be served is a body corporate it is duly served if it is served on the secretary or clerk of that body<sup>7</sup>.

1 *Ie* the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended).

2 *Ie* any of the statutory statements mentioned in *ibid* s 68, Sch 4 (see PARAS 1106-1107 post): s 85(1)(a).

3 *Ie* any of the documents mentioned in *ibid* s 66(2) (see PARA 1110 post): s 85(1)(b).

4 *Ibid* s 85(1). Where a notice requesting a hearing in respect of an offence is permitted by a fixed penalty notice or notice to owner relating to that offence to be given by post, the Interpretation Act 1978 s 7 (see STATUTES vol 44(1) (Reissue) PARA 1388) applies as if that notice were permitted to be so given by the Road Traffic Offenders Act 1988: s 85(2). For the meaning of 'fixed penalty notice' see PARA 1094 post. For the meaning of 'notice to owner' see PARAS 1105, 1110 note 8 post.

5 Ibid s 85(3)(a). For the purposes of Pt III (as amended) and of the Interpretation Act 1978 s 7 (see STATUTES vol 44(1) (Reissue) PARA 1388) as it applies for the purposes of the Road Traffic Offenders Act 1988 s 85(3), the proper address of any person in relation to the service on him of a notice to owner is: (1) in the case of the secretary or clerk of a body corporate, that of the registered or principal office of that body or the registered address of the person who is or was the registered keeper of the vehicle concerned at the time of service; and (2) in any other case, his last known address at the time of service: s 85(4). 'Registered address', in relation to the registered keeper of a vehicle, means the address recorded in the record kept under the Vehicle Excise and Registration Act 1994 (see PARA 518 et seq ante) with respect to that vehicle as being that person's address: Road Traffic Offenders Act 1988 s 85(5) (amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 25(1)).

References in the Road Traffic Offenders Act 1988 Pt III (as amended) to the person who is or was at any time the registered keeper of a vehicle are references to the person in whose name the vehicle is or was at that time registered under the Vehicle Excise and Registration Act 1994: Road Traffic Offenders Act 1988 s 89(2)(c) (amended by the Vehicle Excise and Registration Act 1994 Sch 3 para 25(1)).

6 Road Traffic Offenders Act 1988 s 85(3)(b).

7 Ibid s 85(3).

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## **1092. Functions of traffic wardens.**

An order<sup>1</sup> authorising the employment of traffic wardens to discharge appropriate functions may not authorise the employment of a traffic warden to discharge any function relating to fixed penalties<sup>2</sup> in respect of an offence<sup>3</sup> if the offence appears to the traffic warden to be an offence involving obligatory endorsement<sup>4</sup> unless that offence was committed whilst the vehicle concerned was stationary<sup>5</sup>.

1 Ie an order under the Road Traffic Regulation Act 1984 s 95(5): see PARA 868 ante.

2 Ie any function under the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended).

3 As to the meaning of 'offence' see PARA 1093 note 1 post.

4 For the meaning of 'offence involving obligatory endorsement' see PARA 1080 ante.

5 Road Traffic Offenders Act 1988 s 86(1) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 106). In so far as an order under the Road Traffic Regulation Act 1984 s 95(5) authorises the employment of traffic wardens for the purposes of the Road Traffic Offenders Act 1988 Pt III (as amended) references in Pt III (as amended) to a constable or, as the case may be, to a constable in uniform include a traffic warden: s 86(2). See the Functions of Traffic Wardens Order 1970, SI 1970/1958 (as amended); and PARA 868 ante. As to the appointment of traffic wardens see PARA 868 ante. As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

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## **B. FIXED PENALTY OFFENCES AND NOTICES**

### **1093. Fixed penalty offences.**

An offence<sup>1</sup> in respect of a vehicle is a fixed penalty offence if it is specified for this purpose under the road traffic legislation<sup>2</sup>. The following offences are fixed penalty offences:

- 1168 (1) parking vehicles on footways, verges, etc<sup>3</sup>;
- 1169 (2) obstructing a highway, but only where the offence is committed in respect of a vehicle<sup>4</sup>;
- 1170 (3) using a vehicle in contravention of a traffic regulation order outside Greater London<sup>5</sup>;
- 1171 (4) breach of a traffic regulation order in Greater London<sup>6</sup>;
- 1172 (5) breach of an experimental traffic order<sup>7</sup>;
- 1173 (6) breach of an experimental traffic scheme regulations in Greater London<sup>8</sup>;
- 1174 (7) using a vehicle in contravention of a temporary prohibition or restriction of traffic in case of execution of works, etc<sup>9</sup>;
- 1175 (8) wrongful use of a special road<sup>10</sup>;
- 1176 (9) using a vehicle in contravention of a provision for one-way traffic on a trunk road<sup>11</sup>;
- 1177 (10) driving a vehicle in contravention of an order prohibiting or restricting driving vehicles on certain classes of roads<sup>12</sup>;
- 1178 (11) breach of pedestrian crossing regulations<sup>13</sup>;
- 1179 (12) using a vehicle in contravention of a street playground order<sup>14</sup>;
- 1180 (13) breach of an order regulating the use, etc, of a parking place provided by a local authority, but only where the offence is committed in relation to a parking place provided on a road<sup>15</sup>;
- 1181 (14) breach of a provision of a parking place designation order and other offences committed in relation to a parking place designated by such an order<sup>16</sup>;
- 1182 (15) using a vehicle in contravention of any provision of a parking place designation order<sup>17</sup>;
- 1183 (16) breach of a provision of a parking place designation order having effect by virtue of the provision relating to use of any part of a road for parking without charge<sup>18</sup>;
- 1184 (17) driving a motor vehicle in contravention of an order imposing a minimum speed limit<sup>19</sup>;
- 1185 (18) speeding offences<sup>20</sup>;
- 1186 (19) breach of regulations requiring the wearing of seat belts<sup>21</sup>;
- 1187 (20) breach of restriction on carrying children in the front of vehicles<sup>22</sup>;
- 1188 (21) breach of restriction on carrying children in the rear of vehicles<sup>23</sup>;
- 1189 (22) breach of regulations relating to protective headgear for motor cycle drivers and passengers<sup>24</sup>;
- 1190 (23) breach of regulations relating to head-worn appliances (eye protectors) for use on motorcycles<sup>25</sup>;
- 1191 (24) parking a heavy commercial vehicle on a verge or footway<sup>26</sup>;
- 1192 (25) leaving a vehicle in a dangerous position<sup>27</sup>;
- 1193 (26) unlawful carrying of passengers on motor cycles<sup>28</sup>;
- 1194 (27) carrying more than one person on a pedal cycle<sup>29</sup>;
- 1195 (28) driving a mechanically propelled vehicle elsewhere than on a road<sup>30</sup>;
- 1196 (29) failure to comply with traffic directions<sup>31</sup>;
- 1197 (30) failure to comply with traffic signs<sup>32</sup>;
- 1198 (31) using a vehicle in a dangerous condition etc<sup>33</sup>;
- 1199 (32) breach of requirement as to brakes, steering-gear or tyres<sup>34</sup>;
- 1200 (33) breach of requirement as to weight in relation to goods and passenger vehicles<sup>35</sup>;
- 1201 (34) as from a day to be appointed, breach of requirement as to speed assessment equipment detection devices<sup>36</sup>;

- 1202 (35) breach of requirements as to control of vehicle, mobile telephone etc<sup>37</sup>;
- 1203 (36) breach of other construction and use requirements<sup>38</sup>;
- 1204 (37) using a vehicle without the required test certificate being in force<sup>39</sup>;
- 1205 (38) driving a vehicle otherwise than in accordance with the requisite licence<sup>40</sup>;
- 1206 (39) using a motor vehicle while it is uninsured or unsecured against third party risks<sup>41</sup>;
- 1207 (40) failure to stop vehicle on being so required<sup>42</sup>;
- 1208 (41) failure of the person keeping a vehicle and others to give the police information as to the identity of the driver etc, in the case of certain offences<sup>43</sup>;
- 1209 (42) using or keeping a vehicle on a public road without a vehicle licence, trade licence or nil licence being exhibited in the manner prescribed by regulations<sup>44</sup>;
- 1210 (43) driving or keeping a vehicle without required registration mark<sup>45</sup>;
- 1211 (44) driving or keeping a vehicle with registration mark obscured etc<sup>46</sup>;
- 1212 (45) using an incorrectly registered vehicle<sup>47</sup>;
- 1213 (46) failure to fix prescribed registration mark to a vehicle in accordance with regulations<sup>48</sup>;
- 1214 (47) driving on the footway<sup>49</sup>;
- 1215 (48) cycling on the footway<sup>50</sup>.

An offence under heads (1) to (48) above is not a fixed penalty offence if it is committed by causing or permitting a vehicle to be used by another person in contravention of any provision made or restriction or prohibition imposed by or under any enactment<sup>51</sup>.

The Secretary of State may by order provide for offences to become or (as the case may be) to cease to be fixed penalty offences for these purposes, and may make such modifications of the provisions relating to fixed penalty offences<sup>52</sup> as appear to him to be necessary for the purpose<sup>53</sup>.

1 References to an offence in the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended) include an alleged offence: s 89(2)(b).

2 Ibid s 51(1), which is expressed to be subject to s 51(2) (see the text to note 45 infra). The offence must be specified in s 51, Sch 3 col 1 (as amended), subject to any limitation or exception shown against the enactment in Sch 3 col 2 (as amended) (where the general nature of the offence is also indicated).

3 Ibid Sch 3. The offence referred to is an offence under the Greater London Council (General Powers) Act 1974 s 15 (as amended): see PARA 822 ante.

4 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Highways Act 1980 s 137 (as amended): see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 348.

5 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 5(1): see PARA 746 ante.

6 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 8(1): see PARA 750 ante.

7 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 11 (as amended): see PARA 753 ante.

8 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 13 (repealed).

9 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 16(1): see PARA 758 ante.

10 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 17(4): see PARA 764 ante.

11 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 18(3): see PARA 766 ante.

12 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 20(5): see PARA 768 ante.

13 Road Traffic Offenders Act 1988 Sch 3 (entry amended by the Fixed Penalty Offences Order 1999, SI 1999/1851, art 2(3)(a)). The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 25(5): see PARA 778 ante. This provision does not apply to an offence in respect of a moving motor vehicle other than a contravention of the Zebra, Pelican and Puffin Pedestrian Crossings Regulations and General Directions 1997, SI 1997/2400, regs 23-26 (see PARA 778 ante): see the Road Traffic Offenders Act 1988 Sch 3 (entry as so amended). For the meaning of 'motor vehicle' see PARA 210 ante.

14 Ibid Sch 3 (entry amended by the New Roads and Street Works Act 1991 s 168(2), Sch 9). The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 29(3) (as substituted): see PARA 782 ante.

15 Road Traffic Offenders Act 1988 Sch 3 (entry amended by the Parking Act 1989 s 4, Schedule para 12). The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 35A(1) (as added): see PARA 791 ante.

16 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 47(1) (as amended): see PARA 812 ante. This provision does not apply to any offence of failing to pay an excess charge within the meaning of s 46 (as amended) (see PARA 810 ante): Road Traffic Offenders Act 1988 Sch 3.

17 Ibid Sch 3. The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 53(5): see PARA 817 ante. A parking place designation order has effect by virtue of s 53(1)(a) (inclusion of certain traffic regulation provisions): see PARA 817 ante.

18 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 53(6): see PARA 817 ante. The provision relating to use of any part of a road for parking without charge is s 53(1)(b): see PARA 817 ante.

19 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 88(7): see PARA 855 ante. An order imposing a minimum speed limit is made under s 88(1)(b): see PARA 855 ante.

20 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Regulation Act 1984 s 89(1): see PARA 856 ante. Speeding offences are created under the Road Traffic Regulation Act 1984 and other Acts.

21 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Act 1988 s 14 (as amended): see PARA 626 ante.

22 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Act 1988 s 15(2) (as amended): see PARA 631 ante.

23 Road Traffic Offenders Act 1988 Sch 3 (entry added by the Fixed Penalty Offences Order 1992, SI 1992/345, reg 2). The offence referred to is an offence under the Road Traffic Act 1988 s 15(4) (as amended): see PARA 631 ante.

24 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Act 1988 s 16: see PARA 639 ante.

25 Road Traffic Offenders Act 1988 Sch 3 (entry added by the Fixed Penalty Offences Order 2004, SI 2004/2922, art 2(2)). The offence referred to is an offence under the Road Traffic Act 1988 s 18(3): see PARA 641 ante.

26 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Act 1988 s 19: see PARA 997 ante.

27 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Act 1988 s 22 (as amended): see PARA 999 ante.

28 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Act 1988 s 23 (as amended): see PARA 1001 ante.



- 29 Road Traffic Offenders Act 1988 Sch 3 (entry added by the Fixed Penalty Offences Order 1999, SI 1999/1851, art 3(3)(a)). The offence referred to is an offence under the Road Traffic Act 1988 s 24: see PARA 1002 ante.
- 30 Road Traffic Offenders Act 1988 Sch 3 (entry amended by the Countryside and Rights of Way Act 2000 s 67, Sch 7 para 9). The offence referred to is an offence under the Road Traffic Act 1988 s 34 (as substituted and amended): see PARA 1007 ante.
- 31 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Act 1988 s 35: see PARA 642 ante.
- 32 Road Traffic Offenders Act 1988 Sch 3. The offence referred to is an offence under the Road Traffic Act 1988 s 36 (as amended): see PARA 643 ante.
- 33 Road Traffic Offenders Act 1988 Sch 3 (entry added by the Road Traffic Act 1991 s 48, Sch 4 para 112(2)). The offence referred to is an offence under the Road Traffic Act 1988 s 40A (as added): see PARA 625 ante.
- 34 Road Traffic Offenders Act 1988 Sch 3 (entry added by the Road Traffic Act 1991 Sch 4 para 112(2)). The offence referred to is an offence under the Road Traffic Act 1988 s 41A (as added): see PARA 261 ante.
- 35 Road Traffic Offenders Act 1988 Sch 3 (entry added by the Road Traffic Act 1991 Sch 4 para 112(2)). The offence referred to is an offence under the Road Traffic Act 1988 s 41B (as added): see PARA 262 ante.
- 36 Road Traffic Offenders Act 1988 Sch 3. This entry is added, as from a day to be appointed, by the Road Safety Act 2006 s 26(5). At the date at which this volume states the law no such day had been appointed. The offence referred to is an offence under the Road Traffic Act 1988 s 41C (prospectively added): see PARA 263 ante.
- 37 Road Traffic Offenders Act 1988 Sch 3 (entry added by the Road Safety Act 2006 s 18(7)). The offence referred to is an offence under the Road Traffic Act 1988 s 41D (as added): see PARA 264 ante.
- 38 Road Traffic Offenders Act 1988 Sch 3 (entry amended by the Road Traffic Act 1991 Sch 4 para 112(3)). The offence referred to is an offence under the Road Traffic Act 1988 s 42 (as substituted): see PARA 265 ante.
- 39 Road Traffic Offenders Act 1988 Sch 3 (entry amended by the Fixed Penalty Offences Order 2003, SI 2003/1253, art 2(3)(a)). The offence referred to is an offence under the Road Traffic Act 1988 s 47 (as amended): see PARA 657 ante.
- 40 Road Traffic Offenders Act 1988 Sch 3 (entry amended by the Road Traffic Act 1991 Sch 4 para 112(4)). The offence referred to is an offence under the Road Traffic Act 1988 s 87(1) (as amended): see PARA 444 ante.
- 41 Road Traffic Offenders Act 1988 Sch 3 (entry amended by the Fixed Penalty Offences Order 2003, SI 2003/1253, art 2(3)(b)). The offence referred to is an offence under the Road Traffic Act 1988 s 143 (as amended): see PARA 937 ante.
- 42 Road Traffic Offenders Act 1988 Sch 3 (entry amended by the Traffic Management Act 2004 s 89, Sch 12 Pt 2). The offence referred to is an offence under the Road Traffic Act 1988 s 163 (as amended): see PARA 646 ante. As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.
- 43 Road Traffic Offenders Act 1988 Sch 3 (entry amended by the Fixed Penalty Offences Order 2003, SI 2003/1253, art 2(3)(c)). The offence referred to is an offence under the Road Traffic Act 1988 s 172 (as substituted and amended): see PARA 1026 ante.
- 44 Road Traffic Offenders Act 1988 Sch 3 (entry added by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 25(2); and amended by the Finance Act 1997 s 18, Sch 3 para 8(1)). The offence referred to is an offence under the Vehicle Excise and Registration Act 1994 s 33 (as amended): see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 781.
- 45 Road Traffic Offenders Act 1988 Sch 3 (entry added by the Vehicle Excise and Registration Act 1994 Sch 3 para 25(2)). The offence referred to is an offence under the Vehicle Excise and Registration Act 1994 s 42 (as amended): see PARA 563 ante.
- 46 Road Traffic Offenders Act 1988 Sch 3 (entry added by the Vehicle Excise and Registration Act 1994 Sch 3 para 25(2)). The offence referred to is an offence under the Vehicle Excise and Registration Act 1994 s 43: see PARA 563 ante.

47 Road Traffic Offenders Act 1988 Sch 3 (entry added by the Serious Organised Crime and Police Act 2005 s 150(2)). The offence referred to is an offence under the Vehicle Excise and Registration Act 1994 s 43C (as added): see PARA 543 ante.

48 Road Traffic Offenders Act 1988 Sch 3 (entry added by the Fixed Penalty Offences Order 1999, SI 1999/1851, art 2(3)(b)). The offence referred to is an offence under the Vehicle Excise and Registration Act 1994 s 59 (as amended): see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 792.

49 Road Traffic Offenders Act 1988 Sch 3 (entry added by the Fixed Penalty Offences Order 1999, SI 1999/1851, art 2(3)(c)). The offence referred to is an offence under the Highway Act 1835 s 72 (as amended): see PARA 1019 ante.

50 Road Traffic Offenders Act 1988 Sch 3 (entry added by the Fixed Penalty Offences Order 1999, SI 1999/1851, arts 2(3)(c), 3(3)(b)). The offence referred to is an offence under the Highway Act 1835 s 72 (as amended): see PARA 1019 ante.

51 Road Traffic Offenders Act 1988 s 51(2).

52 *Idem* Pt III (as amended).

53 *Idem* s 51(3). The Fixed Penalty Offences Order 1990, SI 1990/335; the Fixed Penalty Offences Order 1992, SI 1992/345; the Fixed Penalty Offences Order 1999, SI 1999/1851; the Fixed Penalty Offences Order 2003, SI 2003/1253; and the Fixed Penalty Offences Order 2004, SI 2004/2922, have been made under this provision.

## UPDATE

### 1093 Fixed penalty offences

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 53--See also Fixed Penalty Offences Order 2009, SI 2009/483.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iv) Fixed Penalties/B. FIXED PENALTY OFFENCES AND NOTICES/1094. Fixed penalty notices.

### 1094. Fixed penalty notices.

A 'fixed penalty notice' means a notice offering the opportunity of the discharge of any liability to conviction of the offence<sup>1</sup> to which the notice relates by payment of a fixed penalty<sup>2</sup>. A fixed penalty notice must give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence<sup>3</sup>. A fixed penalty notice must state:

- 1216 (1) the period during which proceedings<sup>4</sup> cannot be brought<sup>5</sup> against any person for the offence to which the notice relates, being the period of 21 days following the date of the notice or such longer period, if any, as may be specified in the notice (the 'suspended enforcement period')<sup>6</sup>;
- 1217 (2) the amount of the fixed penalty<sup>7</sup>; and
- 1218 (3) the designated officer for the magistrates' court to whom and the address at which the fixed penalty may be paid<sup>8</sup>.

- 1 As to the meaning of 'offence' see PARA 1093 note 1 ante.
- 2 Road Traffic Offenders Act 1988 s 52(1). Payment of a fixed penalty must be in accordance with Pt III (ss 51-90) (as amended): see s 52(1). For the meaning of 'fixed penalty' see PARA 1095 post.
- 3 Ibid s 52(2).
- 4 'Proceedings', except in relation to proceedings for enforcing payment of a sum registered under ibid s 71 (as amended) (see PARA 1114 post), means criminal proceedings: s 89(1).
- 5 Ie by virtue of ibid s 78(1): see PARA 1120 post.
- 6 Ibid s 52(3)(a).
- 7 Ibid s 52(3)(b).
- 8 Ibid s 52(3)(c) (amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 140, 147; and the Courts Act 2003 s 109(1), Sch 8 para 314). The Road Traffic Offenders Act 1988 s 52(3)(c) (as amended) is further amended by the Road Safety Act 2006 s 5, Sch 1 paras 1, 2, as from a day to be appointed, so as to substitute for the words 'the designated officer for the magistrates' court' the words 'the person'. At the date at which this volume states the law no such day had been appointed.

## UPDATE

### 1094 Fixed penalty notices

NOTE 8--Day appointed is 31 March 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iv) Fixed Penalties/B. FIXED PENALTY OFFENCES AND NOTICES/1095. Amount of fixed penalty.

### 1095. Amount of fixed penalty.

The fixed penalty for an offence<sup>1</sup> is such amount as the Secretary of State<sup>2</sup> may by order prescribe<sup>3</sup>, or one half of the maximum amount of the fine to which a person committing that offence would be liable on summary conviction<sup>4</sup>, whichever is the less<sup>5</sup>. Any such order made may make different provision for different cases or classes of case or in respect of different areas<sup>6</sup>.

- 1 As to the meaning of 'offence' see PARA 1093 note 1 ante.
- 2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 3 Road Traffic Offenders Act 1988 s 53(1)(a) (s 53 substituted by the Road Traffic Act 1991 s 48, Sch 4 para 102). In exercise of this power, the Fixed Penalty Order 2000, SI 2000/2792 (amended by SI 2003/1254) has been made. As from a day to be appointed, an order made under the Road Traffic Offenders Act 1988 s 53(1)(a) may prescribe a higher fixed penalty in a case where, in the period of three years ending with the date of the offence in question, the offender committed an offence for which: (1) he was disqualified from driving; or (2) penalty points were endorsed on the counterpart of any licence held by him: s 53(3) (added by the Domestic Violence, Crime and Victims Act 2004 s 16(1), (2)). At the date at which this volume states the law no such day had been appointed. As to the prospective substitution of this provision see note 6 infra.
- 4 Road Traffic Offenders Act 1988 s 53(1)(b) (as substituted: see note 3 supra).
- 5 Ibid s 53(1) (as substituted: see note 3 supra).

6 Ibid s 53(2) (as substituted: see note 3 supra). As from a day to be appointed, the provisions of s 53(2), (3) (as added) are substituted so as to provide that any order made under s 53(1)(a) (as substituted) in relation to an offence may make provision for the fixed penalty for the offence to be different depending on the circumstances, including (in particular): (1) the nature of the contravention or failure constituting the offence; (2) how serious it is; (3) the area, or sort of place, where it takes place; and (4) whether the offender appears to have committed any offence or offences of a description specified in the order during a period so specified: s 53(2) (substituted by the Road Safety Act 2006 s 3(1), (2)). At the date at which this volume states the law no such day had been appointed.

## **UPDATE**

### **1095 Amount of fixed penalty**

NOTE 3--SI 2000/2792 further amended: SI 2009/488, SI 2009/1487.

NOTE 6--Day appointed is 5 January 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iv) Fixed Penalties/B. FIXED PENALTY OFFENCES AND NOTICES/1096. Accounting for fixed penalties.

### **1096. Accounting for fixed penalties.**

Sums paid by way of fixed penalty<sup>1</sup> for an offence<sup>2</sup> are to be treated for the purposes of the Courts Act 2003<sup>3</sup> as if they were fines imposed on summary conviction for that offence<sup>4</sup>.

1 For the meaning of 'fixed penalty' see PARA 1095 ante.

2 As to the meaning of 'offence' see PARA 1093 note 1 ante.

3 Ie for the purposes of the Courts Act 2003 s 38 (application of receipts of designated officers): see MAGISTRATES vol 29(2) (Reissue) PARA 881.

4 Road Traffic Offenders Act 1988 s 82(1) (amended by virtue of the Courts Act 2003 s 109(1), Sch 8 para 320(1), (2)). The Road Traffic Offenders Act 1988 s 82(1) (as amended) is further amended, as from a day to be appointed, by the Road Safety Act 2006 s 5, Sch 1 paras 1, 20, so as to add 'to the fixed penalty clerk' after 'paid'. At the date at which this volume states the law no such day had been appointed.

## **UPDATE**

### **1096 Accounting for fixed penalties**

NOTE 4--Day appointed is 31 March 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iv) Fixed Penalties/C. GIVING NOTICE TO SUSPECTED OFFENDERS/1097. Notice on-the-spot or at a police station.

## **C. GIVING NOTICE TO SUSPECTED OFFENDERS**

### 1097. Notice on-the-spot or at a police station.

Where on any occasion a constable in uniform<sup>1</sup> has reason to believe that a person he finds is committing or has on that occasion committed a fixed penalty offence<sup>2</sup>, the constable may give him a fixed penalty notice<sup>3</sup> in respect of the offence<sup>4</sup>.

Where the offence appears to the constable to involve obligatory endorsement<sup>5</sup>, the constable may only give the person a fixed penalty notice under the above provision in respect of the offence if<sup>6</sup>:

- 1219 (1) he produces his licence<sup>7</sup> and its counterpart<sup>8</sup> for inspection by the constable<sup>9</sup>;
- 1220 (2) the constable is satisfied, on inspecting the licence and its counterpart, that he would not be liable to be disqualified<sup>10</sup> if he were convicted of that offence<sup>11</sup>; and
- 1221 (3) he surrenders his licence and its counterpart to the constable to be retained and dealt with in accordance with the provisions relating to fixed penalties<sup>12</sup>.

Where the offence appears to the constable to involve obligatory endorsement<sup>13</sup>, and the person concerned does not produce his licence and its counterpart for inspection by the constable<sup>14</sup>, the constable may give him a notice stating that if, within seven days after the notice is given, he produces the notice together with his licence and its counterpart in person to a constable or authorised person<sup>15</sup> at the police station specified in the notice (being a police station chosen by the person concerned) and the following requirements are met he will then be given a fixed penalty notice in respect of the offence<sup>16</sup>. If a person to whom such a notice has been given produces the notice together with his licence and its counterpart in person to a constable or authorised person at the police station specified in the notice within seven days after the notice was so given to him, the constable or authorised person must give him a fixed penalty notice in respect of the offence to which the notice relates, provided the following requirements are met, that is<sup>17</sup>:

- 1222 (a) the constable or authorised person is satisfied, on inspecting the licence and its counterpart that he would not be liable to be disqualified<sup>18</sup> if he were convicted of the offence<sup>19</sup>; and
- 1223 (b) he surrenders his licence and its counterpart to the constable or authorised person to be retained and dealt with in accordance with the provisions relating to fixed penalties<sup>20</sup>.

The notice<sup>21</sup> must give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence<sup>22</sup>.

A licence and a counterpart of a licence surrendered in accordance with the above provisions must be sent to the fixed penalty clerk<sup>23</sup>.

1 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. For the purposes of the enforcement of the law with respect to certain fixed penalties, traffic wardens may exercise the functions conferred on constables: see the Functions of Traffic Wardens Order 1970, SI 1970/1958, art 3(1), Schedule para 1 (as amended); and PARA 868 ante. As to the appointment of traffic wardens see PARA 868 ante. For the purposes of an offence under the Highway Act 1835 s 72 (as amended) committed by cycling (see PARA 1019 ante), a suitably designated community support officer may exercise the powers conferred on constables under the Road Traffic Offenders Act 1988 s 54 (as amended): see the Police Reform Act 2002 s 38(6), Sch 4 paras 1, 2, 4; and POLICE vol 36(1) (2007 Reissue) PARA 529. In addition, a constable's powers may also be exercised for the same purpose by persons accredited for the purposes of a community safety accreditation scheme (see POLICE vol 36(1) (2007 Reissue) PARAS 532-533): see s 41(3), Sch 5 paras 1, 2; and POLICE vol 36(1) (2007 Reissue) PARA 529.

2 Road Traffic Offenders Act 1988 s 54(1) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 103(1), (2)). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 s 5, Sch 1

paras 1, 3(1), (2), so as to refer also to a vehicle examiner who produces his authority. At the date at which this volume states the law no such day had been appointed. For the meaning of 'fixed penalty offence' see PARA 1093 ante. As to the meaning of 'offence' see PARA 1093 note 1 ante.

3 For the meaning of 'fixed penalty notice' see PARA 1094 ante.

4 Road Traffic Offenders Act 1988 s 54(2), which is expressed to be subject to s 54(3): see the text to note 6 infra. As from a day to be appointed, s 54(2) is amended by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 14(1), (2) so as to express it to be subject to the following provisions of the Road Traffic Offenders Act 1988 s 54 (as amended); and by the Road Safety Act 2006 Sch 1 para 3(3) so as to include a reference to a vehicle examiner. At the date at which this volume states the law no such day had been appointed.

5 For the meaning of 'offence involving obligatory endorsement' see PARA 1080 ante.

6 Road Traffic Offenders Act 1988 s 54(3). As from a day to be appointed, s 54(3) is amended by the Road Safety Act 2006 Sch 1 para 3(4) so as to include a reference to a vehicle examiner in addition to each reference to a constable; and by the Road Safety Act 2006 Sch 2 para 14(3) so as to require that the person is the holder of a licence. At the date at which this volume states the law no such day had been appointed.

7 For the meaning of 'licence' see PARA 1032 note 3 ante.

8 For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). As from a day to be appointed, s 98(1) is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7 so as to remove reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

9 Road Traffic Offenders Act 1988 s 54(3)(a) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(2), 3, Sch 2 para 15).

10 Ie under the Road Traffic Offenders Act 1988 s 35 (as amended): see PARA 1070 ante. For the meaning of 'disqualified' see PARA 1046 note 5 ante.

11 Ibid s 54(3)(b) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 15). In determining for the purposes of the Road Traffic Offenders Act 1988 s 54(3)(b), (5) (a) (as amended) whether a person convicted of an offence would be liable to disqualification under s 35 (as amended) (see PARA 1070 ante), it must be assumed, in the case of an offence in relation to which a range of numbers is shown in the last column of Sch 2 Pt I (as amended) (see PARA 1049 ante), that the number of penalty points to be attributed to the offence would be the lowest in the range: s 54(10) (added by the Road Traffic Act 1991 Sch 4 para 103(1), (3)). The Road Traffic Offenders Act 1988 s 54(10) (as added) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 2 para 14(6) so as to refer to the purposes of the Road Traffic Offenders Act 1988 s 54 (as amended) instead of those of s 54(3)(b), (5)(a) (as amended). At the date at which this volume states the law no such day had been appointed.

12 Road Traffic Offenders Act 1988 s 54(3)(c) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 15). The provisions relating to fixed penalties are contained in the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended).

13 Ibid s 54(4)(a). As from a day to be appointed, s 54(4)(a) is amended by the Road Safety Act 2006 Sch 1 para 3(5)(a) so as to refer to the vehicle examiner as well as the constable; and the Road Traffic Offenders Act 1988 s 54(4)(aa) is added by the Road Safety Act 2006 Sch 2 para 14(4)(a) so as to require that the person concerned is the holder of a licence. At the date at which this volume states the law no such day had been appointed.

14 Road Traffic Offenders Act 1988 s 54(4)(b) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 15). As from a day to be appointed, the Road Traffic Offenders Act 1988 s 54(4)(b) is further amended by the Road Safety Act 2006 Sch 1 para 3(5)(a) so as to refer to the vehicle examiner as well as the constable; and by the Road Safety Act 2006 Sch 2 para 14(4)(b) so as to substitute for the words 'the person concerned' the word 'he'. At the date at which this volume states the law no such day had been appointed.

15 For the purposes of the Road Traffic Offenders Act 1988 Pt III (as amended), 'authorised person', in relation to a fixed penalty notice given at a police station, means a person authorised for the purposes of s 54 (as amended) by or on behalf of the chief officer of police for the area in which the police station is situated or a person authorised for those purposes by or on behalf of the chief constable of the British Transport Police: ss 54(9), 89(1) (s 54(9) amended by the Police Reform Act 2002 ss 76(1), (2), 108(10)(c)). 'British Transport Police' means the force of constables appointed under the British Transport Commission Act 1949 (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 7): Road Traffic Offenders Act 1988 s 89(1)

(definition amended by the Police Reform Act 2002 ss 76(1), (6), 108(10)(c)). See further, in relation to references to the British Transport Police Force, the Railways and Transport Safety Act 2003 Sch 5 para 4.

16 Road Traffic Offenders Act 1988 s 54(4) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 15). The Road Traffic Offenders Act 1988 s 54(4) is further amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 3(5)(a)-(c) so as to refer to the vehicle examiner as well as the constable; so as to substitute for the words 'if, within seven days after the notice is given' the words 'he delivers'; and so as to substitute for the words 'in person to a constable or authorised person at the police station specified in the notice (being a police station chosen by the person concerned)' the words 'in accordance with the statutory provisions'. At the date at which this volume states the law no such day had been appointed. As from a day to be appointed, the Road Traffic Offenders Act 1988 s 54(4A) is added by the Road Safety Act 2006 Sch 1 para 3(6) so as to provide that delivery must: (1) if the notice is given by a constable, be made in person, within seven days after the notice is given, to a constable or authorised person at the police station specified in the notice (being a police station chosen by the person concerned); or (2) if the notice is given by a vehicle examiner, be made (either by post or in person), within 14 days after the notice is given, to the Secretary of State at the place specified in the notice. At the date at which this volume states the law no such day had been appointed.

17 Road Traffic Offenders Act 1988 s 54(5) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 15). The Road Traffic Offenders Act 1988 s 54(5) is further amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 3(7)(a), (b), so as to substitute 'delivers' for 'produces'; and a reference to delivery in accordance with the Road Traffic Offenders Act 1988 s 54(4A) (prospectively added) is substituted for the words 'in person to a constable or authorised person at the police station specified in the notice within seven days after the notice was so given to him'. At the date at which this volume states the law no such day had been appointed.

18 *Ie* under the Road Traffic Offenders Act 1988 s 35 (as amended): see PARA 1070 ante. See also note 11 *supra*.

19 *Ibid* s 54(5)(a) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 15). The Road Traffic Offenders Act 1988 s 54(5)(a) is further amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 3(7)(c), so as to substitute for the words 'constable or authorised person' the words 'person to whom the notice is delivered'. At the date at which this volume states the law no such day had been appointed.

20 Road Traffic Offenders Act 1988 s 54(5)(b) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 15). The Road Traffic Offenders Act 1988 s 54(5)(a) is further amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 3(7)(d), (e), Sch 7, so that for the words 'he surrenders his licence and its counterpart to the constable or authorised person' are substituted the words 'his licence and its counterpart are delivered'. At the date at which this volume states the law no such day had been appointed.

The following provisions are added by the Road Safety Act 2006 s 9(1), (4), as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. Where the offence appears to the constable or vehicle examiner to involve obligatory endorsement, and the person is not the holder of a licence, the constable or vehicle examiner may only give him a fixed penalty notice under the Road Traffic Offenders Act 1988 s 54(2) (see the text and note 4 *supra*) in respect of the offence if the constable or vehicle examiner is satisfied, on accessing information held on his driving record, that he would not be liable to be disqualified under s 35 (as amended) (see PARA 1070 ante) if he were convicted of that offence: s 54(5A) (as so added). The following provisions apply where: (1) the offence appears to the constable or vehicle examiner to involve obligatory endorsement; (2) the person concerned is not the holder of a licence; and (3) the constable or vehicle examiner is unable to satisfy himself, by accessing information held on his driving record, that he would not be liable to be disqualified under s 35 (as amended) if he were convicted of that offence: s 54(5B) (as so added). Where this provision applies, the constable or vehicle examiner may give the person a notice stating that if he delivers the notice in accordance with s 54(5D) (as added) and the person to whom it is delivered is satisfied, on accessing information held on his driving record, that he would not be liable to be disqualified under s 35 (as amended) if he were convicted of the offence, he will then be given a fixed penalty notice in respect of the offence: s 54(5C) (as so added). Delivery must: (a) if the notice is given by a constable, be made in person, within seven days after the notice is given, to a constable or authorised person at the police station specified in the notice (being a police station chosen by the person concerned); or (b) if the notice is given by a vehicle examiner, be made (either by post or in person), within 14 days after the notice is given, to the Secretary of State at the place specified in the notice: s 54(5D) (as so added). If a person to whom a notice has been given under s 54(5C) (as added) delivers the notice in accordance with s 54(5D) (as added), and the person to whom it is delivered is satisfied, on accessing information held on his driving record, that he would not be liable to be disqualified under s 35 (as amended) if he were convicted of the offence, that person must give him a fixed penalty notice in respect of the offence to which the notice under s 54(5C) (as added) relates: s 54(5E) (as so added).

The provisions of s 54(3), (4), (4A), (5), (5A)-(5E) (s 53(3), (4), (5) as amended; s 53(4A), (5A)-(5E) as added) are substituted by the Road Safety Act 2006 s 10(1), (3), as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As from the appointed day, where the offence appears to the constable or vehicle examiner to involve obligatory endorsement, the constable or vehicle examiner may only give the person a fixed penalty notice under the Road Traffic Offenders Act 1988 s 54(2) in respect of the offence if the constable or vehicle examiner is satisfied, on accessing information held on his driving record, that he would not be liable to be disqualified under s 35 (as amended) if he were convicted of that offence and, in the case of a person who is the holder of a licence, he produces it for inspection by the constable or vehicle examiner and surrenders it to him to be retained and dealt with in accordance with Pt III (as amended): s 54(3) (as so substituted). Where the offence appears to the constable or vehicle examiner to involve obligatory endorsement, s 54(5) (as substituted) applies if: (i) the constable or vehicle examiner is unable to satisfy himself, by accessing information held on his driving record, that he would not be liable to be disqualified under s 35 (as amended) if he were convicted of that offence; or (ii) in the case of a person who is the holder of a licence, he does not produce it for inspection by the constable or vehicle examiner: s 54(4) (as so substituted). Where this provision applies, the constable or vehicle examiner may give the person a notice stating that if he delivers the notice and (if he is the holder of a licence) his licence in accordance with s 54(5A) (as added and substituted) and the requirements of s 54(5B) (as added and substituted) are met, he will then be given a fixed penalty notice in respect of the offence: s 54(5) (as so substituted). Delivery must: (A) if the notice is given by a constable, be made in person, within seven days after the notice is given, to a constable or authorised person at the police station specified in the notice (being a police station chosen by the person concerned); or (B) if the notice is given by a vehicle examiner, be made (either by post or in person), within 14 days after the notice is given, to the Secretary of State at the place specified in the notice: s 54(5A) (as so added and substituted). If a person to whom a notice has been given under s 54(5) (as substituted) delivers the notice and (if he is the holder of a licence) his licence in accordance with s 54(5A) (as added and substituted), and the following requirements are met, that is: (aa) the person to whom the notice is delivered is satisfied, on accessing information held on his driving record, that he would not be liable to be disqualified under s 35 (as amended) if he were convicted of the offence; and (bb) if he is the holder of a licence, it is delivered to be retained and dealt with in accordance with Pt III (as amended), then the person to whom the notice is delivered must give him a fixed penalty notice in respect of the offence to which the notice under s 54(5) (as substituted) relates: s 54(5B) (as so added and substituted).

21 le under ibid s 54(4) (as amended): see the text and notes 13-16 supra.

22 Ibid s 54(6). As from a day to be appointed, s 54(6) is amended by the Road Safety Act 2006 Sch 2 para 14(5) so as to refer also to a notice under the Road Traffic Offenders Act 1988 s 54(5C) (as added); and by the Road Safety Act 2006 s 10(5) so as to refer only to a notice under the Road Traffic Offenders Act 1988 s 54(5) (as substituted). At the date at which this volume states the law, no such day had been appointed.

23 Ibid s 54(7) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 15). For the meaning of 'fixed penalty clerk' see PARA 1112 note 4 post. As from a day to be appointed, the Road Traffic Offenders Act 1988 s 54(7) is further amended by the Road Safety Act 2006 Sch 1 para 3(8), so as to add the words 'or delivered' after 'surrendered', and so as to add 'if the fixed penalty notice was given by a constable or authorised person' after 'the fixed penalty clerk'; and by s 10(6), Sch 7, so as to remove the reference to a counterpart of a licence. At the date at which this volume states the law, no such day had been appointed.

## UPDATE

### 1097 Notice on-the-spot or at a police station

TEXT AND NOTES--The Fixed Penalty (Procedure) (Vehicle Examiners) Regulations 2009, SI 2009/495, make provision in relation to the issue of fixed penalty notices by vehicle examiners, including provision for (1) documents or information to be provided (reg 4); (2) remittance (reg 5); (3) return of the driving licence (reg 6); (4) notification of registration of the sum (reg 7); (5) receipt for payment (reg 8); and (6) licence receipts (reg 9).

NOTES--Day appointed in relation to Road Safety Act 2006 s 5, Sch 1 is 31 March 2009 and in relation to s 9, Sch 2 is 1 April 2009: SI 2008/3164.

NOTE 1--Police Reform Act 2002 Sch 4 para 2 amended: Local Transport Act 2008 Sch 4 para 65; Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 116.



NOTE 20--Amendment made by Road Safety Act 2006 Sch 1 para 3(7)(d), (e), Sch 7 in force 31 March 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iv) Fixed Penalties/C. GIVING NOTICE TO SUSPECTED OFFENDERS/1098. Effect of fixed penalty notice.

### **1098. Effect of fixed penalty notice.**

Where a fixed penalty notice<sup>1</sup> relating to an offence<sup>2</sup> has been given to any person<sup>3</sup>, no proceedings<sup>4</sup> may be brought against the recipient for the offence to which the fixed penalty notice relates unless before the end of the suspended enforcement period<sup>5</sup> he has given notice requesting a hearing<sup>6</sup> in respect of that offence in the manner specified in the fixed penalty notice<sup>7</sup>.

Where the recipient has not given notice requesting a hearing in respect of the offence to which the fixed penalty notice relates in the manner so specified<sup>8</sup>, and the fixed penalty<sup>9</sup> has not been paid<sup>10</sup> before the end of the suspended enforcement period<sup>11</sup>, a sum equal to the fixed penalty plus one half of the amount of that penalty may be registered<sup>12</sup> for enforcement against the recipient as a fine<sup>13</sup>.

1 For the meaning of 'fixed penalty notice' see PARA 1094 ante.

2 As to the meaning of 'offence' see PARA 1093 note 1 ante.

3 Road Traffic Offenders Act 1988 s 55(1). Fixed penalty notices are given under s 54 (as amended): see PARA 1097 ante. References in s 55 to the recipient are to the person to whom the notice was given: s 55(1).

4 For the meaning of 'proceedings' see PARA 1094 note 4 ante.

5 For the meaning of 'suspended enforcement period' see PARA 1094 head (1) ante.

6 References to a notice requesting a hearing in respect of an offence are references to a notice indicating that the person giving the notice wishes to contest liability for the offence or seeks a determination by a court with respect to the appropriate punishment for the offence: Road Traffic Offenders Act 1988 s 89(2)(a).

7 Ibid s 55(2).

8 Ibid s 55(3)(a).

9 For the meaning of 'fixed penalty' see PARA 1095 ante.

10 Ie in accordance with the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended).

11 Ibid s 55(3)(b).

12 Ie under ibid s 71 (as amended): see PARA 1114 post.

13 Ibid s 55(3).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iv) Fixed Penalties/C. GIVING NOTICE TO SUSPECTED OFFENDERS/1099. Licence receipts.

## 1099. Licence receipts.

A constable<sup>1</sup> or authorised person<sup>2</sup> to whom a person surrenders his licence<sup>3</sup> and its counterpart<sup>4</sup> on receiving a fixed penalty notice<sup>5</sup> must issue a receipt for the licence and its counterpart<sup>6</sup>. The fixed penalty clerk<sup>7</sup> may, on the application of a person who has surrendered his licence and its counterpart in those circumstances, issue a new receipt for them<sup>8</sup>. A receipt so issued ceases to have effect: (1) if issued by a constable or authorised person, on the expiration of the period of one month beginning with the date of issue or such longer period as may be prescribed<sup>9</sup>; and (2) if issued by the fixed penalty clerk, on such date as he may specify in the receipt<sup>10</sup>, or, if earlier, on the return of the licence and its counterpart to the licence holder<sup>11</sup>.

1 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. For the purposes of the enforcement of the law with respect to certain fixed penalties, traffic wardens may exercise the functions conferred on constables: see the Functions of Traffic Wardens Order 1970, SI 1970/1958, art 3(1), Schedule para 1; and PARA 868 ante. As to the appointment of traffic wardens see PARA 868 ante.

2 For the meaning of 'authorised person' see PARA 1097 note 15 ante.

3 For the meaning of 'licence' see PARA 1032 note 3 ante.

4 For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). As from a day to be appointed, s 98(1) is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7 so as to remove reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

5 Issued under the Road Traffic Offenders Act 1988 s 54 (as amended): see PARA 1097 ante. For the meaning of 'fixed penalty notice' see PARA 1094 ante.

6 Ibid s 56(1) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(2), 3, Sch 2 para 16(a)). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 s 5, Sch 1 paras 1, 4(1), (2), so as to substitute for the words 'constable or authorised person' the word 'person', and to add after 'surrenders' the words 'or delivers'; and by the Road Safety Act 2006 Sch 3 paras 30, 46(1), (2), Sch 7, so as to remove the references to the counterpart. At the date at which this volume states the law no such day had been appointed.

7 For the meaning of 'fixed penalty clerk' see PARA 1112 note 4 post.

8 Road Traffic Offenders Act 1988 s 56(2) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 16(b)). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 Sch 1 para 4(3), so that it applies where the duty under the Road Traffic Offenders Act 1988 s 54(7) (as amended) (see PARA 1097 text and note 23 ante) applies, and to add after 'surrendered' the words 'or delivered'; and by the Road Safety Act 2006 Sch 3 para 46(1)-(3), Sch 7, so as to remove reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

9 Road Traffic Offenders Act 1988 s 56(3)(a). A period of two months has been prescribed for these purposes by the Fixed Penalty (Procedure) Regulations 1986, SI 1986/1330, reg 11. The Road Traffic Offenders Act 1988 s 56(3)(a) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 4(4)(a), so as to substitute for the words 'if issued by a constable or authorised person' a reference to a receipt issued under the Road Traffic Offenders Act 1988 s 56(1) (as amended). At the date at which this volume states the law no such day had been appointed.

10 Ibid s 56(3)(b). This provision is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 4(4)(b), so as to substitute for the words 'if issued by the fixed penalty clerk' a reference to a receipt issued under the Road Traffic Offenders Act 1988 s 56(2) (as amended). At the date at which this volume states the law no such day had been appointed.

11 Ibid s 56(3) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 16(c)). This provision is further amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 46(2), Sch 7, so as to remove the reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

**UPDATE****1099 Licence receipts**

NOTES 6, 8-10--Day appointed in relation to Road Safety Act 2006 s 5, Sch 1 is 31 March 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iv) Fixed Penalties/C. GIVING NOTICE TO SUSPECTED OFFENDERS/1100. Endorsement of licences without hearings; powers of court in cases of deception.

**1100. Endorsement of licences without hearings; powers of court in cases of deception.**

These provisions apply until a day to be appointed<sup>1</sup>.

Where a person ('the licence holder') has surrendered his licence and its counterpart<sup>2</sup> to a constable<sup>3</sup> or authorised person<sup>4</sup> on the occasion when he was given a fixed penalty notice<sup>5</sup>, the counterpart of his licence may be endorsed in accordance with this provision without any order of a court<sup>6</sup>. The counterpart of a person's licence may not be endorsed under this provision if at the end of the suspended enforcement period<sup>7</sup> he has given notice, in the manner specified in the fixed penalty notice, requesting a hearing<sup>8</sup> in respect of the offence<sup>9</sup> to which the fixed penalty notice relates<sup>10</sup>, and the fixed penalty<sup>11</sup> has not been paid<sup>12</sup>.

On the payment of the fixed penalty before the end of the suspended enforcement period, the fixed penalty clerk<sup>13</sup> must endorse the relevant particulars<sup>14</sup> on the counterpart of the licence and return it together with the licence to the licence holder<sup>15</sup>.

Where any sum determined by reference to the fixed penalty is registered<sup>16</sup> for enforcement against the licence holder as a fine, the fixed penalty clerk must endorse the relevant particulars on the counterpart of the licence and return it together with the licence to the licence holder<sup>17</sup>: (1) if he is himself the clerk who registers that sum, on the registration of that sum<sup>18</sup>; and (2) in any other case, on being notified of the registration by the clerk who registers that sum<sup>19</sup>. On endorsing the counterpart of a person's licence under this provision the fixed penalty clerk must send notice of the endorsement and of the particulars endorsed to the Secretary of State<sup>20</sup>.

Where, in endorsing the counterpart of any person's licence, the fixed penalty clerk is deceived as to whether that endorsement is excluded<sup>21</sup> by virtue of the fact that the licence holder would be liable to be disqualified<sup>22</sup> if he were convicted of the offence<sup>23</sup>, if the deception constituted or was due to an offence committed by the licence holder<sup>24</sup>, and the licence holder is convicted of that offence<sup>25</sup>, the court by or before which he is convicted has the same powers and duties as it would have had if he had also been convicted by or before it of the offence of which particulars were endorsed<sup>26</sup>.

1 The Road Traffic Offenders Act 1988 s 57 (as amended) is repealed by the Road Safety Act 2006 ss 10(1), (7), 59, Sch 7, as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'licence' see PARA 1032 note 3 ante. For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). As from a day to be appointed, s

98(1) is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7 so as to remove reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

3 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. For the purposes of the enforcement of the law with respect to certain fixed penalties, traffic wardens may exercise the functions conferred on constables: see the Functions of Traffic Wardens Order 1970, SI 1970/1958, art 3(1), Schedule para 1; and PARA 868 ante. As to the appointment of traffic wardens see PARA 868 ante.

4 For the meaning of 'authorised person' see PARA 1097 note 15 ante.

5 le under the Road Traffic Offenders Act 1988 s 54 (as amended): see PARA 1097 ante. For the meaning of 'fixed penalty notice' see PARA 1094 ante.

6 Ibid s 57(1) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(2), 3, Sch 2 para 17), which is expressed to be subject to the Road Traffic Offenders Act 1988 s 57(2) (as amended).

As from a day to be appointed, s 57(1) is further amended by the Road Safety Act 2006 s 5, Sch 1 paras 1, 5(1), (2), so as to substitute for the words 'has surrendered his licence and its counterpart to a constable or authorised person on the occasion when he was given a fixed penalty notice' the words 'has been given a fixed penalty notice in respect of an offence involving obligatory endorsement'; and by s 9(6), Sch 2 paras 2, 15(1), (2), so as to add the words 'who is the holder of a licence' after 'a person'. At the date at which this volume states the law no such day had been appointed.

7 Road Traffic Offenders Act 1988 s 57(2) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 17). For the meaning of 'suspended enforcement period' see PARA 1094 head (1) ante.

8 For the meaning of 'notice requesting a hearing' see PARA 1098 note 6 ante.

9 As to the meaning of 'offence' see PARA 1093 note 1 ante.

10 Road Traffic Offenders Act 1988 s 57(2)(a).

11 For the meaning of 'fixed penalty' see PARA 1095 ante.

12 Road Traffic Offenders Act 1988 s 57(2)(b). Payment must be made in accordance with Pt III (ss 51-90) (as amended).

13 For the meaning of 'fixed penalty clerk' see PARA 1112 note 4 post.

14 References to the relevant particulars are to: (1) particulars of the offence, including the date when it was committed; and (2) the number of penalty points to be attributed to the offence: Road Traffic Offenders Act 1988 s 57(5). As to the penalty points to be attributed to an offence see PARA 1049 ante.

15 Ibid s 57(3) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 17). The Road Traffic Offenders Act 1988 s 57(3), (4) (as amended) is subject to the Road Traffic (New Drivers) Act 1995 s 2(4)(a), Sch 1 para 7(4)(a) (see PARA 514 ante): Road Traffic Offenders Act 1988 s 57(7) (added by the Road Traffic (New Drivers) Act 1995 s 10(4), Sch 2 para 5). The Road Traffic Offenders Act 1988 s 57(3) (as amended) is further amended by the Road Safety Act 2006 Sch 1 para 5(3), as from a day to be appointed, so as to substitute for the words 'fixed penalty clerk' the words 'person to whom it is paid'. At the date at which this volume states the law no such day had been appointed.

16 le under the Road Traffic Offenders Act 1988 s 71 (as amended): see PARA 1114 post.

17 Ibid s 57(4) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 17). See also note 15 supra. The Road Traffic Offenders Act 1988 s 57(4) (as amended) is further amended by the Road Safety Act 2006 Sch 1 para 5(4), as from a day to be appointed, so as to substitute for the words 'fixed penalty clerk' the words 'person to whom the fixed penalty is required to be paid' and for the words 'the clerk' the words 'the person'. At the date at which this volume states the law no such day had been appointed.

18 Road Traffic Offenders Act 1988 s 57(4)(a).

19 Ibid s 57(4)(b).

20 Ibid s 57(6) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 17). This provision is further amended by the Road Safety Act 2006 Sch 1 para 5(5), as from a day to be appointed, so as to substitute for the words 'On endorsing' the words 'Where the endorsement

of' and adding the words 'is made by the fixed penalty clerk,' after 'this provision'. At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

The fixed penalty clerk need not comply with the Road Traffic Offenders Act 1988 s 57(6) (as amended) in a case where he sends a person's licence and its counterpart to the Secretary of State under the Road Traffic (New Drivers) Act 1995 s 2(4)(b), Sch 1 para 7(4)(b) (see PARA 514 ante): Road Traffic Offenders Act 1988 s 57(7) (as added: see note 15 supra).

21 le by ibid s 61(2) (as amended): see PARA 1103 post.

22 le under ibid s 35 (as amended): see PARA 1070 ante. For the meaning of 'disqualified' see PARA 1046 note 5 ante.

23 Ibid s 83(1)(a) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(2), 3, Sch 2 para 24). This provision is further amended by the Road Safety Act 2006 Sch 1 para 21(1), (2)(a), as from a day to be appointed, so as to add the words 'or the Secretary of State' after 'the fixed penalty clerk'. At the date at which this volume states the law no such day had been appointed.

The following provisions apply as from a day to be appointed. The Road Traffic Offenders Act 1988 s 83 (as amended) also applies where: (1) particulars are endorsed on a person's driving record under s 57A (as added) (see PARA 1101 post) because the fixed penalty clerk or the Secretary of State is deceived as to whether endorsement under that provision is excluded by s 61A(2) (as added) (see PARA 1103 post) by virtue of the fact that the person to whom the fixed penalty notice was given would be liable to be disqualified under s 35 (as amended) (see PARA 1070 ante) if he were convicted of the offence; or (2) particulars are endorsed on a person's driving record under s 77A (as added) (see PARA 1119 post) because the appropriate person or court is deceived as to whether proceedings against the person are excluded by s 76 (see PARA 1118 post) by virtue of the fact that the person to whom the conditional offer is issued would be liable to be disqualified under s 35 (as amended) if he were convicted of the offence: s 83(1A) (added by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 28(1), (2)). At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed, the Road Traffic Offenders Act 1988 s 83(1) is repealed by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 55(1), Sch 7; and the word 'also' in the Road Traffic Offenders Act 1988 s 83(1A) (as prospectively added) is repealed by the Road Safety Act 2006 Sch 3 para 55(3), Sch 7. At the date at which this volume states the law no such day had been appointed.

24 Road Traffic Offenders Act 1988 s 83(2)(a). Section 83(2)(a) is amended by the Road Safety Act Sch 2 para 28(1), (3)(a), as from a day to be appointed, so as to substitute for 'the licence holder' the words 'person to whom the fixed penalty notice was given or conditional offer was issued'. At the date at which this volume states the law no such day had been appointed.

25 Road Traffic Offenders Act 1988 s 83(2)(b). Section 83(2)(b) is amended by the Road Safety Act 2006 Sch 2 para 28(3)(b), as from a day to be appointed, so as to substitute for 'the licence holder' the word 'he'. At the date at which this volume states the law no such day had been appointed.

26 Road Traffic Offenders Act 1988 s 83(2). Particulars are endorsed under s 57 (as amended) or, as the case may be, s 77 (as substituted and amended) (see PARA 1119 post). As from a day to be appointed, s 83(2) is amended by the Road Safety Act 2006 Sch 2 para 28(3)(c), (d), so as to add a reference to endorsement under the Road Traffic Offenders Act 1988 s 57A (as added) (see PARA 1101 post) or s 77A (as added) (see PARA 1119 post); and by the Road Safety Act 2006 Sch 3 paras 30, 55(1), (4), Sch 7, so as to remove the reference to endorsement under the Road Traffic Offenders Act 1988 s 57 (as amended) or s 77 (as substituted and amended). At the date at which this volume states the law no such day had been appointed.

## UPDATE

### 1100 Endorsement of licences without hearings; powers of court in cases of deception

NOTES--Day appointed in relation to Road Safety Act 2006 s 5, Sch 1 is 31 March 2009 and in relation to s 9, Sch 2 is 1 April 2009: SI 2008/3164.

1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iv) Fixed Penalties/C. GIVING NOTICE TO SUSPECTED OFFENDERS/1101. Endorsement of driving records without hearings.

### **1101. Endorsement of driving records without hearings.**

The following provisions take effect as from a day to be appointed<sup>1</sup>.

Where a person who is not the holder of a licence<sup>2</sup> has been given a fixed penalty notice<sup>3</sup> in respect of an offence involving obligatory endorsement<sup>4</sup>, his driving record<sup>5</sup> may be endorsed in accordance with these provisions without any order of a court<sup>6</sup>. A person's driving record may not be endorsed under these provisions if at the end of the suspended enforcement period<sup>7</sup>: (1) he has given notice, in the manner specified in the fixed penalty notice, requesting a hearing in respect of the offence to which the fixed penalty notice relates<sup>8</sup>; and (2) the fixed penalty has not been paid in accordance with the relevant statutory provisions<sup>9</sup>.

If payment of the fixed penalty is made before the end of the suspended enforcement period and the person to whom the payment is made is the fixed penalty clerk<sup>10</sup>, the fixed penalty clerk must send to the Secretary of State<sup>11</sup> notice of the relevant particulars<sup>12</sup> which are to be endorsed on the person's driving record<sup>13</sup>.

Where any sum determined by reference to the fixed penalty is registered<sup>14</sup> for enforcement against the person as a fine in a case where the fixed penalty is required to be paid to the fixed penalty clerk, the fixed penalty clerk must send to the Secretary of State notice of the relevant particulars which are to be endorsed on the person's driving record<sup>15</sup>: (a) if he is himself the person who registers the sum, on the registration of that sum<sup>16</sup>; and (b) in any other case, on being notified of the registration by the person who registers that sum<sup>17</sup>.

The Secretary of State must endorse the relevant particulars on the person's driving record if<sup>18</sup>: (i) he receives notice of them<sup>19</sup>; (ii) the fixed penalty is paid to him before the end of the suspended enforcement period<sup>20</sup>; or (iii) in a case where the fixed penalty is required to be paid to the Secretary of State, any sum determined by reference to the fixed penalty is registered for enforcement against the person as a fine<sup>21</sup>.

1 The Road Traffic Offenders Act 1988 s 57A is added by the Road Safety Act 2006 s 9(1), (5), as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'licence' see PARA 1032 note 3 ante.

3 I.e. under the Road Traffic Offenders Act 1988 s 54 (as amended): see PARA 1097 ante. For the meaning of 'fixed penalty offence' see PARA 1093 ante.

4 For the meaning of 'offence involving obligatory endorsement' see PARA 1080 ante.

5 For the meaning of 'driving record' see PARA 1024 note 11 ante.

6 Road Traffic Offenders Act 1988 s 57A(1) (as added: see note 1 supra).

7 Ibid s 57A(2) (as added: see note 1 supra). For the meaning of 'suspended enforcement period' see PARA 1094 head (1) ante.

8 Ibid s 57A(2)(a) (as added: see note 1 supra).

9 Ibid s 57A(2)(b) (as added: see note 1 supra). The statutory provisions referred to are those of Pt III (ss 51-90) (as amended).

10 For the meaning of 'fixed penalty clerk' see PARA 1112 note 4 post.

11 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

12 References in the Road Traffic Offenders Act 1988 s 57A (as added) to the relevant particulars are to: (1) particulars of the offence, including the date when it was committed; and (2) the number of penalty points to be attributed to the offence: s 57A(6) (as added: see note 1 supra).

13 Ibid s 57A(3) (as added: see note 1 supra). Section 57A(3) (as added) is amended, as from a day to be appointed, by the Road Safety Act 2006 s 10(1), (8), (10), so as to add 'and return to that person any licence surrendered by him under the Road Traffic Offenders Act 1988 s 54' after 'driving record'. At the date at which this volume states the law no such day had been appointed.

14 Ie under ibid s 71 (as amended): see PARA 1114 post.

15 Ibid s 57A(4) (as added: see note 1 supra). Section 57A(4) (as added) is amended, as from a day to be appointed, by the Road Safety Act 2006 s 10(11), so as to add 'and return to that person any licence surrendered by him under the Road Traffic Offenders Act 1988 s 54' after 'driving record'. At the date at which this volume states the law no such day had been appointed.

16 Ibid s 57A(4)(a) (as added: see note 1 supra).

17 Ibid s 57A(4)(b) (as added: see note 1 supra).

18 Ibid s 57A(5) (as added: see note 1 supra).

19 Ibid s 57A(5)(a) (as added: see note 1 supra). The text refers to receiving notice of them under s 57A(3) or (4) (as added): see the text and notes 10-17 supra.

20 Ibid s 57A(5)(b) (as added: see note 1 supra).

21 Ibid s 57A(5)(c) (as added: see note 1 supra).

## UPDATE

### 1101 Endorsement of driving records without hearings

TEXT AND NOTE 1--Day appointed is 1 April 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iv) Fixed Penalties/C. GIVING NOTICE TO SUSPECTED OFFENDERS/1102. Effect of endorsement without hearing.

### 1102. Effect of endorsement without hearing.

The following provisions apply until a day to be appointed<sup>1</sup>.

Where the counterpart of a person's licence<sup>2</sup> is endorsed<sup>3</sup> he is to be treated for the purposes of the Road Traffic Offenders Act 1988<sup>4</sup> and the Rehabilitation of Offenders Act 1974<sup>5</sup> as if<sup>6</sup>: (1) he had been convicted of the offence<sup>7</sup>; (2) the endorsement had been made in pursuance of an order made on his conviction by a court<sup>8</sup>; and (3) the particulars of the offence so endorsed<sup>9</sup> were particulars of his conviction of that offence<sup>10</sup>.

The following provisions apply as from a day to be appointed<sup>11</sup>.

Where a person's driving record<sup>12</sup> is endorsed<sup>13</sup> he is to be treated for the purposes of the Road Traffic Offenders Act 1988<sup>14</sup> and the Rehabilitation of Offenders Act 1974 as if<sup>15</sup>:

1224 (a) he had been convicted of the offence<sup>16</sup>;

1225 (b) the endorsement had been made in pursuance of an order made on his conviction<sup>17</sup> by a court<sup>18</sup>; and

1226 (c) the particulars of the offence endorsed<sup>19</sup> were particulars of his conviction of that offence<sup>20</sup>.

1 The Road Traffic Offenders Act 1988 s 58 is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 paras 30, 47, Sch 7. At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'licence' see PARA 1032 note 3 ante. For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). As from a day to be appointed, s 98(1) is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7 so as to remove reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

3 Ie under the Road Traffic Offenders Act 1988 s 57 (as amended): see PARA 1100 ante.

4 Ie for the purposes of ibid s 13(4) (as amended) (see PARA 1037 ante), s 28 (as substituted) (see PARA 1049 ante), s 29 (as substituted) (see PARA 1050 ante), s 45 (as amended) (see PARA 1083 ante).

5 See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 660 et seq.

6 Road Traffic Offenders Act 1988 s 58(1) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(2), 3, Sch 2 para 18).

7 Road Traffic Offenders Act 1988 s 58(1)(a). As to the meaning of 'offence' see PARA 1093 note 1 ante.

8 Ibid s 58(1)(b). An endorsement is made under s 44 (as amended): see PARA 1081 ante.

9 Ie by virtue of ibid s 57(5)(a): see PARA 1100 ante.

10 Ibid s 58(1)(c). In relation to any endorsement of the counterpart of a person's licence under s 57 (as amended) (see PARA 1100 ante) the reference in s 45(4) (as amended) (see PARA 1083 ante) to the order for endorsement, and the references in s 13(4) (as amended) (see PARA 1037 ante) to any order made on a person's conviction, are to be read as references to the endorsement itself: s 58(2) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 18).

11 The Road Traffic Offenders Act 1988 s 58A is added by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 17, as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

12 For the meaning of 'driving record' see PARA 1024 note 11 ante.

13 Ie under the Road Traffic Offenders Act 1988 s 57A (as added): see PARA 1101 ante. In relation to any endorsement of a person's driving record under s 57A (as added), the references in s 13(4) (as amended) (see PARA 1037 ante) to any order made on a person's conviction are to be read as references to the endorsement itself: s 58A(2) (as added: see note 11 supra).

14 Ie for the purposes of ibid s 13(4) (as amended) (see PARA 1037 ante), s 28 (as substituted) (see PARA 1049 ante), s 29 (as substituted) (see PARA 1050 ante), and s 45A (as added) (see PARA 1083 ante).

15 Ibid s 58A(1) (as added: see note 11 supra).

16 Ibid s 58A(1)(a) (as added: see note 11 supra).

17 Ie under ibid s 44 (as amended): see PARA 1081 ante.

18 Ibid s 58A(1)(b) (as added: see note 11 supra).

19 Ie virtue of ibid s 57A(6)(a) (as added): see PARA 1101 ante.

20 Ibid s 58A(1)(c) (as added: see note 11 supra).

## UPDATE

### 1102 Effect of endorsement without hearing

TEXT AND NOTE 11--Day appointed is 1 April 2009: SI 2008/3164.



Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iv) Fixed Penalties/C. GIVING NOTICE TO SUSPECTED OFFENDERS/1103. Exclusion of fixed penalty procedure where fixed penalty notice mistakenly given.

### **1103. Exclusion of fixed penalty procedure where fixed penalty notice mistakenly given.**

The following provisions apply until a day to be appointed<sup>1</sup>.

Where, on inspection of a licence and its counterpart<sup>2</sup> sent to him<sup>3</sup>, it appears to the fixed penalty clerk<sup>4</sup> that the person whose licence it is would be liable to be disqualified<sup>5</sup> if he were convicted of the offence<sup>6</sup> in respect of which the fixed penalty notice<sup>7</sup> was given<sup>8</sup>, the fixed penalty clerk must not endorse the counterpart of the licence<sup>9</sup> but must instead send it together with the licence to the chief officer of police<sup>10</sup>. Nothing in the provisions relating to fixed penalties<sup>11</sup> prevents proceedings<sup>12</sup> being brought in respect of the offence in respect of which the fixed penalty notice was given where those proceedings are commenced before the end of the period of six months beginning with the date on which that notice was given<sup>13</sup>. Where proceedings in respect of that offence are commenced before the end of that period, the case is from then on to be treated in all respects as if no fixed penalty notice had been given in respect of the offence<sup>14</sup>. Accordingly, where proceedings in respect of that offence are so commenced, any action taken in pursuance of any provision relating to fixed penalties by reference to that fixed penalty notice is void<sup>15</sup>.

The following provisions apply as from a day to be appointed<sup>16</sup>.

They apply where, on accessing information held on the driving record<sup>17</sup> of a person to whom a fixed penalty notice was given, but who is not the holder of a licence, it appears to the fixed penalty clerk or the Secretary of State that the person would be liable to be disqualified<sup>18</sup> if he were convicted of the offence in respect of which the fixed penalty notice was given<sup>19</sup>. The person's driving record must not be endorsed<sup>20</sup>. In a case where the fixed penalty is required to be paid to the fixed penalty clerk he must not send notice to the Secretary of State<sup>21</sup> but instead must notify the chief officer of police that the person to whom the fixed penalty notice was given would be liable to be disqualified if he were convicted of the offence in respect of which the fixed penalty notice was given<sup>22</sup>. Nothing in Part III of the Road Traffic Offenders Act 1988<sup>23</sup> prevents proceedings being brought in respect of the offence in respect of which the fixed penalty notice was given where those proceedings are commenced before the end of the period of six months beginning with the date on which that notice was given<sup>24</sup>. Where proceedings in respect of that offence are commenced before the end of that period, the case is from then on to be treated in all respects as if no fixed penalty notice had been given in respect of the offence<sup>25</sup>. Accordingly, where proceedings in respect of that offence are so commenced, any action taken in pursuance of Part III of the Road Traffic Offenders Act 1988 by reference to that fixed penalty notice is void (including, but without prejudice to the generality of the above provision: (1) the registration<sup>26</sup> of any sum, determined by reference to the fixed penalty for that offence, for enforcement against the person to whom the fixed penalty notice was given; and (2) any proceedings<sup>27</sup> for enforcing payment of any such sum)<sup>28</sup>.

<sup>1</sup> The Road Traffic Offenders Act 1988 s 61 is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 paras 30, 47, Sch 7. At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'licence' see PARA 1032 note 3 ante. For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). As from a day to be appointed, s 98(1) is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7 so as to remove reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

3 le sent to him under the Road Traffic Offenders Act 1988 s 54(7) (as amended): see PARA 1097 ante.

4 For the meaning of 'fixed penalty clerk' see PARA 1112 note 4 post.

5 le under the Road Traffic Offenders Act 1988 s 35 (as amended): see PARA 1070 ante. For the meaning of 'disqualified' see PARA 1046 note 5 ante.

6 As to the meaning of 'offence' see PARA 1093 note 1 ante.

7 For the meaning of 'fixed penalty notice' see PARA 1094 ante.

8 Road Traffic Offenders Act 1988 s 61(1) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(2), 3, Sch 2 para 19). This provision is further amended, as from a day to be appointed, by the Road Safety Act 2006 s 5, Sch 1 paras 1, 6(1), (2), with the effect that it refers to a notice surrendered or delivered under the Road Traffic Offenders Act 1988 s 54 (as amended) instead of one sent to the clerk under s 54(7) (as amended); and the words 'or the Secretary of State' are added after 'appears to the fixed penalty clerk'. At the date at which this volume states the law no such day had been appointed.

In determining for the purposes of the Road Traffic Offenders Act 1988 s 61(1) (as amended) whether a person convicted of an offence would be liable to disqualification under s 35 (as amended) (see PARA 1070 ante), it must be assumed, in the case of an offence in relation to which a range of numbers is shown in the last column of Sch 2 Pt I (as amended), that the number of penalty points to be attributed to the offence would be the lowest in the range: s 61(6) (added by the Road Traffic Act 1991 s 48, Sch 4 para 104). As to the penalty points to be attributed to an offence see PARA 1049 ante.

9 le under the Road Traffic Offenders Act 1988 s 57 (as amended): see PARA 1100 ante.

10 Ibid s 61(2) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 19). For the meaning of 'chief officer of police' see PARA 1090 note 8 ante. As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

The Road Traffic Offenders Act 1988 s 61(2) (as amended) is further amended, as from a day to be appointed, by the Road Safety Act 2006 ss 5, 59, Sch 1 paras 6(3), Sch 7, with the effect that for the words 'the fixed penalty clerk must not endorse the counterpart of the licence' there are substituted the words 'the counterpart of the licence must not be endorsed', and the words 'if it was sent to the fixed penalty clerk he' are added after the word 'but'. At the date at which this volume states the law no such day had been appointed.

11 le the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended).

12 For the meaning of 'proceedings' see PARA 1094 note 4 ante.

13 Road Traffic Offenders Act 1988 s 61(3).

14 Ibid s 61(4).

15 Ibid s 61(5). This includes, but without prejudice to the generality of s 61(5):

1673 (1) the registration under s 71 (as amended) (see PARA 1114 post) of any sum, determined by reference to the fixed penalty for that offence, for enforcement against the person whose licence it is as a fine (s 61(5)(a)); and

1674 (2) any proceedings for enforcing payment of any such sum within the meaning of ss 73, 74 (both amended) (see s 74(5); and PARA 1116 post) (s 61(5)(b)).

As to fixed penalties see PARA 1095 ante.

16 Ibid s 61A is added by the Road Safety Act 2006 Sch 2 para 19, as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

17 For the meaning of 'driving record' see PARA 1024 note 11 ante.

18 le under the Road Traffic Offenders Act 1988 s 35 (as amended): see PARA 1070 ante. In determining for the purposes of s 61A(1) (as added) whether a person convicted of an offence would be liable to disqualification under s 35 (as amended), it is to be assumed, in the case of an offence in relation to which a range of numbers

is shown in the last column of Sch 2 Pt 1 (as amended), that the number of penalty points to be attributed to the offence would be the lowest in the range: s 61A(7) (as added: see note 16 supra).

19 Ibid s 61A(1) (as added: see note 16 supra). Section 161A(1) (as added) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 49(1), (2), Sch 7, so as to remove the words 'but who is not the holder of a licence'. At the date at which this volume states the law no such day had been appointed.

20 Road Traffic Offenders Act 1988 s 61A(2) (as added: see note 16 supra). The text refers to endorsement under s 57A (as added).

21 Ie under ibid s 57A (as added). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

22 Ibid s 61A(3) (as added: see note 16 supra). Section 161A(3) (as added) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 49(3), so as to add a requirement for the fixed penalty clerk to send the chief officer of police any licence sent to him under the Road Traffic Offenders Act 1988 s 54(7) (as amended) (see PARA 1097 note 23 ante). At the date at which this volume states the law no such day had been appointed.

23 Ie ibid Pt III (as amended).

24 Ibid s 61A(4) (as added: see note 16 supra).

25 Ibid s 61A(5) (as added: see note 16 supra).

26 Ie under ibid s 71 (as amended): see PARA 1114 post.

27 Ie within the meaning of ibid ss 73, 74 (both as amended): see s 74(5) (as amended); and PARA 1115 note 2 post.

28 Ibid s 61A(6) (as added: see note 16 supra).

## **UPDATE**

### **1103 Exclusion of fixed penalty procedure where fixed penalty notice mistakenly given**

NOTES 8, 10--Day appointed is 31 March 2009: SI 2008/3164.

TEXT AND NOTE 16--Day appointed is 1 April 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iv) Fixed Penalties/D. NOTICES FIXED TO VEHICLES/1104. Fixing notices to vehicles.

## ***D. NOTICES FIXED TO VEHICLES***

### **1104. Fixing notices to vehicles.**

Where on any occasion a constable<sup>1</sup> has reason to believe in the case of any stationary vehicle that a fixed penalty offence<sup>2</sup> is being or has on that occasion been committed in respect of it, he may fix a fixed penalty notice<sup>3</sup> in respect of the offence<sup>4</sup> to the vehicle unless the offence appears to him to involve obligatory endorsement<sup>5</sup>. A person is guilty of an offence<sup>6</sup> if he removes or interferes with any notice fixed to a vehicle under this provision, unless he does so by or under the authority of the driver or person in charge of the vehicle or the person liable for the fixed penalty offence in question<sup>7</sup>.

1 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. For the purposes of the enforcement of the law with respect to certain fixed penalties, traffic wardens may exercise the functions conferred on constables: see the Functions of Traffic Wardens Order 1970, SI 1970/1958, art 3(1), Schedule para 1; and PARA 868 ante. As to the appointment of traffic wardens see PARA 868 ante.

2 For the meaning of 'fixed penalty offence' see PARA 1093 ante.

3 For the meaning of 'fixed penalty notice' see PARA 1094 ante.

4 As to the meaning of 'offence' see PARA 1093 note 1 ante.

5 Road Traffic Offenders Act 1988 s 62(1). For the meaning of 'offence involving obligatory endorsement' see PARA 1080 ante. Section 62(1) is amended, as from a day to be appointed, by the Road Safety Act 2006 s 5, Sch 1 paras 1, 7, so as to add the words 'or a vehicle examiner' after 'a constable'. At the date at which this volume states the law no such day had been appointed.

6 A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: Road Traffic Offenders Act 1988 ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 ante.

7 Ibid s 62(2).

## UPDATE

### 1104 Fixing notices to vehicles

NOTE 5--Day appointed is 31 March 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iv) Fixed Penalties/D. NOTICES FIXED TO VEHICLES/1105. Service of notice to owner if penalty not paid.

### 1105. Service of notice to owner if penalty not paid.

Where a fixed penalty notice<sup>1</sup> relating to an offence<sup>2</sup> has been fixed to a vehicle<sup>3</sup>, if at the end of the suspended enforcement period<sup>4</sup> the fixed penalty<sup>5</sup> has not been paid in accordance with the provisions relating to fixed penalties<sup>6</sup>, a notice under this provision may be served by or on behalf of the chief officer of police<sup>7</sup> on any person who appears to him (or to any person authorised to act on his behalf for these purposes) to be the owner<sup>8</sup> of the vehicle<sup>9</sup>. Such a notice is called a 'notice to owner'.

This provision does not apply where before the end of the suspended enforcement period any person has given notice requesting a hearing<sup>10</sup> in respect of the offence in the manner specified in the fixed penalty notice<sup>11</sup>, and the notice so given contains a statement by that person to the effect that he was the driver<sup>12</sup> of the vehicle at the time when the offence is alleged to have been committed ('the time of the alleged offence')<sup>13</sup>.

A notice to owner must:

- 1227 (1) give particulars of the alleged offence and of the fixed penalty concerned<sup>14</sup>;
- 1228 (2) state the period allowed for response to the notice<sup>15</sup>; and
- 1229 (3) indicate that, if the fixed penalty is not paid before the end of that period, the person on whom the notice is served is asked to provide before the end of that

period to the chief officer of police by or on whose behalf the notice was served a statutory statement<sup>16</sup> of ownership<sup>17</sup>.

A notice to owner relating to any offence must indicate that the person on whom it is served may, before the end of the period allowed for response to the notice, either:

- 1230 (a) give notice requesting a hearing in respect of the offence in the manner indicated by the notice<sup>18</sup>; or
- 1231 (b) if he was not the driver of the vehicle at the time of the alleged offence<sup>19</sup>, and a person purporting to be the driver wishes to give notice requesting a hearing in respect of the offence<sup>20</sup>, provide, together with a statutory statement of ownership provided as requested in that notice, a statutory statement of facts<sup>21</sup>.

In any case where a person on whom a notice to owner relating to any offence has been served provides a statutory statement of facts in pursuance of head (b) above<sup>22</sup>:

- 1232 (i) any notice requesting a hearing in respect of the offence that he purports to give on his own account is of no effect<sup>23</sup>; and
- 1233 (ii) no sum may be registered for enforcement against him as a fine in respect of the offence unless, within the period of two months immediately following the period allowed for response to the notice to owner, no summons in respect of the offence in question is served on the person identified in the statement as the driver<sup>24</sup>.

1 For the meaning of 'fixed penalty notice' see PARA 1094 ante.

2 As to the meaning of 'offence' see PARA 1093 note 1 ante.

3 Road Traffic Offenders Act 1988 s 63(1). A fixed penalty notice is fixed to a vehicle under s 62: see PARA 1104 ante.

4 For the meaning of 'suspended enforcement period' see PARA 1094 head (1) ante.

5 For the meaning of 'fixed penalty' see PARA 1095 ante.

6 I.e. the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended).

7 For the meaning of 'chief officer of police' see PARA 1090 note 8 ante. As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

8 For the purposes of the Road Traffic Offenders Act 1988 Pt III (as amended), the owner of a vehicle is to be taken to be the person by whom the vehicle is kept: s 68(1). Notwithstanding the presumption in s 68(1), it is open to the defence in any proceedings to prove that the person who was the registered keeper of a vehicle at a particular time was not the person by whom the vehicle was kept at that time and to the prosecution to prove that the vehicle was kept by some other person at that time: s 68(2). For the meaning of 'proceedings' see PARA 1094 note 4 ante. For the meaning of 'registered keeper' see PARA 1091 note 5 ante.

9 Ibid s 63(2). As from a day to be appointed, s 63(2) is amended by the Road Safety Act 2006 s 5, Sch 1 paras 1, 8(1), (2), so as to substitute for 'chief officer of police' the words 'relevant person'; and the Road Traffic Offenders Act 1988 s 63(2A) is added by the Road Safety Act 2006 Sch 1 para 8(3) so as to provide that 'the relevant person' means: (1) if the fixed penalty notice was fixed by a constable, the chief officer of police; and (2) if it was fixed by a vehicle examiner, the Secretary of State. At the date at which this volume states the law no such day had been appointed.

For the form of notice to owner see the Road Traffic (Owner Liability) Regulations 2000, SI 2000/2546, reg 2, Sch 1 Form FP1 (amended by SI 2001/1222).

10 For the meaning of 'notice requesting a hearing' see PARA 1098 note 6 ante.

11 Road Traffic Offenders Act 1988 s 63(3)(a).

12 For the purposes of *ibid* Pt III (as amended), 'driver' (except in s 62 (see PARA 1104 ante)) means, in relation to an alleged fixed penalty offence, the person by whom, assuming the offence to have been committed, it was committed: s 89(1). Cf para 207 ante. For the meaning of 'fixed penalty offence' see PARA 1093 ante.

13 *Ibid* s 63(3)(b).

14 *Ibid* s 63(4)(a).

15 *Ibid* s 63(4)(b). For the purposes of Pt III (as amended), the period allowed for response to a notice to owner is the period of 21 days from the date on which the notice is served, or such longer period, if any, as may be specified in the notice: s 63(5).

16 References in *ibid* Pt III (as amended) to statutory statements of any description are references to the statutory statement of that description defined in s 68, Sch 4 (see PARAS 1106-1107 post); and Sch 4 also has effect for the purpose of requiring certain information to be provided in official forms for the statutory statements so defined to assist persons in completing those forms and generally in determining what action to take in response to a notice to owner: s 68(3). In Pt III (as amended), 'official form', in relation to a statutory statement mentioned in Sch 4 or a statement under s 66(2) (see PARA 1110 post), means a document supplied by or on behalf of a chief officer of police for use in making that statement: s 68(4). Section 68(4) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 10, so as to add 'or the Secretary of State' after 'chief officer of police'. At the date at which this volume states the law no such day had been appointed.

17 Road Traffic Offenders Act 1988 s 63(4)(c). Section 63(4)(c) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 8(4), so as to substitute for 'chief officer of police by or on whose behalf the notice was served' the words 'relevant person'. At the date at which this volume states the law no such day had been appointed.

For the statutory statement of ownership see PARA 1106 post. For the form of statutory statement of ownership see the Road Traffic (Owner Liability) Regulations 2000, SI 2000/2546, Sch 1 Form FP2.

18 Road Traffic Offenders Act 1988 s 63(6)(a).

19 *Ibid* s 63(6)(b)(i).

20 *Ibid* s 63(6)(b)(ii).

21 *Ibid* s 63(6)(b). The statutory statement of facts is as defined in Sch 4 Pt II (see PARA 1107 post) as having the effect referred to in Sch 4 para 3(2) (see PARA 1107 post) (that is, as a notice requesting a hearing in respect of the offence given by the driver): s 63(6)(b). For the form of statutory statement of facts see the Road Traffic (Owner Liability) Regulations 2000, SI 2000/2546, reg 2, Sch 1 Form FP3.

22 Road Traffic Offenders Act 1988 s 63(7).

23 *Ibid* s 63(7)(a).

24 *Ibid* s 63(7)(b).

## UPDATE

### 1105 Service of notice to owner if penalty not paid

NOTES 9, 16, 17--Day appointed is 31 March 2009: SI 2008/3164.

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### 1106. Meaning of 'statutory statement of ownership'.

For the purposes of the provisions relating to fixed penalties<sup>1</sup>, a statutory statement of ownership is a statement on an official form<sup>2</sup> signed by the person providing it and stating whether he was the owner<sup>3</sup> of the vehicle at the time of the alleged offence<sup>4</sup> and, if he was not the owner of the vehicle at that time, whether: (1) he was never the owner<sup>5</sup>; or (2) he ceased to be the owner before, or became the owner after, that time<sup>6</sup>, and in a case within head (2) above, stating, if the information is in his possession, the name and address of the person to whom, and the date on which, he disposed of the vehicle or, as the case may be, the name and address of the person from whom, and the date on which, he acquired it<sup>7</sup>.

An official form for a statutory statement of ownership must:

- 1234 (a) indicate that the person providing the statement in response to a notice to owner<sup>8</sup> relating to an offence<sup>9</sup> may give notice requesting a hearing<sup>10</sup> in respect of the offence in the manner specified in the form<sup>11</sup>; and
- 1235 (b) direct the attention of any person proposing to complete the form to the information provided<sup>12</sup> in any official form for a statutory statement of facts<sup>13</sup>.

A statutory statement of hiring is a statement on an official form, signed by the person providing it, being a person by whom a statement of liability<sup>14</sup> was signed, and stating whether at the time of the alleged offence the vehicle was let to him under the hiring agreement<sup>15</sup> to which the statement of liability refers<sup>16</sup>, and if it was not, the date on which he returned the vehicle to the possession of the vehicle-hire firm<sup>17</sup> concerned<sup>18</sup>.

An official form for a statutory statement of hiring must:

- 1236 (i) indicate that the person providing the statement in pursuance of a notice relating to an offence<sup>19</sup> may give notice requesting a hearing in respect of the offence in the manner specified in the form<sup>20</sup>; and
- 1237 (ii) direct the attention of any person proposing to complete the form to the information provided<sup>21</sup> in any official form for a statutory statement of facts<sup>22</sup>.

1    Ie the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended).

2    For the meaning of 'official form' see PARA 1105 note 16 ante.

3    For the meaning of 'owner' see PARA 1105 note 8 ante.

4    For the meaning of 'time of the alleged offence' see PARA 1105 ante.

5    Road Traffic Offenders Act 1988 s 68, Sch 4 Pt I para 1(1)(a).

6    Ibid Sch 4 Pt I para 1(1)(b).

7    Ibid Sch 4 Pt I para 1(1).

8    For the meaning of 'notice to owner' see PARA 1105 ante. See also PARA 1110 note 8 post.

9    As to the meaning of 'offence' see PARA 1093 note 1 ante.

10   For the meaning of 'notice requesting a hearing' see PARA 1098 note 6 ante.

11   Road Traffic Offenders Act 1988 Sch 4 Pt I para 1(2)(a).

12   Ie in accordance with ibid Sch 4 Pt II para 3(3); see PARA 1107 post.

13   Ibid Sch 4 Pt I para 1(2)(b). For the meaning of 'statutory statement of facts' see PARA 1107 post.

- 14 For the meaning of 'statement of liability' see PARA 1110 note 8 post; definition applied by *ibid* Sch 4 Pt I para 2(3).
- 15 For the meaning of 'hiring agreement' see PARA 1110 note 4 post; definition applied by *ibid* Sch 4 Pt I para 2(3).
- 16 *Ibid* Sch 4 Pt I para 2(1)(a).
- 17 For the meaning of 'vehicle-hire firm' see PARA 1110 note 2 post; definition applied by *ibid* Sch 4 Pt I para 2(3).
- 18 *Ibid* Sch 4 Pt I para 2(1)(b).
- 19 *Ie* served under *ibid* s 63 (see PARA 1105 ante) by virtue of s 66 (see PARA 1110 post).
- 20 *Ibid* Sch 4 Pt I para 2(2)(a).
- 21 *Ie* in accordance with *ibid* Sch 4 Pt II para 3(3); see PARA 1107 post.
- 22 *Ibid* Sch 4 Pt I para 2(2)(b).

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### **1107. Meaning of 'statutory statement of facts'.**

For the purposes of the provisions relating to fixed penalties<sup>1</sup>, a statutory statement of facts is a statement on an official form<sup>2</sup>, signed by the person providing it, which states that the person providing it was not the driver<sup>3</sup> of the vehicle at the time of the alleged offence<sup>4</sup>, and states the name and address at the time when the statement is provided of the person who was the driver of the vehicle at the time of the alleged offence<sup>5</sup>.

A statutory statement of facts has effect as a notice given by the driver requesting a hearing<sup>6</sup> in respect of the offence<sup>7</sup> if it is signed by the person identified in the statement as the driver of the vehicle at the time of the alleged offence<sup>8</sup>.

An official form for a statutory statement of facts must indicate that:

- 1238 (1) if a person identified in the statement as the driver of the vehicle at the time of the alleged offence signs the statement he will be regarded as having given notice requesting a hearing in respect of the offence<sup>9</sup>;
- 1239 (2) the person on whom the notice to owner<sup>10</sup> relating to the offence is served may not give notice requesting a hearing in respect of the offence on his own account if he provides a statutory statement of facts signed by a person so identified<sup>11</sup>; and
- 1240 (3) if the fixed penalty<sup>12</sup> is not paid before the end of the period stated in the notice to owner as the period for response to the notice, a sum determined by reference to that fixed penalty may be registered without any court hearing for enforcement as a fine against the person on whom the notice to owner is served, unless he has given notice requesting a hearing in respect of the offence<sup>13</sup>.

However, in a case within head (3) above, the sum in question may not be so registered if the person on whom the notice to owner is served provides a statutory statement of facts as mentioned in head (2) above until two months have elapsed from the end of the period so



stated without service of a summons in respect of the offence on the person identified in that statement as the driver of the vehicle<sup>14</sup>.

- 1    le the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended).
- 2    For the meaning of 'official form' see PARA 1105 note 16 ante.
- 3    For the meaning of 'driver' see PARA 1105 note 12 ante.
- 4    Road Traffic Offenders Act 1988 s 68, Sch 4 Pt II para 3(1)(a). For the meaning of 'time of the alleged offence' see PARA 1105 ante.
- 5    Ibid Sch 4 Pt II para 3(1)(b).
- 6    For the meaning of 'notice requesting a hearing' see PARA 1098 note 6 ante.
- 7    As to the meaning of 'offence' see PARA 1093 note 1 ante.
- 8    Road Traffic Offenders Act 1988 Sch 4 Pt II para 3(2).
- 9    Ibid Sch 4 Pt II para 3(3)(a).
- 10   For the meaning of 'notice to owner' see PARA 1105 ante. See also PARA 1110 note 8 post.
- 11   Road Traffic Offenders Act 1988 Sch 4 Pt II para 3(3)(b).
- 12   For the meaning of 'fixed penalty' see PARA 1095 ante.
- 13   Road Traffic Offenders Act 1988 Sch 4 Pt II para 3(3)(c).
- 14   Ibid Sch 4 para 3(3).

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### **1108. Enforcement or proceedings against owner.**

Where:

- 1241 (1)   a fixed penalty notice<sup>1</sup> relating to an offence<sup>2</sup> has been fixed to a vehicle<sup>3</sup>;
- 1242 (2)   a notice to owner<sup>4</sup> relating to the offence has been served on any person<sup>5</sup> before the end of the period of six months beginning with the day on which the fixed penalty notice was fixed to the vehicle<sup>6</sup>; and
- 1243 (3)   the fixed penalty has not been paid in accordance with the provisions relating to fixed penalties<sup>7</sup> before the end of the period allowed for response to the notice to owner<sup>8</sup>,

proceedings<sup>9</sup> may be brought in respect of the offence against the person on whom the notice to owner<sup>10</sup> was served<sup>11</sup>. If the person on whom the notice to owner was served was not the owner of the vehicle at the time of the alleged offence<sup>12</sup>, and provides a statutory statement<sup>13</sup> of ownership<sup>14</sup> to that effect in response to the notice before the end of the period allowed for response to the notice<sup>15</sup>, he is not liable in respect of the offence by virtue of this provision nor must any sum determined by reference to the fixed penalty for the offence be so registered by virtue of this provision for enforcement against him as a fine<sup>16</sup>.

For the purposes of the institution of proceedings<sup>17</sup> against any person on whom a notice to owner has been served<sup>18</sup>, and in any proceedings brought<sup>19</sup> against any such person<sup>20</sup>, it must be conclusively presumed (notwithstanding that that person may not be an individual) that he was the driver<sup>21</sup> of the vehicle at the time of the alleged offence and, accordingly, that acts or omissions of the driver of the vehicle at that time were his acts or omissions<sup>22</sup>. However, that presumption does not apply in any proceedings brought against any person<sup>23</sup> if, in those proceedings, it is proved that at the time of the alleged offence the vehicle was in the possession of some other person without the consent of the accused<sup>24</sup>.

1 For the meaning of 'fixed penalty notice' see PARA 1094 ante.

2 As to the meaning of 'offence' see PARA 1093 note 1 ante.

3 Road Traffic Offenders Act 1988 s 64(1)(a). A fixed penalty notice is fixed to a vehicle under s 62: see PARA 1104 ante.

4 For the meaning of 'notice to owner' see PARA 1105 ante. See also PARA 1110 note 8 post. For the meaning of 'owner' see PARA 1105 note 8 ante.

5 Ie under the Road Traffic Offenders Act 1988 s 63(2): see PARA 1105 ante.

6 Ibid s 64(1)(b). Subject to s 64(4) and to s 63(7)(b) (see PARA 1105 ante), a sum equal to the fixed penalty plus one half of the amount of that penalty may be registered under s 71 (as amended) (see PARA 1114 post) for enforcement against the person on whom the notice to owner was served as a fine: s 64(2). For the meaning of 'fixed penalty' see PARA 1095 ante.

7 Ie ibid Pt III (ss 51-90) (as amended).

8 Ibid s 64(1)(c). As to the period allowed for response to the notice to owner see PARA 1105 note 15 ante.

9 For the meaning of 'proceedings' see PARA 1094 note 4 ante.

10 For the purposes of determining, in the course of any proceedings brought by virtue of the Road Traffic Offenders Act 1988 s 64(3), who was the owner of a vehicle at any time, it must be presumed that the owner was the person who was the registered keeper of the vehicle at that time: s 68(1). For the meaning of 'registered keeper' see PARA 1091 note 5 ante.

11 Ibid s 64(3), which is expressed to be subject to s 64(4) (see the text and notes 12-16 infra) and s 65 (see PARA 1109 post). Where by virtue of s 64(3) proceedings may be brought in respect of an offence against a person on whom a notice to owner was served, and s 74(1) (see PARA 1115 post) does not apply, the Magistrates' Courts Act 1980 s 127(1) (information must be laid within six months of time offence committed) (see MAGISTRATES vol 29(2) (Reissue) PARA 589) has effect as if for the reference to six months there were substituted a reference to 12 months: Road Traffic Offenders Act 1988 s 64(7).

12 Ibid s 64(4)(a). For the meaning of 'time of the alleged offence' see PARA 1105 ante.

13 For the meaning of 'statutory statement' see PARA 1105 note 16 ante.

14 For the meaning of 'statutory statement of ownership' see PARA 1106 ante.

15 Road Traffic Offenders Act 1988 s 64(4)(b).

16 Ibid s 64(4).

17 Ie by virtue of ibid s 64(3): see the text to note 11 supra.

18 Ibid s 64(5)(a).

19 Ie by virtue of ibid s 64(3): see the text to note 11 supra.

20 Ibid s 64(5)(b).

21 For the meaning of 'driver' see PARA 1105 note 12 ante.

22 Road Traffic Offenders Act 1988 s 64(5), which is expressed to be subject to s 64(6): see the text and note 24 *infra*.

23 *Ie* by virtue of *ibid* s 64(3): see the text to note 11 *supra*.

24 *Ibid* s 64(6).

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### **1109. Restriction on proceedings against owner and others.**

In any case where a notice to owner<sup>1</sup> relating to an offence<sup>2</sup> may be served<sup>3</sup>, no proceedings<sup>4</sup> may be brought in respect of the offence against any person other than a person on whom such a notice has been served unless he is identified as the driver<sup>5</sup> of the vehicle at the time of the alleged offence<sup>6</sup> in a statutory statement<sup>7</sup> of facts<sup>8</sup> by a person on whom such a notice has been served<sup>9</sup>.

Proceedings in respect of an offence to which a notice to owner relates must not be brought against the person on whom the notice was served unless, before the end of the period allowed for response to the notice<sup>10</sup>, he has given notice, in the manner indicated by the notice to owner, requesting a hearing<sup>11</sup> in respect of the offence<sup>12</sup>.

Proceedings in respect of an offence to which a notice to owner relates may not be brought against any person identified as the driver of the vehicle in a statutory statement of facts provided in response to the notice if the fixed penalty<sup>13</sup> is paid<sup>14</sup> before the end of the period allowed for response to the notice<sup>15</sup>.

Once any sum determined by reference to the fixed penalty for an offence has been registered<sup>16</sup> for enforcement as a fine against a person on whom a notice to owner relating to that offence has been served, no proceedings may be brought against any other person in respect of that offence<sup>17</sup>.

1 For the meaning of 'notice to owner' see PARA 1105 *ante*. See also PARA 1110 note 8 *post*. As to the meaning of 'owner' see PARA 1105 note 8 *ante*.

2 As to the meaning of 'offence' see PARA 1093 note 1 *ante*.

3 *Ie* under the Road Traffic Offenders Act 1988 s 63: see PARA 1105 *ante*.

4 For the meaning of 'proceedings' see PARA 1094 note 4 *ante*.

5 For the meaning of 'driver' see PARA 1105 note 12 *ante*.

6 For the meaning of 'time of the alleged offence' see PARA 1105 *ante*.

7 For the meaning of 'statutory statement' see PARA 1105 note 16 *ante*.

8 *Ie* provided in pursuance of the Road Traffic Offenders Act 1988 s 63(3)(b): see PARA 1105 *ante*. For the meaning of 'statutory statement of facts' see PARA 1107 *ante*.

9 *Ibid* s 65(1).

10 As to the period allowed for response to notice to owner see PARA 1105 note 15 *ante*.

11 For the meaning of 'notice requesting a hearing' see PARA 1098 note 6 *ante*.

- 12 Road Traffic Offenders Act 1988 s 65(2).
- 13 For the meaning of 'fixed penalty' see PARA 1095 ante.
- 14 Ie in accordance with the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended).
- 15 Ibid s 65(3).
- 16 Ie by virtue of ibid s 64 (as amended) (see PARA 1108 ante) under s 71 (as amended) (see PARA 1114 post).
- 17 Ibid s 65(4).

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### **1110. Hired vehicles.**

Where:

- 1244 (1) a notice to owner<sup>1</sup> has been served on a vehicle-hire firm<sup>2</sup>;
- 1245 (2) at the time of the alleged offence<sup>3</sup> the vehicle in respect of which the notice was served was let to another person by the vehicle-hire firm under a hiring agreement<sup>4</sup> to which this provision applies<sup>5</sup>; and
- 1246 (3) within the period allowed for response to the notice<sup>6</sup> the firm provides the chief officer of police<sup>7</sup> by or on whose behalf the notice was served with the specified documents<sup>8</sup>,

a person authorised in that behalf by the chief officer of police to whom such documents are provided may, at any reasonable time within six months after service of the notice to owner, (and on the production of his authority) require the firm to produce the originals of the hiring agreement and statement of liability in question<sup>9</sup>.

1 For the meaning of 'notice to owner' see PARA 1105 ante. See also note 8 infra. For the meaning of 'owner' see PARA 1105 note 8 ante.

2 Road Traffic Offenders Act 1988 s 66(1)(a). For this purpose, 'vehicle-hire firm' means any person engaged in hiring vehicles in the course of a business: s 66(8).

3 For the meaning of 'time of the alleged offence' see PARA 1105 ante.

4 For this purpose, 'hiring agreement' refers only to an agreement which contains such particulars as may be prescribed and does not include a hire-purchase agreement within the meaning of the Consumer Credit Act 1974 (see CONSUMER CREDIT vol 9(1) (Reissue) PARA 95): Road Traffic Offenders Act 1988 s 66(8). For the particulars required in a hiring agreement see the Road Traffic (Owner Liability) Regulations 2000, SI 2000/2546, reg 3, Sch 2.

5 Road Traffic Offenders Act 1988 s 66(1)(b). Section 66 applies to a hiring agreement under the terms of which the vehicle concerned is let to the hirer for a fixed period of less than six months (whether or not that period is capable of extension by agreement between the parties or otherwise): s 66(7).

6 As to the period allowed for response to the notice to owner see PARA 1105 note 15 ante.

7 For the meaning of 'chief officer of police' see PARA 1090 note 8 ante. As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

8 Road Traffic Offenders Act 1988 s 66(1)(c). As from a day to be appointed, s 66(1)(c) is amended by the Road Safety Act 2006 s 5, Sch 1 paras 1, 9(1), (2) so as to substitute for the words 'chief officer of police by or on whose behalf the notice was served' the words 'relevant person'; and the Road Traffic Offenders Act 1988 s 66(8) is amended by the Road Safety Act 2006 Sch 1 para 9(4) so as to provide that 'relevant person' means: (1) if the fixed penalty notice was fixed by a constable, the chief officer of police by or on whose behalf the notice to owner was served; and (2) if it was fixed by a vehicle examiner, the Secretary of State. At the date at which this volume states the law no such day had been appointed.

The specified documents are a statement on an official form, signed by or on behalf of the firm, stating that at the time of the alleged offence the vehicle concerned was hired under a hiring agreement to which s 66 applies, together with: (a) a copy of that hiring agreement; and (b) a copy of a statement of liability signed by the hirer under that hiring agreement: Road Traffic Offenders Act 1988 s 66(2). For the meaning of 'official form' see PARA 1105 note 16 ante. For the form of statement see the Road Traffic (Owner Liability) Regulations 2000, SI 2000/2546, reg 2, Sch 1 Form FP2.

A 'statement of liability' means a statement made by the hirer under a hiring agreement to which the Road Traffic Offenders Act 1988 s 66 applies to the effect that the hirer acknowledges that he will be liable, as the owner of the vehicle, in respect of any fixed penalty offence which may be committed with respect to the vehicle during the currency of the hiring agreement and giving such information as may be prescribed: s 66(3). For the form of the statement of liability see the Road Traffic (Owner Liability) Regulations 2000, SI 2000/2546, reg 2, Sch 1 Form H. For the meaning of 'fixed penalty offence' see PARA 1093 ante. Any reference in the Road Traffic Offenders Act 1988 s 66 to the currency of the hiring agreement includes a reference to any period during which, with the consent of the vehicle-hire firm, the hirer continues in possession of the vehicle as hirer, after the expiry of the fixed period specified in the agreement, but otherwise on the terms and conditions so specified: s 66(7).

In any case where s 66 applies, s 63 (see PARA 1105 ante), s 64 (as amended) (see PARA 1108 ante) and s 65 (see PARA 1109 ante) have effect as if: (i) any reference to the owner of the vehicle were a reference to the hirer under the hiring agreement; and (ii) any reference to a statutory statement of ownership were a reference to a statutory statement of hiring, and accordingly references in Pt III (ss 51-90) (as amended) (with the exceptions mentioned below) to a notice to owner include references to a notice served under s 63 as it applies by virtue of s 66: s 66(4). Section 66(4) does not apply to references to a notice to owner in s 66 or s 81(2)(b) (see PARA 1123 post) or Sch 4 Pt I (see PARA 1106 ante): s 66(4). For the meaning of 'statutory statements' see PARA 1105 note 16 ante. For the meanings of 'statutory statement of ownership' and 'statutory statement of hiring' see PARA 1106 ante. For the form of statutory statement of hiring see the Road Traffic (Owner Liability) Regulations 2000, SI 2000/2546, reg 2, Sch 1 Form FP5.

9 Road Traffic Offenders Act 1988 s 66(5). Section 66(5) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 9(2) so as to substitute for the words 'chief officer of police' the word 'person'. At the date at which this volume states the law no such day had been appointed.

If a vehicle-hire firm fails to produce the original of a document when required to do so under these provisions, the Road Traffic Offenders Act 1988 s 66 (as amended) thereupon ceases to apply (and s 64 (as amended) (see PARA 1108 ante) applies accordingly in any such case after that time as it applies in a case where the person on whom the notice to owner was served has failed to provide a statutory statement of ownership in response to the notice within the period allowed): s 66(6).

## **UPDATE**

### **1110 Hired vehicles**

NOTES 8, 9--Day appointed is 31 March 2009: SI 2008/3164.

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#### **1111. False statements in response to notices to owner.**

A person who, in response to a notice to owner<sup>1</sup>, provides a statement which is false in a material particular and does so recklessly or knowing it to be false in that particular is guilty of an offence<sup>2</sup>.

1 For the meaning of 'notice to owner' see PARA 1105 ante. See also PARA 1110 note 8 ante. For the meaning of 'owner' see PARA 1105 note 8 ante.

2 Road Traffic Offenders Act 1988 s 67. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: ss 9, 33(1), Sch 2 Pt I. As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 ante.

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## ***E. FIXED PENALTY PROCEDURE***

### **1112. Payment of penalty.**

Payment of a fixed penalty<sup>1</sup> under the provisions relating to fixed penalties<sup>2</sup> must be made to such designated officer for a magistrates' court as may be specified in the fixed penalty notice<sup>3</sup> relating to that penalty<sup>4</sup>.

Without prejudice to payment by any other method, payment of a fixed penalty<sup>5</sup> may be made by properly addressing<sup>6</sup>, pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) and, unless the contrary is proved, is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post<sup>7</sup>.

1 For the meaning of 'fixed penalty' see PARA 1095 ante.

2 Ie the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended).

3 For the meaning of 'fixed penalty notice' see PARA 1094 ante.

4 Road Traffic Offenders Act 1988 s 69(1) (amended by the Courts Act 2003 s 109(1), Sch 8 para 315(1), (2)). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 s 5, Sch 1 paras 1, 11(1), (2), with the effect that for 'Payment of a fixed penalty under the provisions relating to fixed penalties' there is substituted 'Where a fixed penalty notice has been given or fixed by a constable or authorised person the provisions relating to fixed penalties, payment of the fixed penalty'; and the Road Traffic Offenders Act 1988 s 69(1A) is added by the Road Safety Act 2006 Sch 1 para 11(3), so as to provide that where a fixed penalty notice has been given or fixed by a vehicle examiner, or given by the Secretary of State, under the Road Traffic Offenders Act 1988 Pt III (as amended), payment of the fixed penalty must be made to the Secretary of State. At the date at which this volume states the law no such day had been appointed.

References in Pt III (as amended), except in ss 75-77 (as substituted and amended) (see PARAS 1117-1119 post), in relation to any fixed penalty or fixed penalty notice, to the fixed penalty clerk are references to the designated officer or clerk specified in accordance with s 69(1) in the fixed penalty notice relating to that penalty or (as the case may be) in that fixed penalty notice: s 69(4) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 105; and the Courts Act 2003 Sch 8 para 315(3)). The Road Traffic Offenders Act 1988 s 69(4) (as amended) is further amended by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 20, as from a day to be appointed, so that the excepted provisions are the Road Traffic Offenders Act 1988 ss 75-77A (as substituted, amended and added). At the date at which this volume states the law no such day had been appointed.

5 Ie under ibid Pt III (as amended).

6 A letter is properly addressed for the purposes of ibid s 69(2) if it is addressed to the fixed penalty clerk at the address specified in the fixed penalty notice relating to the fixed penalty as the address at which the fixed

penalty may be paid: s 69(3). Section 69(3) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 11(4), to add 'or the Secretary of State' after 'the fixed penalty clerk'. At the date at which this volume states the law no such day had been appointed.

7 Road Traffic Offenders Act 1988 s 69(2).

## UPDATE

### 1112 Payment of penalty

NOTES 4, 6--Day appointed in relation to Road Safety Act 2006 s 5, Sch 1 is 31 March 2006 and in relation to s 9, Sch 2 is 1 April 2009: SI 2008/3164.

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### 1113. Registration certificates.

The chief officer of police<sup>1</sup> may in respect of any sum payable in default<sup>2</sup> issue a registration certificate stating that the sum is registrable<sup>3</sup> for enforcement against the defaulter<sup>4</sup> as a fine<sup>5</sup>.

Where the chief officer of police or the fixed penalty clerk<sup>6</sup> issues a registration certificate under this provision, he must<sup>7</sup>: (1) if the defaulter appears to him to reside in England or Wales, cause it to be sent to the designated officer for the local justice area in which the defaulter appears to him to reside<sup>8</sup>; and (2) if the defaulter appears to him to reside in Scotland, cause it to be sent to the clerk of a court of summary jurisdiction<sup>9</sup> for the area in which the defaulter appears to him to reside<sup>10</sup>.

A registration certificate so issued in respect of any sum payable in default must give particulars of the offence to which the fixed penalty notice<sup>11</sup> relates<sup>12</sup>, indicate whether registration is authorised<sup>13</sup>, and state the name and last known address of the defaulter and the amount of the sum payable in default<sup>14</sup>.

1 For the meaning of 'chief officer of police' see PARA 1090 note 8 ante. As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

2 The Road Traffic Offenders Act 1988 s 70 (as amended) and s 71 (as amended) (see PARA 1114 post) apply where by virtue of s 55(3) (see PARA 1098 ante) or s 64(2) (see PARA 1108 ante) a sum determined by reference to the fixed penalty for any offence may be registered under s 71 (as amended) for enforcement against any person as a fine: s 70(1). In s 70 (prospectively amended), s 71 (as amended) that sum is referred to as a 'sum payable in default' (s 70(1)(a)), and the person against whom that sum may be so registered is referred to as the 'defaulter' (s 70(1)(b)). As to the meaning of 'offence' see PARA 1093 note 1 ante. For the meaning of 'fixed penalty' see PARA 1095 ante.

3 *le* under *ibid* s 71 (as amended): see PARA 1114 post.

4 For the meaning of 'defaulter' see note 2 *supra*. For the purposes of *ibid* s 70 (prospectively amended) and s 71 (as amended) (see PARA 1114 post), an unincorporated association may be registered as a defaulter: *R v Clerk to the Croydon Justices, ex p Chief Constable of Kent* [1991] RTR 257, DC.

5 Road Traffic Offenders Act 1988 s 70(2). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 s 5, Sch 1 paras 1, 12(1), (2), so as to substitute 'relevant person' for 'chief officer of police'; and the Road Traffic Offenders Act 1988 s 70(2A) is added by the Road Safety Act 2006 Sch 1 para 12(3), so as to provide that in the Road Traffic Offenders Act 1988 s 70(2) (prospectively amended) 'the relevant person' means: (1) if the fixed penalty notice in question was given or fixed by a constable or given by

an authorised person, the chief officer of police; and (2) if it was given or fixed by a vehicle examiner or given by the Secretary of State, the Secretary of State. At the date at which this volume states the law no such day had been appointed.

6 As to the meaning of 'fixed penalty clerk' see PARA 1112 note 4 ante.

7 Road Traffic Offenders Act 1988 s 70(4). Section 70(4) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 12(6), so as to substitute 'a person' for 'the chief officer of police or the fixed penalty clerk'. At the date at which this volume states the law no such day had been appointed.

8 Road Traffic Offenders Act 1988 s 70(4)(a) (amended by the Courts Act 2003 s 109(1), Sch 8 para 316). As from a day to be appointed, this provision is further amended by the Road Safety Act 2006 s 59, Sch 7. At the date at which this volume states the law no such day had been appointed.

9 'Court of summary jurisdiction' has the same meaning as in the Criminal Procedure (Scotland) Act 1995 s 307(1); definition applied by the Road Traffic Offenders Act 1988 s 89(1) (amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 s 5, Sch 4 para 71(10)).

10 Road Traffic Offenders Act 1988 s 70(4)(b). As from a day to be appointed, if neither head (1) nor head (2) in the text applies, the chief officer of police or the fixed penalty clerk must: (1) if the offence to which the fixed penalty notice or conditional offer relates was committed in England or Wales, cause it to be sent to the designated officer for the local justice area in which the offence was committed; or (2) if the offence was committed in Scotland, cause it to be sent to the clerk of a court of summary jurisdiction for the area in which the offence was committed: s 70(4)(c) (added by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 21(1)). At the date at which this volume states the law no such day had been appointed.

11 For the meaning of 'fixed penalty notice' see PARA 1094 ante.

12 Road Traffic Offenders Act 1988 s 70(5)(a).

13 Ibid s 70(5)(b). Registration is authorised under s 55(3) (see PARA 1098 ante) or s 64(2) (see PARA 1108 ante).

14 Ibid s 70(5)(c).

## UPDATE

### 1113 Registration certificates

NOTES 5, 7, 10--Day appointed in relation to Road Safety Act 2006 s 5, Sch 1 is 31 March 2006 and in relation to s 9, Sch 2 is 1 April 2009: SI 2008/3164.

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### 1114. Registration of sums payable in default.

Where, in England and Wales, the designated officer for a local justice area receives a registration certificate<sup>1</sup> in respect of any sum payable in default<sup>2</sup>: (1) if it appears to him that the defaulter resides in a local justice area for which he is the designated officer, he must register that sum for enforcement as a fine in that area by entering it in the register of a magistrates' court acting in that area; (2) if it appears to him that the defaulter resides in any other local justice area in England and Wales, he must send the certificate to the designated officer for that area; or (3) if it appears to him that the defaulter resides in Scotland, he must send the certificate to the clerk of the court of summary jurisdiction<sup>3</sup> for the area in which the defaulter appears to him to reside<sup>4</sup>.



On registering any sum under this provision for enforcement as a fine, the designated officer for a local justice area or, as the case may be, the clerk of a court of summary jurisdiction must give to the defaulter notice of registration<sup>5</sup> specifying the amount of that sum<sup>6</sup>, and giving the information with respect to the offence and the authority for registration included in the registration certificate<sup>7</sup>.

On the registration of any sum in a magistrates' court or a court of summary jurisdiction by virtue of this provision any enactment referring, in whatever terms, to a fine imposed or other sum adjudged to be paid on the conviction of such a court has effect in the case in question as if the sum so registered were a fine imposed by that court on the conviction of the defaulter on the date of the registration<sup>8</sup>.

Where the defaulter is a body corporate, the place where that body resides and the address of that body are either of the following<sup>9</sup>:

- 1247 (a) the registered or principal office of that body<sup>10</sup>; and
- 1248 (b) the address which, with respect to the vehicle concerned, is the address recorded in the record kept under the Vehicle Excise and Registration Act 1994<sup>11</sup> as being that body's address<sup>12</sup>.

1 le issued under the Road Traffic Offenders Act 1988 s 70 (as amended): see PARA 1113 ante.

2 For the meaning of 'sum payable in default' see PARA 1113 note 2 ante.

3 As to the meaning of 'court of summary jurisdiction' see PARA 1113 note 9 ante.

4 Road Traffic Offenders Act 1988 s 71(1) (substituted by the Access to Justice Act 1999 s 90(1), Sch 13 paras 140, 150(1), (2); and amended by the Courts Act 2003 s 109(1), Sch 8 para 317(1), (2)). As from a day to be appointed, the Road Traffic Offenders Act 1988 s 71(1) (as amended) is further amended to add a fourth head in the text, providing that if it appears to him that the defaulter does not reside in England, Wales or Scotland: (1) in a case where the offence to which the fixed penalty notice or conditional offer relates was committed in the local justice area for which he is the designated officer, he must register that sum for enforcement as a fine in that area by entering it in the register of a magistrates' court acting in that area; (2) in a case where it was committed in another local justice area in England and Wales, he must send the certificate to the designated officer for that area; and (3) in a case where it was committed in Scotland, he must send the certificate to the clerk of a court of summary jurisdiction for the area in which the offence was committed: s 71(1)(d) (added by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 22(1), (2)). At the date at which this volume states the law no such day had been appointed.

The Road Traffic Offenders Act 1988 s 71(1) (as amended) applies to officers and clerks who receive certificates pursuant to the provision they contain as it applies to the original recipients: s 71(2A) (added by the Access to Justice Act 1999 Sch 13 para 150(2); and amended by the Courts Act 2003 Sch 8 para 317(4)).

5 Road Traffic Offenders Act 1988 s 71(6) (amended by the Courts Act 2003 Sch 8 para 317(5)).

6 Road Traffic Offenders Act 1988 s 71(6)(a).

7 Ibid s 71(6)(b). The information is included in the registration certificate by virtue of s 70(5)(a), (b): see PARA 1113 ante.

8 Ibid s 71(7). Accordingly, in the application by virtue of s 71 (as amended) of the provisions of the Magistrates' Courts Act 1980 (see MAGISTRATES) relating to the satisfaction and enforcement of sums adjudged to be paid on the conviction of a magistrates' court, s 85 (as substituted and amended) (power to remit a fine in whole or in part) (see MAGISTRATES vol 29(2) (Reissue) PARA 862) is not excluded by s 85(2) (references in s 85 to a fine not to include any other sum adjudged to be paid on a conviction) from applying to a sum registered in a magistrates' court by virtue of the Road Traffic Offenders Act 1988 s 71 (as amended): s 71(8).

9 Ibid s 71(9).

10 Ibid s 71(9)(a).

11 See PARA 518 et seq ante.

<sup>12</sup> Road Traffic Offenders Act 1988 s 71(9)(b) (amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 25(1)).

## **UPDATE**

### **1114 Registration of sums payable in default**

NOTE 4--Day appointed is 1 April 2009: SI 2008/3164.

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### **1115. Invalidity of registration and endorsement in the case of notices on-the-spot or at a police station.**

Where a person who has received notice of the registration<sup>1</sup> of a sum<sup>2</sup> for enforcement against him as a fine makes a statutory declaration to the effect mentioned below<sup>3</sup>, and that declaration is, within 21 days of the date on which the person making it received notice of the registration, served on the proper officer of the relevant court<sup>4</sup>, the statutory declaration must state:

- 1249 (1) that the person making the declaration was not the person to whom the relevant fixed penalty notice<sup>5</sup> was given<sup>6</sup>; or
- 1250 (2) that he gave notice requesting a hearing<sup>7</sup> in respect of the alleged offence as permitted by the fixed penalty notice before the end of the suspended enforcement period<sup>8</sup>.

In any case within head (1) above, the relevant fixed penalty notice, the registration and any proceedings taken before the declaration was served for enforcing payment of the registered sum are void<sup>9</sup>. Where in any case within head (1) above the person to whom the relevant fixed penalty notice was given surrendered a licence<sup>10</sup> and its counterpart<sup>11</sup> held by the person making the declaration, any endorsement of that counterpart<sup>12</sup> in respect of the offence in respect of which that notice was given is void<sup>13</sup>.

In any case within head (2) above:

- 1251 (a) the registration, any proceedings taken before the declaration was served for enforcing payment of the sum registered, and any endorsement, in respect of the offence in respect of which the relevant fixed penalty notice was given<sup>14</sup> before the declaration was served, are void<sup>15</sup>; and
- 1252 (b) the case must be treated after the declaration is served as if the person making the declaration had given notice requesting a hearing in respect of the alleged offence as stated in the declaration<sup>16</sup>.

The proper officer of the relevant court must<sup>17</sup> cancel an endorsement of the counterpart of a licence<sup>18</sup> that is void by virtue of this provision on production of the licence and its counterpart to him for that purpose<sup>19</sup>, and send notice of the cancellation to the Secretary of State<sup>20</sup>.

1 le by virtue of the Road Traffic Offenders Act 1988 s 55(3): see PARA 1098 ante.

2 le under *ibid* s 71 (as amended): see PARA 1114 ante. For the purposes of ss 72-74 (as amended) a person is to be taken to receive notice of the registration of a sum under s 71 (as amended) for enforcement against him as a fine when he receives notice either of the registration as such or of any proceedings for enforcing payment of the sum registered: s 74(6). References to proceedings for enforcing payment of the sum registered are references to any process issued or other proceedings taken for or in connection with enforcing payment of that sum: s 74(5)(c). Nothing in the provisions of ss 72-74 (as amended) is to be read as prejudicing any rights a person may have apart from those provisions by virtue of the invalidity of any action purportedly taken in pursuance of Pt III (ss 51-90) (as amended) which is not in fact authorised by Pt III (as amended) in the circumstances of the case; and, accordingly, references in those provisions to the registration of any sum or to any other action taken under or by virtue of any provision of Pt III (as amended) are not to be read as implying that the registration or action was validly made or taken in accordance with that provision: s 74(7). For the meaning of 'proceedings' see PARA 1094 note 4 ante.

3 *Ibid* s 72(1)(a).

4 *Ibid* s 72(1)(b) (amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 140, 151). In the Road Traffic Offenders Act 1988 ss 72-74 (as amended), references to the proper officer of the relevant court are, in the case of a magistrates' court, references to the designated officer for that court and, in the case of a court of summary jurisdiction in Scotland, references to the clerk of the court: s 74(5)(b) (substituted by the Access to Justice Act 1999 Sch 13 para 152(1), (3); and amended by the Courts Act 2003 s 109(1), Sch 8 para 318(c)). References to the relevant court are, in the case of a sum registered under the Road Traffic Offenders Act 1988 s 71 (as amended) (see PARA 1114 ante) for enforcement as a fine in a local justice area in England and Wales, references to any magistrates' court acting in that area; and, in the case of a sum registered under s 71 (as amended) for enforcement as a fine by a court of summary jurisdiction in Scotland, references to that court: s 74(5)(a) (amended by the Courts Act 2003 Sch 8 para 318(b)). For the purposes of the Road Traffic Offenders Act 1988 ss 72(1), 73(1) (see PARA 1116 post), a statutory declaration is taken to be duly served on the proper officer of the relevant court if it is delivered to him, left at his office, or sent in a registered letter or by the recorded delivery service addressed to him at his office: s 74(4) (amended by the Access to Justice Act 1999 Sch 13 para 152(2)).

5 References in the Road Traffic Offenders Act 1988 s 72 (as amended) to the relevant fixed penalty notice are to the fixed penalty notice relating to the fixed penalty concerned: s 72(7). For the meaning of 'fixed penalty notice' see PARA 1094 ante; and for the meaning of 'fixed penalty' see PARA 1095 ante.

6 *Ibid* s 72(2)(a).

7 For the meaning of 'notice requesting a hearing' see PARA 1098 note 6 ante.

8 Road Traffic Offenders Act 1988 s 72(2)(b). For the meaning of 'suspended enforcement period' see PARA 1094 head (1) ante. In any case within s 72(2)(b) or s 73(2) (see PARA 1116 post) the Magistrates' Courts Act 1980 s 127(1) (limitation of time) (see MAGISTRATES vol 29(2) (Reissue) PARA 589) has effect as if for the reference to the time when the offence was committed or (as the case may be) the time when the contravention occurred there were substituted a reference to the date of the statutory declaration made for the purposes of the Road Traffic Offenders Act 1988 s 72(1) or, as the case may be, s 73(1) (see PARA 1116 post): s 74(1). Where, on the application of a person who has received notice of the registration of a sum under s 71 (as amended) (see PARA 1114 ante) for enforcement against him as a fine, it appears to the relevant court (which for this purpose may be composed of a single justice) that it was not reasonable to expect him to serve, within 21 days of the date on which he received the notice, a statutory declaration to the effect mentioned in s 72(2) or, as the case may be, s 73(2), the court may accept service of such a declaration by that person after that period has expired: s 74(2). A statutory declaration accepted under s 74(2) is to be taken to have been served as required by s 72(1) or, as the case may be, s 73(1): s 74(3).

9 *Ibid* s 72(3).

10 For the meaning of 'licence' see PARA 1032 note 3 ante.

11 For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). As from a day to be appointed, s 98(1) is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7 so as to remove reference to the counterpart. At the date at which this volume states the law no such day had been appointed.

12 le made under the Road Traffic Offenders Act 1988 s 57 (as amended): see PARA 1100 ante.

13 *Ibid* s 72(4) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, regs 2(2), 3, Sch 2 para 20(a)). As from a day to be appointed, the Road Traffic Offenders Act 1988 s 72(4) (as amended) is further amended by the Road Safety Act 2006 s 5, Sch 1 paras 1, 13(1), (2), so as to add

'or delivered' after 'surrendered'. At the date at which this volume states the law no such day had been appointed. The Road Traffic Offenders Act 1988 s 72(4) (as amended) is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 paras 30, 50(1), (2), Sch 7. At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed, where in any case within the Road Traffic Offenders Act 1988 s 72(2)(a) the driving record of the person to whom the relevant fixed penalty notice was given was endorsed under s 57A (as added) (see PARA 1101 ante) in respect of the offence in respect of which the notice was given, the endorsement is void: s 72(4A) (added by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 23(1), (2)). At the date at which this volume states the law no such day had been appointed.

14     Ie made under the Road Traffic Offenders Act 1988 s 57 (as amended): see PARA 1100 ante.

15     Ibid s 72(5)(a). Section 72(5)(a) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 2 para 23(3), so as to add a reference to an endorsement made under the Road Traffic Offenders Act 1988 s 57A (as added) (see PARA 1101 ante). At the date at which this volume states the law no such day had been appointed.

16     Ibid s 72(5)(b).

17     Ibid s 72(6) (amended by the Access to Justice Act 1999 Sch 13 para 151). As from a day to be appointed, this provision is repealed by the Road Safety Act 2006 Sch 3 para 50(4), Sch 7. At the date at which this volume states the law no such day had been appointed.

18     Ie under the Road Traffic Offenders Act 1988 s 57 (as amended): see PARA 1100 ante.

19     Ibid s 72(6)(a) (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, Sch 2 para 20(b)). As to the prospective repeal of this provision see note 17 supra.

20     Road Traffic Offenders Act 1988 s 72(6)(b). As to the prospective repeal of this provision see note 17 supra. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

As from a day to be appointed, the proper officer of the relevant court must send notice to the Secretary of State of any endorsement of a person's driving record that is void by virtue s 72 (as amended) and the Secretary of State must adjust the endorsements on that record accordingly: s 72(6A) (added by the Road Safety Act 2006 Sch 2 para 23(4)). At the date at which this volume states the law no such day had been appointed.

## UPDATE

### **1115 Invalidity of registration and endorsement in the case of notices on-the-spot or at a police station**

NOTE 4--Where a magistrates' court officer receives a statutory declaration under the Road Traffic Offenders Act 1988 s 72 he must send a copy of it to the appropriate chief officer of police: CrimPR 55.4 (added by SI 2008/2076).

NOTES 13, 15, 20--Day appointed in relation to Road Safety Act 2006 s 5, Sch 1 is 31 March 2006 and in relation to s 9, Sch 2 is 1 April 2009: SI 2008/3164.

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### **1116. Invalidity of registration in the case of notices affixed to vehicles.**

Where a person who has received notice of the registration<sup>1</sup> of a sum<sup>2</sup> for enforcement against him as a fine makes a statutory declaration to the effect mentioned below<sup>3</sup>, and that declaration is, within 21 days of the date on which the person making it received notice of the registration, served on the proper officer of the relevant court<sup>4</sup>, the statutory declaration must state:

- 1253 (1) that the person making the declaration did not know of the fixed penalty<sup>5</sup> concerned or of any fixed penalty notice<sup>6</sup> or notice to owner<sup>7</sup> relating to that penalty until he received notice of the registration<sup>8</sup>; or
- 1254 (2) that he was not the owner of the vehicle at the time of the alleged offence<sup>9</sup> of which particulars are given in the relevant notice to owner<sup>10</sup> and that he has a reasonable excuse for failing to comply with that notice<sup>11</sup>; or
- 1255 (3) that he gave notice requesting a hearing<sup>12</sup> in respect of that offence as permitted by the relevant notice to owner before the end of the period allowed for response to that notice<sup>13</sup>.

In any case within head (1) or head (2) above, the relevant notice to owner, the registration, and any proceedings taken before the declaration was served for enforcing payment of the sum registered<sup>14</sup>, are void but without prejudice, in a case within head (1) above, to the service of a further notice to owner<sup>15</sup> on the person making the declaration<sup>16</sup>.

In any case within head (3) above:

- 1256 (a) no proceedings are to be taken, after the statutory declaration is served until the end of the period of 21 days following the date of that declaration, for enforcing payment of the sum registered<sup>17</sup>; and
- 1257 (b) where before the end of that period a notice is served by or on behalf of the chief officer of police<sup>18</sup> on the person making the declaration asking him to provide a new statutory statement of ownership<sup>19</sup> to that chief officer of police before the end of the period of 21 days from the date on which the notice is served, no such proceedings are to be taken until the end of the period allowed for response to that notice<sup>20</sup>.

Where in any case within head (3) above: (i) no notice is served by or on behalf of the chief officer of police in accordance with the above provision<sup>21</sup>; or (ii) such a notice is so served and the person making the declaration provides a new statutory statement of ownership in accordance with the notice<sup>22</sup>, then the registration and any proceedings taken before the declaration was served for enforcing payment of the sum registered are void<sup>23</sup>, and the case is to be treated after the specified time<sup>24</sup> as if the person making the declaration had given notice requesting a hearing in respect of the alleged offence as stated in the declaration<sup>25</sup>.

1    le by virtue of the Road Traffic Offenders Act 1988 s 64(2): see PARA 1108 ante.

2    le under *ibid* s 71 (as amended): see PARA 1114 ante. See also PARA 1115 note 2 ante.

3    *Ibid* s 73(1)(a).

4    *Ibid* s 73(1)(b) (amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 140, 151). For provisions supplementary to the Road Traffic Offenders Act 1988 s 73(1) (as amended) see PARA 1115 note 4 ante. As to the meanings of 'proper officer of the relevant court' and 'relevant court' see PARA 1115 note 4 ante.

5    For the meaning of 'fixed penalty' see PARA 1095 ante.

6    For the meaning of 'fixed penalty notice' see PARA 1094 ante.

7 For the meaning of 'notice to owner' see PARA 1105 ante; and see also PARA 1110 note 8 ante. For the meaning of 'owner' see PARA 1105 note 8 ante.

8 Road Traffic Offenders Act 1988 s 73(2)(a).

9 For the meaning of 'time of the alleged offence' see PARA 1105 ante.

10 References in the Road Traffic Offenders Act 1988 s 73 (as amended) to the relevant notice to owner are to the notice to owner relating to the fixed penalty concerned: s 73(8).

11 Ibid s 73(2)(b).

12 For the meaning of 'notice requesting a hearing' see PARA 1098 note 6 ante.

13 Road Traffic Offenders Act 1988 s 73(2)(c). As to the period allowed for response to the notice to owner see PARA 1105 note 15 ante. For provisions supplementary to s 73(2) see also PARA 1115 note 8 ante.

14 For the meaning of 'proceedings for enforcing payment of the sum registered' see PARA 1115 note 2 ante.

15 Ie under the Road Traffic Offenders Act 1988 s 63: see PARA 1105 ante.

16 Ibid s 73(3). Section 73(3) applies whether or not the relevant notice to owner was duly served in accordance with s 63 (see PARA 1105 ante) on the person making the declaration: s 73(3).

17 Ibid s 73(4)(a).

18 For the meaning of 'chief officer of police' see PARA 1090 note 8 ante. As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

19 For the meaning of 'statutory statement of ownership' see PARA 1106 ante.

20 Road Traffic Offenders Act 1988 s 73(4). Section 73(4) is amended, as from a day to be appointed, by the Road Safety Act 2006 s 5, Sch 1 paras 1, 14(1), (2), so as to substitute 'the relevant person' for 'the chief officer of police' and 'that chief officer of police'; and the Road Traffic Offenders Act 1988 s 73(4A) is added by the Road Safety Act 2006 Sch 1 para 14(3), so as to provide that in the Road Traffic Offenders Act 1988 s 73(4) (as amended) 'the relevant person' means: (1) if the fixed penalty notice concerned was fixed by a constable, the fixed penalty clerk; and (2) if it was fixed by a vehicle examiner, the Secretary of State. At the date at which this volume states the law no such day had been appointed.

In any case where notice is served by or on behalf of the chief officer of police in accordance with the Road Traffic Offenders Act 1988 s 73(4), he must cause the proper officer of the relevant court to be notified of that fact immediately on service of the notice: s 73(7) (amended by the Access to Justice Act 1999 Sch 13 para 151). The Road Traffic Offenders Act 1988 s 73(7) (as amended) is further amended, as from a day to be appointed, by the Road Safety Act 2006 ss 5, 59, Sch 1 para 14(5), Sch 7, so as to remove the words 'by or on behalf of the chief officer of police' and to substitute 'the person by whom it is served' for 'he'. At the date at which this volume states the law no such day had been appointed.

21 Road Traffic Offenders Act 1988 s 73(5)(a). Section 73(5)(a) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 14(4)(a), Sch 7, so as to remove the words 'by or on behalf of the chief officer of police'. At the date at which this volume states the law no such day had been appointed.

22 Road Traffic Offenders Act 1988 s 73(5)(b). Section 73(5)(a) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 14(4)(b), Sch 7, so as to remove the word 'such'. At the date at which this volume states the law no such day had been appointed.

23 Road Traffic Offenders Act 1988 s 73(5)(i).

24 The time referred to in ibid s 73(5) is: (1) in a case within head (i) in the text, the end of the period of 21 days following the date of the statutory declaration; and (2) in a case within head (ii) in the text, the time when the statement is provided: s 73(6).

25 Ibid s 73(5)(ii).

## UPDATE

### 1116 Invalidity of registration in the case of notices affixed to vehicles

NOTES 20-22--Day appointed in relation to Road Safety Act 2006 ss 5, 59, Sch 1, Sch 7 is 31 March 2009: SI 2008/3164.

NOTE 20--Where a magistrates' court officer receives a statutory declaration under the Road Traffic Offenders Act 1988 s 73 he must send a copy of it to the appropriate chief officer of police: CrimPR 55.4 (added by SI 2008/2076).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iv) Fixed Penalties/F. CONDITIONAL OFFER OF FIXED PENALTY/1117. Issue of conditional offer.

## ***F. CONDITIONAL OFFER OF FIXED PENALTY***

### **1117. Issue of conditional offer.**

Where a constable<sup>1</sup> has reason to believe that a fixed penalty offence<sup>2</sup> has been committed<sup>3</sup>, and no fixed penalty notice<sup>4</sup> in respect of the offence has been given<sup>5</sup> or fixed to a vehicle<sup>6</sup>, a conditional offer<sup>7</sup> may be sent to the alleged offender by or on behalf of the chief officer of police or, if the constable is a member of the British Transport Police, by or on behalf of the chief constable of the British Transport Police<sup>8</sup>.

Where a person issues a conditional offer, he must notify the designated officer specified in it of its issue and its terms<sup>9</sup>.

A conditional offer must:

- 1258 (1) give such particulars of the circumstances alleged to constitute the offence<sup>10</sup> to which it relates as are necessary for giving reasonable information about the alleged offence<sup>11</sup>;
- 1259 (2) state the amount of the fixed penalty<sup>12</sup> for that offence<sup>13</sup>; and
- 1260 (3) state that proceedings<sup>14</sup> against the alleged offender cannot be commenced in respect of that offence until the end of the period of 28 days following the date on which the conditional offer was issued or such longer period as may be specified in the conditional offer<sup>15</sup>.

A conditional offer must indicate that if the following conditions are fulfilled, that is:

- 1261 (a) within the period of 28 days following the date on which the offer was issued, or such longer period as may be specified in the offer<sup>16</sup>, the alleged offender makes payment of the fixed penalty to the fixed penalty clerk<sup>17</sup>, and where the offence to which the offer relates is an offence involving obligatory endorsement<sup>18</sup>, at the same time delivers his licence<sup>19</sup> and its counterpart<sup>20</sup> to that clerk<sup>21</sup>; and
- 1262 (b) where his licence and its counterpart are so delivered, that clerk is satisfied on inspecting them that, if the alleged offender were convicted of the offence, he would not be liable to be disqualified<sup>22</sup>,

any liability to conviction of the offence is to be discharged<sup>23</sup>.

<sup>1</sup> As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. For the purposes of the enforcement of the law with respect to certain fixed penalties, traffic wardens may exercise the functions conferred on

constables: see the Functions of Traffic Wardens Order 1970, SI 1970/1958, art 3(1), Schedule para 1; and PARA 868 ante. As to the appointment of traffic wardens see PARA 868 ante.

2 For the meaning of 'fixed penalty offence' see PARA 1093 ante.

3 Road Traffic Offenders Act 1988 s 75(1)(a) (s 75 substituted by the Road Traffic Act 1991 s 34

4 For the meaning of 'fixed penalty notice' see PARA 1094 ante.

5 le under the Road Traffic Offenders Act 1988 s 54 (as amended): see PARA 1097 ante.

6 Ibid s 75(1)(b) (as substituted: see note 3 supra). A penalty notice is fixed to a vehicle under s 62: see PARA 1104 ante.

7 le a notice under ibid s 75 (as substituted and amended): see s 75(5) (as substituted: see note 3 supra). As from a day to be appointed, this provision is amended by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 24(1), (2); and by s 10(12), Sch 3 paras 30, 51(1), (2). At the date at which this volume states the law no such day had been appointed.

8 Road Traffic Offenders Act 1988 s 75(1) (as substituted (see note 3 supra); and amended by the Police Reform Act 2002 ss 76(3), 108(10)(c)). For the meaning of 'chief officer of police' see PARA 1090 note 8 ante. As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq. For the meaning of 'British Transport Police' see PARA 1097 note 15 ante.

As from a day to be appointed, where in England and Wales: (1) a vehicle examiner has reason to believe that a fixed penalty offence has been committed; and (2) no fixed penalty notice in respect of the offence has been given under the Road Traffic Offenders Act 1988 s 54 (as amended) (see PARA 1097 ante) or fixed to a vehicle under s 62 (see PARA 1104 ante), a notice under s 75 (as amended) may be sent to the alleged offender by the Secretary of State: s 75(1A) (added by the Road Safety Act 2006 s 5, Sch 1 paras 1, 15(1), (2)). At the date at which this volume states the law no such day had been appointed.

9 Road Traffic Offenders Act 1988 s 75(6) (as substituted (see note 3 supra); and amended by the Courts Act 2003 s 109(1), Sch 8 para 319). The person issuing the offer is referred to in s 75-77 (as substituted) as 'the fixed penalty clerk': Road Traffic Offenders Act 1988 s 75(6) (as so substituted; and amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 140, 153(b)). As from a day to be appointed, the Road Traffic Offenders Act 1988 s 75(6) (as substituted and amended) is further amended by the Road Safety Act 2006 Sch 2 para 24(3), so as to add a reference to the Road Traffic Offenders Act 1988 s 77A (prospectively added); and by the Road Safety Act 2006 Sch 3 para 51(2), so as to refer only to the Road Traffic Offenders Act 1988 s 76 (as amended) and s 77A (as prospectively added). At the date at which this volume states the law no such day had been appointed.

Section 75(6) (as substituted and amended) is further amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 15(5), so that that for 'Where a person issues a conditional offer' there is substituted 'Where a conditional offer is issued by a person under the Road Traffic Offenders Act 1988 s 75(1), (2) or (3) (as substituted)'. At the date at which this volume states the law no such day had been appointed.

10 As to the meaning of 'offence' see PARA 1093 note 1 ante.

11 Road Traffic Offenders Act 1988 s 75(7)(a) (as substituted: see note 3 supra).

12 For the meaning of 'fixed penalty' see PARA 1095 ante.

13 Road Traffic Offenders Act 1988 s 75(7)(b) (as substituted: see note 3 supra).

14 For the meaning of 'proceedings' see PARA 1094 note 4 ante.

15 Road Traffic Offenders Act 1988 s 75(7)(c) (as substituted: see note 3 supra).

16 Ibid s 75(8)(a) (as substituted: see note 3 supra). Section 75(8)(a) (as substituted) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 2 para 24(4), so as to add the words 'sent to an alleged offender who is the holder of a licence' after 'A conditional offer'. At the date at which this volume states the law no such day had been appointed.

17 Road Traffic Offenders Act 1988 s 75(8)(a)(i) (as substituted: see note 3 supra). Section 75(8)(a)(i) (as substituted) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 15(6), so as to substitute 'the appropriate person' for 'the fixed penalty clerk'. At the date at which this volume states the law no such day had been appointed. As from a day to be appointed, in the Road Traffic Offenders Act 1988 s 75 (as substituted and amended), s 76 and s 77 (as amended) 'the appropriate person' means: (1) where the conditional offer was issued under s 75(1), (2) or (3), the fixed penalty clerk; and (2) where the conditional offer



was issued under s 75(1A) or (3B) (as added), the Secretary of State: s 75(11A) (added by the Road Safety Act 2006 Sch 1 para 15(7)). At the date at which this volume states the law no such day had been appointed. As from a day to be appointed, the Road Traffic Offenders Act 1988 s 75(11A) (as added) is amended by the Road Safety Act 2006 Sch 2 para 24(7), so as to extend the definition to apply for the purposes of the Road Traffic Offenders Act 1988 ss 76, 77, 77A (as added); and by the Road Safety Act 2006 Sch 3 para 51(5) so as to extend the definition only to the Road Traffic Offenders Act 1988 ss 76, 77A (as added). At the date at which this volume states the law no such day had been appointed.

18 For the meaning of 'offence involving obligatory endorsement' see PARA 1080 ante.

19 For the meaning of 'licence' see PARA 1032 note 3 ante. Delivery of the licence is not required where the alleged offender has sent it to the Driver and Vehicle Licensing Agency pursuant to a separate statutory obligation: *Bryson v Currie* 2005 SLT 253.

20 For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). As from a day to be appointed, s 98(1) is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7 so as to remove reference to the counterpart. At the date at which this volume states the law no such day had been appointed. In relation to licences which came into force before 1 June 1990, the references in the Road Traffic Offenders Act 1988 s 75(8) (as substituted) to the counterpart of a licence are to be disregarded: s 75(12) (as substituted: see note 3 supra). This provision is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 51(6), Sch 7. At the date at which this volume states the law no such day had been appointed.

21 Road Traffic Offenders Act 1988 s 75(8)(a)(ii) (as substituted: see note 3 supra). Section 75(8)(a)(ii) (as substituted) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 15(6), so as to substitute 'the appropriate person' for 'that clerk'. At the date at which this volume states the law no such day had been appointed.

22 Ibid s 75(8)(b) (as substituted: see note 3 supra). Section 75(8)(b) (as substituted) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 15(6), so as to substitute 'the appropriate person' for 'that clerk'. At the date at which this volume states the law no such day had been appointed.

Disqualification is under the Road Traffic Offenders Act 1988 s 35 (as amended): see PARA 1070 ante. For the meaning of 'disqualified' see PARA 1046 note 5 ante. For the purposes of the condition set out in s 75(8)(b) (as substituted), it is to be assumed, in the case of an offence in relation to which a range of numbers is shown in the last column of Sch 2 Pt I (as amended) (see PARA 1049 ante), that the number of penalty points to be attributed to the offence would be the lowest in the range: s 75(9) (as so substituted). As from a day to be appointed, s 75(9) is amended, to substitute for 'the condition set out in s 75(8)(b) (as substituted)', 'the conditions set out in s 75(8)(b) (as substituted) and s 75(8A)(b) (as added)', by the Road Safety Act 2006 Sch 2 para 24(6). At the date at which this volume states the law no such day had been appointed.

23 Road Traffic Offenders Act 1988 s 75(8) (as substituted: see note 3 supra). Section 75(8) is repealed, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 51(3), Sch 7. At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed, a conditional offer sent to an alleged offender who is not the holder of a licence must indicate that if the following conditions are fulfilled, that is:

1675 (1) within the period of 28 days following the date on which the offer was issued, or such longer period as may be specified in the offer, the alleged offender makes payment of the fixed penalty to the appropriate person; and

1676 (2) the appropriate person is satisfied, on accessing information held on the driving record of the alleged offender, that if he were convicted of the offence, he would not be liable to be disqualified under the Road Traffic Offenders Act 1988 s 35 (as amended),

any liability to conviction of the offence is to be discharged: s 75(8A) (added by the Road Safety Act 2006 Sch 2 para 24(5)). At the date at which this volume states the law no such day had been appointed. As from a day to be appointed, the Road Traffic Offenders Act 1988 s 75(8A) (as added) is amended by the Road Safety Act 2006 Sch 3 para 51(4)(a), Sch 7, so as to remove the words 'who is not the holder of a licence'; and by Sch 3 para 51(4)(b) so that the words 'makes payment of the fixed penalty to the appropriate person, and' in head (1) supra are substituted with '(a) makes payment of the fixed penalty to the appropriate person; and (b) where he is the holder of a licence and the offence to which the offer relates is an offence involving obligatory endorsement, at the same time delivers his licence to the appropriate person; and'. At the date at which this volume states the law no such day had been appointed.

## UPDATE

## 1117 Issue of conditional offer

NOTES 7-9, 17, 21, 22--Day appointed in relation to Road Safety Act 2006 s 5, Sch 1 is 31 March 2006 and in relation to s 9, Sch 2 is 1 April 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iv) Fixed Penalties/F. CONDITIONAL OFFER OF FIXED PENALTY/1118. Effect of offer and payment of penalty.

## 1118. Effect of offer and payment of penalty.

Where a conditional offer<sup>1</sup> has been sent to a person<sup>2</sup>, no proceedings<sup>3</sup> are to be brought against any person for the offence<sup>4</sup> to which the conditional offer relates until the person by or on whose behalf the conditional offer was sent receives notice in accordance with the following provisions<sup>5</sup>. Where the alleged offender makes payment of the fixed penalty<sup>7</sup> in accordance with the conditional offer, no proceedings are to be brought against him for the offence to which the offer relates<sup>8</sup>.

Where:

- 1263 (1) the alleged offender tenders payment in accordance with the conditional offer and delivers his licence<sup>9</sup> and its counterpart<sup>10</sup> to the fixed penalty clerk<sup>11</sup>; but
- 1264 (2) it appears to the clerk, on inspecting the licence and counterpart, that the alleged offender would be liable to be disqualified<sup>12</sup> if he were convicted of the offence to which the conditional offer relates<sup>13</sup>,

then the above provision does not apply and the clerk must return the licence and its counterpart to the alleged offender together with the payment and give notice that he has done so to the chief officer of police<sup>14</sup>.

Where, on the expiry of the period of 28 days following the date on which the conditional offer was made or such longer period as may be specified in the offer, the conditions specified in the offer<sup>15</sup> have not been fulfilled, the fixed penalty clerk must notify the chief officer of police<sup>16</sup>.

In any proceedings a certificate that by a date specified in the certificate payment of a fixed penalty was or was not received by the fixed penalty clerk, if the certificate purports to be signed by that clerk, is evidence of the facts stated<sup>17</sup>.

1 As to conditional offers see PARA 1117 ante.

2 Road Traffic Offenders Act 1988 s 76(1) (s 76 substituted by the Road Traffic Act 1991 s 34). A conditional offer is sent under the Road Traffic Offenders Act 1988 s 75 (as substituted and amended): see PARA 1117 ante. Section 76(1) is amended, as from a day to be appointed, by the Road Safety Act 2006 s 5, Sch 1 paras 1, 16(1), (2), to substitute 'issued' for 'sent'. At the date at which this volume states the law no such day had been appointed.

3 For the meaning of 'proceedings' see PARA 1094 note 4 ante.

4 As to the meaning of 'offence' see PARA 1093 note 1 ante.

5 For the meaning of 'chief officer of police' see PARA 1090 note 8 ante.

6 Road Traffic Offenders Act 1988 s 76(2) (as substituted (see note 2 supra); and amended by the Police Reform Act 2002 s 76(4); and the Railways and Transport Safety Act 2003 ss 109, 118, Sch 8). Notice must be given in accordance with the Road Traffic Offenders Act 1988 s 76(4), (5) (as substituted): see the text and notes 9-16 infra. See note 16 infra.

7 For the meaning of 'fixed penalty' see PARA 1095 ante.

8 Road Traffic Offenders Act 1988 s 76(3) (as substituted: see note 2 supra). See note 16 infra.

9 For the meaning of 'licence' see PARA 1032 note 3 ante.

10 For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). As from a day to be appointed, s 98(1) is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7 so as to remove reference to the counterpart. At the date at which this volume states the law no such day had been appointed. In relation to licences which came into force before 1 June 1990, the references in the Road Traffic Offenders Act 1988 s 76(4) (as substituted) to the counterpart of a licence are to be disregarded: s 76(8) (as substituted: see note 2 supra).

11 Ibid s 76(4)(a) (as substituted: see note 2 supra). As to the meaning of 'fixed penalty clerk' see PARA 1117 note 9 ante. See note 16 infra.

12 Ie under ibid s 35 (as amended): see PARA 1070 ante. For the meaning of 'disqualified' see PARA 1046 note 5 ante. In determining for the purposes of s 76(4)(b) (as substituted) whether a person convicted of an offence would be liable to disqualification under s 35 (as amended), it is to be assumed, in the case of an offence in relation to which a range of numbers is shown in the last column of Sch 2 Pt I (as amended) (see PARA 1049 ante), that the number of penalty points to be attributed to the offence would be the lowest in the range: s 76(6) (as substituted: see note 2 supra). Section 76(6) (as substituted) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 16(4), so as to refer to the purposes of the Road Traffic Offenders Act 1988 s 76(3)(a) (as substituted) (see note 16 infra) instead of to those of s 76(4)(b) (as substituted). At the date at which this volume states the law no such day had been appointed. As to the penalty points to be attributed to an offence see PARA 1049 ante.

13 Ibid s 76(4)(b) (as substituted: see note 2 supra). See note 16 infra.

14 Ibid s 76(4) (as substituted: see note 2 supra). See note 16 infra.

15 Ie in accordance with ibid s 75(8)(a) (as substituted): see PARA 1117 ante.

16 Ibid s 76(5) (as substituted: see note 2 supra).

As from a day to be appointed, the provisions of s 76(2)-(5) are substituted by the Road Safety Act 2006 Sch 1 para 16(3). At the date at which this volume states the law no such day had been appointed. As from the appointed day, where the alleged offender makes payment of the fixed penalty in accordance with the conditional offer, no proceedings may be brought against him for the offence to which the offer relates unless the Road Traffic Offenders Act 1988 s 76(3) (as substituted) applies: s 76(2) (as so substituted). Section 76(3) (as substituted) applies where: (1) it appears to the appropriate person, on inspecting the licence and its counterpart, that the alleged offender would be liable to be disqualified under s 35 (as amended) (see PARA 1070 ante) if he were convicted of the offence to which the conditional offer relates; (2) the appropriate person returns the payment to the alleged offender together with his licence and its counterpart; and (3) where the appropriate person is not the Secretary of State, the appropriate person gives notice that he has done so to the person required to be notified: s 76(3) (as so substituted). Where the requirements specified in the conditional offer in accordance with s 75(8)(a)(i), (ii) (prospectively amended) (see PARA 1117 ante) have not been fulfilled, no proceedings may be brought against the alleged offender for the offence to which the offer relates: (a) until the end of the period of 28 days following the date on which the conditional offer was made, or such longer period as may be specified in the offer; and (b) where the appropriate person is not the Secretary of State, unless the appropriate person notifies the person required to be notified that proceedings may be brought by virtue of this provision: s 76(4) (as so substituted). In ss 76, 77 (as amended), 'the person required to be notified' means: (i) if the conditional offer was issued under s 75(1), the chief officer of police; (ii) if it was issued under s 75(2), the procurator fiscal; and (iii) if it was issued under s 75(3), the chief constable or (as the case may be) the chief constable of the British Transport Police Force: s 76(5) (as so substituted). For the meaning of 'appropriate person' see PARA 1117 note 17 ante.

Section 76(3) (as substituted) is amended, as from a day to be appointed, by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 25(1), (2), by adding in head (1) supra 'or (where the alleged offender is not the holder of a licence)' after 'its counterpart'; and by adding in head (2) supra '(where he is the holder of a licence)' after 'together with'. At the date at which this volume states the law no such day had been appointed. The Road Traffic Offenders Act 1988 s 76(3) (as substituted and amended) is further amended, as from a day to be appointed, by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 52(1), (2)(a), Sch 7, so as to remove the words in head (1) supra 'inspecting the licence and its counterpart or (where the alleged offender is not the

holder of a licence)' and to substitute 'the alleged offender's' for 'his', and in head (2) supra to remove the words 'and its counterpart'. At the date at which this volume states the law no such day had been appointed.

The Road Traffic Offenders Act 1988 s 76(4) (as substituted) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 2 para 25(3), so as to add a reference to a conditional offer in accordance with the Road Traffic Offenders Act 1988 s 75(8A)(a) (as added). At the date at which this volume states the law no such day had been appointed. Section 76(4) (as substituted and amended) is further amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 52(4), so as to refer only to a conditional offer in accordance with the Road Traffic Offenders Act 1988 s 75(8A)(a) (as added). At the date at which this volume states the law no such day had been appointed.

17 Ibid s 76(7) (as substituted: see note 2 supra). Section 76(7) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 16(5), so as to substitute 'the appropriate person' for 'the fixed penalty clerk' and 'that clerk'. At the date at which this volume states the law no such day had been appointed.

## UPDATE

### 1118 Effect of offer and payment of penalty

NOTES 2, 12, 16, 17--Day appointed in relation to Road Safety Act 2006 s 5, Sch 1 is 31 March 2006 and in relation to s 9, Sch 2 is 1 April 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iv) Fixed Penalties/F. CONDITIONAL OFFER OF FIXED PENALTY/1119. Endorsement where penalty paid.

### 1119. Endorsement where penalty paid.

The following provisions apply until a day to be appointed<sup>1</sup>.

Where: (1) in pursuance of a conditional offer<sup>2</sup> a person (the 'licence holder') makes payment of the fixed penalty to the fixed penalty clerk<sup>3</sup> and delivers his licence<sup>4</sup> and its counterpart<sup>5</sup> to the clerk<sup>6</sup>; and (2) the clerk is not required<sup>7</sup> to return the licence and its counterpart to him and did not, before the payment was tendered, notify the chief officer of police<sup>8</sup>, the clerk must forthwith endorse the relevant particulars<sup>9</sup> on the counterpart of the licence and return it to the licence holder together with the licence<sup>10</sup>.

Where a cheque tendered in payment is subsequently dishonoured<sup>11</sup>:

- 1265 (a) any endorsement made by a clerk under the above provision remains effective, notwithstanding that the licence holder is still liable to prosecution in respect of the alleged offence to which the endorsement relates<sup>12</sup>; and
- 1266 (b) the clerk must, upon the expiry of the period specified in the conditional offer or, if the period has expired, forthwith, notify the chief officer of police that no payment has been made<sup>13</sup>.

When proceedings are brought against a licence holder after a notice has been given in pursuance of head (b) above, the court must order the removal of the fixed penalty endorsement from the counterpart of the licence<sup>14</sup>, and may, on finding the licence holder guilty, make any competent order of endorsement or disqualification<sup>15</sup> and pass any competent sentence<sup>16</sup>.

The fixed penalty clerk must send notice to the Secretary of State of any such endorsement and of the particulars endorsed<sup>17</sup>, and of any order removing the fixed penalty endorsement from the counterpart of the licence<sup>18</sup>.

The following provisions apply as from a day to be appointed<sup>19</sup>.

Where:

- 1267 (i) in pursuance of a conditional offer<sup>20</sup> a person who is not the holder of a licence (the 'alleged offender') makes payment of the fixed penalty to the fixed penalty clerk<sup>21</sup>; and
- 1268 (ii) proceedings against the alleged offender for the offence to which the conditional offer relates are excluded<sup>22</sup>,

the fixed penalty clerk must forthwith send to the Secretary of State notice of the relevant particulars<sup>23</sup> to be endorsed on the alleged offender's driving record<sup>24</sup>.

The Secretary of State must endorse the relevant particulars on a person's driving record on receiving such a notice or if, in pursuance of a conditional offer<sup>25</sup>, a person who is not the holder of a licence (also referred to as the 'alleged offender') makes payment of the fixed penalty to him and proceedings against the alleged offender are excluded<sup>26</sup>.

Where a cheque tendered in payment is subsequently dishonoured, any endorsement made by the Secretary of State remains effective notwithstanding that the alleged offender is still liable to prosecution in respect of the alleged offence to which the endorsement relates and, unless the appropriate person is the Secretary of State, the appropriate person must upon expiry of the period specified in the conditional offer or, if the period has expired, forthwith notify the person required to be notified that no payment has been made<sup>27</sup>.

When proceedings are brought against an alleged offender where a cheque has been dishonoured, the court<sup>28</sup>:

- 1269 (A) must order the removal of the fixed penalty endorsement from the driving record of the alleged offender<sup>29</sup>;
- 1270 (B) may, on finding the alleged offender guilty, make any competent order of endorsement or disqualification and pass any competent sentence<sup>30</sup>; and
- 1271 (C) must send to the Secretary of State notice of any order made under head (A) or head (B) above<sup>31</sup>.

On receiving a notice under head (c) above, the Secretary of State must make any necessary adjustments to the endorsements on the alleged offender's driving record<sup>32</sup>.

Where a person's driving record is endorsed under these provisions, he is to be treated for the purposes of the Road Traffic Offenders Act 1988<sup>33</sup> and of the Rehabilitation of Offenders Act 1974<sup>34</sup> as if he had been convicted of the offence, the endorsement had been made in pursuance of an order made on his conviction by a court<sup>35</sup>, and the particulars of the offence endorsed<sup>36</sup> were particulars of his conviction of that offence<sup>37</sup>.

1 The Road Traffic Offenders Act 1988 s 77 is repealed by the Road Safety Act 2006 Sch 3 paras 30, 53, Sch 7, as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to conditional offers see PARA 1117 ante.

3 For the meaning of 'fixed penalty' see PARA 1095 ante. As to the meaning of 'fixed penalty clerk' see PARA 1117 note 9 ante.

4 For the meaning of 'licence' see PARA 1032 note 3 ante.

5 For the meaning of 'counterpart' see PARA 415 note 19 ante; definition applied by the Road Traffic Offenders Act 1988 s 98(1). As from a day to be appointed, s 98(1) is amended by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 61(b), Sch 7 so as to remove reference to the counterpart. At the date at which this

volume states the law no such day had been appointed. In relation to licences which came into force before 1 June 1990, the references in the Road Traffic Offenders Act 1988 s 77 (as substituted) to the counterpart of a licence are to be disregarded or, as the case may require, construed as references to the licence itself: s 77(9) (s 77 substituted by the Road Traffic Act 1991 s 34).

6 Road Traffic Offenders Act 1988 s 77(1)(a) (as substituted: see note 5 supra). Section 77(1)(a) is amended, as from a day to be appointed, by the Road Safety Act 2006 s 5, Sch 1 paras 1, 17(1), (2), to substitute for 'the fixed penalty clerk' and 'the clerk' in each case 'the appropriate person'. For the meaning of 'appropriate person' see PARA 1117 note 17 ante. At the date at which this volume states the law no such day had been appointed. The Road Traffic Offenders Act 1988 s 77(1)(a) is further amended, as from a day to be appointed, by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 26(1), (2), to add the words 'who is the holder of a licence' after 'a person'. At the date at which this volume states the law no such day had been appointed.

7 le by the Road Traffic Offenders Act 1988 s 76(4) (as substituted): see PARA 1118 ante.

8 Ibid s 77(1)(b) (as substituted: see note 5 supra). Section 77(1)(a) is substituted, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 17(3), so as to provide that proceedings against the alleged offender for the offence to which the conditional offer relates are excluded by the Road Traffic Offenders Act 1988 s 76 (as amended). At the date at which this volume states the law no such day had been appointed. Notification is made under s 76(5) (as substituted): see PARA 1118 ante. For the meaning of 'chief officer of police' see PARA 1090 note 8 ante. As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

9 The reference in ibid s 77(1) (as substituted) to the relevant particulars is to: (1) particulars of the offence, including the date when it was committed; and (2) the number of penalty points to be attributed to the offence: s 77(5) (as substituted: see note 5 supra). As to the penalty points to be attributed to an offence see PARA 1049 ante.

10 Ibid s 77(1) (as substituted: see note 5 supra). Section 77(1)(a) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 17(4), so as to substitute 'the appropriate person' for 'the clerk'. At the date at which this volume states the law no such day had been appointed. The Road Traffic Offenders Act 1988 s 77(1) (as substituted and amended) is subject to the Road Traffic (New Drivers) Act 1995 s 2(4)(a), Sch 1 para 7(4)(a) (see PARA 514 ante); and the fixed penalty clerk need not send a notice falling within the Road Traffic Offenders Act 1988 s 77(6)(a) (as substituted) (see the text and note 17 infra) in a case where he sends a person's licence and its counterpart to the Secretary of State under the Road Traffic (New Drivers) Act 1995 s 2(4)(b), Sch 1 para 7(4)(b) (see PARA 514 ante): Road Traffic Offenders Act 1988 s 77(10) (added by the Road Traffic (New Drivers) Act 1995 s 10(4), Sch 2 para 6).

Where the counterpart of a person's licence is endorsed under the Road Traffic Offenders Act 1988 s 77 (as substituted) he is to be treated for the purposes of s 13(4) (as amended) (see PARA 1037 ante), s 28 (as substituted) (see PARA 1049 ante), s 29 (as substituted) (see PARA 1050 ante), s 45 (as amended) (see PARA 1083 ante) and for the purposes of the Rehabilitation of Offenders Act 1974 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 660 et seq) as if:

1677 (1) he had been convicted of the offence (Road Traffic Offenders Act 1988 s 77(7)(a) (as so substituted));

1678 (2) the endorsement had been made in pursuance of an order made on his conviction by a court under s 44 (as amended) (see PARA 1081 ante) (s 77(7)(b) (as so substituted)); and

1679 (3) the particulars of the offence endorsed by virtue of s 77(5)(a) (as substituted) (see note 9 head (1) supra) were particulars of his conviction of that offence (s 77(7)(c) (as so substituted)).

In relation to any endorsement of the counterpart of a person's licence under s 77 (as substituted) the reference in s 45(4) (as amended) (see PARA 1083 ante) to the order for endorsement, and the references in s 13(4) (as amended) (see PARA 1037 ante) to any order made on a person's conviction, are to be read as references to the endorsement itself: s 77(8) (as so substituted).

As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

11 Ibid s 77(3) (as substituted: see note 5 supra), which is expressed to be subject to s 77(4) (as substituted): see the text and notes 14-16 infra.

12 Ibid s 77(3)(a) (as substituted: see note 5 supra). Section 77(3)(a) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 17(6)(a), to substitute 'the appropriate person' for 'a clerk'. At the date at which this volume states the law no such day had been appointed.

13 Road Traffic Offenders Act 1988 s 77(3)(b) (as substituted: see note 5 supra). Section 77(3)(b) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 17(6)(b), (c), to substitute 'unless the appropriate person is the Secretary of State, the appropriate person' for 'the clerk', and 'the person required to be notified' for 'the chief officer of police'. At the date at which this volume states the law no such day had been appointed.

14 Road Traffic Offenders Act 1988 s 77(4)(a) (as substituted: see note 5 supra). Section 77(4) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 17(7), with the effect that in the text, for 'after a notice has been given in pursuance of head (b) above' there is substituted 'where head (a) or (b) above applies'. At the date at which this volume states the law no such day had been appointed.

15 For the meaning of 'disqualification' see PARA 1046 note 5 ante.

16 Road Traffic Offenders Act 1988 s 77(4)(b) (as substituted: see note 5 supra).

17 Ibid s 77(6)(a) (as substituted: see note 5 supra). Section 77(6) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 17(8), to substitute 'Where the appropriate person is the fixed penalty clerk, he' for 'The fixed penalty clerk'. At the date at which this volume states the law no such day had been appointed.

18 Road Traffic Offenders Act 1988 s 77(6)(c) (as substituted: see note 5 supra). The order mentioned in the text is any order under s 77(4)(a) (as substituted) (see the text and note 14 supra).

19 Ibid s 77A is added by the Road Safety Act 2006 s 9(6), Sch 2 paras 2, 27, as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

20 Ie issued under the Road Traffic Offenders Act 1988 s 75(1), (2) or (3) (as substituted and amended): see PARA 1118 ante.

21 Ibid s 77A(1)(a) (as added: see note 19 supra). Section 77A(1)(a) (as added) is amended, as from a day to be appointed, by the Road Safety Act 2006 ss 10(12), 59, Sch 3 paras 30, 54(1), (2)(a), Sch 7, to remove the words 'who is not the holder of a licence'; and by Sch 3 para 54(2)(b), to add the words 'and (if he is the holder of a licence) delivers his licence to the fixed penalty clerk' after 'fixed penalty clerk'. At the date at which this volume states the law no such day had been appointed.

22 Road Traffic Offenders Act 1988 s 77A(1)(b) (as added: see note 19 supra). The proceedings are excluded by s 76 (as amended): see PARA 1118 ante.

23 The references in ibid s 77A(1), (2) (as added) to the relevant particulars are to: (1) particulars of the offence, including the date when it was committed; and (2) the number of penalty points to be attributed to the offence: s 77A(8) (as added: see note 19 supra).

24 Ibid s 77A(1) (as added: see note 19 supra). Section 77A(1) (as added) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 54(2)(c), to add 'together with any licence delivered under head (ii) above' after 'driving record'. At the date at which this volume states the law no such day had been appointed. For the meaning of 'driving record' see PARA 1024 note 11 ante. In relation to any endorsement of a person's driving record under the Road Traffic Offenders Act 1988 s 77A (as added), the references in s 13(4) (as amended) (see PARA 1037 ante) to any order made on a person's conviction are to be read as references to the endorsement itself: s 77A(10) (as so added).

25 Ie issued under ibid s 75(1A) (prospectively added): see PARA 1117 ante.

26 Ibid s 77A(2) (as added: see note 19 supra). Proceedings are excluded by s 76 (as amended) (see PARA 1118 ante). Section 77A(2) (as added) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 3 para 54(3), Sch 7, so as to provide that the Secretary of State must endorse the relevant particulars on a person's driving record and return any licence delivered to him under these provisions to the alleged offender: (1) on receiving such a notice; or (2) if, in pursuance of a conditional offer, a person (the 'alleged offender') makes payment of the fixed penalty to him and (if he is the holder of a licence) delivers his licence to him, and proceedings against the alleged offender are excluded. At the date at which this volume states the law no such day had been appointed.

27 Road Traffic Offenders Act 1988 s 77A(4) (as added: see note 19 supra).

28 Ibid s 77A(5) (as added: see note 19 supra).

29 Ibid s 77A(5)(a) (as added: see note 19 supra).

30 Ibid s 77A(5)(b) (as added: see note 19 supra).

- 31 Ibid s 77A(5)(c) (as added: see note 19 supra).
- 32 Ibid s 77A(7) (as added: see note 19 supra).
- 33 Ie for the purposes of ibid s 13(4), (as amended) (see PARA 1037 ante), s 28 (as substituted) (see PARA 1049 ante), s 29 (as substituted) (see PARA 1050 ante), s 45A (prospectively added) (see PARA 1083 ante).
- 34 See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 660 et seq.
- 35 Ie under the Road Traffic Offenders Act 1988 s 44 (as amended): see PARA 1081 ante.
- 36 Ie by virtue of ibid s 77A(8)(a) (as added): see note 23 head (1) supra.
- 37 Ibid s 77A(9) (as added: see note 19 supra).

## **UPDATE**

### **1119 Endorsement where penalty paid**

NOTES--Day appointed in relation to Road Safety Act 2006 s 5, Sch 1 is 31 March 2006 and in relation to s 9, Sch 2 is 1 April 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iv) Fixed Penalties/G. PROCEEDINGS IN FIXED PENALTY CASES/1120. General restrictions on proceedings.

## ***G. PROCEEDINGS IN FIXED PENALTY CASES***

### **1120. General restrictions on proceedings.**

Proceedings<sup>1</sup> are not to be brought against any person for the offence<sup>2</sup> to which a fixed penalty notice<sup>3</sup> relates until the end of the suspended enforcement period<sup>4</sup>. Nor are proceedings to be brought against any person for the offence to which a fixed penalty notice relates if the fixed penalty<sup>5</sup> is paid<sup>6</sup> before the end of the suspended enforcement period<sup>7</sup>.

- 1 For the meaning of 'proceedings' see PARA 1094 note 4 ante.
- 2 As to the meaning of 'offence' see PARA 1093 note 1 ante.
- 3 For the meaning of 'fixed penalty notice' see PARA 1094 ante.
- 4 Road Traffic Offenders Act 1988 s 78(1). For the meaning of 'suspended enforcement period' see PARA 1094 head (1) ante.
- 5 For the meaning of 'fixed penalty' see PARA 1095 ante.
- 6 Ie under the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended).
- 7 Ibid s 78(2).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-



1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iv) Fixed Penalties/G. PROCEEDINGS IN FIXED PENALTY CASES/1121. Statements by constables.

### **1121. Statements by constables.**

In any proceedings<sup>1</sup> a certificate that a copy of a statement by a constable<sup>2</sup> with respect to the alleged offence<sup>3</sup> (a 'constable's witness statement') was included in or given with a fixed penalty notice<sup>4</sup> given to the accused on a date specified in the certificate, if the certificate purports to be signed by the constable or authorised person<sup>5</sup> who gave the accused the notice, is evidence of service of a copy of that statement by delivery to the accused on that date<sup>6</sup>.

In any proceedings a certificate that a copy of a constable's witness statement was included in or served with a notice to owner<sup>7</sup> served on the accused in the manner and on a date specified in the certificate, if the certificate purports to be signed by any person employed by the police authority for the police area in which the offence to which the proceedings relate is alleged to have been committed, is evidence of service in the manner and on the date so specified both of a copy of that statement and of the notice to owner<sup>8</sup>.

Any address specified in any such certificate as being the address at which service of the notice to owner was effected is to be taken for the purposes of any proceedings in which the certificate is tendered in evidence to be the accused's proper address, unless the contrary is proved<sup>9</sup>.

1 For the meaning of 'proceedings' see PARA 1094 note 4 ante.

2 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. For the purposes of the enforcement of the law with respect to certain fixed penalties, traffic wardens may exercise the functions conferred on constables: see the Functions of Traffic Wardens Order 1970, SI 1970/1958, art 3(1), Schedule para 1; and PARA 868 ante. As to the appointment of traffic wardens see PARA 868 ante.

3 As to the meaning of 'offence' see PARA 1093 note 1 ante.

4 Or a notice under the Road Traffic Offenders Act 1988 s 54(4) (as amended) (see PARA 1097 ante); see s 79(1) (amended by the Road Safety Act 2006 s 58(4)). For the meaning of 'fixed penalty notice' see PARA 1094 ante.

5 For the meaning of 'authorised person' see PARA 1097 note 15 ante.

6 Road Traffic Offenders Act 1988 s 79(1). Section 79(1) is amended, as from a day to be appointed, by the Road Safety Act 2006 s 5, Sch 1 paras 1, 18(1), (2)(a), to add 'or vehicle examiner' after 'a constable'; by Sch 1 para 18(2)(b), to substitute 'relevant witness statement' for 'constable's witness statement'; and by ss 5, 59, Sch 1 para 18(2)(c), Sch 7, to remove the words 'constable or authorised' after 'signed by the'. At the date at which this volume states the law no such day had been appointed.

7 For the meaning of 'notice to owner' see PARA 1105 ante; and see also PARA 1110 note 8 ante.

8 Road Traffic Offenders Act 1988 s 79(2). Section 79(2) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 18(3)(a), to substitute 'relevant witness statement' for 'constable's witness statement'; and by Sch 1 para 18(3)(b), to add 'or on behalf of the Secretary of State' after 'committed'. At the date at which this volume states the law no such day had been appointed. Where a copy of a constable's witness statement is included in or served with a notice to owner served in any manner in which the notice is authorised to be served under Pt III (ss 51-90) (as amended), the statement is to be treated as duly served for the purposes of the Criminal Justice Act 1967 s 9 (as amended) (proof by written statement) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1535) notwithstanding that the manner of service is not authorised by s 9(8) (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1535); Road Traffic Offenders Act 1988 s 79(4). Section 79(4) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 18(4), to substitute 'relevant witness statement' for 'constable's witness statement'. At the date at which this volume states the law no such day had been appointed.

In relation to any proceedings in which service of a constable's witness statement is proved by certificate under the Road Traffic Offenders Act 1988 s 79 (as amended):

1680 (1) that service is to be taken for the purposes of the Criminal Justice Act 1967 s 9(2)(c) (copy of statement to be tendered in evidence to be served before hearing on other parties to the proceedings by or on behalf of the party proposing to tender it) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1535) to have been effected by or on behalf of the prosecutor (Road Traffic Offenders Act 1988 s 79(5)(a)); and

1681 (2) the Criminal Justice Act 1967 s 9(2)(d) (time for objection) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1535) has effect with the substitution, for the reference to seven days from the service of the copy of the statement, of a reference to seven days from the relevant date (Road Traffic Offenders Act 1988 s 79(5)(b)).

Section 79(5) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 18(4), to substitute 'relevant witness statement' for 'constable's witness statement'. At the date at which this volume states the law no such day had been appointed.

In the Road Traffic Offenders Act 1988 s 79(5)(b), 'relevant date' means: (a) where the accused gives notice requesting a hearing in respect of the offence in accordance with any provision of Pt III (as amended), the date on which he gives that notice; and (b) where a notice in respect of the offence was given to the accused under s 54(4) (as amended) but no fixed penalty notice is given in respect of it, the last day for production of the notice under s 54(5) (as amended) at a police station in accordance with s 54 (as amended) (see PARA 1097 ante): s 79(6). For the meaning of 'notice requesting a hearing' see PARA 1098 note 6 ante. Section 79(6) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 1 para 18(5), so that head (b) supra refers to 'delivery of the notice' instead of production of the notice under the Road Traffic Offenders Act 1988 s 54(5) (as amended) at a police station in accordance with s 54 (as amended). At the date at which this volume states the law no such day had been appointed.

9 Ibid s 79(3).

## UPDATE

### 1121 Statements by constables

NOTES 6, 8--Day appointed is 31 March 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iv) Fixed Penalties/G. PROCEEDINGS IN FIXED PENALTY CASES/1122. Certificates about payment.

### 1122. Certificates about payment.

In any proceedings<sup>1</sup>, a certificate:

- 1272 (1) that payment of a fixed penalty<sup>2</sup> was or was not received, by a date specified in the certificate, by the fixed penalty clerk<sup>3</sup>; or
- 1273 (2) that a letter containing an amount sent by post in payment of a fixed penalty was marked as posted on a date so specified<sup>4</sup>,

if the certificate purports to be signed by the fixed penalty clerk, is evidence of the facts stated<sup>5</sup>.

1 For the meaning of 'proceedings' see PARA 1094 note 4 ante.

2 For the meaning of 'fixed penalty' see PARA 1095 ante.

3 Road Traffic Offenders Act 1988 s 80(a). As to the meaning of 'fixed penalty clerk' see PARA 1112 note 4 ante. Section 80 is amended, as from a day to be appointed, by the Road Safety Act 2006 s 5, Sch 1 paras 1,

19, to substitute 'person to whom it was required to be paid' for 'fixed penalty clerk'. At the date at which this volume states the law no such day had been appointed.

4 Road Traffic Offenders Act 1988 s 80(b).

5 Ibid s 80. As to the prospective amendment of this provision see note 3 supra.

## **UPDATE**

### **1122 Certificates about payment**

NOTE 3--Day appointed is 31 March 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(iv) Fixed Penalties/G. PROCEEDINGS IN FIXED PENALTY CASES/1123. Documents signed by the accused.

### **1123. Documents signed by the accused.**

Where any person is charged with a fixed penalty offence<sup>1</sup>, and the prosecutor produces to the court a document<sup>2</sup> purporting to have been signed by the accused<sup>3</sup>, the document is to be presumed, unless the contrary is proved, to have been signed by the accused and is evidence in the proceedings<sup>4</sup> of any facts stated in it tending to show that the accused was the owner<sup>5</sup>, the hirer<sup>6</sup> or the driver<sup>7</sup> of the vehicle concerned at a particular time<sup>8</sup>.

1 Road Traffic Offenders Act 1988 s 81(1)(a). For the meaning of 'fixed penalty offence' see PARA 1093 ante.

2 Ibid s 81(1) applies to any document purporting to be: (1) a notice requesting a hearing in respect of the offence charged given in accordance with a fixed penalty notice relating to that offence; or (2) a statutory statement of any description defined in s 68, Sch 4 (see PARAS 1106-1107 ante) or a copy of a statement of liability within the meaning of s 66 (see PARA 1110 ante) provided in response to a notice to owner: s 81(2). For the meaning of 'notice requesting a hearing' see PARA 1098 note 6 ante. As to the meaning of 'offence' see PARA 1093 ante. For the meaning of 'fixed penalty notice' see PARA 1094 ante. For the meaning of 'notice to owner' see PARA 1105 ante; and see also PARA 1110 note 8 ante.

3 Ibid s 81(1)(b).

4 For the meaning of 'proceedings' see PARA 1094 note 4 ante.

5 For the meaning of 'owner' see PARA 1105 note 8 ante.

6 As to hired vehicles see PARA 1110 ante.

7 For the meaning of 'driver' see PARA 1105 note 12 ante.

8 Road Traffic Offenders Act 1988 s 81(1).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(v) Financial Penalty Deposits/1124. Power to impose financial penalty deposit requirement.

## (v) Financial Penalty Deposits

### 1124. Power to impose financial penalty deposit requirement.

The following provisions take effect as from a day to be appointed<sup>1</sup>.

A constable<sup>2</sup> or vehicle examiner<sup>3</sup> may impose a financial penalty deposit requirement<sup>4</sup> on a person on any occasion if the following conditions are satisfied<sup>5</sup>:

- 1274 (1) the constable or vehicle examiner must have reason to believe: (a) that the person is committing or has on that occasion committed an offence relating to a motor vehicle<sup>6</sup>; and (b) that the person, the offence and the circumstances in which the offence is committed are of a description specified in an order made by the Secretary of State<sup>7</sup>;
- 1275 (2) the person must be: (a) given written notification that it appears likely that proceedings will be brought against him in respect of the offence; or (b) (if the offence is a fixed penalty offence<sup>8</sup>) either given such notification or given a fixed penalty notice<sup>9</sup> in respect of the offence<sup>10</sup>;
- 1276 (3) the person has failed to provide a satisfactory address<sup>11</sup>;
- 1277 (4) the person who is to impose the financial penalty deposit requirement, if a constable, must be in uniform<sup>12</sup> and, if a vehicle examiner, must produce his authority<sup>13</sup>.

For these purposes, a financial penalty deposit requirement is a requirement to make a payment of the appropriate amount<sup>14</sup> to the Secretary of State: (i) in a manner specified in an order made by him; and (ii) either immediately or within the relevant period<sup>15</sup>.

1 The Road Traffic Offenders Act 1988 Pt IIIA (ss 90A-90F) is added by the Road Safety Act 2006 s 11(1) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

3 'Vehicle examiner' means an examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 ante): Road Traffic Offenders Act 1988 s 90F (as added: see note 1 supra).

4 'Financial penalty deposit requirement' has the meaning given by *ibid* s 90B(1) (as added) (see text and notes 14-15 *infra*): s 90F (as added: see note 1 supra).

5 *Ibid* s 90A(1) (as added: see note 1 supra).

6 For the meaning of 'motor vehicle' see PARA 210 ante.

7 Road Traffic Offenders Act 1988 s 90A(2) (as added: see note 1 supra). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

Any power conferred by s 90A (as added), s 90B (as added), s 90C (as added) or s 90D (as added) on the Secretary of State or the Treasury to make an order is exercisable by statutory instrument: s 90E(1) (as so added). Before making an order under any of those provisions the Secretary of State or the Treasury must consult with such representative organisations as appear appropriate: s 90E(2) (as so added). An order under any of those provisions may make different provision for different cases: s 90E(3) (as so added). A statutory instrument containing an order under s 90A (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 90E(5) (as so added). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

8 'Fixed penalty offence' is to be construed in accordance with *ibid* s 51 (see PARA 1093 ante): s 90F (as added: see note 1 supra).

9 For the meaning of 'fixed penalty notice' see PARA 1094 ante; definition applied by *ibid* s 90F (as added: see note 1 supra).

10 Ibid s 90A(3) (as added: see note 1 supra).

11 Ibid s 90A(4) (as added: see note 1 supra). For this purpose 'a satisfactory address' is an address in the United Kingdom at which the constable or vehicle examiner considers it likely that it would be possible to find the person whenever necessary to do so in connection with the proceedings or fixed penalty notice: s 90A(4) (as so added).

12 As to whether a constable is in uniform see PARA 979 note 3 ante.

13 Road Traffic Offenders Act 1988 s 90A(5) (as added: see note 1 supra).

14 In ibid Pt IIIA (as added), 'the appropriate amount', in relation to an offence and a person, is an amount specified in relation to the offence in an order made by the Secretary of State; and different amounts may be so specified: (1) by reference to whether the person is given notification that it appears likely that proceedings will be brought against him or that he will be given a fixed penalty notice; and (2) otherwise by reference to the circumstances of the offence: s 90B(2) (as added: see note 1 supra). As to the making of orders see note 7 supra. No order may be made under s 90B(2) (as added) unless a draft of the instrument containing it has been laid before, and approved by a resolution of, each House of Parliament: s 90E(4) (as so added).

15 Ibid s 90B(1) (as added: see note 1 supra). 'The relevant period' means: (1) if the person was given a fixed penalty notice and proceedings are not brought in respect of the offence by virtue of the Road Traffic Offenders Act 1988 before the end of the suspended enforcement period, the suspended enforcement period; and (2) otherwise, the period ending with the person being charged with the offence: s 90B(3) (as so added). 'Suspended enforcement period' is to be construed in accordance with s 52(3)(a) (see PARA 1094 ante): s 90F (as so added). A statutory instrument containing an order under s 90B(1) (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 90E(5) (as so added).

## UPDATE

### **1124-1131 Power to impose financial penalty deposit requirement ... Offences as to securing possession of vehicles**

These provisions take effect as from 5 January 2009: SI 2008/3164.

#### **1124 Power to impose financial penalty deposit requirement**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 7--See the Road Safety (Financial Penalty Deposit) Order 2009, SI 2009/491; and the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009, SI 2009/492.

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#### **1125. Making of payment in compliance with requirement.**

The following provisions take effect as from a day to be appointed<sup>1</sup>.

They will apply where a person on whom a financial penalty deposit requirement<sup>2</sup> is imposed in respect of an offence makes a payment<sup>3</sup> of the appropriate amount<sup>4</sup>. On payment by the person

of the appropriate amount the person by whom the payment is received must issue him with a written receipt for the payment specifying the effect of the following provisions<sup>5</sup>.

In a case where: (1) a fixed penalty notice<sup>6</sup> relating to the offence has been given to the person; (2) the person does not give notice requesting a hearing in respect of the offence before the end of the relevant period<sup>7</sup> in the appropriate manner<sup>8</sup>; and (3) proceedings are not brought in respect of the offence<sup>9</sup>, the Secretary of State<sup>10</sup> must: (a) apply so much of the payment as does not exceed the amount of the fixed penalty in or towards payment of the fixed penalty; and (b) take the appropriate steps to make any appropriate refund<sup>11</sup> to the person<sup>12</sup>.

In any other case: (i) if the person is informed that he is not to be prosecuted for the offence, is acquitted of the offence or is convicted but not fined in respect of it, or the prosecution period<sup>13</sup> comes to an end without a prosecution having been commenced against him in respect of it<sup>14</sup>, the Secretary of State must take the appropriate steps to make the appropriate refund to the person<sup>15</sup>; and (ii) if a fine is imposed on the person in respect of the offence (otherwise than as a result of a conviction obtained on a prosecution commenced after the end of the prosecution period)<sup>16</sup>, the Secretary of State must: (A) apply so much of the payment as does not exceed the amount of the fine in or towards payment of the fine; and (B) take the appropriate steps to make any appropriate refund to the person<sup>17</sup>.

1 The Road Traffic Offenders Act 1988 Pt IIIA (ss 90A-90F) is added by the Road Safety Act 2006 s 11(1) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'financial penalty deposit requirement' see PARA 1124 ante.

3 In accordance with the Road Traffic Offenders Act 1988 s 90B(1) (prospectively added) (and any order made under it): see PARA 1124 ante.

4 Ibid s 90C(1) (s 90C as added: see note 1 supra). For the meaning of 'the appropriate amount' see PARA 1124 note 14 ante; definition applied by s 90F (as so added).

5 Ibid s 90C(2) (as added: see note 1 supra).

6 For the meaning of 'fixed penalty notice' see PARA 1094 ante; definition applied by ibid s 90F (as added: see note 1 supra).

7 For the meaning of 'the relevant period' see PARA 1124 note 15 ante; definition applied by ibid (s 90F as added: see note 1 supra).

8 For this purpose, 'the appropriate manner' means the manner specified in the fixed penalty notice: ibid s 90C(5) (as added: see note 1 supra).

9 Ibid s 90C(4) (as added: see note 1 supra).

10 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

11 For these purposes, 'the appropriate refund', in any case, is a refund of:

1682 (1) where the Road Traffic Offenders Act 1988 s 90C(6) (as added) (see the text to notes 10-12 infra) applies, so much of the payment as exceeds the amount of the fixed penalty;

1683 (2) where s 90C(9) (as added) (see the text to note 15 infra) applies, the amount of the payment; and

1684 (3) where s 90C(10) (as added) (see the text to note 17 infra) applies, so much of the amount of the payment as exceeds the amount of the fine,

together with interest calculated in accordance with provision made by order made by the Treasury: s 90C(12) (as added: see note 1 supra). As to the making of orders see PARA 1124 note 7 ante. A statutory instrument containing an order under s 90C (as added) is subject to annulment in pursuance of a resolution of either House

of Parliament: s 90E(5) (as so added). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

12 Ibid s 90C(6) (as added: see note 1 supra). Where the Secretary of State is required by to take the appropriate steps to make an appropriate refund, he must take such steps to trace the person and to make the refund to him, by such means, as are specified in an order made by the Secretary of State: s 90C(11) (as so added). As to orders under s 90C (as added) see note 11 supra.

13 For these purposes, 'the prosecution period' means the period of 12 months beginning with the imposition of the financial penalty deposit requirement or, if shorter, any period after which no prosecution may be commenced in respect of the offence: ibid s 90C(8) (as added: see note 1 supra).

14 Ibid s 90C(7)(a) (as added: see note 1 supra).

15 Ibid s 90C(9) (as added: see note 1 supra).

16 Ibid s 90C(7)(b) (as added: see note 1 supra).

17 Ibid s 90C(10) (as added: see note 1 supra).

## UPDATE

### **1124-1131 Power to impose financial penalty deposit requirement ... Offences as to securing possession of vehicles**

These provisions take effect as from 5 January 2009: SI 2008/3164.

### **1125 Making of payment in compliance with requirement**

NOTE 11--See the Road Safety (Financial Penalty Deposit) (Interest) Order 2009, SI 2009/498, which provides for the calculation of interest for the purposes of the Road Traffic Offenders Act 1988 s 90C(12).

NOTE 12--See the Road Safety (Financial Penalty Deposit) Order 2009, SI 2009/491, which sets out the appropriate steps to trace a person and make an appropriate refund for the purposes of the Road Traffic Offenders Act 1988 s 90C(11).

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### **1126. Prohibition on driving on failure to make payment.**

The following provisions take effect as from a day to be appointed<sup>1</sup>.

Where a person on whom a financial penalty deposit requirement<sup>2</sup> is imposed does not make an immediate payment of the appropriate amount<sup>3</sup>, the constable<sup>4</sup> or vehicle examiner<sup>5</sup> by whom the requirement was imposed may prohibit the driving<sup>6</sup> on a road<sup>7</sup> of any vehicle of which the person was in charge at the time of the offence by giving to the person notice in writing of the prohibition<sup>8</sup>. The prohibition comes into force as soon as the notice is given, and continues in force until the happening of whichever of the following events occurs first<sup>9</sup>. Those events are<sup>10</sup>:

- 1278 (1) the person making a payment of the appropriate amount at any time during the relevant period<sup>11</sup>;

- 1279 (2) where a fixed penalty notice<sup>12</sup> was given to the person in respect of the offence, payment of the fixed penalty<sup>13</sup>;  
 1280 (3) the person being convicted or acquitted of the offence<sup>14</sup>;  
 1281 (4) the person being informed that he is not to be prosecuted for the offence<sup>15</sup>; and  
 1282 (5) the coming to an end of the prosecution period<sup>16</sup>.

A constable or vehicle examiner may by direction in writing require the person to remove the vehicle to which the prohibition relates (and, if it is a motor vehicle<sup>17</sup> drawing a trailer<sup>18</sup>, also to remove the trailer) to such place and subject to such conditions as are specified in the direction; and the prohibition does not apply to the removal of the vehicle (or trailer) in accordance with the direction<sup>19</sup>.

A person who: (a) drives a vehicle in contravention of a prohibition under the above provisions; (b) causes or permits a vehicle to be driven in contravention of such a prohibition; or (c) fails to comply within a reasonable time with a removal direction, is guilty of an offence<sup>20</sup>.

1 The Road Traffic Offenders Act 1988 Pt IIIA (ss 90A-90F) is added by the Road Safety Act 2006 s 11(1) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 For the meaning of 'financial penalty deposit requirement' see PARA 1124 ante.

3 In accordance with the Road Traffic Offenders Act 1988 s 90B(1) (as added) (and any order made under it) (see PARA 1125 ante); s 90D(1) (as added: see note 1 supra). For the meaning of 'the appropriate amount' see PARA 1124 note 14 ante; definition applied by s 90F (as so added).

4 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

5 For the meaning of 'vehicle examiner' see PARA 1124 note 3 ante.

6 For the meaning of 'drive' see PARA 207 ante.

7 For the meaning of 'road' see PARA 206 ante.

8 Road Traffic Offenders Act 1988 s 90D(2) (as added: see note 1 supra).

9 Ibid s 90D(3) (as added: see note 1 supra).

10 Ibid s 90D(4) (as added: see note 1 supra).

11 Ibid s 90D(4)(a) (as added: see note 1 supra). For the meaning of 'the relevant period' see PARA 1124 note 15 ante; definition applied by s 90F (as so added).

12 For the meaning of 'fixed penalty notice' see PARA 1094 ante; definition applied by ibid s 90F (as added: see note 1 supra).

13 Ibid s 90D(4)(b) (as added: see note 1 supra).

14 Ibid s 90D(4)(c) (as added: see note 1 supra).

15 Ibid s 90D(4)(d) (as added: see note 1 supra).

16 Ibid s 90D(4)(e) (as added: see note 1 supra). For the meaning of 'the prosecution period' see PARA 1125 note 13 ante; definition applied by s 90F (as so added).

17 For the meaning of 'motor vehicle' see PARA 210 ante.

18 For the meaning of 'trailer' see PARA 210 ante.

19 Road Traffic Offenders Act 1988 s 90D(5) (as added: see note 1 supra). The Road Safety Act 2006 s 11(3), Sch 4 makes provision about the immobilisation of vehicles the driving of which has been prohibited under the Road Traffic Offenders Act 1988 s 90D (as added) and about their removal and disposal: s 90D(8) (as so added). See PARAS 1127-1131 post.



20 Ibid s 90D(6) (as added: see note 1 supra). The penalty on summary conviction is a fine not exceeding level 5 on the standard scale: ss 9, 28 (as substituted) (see PARA 1049 ante), s 33(1), Sch 2 Pt I (entry prospectively added by the Road Safety Act 2006 s 11(2)). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 ante; and as to legal proceedings generally see PARA 1023 et seq ante.

The Secretary of State may by order provide for exceptions from the Road Traffic Offenders Act 1988 s 90D(6) (as added): s 90D(7) (as so added). As to the making of orders see PARA 1124 note 7 ante. A statutory instrument containing an order under s 90D (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 90E(5) (as so added).

## UPDATE

### **1124-1131 Power to impose financial penalty deposit requirement ... Offences as to securing possession of vehicles**

These provisions take effect as from 5 January 2009: SI 2008/3164.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(vi) Prohibition on Driving; Immobilisation, Removal and Disposal of Vehicles/1127. Regulations.

## **(vi) Prohibition on Driving; Immobilisation, Removal and Disposal of Vehicles**

### **1127. Regulations.**

The following provisions take effect as from a day to be appointed<sup>1</sup>.

The Secretary of State<sup>2</sup> may make regulations<sup>3</sup> with respect to any case where, on or after such date as may be prescribed<sup>4</sup>, the driving<sup>5</sup> of a vehicle<sup>6</sup> has been prohibited<sup>7</sup>.

As regards anything falling to be done under the regulations (such as receiving payment of a charge or other sum) the regulations may provide that it may be done: (1) by an authorised person<sup>8</sup>; or (2) by an authorised person or a person acting under his direction<sup>9</sup>.

The regulations may make provision for the application of any or all of certain provisions of the Road Traffic Offenders Act 1988<sup>10</sup> to an offence for which provision is made by the regulations<sup>11</sup>.

The regulations may make provision about the proceedings to be followed where a dispute occurs as a result of the regulations, and may in particular make provision: (a) for an application to be made to a magistrates' court; or (b) for a court to order a sum to be paid by the Secretary of State<sup>12</sup>.

1 The Road Safety Act 2006 s 11(3), Sch 4 is to come into force as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 The power to make regulations under the Road Safety Act 2006 Sch 4 is exercisable by statutory instrument: s 11(3), Sch 4 para 14(1). A statutory instrument containing regulations under Sch 4 is subject to annulment in pursuance of a resolution of either House of Parliament: Sch 4 para 14(2).

4 'Prescribed' means prescribed by the regulations: ibid Sch 4 para 12.

5 For the meaning of 'drive' see PARA 207 ante.

6 References in the Road Safety Act 2006 Sch 4 to a vehicle include references to any trailer drawn by the vehicle: Sch 4 para 9. For the meaning of 'trailer' see PARA 210 ante.

7 Ibid Sch 14 para 1(1). The regulations may apply where driving has been prohibited under the Transport Act 1968 s 99A(1) (as added) (powers to prohibit driving of vehicles in connection with contravention of provisions about drivers' hours: see PARA 1430 post), the Road Traffic (Foreign Vehicles) Act 1972 s 1 (powers to prohibit driving of foreign goods vehicles and foreign public service vehicles: see PARA 1645 post), the Road Traffic Act 1988 s 69 (as substituted) or s 70 (as amended) (powers to prohibit driving of unfit or overloaded vehicles: see PARAS 688, 690 ante), or the Road Traffic Offenders Act 1988 s 90D (prospectively added) (power to prohibit driving of vehicle on failure to make payment in compliance with financial penalty deposit requirement: see PARA 1126 ante). See further PARAS 1128-1131 post.

8 'Authorised person' means whichever of the following is appropriate (see the Road Safety Act 2006 Sch 14 para 10(1)):

1685 (1) where the driving of the vehicle has been prohibited under the Transport Act 1968 s 99A(1) (as added) (see PARA 1430 post), the Road Traffic (Foreign Vehicles) Act 1972 s 1(2) (see PARA 1645 post) or the Road Traffic Act 1988 s 69 (as substituted) (see PARA 688 ante), 'authorised person' means: (a) an examiner appointed by the Secretary of State under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 ante); or (b) a constable authorised by or on behalf of a chief officer of police to act for the purposes of the provision under which the driving of the vehicle has been prohibited (Road Safety Act 2006 Sch 14 para 10(2));

1686 (2) where the driving of the vehicle has been prohibited under the Road Traffic (Foreign Vehicles) Act 1972 s 1(3) (see PARA 1645 post), 'authorised person' means a person authorised to exercise the powers of the Road Traffic Act 1988 s 78 (see PARA 697 ante) with respect to the weighing of motor vehicles and trailers (Road Safety Act 2006 Sch 14 para 10(3));

1687 (3) where the driving of the vehicle has been prohibited under the Road Traffic Act 1988 s 70 (as amended) (see PARA 690 ante), 'authorised person' means a person mentioned in head (1) supra or a person authorised with the consent of the Secretary of State to act for the purposes of s 70(1) (as amended) by a highway authority other than the Secretary of State (Road Safety Act 2006 Sch 14 para 10(4));

1688 (4) where the driving of the vehicle has been prohibited under the Road Traffic Offenders Act 1988 s 90D (prospectively added) (see PARA 1126 ante), 'authorised person' means: (a) an examiner appointed by the Secretary of State under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 ante); or (b) a constable (Road Safety Act 2006 Sch 14 para 10(5)).

As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

9 Ibid Sch 4 para 7.

10 Ie the Road Traffic Offenders Act 1988 s 1 (as amended), s 6, s 11 (as amended) and s 12(1) (as amended). See PARAS 1028, 1031, 1035-1036 ante.

11 Road Safety Act 2006 Sch 14 para 8.

12 Ibid Sch 4 para 6.

## UPDATE

### **1124-1131 Power to impose financial penalty deposit requirement ... Offences as to securing possession of vehicles**

These provisions take effect as from 5 January 2009: SI 2008/3164.

### **1127-1131 Prohibition on Driving; Immobilisation, Removal and Disposal of Vehicles**

NOTES--In exercise of the powers conferred on him by the Road Safety Act 2006 s 11(3), Sch 4, the Secretary of State has made the Road Safety (Immobilisation, Removal and Disposal of Vehicles) Regulations 2009, SI 2009/493.

## **1127 Regulations**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(vi) Prohibition on Driving; Immobilisation, Removal and Disposal of Vehicles/1128. Immobilisation.

## **1128. Immobilisation.**

The following provisions take effect as from a day to be appointed<sup>1</sup>.

The regulations<sup>2</sup> may provide that an authorised person<sup>3</sup> or a person acting under his direction may<sup>4</sup>: (1) fix an immobilisation device<sup>5</sup> to the vehicle<sup>6</sup>; and (2) move the vehicle, or direct it to be moved, for the purpose of enabling an immobilisation device to be fitted to it<sup>7</sup>. The regulations may provide that on any occasion when an immobilisation device is fixed to a vehicle in accordance with the regulations the person fixing the device must also fix to the vehicle a notice<sup>8</sup>: (a) indicating that the device has been fixed to the vehicle and warning that no attempt should be made to drive it or otherwise put it in motion until it has been released from the device<sup>9</sup>; (b) specifying the steps to be taken to secure its release<sup>10</sup>; and (c) giving such other information as may be prescribed<sup>11</sup>.

The regulations may provide that a vehicle to which an immobilisation device has been fixed in accordance with the regulations may only be released from the device by or under the direction of an authorised person but subject to that, must be released from the device if the first and second requirements specified below are met<sup>12</sup>. The first requirement is that such charge in respect of the release as may be prescribed is paid in any manner specified in the immobilisation notice<sup>13</sup>. The second requirement is that, in accordance with instructions specified in the immobilisation notice, there is produced such evidence as may be prescribed establishing that the prohibition has been removed<sup>14</sup>.

The regulations may provide that they do not apply in relation to a vehicle if a current disabled person's badge<sup>15</sup> is displayed on the vehicle or such other conditions as may be prescribed are fulfilled<sup>16</sup>.

The regulations may provide that an immobilisation notice is not to be removed or interfered with except by or on the authority of a person falling within a prescribed description<sup>17</sup>.

1 The Road Safety Act 2006 s 11(3), Sch 4 is to come into force as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the regulations see PARA 1127 ante.

3 For the meaning of 'authorised person' see PARA 1127 note 8 ante.

4 Road Safety Act 2006 s 11(3), Sch 4 para 2(1).

- 5 For these purposes, references to an immobilisation device are to a device or appliance which is an immobilisation device for the purposes of the Road Traffic Regulation Act 1984 s 104 (as amended) (immobilisation of vehicles illegally parked: see PARA 876 ante); Road Safety Act 2006 s 11(3), Sch 4 para 11(a).
- 6 Ibid Sch 4 para 2(1)(a). As to the meaning of 'vehicle' see PARA 1127 note 6 ante.
- 7 Ibid Sch 4 para 2(1)(b).
- 8 Ibid Sch 4 para 2(2).
- 9 Ibid Sch 4 para 2(2)(a).
- 10 Ibid Sch 4 para 2(2)(b).
- 11 Ibid Sch 4 para 2(2)(c). For the meaning of 'prescribed' see PARA 1127 note 4 ante.
- 12 Ibid Sch 4 para 2(3).
- 13 Ibid Sch 4 para 2(4). References to an immobilisation notice are to a notice fixed to a vehicle in accordance with the regulations: Sch 4 para 11(b).
- 14 Ibid Sch 4 para 2(5).
- 15 'Disabled person's badge' means a badge issued, or having effect as if issued, under any regulations for the time being in force under the Chronically Sick and Disabled Persons Act 1970 s 21 (see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1071); Road Safety Act 2006 Sch 4 para 2(6).
- 16 Ibid Sch 4 para 2(6)(a), (b).
- 17 Ibid Sch 4 para 2(7).

## UPDATE

### **1124-1131 Power to impose financial penalty deposit requirement ... Offences as to securing possession of vehicles**

These provisions take effect as from 5 January 2009: SI 2008/3164.

### **1127-1131 Prohibition on Driving; Immobilisation, Removal and Disposal of Vehicles**

NOTES--In exercise of the powers conferred on him by the Road Safety Act 2006 s 11(3), Sch 4, the Secretary of State has made the Road Safety (Immobilisation, Removal and Disposal of Vehicles) Regulations 2009, SI 2009/493.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/11. OFFENCES AND LEGAL PROCEEDINGS/(2) LEGAL PROCEEDINGS/(vi) Prohibition on Driving; Immobilisation, Removal and Disposal of Vehicles/1129. Offences connected with immobilisation.

### **1129. Offences connected with immobilisation.**

The following provisions take effect as from a day to be appointed<sup>1</sup>.

The regulations<sup>2</sup> may provide that a person who fails to comply within a reasonable time with a direction for a vehicle<sup>3</sup> to be moved for the purpose of enabling an immobilisation device<sup>4</sup> to be fitted to it<sup>5</sup> is guilty of an offence<sup>6</sup>.

The regulations may provide that a person contravening provision requiring that an immobilisation notice<sup>7</sup> is not to be removed or interfered with<sup>8</sup> is guilty of an offence<sup>9</sup>. The regulations may also provide that a person who, without being authorised to do so<sup>10</sup>, removes or attempts to remove an immobilisation device fixed to a vehicle in accordance with the regulations is guilty of an offence<sup>11</sup>.

The regulations may provide that where they would otherwise have applied in relation to a vehicle but for provision that they do not apply in relation to a vehicle if a current disabled person's badge<sup>12</sup> is displayed on the vehicle<sup>13</sup> and the vehicle was not, at the time at which they would otherwise have applied: (1) being used in accordance with regulations under the Chronically Sick and Disabled Persons Act 1970<sup>14</sup>; and (2) in circumstances where a disabled person's concession would be available<sup>15</sup>, the person in charge of the vehicle at that time is guilty of an offence<sup>16</sup>.

The regulations may provide that where: (a) a person makes a declaration with a view to securing the release of a vehicle from an immobilisation device purported to have been fixed in accordance with the regulations; (b) the declaration is that the prohibition has been removed; and (c) the declaration is to the person's knowledge either false or in any material respect misleading, he is guilty of an offence<sup>17</sup>.

1 The Road Safety Act 2006 s 11(3), Sch 4 is to come into force as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the regulations see PARA 1127 ante.

3 As to the meaning of 'vehicle' see PARA 1127 note 6 ante.

4 As to the meaning of 'immobilisation device' see PARA 1128 note 5 ante.

5 I.e. a direction under provision made under the Road Safety Act 2006 s 11(3), Sch 4 para 2(1)(b): see PARA 1128 ante.

6 Ibid Sch 4 para 3(1). The regulations may provide that a person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: see Sch 4 para 3(1). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 ante; and as to legal proceedings generally see PARA 1023 et seq ante.

7 As to the meaning of 'immobilisation notice' see PARA 1128 note 13 ante.

8 I.e. made under the Road Safety Act 2006 Sch 4 para 2(7): see PARA 1128 ante.

9 Ibid Sch 4 para 3(2). The regulations may provide that a person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: see Sch 4 para 3(2).

10 I.e. in accordance with provision made under ibid Sch 4 para 2: see PARA 1128 ante.

11 Ibid Sch 4 para 3(3). The regulations may provide that a person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: see Sch 4 para 3(3).

12 For the meaning of 'disabled person's badge' see PARA 1128 note 15 ante.

13 I.e. made under the Road Safety Act 2006 Sch 4 para 2(6)(a): see PARA 1128 ante.

14 I.e. under the Chronically Sick and Disabled Persons Act 1970 s 21: see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1071.

15 I.e. falling within the Road Traffic Regulation Act 1984 s 117(1)(b) (as substituted): see PARA 862 ante.

16 Road Safety Act 2006 Sch 4 para 3(4). The regulations may provide that a person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: see Sch 4 para 3(4).

17 Ibid Sch 4 para 3(5). The regulations may provide that a person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both: see Sch 4 para 3(6). As to the statutory maximum see PARA 359 note 11 ante.

## **UPDATE**

### **1124-1131 Power to impose financial penalty deposit requirement ... Offences as to securing possession of vehicles**

These provisions take effect as from 5 January 2009: SI 2008/3164.

### **1127-1131 Prohibition on Driving; Immobilisation, Removal and Disposal of Vehicles**

NOTES--In exercise of the powers conferred on him by the Road Safety Act 2006 s 11(3), Sch 4, the Secretary of State has made the Road Safety (Immobilisation, Removal and Disposal of Vehicles) Regulations 2009, SI 2009/493.

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### **1130. Removal and disposal of vehicles.**

The following provisions take effect as from a day to be appointed<sup>1</sup>.

The regulations<sup>2</sup> may provide that where such conditions as may be prescribed<sup>3</sup> are fulfilled an authorised person<sup>4</sup>, or a person acting under his direction, may remove the vehicle<sup>5</sup> or direct it to be removed<sup>6</sup>. The regulations may provide that where such conditions as may be prescribed are fulfilled an authorised person, or a person acting under his direction, may deliver the vehicle, or direct it to be delivered, into the custody of a person who is identified in accordance with prescribed rules and who agrees to accept delivery in accordance with arrangements agreed between that person and the Secretary of State<sup>7</sup>, and the arrangements may include provision as to the payment of a sum to the person into whose custody the vehicle is delivered<sup>8</sup>.

The regulations may make provision for such persons as may be prescribed to be informed that a vehicle has been removed and delivered into a person's custody and may, in particular, include provision requiring the publication by an authorised person of such notices as may be prescribed and the giving of notice by an authorised person to such persons as may be prescribed<sup>9</sup>. The regulations may provide that the person into whose custody the vehicle is delivered may dispose of it, and may in particular make provision as to the time at which the vehicle may be disposed of and the manner in which it may be disposed of<sup>10</sup>.

The regulations may make provision allowing a person to take possession of the vehicle if he claims it before it is disposed of and any prescribed conditions are fulfilled<sup>11</sup>. The regulations may provide for a sum of an amount arrived at under prescribed rules to be paid to a person if:

(1) he claims after the vehicle's disposal to be or to have been its owner<sup>12</sup> or to have been the person in charge<sup>13</sup> of the vehicle when it was removed; (2) the claim is made within a prescribed time of the disposal; and (3) any other prescribed conditions are fulfilled<sup>14</sup>. The regulations may provide that (whether or not a claim is made for possession or compensation<sup>15</sup>) the Secretary of State or a person into whose custody the vehicle is delivered under the regulations may recover from the vehicle's owner or the person in charge of the vehicle such charges as may be prescribed in respect of all or any of its release, removal, custody and disposal<sup>16</sup>.

The regulations may in particular include provision for purposes corresponding to those under the Road Traffic Regulation Act 1984 relating to disposal and charges<sup>17</sup> subject to such additions, omissions or other modifications as the Secretary of State thinks fit<sup>18</sup>.

1 The Road Safety Act 2006 s 11(3), Sch 4 is to come into force as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the regulations see PARA 1127 ante.

3 For the meaning of 'prescribed' see PARA 1127 note 4 ante.

4 For the meaning of 'authorised person' see PARA 1127 note 8 ante.

5 As to the meaning of 'vehicle' see PARA 1127 note 6 ante.

6 Road Safety Act 2006 s 11(3), Sch 4 para 4(1).

7 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

8 Road Safety Act 2006 Sch 4 para 4(2).

9 Ibid Sch 4 para 4(3).

10 Ibid Sch 4 para 4(4).

11 Ibid Sch 4 para 4(5). The conditions prescribed under Sch 4 para 4(5) may include conditions as to: (1) satisfying the person with custody that the claimant is the vehicle's owner or was the person in charge of the vehicle when it was removed; (2) the payment of prescribed charges in respect of the vehicle's release, removal and custody; and (3) the production of such evidence as may be prescribed establishing that the prohibition has been removed: Sch 4 para 4(9). As to the meaning of 'owner' see note 12 infra.

12 For these purposes, 'owner', in relation to a vehicle, means the person who was the vehicle's owner when it was removed: *ibid* Sch 4 para 4(8). The regulations may make provision as to the meaning for the purposes of the regulations of 'owner' as regards a vehicle: Sch 4 para 13(1). In particular, the regulations may provide that for the purposes of the regulations the owner of a vehicle is taken to be the person in whose name it is then registered under the Vehicle Excise and Registration Act 1994 (see PARA 518 et seq ante): Road Safety Act 2006 Sch 4 para 13(2).

13 For these purposes, 'person in charge', in relation to a vehicle, means the person who was in charge of the vehicle when it was removed: *ibid* Sch 4 para 4(8).

14 *Ibid* Sch 4 para 4(6).

15 *Ie* under provision made under *ibid* Sch 4 para 4(5) or (6): see the text and notes 11-14 supra.

16 Sch 4 para 4(7).

17 *Ie* the Road Traffic Regulation Act 1984 ss 101, 102 (as amended): see PARAS 871-874 ante.

18 Road Safety Act 2006 Sch 4 para 4(10).

## UPDATE

## **1124-1131 Power to impose financial penalty deposit requirement ... Offences as to securing possession of vehicles**

These provisions take effect as from 5 January 2009: SI 2008/3164.

## **1127-1131 Prohibition on Driving; Immobilisation, Removal and Disposal of Vehicles**

NOTES--In exercise of the powers conferred on him by the Road Safety Act 2006 s 11(3), Sch 4, the Secretary of State has made the Road Safety (Immobilisation, Removal and Disposal of Vehicles) Regulations 2009, SI 2009/493.

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### **1131. Offences as to securing possession of vehicles.**

The following provisions take effect as from a day to be appointed<sup>1</sup>.

The regulations<sup>2</sup> may provide that a person who fails to comply within a reasonable time with a direction for the removal or delivery of a vehicle<sup>3</sup> is guilty of an offence<sup>4</sup>.

The regulations also may provide that where: (1) a person makes a declaration with a view to securing possession of a vehicle purported to have been delivered into the custody of a person<sup>5</sup>; (2) the declaration is that the prohibition on driving the vehicle<sup>6</sup> has been removed; and (3) the declaration is to the person's knowledge either false or in any material respect misleading, he is guilty of an offence<sup>7</sup>.

<sup>1</sup> The Road Safety Act 2006 s 11(3), Sch 4 is to come into force as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

<sup>2</sup> As to the regulations see PARA 1127 ante.

<sup>3</sup> Ie under provision made under the Road Safety Act 2006 Sch 4 para (1) or (2): see PARA 1130 ante. As to the meaning of 'vehicle' see PARA 1127 note 6 ante.

<sup>4</sup> Ibid s 11(3), Sch 4 para 5(1). The regulations may provide that a person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: see Sch 4 para 5(1). As to the standard scale see PARA 230 note 3 ante. As to the prosecution of offences see PARA 1027 ante; and as to legal proceedings generally see PARA 1023 et seq ante.

<sup>5</sup> Ie in accordance with provision made under ibid Sch 4 para 4: see PARA 1130 ante.

<sup>6</sup> As to the prohibition on driving see PARA 1127 note 7 ante.

<sup>7</sup> Road Safety Act 2006 Sch 4 para 5(2). The regulations may provide that a person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both: Sch 4 para 5(3). As to the statutory maximum see PARA 359 note 11 ante.

## **UPDATE**



## **1124-1131 Power to impose financial penalty deposit requirement ... Offences as to securing possession of vehicles**

These provisions take effect as from 5 January 2009: SI 2008/3164.

## **1127-1131 Prohibition on Driving; Immobilisation, Removal and Disposal of Vehicles**

NOTES--In exercise of the powers conferred on him by the Road Safety Act 2006 s 11(3), Sch 4, the Secretary of State has made the Road Safety (Immobilisation, Removal and Disposal of Vehicles) Regulations 2009, SI 2009/493.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(1) LEGISLATION/1132. Introduction.

## **12. PUBLIC PASSENGER VEHICLES**

### **(1) LEGISLATION**

#### **1132. Introduction.**

The principal statutes governing the regulation of public service vehicles are the Public Passenger Vehicles Act 1981<sup>1</sup> (which consolidated certain enactments relating to public service vehicles<sup>2</sup>) and the Transport Act 1985<sup>3</sup> (which both amends and supplements the Public Passenger Vehicles Act 1981). With certain exceptions<sup>4</sup>, the Public Passenger Vehicles Act 1981 and the Transport Act 1985 do not extend to Northern Ireland<sup>5</sup>.

The Public Passenger Vehicles Act 1981 defines a public service vehicle<sup>6</sup>, makes general provisions relating to such vehicles<sup>7</sup>, and provides for regulations as to the conduct of drivers, inspectors, conductors and passengers as to the number of passengers that may be carried<sup>8</sup>. Other provisions of the Public Passenger Vehicles Act 1981 concern the review of decisions of traffic commissioners with respect to PSV operators' licences<sup>9</sup>, appeals to the Transport Tribunal in connection with PSV operators' licences<sup>10</sup>, appeals to the Secretary of State<sup>11</sup> in connection with certain decisions of examiners<sup>12</sup>, fees and expenses<sup>13</sup>, inquiries by traffic commissioners<sup>14</sup>, procedural regulations<sup>15</sup>, and offences<sup>16</sup>.

The Transport Act 1985 abolished road service licensing under Part III of the Public Passenger Vehicles Act 1981<sup>17</sup>, and replaced it with a new system in relation to London local services<sup>18</sup> and other local services<sup>19</sup>.

Part II of the Transport Act 2000<sup>20</sup> deals with local transport. It provides a statutory basis for local transport plans and bus strategies in England and Wales outside London<sup>21</sup>. It empowers local transport authorities, either alone or jointly, to set up quality partnership schemes as part of the process of implementation of their current bus strategy<sup>22</sup>; makes provision with respect to quality contracts schemes<sup>23</sup> and ticketing schemes<sup>24</sup> and as to the provision of information with respect to bus services<sup>25</sup>. Provision is made as to local transport functions in relation to Wales by the Transport (Wales) Act 2006<sup>26</sup>.

1 The Public Passenger Vehicles Act 1981 came into force on 30 October 1981: s 89(1), (2). See PARA 1136 et seq post.

2 le the Road Traffic Act 1960 Pt III (ss 117-163) (repealed); the Passenger Vehicles (Experimental Areas) Act 1977; the Minibus Act 1977; and the Transport Act 1980 Pt I (ss 1-42) (as amended), Schs 1, 3, 5 (all repealed).

3 The provisions of the Transport Act 1985, with the exception of ss 58, 140, and Sch 6 para 12, came into force on various dates between 6 January 1986 and 13 August 1987: see s 140(1)-(3). Sections 58, 140, and Sch 6 para 12 (now repealed), came into force on 30 October 1985: s 140(1). See PARA 1177 et seq post.

4 le with the exception of *ibid* ss 114(1)(a), (2), 115: s 140(6).

5 Public Passenger Vehicles Act 1981 s 89(4); Transport Act 1985 s 140(5).

6 For the meaning of 'public service vehicle' see PARA 1136 post.

7 See PARAS 1141-1162 post.

8 See PARAS 1172-1176 post.

9 See PARA 1163 post.

10 See PARA 1164 post.

11 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

12 See PARA 1165 post.

13 See PARAS 1170-1171 post.

14 See PARA 1166 post.

15 See PARA 1133 post.

16 See PARAS 1304-1313 post.

17 le the Public Passenger Vehicles Act 1981 Pt III (ss 30-41) (repealed).

18 le by the Transport Act 1985 Pt II (ss 34-46) (as amended): see PARA 1246 post. For the meaning of 'London local service' see PARA 1231 ante. As from a day to be appointed Pt II (as amended) is repealed by the Greater London Authority Act 1999 s 423, Sch 34 Pt II. At the date at which this volume states the law no such day had been appointed. As to the regulation of bus services in Greater London after 3 July 2000 see PARAS 1231-1245 post. As to the transitional period, during which existing licences continue to be regulated by the Transport Act 1985 Pt II (as amended) see PARA 1230 post.

19 le by *ibid* ss 6-9: see PARAS 1178-1181 post. For the meaning of 'local service' see PARA 1177 post.

20 le the Transport Act 2000 (ss 108-162) (as amended).

21 See *ibid* ss 108-113 (as amended); and PARA 1190 et seq post.

22 See *ibid* ss 114-123; and PARA 1200 et seq post.

23 See *ibid* ss 124-134 (as amended); and PARA 1209 et seq post.

24 See *ibid* ss 135-138 (as amended); and PARA 1220 et seq post.

25 See *ibid* ss 139-141; and PARA 1224 post. As to the power to obtain information about local services see PARA 1225 post. For provision as to regulations and orders under Pt II (as amended) see PARA 1226 post.

26 See PARAS 1227- 1229 post.

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**1133. Power to make regulations as to procedure.**

Subject to the provisions of the Public Passenger Vehicles Act 1981, provision may be made by regulations<sup>1</sup> as to the procedure on<sup>2</sup>:

- 1689 (1) applications for the grant of PSV operators' licences<sup>3</sup>;
- 1690 (2) applications or proposals for the variation of conditions attached to PSV operators' licences<sup>4</sup>;
- 1691 (3) the determination of questions in connection with the grant, suspension and revocation of such licences as are mentioned in head (1) above and in connection with any such variation as is mentioned in head (2) above<sup>5</sup>; and
- 1692 (4) the surrender of licences<sup>6</sup>.

Those regulations may make provision as to the particulars to be furnished and the persons to whom notices are to be given, the manner in which notices are to be published or served, and the manner in which objections or other representations with respect to the determination of such questions as are mentioned in head (3) above may be made<sup>7</sup>.

Until a day to be appointed, these provisions also apply in the case of a London local service licence<sup>8</sup>.

1 See the Public Service Vehicles (London Local Service Licences) Regulations 1986, SI 1986/1691 (amended by SI 1991/288); and the Public Service Vehicles (Operators' Licences) Regulations 1995, SI 1995/2908. 'Regulations' means regulations made by the Secretary of State: Public Passenger Vehicles Act 1981 s 60(2) (amended by the Transport Act 1985 s 134(2)). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Public Passenger Vehicles Act 1981 s 59.

3 Ibid s 59(a) (amended by the Transport Act 1985 ss 1(3), 139(3), Sch 1 para 10, Sch 8; and the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 16, Sch 6). For the meaning of 'PSV operator's licence' see PARA 1136 note 7 post. As to applications for PSV operators' licences see PARA 1144 ante.

4 Public Passenger Vehicles Act 1981 s 59(b) (amended by the Transport Act 1985 Sch 1 para 10 (repealed), Sch 8). As to the power to attach and vary conditions see PARA 1153 post.

5 Public Passenger Vehicles Act 1981 s 59(c). As to the grant, suspension and revocation of PSV operators' licences see PARAS 1146, 1155 post.

6 Ibid s 59(d).

7 Ibid s 59.

8 See the Transport Act 1985 s 44(1), (2) (prospectively repealed by the Greater London Authority Act 1999 s 423, Sch 34 Pt II). At the date at which this volume states the law no day had been appointed for the repeal of these provisions to take effect. As to London local service licences see PARA 1246 post. For the meaning of 'London local service' see PARA 1231 post.

**UPDATE****1133 Power to make regulations as to procedure**

NOTE 1--SI 1995/2908 amended: SI 2009/786.

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### **1134. General power to make regulations under the Public Passenger Vehicles Act 1981.**

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> for the purpose of carrying the Public Passenger Vehicles Act 1981 into effect, and in particular<sup>3</sup> may make regulations with respect to any of the following matters<sup>4</sup>:

- 1693 (1) the forms to be used for the purpose of the Public Passenger Vehicles Act 1981<sup>5</sup>;
- 1694 (2) applications for and issue of licences and of certificates of initial fitness<sup>6</sup>;
- 1695 (3) the issue of copies of licences and certificates in the case of licences or certificates lost or destroyed<sup>7</sup>;
- 1696 (4) the fees to be payable under the Public Passenger Vehicles Act 1981, the persons liable to pay them, and the repayment (or partial repayment), in prescribed<sup>8</sup> circumstances, of fees paid<sup>9</sup>;
- 1697 (5) the documents, plates and marks to be carried by, and the information to be displayed in or on public service vehicles<sup>10</sup> and the manner in which they are to be carried or it is to be displayed<sup>11</sup>;
- 1698 (6) the badges to be worn by drivers<sup>12</sup> of public service vehicles<sup>13</sup>;
- 1699 (7) the custody, production and cancellation on revocation or expiration of licences and certificates of initial fitness, and the return to the traffic commissioners<sup>14</sup> of licences which have become void, or have been revoked, and as to the custody, production and return of badges and plates<sup>15</sup>;
- 1700 (8) the carriage of luggage and goods on public service vehicles or tramcars<sup>16</sup>;
- 1701 (9) the safe custody and re-delivery or disposal of any property accidentally left in a public service vehicle or tramcar and fixing the charges made in respect of this<sup>17</sup>;
- 1702 (10) the equipment to be carried by public service vehicles<sup>18</sup>;
- 1703 (11) for providing that the Public Passenger Vehicles Act 1981 or, any of its provisions, has effect in relation to public service vehicles registered in Great Britain<sup>19</sup>, while making journeys to or from destinations outside Great Britain; and public service vehicles registered outside Great Britain, with such additions, omissions, alterations or other modifications (whether conditional or not) as may be prescribed<sup>20</sup>.

Regulations made under any provision of the Public Passenger Vehicles Act 1981 may make different provision for different cases to which the regulations apply, and may in particular make different provision as respects different areas, and make different provision as respects different classes or descriptions of vehicles or as respects the same class or description of vehicles in different circumstances<sup>21</sup>.

Regulations made under any provision of the Public Passenger Vehicles Act 1981 and applying to tramcars may amend or exclude any provision of an Act or instrument of local application whose subject-matter is the same as that of the regulations<sup>22</sup>.

Any power conferred by the Public Passenger Vehicles Act 1981 upon the Secretary of State to make regulations is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament<sup>23</sup>. Before making any such regulations the Secretary of State must consult with such representative organisations as he thinks fit<sup>24</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'regulations' see PARA 1133 note 1 ante.

3 This is expressed to be without prejudice to the generality of the Public Passenger Vehicles Act 1981 ss 1-59 (as amended): see PARAS 1132-1133 ante, 1135-1176 post.

4 Ibid s 60(1) (amended by the Transport Act 1985 ss 3(5), 134, 139(2), (3), Sch 2 Pt II para 4(18), Sch 7 para 21(9), Sch 8). At the date at which this volume states the law the following regulations had been made under the Public Passenger Vehicles Act 1981 s 60 (as amended): the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748 (amended by SI 1987/1755; SI 1988/1809; SI 1990/1103; SI 2003/1118; SI 2004/1882); the Public Service Vehicles (Carrying Capacity) Regulations 1984, SI 1984/1406 (amended by SI 1996/167); the Community Bus Regulations 1986, SI 1986/1245 (amended by SI 1990/1020; SI 1996/3087; SI 1997/2917); the Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) Regulations 1986, SI 1986/1629 (amended by SI 1993/2754); the Public Service Vehicles (Registration of Local Services) Regulations 1986, SI 1986/1671 (amended by SI 1988/1879; SI 1989/1064; SI 1993/2752; SI 1994/3271; SI 2007/690); the Public Service Vehicles (London Local Service Licences) Regulations 1986, SI 1986/1691 (amended by SI 1988/408); the Minibus and Other Section 19 Permit Buses Regulations 1987, SI 1987/1230 (amended by SI 1996/3088; SI 1997/2916; SI 2002/2534; SI 2004/2251; SI 2005/2354; SI 2007/691); the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990, SI 1990/1020 (amended by SI 1995/186; SI 2002/1724); the Public Service Vehicles (Operators' Licences) Regulations 1995, SI 1995/2908; the Public Service Vehicles (Operators' Licences) (Fees) Regulations 1995, SI 1995/2909 (amended by SI 2002/2535; SI 2004/1876; SI 2005/2346; SI 2007/689); the Public Service Vehicles (Traffic Regulation Conditions) (England and Wales) Regulations 2004, SI 2004/2682.

In addition, by virtue of the Interpretation Act 1978 s 17(2)(b), the following regulations have effect as if made for the purposes of the Public Passenger Vehicles Act 1981 s 60 (as amended): the Public Service Vehicles (Lost Property) Regulations 1978, SI 1978/1684 (amended by SI 1981/1623; SI 1985/185; SI 2003/1615); the Public Service Vehicles (Conditions of Fitness, Equipment, Use and Certification) Regulations 1981, SI 1981/257 (amended by SI 1982/20; SI 1982/1058; SI 1984/1763; SI 1986/1812; SI 1987/1150; SI 1988/340; SI 1989/2359; SI 1992/565; SI 1993/3012; SI 1995/305; SI 1997/84; SI 1998/1670; SI 1999/3413; SI 2000/1431; SI 2001/1649; SI 2002/335; SI 2003/1817; SI 2004/1880; SI 2005/1403; SI 2005/2342; SI 2005/2986; SI 2005/3128; SI 2007/502).

5 Public Passenger Vehicles Act 1981 s 60(1)(a). See note 4 supra.

6 Ibid s 60(1)(b). As to certificates of initial fitness see PARA 1141 post. See note 4 supra.

7 Ibid s 60(1)(c). See note 4 supra.

8 'Prescribed' means prescribed by regulations: ibid ss 60(2), 82(1). For the meaning of 'regulations' see PARA 1133 note 1 ante.

9 Ibid s 60(1)(e) (substituted by the Deregulation and Contracting Out Act 1994 s 66(5)). See note 4 supra.

10 For the meaning of 'public service vehicles' see PARA 1136 post.

11 Public Passenger Vehicles Act 1981 s 60(1)(f) (amended by the Transport Act 1985 Sch 2 Pt II para 4(18), Sch 7 para 21(9), Sch 8). See note 4 supra.

12 For the meaning of 'driver' see PARA 207 ante.

13 Public Passenger Vehicles Act 1981 s 60(1)(g). See note 4 supra.

14 As to traffic commissioners see PARA 1139 post.

15 Public Passenger Vehicles Act 1981 s 60(1)(h) (amended by the Transport Act 1985 Sch 2 Pt II para 4(18), Sch 7 para 21(9), Sch 8). See note 4 supra.

16 Public Passenger Vehicles Act 1981 s 60(1)(j) (amended by the Transport Works Act 1992 s 61(1), (5)). For the meaning of 'tramcar' see PARA 219 ante. See note 4 supra.

17 Public Passenger Vehicles Act 1981 s 60(1)(k) (amended by the Transport Works Act 1992 s 61(1), (5)). See note 4 supra.

18 Public Passenger Vehicles Act 1981 s 60(1)(l). See note 4 supra.

- 19 For the meaning of 'Great Britain' see PARA 205 note 3 ante.
- 20 Public Passenger Vehicles Act 1981 s 60(1)(m). See note 4 supra.
- 21 Ibid s 60(1A) (added by the Transport Act 1985 s 134(2)). 'Modification' includes addition, omission and alteration: s 82(1).
- 22 Public Passenger Vehicles Act 1981 s 60(1B) (added by the Transport and Works Act 1992 s 61(6)).
- 23 Public Passenger Vehicles Act 1981 s 61(1).
- 24 Ibid s 61(2) (amended by the Transport Act 1985 s 135(1), Sch 8).

## UPDATE

### **1134 General power to make regulations under the Public Passenger Vehicles Act 1981**

NOTE 4--SI 1984/748 further amended: SI 2008/1577, SI 2009/879. SI 1986/1245 replaced: Community Bus Regulations 2009, SI 2009/366. SI 1986/1671 further amended: SI 2008/1470, SI 2009/878, SI 2009/3245. SI 1995/2909 further amended: SI 2008/1473, SI 2009/787. SI 1981/257 further amended: SI 2008/1458, SI 2009/141, SI 2009/877. SI 1987/1230 replaced: Section 19 Permit Regulations 2009, SI 2009/365. SI 1995/2908 amended: SI 2009/786.

NOTES 8, 9--See the Department for Transport (Fees) Order 2009, SI 2009/711 (amended by SI 2009/1885), which specifies for the purposes of the Finance (No 2) Act 1987 s 102(3) the functions to be taken into account in the determination of the fees to be fixed by the Secretary of State.

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### **1135. General power to make regulations, rules and orders under the Transport Act 1985.**

The provisions of the Public Passenger Vehicles Act 1981 relating to the general power to make regulations for the purposes of the Public Passenger Vehicles Act 1981<sup>1</sup> have effect as if Part I and Part II of the Transport Act 1985<sup>2</sup> were contained in the Public Passenger Vehicles Act 1981<sup>3</sup>. The power to make such regulations<sup>4</sup> extends to applications for, and the issue of, permits for the use of buses by educational and other bodies<sup>5</sup> and community bus permits<sup>6</sup>, and the issue of copies of such permits in the case of permits lost or destroyed<sup>7</sup>.

The Secretary of State<sup>8</sup> may make regulations<sup>9</sup> for the purpose of carrying the provisions of the Transport Act 1985 (apart from Part I and Part II) into effect<sup>10</sup>. Regulations or rules made under any provision of the Transport Act 1985 (other than one contained in Part I or Part II), and any order made by the Secretary of State under any provision of the Transport Act 1985, including one so contained, may make different provision for different cases to which those regulations or rules or, as the case may be, to which that order applies, and may in particular make different provision as respects different areas<sup>11</sup>.

The provision of the Public Passenger Vehicles Act 1981 relating to the procedure for making regulations under the Public Passenger Vehicles Act 1981<sup>12</sup> has effect as if Part I and Part II of

the Transport Act 1985 were contained in the Public Passenger Vehicles Act 1981<sup>13</sup>. Any power of the Secretary of State to make regulations or rules under any provision of the Transport Act 1985, other than one contained in Part I or Part II, or to make an order under any provision of the Transport Act 1985, including one so contained, is exercisable by statutory instrument<sup>14</sup>. Any statutory instrument containing any such regulations, rules or order is subject to annulment in pursuance of a resolution of either House of Parliament<sup>15</sup>.

1    Ie the Public Passenger Vehicles Act 1981 s 60 (as amended): see PARA 1134 ante.

2    Ie the Transport Act 1985 Pt I (ss 1-33) (as amended), and Pt II (ss 34-46) (as amended).

3    Ibid s 134(1).

4    Ie under the Public Passenger Vehicles Act 1981 s 60 (as amended): see PARA 1134 ante. For the meaning of 'regulations' see PARA 1178 note 4 post.

5    Ie under the Transport Act 1985 s 19: see PARA 1183 ante.

6    As to community bus permits issued under ibid s 22 see PARA 1185 post.

7    Ibid s 134(3).

8    As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

9    Ie under the Transport Act 1985 s 134.

10   Ibid s 134(4). See the Travel Concessions Schemes Regulations 1986, SI 1986/77 (amended by SI 1996/2711).

11   Transport Act 1985 s 134(5).

12   Ie the Public Passenger Vehicles Act 1981 s 61 (as amended): see PARA 1134 ante.

13   Transport Act 1985 s 135(1).

14   Ibid s 135(2).

15   Ibid s 135(3). However, s 135(3) does not apply to a statutory instrument containing an order under s 46, s 52(5) (repealed), s 53(1) (repealed), s 85 (see PARA 1251 post), or s 140(2): s 135(4).

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## **(2) PUBLIC SERVICE VEHICLES**

### **(i) Definition and Classification of Public Service Vehicles**

#### **1136. Meaning of 'public service vehicle'.**

'Public service vehicle' means a motor vehicle<sup>1</sup> (other than a tramcar<sup>2</sup>) which<sup>3</sup>: (1) being a vehicle adapted<sup>4</sup> to carry more than eight passengers, is used<sup>5</sup> for carrying passengers for hire or reward<sup>6</sup>; or (2) being a vehicle not so adapted, is used for carrying passengers for hire or reward at separate fares<sup>7</sup> in the course of a business of carrying passengers<sup>8</sup>. Vehicles which meet certain conditions do not fall within this definition<sup>9</sup>.

A journey made by a vehicle in the course of which one or more passengers are carried at separate fares must not be treated as made in the course of a business of carrying passengers if<sup>10</sup>: (a) the fare or the aggregate of the fares paid in respect of the journey does not exceed the amount of the running costs<sup>11</sup> of the vehicle for the journey<sup>12</sup>; and (b) the arrangements for the payment of the fares by the passenger or passengers so carried were made before the journey began<sup>13</sup>.

1 For the meaning of 'motor vehicle' see PARA 210 ante.

2 For the meaning of 'tramcar' see PARA 219 ante. As to tramways see PARA 1532 et seq post.

3 Public Passenger Vehicles Act 1981 s 1(1), which is expressed to be subject to the provisions of s 1 (as amended).

4 'Adapted' may mean altered or changed (*French v Champkin* [1920] 1 KB 76, DC; *Davison v Birmingham Industrial Co-operative Society Ltd* (1920) 90 LJKB 206, DC; *Hubbard v Messenger* [1938] 1 KB 300 at 307, [1937] 4 All ER 48 at 50 per Lord Hewart LC; *Taylor v Mead* [1961] 1 All ER 626, [1961] 1 WLR 435; *Flower Freight Co Ltd v Hammond* [1963] 1 QB 275, [1962] 3 All ER 950, DC; *Baker v Secretary of State for the Environment* [1983] 2 All ER 1021, [1983] 1 WLR 1485), or it may mean apt or suitable for (*Herrmann v Metropolitan Leather Co Ltd* [1942] Ch 248, [1942] 1 All ER 294; *Maddox v Storer* [1963] 1 QB 451, [1962] 1 All ER 831, DC; *Burns v Currell* [1963] 2 QB 433, [1963] 2 All ER 297, DC; *Wurzal v Addison* [1965] 2 QB 131, [1965] 1 All ER 20, DC; *Traffic Comrs for South Wales Traffic Area v Snape* [1977] RTR 367, DC). It is likely that in this context, particularly in the light of the last two decisions cited, it means apt or suitable for.

It has been held that a minibus with four out of eleven seats blocked off is not a public service vehicle: see *Westacott v Centaur Overland Travel Ltd* [1981] RTR 182, DC.

5 For the purposes of the Public Passenger Vehicles Act 1981 s 1(1), a vehicle 'is used' as mentioned in head (1) or head (2) in the text if it is being so used or if it has been used as mentioned in that head and that use has not been permanently discontinued: s 1(2).

6 Ibid s 1(1)(a). A vehicle is to be treated as carrying passengers for hire or reward if payment is made for, or for matters which include, the carrying of passengers, irrespective of the person to whom the payment is made and, in the case of a transaction effected by or on behalf of a member of any association of persons (whether incorporated or not) on the one hand and the association or another member thereof on the other hand, notwithstanding any rule of law as to such transactions: s 1(5)(a). See note 7 infra. See *Drew v Dingle* [1934] 1 KB 187, DC, where a charge was made for carrying goods to market and passengers accompanying the goods were carried without further charge. Carriage 'for hire or reward' involves systematic carrying of passengers going beyond the bounds of mere social kindness and amounting to a predominantly business activity: see *Albert v Motor Insurers' Bureau* [1972] AC 301, [1971] 2 All ER 1345, HL; *DPP v Sikondar* [1993] Crim LR 76, [1993] RTR 90, DC; *Rout v Swallow Hotels Ltd* [1993] RTR 80, 157 JP 771, DC. Payments to a factory employer or a group organiser who then pays the operator are fares: *Wurzal v Addison* [1965] 2 QB 131, [1965] 1 All ER 20, DC; *Wurzal v Wilson* [1965] 1 All ER 26, [1965] 1 WLR 285, DC.

7 'Fares' includes sums payable in respect of a contract ticket or season ticket: Public Passenger Vehicles Act 1981 s 82(1). A payment for the carrying of a passenger is treated as a fare notwithstanding that it is made in consideration of other matters in addition to the journey and irrespective of the person by or to whom it is made: s 1(5)(b). See also *Drew v Dingle* [1934] 1 KB 187.

A payment is treated as made for the carrying of a passenger if made in consideration of a person's being given a right to be carried, whether for one or more journeys and whether or not the right is exercised: Public Passenger Vehicles Act 1981 s 1(5)(c). See also *DPP v Sikondar* [1993] Crim LR 76, [1993] RTR 90, DC; *Rout v Swallow Hotels Ltd* [1993] RTR 80, 157 JP 771, DC.

Where a fare is paid for the carriage of a passenger on a journey by air, no part of that fare is to be treated for the purposes of the Public Passenger Vehicles Act 1981 s 1(5) as paid in consideration of the carriage of the passenger by road by reason of the fact that, in case of mechanical failure, bad weather or other circumstances outside the operator's control, part of that journey may be made by road: s 1(6). For the meaning of 'road' see PARA 206 ante.

Regulations may make provision as to the person who is to be regarded as the operator of a vehicle which is made available by one holder of a PSV operator's licence to another under a hiring arrangement, and where such regulations do not apply, the operator of a vehicle is the driver, if he owns the vehicle, and in any other case, the person for whom the driver works (whether under a contract of employment or any other description of contract personally to do work): ss 81(1), 82(1). For the meaning of 'regulations' see PARA 1133 note 1 ante. For the meaning of 'driver' see PARA 207 ante. As to operators under hiring arrangements see the Public Service Vehicles (Operators' Licences) Regulations 1995, SI 1995/2908, reg 22. 'PSV operator's licence' means a PSV



operator's licence granted under the provisions of the Public Passenger Vehicles Act 1981 Pt II (ss 6-29) (as amended) (see PARA 1141 et seq post): s 82(1). For the purposes of the Transport Act 1985, the operator of a passenger transport service of any description is the person, or each of the persons, providing the service; and for those purposes the operator of a vehicle being used on a road for the carriage of passengers for hire or reward at separate fares is to be taken to be providing the service provided by means of the vehicle unless he proves that the service is or forms part of a service provided not by himself but by one or more other persons: s 137(7). In relation to the national travel concession (see PARA 1289 text and notes 15-27 post), this provision is amended so that 'he proves' is substituted by the words 'it is proved': see s 137(7) (amended by the Concessionary Bus Travel Act 2007 s 13, Sch 2 paras 1, 6).

Under earlier corresponding legislation payment made to the owner of the vehicle, however indirectly, has been held to constitute separate fares in respect of the passengers: *Osborne v Richards* [1933] 1 KB 283, DC; *Hawthorne v Knight* 1962 SLT 69; *Aitken v Hamilton* 1964 SLT 125; *Wurzal v Addison* [1965] 2 QB 131, [1965] 1 All ER 20, DC; *Vickers v Bowman* [1976] RTR 165, DC. An ex gratia payment to the driver may not constitute a fare: *MacLean v Fearn* 1954 SLT 37, Sh Ct.

8 Public Passenger Vehicles Act 1981 s 1(1)(b). The definition of public service vehicle is applied by the Transport Act 1968 s 159(1) (as amended); the Road Traffic (Foreign Vehicles) Act 1972 s 7(1) (as amended); the Local Government (Miscellaneous Provisions) Act 1976 s 80(1) (as amended); the Road Traffic Regulation Act 1984 s 142(1) (as amended); and the Transport Act 1985 s 137(1), (2).

A thing is done 'in the course of a business' if it is done as part of the activities of a business: *Charles R Davidson & Co v M'Robb (or Officer)* [1918] AC 304, HL; *Haverling London Borough Council v Stevenson* [1970] 3 All ER 609, [1970] 1 WLR 1375, DC; *Wycombe Marsh Garages Ltd v Fowler* [1972] 3 All ER 248, [1972] 1 WLR 1156, DC. 'Business' means anything which is an occupation, trade or profession: *Rolls v Miller* (1884) 27 ChD 71, CA; *Re Williams' Will Trusts, Chartered Bank of India, Australia and China v Williams* [1953] Ch 138, [1953] 1 All ER 536. See also the text to notes 11-13 infra.

9 See PARA 1137 post.

10 Public Passenger Vehicles Act 1981 s 1(4).

11 The running costs of a vehicle for a journey include an appropriate amount in respect of depreciation and general wear: *ibid* s 1(4).

12 *Ibid* s 1(4)(a).

13 *Ibid* s 1(4)(b).

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### **1137. Vehicles which may not be public service vehicles.**

A vehicle carrying passengers at separate fares<sup>1</sup> in the course of a business of carrying passengers<sup>2</sup>, but doing so in circumstances in which the following conditions<sup>3</sup> are fulfilled, is treated as not being a public service vehicle<sup>4</sup> unless it is adapted to carry more than eight passengers<sup>5</sup>. The conditions are that:

1704 (1) the making of the agreement for the payment of separate fares must not have been initiated by the driver<sup>6</sup> or by the owner<sup>7</sup> of the vehicle, by any person who has made the vehicle available under any arrangement, or by any person who receives any remuneration in respect of the arrangements for the journey<sup>8</sup>;

1705 (2) the journey must be made without previous advertisement<sup>9</sup> to the public<sup>10</sup> of facilities for its being made by passengers to be carried at separate fares, except where the local authorities<sup>11</sup> concerned have approved the arrangements under

which the journey is made as designed to meet the social and welfare needs of one or more communities, and their approvals remain in force<sup>12</sup>;

- 1706 (3) arrangements for the bringing together of all the passengers for the purpose of making the journey must have been made otherwise than by, or by a person acting on behalf of: (a) the holder of the PSV operator's licence<sup>13</sup> under which the vehicle is to be used, if such a licence is in force; (b) the driver or the owner of the vehicle or any person who has made the vehicle available under any arrangement, if no such licence is in force, and otherwise than by any person who receives any remuneration in respect of the arrangements<sup>14</sup>;
- 1707 (4) the journey must be made without previous advertisement to the public of the arrangements for it<sup>15</sup>;
- 1708 (5) all passengers must, in the case of a journey to a particular destination, be carried to, or to the vicinity of, that destination, or, in the case of a tour, be carried for the greater part of the journey<sup>16</sup>;
- 1709 (6) no differentiation of fares for the journey on the basis of distance or of time must be made<sup>17</sup>.

1 For the meaning of 'fares' see PARA 1136 note 7 ante.

2 As to the meaning of 'in the course of a business of carrying passengers' see PARA 1136 ante.

3 In the conditions in the Public Passenger Vehicles Act 1981 s 1(3), Sch 1 Pt I (as amended) (sharing of taxis and hire-cars) or Sch 1 Pt III (alternative conditions affecting status or classification): see the text and notes 6-17 infra.

4 For the meaning of 'public service vehicle' see PARA 1136 ante.

5 Public Passenger Vehicles Act 1981 s 1(3) (amended by the Transport Act 1985 s 139(3), Sch 8).

6 For the meaning of 'driver' see PARA 207 ante.

7 For the meaning of 'owner' see PARA 207 ante.

8 Public Passenger Vehicles Act 1981 Sch 1 para 1.

9 For the purposes of *ibid* Sch 1 paras 2, 6 (see the text and notes 11-12, 15 infra), no account may be taken of any such advertisement as follows (Sch 1 para 9):

1283 (1) a notice displayed or announcement made: (a) at or in any place of worship for the information of persons attending that place of worship; (b) at or in any place of work for the information of persons who work there; or (c) by any club or other voluntary association at or in any premises occupied or used by the club or association (Sch 1 para 9(a));

1284 (2) a notice contained in any periodical published for the information of, and circulating wholly or mainly among: (a) persons who attend or might reasonably be expected to attend a particular place of worship or a place of worship in a particular place; or (b) persons who work at a particular place of work or at any of two or more particular places of work; or (c) the members of a club or other voluntary association (Sch 1 para 9(b)).

The expression 'club' is not defined in the Act but a club is a society whose members are constantly changing; it is not a partnership: *Wise v Perpetual Trustee Co Ltd* [1903] AC 139, PC. As to the nature of clubs see CLUBS vol 13 (2009) PARA 201. In the expression 'wholly or mainly' the 'mainly' probably means 'more than half': *Fawcett Properties Ltd v Buckingham County Council* [1961] AC 636 at 669, [1960] 3 All ER 503 at 512, HL, per Lord Morton of Henryton. As to the meaning of 'wholly or mainly' (or 'exclusively or mainly') in various contexts see *Re Hatschek's Patents, ex p Zerenner* [1909] 2 Ch 68; *Miller v Ottilie (Owners)* [1944] KB 188, [1944] 1 All ER 277; *Franklin v Gramophone Co Ltd* [1948] 1 KB 542 at 555, [1948] 1 All ER 353 at 358, CA, per Somervell LJ; *Berthelemy v Neale* [1952] 1 All ER 437, 96 Sol Jo 165, CA.

10 As to the meaning of 'public', 'the public' and 'member of the public' in various contexts, see *Tatem Steam Navigation Co Ltd v IRC* [1941] 2 KB 194, [1941] 2 All ER 616, CA; *Income Tax Commr v Bjordal* [1955] AC 309, [1955] 1 All ER 401, PC; *DPP v Milbanke Tours Ltd* [1960] 2 All ER 467, [1960] 1 WLR 630; *Morrisons Holdings Ltd v IRC* [1966] 1 All ER 789, [1966] 1 WLR 553; *IRC v Park Investments Ltd* [1966] Ch 701, [1966] 2 All ER 785, CA; *R v Delmayne* [1970] 2 QB 170, [1969] 2 All ER 980, CA; *Beynon v Caerphilly Lower Licensing*

*Justices* [1970] 1 All ER 618, [1970] 1 WLR 369; *A-G's Reference (No 2 of 1977)* [1978] 2 All ER 646, [1978] 1 WLR 290, CA.

11 In relation to a journey the local authorities concerned for these purposes are those in whose area any part of the journey is to be made: Public Passenger Vehicles Act 1981 Sch 1 para 2(2). For these purposes 'local authority' means, in relation to England and Wales, the council of a county, metropolitan district or London borough and the Common Council of the City of London: Sch 1 para 2(2) (amended by the Local Government Act 1985 s 8, Sch 5 para 3(7)). As to local government areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq. As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

12 Public Passenger Vehicles Act 1981 Sch 1 para 2(1).

13 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante.

14 Public Passenger Vehicles Act 1981 Sch 1 para 5.

15 Ibid Sch 1 para 6. See note 9 supra.

16 Ibid Sch 1 para 7.

17 Ibid Sch 1 para 8.

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## **(ii) Traffic Areas and Traffic Commissioners**

### **1138. Traffic areas.**

For the purposes of the Public Passenger Vehicles Act 1981, Great Britain<sup>1</sup> is divided into the Scottish, North-Western, North-Eastern, West Midland, Eastern, Welsh, Western, South-Eastern and Metropolitan Traffic Areas<sup>2</sup>. The Secretary of State<sup>3</sup> may from time to time by order<sup>4</sup> vary the provisions of the Public Passenger Vehicles Act 1981 constituting traffic areas, either by altering the limits of an existing traffic area or by increasing or reducing the number of traffic areas or otherwise as he may think fit<sup>5</sup>. Such an order for varying the number or limits of traffic areas may contain such consequential and incidental provisions, including provisions<sup>6</sup>:

1710 (1) as to the effect of licences previously issued, and consents previously given, by the traffic commissioner<sup>7</sup> for any traffic area abolished or otherwise affected<sup>8</sup>;

1711 (2) as to the effect of applications for licences or consents previously made to any traffic commissioner, as to the traffic commissioner to whom applications relating to any such area may be made between the date of the order and the date as from which the abolition of, or other change in, the area is to have effect, and as to the traffic commissioner by whom and the places at which any such application may be heard, either before or after the last mentioned date<sup>9</sup>;

1712 (3) as to the continuance of appeals pending against decisions of the traffic commissioner for any traffic area abolished or otherwise affected<sup>10</sup>; and

1713 (4) as to the recovery of any sums due, at the date as from which a traffic area is abolished, to the traffic commissioner for that area<sup>11</sup>,

as appears to the Secretary of State to be necessary or expedient in consequence of the variations of areas to be affected by the order<sup>12</sup>.

1 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

2 Public Passenger Vehicles Act 1981 s 3(1); Traffic Areas (Reorganisation) Order 1990, SI 1991/288, art 4, Sch 1 (amended by SI 1991/634); Traffic Areas (Reorganisation) (Wales) Order 1999, SI 1999/1204, art 3.

As respects the South-Eastern and Metropolitan Traffic Area, the Metropolitan Public Carriage Act 1869 and the London Cab and Stage Carriage Act 1907 do not apply to a public service vehicle or to the driver or conductor of it: Public Passenger Vehicles Act 1981 s 64(1); Traffic Areas (Reorganisation) Order 1990, SI 1991/288, art 5(2). As to the Metropolitan Public Carriage Act 1869 see PARAS 1477-1484 post; and as to the London Cab and Stage Carriage Act 1907 see PARAS 1477-1478, 1484, 1493 post. For the meaning of 'public service vehicle' see PARA 1136 ante; and for the meaning of 'driver' see PARA 207 ante.

As respects the South-Eastern and Metropolitan Traffic Area, no local authority may exercise under the Town Police Clauses Act 1847 any powers with respect to public service vehicles or the licensing of them or of their drivers or conductors: Public Passenger Vehicles Act 1981 s 64(2); Traffic Areas (Reorganisation) Order 1990, SI 1991/288, art 5(2). 'Local authority' means, in relation to England and Wales, any local authority within the meaning of the Local Government Act 1972 (see LOCAL GOVERNMENT vol 69 (2009) PARA 23): Public Passenger Vehicles Act 1981 s 82(1). As to the Town Police Clauses Act 1847 see PARA 1432 et seq post.

3 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 The power to make orders conferred by the Public Passenger Vehicles Act 1981 s 3 (as amended) is exercisable by statutory instrument which must be laid before Parliament after being made, and an order under s 3 (as amended) does not have effect unless and until it has been approved by a resolution of each House of Parliament: s 3(4). See the Traffic Areas (Reorganisation) Order 1990, SI 1991/288 (amended by SI 1991/634); and the Traffic Areas (Reorganisation) (Wales) Order 1999, SI 1999/1204.

5 Public Passenger Vehicles Act 1981 s 3(2). References in the Public Passenger Vehicles Act 1981 to a traffic area constituted for the purposes thereof by a particular designation are references to the area described by that designation in the Traffic Areas (Reorganisation) Order 1990, SI 1991/288, art 4, Sch 1 (as amended) (see the text and note 2 supra): Public Passenger Vehicles Act 1981 s 80(1) (amended by the Traffic Areas (Reorganisation) Order 1990, SI 1991/288, art 5(1)). The Public Passenger Vehicles Act 1981 s 80(1) (as amended) has effect subject to the powers of the Secretary of State under s 3 (as amended) to vary the provisions of the Public Passenger Vehicles Act 1981 constituting traffic areas: s 80(2) (amended by the Traffic Areas (Reorganisation) (No 2) Order 1983, SI 1983/1714, art 5(1)).

The power to act 'as he may think fit' is subject to the inherent jurisdiction of the courts to determine whether such a power has been properly exercised, ie whether a reasonable person could have come to the decision in question without misdirecting himself on the law or the facts in a material respect: see JUDICIAL REVIEW.

6 Public Passenger Vehicles Act 1981 s 3(3).

7 'Traffic commissioner' means the person appointed to be the commissioner for a traffic area constituted for the purposes of the Public Passenger Vehicles Act 1981: s 82(1) (definition added by the Transport Act 1985 ss 1(3), 3(5), Sch 1 para 13, Sch 2 Pt II). As to traffic commissioners see PARA 1139 post.

8 Public Passenger Vehicles Act 1981 s 3(3)(a) (s 3(3) amended by the Transport Act 1985 Sch 2 Pt II para 4(2)).

9 Public Passenger Vehicles Act 1981 s 3(3)(b) (as amended: see note 8 supra).

10 Ibid s 3(3)(c) (as amended: see note 8 supra).

11 Ibid s 3(3)(d) (as amended: see note 8 supra).

12 Ibid s 3(3) (as amended: see note 8 supra).

## UPDATE

### 1138 Traffic areas

NOTE 5--Public Passenger Vehicles Act 1981 s 3(2A)-(2C) added: Local Transport Act 2008 s 1.

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### **1139. Traffic commissioners.**

For each traffic area<sup>1</sup> constituted<sup>2</sup> for the purposes of the Public Passenger Vehicles Act 1981 there is a traffic commissioner<sup>3</sup>. The commissioner for each traffic area is appointed<sup>4</sup> by the Secretary of State and is known as the traffic commissioner for the area<sup>5</sup>. The traffic commissioner for a traffic area is responsible for issuing licences under the Public Passenger Vehicles Act 1981<sup>6</sup> and has such other functions as are given to him by, or in pursuance of, the Act or any other enactment<sup>7</sup>. Any person appointed to be the traffic commissioner for a traffic area must act under the general directions of the Secretary of State, and vacate his office on attaining the age of 65 years, or on such later date before he attains the age of 66 years as the Secretary of State may at any time direct, but otherwise holds office during Her Majesty's pleasure<sup>8</sup>.

Where the office of traffic commissioner for any traffic area becomes vacant the Secretary of State may, pending the appointment of a new traffic commissioner for that area<sup>9</sup> appoint a person (whether or not over the age of 65 years) to act as traffic commissioner for that area for a limited period<sup>10</sup>.

Where the Secretary of State proposes to appoint a person to be the traffic commissioner for a traffic area he must, before making the appointment, require that person to declare if he has any, and if so what, financial interest in any transport undertaking which carries passengers or goods by road within Great Britain<sup>11</sup>.

There must be paid to a traffic commissioner and deputy traffic commissioner, and to the persons acting as officers or servants of a traffic commissioner, such remuneration and allowances as may be determined by the Secretary of State with the consent of the Treasury<sup>12</sup>.

1 As to traffic areas see PARA 1138 ante.

2 See PARA 1138 note 5 ante.

3 Public Passenger Vehicles Act 1981 s 4(1) (s 4, Sch 2 substituted by the Transport Act 1985 s 3, Sch 2 Pt I). For the meaning of 'traffic commissioner' see PARA 1138 note 7 ante.

4 In case of illness, incapacity or absence of a traffic commissioner, the Secretary of State may appoint some other person to act as his deputy: Public Passenger Vehicles Act 1981 s 4(6), Sch 2 para 3 (as substituted: see note 3 supra). If the Secretary of State considers that the duties to be performed by a traffic commissioner, or any deputy so appointed to the traffic commissioner, cannot conveniently or efficiently be performed by one person, the Secretary of State may appoint one or more persons to act as deputy to the traffic commissioner: Sch 2 para 4 (as so substituted). A person so appointed must be appointed upon such terms and conditions, including conditions as to the time which he is to devote to the duties of his office, as the Secretary of State may determine, and must act for the traffic commissioner whose deputy he is in such matters as the traffic commissioner, or any deputy appointed by reason of the traffic commissioner's illness, incapacity or absence, may from time to time direct or as the Secretary of State may from time to time by general directions require, and for that purpose must exercise and perform all the powers and duties of the traffic commissioner: Sch 2 para 5 (as so substituted). Subject to the approval of the Treasury, the Secretary of State may appoint such persons to act as officers and servants of a traffic commissioner as he considers appropriate: Sch 2 para 7 (as so substituted). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the

Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

5 Ibid s 4(2) (as substituted: see note 3 supra).

6 Ie PSV operators' licences under ibid ss 12-21 (as amended): see PARAS 1144-1155, 1158-1162 post.

7 Ibid s 4(3) (as substituted: see note 3 supra).

8 Ibid s 4(4) (as substituted: see note 3 supra). The Secretary of State may remove a traffic commissioner from his office for inability or misbehaviour: Sch 2 para 1 (as so substituted).

9 Ie under ibid s 4 (as substituted).

10 Ibid Sch 2 para 6(1) (as substituted: see note 3 supra). Any person so appointed must hold office for such period as the Secretary of State specifies when making the appointment, and during that period be treated for all purposes (except those of Sch 2 para 9 (as substituted) (see note 12 infra)) as the traffic commissioner for the traffic area in question: Sch 2 para 6(2) (as so substituted).

11 Ibid s 4(5) (as substituted: see note 3 supra). For the meaning of 'Great Britain' see PARA 205 note 3 ante. If a traffic commissioner acquires a financial interest in a transport undertaking which carries passengers or goods by road within Great Britain he must, within four weeks after so doing give notice of that acquisition in writing to the Secretary of State specifying the interest so acquired and the Secretary of State after taking the matter into consideration, may if he thinks fit declare that the traffic commissioner has vacated his office: Sch 2 para 2 (as so substituted). Unless the contrary intention appears, 'writing' includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form, and expressions referring to writing are to be construed accordingly: Interpretation Act 1978 s 5, Sch 1.

12 Public Passenger Vehicles Act 1981 Sch 2 para 8 (as substituted: see note 3 supra). The principal civil service pension scheme (within the meaning of the Superannuation Act 1972 s 2 (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARAS 565, 567) which is for the time being in force applies to persons holding the office of traffic commissioner for each of the traffic areas: Public Passenger Vehicles Act 1981 Sch 2 para 9 (as so substituted).

## UPDATE

### 1139 Traffic commissioners

TEXT AND NOTES--One of the traffic commissioners is to be appointed by the Secretary of State to be the senior traffic commissioner: Public Passenger Vehicles Act 1981 s 4A(1) (ss 4A-4D added by the Local Transport Act 2008 s 3(1)). As to the functions of the senior traffic commissioner, see the Public Passenger Vehicles Act 1981 s 4A(2). The senior traffic commissioner may hold office for such period as the Secretary of State specifies when making the appointment, but ceases to hold that office on ceasing to hold office as a traffic commissioner: Public Passenger Vehicles Act 1981 s 4A(3). A traffic commissioner who has been the senior traffic commissioner is eligible for reappointment as the senior traffic commissioner (s 4A(4)), and, in the case of illness, incapacity or absence of the senior traffic commissioner, the Secretary of State may appoint another traffic commissioner to act as deputy for the senior traffic commissioner (s 4A(5)). Where the office of senior traffic commissioner becomes vacant, the Secretary of State may appoint a person to act as senior traffic commissioner pending the appointment of a new senior traffic commissioner (s 4A(6)), and he will hold office for such period as the Secretary of State specifies when making the appointment (s 4A(7)(a)). As to the power of a senior traffic commissioner to deploy other commissioners, see the Public Passenger Vehicles Act 1981 s 4B (not yet in force). The senior traffic commissioner may give to the traffic commissioners guidance or general directions as to the exercise of their functions under any enactment (s 4C(1)-(3)), and must consult each of the specified persons before giving such guidance or directions (s 4C(4) (amended by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 54)). The Secretary of State may give the senior traffic commissioner guidance as to the exercise of any of the senior

traffic commissioners functions (Public Passenger Vehicles Act 1981 s 4D(1)), to which the senior traffic commissioner must have regard (s 4D(2)).

TEXT AND NOTES 1-5--Public Passenger Vehicles Act 1981 s 4(1), (2) substituted: Local Transport Act 2008 s 2(2) (not yet in force).

NOTE 4--The Secretary of State may appoint such number of persons to be deputy traffic commissioners as the Secretary of State thinks fit: Public Passenger Vehicles Act 1981 Sch 2 para 2A(1) (Sch 2 para 2A added by Local Transport Act 2008 s 4(4) (not yet in force)). As to the functions of deputy traffic commissioners, see the Public Passenger Vehicles Act 1981 Sch 2 para 2A(2), (4), (5). Appointment as a deputy traffic commissioner will be on such terms and conditions, including conditions as to the time to be devoted to the duties of the office, as the Secretary of State may determine: Public Passenger Vehicles Act 1981 Sch 2 para 2A(3). Sch 2 paras 3-5 now have effect in relation to the Scottish Traffic Area only: Public Passenger Vehicles Act 1981 Sch 2B (added by Local Transport Act 2008 s 4(6) (not yet in force)).

TEXT AND NOTES 6, 7--Public Passenger Vehicles Act 1981 s 4(3) amended: Local Transport Act 2008 s 2(3) (not yet in force). As to the jurisdiction of a traffic commissioner, see the Public Passenger Vehicles Act 1981 s 2(3A)-(3B) (added by Local Transport Act 2008 s 2(4) (not yet in force)).

TEXT AND NOTE 8--Public Passenger Vehicles Act 1981 s 4(4) amended: Local Transport Act 2008 s 2(5) (not yet in force), s 3(2).

NOTE 8--Public Passenger Vehicles Act 1981 Sch 2 para 1 amended: Local Transport Act 2008 s 4(2), (3) (not yet in force).

NOTES 9, 10--Public Passenger Vehicles Act 1981 Sch 2 para 5A (appointment of acting traffic commissioner during vacancy) added: Local Transport Act 2008 s 4(7) (not yet in force). Public Passenger Vehicles Act 1981 Sch 2 para 6(1) now has effect in relation to any traffic area in Scotland only: Local Transport Act 2008 s 4(8) (not yet in force).

TEXT AND NOTE 11--Public Passenger Vehicles Act 1981 s 4(5) amended: Local Transport Act 2008 s 2(6) (not yet in force).

NOTE 12--Public Passenger Vehicles Act 1981 Sch 2 para 9 amended: Local Transport Act 2008 s 4(9) (not yet in force).

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#### **1140. Publication of information by traffic commissioners.**

Every traffic commissioner<sup>1</sup> must publish, in such form and at such times as may be prescribed<sup>2</sup>, such information with respect to the exercise, or proposed exercise, of any of his functions under the Public Passenger Vehicles Act 1981 or the Transport Act 1985<sup>3</sup> as may be prescribed<sup>4</sup>.

Where the traffic commissioner for a traffic area<sup>5</sup> publishes information<sup>6</sup> he must<sup>7</sup>: (1) send a copy of the publication to every chief officer of police<sup>8</sup>, the passenger transport executive<sup>9</sup> and local authority<sup>10</sup> whose area falls partly or wholly within that traffic area, and where that traffic area falls wholly or partly within London, to Transport for London<sup>11</sup>; and (2) make a copy of it

available (by post if required and on payment of such fee as may be prescribed) to anyone who asks for one<sup>12</sup>.

- 1 As to traffic commissioners see PARA 1139 ante.
- 2 For the meaning of 'prescribed' see PARA 1134 note 8 ante. See the Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) Regulations 1986, SI 1986/1629 (amended by SI 1993/2754); the Public Service Vehicles (London Local Service Licences) Regulations 1986, SI 1986/1691 (amended by SI 1988/408; and amended by virtue of SI 1991/288); and the Public Service Vehicles (Traffic Regulation Conditions) (England and Wales) Regulations 2004, SI 2004/2682.
- 3 See PARAS 1139 ante, 1177 et seq post.
- 4 Public Passenger Vehicles Act 1981 s 5(1) (s 5 substituted by the Transport Act 1985 s 3(2)).
- 5 As to traffic areas see PARA 1138 ante.
- 6 le where he publishes information under the Public Passenger Vehicles Act 1981 s 5 (as substituted and amended).
- 7 Ibid s 5(2) (as substituted: see note 4 supra).
- 8 As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.
- 9 As to passenger transport executives see PARA 247 ante.
- 10 For these purposes 'local authority' means, in England and Wales, the council of any non-metropolitan county, any district or any London borough or the Common Council of the City of London: Public Passenger Vehicles Act 1981 s 5(3) (as substituted: see note 4 supra). As to local government areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq. As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.
- 11 Ibid s 5(2)(a) (as substituted (see note 4 supra); and amended by the Transport for London (Consequential Provisions) Order 2003, SI 2003/1615, art 2, Sch 1 Pt 1 para 8). As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.
- 12 Public Passenger Vehicles Act 1981 s 5(2) (as substituted: see note 4 supra).

## **UPDATE**

### **1140 Publication of information by traffic commissioners**

NOTE 2--See also the Public Service Vehicles (Registration Restrictions) (England and Wales) Regulations 2009, SI 2009/443.

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### **(iii) Licensing of Public Service Vehicles**

#### **A. FITNESS OF PUBLIC SERVICE VEHICLES**

##### **1141. Certificate of initial fitness.**



A public service vehicle<sup>1</sup> adapted to carry more than eight passengers must not be used on a road<sup>2</sup> unless<sup>3</sup>:

- 1714 (1) an appointed examiner<sup>4</sup> has issued a certificate of initial fitness that the prescribed conditions<sup>5</sup> as to fitness are fulfilled in respect of the vehicle<sup>6</sup>; or
- 1715 (2) a certificate of type approval<sup>7</sup> has been issued in respect of the vehicle<sup>8</sup>; or
- 1716 (3) there has been issued in respect of the vehicle a certificate of type approval<sup>9</sup> of a kind which by virtue of regulations is to be treated as the equivalent of a certificate of initial fitness<sup>10</sup>.

If a vehicle is used in contravention<sup>11</sup> of the above provisions<sup>12</sup> the operator<sup>13</sup> of the vehicle is liable<sup>14</sup> on summary conviction to a fine<sup>15</sup>.

Where it appears to the Secretary of State expedient to do so for the purpose of the making of tests or trials of a vehicle or its equipment, he may by order made in respect of that vehicle<sup>16</sup> dispense with such of the prescribed conditions as to fitness<sup>17</sup> as are specified in the order<sup>18</sup>.

1 For the meaning of 'public service vehicle' see PARA 1136 ante.

2 For the meaning of 'road' see PARA 206 ante. The decision whether or not a particular place is a road is a question of fact for the justices; eg Trafalgar Square was found to be a road for the purposes of the Road Traffic Act 1988: *Sadiku v DPP* [2000] RTR 155, applying *Griffin v Squires* [1958] 3 All ER 468, [1958] 1 WLR 1106, DC. It has been held that the users of an office car park were a special class and not the public at large so there was no public access: *R v Spence* [1999] RTR 353, 163 JP 754, CA. A car park has been held not to be a road as a matter of fact: *Cutter v Eagle Star Insurance Co Ltd*, *Clark v Kato* [1998] 4 All ER 417, sub nom *Clarke v General Accident Fire and Life Assurance Corp plc*, *Cutter v Eagle Star Insurance Co Ltd* [1999] RTR 153, HL. See also *R v Murray* [1984] RTR 203, CA; *DPP v Cargo Handling Ltd* [1992] RTR 318, DC.

3 Public Passenger Vehicles Act 1981 s 6(1).

4 ie an examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended): see PARA 698 ante.

5 ie prescribed by regulations made under the Public Passenger Vehicles Act 1981 s 60 (as amended): see PARA 1134 ante. For the meaning of 'prescribed' see PARA 1134 note 8 ante. For the meaning of 'regulations' see PARA 1133 note 1 ante.

6 Ibid s 6(1)(a) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 14). As from a day to be appointed, the Public Passenger Vehicles Act 1981 s 6(1)(a) (as amended) is to provide that a public service vehicle adapted to carry more than eight passengers may not be used on a road unless an examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 ante) or an authorised inspector has issued a certificate of initial fitness that the prescribed conditions as to fitness are fulfilled in respect of the vehicle: Public Passenger Vehicles Act 1981 s 6(1)(a) (as so amended; and further amended by the Transport Act 1982 s 10(3) (substituted by the Road Traffic Act 1991 s 48, Sch 4 para 19(1), (2))). At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed, references in any provision of the Public Passenger Vehicles Act 1981 to an authorised inspector are references to an authorised inspector under the Transport Act 1982 s 8 (as amended) (not yet in force) (see PARA 699 ante) and, where the function to which that provision relates is one of those specified in s 9 (as amended) (not yet in force) (testing and surveillance functions) (see PARA 699 ante), are limited to an authorised inspector authorised under s 8 to exercise that function: Public Passenger Vehicles Act 1981 s 82(1A) (added by the Transport Act 1982 s 74, Sch 5 para 23). At the date at which this volume states the law no such day had been appointed.

At the date at which this volume states the law no regulations had been made for the purposes of the Public Passenger Vehicles Act 1981 s 6(1)(a) (as amended), but by virtue of the Interpretation Act 1978 s 17(2)(b), the following regulations have effect as if made for those purposes: the Public Service Vehicles (Conditions of Fitness, Equipment, Use and Certification) Regulations 1981, SI 1981/257 (amended by SI 1982/20; SI 1982/1058; SI 1984/1763; SI 1986/1812; SI 1987/1150; SI 1988/340; SI 1989/2359; SI 1992/565; SI 1993/3012; SI 1995/305; SI 1997/84; SI 1998/1670; SI 1999/3413; SI 2000/1431; SI 2001/1649; SI 2002/335; SI 2003/1817; SI 2004/1880; SI 2005/1403; SI 2005/2342; SI 2005/2986; SI 2005/3128; SI 2007/502).

As from a day to be appointed regulations may make provision with respect to the examination of vehicles for the purposes of the Public Passenger Vehicles Act 1981 s 6(1)(a) (as amended) by or under the direction of

authorised inspectors and the issue or refusal of certificates of initial fitness by such inspectors on any such examinations: s 6(1A) (added by the Transport Act 1982 s 10(8) (amended by the Road Traffic Act 1991 s 83, Sch 8)). At the date at which this volume states the law no such day had been appointed, and no such regulations had been made.

As from a day to be appointed regulations made under the Public Passenger Vehicles Act 1981 s 6(1A) (as prospectively added and amended), s 10(4) (as prospectively added) (see PARA 1143 note 7 post), or s 20(2A) (as prospectively added) (see PARA 1161 note 8 post) may include provision for the purpose of securing that private-sector examinations are properly carried out in accordance with the regulations, including (but without prejudice to the generality of this provision) provision for the supervision or review of private-sector examinations by persons authorised for the purpose by or under the regulations: Transport Act 1982 s 10(11). As from a day to be appointed 'private-sector examination' means, in relation to an examination under regulations so made, an examination carried out by or under the direction of an authorised inspector; and no person other than an officer of the Secretary of State may be authorised by or under regulations so made to supervise or review an examination carried out in the course of a vehicle testing business carried on by a person other than his own employer: s 10(11). At the date at which this volume states the law no such day had been appointed for the commencement of s 10(11). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

As to access to public service vehicles for disabled people see the Disability Discrimination Act 1995 ss 40-45; the Public Service Vehicles Accessibility Regulations 2000, SI 2000/1970 (as amended); and DISCRIMINATION vol 13 (2007 Reissue) PARAS 635-640.

7 le a certificate under the Public Passenger Vehicles Act 1981 s 10 (as amended): see PARA 1143 post.

8 Ibid s 6(1)(b). The requirement of s 6(1)(b) is to be treated as complied with if a certificate under the corresponding provisions of the Road Traffic Act 1960 s 130 (repealed) was in force immediately before 1 April 1981 or has since that date been issued in respect of the vehicle: Public Passenger Vehicles Act 1981 s 88(1), Sch 6 para 4.

9 le a certificate under the Road Traffic Act 1972 s 47 (repealed) or the Road Traffic Act 1988 ss 55-58 (as amended): see PARAS 703-706 ante.

10 Public Passenger Vehicles Act 1981 s 6(1)(c) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 22). A certificate of fitness issued under the corresponding provisions of the Road Traffic Act 1960 s 129 (repealed), which was in force immediately before 1 April 1981 and had effect on and after that date as if it were a certificate of initial fitness by virtue of the Transport Act 1980 s 17(2) (repealed), continues to have effect as if it were such a certificate: Public Passenger Vehicles Act 1981 Sch 6 para 3.

As to whether a certificate of initial fitness provides any defence in an action based on a defect in the vehicle see *Donnelly v Glasgow Corp* 1953 SC 107, 1953 SLT 161; *Davie v New Merton Board Mills Ltd* [1959] AC 604, [1959] 1 All ER 346, HL.

11 'Contravention', in relation to any condition or provision, includes a failure to comply with the condition or provision; and 'contravene' is to be construed accordingly: Public Passenger Vehicles Act 1981 s 82(1).

12 le *ibid* s 6(1) (as amended): see the text and notes 1-10 *supra*.

13 As to the meaning of 'operator' see PARA 1136 note 7 ante.

14 It is a defence for a person charged with such an offence to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of any such offence: Public Passenger Vehicles Act 1981 s 68(3), (4).

15 Ibid s 6(2). The fine must not exceed level 4 on the standard scale: s 6(2) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see PARA 230 note 3 ante.

16 le for the purposes of the Public Passenger Vehicles Act 1981 s 6 (as amended): see the text and notes 1-15 *supra*.

17 le referred to in *ibid* s 6(1)(a) (as amended): see the text to note 6 *supra*.

18 Ibid s 11(1). While such an order is in force in respect of the vehicle s 6 (as amended) (see the text and notes 1-15 *supra*) has effect in relation to the vehicle as if the prescribed conditions as to fitness referred to in s 6(1)(a) (as amended) (see the text to note 6 *supra*) did not include such of those conditions as are dispensed with by the order: s 11(2). An order under s 11 must specify the period for which it is to continue in force, and may contain, or authorise the imposition of, requirements, restrictions or prohibitions relating to the construction, equipment or use of the vehicle to which the order relates: s 11(3). Where an order under s 11 in

respect of a vehicle is revoked or otherwise ceases to have effect, any certificate of initial fitness issued under s 6 (as amended) in respect of the vehicle while the order was in force is, for the purposes of s 6 (as amended) as regards any use of the vehicle after the order has ceased to have effect, deemed never to have been issued: s 11(4). Orders under s 11 are not made by statutory instrument and relate to particular vehicles only and as such are not recorded in this work.

## UPDATE

### 1141 Certificate of initial fitness

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTES 1-10--Head (3) now provides that a public service vehicle adapted to carry more than eight passengers must not be used on a road unless (a) an EC certificate of conformity; (b) a national small series certificate of conformity; or (c) an individual approval certificate has effect with respect to the vehicle: Public Passenger Vehicles Act 1981 s 6(1)(d) (substituted for s 6(1)(c) by SI 2009/818). 'EC certificate of conformity', 'national small series certificate of conformity', and 'individual approval certificate' have the meaning given by the Road Vehicles (Approval) Regulations 2009, SI 2009/717 (see PARA 700): Public Passenger Vehicles Act 1981 s 6(3) (added by SI 2009/818). In the case of any public service vehicle which, by virtue of SI 2009/717 reg 6, may not be granted a first licence under the Vehicle Excise and Registration Act 1994 s 21 (see PARA 519) or be registered before the issue of a first licence under s 21 unless one of the certificates mentioned in head (3) has effect with respect to the vehicle, the provisions have effect as if heads (1) and (2) were omitted: Public Passenger Vehicles Act 1981 s 6(1ZA), (1ZB) (added by SI 2009/818).

NOTE 6--SI 1981/257 further amended: SI 2008/1458, SI 2009/141, SI 2009/877.

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### 1142. Powers of inspection.

The Secretary of State<sup>1</sup> may: (1) provide and maintain stations where inspections of public service vehicles<sup>2</sup> may be carried out<sup>3</sup>; (2) designate premises as stations where such inspections may be carried out<sup>4</sup>; and (3) provide and maintain apparatus for the carrying out of such inspections<sup>5</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'public service vehicle' see PARA 1136 ante.

3 Public Passenger Vehicles Act 1981 s 8(3)(a) (amended by the Road Traffic Act 1991 s 83, Sch 8).

4 Public Passenger Vehicles Act 1981 s 8(3)(b).

5 Ibid s 8(3)(c). Section 8 (as amended) applies to any motor vehicle (other than a tramcar) which is adapted to carry more than eight passengers but is not a public service vehicle, as it applies to a public service vehicle:

s 9A(1) (s 9A added by the Transport Act 1985 s 33; and amended by the Road Traffic Act 1991 Sch 8). For the meaning of 'motor vehicle' see PARA 210 ante; and for the meaning of 'tramcar' see PARA 219 ante.

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### **1143. Approval of type vehicle.**

Where the Secretary of State<sup>1</sup> is satisfied in respect of one vehicle of a particular type that the prescribed conditions as to fitness<sup>2</sup> are fulfilled in respect of the vehicle he may, on payment of the prescribed fee<sup>3</sup>, approve the vehicle as a type vehicle<sup>4</sup>. Where a type vehicle has been so approved and a declaration in the prescribed form has been made by a person authorised by the Secretary of State in that behalf that any other vehicle conforms in design, construction and equipment with the type vehicle, an appointed examiner<sup>5</sup> may, after examining if he thinks fit that other vehicle, issue a certificate in the prescribed form that the vehicle conforms to the type vehicle<sup>6</sup>.

The Secretary of State may at any time withdraw his approval of a type vehicle and thereafter no certificate that any other vehicle conforms to the type vehicle may be issued<sup>7</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 I.e. prescribed by regulations made under the Public Passenger Vehicles Act 1981 s 60 (as amended): see PARA 1134 ante. For the meaning of 'prescribed' see PARA 1134 note 8 ante. For the meaning of 'regulations' see PARA 1133 note 1 ante. At the date at which this volume states the law no regulations had been made for the purposes of s 10(1), (2), but by virtue of the Interpretation Act 1978 s 17(2)(b), the Public Service Vehicles (Conditions of Fitness, Equipment, Use and Certification) Regulations 1981, SI 1981/257 (as amended) (see PARA 1141 ante) have effect as if so made.

3 See note 2 supra.

4 Public Passenger Vehicles Act 1981 s 10(1). As from a day to be appointed s 10(1) is to provide that where the Secretary of State or the prescribed testing authority is satisfied in respect of one vehicle of a particular type that the prescribed conditions as to fitness are fulfilled in respect of the vehicle the Secretary of State or that authority may, on payment of the prescribed fee, approve the vehicle as a type vehicle: s 10(1) (amended by the Transport Act 1982 s 11(1)). 'Prescribed testing authority' means such person authorised by the Secretary of State under the Transport Act 1982 s 8 (as amended) (not yet in force) (see PARA 699 ante) to carry on a vehicle testing business within the meaning of Pt II (ss 8-26) (as amended) as may be prescribed: Public Passenger Vehicles Act 1981 s 82(1) (definition added by the Transport Act 1982 s 74, Sch 5 para 23). At the date at which this volume states the law no such day had been appointed.

5 I.e. appointed under the Road Traffic Act 1988 s 66A (as added and amended): see PARA 698 ante.

6 Public Passenger Vehicles Act 1981 s 10(2) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 15). As from a day to be appointed the Public Passenger Vehicles Act 1981 s 10(2) is to provide that where a type vehicle has been approved under s 10 (as amended) and a declaration in the prescribed form has been made by a person authorised by the Secretary of State or the prescribed testing authority in that behalf that any other vehicle conforms in design, construction and equipment with the type vehicle, an examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 ante) or an authorised inspector may, after examining if he thinks fit that other vehicle, issue a certificate in the prescribed form that the vehicle conforms to the type vehicle: Public Passenger Vehicles Act 1981 s 10(2) (as so amended; and further amended by the Transport Act 1982 ss 10(3), 11(1)). At the date at which this volume states the law no such day had been appointed. For the meaning of 'authorised inspector' see PARA 1141 note 6 ante.

7 Public Passenger Vehicles Act 1981 s 10(3). However, as regards any such certificate previously issued, the withdrawal of the approval does not affect the operation of that certificate for the purposes of s 6 (as amended) (see PARA 1141 ante): s 10(3). As from a day to be appointed s 10(3) is to provide that approval of a

type vehicle (whether given by the Secretary of State or the prescribed testing authority) may at any time be withdrawn by either of them and thereafter no certificate that any other vehicle conforms to the type vehicle may be issued; but as regards any such certificate previously issued, the withdrawal of the approval does not affect the operation of that certificate for the purposes of s 6 (as amended): s 10(3) (amended by the Transport Act 1982 s 11(1)). At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed regulations may make provision with respect to: (1) the examination of vehicles for the purposes of the Public Passenger Vehicles Act 1981 s 10 (as amended) by or under the direction of authorised inspectors; (2) the approval of vehicles as type vehicles by the prescribed testing authority on such examinations, or the withdrawal of such approval by that authority on such examinations; (3) the issue or refusal of certificates under s 10(2) (as amended) by authorised inspectors; and (4) the authorisation by the prescribed testing authority of persons to make declarations under s 10(2) (as amended): s 10(4) (added by the Transport Act 1982 s 11(2)). At the date at which this volume states the law no such day had been appointed.

The Secretary of State may by order made by statutory instrument repeal the Public Passenger Vehicles Act 1981 s 10 (as amended) from such day as may be specified in the order, and any such order may include provision, to take effect on that day, for the repeal of s 6(1)(b) (see PARA 1141 ante), s 51(1)(b) (as substituted and amended) (see PARA 1165 post), s 65(1)(c) (see PARA 1304 post) and s 66(c) (see PARA 1305 post): s 87.

## UPDATE

### 1143 Approval of type vehicle

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 4--See the Department for Transport (Fees) Order 2009, SI 2009/711 (amended by SI 2009/1885), which specifies for the purposes of the Finance (No 2) Act 1987 s 102(3) the functions to be taken into account in the determination of the fees to be fixed by the Secretary of State.

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## ***B. PUBLIC SERVICE VEHICLE OPERATORS' LICENCES***

### **1144. Public service vehicle operators' licences.**

A public service vehicle<sup>1</sup> may not be used on a road<sup>2</sup> for carrying passengers for hire or reward<sup>3</sup> except under a PSV operator's licence<sup>4</sup>. The authority having power to grant a PSV operator's licence is the traffic commissioner<sup>5</sup> for any traffic area<sup>6</sup> in which, if the licence is granted, there will be one or more operating centres<sup>7</sup> of vehicles used under the licence<sup>8</sup>. A PSV operator's licence authorises the holder to use anywhere in Great Britain<sup>9</sup> vehicles which have their operating centre in the area of the traffic commissioner by whom the licence was granted<sup>10</sup>. A person may hold two or more PSV operators' licences each granted by the traffic commissioner for a different area, but may not at the same time hold more than one such licence granted by the traffic commissioner for the same area<sup>11</sup>.

An application for a PSV operator's licence must be made in such form as the traffic commissioner may require, and an applicant must give the commissioner such information as he may reasonably require for disposing of the application<sup>12</sup>.

If a vehicle is used in contravention<sup>13</sup> of this provision<sup>14</sup>, the operator of the vehicle<sup>15</sup> is liable<sup>16</sup> on summary conviction to a fine<sup>17</sup>.

1 For the meaning of 'public service vehicle' see PARA 1136 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 As to the meaning of 'hire or reward' see PARA 1136 note 6 ante.

4 Public Passenger Vehicles Act 1981 s 12(1) (s 12(1) substituted, and s 12(2)-(4) amended, by the Transport Act 1985 ss 1(3), 3(5), Sch 1 para 4, Sch 2 para 4(4)). For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante. The PSV operator's licence must be granted in accordance with the Public Passenger Vehicles Act 1981 ss 12-29 (as amended) (see PARAS 1145-1155, 1158-1162, 1172-1175 post): s 12(1) (as so substituted).

As to the abolition of special licences for driving heavy goods vehicles and public service vehicles, and for special provisions relating to the licensing of drivers of large goods vehicles and passenger-carrying vehicles see the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 1, Sch 1 (amended, and prospectively further amended, by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 16, Sch 6); Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 2 (amended by the Driving Licences (Community Driving Licence) Regulations 1990, SI 1990/144, reg 2(3), Sch 3 para 2).

5 As to traffic commissioners see PARA 1139 ante.

6 As to traffic areas see PARA 1138 ante.

7 'Operating centre', in relation to a vehicle, means the base or centre at which the vehicle is normally kept: Public Passenger Vehicles Act 1981 s 82(1).

8 Ibid s 12(2) (as amended: see note 4 supra).

9 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

10 Public Passenger Vehicles Act 1981 s 12(2) (as amended: see note 4 supra), which is expressed to be subject to the provisions of Pt II (ss 6-29) (as amended).

11 Ibid s 12(3) (as amended: see note 4 supra).

12 Ibid s 12(4) (as amended: see note 4 supra).

13 As to the meaning of 'contravention' see PARA 1141 note 11 ante.

14 Ie the Public Passenger Vehicles Act 1981 s 12(1) (as amended): see the text to note 4 supra.

15 As to the meaning of 'operator' see PARA 1136 note 7 ante.

16 It is a defence for a person charged with such an offence to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of any such offence: Public Passenger Vehicles Act 1981 s 68(3), (4).

17 Ibid s 12(5). The fine must not exceed level 4 on the standard scale: s 12(5) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see PARA 230 note 3 ante.

## UPDATE

### 1144 Public service vehicle operators' licences

NOTES 1-4--As to the making of regulations which relate to the detention, removal and disposal of public service vehicles which are adapted to carry more than eight passengers and in respect of which it appears that the Public Passenger Vehicles Act 1981 s 12(1) is contravened, see the Public Passenger Vehicles Act 1981 s 12A, Sch 2A (added by the Local Transport Act 2008 s 47, Sch 3; Public Passenger Vehicles Act 1981 Sch 2A amended by SI 2009/1885). See also the Public Service Vehicles (Enforcement Powers) Regulations 2009, SI 2009/1964. As to the making of regulations

which relate to a vehicle which is a licensed hire car for the purposes of the Transport Act 1985 s 12 at any time when that vehicle is being used to provide a local service under a special licence, see the Local Services (Operation by Licensed Hire Cars) Regulations 2009, SI 2009/2863.

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### **1145. Classification of licences.**

A PSV operator's licence<sup>1</sup> may either be a standard licence<sup>2</sup> or a restricted licence<sup>3</sup>.

A standard licence authorises the use of any description of public service vehicle<sup>4</sup> and may authorise the use either on both national and international operations<sup>5</sup> or on national operations only<sup>6</sup>.

A restricted licence authorises the use (whether on national or international operations) of<sup>7</sup>: (1) public service vehicles not adapted<sup>8</sup> to carry more than eight passengers<sup>9</sup>; and (2) public service vehicles not adapted to carry more than 16 passengers when used<sup>10</sup>: (a) otherwise than in the course of a business of carrying passengers<sup>11</sup>; or (b) by a person whose main occupation is not the operation of public service vehicles adapted to carry more than eight passengers<sup>12</sup>.

1 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante.

2 'Standard licence' means a PSV operator's licence which is not a restricted licence: Public Passenger Vehicles Act 1981 s 82(1). 'Restricted licence' means such a PSV operator's licence as is mentioned in s 13(3) (see the text to note 7 infra): s 82(1).

3 Ibid s 13(1).

4 For the meaning of 'public service vehicle' see PARA 1136 ante.

5 'National operation' means a passenger transport operation wholly within the United Kingdom: Public Passenger Vehicles Act 1981 s 82(1). For the meaning of 'United Kingdom' see PARA 224 note 5 ante. 'International operation' means a passenger transport operation starting or terminating in the United Kingdom and involving an international journey by the vehicle concerned, whether or not any driver leaves or enters the United Kingdom with that vehicle: s 82(1). For the meaning of 'driver' see PARA 207 ante.

6 Ibid s 13(2).

7 Ibid s 13(3).

8 As to the meaning of 'adapted' see PARA 1136 note 4 ante.

9 Public Passenger Vehicles Act 1981 s 13(3)(a).

10 Ibid s 13(3)(b).

11 Ibid s 13(3)(b)(i). For these purposes, a vehicle used for carrying passengers by a local or public authority is not to be regarded as used in the course of a business of carrying passengers unless it is used by the public service vehicle undertaking of that authority: s 13(4). For the meaning of 'local authority' see PARA 1138 note 2 post. As to the meaning of 'in the course of a business of carrying passengers' see PARA 1136 ante.

12 Ibid s 13(3)(b)(ii).

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### **1146. Grant of licences.**

An application for a standard licence<sup>1</sup> may not be granted unless the traffic commissioner<sup>2</sup> is satisfied<sup>3</sup> that the applicant meets the requirements<sup>4</sup>: (1) to be of good repute<sup>5</sup>; (2) to be of appropriate financial standing<sup>6</sup>; and (3) as to professional competence<sup>7</sup>. An application for a restricted licence<sup>8</sup> may not be granted unless the traffic commissioner is satisfied that the applicant meets the requirements to be of good repute and of appropriate financial standing<sup>9</sup>.

Notwithstanding that it appears to the traffic commissioner on an application for a standard or restricted licence that the above requirements are met, the application may not be granted unless the commissioner is further satisfied<sup>10</sup>: (a) that there will be adequate facilities or arrangements for maintaining in a fit and serviceable condition<sup>11</sup> the vehicles proposed to be used under the licence<sup>12</sup>; and (b) that there will be adequate arrangements for securing compliance with the requirements of the law relating to the driving and operation of those vehicles<sup>13</sup>. In considering on an application for a PSV operator's licence<sup>14</sup> whether the requirements of heads (a) and (b) above are satisfied, the traffic commissioner may take into account any undertakings given by the applicant (or procured by him to be given) for the purposes of the application and may assume that those undertakings will be fulfilled<sup>15</sup>.

If on an application for a PSV operator's licence the traffic commissioner determines that the relevant requirements of heads (1) to (3) above and the further requirements of heads (a) and (b) above are satisfied he must<sup>16</sup> grant the licence in accordance with the application<sup>17</sup>.

In any case where the traffic commissioner grants an application for a PSV operator's licence, any undertakings taken into account by him<sup>18</sup> that he considers to be material to the granting of the application must be recorded in the licence issued to the applicant<sup>19</sup>.

1 For the meaning of 'standard licence' see PARA 1145 note 2 ante.

2 As to traffic commissioners see PARA 1139 ante.

3 See PARA 1138 note 5 ante.

4 Public Passenger Vehicles Act 1981 s 14(1) (s 14(1), (3) amended by the Transport Act 1985 s 3(5), Sch 2 Pt II).

5 Public Passenger Vehicles Act 1981 s 14(1)(a). As to good repute see PARA 1147 post.

6 Ibid s 14(1)(b). As to appropriate financial standing see PARA 1148 post.

7 Ibid s 14(1)(c). As to professional competence see PARA 1149 post.

8 For the meaning of 'restricted licence' see PARA 1145 note 2 ante.

9 Public Passenger Vehicles Act 1981 s 14(1) (as amended: see note 4 supra). The provisions of Sch 3 (as amended) (see PARAS 1147-1150 post) have effect for supplementing the provisions of s 14(1) (as amended), and for modifying the operation of s 14(1) (as amended) in the case of persons engaged in road passenger transport before 1 January 1978: s 14(2). See the Operation of Public Service Vehicles (Partnership) Regulations 1986, SI 1986/1628 (amended by SI 1990/1850).

10 Public Passenger Vehicles Act 1981 s 14(3) (as amended: see note 4 supra).

11 As to the fitness requirements relating to public service vehicles generally see PARA 1141 ante.



12 Public Passenger Vehicles Act 1981 s 14(3)(a).

13 Ibid s 14(3)(b).

14 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante. As to applications for PSV operators' licences see PARA 1144 ante.

15 Public Passenger Vehicles Act 1981 s 14(3A) (s 14(3A), (5) added by the Deregulation and Contracting Out Act 1994 s 59(2), (3)). In the event of an undertaking by which a service of public service vehicles is provided being purchased compulsorily by a local authority, that part of the value of the undertaking attributable directly or indirectly to the Public Passenger Vehicles Act 1981 or the Transport Act 1985 Pt II (ss 34-46) (as amended) must not be taken into account: Public Passenger Vehicles Act 1981 s 84(2); Transport Act 1985 s 44(3).

16 Ie subject to the Public Passenger Vehicles Act 1981 s 16 (as amended): see PARA 1153 post.

17 Ibid s 14(4) (amended by the Transport Act 1985 Sch 2 Pt II; and the Deregulation and Contracting Out Act 1994 s 68, Sch 14 para 2). Nothing in the Public Passenger Vehicles Act 1981 or the Transport Act 1985 Pt II (as amended) is to be treated as conferring on the holder of a licence granted under it any right to the continuance of any benefits arising from, or from a licence granted under, the Public Passenger Vehicles Act 1981 or the Transport Act 1985 Pt II (as amended), or from any conditions attached to any such licence: Public Passenger Vehicles Act 1981 s 84(1); Transport Act 1985 s 44(3).

18 Ie under the Public Passenger Vehicles Act 1981 s 14(3A) (as added): see the text to note 15 supra.

19 Ibid s 14(5) (as added: see note 15 supra).

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### **1147. Good repute.**

In determining whether an individual<sup>1</sup> is of good repute, a traffic commissioner<sup>2</sup> must have regard to all the relevant evidence and in particular to<sup>3</sup>: (1) relevant convictions<sup>4</sup> of his and of his employees and agents<sup>5</sup>; and (2) such other information as the commissioner may have as to his previous conduct, in whatever capacity, in relation to the operation of vehicles of any description in the course of a business<sup>6</sup>.

In determining whether a company<sup>7</sup> is of good repute, a traffic commissioner must have regard to all the relevant evidence and in particular to<sup>8</sup>: (a) relevant convictions of the company and its officers, employees and agents<sup>9</sup>; and (b) such other information as the commissioner may have as to previous conduct of the company's officers, employees and agents in relation to the operation of vehicles of any description in the course of any business<sup>10</sup> carried on by the company, and each of the company's directors<sup>11</sup>, in whatever capacity, in relation to the operation of vehicles of any description in the course of any other business<sup>12</sup>.

A traffic commissioner must determine that an individual is not of good repute if he has more than one conviction for a serious offence<sup>13</sup> or has been convicted of road transport offences<sup>14</sup>.

1 For these purposes, references to an individual include references to a transport manager as well as to an individual who is an applicant for, or the holder of, a PSV operator's licence: Public Passenger Vehicles Act 1981 ss 14(2), 17(6), Sch 3 para 1(10) (Sch 3 para 1(3)-(10) added by the Public Service Vehicle Operators (Qualifications) Regulations 1990, SI 1990/1851, reg 2, Schedule). 'Transport manager', in relation to a business, means an individual who, either alone or jointly with one or more other persons, has continuous and effective responsibility for the management of the road passenger transport operations of the business: Public Passenger Vehicles Act 1981 s 82(1). For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante.

The word 'individual' is used instead of the word 'person' in order, presumably, to exclude bodies of persons corporate or unincorporate: cf the definition of 'person' in the Interpretation Act 1978 s 5, Sch 1 (see STATUTES vol 44(1) (Reissue) PARA 1382); and *Whitney v IRC* [1926] AC 37 at 43 per Viscount Cave LC. However, it must be borne in mind that these provisions implement EC Council Directive 96/76 (OJ L277, 14.10.98, p 17) which amends EC Council Directive 96/26 (OJ L124, 23.05.96, p 1) on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations, and thus this term has to be interpreted in accordance with the meaning it bears in the Directives. As to the consistent interpretation of national law implementing an EC directive see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 24.

2 As to traffic commissioners see PARA 1139 ante.

3 Public Passenger Vehicles Act 1981 ss 12(2), 17(6), Sch 3 para 1(1) (Sch 3 para 1 amended by the Transport Act 1985 s 3(5), Sch 2 Pt II para 4(21)).

4 'Relevant conviction' means a conviction (other than a spent conviction) of any offence prescribed for the purposes of the Public Passenger Vehicles Act 1981, or an offence under the law of Northern Ireland, or of a country or territory outside the United Kingdom, corresponding to an offence so prescribed: s 82(1). For the meaning of 'prescribed' see PARA 1134 note 8 ante. For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

5 Ibid Sch 3 para 1(1)(a). As from a day to be appointed, Sch 3 para 1(1) is amended with the effect of adding another head in the text, requiring a traffic commissioner to have regard to relevant fixed penalty notices issued to him and to his employees and agents: Sch 3 para 1(1)(aa) (added by the Road Safety Act 2006 s 7(1), (3)). In the Public Passenger Vehicles Act 1981 Sch 3 para 1(1)(aa) (as added) and Sch 3 para 1(2)(aa) (as added) (see note 9 infra), 'relevant fixed penalty notice' means a fixed penalty notice or conditional offer issued under the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended) in respect of an offence prescribed for the purposes of the Public Passenger Vehicles Act 1981: Sch 3 para 1(2A) (added by the Road Safety Act 2006 s 7(5)). For the meaning of 'fixed penalty notice' see PARA 1094 ante; and as to conditional offers see PARA 1117 ante. At the date at which this volume states the law no such day had been appointed.

6 Public Passenger Vehicles Act 1981 Sch 3 para 1(1)(b) (as amended: see note 3 supra).

7 'Company' means a body corporate: ibid s 82(1). As to bodies corporate see generally COMPANIES; CORPORATIONS.

8 Ibid Sch 3 para 1(2) (as amended: see note 3 supra).

9 Ibid Sch 3 para 1(2)(a). As from a day to be appointed, Sch 3 para 1(2) is amended, with the effect of adding another head in the text, requiring the traffic commissioner to have regard to relevant fixed penalty notices issued to the company's officers, employees and agents: Sch 3 para 1(2)(aa) (added by the Road Safety Act 2006 s 7(4)). At the date at which this volume states the law no such day had been appointed.

10 As to the meaning of 'in the course of a business' see PARA 1136 note 8 ante.

11 'Director', in relation to a company, includes any person who occupies the position of a director, by whatever name called: Public Passenger Vehicles Act 1981 s 82(1).

12 Ibid Sch 3 para 1(2)(b) (as amended: see note 3 supra).

13 A serious offence is: (1) an offence under the law in force in any part of the United Kingdom for which a sentence of imprisonment for a term exceeding three months, a fine exceeding level 4 on the standard scale or a community order requiring the offender to perform unpaid work for more than 60 hours was imposed; and (2) any corresponding offence under the law of a country or territory outside the United Kingdom for which a corresponding punishment was imposed: ibid Sch 3 para 1(4) (as added: see note 1 supra).

References to an offence under the law in force in any part of the United Kingdom include a reference to a civil offence (wherever committed) within the meaning of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 (see ARMED FORCES vol 2(2) (Reissue) PARA 422): Public Passenger Vehicles Act 1981 Sch 3 para 1(7) (as so added).

'A sentence of imprisonment' includes any form of custodial sentence or order other than one under the enactments relating to mental health; and 'a community order' means an order under the Criminal Justice Act 2003 s 177 or a community punishment order made before the commencement of that provision (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 163): Public Passenger Vehicles Act 1981 Sch 3 para 1(6) (as so added; and amended by virtue of the Criminal Justice and Court Services Act 2000 s 44; and by the Criminal Justice Act 2003 s 304, Sch 32 Pt 1 para 32(1), (3)).

As to the standard scale see PARA 230 note 3 ante.

14 Public Passenger Vehicles Act 1981 Sch 3 para 1(3) (as added (see note 1 supra); and Sch 3 para 1(3), (5) substituted by the Public Service Vehicle Operators (Qualifications) Regulations 1999, SI 1999/2431, reg 2). The Public Passenger Vehicles Act 1981 Sch 3 para 1(3) (as added and substituted) is without prejudice to the power of a traffic commissioner to determine that an individual is not of good repute for reasons other than convictions of the kind mentioned in Sch 3 para 1(3) (as added and substituted): Sch 3 para 1(9) (as so added). For the purposes of Sch 3 para 1(3) (as added and substituted), spent convictions are disregarded; and a traffic commissioner may also disregard an offence if such time as he considers appropriate has elapsed since the date of the conviction: Sch 3 para 1(8) (as so added).

A road transport offence is: (1) an offence under the law of any part of the United Kingdom relating to road transport, including in particular an offence relating to drivers' hours of work or rest periods, the weights or dimensions of commercial vehicles, road or vehicle safety or the protection of the environment, and any other offence concerning professional liability; or (2) any corresponding offence under the law of a country or territory outside the United Kingdom: Sch 3 para 1(5) (as so added and substituted). See note 13 supra.

## UPDATE

### 1147 Good repute

NOTE 1--Directive 96/26 replaced with effect from 4 December 2011: European Parliament and EC Council Regulation 1071/2009 (OJ L300, 14.11.2009, p 51).

NOTE 13--Public Passenger Vehicles Act 1981 Sch 3 para 1(6), (7) amended: Armed Forces Act 2006 Sch 16 para 90.

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### 1148. Appropriate financial standing.

Being of appropriate financial standing in relation to an applicant for, or holder of, a PSV operator's licence<sup>1</sup> consists in having available sufficient financial resources to ensure the establishment and proper administration of the business carried on, or proposed to be carried on, under the licence<sup>2</sup>.

An applicant for, or the holder of, a standard licence<sup>3</sup> is not to be considered to be of the appropriate financial standing unless he has available to him capital and reserves of an amount equal to or exceeding the aggregate of<sup>4</sup> 9,000 euros for the first or only vehicle which is to be or is authorised under the licence<sup>5</sup>, and 5,000 euros for each additional vehicle which is to be or is so authorised<sup>6</sup>.

1 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante.

2 Public Passenger Vehicles Act 1981 ss 14(2), 17(6), Sch 3 para 2(1) (renumbered by the Public Service Vehicle Operators (Qualifications) Regulations, SI 1990/1851, reg 2, Schedule).

3 For the meaning of 'standard licence' see PARA 1145 note 2 ante.

4 Public Passenger Vehicles Act 1981 Sch 3 para 2(2) (added by the Public Service Vehicle Operators (Qualifications) Regulations, SI 1990/1851, Schedule; substituted by the Public Service Vehicle Operators (Qualifications) Regulations 1999, SI 1999/2431, reg 3; and amended by the Public Service Vehicle Operators (Qualifications) (Amendment) Regulations 2004, SI 2004/3223, reg 2).

- 5 Public Passenger Vehicles Act 1981 Sch 3 para 2(2)(a) (as added and substituted: see note 4 supra).
- 6 Ibid Sch 3 para 2(2)(b) (as added and substituted: see note 4 supra).

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### **1149. Professional competence.**

References in Part II of the Public Passenger Vehicles Act 1981<sup>1</sup> to professional competence are to the professional competence of an individual; and a company<sup>2</sup> satisfies the requirement as to professional competence if, and so long as it has a transport manager<sup>3</sup> or transport managers of its road transport business who, or each of whom, is of good repute and professionally competent<sup>4</sup>.

Where an individual is not himself professionally competent, the requirement as to professional competence must be regarded as satisfied in relation to him if, and so long as, he has a transport manager of his road passenger transport business who is of good repute and professionally competent<sup>5</sup>.

Where the holder of a PSV operator's licence<sup>6</sup> relies on a single transport manager to satisfy the requirement as to professional competence and that manager<sup>7</sup>: (1) dies or ceases by reason of physical disability or mental disorder to be capable of discharging his duties as transport manager<sup>8</sup>; (2) ceases to work for the business<sup>9</sup>; or (3) ceases to be of good repute<sup>10</sup>, the holder must nevertheless not be treated as failing to satisfy that requirement until the expiry of such period as in the opinion of<sup>11</sup> the relevant traffic commissioner<sup>12</sup> is reasonably required for the appointment of a new transport manager<sup>13</sup>.

Where the holder of a PSV operator's licence is a company with two or more transport managers and any of them ceases to be of good repute the company must nevertheless not be treated as failing to satisfy the requirement as to professional competence until the expiry of such period as in the opinion of the relevant traffic commissioner is reasonably required for his removal or the appointment of a transport manager in his place<sup>14</sup>.

An individual must be regarded as professionally competent for the purpose of Part II of the Public Passenger Vehicles Act 1981 if, and only if<sup>15</sup>: (a) he has demonstrated that he possesses the requisite skills<sup>16</sup> by passing a written examination<sup>17</sup> organised by an approved body<sup>18</sup> and is the holder of a certificate<sup>19</sup> to that effect issued by that body<sup>20</sup>; or (b) he is the holder of any other certificate of competence, diploma or other qualification recognised for these purposes by the Secretary of State<sup>21</sup>.

1 Ie the Public Passenger Vehicles Act 1981 Pt II (ss 6-29) (as amended).

2 For the meaning of 'company' see PARA 1147 note 7 ante.

3 For the meaning of 'transport manager' see PARA 1147 note 1 ante.

4 Public Passenger Vehicles Act 1981 ss 14(2), 17(6), Sch 3 para 3 (amended by the Public Service Vehicle Operators (Qualifications) Regulations 1990, SI 1990/1851, reg 2, Schedule). As to good repute see PARA 1147 ante.

5 Public Passenger Vehicles Act 1981 Sch 3 para 4.

6 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante.

7 Public Passenger Vehicles Act 1981 Sch 3 para 5(1) (renumbered and amended by the Public Service Vehicle Operators (Qualifications) Regulations 1990, SI 1990/1851, Schedule).

8 Public Passenger Vehicles Act 1981 Sch 3 para 5(1)(a).

9 Ibid Sch 3 para 5(1)(b).

10 Ibid Sch 3 para 5(1)(c).

11 See PARA 1138 note 5 ante.

12 As to traffic commissioners see PARA 1139 ante.

13 Public Passenger Vehicles Act 1981 Sch 3 para 5(1) (amended by the Transport Act 1985 s 3(5), Sch 2 Pt II para 4(21)).

14 Public Passenger Vehicles Act 1981 Sch 3 para 5(2) (added by the Public Service Vehicle Operators (Qualifications) Regulations 1990, SI 1990/1851, Schedule).

15 Public Passenger Vehicles Act 1981 Sch 3 para 6(1) (renumbered by the Public Service Vehicle Operators (Qualifications) Regulations 1999, SI 1999/2431, reg 4(2)), which is expressed to be subject to the Public Passenger Vehicles Act 1981 Sch 3 para 10 (see PARA 1150 post).

16 For these purposes 'the requisite skills' means knowledge corresponding to the level of training, for either national or international transport operations as the case may be, provided for in EC Council Directive 26/96 (OJ L124, 23.5.96, p 1) on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations, Annex I (as substituted) in the subjects listed there: Public Passenger Vehicles Act 1981 Sch 3 para 7 (definition amended by the Public Service Vehicle Operators (Qualifications) Regulations 1999, SI 1999/2431, reg 4(3)). For the meanings of 'national operation' and 'international operation' see PARA 1145 note 5 ante.

17 The written examination may be supplemented by an oral examination organised by the approved body in the form set out in EC Council Directive 26/96 (OJ L124, 23.5.96, p 1) Annex I (as substituted): Public Passenger Vehicles Act 1981 Sch 3 para 6(2) (Sch 3 para 6(2), (3) added by the Public Service Vehicle Operators (Qualifications) Regulations 1999, SI 1999/2431, reg 4(2)).

18 For these purposes 'approved body' means: (1) a body approved by the Secretary of State for the purposes of the Public Passenger Vehicles Act 1981 Sch 3 para 6 (as amended); or (2) a body approved by the Department of the Environment for Northern Ireland for the purposes of the Transport Act (Northern Ireland) 1967 s 46A(5)(c) (as added and amended); or (3) a body or authority designated by another member state for the purposes of EC Council Directive 26/96 (OJ L124, 23.5.96, p 1) art 3(4) (as substituted): Public Passenger Vehicles Act 1981 Sch 3 para 7 (definition as amended: see note 16 supra).

As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

'Member', in the expression 'member state', refers to membership of the Communities: European Communities Act 1972 s 1(2) (as amended), Sch 1 Pt II; definition applied by the Interpretation Act 1978 s 5, Sch 1.

19 The certificate must take the form of the certificate set out in EC Council Directive 26/96 (OJ L124, 23.5.96, p 1) Annex Ia (as added): Public Passenger Vehicles Act 1981 Sch 3 para 6(3) (as added: see note 17 supra).

20 Ibid Sch 3 para 6(1)(a) (as renumbered (see note 15 supra); and substituted by the Public Service Vehicle Operators (Qualifications) Regulations 1999, SI 1999/2431, reg 4(1)).

21 Public Passenger Vehicles Act 1981 Sch 3 para 6(b) (as renumbered: see note 15 supra).

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### **1150. Persons engaged in road transport before 1 January 1978.**

An individual or company<sup>1</sup> authorised to engage in the occupation of road passenger transport operator<sup>2</sup> at any time before 1 January 1978 is deemed until the contrary is proved to satisfy the requirements to be of good repute<sup>3</sup> and appropriate financial standing<sup>4</sup> and, if so authorised before 1 January 1975, also to satisfy the requirement as to professional competence<sup>5</sup>.

An applicant for a standard licence<sup>6</sup>, or for the variation of such a licence, is not obliged to furnish to the traffic commissioner<sup>7</sup> in support of his application information relating to a requirement which is deemed to be satisfied<sup>8</sup> unless it appears to the commissioner that there are grounds for thinking that the requirement is not in fact satisfied<sup>9</sup>.

An individual is to be regarded as professionally competent for the purpose of Part II of the Public Passenger Vehicles Act 1981<sup>10</sup> if he was authorised to engage in the occupation of road passenger transport operator before 1 January 1978 and was so authorised for a period of, or for periods amounting in the aggregate to, two years during the period 1 January 1975 to 31 December 1979, or at any time in the period 1 January 1970 to 31 December 1974<sup>11</sup>.

The above provisions<sup>12</sup> apply only to persons applying for, and to holders of, standard licences<sup>13</sup>.

1 For the meaning of 'company' see PARA 1147 note 7 ante.

2 For the purposes of the Public Passenger Vehicles Act 1981 ss 14(2), 17(6), Sch 3 paras 9, 10 (Sch 3 para 9 as amended), an individual or company was authorised to engage in the occupation of road passenger transport operator at any time if, and only if, at that time: (1) he was the holder, or one of the joint holders, of a public service vehicle licence under the Road Traffic Act 1960 s 127 (now repealed), or the corresponding provision of the law of Northern Ireland, relating to a vehicle adapted to carry more than eight passengers; or (2) he was by virtue of a permit under the Public Service Vehicles (Licences and Certificates) Regulations 1952 SI 1952/900, reg 20 (now revoked), or the corresponding provision of the law of Northern Ireland, deemed to be the holder or one of the joint holders of such a licence; or (3) he was so authorised under the law of another member state; or (4) he was transport manager of a person within head (1), head (2) or head (3) supra: Public Passenger Vehicles Act 1981 Sch 3 para 8(2).

3 As to the requirement of good repute see PARA 1147 ante.

4 As to the requirement of appropriate financial standing see PARA 1148 ante.

5 Public Passenger Vehicles Act 1981 Sch 3 para 9(1). As to the requirement for professional competence see PARA 1149 ante.

6 For the meaning of 'standard licence' see PARA 1145 note 2 ante.

7 As to traffic commissioners see PARA 1139 ante.

8 Ie by virtue of the Public Passenger Vehicles Act 1981 Sch 3 para 9(1): see the text to note 5 supra.

9 Ibid Sch 3 para 9(2) (amended by the Transport Act 1985 s 3(5), Sch 2 Pt II para 4(21)).

10 Ie the Public Passenger Vehicles Act 1981 Pt II (ss 6-29) (as amended).

11 Ibid Sch 3 para 10.

12 Ie ibid Sch 3 paras 9, 10 (Sch 3 para 9 as amended): see the text and notes 1-11 supra.

13 Ibid Sch 3 para 8(1).

Service Vehicles/B. PUBLIC SERVICE VEHICLE OPERATORS' LICENCES/1151. Objections to applications for a public service vehicle operator's licence.

### **1151. Objections to applications for a public service vehicle operator's licence.**

Where an application is made for the grant of a PSV operator's licence<sup>1</sup> under the Public Passenger Vehicles Act 1981, any chief officer of police<sup>2</sup> or local authority<sup>3</sup> may object to the grant of the licence on the ground that one or more of the requirements<sup>4</sup> are not satisfied in relation to the application<sup>5</sup>. Such an objection must be made within the prescribed time<sup>6</sup> and in the prescribed manner<sup>7</sup> and must contain particulars of the ground on which it is made<sup>8</sup>. Where the traffic commissioner<sup>9</sup> considers there to be exceptional circumstances that justify his doing so, he may direct that an objection be treated for the purposes of Part II of the Public Passenger Vehicles Act 1981<sup>10</sup> as duly made<sup>11</sup>, notwithstanding that it was not made within the prescribed time or in the prescribed manner<sup>12</sup>.

However, the above provisions do not apply in relation to any application for a special licence<sup>13</sup>.

1 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante. As to applications for PSV operators' licences see PARA 1144 ante.

2 As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

3 For these purposes, 'local authority' means, in England and Wales, the council of a county, district or London borough or the Common Council of the City of London or a passenger transport executive: Public Passenger Vehicles Act 1981 s 14A(4) (s 14A added by the Transport Act 1985 s 25). As to passenger transport executives see PARA 247 ante. As to local government areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq. As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

4 I.e. the requirements mentioned in the Public Passenger Vehicles Act 1981 s 14(1), (3) (as amended): see PARA 1146 ante.

5 Ibid s 14A(1) (as added: see note 3 supra).

6 I.e. prescribed by regulations made under ibid s 60 (as amended): see PARA 1134 ante. For the meaning of 'prescribed' see PARA 1134 note 8 ante. For the meaning of 'regulations' see PARA 1133 note 1 ante. The prescribed time within which an objection must be made is the period of 21 days beginning with the day after the date when the notice of the application is published in Notices and Proceedings: see the Public Service Vehicles (Operators' Licences) Regulations 1995, SI 1995/2908, reg 5(1). As to Notices and Proceedings see PARA 1166 note 7 post.

7 The prescribed manner for making an objection is by serving on the traffic commissioner a document setting out the objection, and signed by or on behalf of the person making the objection: see ibid reg 5(2). Service of a document on the traffic commissioner is effected by delivering it, or sending it by post, or transmitting it by fax, to the traffic commissioner at the office of his traffic area: reg 5(3). A copy of every document setting out an objection must be sent by the objector to the applicant on the day or the next working day after it is made: reg 5(4).

8 Public Passenger Vehicles Act 1981 s 14A(2) (as added: see note 3 supra).

9 As to traffic commissioners see PARA 1139 ante.

10 I.e. the Public Passenger Vehicles Act 1981 Pt II (ss 6-29) (as amended).

11 I.e. under ibid s 14A (as added and amended).

12 Ibid s 14A(2A) (s 14A as added (see note 3 supra); and s 14A(2A) added by the Deregulation and Contracting Out Act 1994 s 60).

13 Public Passenger Vehicles Act 1981 s 14A(5) (as added: see note 3 supra). For the meaning of 'special licence' see PARA 1497 note 10 post.

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### **1152. Duration of licences.**

There must be specified in every PSV operator's licence<sup>1</sup> the date on which the licence is to come into force<sup>2</sup>. Subject to its revocation or other termination under any provision of the Public Passenger Vehicles Act 1981 or another statutory provision<sup>3</sup>, a PSV operator's licence continues in force indefinitely<sup>4</sup>. If the holder of a PSV operator's licence requests the traffic commissioner<sup>5</sup> by whom it was granted to terminate it at any time, the commissioner must comply with the request<sup>6</sup>.

1 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante.

2 Public Passenger Vehicles Act 1981 s 15(1) (amended by the Deregulation and Contracting Out Act 1994 s 61).

3 'Statutory provision' means a provision contained in an Act or in subordinate legislation within the meaning of the Interpretation Act 1978 (see STATUTES vol 44(1) (Reissue) PARA 1232); Public Passenger Vehicles Act 1981 s 82(1).

4 Ibid s 15(2) (s 15(2)-(4) substituted by the Deregulation and Contracting Out Act 1994 s 61). As to the revocation of PSV operators' licences see PARA 1155 post; and as to the termination of licences see PARA 1156 post.

5 As to traffic commissioners see PARA 1139 ante.

6 Public Passenger Vehicles Act 1981 s 15(3) (as substituted: see note 4 supra). The traffic commissioner may refuse to comply with the request if he is considering taking action in respect of the licence under s 17(1) or (2) (as amended) (see PARA 1155 post); s 15(4) (as so substituted).

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### **1153. Conditions attached to a public service vehicle operator's licence.**

A traffic commissioner<sup>1</sup> on granting a PSV operator's licence<sup>2</sup> must attach to it one or more conditions specifying the maximum number of vehicles<sup>3</sup> (being vehicles having their operating centre<sup>4</sup> in the area of that commissioner) which the holder of the licence may at any one time use under the licence<sup>5</sup>. Conditions attached to a PSV operator's licence may specify different maximum numbers for different descriptions of vehicle<sup>6</sup>.

A traffic commissioner may, whether at the time when the licence is granted or at any time after that, attach to a PSV operator's licence granted by him such conditions or additional conditions as he thinks fit<sup>7</sup> for restricting or regulating the use of vehicles under the licence, being conditions of any prescribed description<sup>8</sup>. Without prejudice to the generality of the power to prescribe descriptions of conditions, the descriptions which may be so prescribed



include conditions for regulating the places at which vehicles being used under a PSV operator's licence may stop to take up or set down passengers<sup>9</sup>.

The traffic commissioner by whom a PSV operator's licence was granted may at any time while it is in force vary the licence by altering in such manner as he thinks fit any condition attached<sup>10</sup> to the licence or removing any condition so attached to the licence<sup>11</sup>.

On the application of the holder of a PSV operator's licence, the traffic commissioner by whom the licence was granted may at any time while it is in force<sup>12</sup>: (1) vary the conditions attached<sup>13</sup> to the licence<sup>14</sup>; (2) exercise his powers (whether of alteration or removal)<sup>15</sup>; or (3) vary or remove any undertaking recorded in the licence<sup>16</sup>.

In considering whether to grant such an application, the traffic commissioner may take into account any undertakings given by the applicant (or procured by him to be given) for the purposes of the application, and may assume that those undertakings will be fulfilled<sup>17</sup>. In any case where the traffic commissioner grants such an application, any such undertakings taken into account by him that he considers to be material to the granting of the application must be recorded in the licence as varied<sup>18</sup>.

If a condition attached to a PSV operator's licence is contravened<sup>19</sup>, the holder of the licence is liable<sup>20</sup> on summary conviction to a fine<sup>21</sup>.

Compliance with any condition attached to a PSV operator's licence<sup>22</sup> may be temporarily dispensed with by the traffic commissioner by whom the licence was granted if he is satisfied that compliance with the condition would be unduly onerous by reason of circumstances not foreseen when the condition was attached or, if the condition has been altered, when it was last altered<sup>23</sup>.

The conditions attached<sup>24</sup> to a PSV operator's licence granted by the traffic commissioner for any area do not affect the use by the holder of the licence of a vehicle<sup>25</sup>: (a) under a PSV operator's licence granted to him by the traffic commissioner for another area<sup>26</sup>; or (b) in circumstances such that another person falls to be treated as the operator<sup>27</sup> of the vehicle<sup>28</sup>.

1 As to traffic commissioners see PARA 1139 ante.

2 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante.

3 In the case of a restricted licence, the number specified as the maximum in any condition imposed under the Public Passenger Vehicles Act 1981 s 16(1) (as amended) must not, except in any prescribed case or class of case, exceed two: s 16(1A) (added by the Transport Act 1985 s 24(1)). For the meaning of 'prescribed' see PARA 1134 note 8 ante. For the meaning of 'restricted licence' see PARA 1145 note 2 ante. As to the exclusion of the Public Passenger Vehicles Act 1981 s 16(1A) (as added) in respect of a licence held at any time by a universal service provider in connection with the provision of a universal postal service see the Public Service Vehicles (Operators' Licences) Regulations 1995, SI 1995/2908, reg 25 (amended by SI 2001/1149); and POST OFFICE vol 36(2) (Reissue) PARA 24.

4 For the meaning of 'operating centre' see PARA 1144 note 7 ante.

5 Public Passenger Vehicles Act 1981 s 16(1) (amended by the Transport Act 1985 ss 3(5), 139(2), Sch 2 Pt II para 4(7)(a), Sch 7 para 21(4)), which is expressed to be subject to the Public Passenger Vehicles Act 1981 s 16(1A) (as added) (see note 3 supra) and the Transport Act 1985 s 12(7) (see PARA 1497 post).

6 Public Passenger Vehicles Act 1981 s 16(2).

7 See PARA 1138 note 5 ante.

8 Public Passenger Vehicles Act 1981 s 16(3) (amended by the Transport Act 1985 Sch 2 Pt II para 4(7)(b), (c)). As to the description of conditions which may be attached to a licence so as to restrict or regulate the use of a vehicle see the Public Service Vehicles (Operators' Licences) Regulations 1995, SI 1995/2908, reg 7.

9 Public Passenger Vehicles Act 1981 s 16(4).

10 In any condition attached under *ibid* s 16(3) (as amended): see the text to note 8 supra.

- 11 Ibid s 16(5) (amended by the Transport Act 1985 Sch 2 Pt II para 4(7)(b), (c)).
- 12 Public Passenger Vehicles Act 1981 s 16(6) (amended by the Transport Act 1985 Sch 2 Pt II para 4(7)(d)).
- 13 Ie the conditions attached under the Public Passenger Vehicles Act 1981 s 16(1) (as amended): see the text to note 5 supra.
- 14 Ibid s 16(6)(a) (amended by the Deregulation and Contracting Out Act 1994 ss 68, 81, Sch 14 para 4, Sch 17).
- 15 Public Passenger Vehicles Act 1981 s 16(6)(b) (amended by the Transport Act 1985 Sch 2 Pt II para 4(7)(d)). The text refers to the powers under the Public Passenger Vehicles Act 1981 s 16(5) (as amended): see the text to note 11 supra.
- 16 Ibid s 16(6)(c) (added by the Deregulation and Contracting Out Act 1994 s 59(4)). A person making an application under the Public Passenger Vehicles Act 1981 s 16(6) (as amended) must give to the traffic commissioner such information as he may reasonably require for the discharge of his duties in relation to the application: s 16(6) (as amended: see note 12 supra).
- 17 Public Passenger Vehicles Act 1981 s 16(6A) (s 16(6A), (6B) added by the Deregulation and Contracting Out Act 1994 s 59(5)).
- 18 Public Passenger Vehicles Act 1981 s 16(6B) (as added: see note 17 supra).
- 19 As to the meaning of 'contravention' see PARA 1141 note 11 ante.
- 20 It is a defence for a person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of any offence: Public Passenger Vehicles Act 1981 s 68(3), (4).
- 21 Ibid s 16(7). The fine must not exceed level 3 on the standard scale: s 16(7) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see PARA 230 note 3 ante.
- 22 Ie any condition other than one attached under the Public Passenger Vehicles Act 1981 s 16(1A) (as added): see note 3 supra.
- 23 Ibid s 16(8) (amended by the Transport Act 1985 ss 24(1)(c), 139(3), Sch 2 Pt II para 4(7)(e), Sch 8).
- 24 Ie under the Public Passenger Vehicles Act 1981 s 16(1) (as amended) or s 16(1A) (as added): see the text and notes 1-5 supra.
- 25 Ibid s 16(9) (amended by the Transport Act 1985 Sch 2 Pt II para 4(7)(f)).
- 26 Public Passenger Vehicles Act 1981 s 16(9)(a) (as amended: see note 25 supra).
- 27 As to the meaning of 'operator' see PARA 1136 note 7 ante.
- 28 Public Passenger Vehicles Act 1981 s 16(9)(b). A person falls to be treated as the operator of the vehicle, for example, by virtue of regulations under s 81(1)(a) (see PARA 1136 note 7 ante): s 16(9)(b).

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#### **1154. Conditions attached to a standard licence.**

On issuing a standard licence<sup>1</sup> a traffic commissioner<sup>2</sup> must attach to it the following conditions:

- 1717 (1) a condition requiring the licence holder to inform the commissioner of any event which could affect the fulfilment by the licence holder of any of the

requirements of good repute, appropriate financial standing and professional competence<sup>3</sup>, and to do so within 28 days of the event<sup>4</sup>; and  
 1718 (2) a condition requiring the licence holder to inform the commissioner of any event which could affect the fulfilment by a relevant transport manager<sup>5</sup> of the requirements of good repute or professional competence<sup>6</sup>, and to do so within 28 days of the event coming to the licence holder's knowledge<sup>7</sup>.

Any person who contravenes<sup>8</sup> any such condition attached to a licence of which he is the holder is guilty of an offence and liable on summary conviction to a fine<sup>9</sup>.

1 For the meaning of 'standard licence' see PARA 1145 note 2 ante.

2 As to traffic commissioners see PARA 1139 ante.

3 I.e. the requirements of the Public Passenger Vehicles Act 1981 s 14(1) (as amended): see PARA 1146 ante. As to good repute see PARA 1147 ante; as to appropriate financial standing see PARA 1148 ante; and as to professional competence see PARA 1149 ante.

4 Ibid s 16A(1)(a) (s 16A added by the Public Service Vehicle Operators' (Qualifications) Regulations 1999, SI 1999/2431, reg 5).

5 The reference to a 'relevant transport manager' is a reference to any transport manager employed by the licence holder who is relied on by the licence holder to fulfil the requirement of professional competence (see the Public Passenger Vehicles Act 1981 s 14(1)(c); and PARA 1146 ante): s 16A(2) (as added: see note 4 supra).

6 I.e. the requirements of ibid s 14(1)(a) or s 14(1)(c): see PARA 1146 ante.

7 Ibid s 16A(1)(b) (as added: see note 4 supra).

8 As to the meaning of 'contravene' see PARA 1141 note 11 ante.

9 Public Passenger Vehicles Act 1981 s 16A(3) (as added: see note 4 supra). The fine must not exceed level 4 on the standard scale: s 16A(3) (as so added). As to the standard scale see PARA 230 note 3 ante.

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### **1155. Revocation and suspension of licences.**

The traffic commissioner<sup>1</sup> by whom a standard licence<sup>2</sup> was granted must revoke the licence if it appears to him<sup>3</sup> at any time that the holder no longer satisfies the requirement to be of good repute<sup>4</sup>, the requirement to be of appropriate financial standing<sup>5</sup> or the requirement as to professional competence<sup>6</sup>.

The traffic commissioners by whom a PSV operator's licence<sup>7</sup> was granted may, on any of the grounds specified in heads (a) to (g) below, at any time: (1) revoke the licence; (2) suspend the licence for such period as he directs; or (3) vary any condition attached<sup>8</sup> to the licence, or attach to the licence (whether in addition to or in place of any condition so attached to it) any such condition<sup>9</sup>.

The grounds for action are:

- 1719 (a) that the holder of the licence made or procured to be made for the purposes of his application for the licence, or for the purposes of an application for the variation of the licence, a statement of fact which (whether to his knowledge or not) was false<sup>10</sup>, or a statement of expectation which has not been fulfilled<sup>11</sup>;
- 1720 (b) that any undertaking recorded in the licence has not been fulfilled<sup>12</sup>;
- 1721 (c) that there has been a contravention<sup>13</sup> of any condition attached to the licence<sup>14</sup>;
- 1722 (d) that a prohibition of the driving of unfit vehicles<sup>15</sup> has been imposed with respect to a vehicle owned or operated by the holder of the licence, or that the holder of the licence has been convicted of an offence of having an unfit or overloaded vehicle<sup>16</sup> arising out of the contravention of such a prohibition<sup>17</sup>;
- 1723 (e) in the case of a restricted licence<sup>18</sup>, that the holder no longer satisfies the requirement to be of good repute or the requirement to be of appropriate financial standing<sup>19</sup>;
- 1724 (f) that there has been since the licence was granted or varied a material change in any of the circumstances of the holder of the licence which were relevant to the grant or variation of his licence<sup>20</sup>;
- 1725 (g) the licence is one in relation to which a direction given by a traffic commissioner under the provision relating to the power when disqualifying a former licence holder to direct that certain other PSV operators' licences should be liable to be revoked, suspended<sup>21</sup> has effect<sup>22</sup>.

A traffic commissioner must not take any action<sup>23</sup> in respect of any licence without first holding an inquiry if the holder of the licence requests him to do so<sup>24</sup>. Where a traffic commissioner decides to revoke a licence, he may direct that the revocation must not take effect for such period as appears to him reasonably required to enable the business carried on under the licence to be transferred to another person duly licensed to carry it on<sup>25</sup>. Where a licence is suspended, it remains in force during the time of its suspension subject to the limitation that no vehicles are authorised to be used under it<sup>26</sup>. A traffic commissioner who has suspended a licence may at any time cancel the suspension or, with the consent of the holder of the licence, vary the period for which it is suspended<sup>27</sup>.

1 As to traffic commissioners see PARA 1139 ante.

2 For the meaning of 'standard licence' see PARA 1145 note 2 ante.

3 See PARA 1138 note 5 ante.

4 As to the requirement to be of good repute see PARA 1147 ante.

5 As to the requirement to be of appropriate financial standing see PARA 1148 ante.

6 Public Passenger Vehicles Act 1981 s 17(1) (amended by the Transport Act 1985 ss 3, 139(2), Sch 2 Pt II para 4(8)(a), (c), (d), Sch 7 para 21(6)). As to the requirement of professional competence see PARA 1149 ante. The provisions of the Public Passenger Vehicles Act 1981 s 17(6), Sch 3 (as amended) (supplementary provisions as to qualifications for PSV operators' licences) (see PARAS 1147-1150 ante) apply for the purposes of s 17(1) (as amended) and s 17(3)(d) (see head (e) in the text) as they apply for the purposes of s 14(1) (as amended) (see PARA 1146 ante): s 17(6).

Section 17(1) (as amended) is modified in its application to persons in partnership: see the Operation of Public Service Vehicles (Partnership) Regulations 1986, SI 1986/1628 (amended by SI 1990/1850).

7 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante.

8 Ie attached under the Public Passenger Vehicles Act 1981 s 16(1) (as amended): see PARA 1153 ante.

9 Ibid s 17(2) (amended by the Transport Act 1985 Sch 2 Pt II para 4(8)(b); and the Deregulation and Contracting Out Act 1994 ss 62(2), 68, 81(1), Sch 14 paras 1, 5, Sch 17), which is expressed to be without

prejudice to the Public Passenger Vehicles Act 1981 s 17(1) (as amended). The text refers to any such condition as is mentioned in s 16(1) (as amended): see PARA 1153 ante.

10 A statement may be false on account of what it omits even though it is literally true: see *R v Lord Kylsant* [1932] 1 KB 442, [1931] All ER Rep 179; *R v Bishirgian* [1936] 1 All ER 586, CCA; cf *Curtis v Chemical Cleaning and Dyeing Co Ltd* [1951] 1 KB 805 at 808-809, [1957] 1 All ER 631 at 634, CA, per Ashworth J. Whether or not gain or advantage accrues from the false statement is irrelevant: see *Jones v Meatyard* [1939] 1 All ER 140; *Stevens and Steeds Ltd and Evans v King* [1943] 1 All ER 314; *Clear v Smith* [1981] 1 WLR 399, [1980] Crim LR 246; *Barrass v Reeve* [1980] 3 All ER 705, [1981] 1 WLR 408. Where the false statement was made knowingly the person is also guilty of an offence under the Public Passenger Vehicles Act 1981 s 66 (as amended): see PARA 1305 post.

11 Ibid s 17(3)(a) (amended by the Deregulation and Contracting Out Act 1994 Sch 14 paras 1, 5, Sch 17).

12 Public Passenger Vehicles Act 1981 s 17(3)(aa) (added by the Deregulation and Contracting Out Act 1994 s 59(6)).

13 As to the meaning of 'contravene' see PARA 1141 note 11 ante.

14 Public Passenger Vehicles Act 1981 s 17(3)(b).

15 Ie under the Road Traffic Act 1988 s 69 (as substituted): see PARA 688 post.

16 Ie under ibid s 71(1)(a) or (b) (as substituted): see PARA 691 ante.

17 Public Passenger Vehicles Act 1981 s 17(3)(c) (amended by the Deregulation and Contracting Out Act 1994 Sch 14 paras 1, 5).

18 For the meaning of 'restricted licence' see PARA 1145 note 2 ante.

19 Public Passenger Vehicles Act 1981 s 17(3)(d).

20 Ibid s 17(3)(e).

21 Ie the Transport Act 1985 s 28(4): see PARA 1188 post.

22 Public Passenger Vehicles Act 1981 s 17(3)(f) (added by the Transport Act 1985 Sch 7 para 21(5)).

23 Ie under the Public Passenger Vehicles Act 1981 s 17(1) (as amended) or s 17(2) (as amended): see the text and notes 1-9 supra.

24 Ibid s 17(4) (amended by the Transport Act 1985 Sch 2 Pt II para 4(8)(a), (c), (d), Sch 7 para 21(6)).

25 Public Passenger Vehicles Act 1981 s 17(5) (amended by the Transport Act 1985 Sch 2 Pt II para 4(8)(a), (c), (d), Sch 7 para 21(6)).

26 Public Passenger Vehicles Act 1981 s 17(5A) (s 17(5A), (5B) added by the Deregulation and Contracting Out Act 1994 s 62(3)).

27 Public Passenger Vehicles Act 1981 s 17(5B) (as added: see note 26 supra).

## UPDATE

### 1155 Revocation and suspension of licences

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1663)/12. PUBLIC PASSENGER VEHICLES/(2) PUBLIC SERVICE VEHICLES/(iii) Licensing of Public Service Vehicles/B. PUBLIC SERVICE VEHICLE OPERATORS' LICENCES/1156. Death or bankruptcy of licence holder.

### **1156. Death or bankruptcy of licence holder.**

A PSV operator's licence<sup>1</sup> is not assignable or, subject to the following provisions, transmissible on death or in any other way<sup>2</sup>.

A PSV operator's licence held by an individual<sup>3</sup> terminates if he<sup>4</sup>: (1) dies<sup>5</sup>; or (2) is adjudged bankrupt<sup>6</sup>; or (3) becomes a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to use a vehicle under the licence<sup>7</sup>.

In relation to a PSV operator's licence held by an individual or by a company<sup>8</sup>, regulations<sup>9</sup> may specify other events relating to the licence holder on the occurrence of which the licence is to terminate<sup>10</sup>.

The traffic commissioner<sup>11</sup> by whom a PSV operator's licence was granted may<sup>12</sup>: (a) direct that the termination of the licence under the above provisions, be deferred for a period not exceeding 12 months<sup>13</sup> or, if it appears to the commissioner<sup>14</sup> that there are special circumstances, 18 months<sup>15</sup>; and (b) authorise the business of the licence holder to be carried on under the licence by some other person during the period of deferment, subject to such conditions as the commissioner may impose<sup>16</sup>.

Until a day to be appointed, these provisions also apply in the case of a London local service licence<sup>17</sup>.

1 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante.

2 Public Passenger Vehicles Act 1981 s 57(1) (s 57(1)-(4) amended by the Transport Act 1985 ss 1(3), 3(5), 139(3), Sch 1 para 9, Sch 2 Pt II para 4(17), Sch 8).

3 As to the meaning of 'individual' see PARA 1147 note 1 ante.

4 Public Passenger Vehicles Act 1981 s 57(2) (as amended: see note 2 supra).

5 Ibid s 57(2)(a).

6 Ibid s 57(2)(b).

7 Ibid s 57(2)(c) (amended by the Mental Capacity Act 2005 s 67(1), Sch 6 para 26). As to persons who lack capacity see MENTAL HEALTH vol 30(2) (Reissue) PARA 641 et seq.

8 For the meaning of 'company' see PARA 1147 note 7 ante. The operation of PSV operators' licences held by a partnership is covered by the Operation of Public Service Vehicles (Partnership) Regulations 1986, SI 1986/1628 (amended by SI 1990/1850). See PARA 1157 post.

9 For the meaning of 'regulations' see PARA 1133 note 1 ante.

10 Public Passenger Vehicles Act 1981 s 57(3) (as amended: see note 2 supra). As to the termination of licences held by companies see the Public Service Vehicles (London Local Service Licences) Regulations 1986, SI 1986/1691, reg 16; and the Public Service Vehicles (Operators' Licences) Regulations 1995, SI 1995/2908, reg 23.

11 As to traffic commissioners see PARA 1139 ante.

12 Public Passenger Vehicles Act 1981 s 57(4) (as amended: see note 2 supra).

13 'Months' means calendar months: Interpretation Act 1978 s 5, Sch 1; and see STATUTES vol 44(1) (Reissue) PARA 1387.

14 See PARA 1138 note 5 ante.

15 Public Passenger Vehicles Act 1981 s 57(4)(a) (as amended: see note 2 supra)

16 Ibid s 57(4)(b) (as amended: see note 2 supra). Where a person is authorised to carry on the business of the holder of a PSV operator's licence by virtue of an authorisation under s 57(4)(b) (as amended), such person must be treated as the holder of any Community licence held by the holder of the PSV operator's licence, for the same period as is specified in that authorisation: Public Service Vehicles (Community Licences) Regulations 1999, SI 199/1322, reg 11. As to Community licences see PARA 1652 post.

17 See the Transport Act 1985 s 44(1), (2) (prospectively repealed by the Greater London Authority Act 1999 s 423, Sch 34 Pt II). At the date at which this volume states the law no day had been appointed for the repeal of these provisions to take effect. As to London local service licences see PARA 1246 post. For the meaning of 'London local service' see PARA 1231 post.

## UPDATE

### 1156 Death or bankruptcy of licence holder

NOTE 8--SI 1986/1628 further amended: SI 2007/1898.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(2) PUBLIC SERVICE VEHICLES/(iii) Licensing of Public Service Vehicles/B. PUBLIC SERVICE VEHICLE OPERATORS' LICENCES/1157. Partnerships.

### 1157. Partnerships.

Provision may be made by regulations<sup>1</sup> for modifying the provisions of the Public Passenger Vehicles Act 1981, the Transport Act 1985 and any other statutory provisions<sup>2</sup> relating to public service vehicles<sup>3</sup>, in their application to the operation of vehicles and the provision of services by persons in partnership<sup>4</sup>.

A PSV operator's licence<sup>5</sup> may not be granted to an unincorporated body as such or to more than one person jointly except in cases permitted by regulations so made<sup>6</sup>. Until a day to be appointed, this provision also applies in the case of a London local service licence<sup>7</sup>.

1 For the meaning of 'regulations' see PARA 1133 note 1 ante.

2 For the meaning of 'statutory provision' see PARA 1152 note 3 ante.

3 For the meaning of 'public service vehicle' see PARA 1136 ante.

4 Public Passenger Vehicles Act 1981 s 58(1); Transport Act 1985 s 132. The Public Passenger Vehicles Act 1981 is modified in its application to PSV operators' licences held by a partnership: see the Operation of Public Service Vehicles (Partnership) Regulations 1986, SI 1986/1628 (amended by SI 1990/1850).

5 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante.

6 Public Passenger Vehicles Act 1981 s 58(2) (amended by the Transport Act 1985 ss 1(3), 139(3), Sch 1 para 9, Sch 8). See note 4 supra.

7 See the Transport Act 1985 s 44(1), (2) (prospectively repealed by the Greater London Authority Act 1999 s 423, Sch 34 Pt II). At the date at which this volume states the law no day had been appointed for the repeal of these provisions to take effect. As to London local service licences see PARA 1246 post. For the meaning of 'London local service' see PARA 1231 post.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(2) PUBLIC SERVICE VEHICLES/(iii) Licensing of Public Service Vehicles/B. PUBLIC SERVICE VEHICLE OPERATORS' LICENCES/1158. Assessors to assist traffic commissioners.

### **1158. Assessors to assist traffic commissioners.**

In considering any financial question which appears to him to arise in relation to the exercise of his functions for the grant of licences<sup>1</sup>, the conditions to be attached to a licence<sup>2</sup>, and the revocation and suspension of licences<sup>3</sup>, a traffic commissioner<sup>4</sup> may be assisted by an assessor drawn from a panel of persons appointed by the Secretary of State<sup>5</sup>. A traffic commissioner must pay to any such assessor, in respect of his services, such remuneration as may be determined by the Secretary of State with the consent of the Treasury<sup>6</sup>.

1    le under the Public Passenger Vehicles Act 1981 s 14 (as amended): see PARA 1146 ante.

2    le under ibid s 16 (as amended): see PARA 1153 ante.

3    le under ibid s 17 (as amended): see PARA 1155 ante.

4    As to traffic commissioners see PARA 1139 ante.

5    Public Passenger Vehicles Act 1981 s 17A(1) (s 17A added by the Transport Act 1985 s 5). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6    Public Passenger Vehicles Act 1981 s 17A(2) (as added: see note 5 supra). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(2) PUBLIC SERVICE VEHICLES/(iii) Licensing of Public Service Vehicles/B. PUBLIC SERVICE VEHICLE OPERATORS' LICENCES/1159. Duty to exhibit operator's licence disc.

### **1159. Duty to exhibit operator's licence disc.**

Where a vehicle is being used in circumstances such that a PSV operator's licence<sup>1</sup> is required, there must be fixed and exhibited on the vehicle in the prescribed manner<sup>2</sup> an operator's disc<sup>3</sup> showing particulars of the operator<sup>4</sup> of the vehicle and of the PSV operator's licence under which the vehicle is being used<sup>5</sup>.

If a vehicle is used in contravention<sup>6</sup> of the duty to exhibit an operator's disc<sup>7</sup>, the operator of the vehicle is liable<sup>8</sup> on summary conviction to a fine<sup>9</sup>.

A traffic commissioner<sup>10</sup> on granting a PSV operator's licence must supply the person to whom the licence is granted<sup>11</sup>:

1726 (1)    with a number of operators' discs equal to the maximum number of vehicles that he may use under the licence in accordance with the condition or conditions attached to the licence<sup>12</sup>; or

1727 (2)    with such lesser number of operators' discs as he may request<sup>13</sup>.



Where, in the case of any PSV operator's licence, the maximum number referred to in head (1) above is increased on the variation of one or more of the conditions there referred to, the traffic commissioner on making the variation must supply the holder of the licence with<sup>14</sup>:

- 1728 (a) such number of additional operators' discs as will bring the total number of operators' discs held by him in respect of the licence to that maximum number<sup>15</sup>; or
- 1729 (b) such lesser number of additional operators' discs as he may request<sup>16</sup>.

Where the number of operators' discs currently held in respect of a PSV operator's licence is less than the maximum number referred to in head (1) above, the traffic commissioner by whom the licence was granted must on the application of the holder of the licence supply him with such number of additional operators' discs as is mentioned in head (a) or head (b) above<sup>17</sup>.

Where, in accordance with regulations<sup>18</sup> under head (ii) below all the operators' discs held in respect of a PSV operator's licence expire at the same time, the traffic commissioner by whom the licence was granted must supply the holder of the licence with a number of new operators' discs equal to the number of discs that have expired<sup>19</sup>.

Regulations may make provision:

- 1730 (i) as to the form of operators' discs and the particulars to be shown on them<sup>20</sup>;
- 1731 (ii) as to the expiry of operators' discs<sup>21</sup>;
- 1732 (iii) with respect to the custody and production of operators' discs<sup>22</sup>;
- 1733 (iv) for the issue of new operators' discs in place of those lost, destroyed or defaced<sup>23</sup>;
- 1734 (v) for the return of operators' discs on their expiry or otherwise ceasing to have effect, on the revocation or termination of a PSV operator's licence or in the event of a variation of one or more conditions attached to a licence<sup>24</sup> having the effect of reducing the maximum number of vehicles which may be used under the licence<sup>25</sup>;
- 1735 (vi) for the voluntary return of operators' discs by the holder of a PSV operator's licence<sup>26</sup>.

1 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante.

2 For the meaning of 'prescribed' see PARA 1134 note 8 ante. As to the manner in which discs are to be fixed and exhibited see the Public Service Vehicles (Operators' Licences) Regulations 1995, SI 1995/2908, reg 12.

3 Issued under the Public Passenger Vehicles Act 1981 s 18 (as amended).

4 As to the meaning of 'operator' see PARA 1136 note 7 ante.

5 Public Passenger Vehicles Act 1981 s 18(1). Section 18(1) is modified in its application to persons in partnership: see the Operation of Public Service Vehicles (Partnership) Regulations 1986, SI 1986/1628 (amended by SI 1990/1850).

6 As to the meaning of 'contravention' see PARA 1141 note 11 ante.

7 In contravention of the Public Passenger Vehicles Act 1981 s 18(1): see the text and notes 1-5 supra.

8 It is a defence for a person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of any offence: *ibid* s 68(3), (4).

9 *Ibid* s 18(4). The fine must not exceed level 3 on the standard scale: s 18(4) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see PARA 230 note 3 ante.

10 As to traffic commissioners see PARA 1139 ante.

11 Public Passenger Vehicles Act 1981 s 18(2) (s 18(2) substituted, and s 18(2A)-(2C) added, by the Deregulation and Contracting Out Act 1994 s 63).

12 Public Passenger Vehicles Act 1981 s 18(2)(a) (as substituted: see note 11 supra). The text refers to conditions attached to the licence under s 16(1) (as amended): see PARA 1153 ante.

13 Ibid s 18(2)(b) (as substituted: see note 11 supra).

14 Ibid s 18(2A) (as added: see note 11 supra).

15 Ibid s 18(2A)(a) (as added: see note 11 supra).

16 Ibid s 18(2A)(b) (as added: see note 11 supra).

17 Ibid s 18(2B) (as added: see note 11 supra).

18 For the meaning of 'regulations' see PARA 1133 note 1 ante. For further requirements relating to discs see the Public Service Vehicles (Operators' Licences) Regulations 1995, SI 1995/2908, regs 10-16.

19 Public Passenger Vehicles Act 1981 s 18(2C) (as added: see note 11 supra)

20 Ibid s 18(3)(a). As to the forms of and particulars to be contained on discs see the Public Service Vehicles (Operators' Licences) Regulations 1995, SI 1995/2908, reg 10.

21 Public Passenger Vehicles Act 1981 s 18(3)(aa) (s 18(3)(aa), (e) added, and s 18(3)(d) amended, by the Deregulation and Contracting Out Act 1994 s 68, Sch 14 para 6). As to the coming into force and expiry of discs see the Public Service Vehicles (Operators' Licences) Regulations 1995, SI 1995/2908, reg 11.

22 Public Passenger Vehicles Act 1981 s 18(3)(b). As to the production of licences and discs for examination see the Public Service Vehicles (Operators' Licences) Regulations 1995, SI 1995/2908, reg 16; and as to the manner in which discs are to be fixed and exhibited see reg 12.

23 Public Passenger Vehicles Act 1981 s 18(3)(c). As to the issue of a duplicate licence or disc and prohibition on unauthorised alteration of a disc see the Public Service Vehicles (Operators' Licences) Regulations 1995, SI 1995/2908, reg 13.

24 Ie under the Public Passenger Vehicles Act 1981 s 16(1) (as amended): see PARA 1153 ante.

25 Ibid s 18(3)(d) (as amended: see note 21 supra). As to the compulsory return of licences and discs see the Public Service Vehicles (Operators' Licences) Regulations 1995, SI 1995/2908, reg 14.

26 Public Passenger Vehicles Act 1981 s 18(3)(e) (as added: see note 21 supra). As to the voluntary return of discs see the Public Service Vehicles (Operators' Licences) Regulations 1995, SI 1995/2908, reg 15.

## UPDATE

### 1159 Duty to exhibit operator's licence disc

NOTE 21--SI 1995/2908 reg 11 amended: SI 2009/786.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(2) PUBLIC SERVICE VEHICLES/(iii) Licensing of Public Service Vehicles/B. PUBLIC SERVICE VEHICLE OPERATORS' LICENCES/1160. Duty to inform traffic commissioner of relevant conviction.

### 1160. Duty to inform traffic commissioner of relevant conviction.

A person who has applied for a PSV operator's licence<sup>1</sup> must forthwith<sup>2</sup> notify the traffic commissioner<sup>3</sup> to whom the application was made if, in the interval between the making of the application and the date on which it is disposed of, a relevant conviction<sup>4</sup> occurs of the applicant, or any employee or agent of his, or of any person proposed to be engaged as

transport manager<sup>5</sup> whose repute and competence are relied on in connection with the application<sup>6</sup>.

It is the duty of the holder of a PSV operator's licence to give notice in writing<sup>7</sup> to the traffic commissioner by whom the licence was granted of any relevant conviction of the holder and any relevant conviction of an any officer, employee or agent of the holder for an offence committed in the course of the holder's road passenger transport business<sup>8</sup>. This must be done within 28 days<sup>9</sup> of the conviction in the case of a conviction of the holder or his transport manager and within 28 days of the conviction coming to the holder's knowledge in any other case<sup>10</sup>.

It is the duty of the holder of a PSV operator's licence within 28 days of the occurrence of<sup>11</sup>:

- 1736 (1) the bankruptcy or liquidation of the holder, or the sequestration of his estate, or the entry into administration<sup>12</sup> of the holder, or the appointment of a receiver, manager or trustee of his road passenger transport business<sup>13</sup>; or
- 1737 (2) any change in the identity of the transport manager of the holder's road passenger transport business<sup>14</sup>,

to give notice in writing of that event to the traffic commissioner by whom the licence was granted<sup>15</sup>.

A traffic commissioner, on granting or varying a PSV operator's licence, or at any time after that, may require the holder of the licence to inform him forthwith or within a time specified by him of any material change specified by him in any of the holder's circumstances which were relevant to the grant or variation of the licence<sup>16</sup>.

A person who fails to comply with the above provisions<sup>17</sup> is liable<sup>18</sup> on summary conviction to a fine<sup>19</sup>.

1 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante. As to applications for PSV operators' licences see PARA 1144 ante.

2 As to the meaning of 'forthwith' see TIME vol 97 (2010) PARA 352.

3 As to traffic commissioners see PARA 1139 ante.

4 For the meaning of 'relevant conviction' see PARA 1147 note 4 ante. As from a day to be appointed, for the purposes of the Public Passenger Vehicles Act 1981 s 19(1), (2) (as amended) (see notes 6, 8 infra) the issue to a person of a fixed penalty notice or conditional offer under the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended) in respect of an offence prescribed for the purposes of the Public Passenger Vehicles Act 1981 is to be treated as if it were a relevant conviction of him: s 19(2A) (amended by the Road Safety Act 2006 s 17(1), (2)). At the date at which this volume states the law no such day had been appointed. For the meaning of 'fixed penalty notice' see PARA 1094 ante; and as to conditional offers see PARA 1117 ante.

5 For the meaning of 'transport manager' see PARA 1147 note 1 ante.

6 Public Passenger Vehicles Act 1981 s 19(1) (amended by the Transport Act 1985 s 3(5), Sch 2 Pt II para 4(10)). The Public Passenger Vehicles Act 1981 s 19(1)-(3) (as amended) is modified in its application to persons in partnership: see the Operation of Public Service Vehicles (Partnership) Regulations 1986, SI 1986/1628 (amended by SI 1990/1850).

7 As to the meaning of 'writing' see PARA 1139 note 11 ante.

8 Public Passenger Vehicles Act 1981 s 19(2) (amended by the Transport Act 1985 Sch 2 Pt II para 4(10)).

9 As to the period within which an act must be done see TIME vol 97 (2010) PARAS 336-341.

10 Public Passenger Vehicles Act 1981 s 19(2).

11 Ibid s 19(3).

12 As to administration orders see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 212 et seq.

13 Public Passenger Vehicles Act 1981 s 19(3)(a) (amended by the Insolvency Act 1985 s 235(1), Sch 8 para 34; the Insolvency Act 1986 s 439(2), Sch 14; and the Enterprise Act 2002 (Insolvency) Order 2003, SI 2003/2096, art 4, Schedule Pt 1 para 4).

14 Public Passenger Vehicles Act 1981 s 19(3)(b).

15 Ibid s 19(3) (s 19(3), (4) amended by the Transport Act 1985 Sch 2 Pt II para 4(10)).

16 Public Passenger Vehicles Act 1981 s 19(4) (as amended: see note 15 supra).

17 He fails to comply with ibid s 19(1)-(3) (as amended) or with any other requirement under s 19(4) (as amended): see the text to notes 1-16 supra.

18 It is a defence for a person charged to prove that there was a reasonable excuse for the act or omission in respect of which he is charged: ibid s 68(1), (2).

19 Ibid s 19(5). The fine must not exceed level 3 on the standard scale: s 19(5) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see PARA 230 note 3 ante.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(2) PUBLIC SERVICE VEHICLES/(iii) Licensing of Public Service Vehicles/B. PUBLIC SERVICE VEHICLE OPERATORS' LICENCES/1161. Duty to give traffic commissioners information about vehicles.

### **1161. Duty to give traffic commissioners information about vehicles.**

It is the duty of the holder of a PSV operator's licence<sup>1</sup>, on the happening to any public service vehicle<sup>2</sup> owned<sup>3</sup> by him of any failure or damage of a nature calculated<sup>4</sup> to affect the safety of occupants of the public service vehicle or of persons using the road<sup>5</sup>, to report the matter as soon as is practicable to the Secretary of State<sup>6</sup>.

It is the duty of the holder of a PSV operator's licence, on any alteration otherwise than by replacement of parts in the structure or fixed equipment of any public service vehicle owned by him, to give notice of the alteration as soon as is practicable<sup>7</sup> to the Secretary of State<sup>8</sup>.

The traffic commissioner<sup>9</sup> by whom a PSV operator's licence was granted may<sup>10</sup>:

1738 (1) require the holder of the licence to supply him forthwith or within a specified time with such information as he may reasonably require about the public service vehicles owned by the holder and normally kept at an operating centre<sup>11</sup> within the area of that commissioner, and to keep up to date information so supplied by the holder<sup>12</sup>; or

1739 (2) require the holder or former holder of the licence to supply him forthwith or within a specified time with such information as he may reasonably require about the public service vehicles owned by the holder or former holder at any material time<sup>13</sup> specified by him which were at that time normally kept at an operating centre within the area of that commissioner<sup>14</sup>.

A person who fails to comply with the above provisions<sup>15</sup> or with any requirement under head (1) or head (2) above<sup>16</sup> is liable<sup>17</sup> on summary conviction to a fine<sup>18</sup>.

A person who in purporting to comply with any such requirement<sup>19</sup> supplies any information which he knows<sup>20</sup> to be false<sup>21</sup> or does not believe to be true is liable on summary conviction to a fine<sup>22</sup>.

1 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante.

2 For the meaning of 'public service vehicle' see PARA 1136 ante.

3 For the meaning of 'owner' see PARA 207 ante.

4 The word 'calculated' may mean 'likely' or 'intended' (cf 82 JP Jo 447; and 103 JP Jo 734), but it is thought that here the word means 'likely'. For cases which discuss these words in various contexts see *Eno v Dunn* (1890) 15 App Cas 252, HL; *Re McGlennon's Application for Registration of Shamrock* (1908) 25 TLR 23; *Re Royal Worcester Corset Co's Application* [1909] 1 Ch 459. See also *North Cheshire and Manchester Brewery Co v Manchester Brewery Co* [1899] AC 83, HL; *McDowell v Standard Oil Co (New Jersey)* [1927] AC 632, 96 LJ Ch 386, HL; *Collett v Co-operative Wholesale Society Ltd* [1970] 1 All ER 274, 68 LGR 158; *R v Davison* [1972] 3 All ER 1121, [1972] 1 WLR 1540, CA.

5 For the meaning of 'road' see PARA 206 ante.

6 Public Passenger Vehicles Act 1981 s 20(1) (amended by the Transport Act 1985 ss 3(5), 29, Sch 2 Pt II para 4(11)). As from a day to be appointed the Public Passenger Vehicles Act 1981 s 20(1) (as amended) provides that the matter must be reported as soon as is practicable in accordance with regulations made by virtue of s 20(2A) (prospectively added) (see note 8 infra): s 20(1) (amended by the Transport Act 1982 s 10(9)). At the date at which this volume states the law no such day had been appointed.

As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 The meaning of 'practicable' and the difference between 'practicable' and the less strict standard of 'reasonably practicable' have been most often considered judicially in relation to safety legislation: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 417. See also *Dedman v British Building and Engineering Appliances Ltd* [1974] 1 All ER 520 at 524-526, [1974] ICR 53 at 59-62, CA, per Lord Denning MR.

8 Public Passenger Vehicles Act 1981 s 20(2) (amended by the Transport Act 1985 Sch 2 Pt II para 4(11)). As from a day to be appointed the Public Passenger Vehicles Act 1981 s 20(2) (as amended) provides that the matter must be reported as soon as is practicable in accordance with regulations made by virtue of s 20(2A) (prospectively added) (see infra): s 20(2) (amended by the Transport Act 1982 s 10(9)). At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed regulations may make provision for: (1) any report or notice required under the Public Passenger Vehicles Act 1981 s 20(1) or (2) (as amended) to be made or given to the Secretary of State or to the prescribed testing authority; (2) requiring a public service vehicle to be submitted for examination in the event of any such failure or damage as is mentioned in s 20(1) (as amended) or any such alteration as is mentioned in s 20(2) (as amended); and (3) the examinations to be carried out under the regulations and, in particular, for authorising any such examination to be carried out by or under the direction of an examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended) or an authorised inspector: Public Passenger Vehicles Act 1981 s 20(2A) (added by the Transport Act 1982 s 10(9) (amended by the Road Traffic Act 1991 s 48, Sch 4 para 19(1), (4))). At the date at which this volume states the law no such day had been appointed. For the meaning of 'regulations' see PARA 1133 note 1 ante; for the meaning of 'prescribed testing authority' see PARA 1143 note 4 ante; and for the meaning of 'authorised inspector' see PARA 1141 note 6 ante.

9 As to traffic commissioners see PARA 1139 ante.

10 Public Passenger Vehicles Act 1981 s 20(3) (amended by the Transport Act 1985 Sch 2 Pt II para 4(11)).

11 For the meaning of 'operating centre' see PARA 1144 note 7 ante.

12 Public Passenger Vehicles Act 1981 s 20(3)(a) (as amended: see note 10 supra).

13 'Material time' means a time when the PSV operator's licence in question was in force: *ibid* s 20(3).

14 *Ibid* s 20(3)(b) (as amended: see note 10 supra).

15 *Ie* fails to comply with *ibid* s 20(1) (as amended) (see the text and notes 1-6 supra) or s 20(2) (as amended) (see the text and notes 7-8 supra).

16 le any requirement under *ibid* s 20(3) (as amended): see the text and notes 9-14 *supra*.

17 It is a defence for a person charged to prove that there was a reasonable excuse for the act or omission in respect of which he is charged: *ibid* s 68(1), (2).

18 *Ibid* s 20(4). The fine must not exceed level 3 on the standard scale: s 20(4) (amended by virtue of the Criminal Justice Act 1982 s 37, 46). As to the standard scale see *PARA* 230 note 3 *ante*.

19 le any requirement under the Public Passenger Vehicles Act 1981 s 20(3) (as amended): see the text and notes 9-14 *supra*.

20 The meaning of 'know' has been judicially considered in various contexts. It has been held to include the state of mind of a person who shuts his eyes to the obvious: see *James & Son Ltd v Smees* [1955] 1 QB 78 at 91, [1954] 3 All ER 273 at 278 per Parker J; *Westminster City Council v Croyalgrange Ltd* [1986] 2 All ER 353, [1986] 1 WLR 674, HL. Moreover, there is authority for saying that where a person deliberately refrains from making inquiries the results of which he may not care to have, this constitutes in law actual knowledge of the facts in question: see *Knox v Boyd* 1941 JC 82 at 86 per Lord Flemming; *Roper v Taylor's Central Garages (Exeter) Ltd* [1951] 2 TLR 284 at 289, sub nom *Taylor's Central Garages (Exeter) Ltd v Roper* (1951) 115 JP 445 at 449-450 per Devlin J; *Westminster City Council v Croyalgrange Ltd* *supra*; and see also *Mallon v Allon* [1964] 1 QB 385 at 394, [1963] 3 All ER 843 at 847 per Lord Parker CJ. Yet mere neglect to ascertain what could have been found out by making reasonable inquiries is not tantamount to knowledge: *Roper v Taylor's Central Garages (Exeter) Ltd* *supra*; and cf *London Computator Ltd v Seymour* [1944] 2 All ER 11. See also *Mallon v Allon* *supra*.

21 See *PARA* 1155 note 10 *ante*.

22 Public Passenger Vehicles Act 1981 s 20(5). The fine must not exceed level 4 on the standard scale: s 20(5) (amended by virtue of the Criminal Justice Act 1982 s 37, 46).

## UPDATE

### 1161 Duty to give traffic commissioners information about vehicles

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) *PARA* 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(2) PUBLIC SERVICE VEHICLES/(iii) Licensing of Public Service Vehicles/B. PUBLIC SERVICE VEHICLE OPERATORS' LICENCES/1162. Certificates of qualification.

### 1162. Certificates of qualification.

A person who wishes to do either of the following things in another member state<sup>1</sup> or in Northern Ireland, namely to carry on a road passenger transport business or to be the transport manager<sup>2</sup> of such a business, may apply for a certificate as to his repute<sup>3</sup> and professional competence<sup>4</sup> and, where relevant, his financial standing<sup>5</sup>. If he holds a standard licence<sup>6</sup>, he must apply to the traffic commissioner<sup>7</sup> by whom that licence was granted or, if he holds more than one, by whom the last such licence was granted<sup>8</sup>. In any other case, he must apply to the traffic commissioner for any traffic area<sup>9</sup>.

A person applying for such a certificate must give the traffic commissioner such information as he may reasonably require for the discharge of his duties in relation to the application<sup>10</sup>.

The traffic commissioner to whom such an application is made must certify such matters relating to the applicant as he is satisfied he may properly certify, and appear to the

commissioner to be of assistance to the applicant in satisfying the requirements of the law of the other member state in which he wishes to carry on business or to work or, as the case may be, the requirements of the law of Northern Ireland<sup>11</sup>.

- 1 As to the meaning of 'member state' see PARA 1149 note 18 ante.
- 2 For the meaning of 'transport manager' see PARA 1147 note 1 ante.
- 3 As to the requirement to be of good repute see PARA 1147 ante.
- 4 As to the requirement of professional competence see PARA 1149 ante.
- 5 Public Passenger Vehicles Act 1981 s 21(1). As to the requirement to be of appropriate financial standing see PARA 1148 ante.
- 6 For the meaning of 'standard licence' see PARA 1145 note 2 ante.
- 7 As to traffic commissioners see PARA 1139 ante.
- 8 Public Passenger Vehicles Act 1981 s 21(1)(a) (s 21(1)-(3) amended by the Transport Act 1985 s 3(5), Sch 2 Pt II para 4(12)).
- 9 Public Passenger Vehicles Act 1981 s 21(1)(b) (as amended: see note 8 supra). As to traffic areas see PARA 1138 ante.
- 10 Ibid s 21(2) (as amended: see note 8 supra).
- 11 Ibid s 21(3) (as amended: see note 8 supra).

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### ***C. REVIEW OF DECISIONS AND APPEALS***

#### **1163. Review of decisions.**

A traffic commissioner<sup>1</sup> may review and, if he thinks fit, vary or revoke any decision of his<sup>2</sup>:

- 1740 (1) to grant or refuse an application for a PSV operator's licence<sup>3</sup>; or
- 1741 (2) to grant or refuse an application for the variation of a PSV operator's licence<sup>4</sup>,

if he is satisfied that a procedural requirement imposed under the Public Passenger Vehicles Act 1981 has not been complied with in relation to the decision<sup>5</sup>.

A traffic commissioner may only review such a decision<sup>6</sup>:

- 1742 (a) if, within such period after taking the decision as may be prescribed<sup>7</sup>, he has given notice<sup>8</sup> to the applicant or, as the case may be, the licence holder that he intends to review the decision<sup>9</sup>;
- 1743 (b) if, within that period, a person who appears to him to have an interest in the decision has requested him to review it<sup>10</sup>; or
- 1744 (c) where neither head (a) nor head (b) above applies, if he considers there to be exceptional circumstances that justify the review<sup>11</sup>.

The variation or revocation of a decision does not make unlawful anything done in reliance on the decision before the variation or revocation takes effect<sup>12</sup>.

1 As to traffic commissioners see PARA 1139 ante.

2 Public Passenger Vehicles Act 1981 s 49A(1) (s 49A added by the Deregulation and Contracting Out Act 1994 s 65(1)).

3 Public Passenger Vehicles Act 1981 s 49A(1)(a) (as added: see note 2 supra). For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante.

4 Ibid s 49A(1)(b) (as added: see note 2 supra).

5 Ibid s 49A(1) (as added: see note 2 supra).

6 Ibid s 49A(2) (as added: see note 2 supra).

7 For the meaning of 'prescribed' see PARA 1134 note 8 ante. For the meaning of 'regulations' see PARA 1133 note 1 ante. The prescribed period is two months: Public Service Vehicles (Operators' Licences) Regulations 1995, SI 1995/2908, reg 18.

8 Regulations may make provision as to the manner in which notices under head (a) in the text are to be or may be served, including provision as to the circumstances in which and time at which any such notice is to be treated as having been duly served (whether or not it has in fact been served): Public Passenger Vehicles Act 1981 s 49A(3) (as added: see note 2 supra). As to notices generally see the Public Service Vehicles (Operators' Licences) Regulations 1995, SI 1995/2908, reg 19.

9 Public Passenger Vehicles Act 1981 s 49A(2)(a) (as added: see note 2 supra).

10 Ibid s 49A(2)(b) (as added: see note 2 supra).

11 Ibid s 49A(2)(c) (as added: see note 2 supra).

12 Ibid s 49A(4) (as added: see note 2 supra).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(2) PUBLIC SERVICE VEHICLES/(iii) Licensing of Public Service Vehicles/C. REVIEW OF DECISIONS AND APPEALS/1164. Appeals to the Transport Tribunal.

### **1164. Appeals to the Transport Tribunal.**

An applicant for the grant of a PSV operator's licence<sup>1</sup> under the Public Passenger Vehicles Act 1981 may appeal to the Transport Tribunal<sup>2</sup> against any decision of the traffic commissioner<sup>3</sup> to refuse to grant the licence in accordance with the application<sup>5</sup>, or to attach any condition to the licence otherwise than in accordance with the application<sup>6</sup>. Where an application for a PSV operator's licence is granted and a person who duly made an objection to the grant<sup>7</sup> is aggrieved by the grant of the licence he may appeal to the Transport Tribunal<sup>8</sup>.

The holder of a PSV operator's licence may appeal to the Transport Tribunal against any decision of the traffic commissioners to<sup>9</sup>:

1745 (1) refuse his application for the variation or removal of any condition attached to the licence or any undertaking recorded in it<sup>10</sup>;

1746 (2) vary any such condition, or attach any new condition to the licence, otherwise than on his application<sup>11</sup>; or



1747 (3) revoke or suspend the licence<sup>12</sup>.

A person who within the prescribed period<sup>13</sup> has made an application for a review<sup>14</sup>, and has been certified by the traffic commissioner<sup>15</sup>, may appeal to the Transport Tribunal against the refusal of the application<sup>16</sup>.

Where: (a) the holder of a PSV operator's licence in respect of which an order or direction has been made or given<sup>17</sup>; or (b) any person in respect of whom any such order or direction has been made or given<sup>18</sup>, is aggrieved by the order or direction he may appeal to the Transport Tribunal<sup>19</sup>.

The traffic commissioner making any such decision<sup>20</sup> with respect to a licence as is mentioned in head (2) or head (3) above<sup>21</sup>, or making any such order or giving any such direction as is mentioned in heads (a) and (b) above<sup>22</sup> may, if the holder of the licence or any such person as is mentioned in head (b) above so requests, direct that his decision is not to have effect until the expiration of the period within which an appeal against it may be made to the Transport Tribunal and, if an appeal is made, until it is disposed of<sup>23</sup>. Where a traffic commissioner has given such a direction he may withdraw it at any time<sup>24</sup>. If he refuses to give such a direction or withdraws such a direction, the person requesting it may apply for such a direction to the Transport Tribunal and the Transport Tribunal must give its decision on the application within 14 days<sup>25</sup>.

The above provisions do not apply in relation to conditions attached to a PSV operator's licence for enforcement of traffic regulation conditions<sup>26</sup>.

1 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante.

2 As to the constitution, powers and proceedings of the Transport Tribunal see PARAS 253-258 ante.

3 As to traffic commissioners see PARA 1139 ante.

4 Public Passenger Vehicles Act 1981 s 50(1) (s 50 substituted by the Transport Act 1985 s 31).

5 Public Passenger Vehicles Act 1981 s 50(1)(a) (as substituted: see note 4 supra).

6 Ibid s 50(1)(b) (as substituted: see note 4 supra).

7 Ie under ibid s 14A (as added and amended): see PARA 1151 ante.

8 Ibid s 50(3) (as substituted: see note 4 supra). As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARAS 656, 664.

9 Ibid s 50(4) (as substituted: see note 4 supra).

10 Ibid s 50(4)(a) (as substituted (see note 4 supra); and s 50(4)(a), (c) amended by the Deregulation and Contracting Out Act 1994 ss 68, 81, Sch 14 para 7(2), Sch 17).

11 Public Passenger Vehicles Act 1981 s 50(4)(b) (as substituted: see note 4 supra).

12 Ibid s 50(4)(c) (as substituted and amended: see notes 4, 10 supra).

13 Ie the period prescribed for the purposes of ibid s 49A(2)(a), (b) (as added): see PARA 1163 ante. For the meaning of 'prescribed' see PARA 1134 note 8 ante.

14 Ibid s 50(4A)(a) (s 50(4A) added by the Deregulation and Contracting Out Act 1994 s 65(2)). The text refers to an application for review under the Public Passenger Vehicles Act 1981 s 49A (as added): see PARA 1163 ante.

15 Ibid s 50(4A)(b) (as added: see note 14 supra). The text refers to a person who has been certified by the traffic commissioner as a person such as is mentioned in s 49A(2)(b) (as added): see PARA 1163 head (b) ante.

16 Ibid s 50(4A) (as added: see note 14 supra).

17 Ibid s 50(5)(a) (as substituted: see note 4 supra). The text refers to an order or direction under the Transport Act 1985 s 28 (as amended) (power to disqualify PSV operators): see PARA 1188 post.

18 Public Passenger Vehicles Act 1981 s 50(5)(b) (as substituted: see note 4 supra).

19 Ibid s 50(5) (as substituted: see note 4 supra).

20 The traffic commissioner is generally obliged to give reasons for his decision: see the Tribunals and Inquiries Act 1992 s 10(1), Sch 1 Pt I para 40(a); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 55-57.

21 Public Passenger Vehicles Act 1981 s 50(6)(a) (as substituted: see note 4 supra).

22 Ibid s 50(6)(b) (as substituted: see note 4 supra).

23 Ibid s 50(6) (as substituted: see note 4 supra).

24 Ibid s 50(7) (as substituted: see note 4 supra).

25 Ibid s 50(8) (as substituted: see note 4 supra).

26 Ibid s 50(9) (as substituted: see note 4 supra). The text refers to enforcement of traffic regulation conditions under the Transport Act 1985 s 8: see PARA 1180 post.

## UPDATE

### 1164 Appeals to the [Upper] Tribunal

TEXT AND NOTES--References to the Transport Tribunal are now to the Upper Tribunal: SI 2009/1885.

TEXT AND NOTE 25--Public Passenger Vehicles Act 1981 s 50(8) amended: SI 2009/1885.

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### 1165. Appeals to the Secretary of State.

A person applying for a certificate of initial fitness<sup>1</sup> or a certificate that a vehicle conforms to a type vehicle<sup>2</sup> may appeal to the Secretary of State<sup>3</sup> against the refusal of an examiner to issue such a certificate<sup>4</sup>. An appeal must be made within the prescribed time<sup>5</sup> and in the prescribed manner, and provision may be made by regulations<sup>6</sup> as to the procedure to be followed in connection with such appeals<sup>7</sup>. On the determination of an appeal, the Secretary of State may confirm, vary or reverse the decision appealed against, and may give such directions as he thinks fit to the examiner for giving effect to his decision, and it is the duty of the examiner to comply with any such directions<sup>8</sup>.

1 Ie under the Public Passenger Vehicles Act 1981 s 6 (as amended): see PARA 1141 ante.

2 Ie under ibid s 10 (as amended): see PARA 1143 ante.

3 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 Public Passenger Vehicles Act 1981 s 51(1) (s 51 substituted by the Transport Act 1985 s 31; and the Public Passenger Vehicles Act 1981 s 51(1) amended by the Road Traffic Act 1991 s 48, Sch 4 para 16).

As from a day to be appointed, the Public Passenger Vehicles Act 1981 s 51(1) (as substituted and amended) provides that a person applying for a certificate of initial fitness under s 6 (as amended) (see PARA 1141 ante) or a certificate under s 10 (as amended) (see PARA 1143 ante) that a vehicle conforms to a type vehicle, may appeal to the Secretary of State against the refusal of an examiner or an authorised inspector to issue such a certificate: s 51(1) (as so substituted and amended; and further amended by the Transport Act 1982 s 21(4) (substituted by the Road Traffic Act 1991 Sch 4 para 21)). At the date at which this volume states the law no such day had been appointed. For the meaning of 'authorised inspector' see PARA 1141 note 6 ante.

As from a day to be appointed a person aggrieved by the refusal of the prescribed testing authority to approve a vehicle as a type vehicle under the Public Passenger Vehicles Act 1981 s 10 (as amended) or by the withdrawal by that authority under s 10 (as amended) of such approval may appeal to the Secretary of State: s 51(1A) (s 51 as so substituted; and s 51(1A), (1B) added by the Transport Act 1982 s 21(4) (as so substituted)). At the date at which this volume states the law no such day had been appointed. For the meaning of 'prescribed testing authority' see PARA 1143 note 4 ante. As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARAS 656, 664.

As from a day to be appointed on any appeal under the Public Passenger Vehicles Act 1981 s 51(1A) (prospectively added) the Secretary of State must cause an examination of the vehicle concerned to be made by an officer of the Secretary of State appointed by him for the purpose and must make such determination on the basis of the examination as he thinks fit: s 51(1B) (as so added). At the date at which this volume states the law no such day had been appointed.

5 For the meaning of 'prescribed' see PARA 1134 note 8 ante. For the meaning of 'regulations' see PARA 1133 note 1 ante.

6 The Public Passenger Vehicles (Exemptions, and Appeals against Refusals to Issue Certificates or Remove Prohibitions) Regulations 1987, SI 1987/1150, regs 4-6 were made in exercise of this power, but they have now been revoked.

7 Public Passenger Vehicles Act 1981 s 51(3) (as substituted: see note 4 supra).

8 Ibid s 51(4) (as substituted (see note 4 supra); and amended by the Road Traffic Act 1991 Sch 4 para 16). As from a day to be appointed s 51(4) (as substituted and amended) provides that on the determination of an appeal under s 51 (as substituted and amended), the Secretary of State may confirm, vary or reverse the decision appealed against, and may give such directions as he thinks fit to the examiner, prescribed testing authority or authorised inspector concerned for giving effect to his decision; and it is the duty of the examiner, prescribed testing authority or authorised inspector concerned to comply with any such directions: s 51(4) (as so substituted and amended; and further amended by the Transport Act 1982 s 21(4) (substituted by the Road Traffic Act 1991 Sch 4 para 21)). At the date at which this volume states the law no such day had been appointed.

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## ***D. ADMINISTRATION AND FINANCE***

### **1166. Inquiries held by traffic commissioners.**

A traffic commissioner<sup>1</sup> may, at such places as appear to him to be convenient, hold such inquiries as he thinks fit in connection with the exercise of his functions<sup>2</sup>. Where, as respects the proposed exercise of his powers on any occasion, a traffic commissioner receives a request for an inquiry from two or more persons he may hold a single inquiry in response to those requests<sup>3</sup>. Subject to any provision made by regulations<sup>4</sup>, any inquiry so held must be public<sup>5</sup>. Where a traffic commissioner proposes to hold an inquiry for the purpose of considering any application or proposal, he must publish notice of the inquiry in the prescribed<sup>6</sup> manner<sup>7</sup>.

Where a traffic commissioner holds an inquiry he may, in such circumstances as may be prescribed and subject to regulations<sup>8</sup>, make such order as he thinks fit as to the payment, by such party to the inquiry as he thinks fit, of costs incurred by him or by the Secretary of State<sup>9</sup> in connection with the holding of the inquiry<sup>10</sup>. Regulations may make provision, in relation to such orders, as to the method of calculating the amount of any costs incurred and the maximum amount which may be ordered to be paid under such an order<sup>11</sup>. Any amount so ordered to be paid by any person may be recoverable from him as a debt due to the Crown<sup>12</sup>.

Information with respect to any particular trade or business<sup>13</sup> which is given at any such inquiry while admission to the inquiry is restricted in accordance with regulations must not be disclosed, so long as that trade or business continues to be carried on, except<sup>14</sup>:

- 1748 (1) with the consent of the person for the time being carrying it on<sup>15</sup>;
- 1749 (2) for the purpose of the discharge by any person of his functions under certain enactments<sup>16</sup>; or
- 1750 (3) with a view to the institution of, or otherwise for the purposes of, any legal proceedings pursuant to or arising out of any such enactment (including proceedings before the Transport Tribunal)<sup>17</sup>.

Any person who discloses any information in contravention of this provision is liable on summary conviction to a fine<sup>18</sup>.

1 As to traffic commissioners see PARA 1139 ante.

2 Public Passenger Vehicles Act 1981 s 54(1) (s 54 substituted by the Transport Act 1985 s 4).

3 Public Passenger Vehicles Act 1981 s 54(2) (as substituted: see note 2 supra).

4 In exercise of this power the Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) Regulations 1986, SI 1986/1629 (amended by SI 1993/2754) have been made. For the meaning of 'regulations' see PARA 1133 note 1 ante.

5 Public Passenger Vehicles Act 1981 s 54(3) (as substituted: see note 2 supra).

6 For the meaning of 'prescribed' see PARA 1134 note 8 ante.

7 Public Passenger Vehicles Act 1981 s 54(4) (as substituted: see note 2 supra). Every traffic commissioner must publish not less frequently than once a fortnight a statement to be known as 'Notices and Proceedings' which includes a notice as to the date and place at which he proposes to hold any inquiry into any application or proposal under the Public Passenger Vehicles Act 1981 or the Transport Act 1985: see the Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) Regulations 1986, SI 1986/1629, reg 3(4). As to postponing or adjourning inquiries see reg 5; and as to attendance at inquiries see reg 6.

8 I.e. any provision made by regulations under the Public Passenger Vehicles Act 1981 s 54(6) (as substituted): see the text to note 11 infra.

9 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

10 Public Passenger Vehicles Act 1981 s 54(5) (as substituted: see note 2 supra).

11 Ibid s 54(6) (as substituted: see note 2 supra). As to the payment of costs by a party to an inquiry see the Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) Regulations 1986, SI 1986/1629, reg 8.

12 Public Passenger Vehicles Act 1981 s 54(7) (as substituted: see note 2 supra).

13 As to the meaning of 'trade or business' see PARA 1329 note 6 post.

14 Public Passenger Vehicles Act 1981 s 54(8) (as substituted: see note 2 supra). As to the extension of disclosure powers under s 54(8) (as substituted) see the Anti-terrorism, Crime and Security Act 2001 s 17, Sch 4 Pt 1 para 18; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 395.

15 Public Passenger Vehicles Act 1981 s 54(8)(a) (as substituted: see note 2 supra).

16 The enactments referred to are *ibid* ss 12-21 (as amended) (see PARAS 1144-1155, 1158-1162 ante), and the Transport Act 1985 ss 24-28 (as amended) (see PARAS 1187-1188 post): Public Passenger Vehicles Act 1981 s 54(9) (as substituted: see note 2 supra). The Secretary of State may by order made by statutory instrument amend s 54(9) (as substituted) by adding a reference to an enactment or by removing any such reference; and any statutory instrument made in exercise of the power conferred by s 54(10) (as substituted) is subject to annulment in pursuance of a resolution of either House of Parliament: s 54(10) (as substituted: see note 2 supra). At the date at which this volume states the law no such order had been made.

17 *Ibid* s 54(8)(c) (as substituted: see note 2 supra). As to the constitution, powers and proceedings of the Transport Tribunal see PARAS 253-258 ante.

18 *Ibid* s 54(8) (as substituted: see note 2 supra). The fine must not exceed level 4 on the standard scale: s 54(8) (as so substituted). As to the standard scale see PARA 230 note 3 ante.

## UPDATE

### 1166 Inquiries held by traffic commissioners

TEXT AND NOTE 17--Reference to Transport Tribunal is now to Upper Tribunal: Public Passenger Vehicles Act 1981 s 54(8)(c) (amended by SI 2009/1885).

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### 1167. Annual report of traffic commissioner.

The traffic commissioner<sup>1</sup> for each traffic area<sup>2</sup> must make an annual report to the Secretary of State<sup>3</sup> on his proceedings, containing particulars with respect to such matters as the Secretary of State may direct<sup>4</sup>.

1 As to traffic commissioners see PARA 1139 ante.

2 As to traffic areas see PARA 1138 ante.

3 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 Public Passenger Vehicles Act 1981 s 55 (amended by the Transport Act 1985 s 3(5), Sch 2 Pt II para 4(15); and the Metropolitan Traffic Area (Transfer of Functions) Order 1984, SI 1984/31).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(2) PUBLIC SERVICE VEHICLES/(iii) Licensing of Public Service Vehicles/D. ADMINISTRATION AND FINANCE/1168. Records of licences.

### 1168. Records of licences.

The traffic commissioner<sup>1</sup> for each traffic area<sup>2</sup> must keep a record in such form and containing such particulars as may be prescribed<sup>3</sup> of all licences granted by him under the Public Passenger Vehicles Act 1981 and must allow the record to be inspected at all reasonable times by members of the public<sup>4</sup>.

Such a record is admissible in evidence of the matters required under the Public Passenger Vehicles Act 1981 to be entered in it, and a copy of an entry made in such a record in pursuance of this provision purporting to be signed by or on behalf of the authority by whom the record is kept and to be certified to be a true copy is evidence of the matters stated in that entry without proof of the signature or authority of the person signing the same<sup>5</sup>.

1 As to traffic commissioners see PARA 1139 ante.

2 As to traffic areas see PARA 1138 ante.

3 For the meaning of 'prescribed' see PARA 1134 note 8 ante. Every traffic commissioner must keep: (1) a duplicate copy of every licence granted by him under the Public Passenger Vehicles Act 1981 or the Transport Act 1985, together with a record of the period of its validity and any change in that period; (2) a record of every condition (including traffic regulation conditions) attached to any such licence and the date of any alteration to it or removal of it; (3) a record of all traffic regulation conditions determined by him; and (4) a record of the prescribed particulars of all services registered with him under s 6 (as amended) (see PARA 1178 post), and of all variations and cancellations of such registrations: Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) Regulations 1986, SI 1986/1629, reg 5.

4 Public Passenger Vehicles Act 1981 s 56(1) (amended by the Transport Act 1985 ss 3(5), 139(2), (3), Sch 2 Pt II para 4(16), Sch 7 para 21(8), Sch 8; and the Metropolitan Traffic Area (Transfer of Functions) Order 1984, SI 1984/31, art 5).

5 Public Passenger Vehicles Act 1981 s 56(3).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(2) PUBLIC SERVICE VEHICLES/(iii) Licensing of Public Service Vehicles/D. ADMINISTRATION AND FINANCE/1169. Correction of errors.

### **1169. Correction of errors.**

Where it appears to the traffic commissioner<sup>1</sup> for a traffic area<sup>2</sup> that a document purporting to record, or issued in consequence of, a decision taken in the exercise of his functions contains a clerical error, he may issue a corrected document or a notice in writing that the document is to have effect with such corrections as are stated in the notice<sup>3</sup>.

1 As to traffic commissioners see PARA 1139 ante.

2 As to traffic areas see PARA 1138 ante.

3 Public Passenger Vehicles Act 1981 s 56A (added by the Deregulation and Contracting Out Act 1994 s 65(3)).

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**1170. Fees.**

Such fees, payable at such times, and whether in one sum or by instalments, as may be prescribed<sup>1</sup> must be charged<sup>2</sup> by the traffic commissioner<sup>3</sup> for each traffic area<sup>4</sup> in respect of<sup>5</sup>:

- 1751 (1) applications for, and the grant of, PSV operators' licences<sup>6</sup>;
- 1752 (2) applications for the variation of conditions of PSV operators' licences<sup>7</sup> and the grant of such applications<sup>8</sup>;
- 1753 (3) the continuation in force of PSV operators' licences<sup>9</sup>;
- 1754 (4) applications for, and the issue of, certificates of initial fitness<sup>10</sup>;
- 1755 (5) the issue of operators' discs<sup>11</sup>;
- 1756 (6) applications for, and the issue of, certificates<sup>12</sup> as to repute, professional competence or financial standing<sup>13</sup>; and
- 1757 (7) applications for, and the issue of, documents required in relation to public service vehicles<sup>14</sup> registered in Great Britain<sup>15</sup> while making journeys to or from places outside Great Britain or in relation to public service vehicles registered outside Great Britain<sup>16</sup>.

A traffic commissioner may, if any fee or instalment of a fee due in respect of them has not been paid, decline to proceed with<sup>17</sup>:

- 1758 (a) any such application as is mentioned in heads (1) to (7) above<sup>18</sup>;
- 1759 (b) the grant of any PSV operator's licence or of any application for the variation of conditions of PSV operators' licences<sup>19</sup>;
- 1760 (c) the issue of any certificate, disc or other document referred to in heads (1) to (7) above<sup>20</sup>,

until the fee or instalment in question has been paid<sup>21</sup>.

If, in the case of any application for a PSV operator's licence, any fee or instalment of a fee in respect of the application, the grant of the licence or the issue of operators' discs<sup>22</sup> is not duly paid by the prescribed time, the application must be treated as withdrawn at that time, any decision made on the application ceases to have effect at that time, and any licence granted in pursuance of such a decision terminates at that time<sup>23</sup>.

If, in the case of any application for the variation of conditions of a PSV operator's licence<sup>24</sup>, any fee or instalment of a fee in respect of the application, the grant of the application or the issue of operators' discs<sup>25</sup> is not duly paid by the prescribed time, the application must be treated as withdrawn at that time, and any decision made on the application, and any variation effected in pursuance of such a decision, ceases to have effect at that time<sup>26</sup>.

If, in the case of any PSV operator's licence, any fee or instalment of a fee in respect of the continuation in force of the licence, or the issue of operators' discs<sup>27</sup> is not duly paid by the prescribed time, the licence terminates at that time<sup>28</sup>.

If any fee or instalment of a fee in respect of any operators' discs that have been issued<sup>29</sup> is not duly paid by the prescribed time, the discs cease to have effect at that time<sup>30</sup>.

Any fees received by a traffic commissioner must be paid into the Consolidated Fund<sup>31</sup> in such manner as the Treasury<sup>32</sup> may direct<sup>33</sup>.

1    I.e. prescribed by regulations made under the Public Passenger Vehicles Act 1981 s 60 (as amended): see PARA 1134 ante. For the meaning of 'regulations' see PARA 1133 note 1 ante. As to the fees that have been prescribed see the Public Service Vehicles (Conditions of Fitness, Equipment, Use and Certification) Regulations 1981, SI 1981/257, reg 46(2) (substituted by SI 1984/1763; and amended by SI 1998/1670; SI 2000/1431; SI 2001/1649; SI 2003/1817; SI 2004/1880; SI 2005/1403; SI 2005/2342; SI 2007/502); the Community Bus

Regulations 1986, SI 1986/1245, reg 4 (amended by SI 2002/2537; SI 2004/2252; SI 2005/2353; SI 2007/693); the Public Service Vehicles (Registration of Local Services) Regulations 1986, SI 1986/1671, reg 12 (substituted by SI 1989/1064; and amended by SI 1993/2752; SI 2002/2536; SI 2004/10; SI 2004/2250; SI 2005/2355; SI 2007/690); the Public Service Vehicles (London Local Service Licences) Regulations 1986, SI 1986/1691, reg 12 (amended by SI 1988/408); and the Public Service Vehicles (Operators' Licences) (Fees) Regulations 1995, SI 1995/2909 (amended by SI 2002/2535; SI 2004/1876; SI 2005/2346; SI 2007/689).

2 Public Passenger Vehicles Act 1981 s 52(1).

3 As to traffic commissioners see PARA 1139 ante.

4 As to traffic areas see PARA 1138 ante.

5 Public Passenger Vehicles Act 1981 s 52(1)(a) (amended by the Transport Act 1985 s 3, Sch 2 Pt II para 4(14)(a)).

6 Public Passenger Vehicles Act 1981 s 52(1)(a)(i) (amended by the Transport Act 1985 ss 1, 139(3), Sch 1 para 7, Sch 8). For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante.

7 I.e. applications under the Public Passenger Vehicles Act 1981 s 16(6) (as amended): see PARA 1153 ante.

8 Ibid s 52(1)(a)(ia) (s 52(1)(a)(ia), (ib) added by the Deregulation and Contracting Out Act 1994 s 66(2)).

9 Public Passenger Vehicles Act 1981 s 52(1)(a)(ib) (as added: see note 8 supra).

10 Ibid s 52(1)(a)(ii). The text refers to certificates of initial fitness under s 6 (as amended): see PARA 1141 ante.

As from a day to be appointed, s 52(1)(a)(ii) will provide for applications for certificates of initial fitness under s 6 (as amended) which are required by regulations to be made to the commissioner and the issue of certificates on such applications: s 52(1)(a)(ii) (substituted by the Transport Act 1982 s 74, Sch 5 para 22). At the date at which this volume states the law no such day had been appointed.

11 Public Passenger Vehicles Act 1981 s 52(1)(a)(iii). The text refers to the issue of operators' discs under s 18 (as amended): see PARA 1159 ante.

12 I.e. under ibid s 21 (as amended): see PARA 1162 ante.

13 Ibid s 52(1)(a)(iv).

14 For the meaning of 'public service vehicle' see PARA 1136 ante.

15 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

16 Public Passenger Vehicles Act 1981 s 52(1)(a)(v). As to the requirement for, applications for and the issue of these documents see the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748 (amended by SI 1987/1755; SI 1988/1809; SI 1990/1103; SI 1997/2971; SI 2003/1118; SI 2004/1882).

17 Public Passenger Vehicles Act 1981 s 52(2) (amended by the Transport Act 1985 Sch 2 Pt II para 4(14)(b); and the Metropolitan Traffic Area (Transfer of Functions) Order 1984, SI 1984/31, art 5).

18 Public Passenger Vehicles Act 1981 s 52(2)(a).

19 Ibid s 52(2)(b) (substituted by the Deregulation and Contracting Out Act 1994 s 66(3)). The text refers to applications under the Public Passenger Vehicles Act 1981 s 16(6) (as amended): see PARA 1153 ante.

20 Ibid s 52(2)(bb) (added by the Deregulation and Contracting Out Act 1994 s 66(3)).

21 Public Passenger Vehicles Act 1981 s 52(2).

22 I.e. the issue of operators' discs under ibid s 18(2) (as substituted): see PARA 1159 ante.

23 Ibid s 52(2A) (s 52(2A)-(2F) added by the Deregulation and Contracting Out Act 1994 s 66(4)). The traffic commissioner by whom a PSV operator's licence was granted may, if he considers there to be exceptional circumstances that justify his doing so in any case where the Public Passenger Vehicles Act 1981 s 52(2A) (as added), s 52(2B) (as added), s 52(2C) (as added) or s 52(2D) (as added) has applied, direct that as from the time mentioned in that provision its effect in that case be disregarded: s 52(2E) (as so added). Where the traffic commissioner has given a direction under s 52(2E) (as added) in respect of a PSV operator's licence in a case where s 52(2A) (as added) or s 52(2C) (as added) has applied, it must not for the purposes of s 20(1) (as



amended) or s 20(2) (as amended) (see PARA 1161 ante) be regarded as having been practicable for the licence holder to: (1) report any matter to the Secretary of State; or (2) give him notice of any alteration, during the period beginning with the time mentioned in s 52(2A) (as added) or s 52(2C) (as added) and ending when the direction came into force: s 52(2F) (as so added). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

24 le an application under *ibid* s 16(6) (as amended): see PARA 1153 ante.

25 le under *ibid* s 18(2A) (as added): see PARA 1159 ante.

26 *Ibid* s 52(2B) (as added: see note 23 *supra*).

27 le the issue of operators' discs under *ibid* s 18(2C) (as added): see PARA 1159 ante.

28 *Ibid* s 52(2C) (as added: see note 23 *supra*).

29 le operators' discs issued under *ibid* s 18 (as amended): see PARA 1159 ante.

30 *Ibid* s 52(2D) (as added: see note 23 *supra*).

31 As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

32 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

33 Public Passenger Vehicles Act 1981 s 52(3) (amended by the Transport Act 1985 Sch 2 Pt II para 4(14)(c), Sch 8).

## UPDATE

### 1170 Fees

NOTES 1-16--See the Department for Transport (Fees) Order 2009, SI 2009/711 (amended by SI 2009/1885), which specifies for the purposes of the Finance (No 2) Act 1987 s 102(3) the functions to be taken into account in determining the fees.

NOTE 1--SI 1981/257 reg 46(2) further amended: SI 2008/1458, SI 2009/877. SI 1986/1671 reg 12 further amended: SI 2008/1470, SI 2009/878. SI 1995/2909 further amended: see PARA 1134 NOTE 4.

NOTE 4--SI 1986/1245 replaced: Community Bus Regulations 2009, SI 2009/366. See regs 8-10.

NOTE 16--SI 1984/748 further amended: see PARA 1134 NOTE 4.

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### 1171. Payment of expenses.

There must be paid in every year out of money provided by Parliament such sums as the Secretary of State<sup>1</sup> may, with the consent of the Treasury<sup>2</sup>, direct in respect of the salaries, remuneration, establishment charges, and other expenses of traffic commissioners<sup>3</sup> and any other officer or servant appointed by the Secretary of State for the purposes of Part I or Part II of the Public Passenger Vehicles Act 1981<sup>4</sup>, including any expenses incurred in connection with the employment of police officers as vehicle examiners<sup>5</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

3 As to traffic commissioners see PARA 1139 ante.

4 I.e. the Public Passenger Vehicles Act 1981 Pt I (ss 1-5) (as amended) or Pt II (ss 6-29) (as amended): see PARAS 1136-1155, 1158-1161 ante, 1172-1175 post.

5 Ibid s 53(1) (amended by the Transport Act 1985 ss 1(3), 139(3), Sch 1 para 8, Sch 8; and the Road Traffic Act 1991 s 83, Sch 8); Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, art 2.

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## **(iv) Drivers, Inspectors, Conductors and Passengers of Public Service Vehicles**

### ***A. REGULATION OF CONDUCT***

#### **1172. Regulation of conduct of drivers, inspectors and conductors.**

Regulations<sup>1</sup> may make provision for regulating the conduct, when acting as such, of:<sup>2</sup> (1) drivers<sup>3</sup> of public service vehicles<sup>4</sup>; (2) inspectors<sup>5</sup> and conductors of such vehicles<sup>6</sup>; and (3) drivers, inspectors and conductors of tramcars<sup>7</sup>. If a person to whom such regulations apply contravenes<sup>8</sup>, or fails to comply with, any of the provisions of the regulations, he is liable<sup>9</sup> on summary conviction to a fine<sup>10</sup>. In the case of an offence by a person acting as driver of a public service vehicle, the court by which he is convicted may, if it thinks fit, cause particulars of the conviction to be endorsed upon the counterpart of the licence granted to that person under Part III of the Road Traffic Act 1988<sup>11</sup> or, as the case may be, the counterpart, if any, of his Community licence<sup>12</sup>.

The person who has the custody of the licence and its counterpart must, if so required by the convicting court, produce them within a reasonable time for the purpose of endorsement, and if he fails to do so is liable<sup>13</sup> on summary conviction to a fine<sup>14</sup>.

1 See the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990, SI 1990/1020 (amended by SI 1995/186; SI 2002/1724). For the meaning of 'regulations' see PARA 1133 note 1 ante.

2 Public Passenger Vehicles Act 1981 s 24(1).

3 For the meaning of 'driver' see PARA 207 ante.

4 Public Passenger Vehicles Act 1981 s 24(1)(a) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 ss 7, 16, Sch 3 para 2, Sch 6). Notwithstanding the Public Passenger Vehicles Act 1981 s 1(1) (see PARA 1136 ante), for the purposes of s 24 (as amended) and ss 25, 26 (both as amended) (see PARAS 1173-1174 post), 'public service vehicle' is to be construed as meaning a public service vehicle being used on a road for carrying passengers for hire or reward: s 24(5) (added by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 3 para 2, Sch 6).

5 For the purposes of the Public Passenger Vehicles Act 1981 ss 24, 25 (both as amended), 'inspector', in relation to a public service vehicle, means a person authorised to act as an inspector by the holder of the PSV operator's licence under which the vehicle is being used: s 24(4). For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante.

6 Ibid s 24(1)(b).

7 Ibid s 24(1)(c) (added by the Transport and Works Act 1992 s 61(2)(a)). For the meaning of 'tramcar' see PARA 219 ante. It has been held that a conductor is entitled to assume that the driver will stop at a compulsory stop and that a passenger will not get off before the vehicle comes to a stop; he is not therefore guilty of negligently endangering the safety of a passenger when he is on top-deck collecting fares and the passenger attempts to alight before the vehicle stops: *Askew v Bowtell* [1947] 1 All ER 883, 91 Sol Jo 249, DC. However, a driver could be guilty of the offence if he drives negligently: *Chapman v Kirke* [1948] 2 KB 450, [1948] 2 All ER 556, DC.

8 As to the meaning of 'contravene' see PARA 1141 note 11 ante.

9 It is a defence for a person charged to prove that there was a reasonable excuse for the act or omission in respect of which he is charged: Public Passenger Vehicles Act 1981 s 68(1), (2).

10 Ibid s 24(2). The fine must not exceed level 2 on the standard scale: s 24(2) (s 24(2), (3) amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see PARA 230 note 3 ante.

11 Ie the Road Traffic Act 1988 Pt III (ss 87-109) (as amended): see PARA 444 et seq ante.

12 Public Passenger Vehicles Act 1981 s 24(2) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 3 para 2; the Transport and Works Act 1992 s 61(2)(b); and the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 5, Sch 4 para 4). The Public Passenger Vehicles Act 1981 s 24(2) (as amended) is further amended, as from a day to be appointed, by the Road Safety Act 2006 s 9(6), Sch 2 para 1(1), (2), with the effect that the following is added at the end: or, if he is not the holder of a licence (within the meaning of the Road Traffic Act 1988 Pt III (as amended)), on his driving record (within the meaning of the Road Traffic Offenders Act 1988 s 97A (prospectively added) (see PARA 1024 note 11 ante). At the date at which this volume states the law no such day had been appointed. The Public Passenger Vehicles Act 1981 s 24(2) (as amended) is further amended, as from a day to be appointed, by the Road Safety Act 2006 s 10(12), Sch 3 para 1(1), (2), to substitute the words 'cause particulars' to the end, to the following effect: the court may send notice of the particulars of the conviction to the Secretary of State requiring the Secretary of State to endorse them on the person's driving record (within the meaning of the Road Traffic Offenders Act 1988 s 97A (prospectively added)). At the date at which this volume states the law no such day had been appointed.

13 This is expressed to be subject to the defence provided by the Public Passenger Vehicles Act 1981 s 68(1), (2): see note 9 supra.

14 Ibid s 24(3) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 Sch 3 para 2). The fine must not exceed level 3 on the standard scale: Public Passenger Vehicles Act 1981 s 24(3) (as amended: see note 10 supra). Section 24(3) is amended, as from a day to be appointed, by the Road Safety Act 2006 Sch 2 para 1(3), to the effect that in the text, for 'the licence and its counterpart' there is substituted 'any counterpart of a licence which is to be endorsed', and for 'them' there is substituted 'it and the licence'. At the date at which this volume states the law no such day had been appointed. The Public Passenger Vehicles Act 1981 s 24(3) (as amended) is repealed, as from a day to be appointed, by the Road Safety Act 2006 ss 10(12), 59, Sch 3 para 1(3), Sch 7. At the date at which this volume states the law no such day had been appointed.

## UPDATE

### 1172 Regulation of conduct of drivers, inspectors and conductors

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTE 4--The appropriate national authority may make regulations requiring prescribed persons, or persons of a prescribed description, to display, in such place or places and in such manner as may be prescribed, prescribed information, or

information of a prescribed description, relating to persons or bodies with functions relating to public passenger transport services: Local Transport Act 2008 s 75(1), (2). The regulations may provide that a traffic commissioner may impose a financial penalty on any operator of a public service vehicle who, without reasonable excuse, fails to comply with a requirement imposed on the operator: s 75(3). Regulations made by virtue of s 75(3) may (1) specify the maximum penalty that may be imposed; and (2) require a traffic commissioner who has imposed a penalty to give notice in writing to such persons as may be prescribed: s 75(4). A penalty imposed by virtue of s 75(3) is (a) payable to the appropriate national authority that made the regulations; and (b) recoverable as a civil debt: s 75(5). An operator on whom a penalty is imposed by virtue of s 75(3) may appeal to the Upper Tribunal against the imposition of the penalty: s 75(6) (amended by SI 2009/1885).

NOTES 12, 14--Day appointed in relation to Road Safety Act 2006 s 9, Sch 2 is 1 April 2009: SI 2008/3164.

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### **1173. Regulation of conduct of passengers.**

Regulations<sup>1</sup> may make provision generally as to the conduct of passengers on public service vehicles<sup>2</sup> or tramcars<sup>3</sup> and in particular for<sup>4</sup>:

- 1761 (1) authorising the removal from a public service vehicle or a tramcar of a person infringing the regulations by the driver<sup>5</sup>, inspector<sup>6</sup> or conductor of the vehicle or on the request of the driver, inspector or conductor by a police constable<sup>7</sup>;
- 1762 (2) requiring a passenger in a public service vehicle or tramcar who is reasonably suspected by the driver, inspector or conductor of the vehicle of contravening the regulations to give his name and address to the driver, inspector or conductor on demand<sup>8</sup>;
- 1763 (3) requiring a passenger to declare, if so requested by the driver, inspector or conductor, the journey he intends to take or has taken in the vehicle, and to pay the fare for the whole of that journey and to accept any ticket provided for it<sup>9</sup>;
- 1764 (4) requiring, on demand being made for the purpose by the driver, inspector or conductor, production during the journey and surrender at the end of the journey by the holder of any ticket issued to him<sup>10</sup>;
- 1765 (5) requiring a passenger, if so requested by the driver, inspector or conductor, to leave the vehicle on the completion of the journey the fare for which he has paid<sup>11</sup>;
- 1766 (6) requiring the surrender of the ticket by the holder on the expiry of the period for which it is issued to him<sup>12</sup>.

If a person contravenes<sup>13</sup>, or fails to comply with, a provision of such regulations, he is liable<sup>14</sup> on summary conviction to a fine<sup>15</sup>.

- 1 See the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990, SI 1990/1020 (amended by SI 1995/186; SI 2002/1724). For the meaning of 'regulations' see PARA 1133 note 1 ante.
- 2 For the meaning of 'public service vehicle' see PARA 1172 note 4 ante.
- 3 For the meaning of 'tramcar' see PARA 219 ante.
- 4 Public Passenger Vehicles Act 1981 s 25(1) (amended by the Transport and Works Act 1992 s 61(1), (3)).
- 5 For the meaning of 'driver' see PARA 207 ante.
- 6 For the meaning of 'inspector', in relation to a public service vehicle, see PARA 1172 note 5 ante.
- 7 Public Passenger Vehicles Act 1981 s 25(1)(a) (as amended: see note 4 supra). As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.
- 8 Ibid s 25(1)(b) (as amended: see note 4 supra).
- 9 Ibid s 25(1)(c).
- 10 Ibid s 25(1)(d).
- 11 Ibid s 25(1)(e).
- 12 Ibid s 25(1)(f).
- 13 As to the meaning of 'contravene' see PARA 1141 note 11 ante.
- 14 It is a defence for the person charged to prove that there was a reasonable excuse for the act or omission in respect of which he is charged: Public Passenger Vehicles Act 1981 s 68(1), (2).
- 15 Ibid s 25(3). The fine must not exceed level 3 on the standard scale: s 25(3) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see PARA 230 note 3 ante.

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## ***B. NUMBER OF PASSENGERS***

### **1174. Control of number of passengers.**

Regulations<sup>1</sup> may make provision with respect to public service vehicles<sup>2</sup> for<sup>3</sup>:

- 1767 (1) the determination by or under the regulations of the number of the seated passengers and standing passengers respectively for whom a vehicle is constructed or adapted<sup>4</sup> and fit to carry<sup>5</sup>;
- 1768 (2) the determination by or under the regulations of the number of such passengers respectively who may be carried in a vehicle<sup>6</sup>;
- 1769 (3) the marks to be carried on a vehicle showing those numbers and the manner in which those marks are to be carried<sup>7</sup>.

If a person contravenes, or fails to comply with, a provision of such regulations, he is liable<sup>8</sup> on summary conviction to a fine<sup>9</sup>.

1 See the Public Service Vehicles (Carrying Capacity) Regulations 1984, SI 1984/1406 (amended by SI 1996/167). For the meaning of 'regulations' see PARA 1133 note 1 ante.

2 For the meaning of 'public service vehicle' see PARA 1172 note 4 ante. The conductor of a bus does not contravene the regulations if more people than are permitted are carried but he may aid and abet an offence by the owner of the vehicle: *Spires v Smith* [1956] 2 All ER 277, [1956] 1 WLR 601, DC.

3 Public Passenger Vehicles Act 1981 s 26(1).

4 The meaning of 'adapted' has been considered judicially in various contexts. It is thought that this means originally constructed or subsequently altered so as to make apt: cf *French v Champkin* [1920] 1 KB 76; *Hubbard v Messenger* [1938] 1 KB 300 at 307, [1937] 4 All ER 48 at 50 per Lord Hewart LC]. See also *Taylor v Mead* [1961] 1 All ER 626, [1961] 1 WLR 435, DC; *Maddox v Storer* [1963] 1 QB 451, [1962] 1 All ER 831, DC; *Flower Freight Co Ltd v Hammond* [1963] 1 QB 275, [1962] 3 All ER 950, DC; *Popperwell v Cockerton* [1968] 1 All ER 1038n, [1968] 1 WLR 438; *Baker v Secretary of State for the Environment* [1983] 2 All ER 1021, [1983] 1 WLR 1485. Cf para 818 note 4 ante.

5 Public Passenger Vehicles Act 1981 s 26(1)(a).

6 Ibid s 26(1)(b).

7 Ibid s 26(1)(c).

8 It is a defence for a person charged to prove that there was a reasonable excuse for the act or omission in respect of which he is charged: ibid s 68(1), (2). It is also a defence for a person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of any offence: s 68(3), (4).

9 Ibid s 26(2). The fine must not exceed level 2 on the standard scale: s 26(2) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see PARA 230 note 3 ante.

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## **C. LIABILITY FOR DEATH OR INJURY TO PASSENGERS**

### **1175. Avoidance of contracts.**

A contract for the conveyance of a passenger<sup>1</sup> in a public service vehicle<sup>2</sup>, so far as it purports to negative or restrict the liability<sup>3</sup> of a person in respect of a claim which may be made against him in respect of the death of, or bodily injury to, the passenger while being carried in, entering or alighting from the vehicle, or purports to impose conditions with respect to the enforcement of any such liability, is void<sup>4</sup>.

1 A pass issued to an employee entitling him to travel free on his employer's omnibuses is a mere licence and not a 'contract for the conveyance of a passenger': see *Wilkie v London Passenger Transport Board* [1947] 1 All ER 258, [1947] LJR 864, CA. Where a free pass was issued for use on the corporation's buses to a retirement pensioner, it was held that on the facts, and having regard to the terms of the pass, its issue and acceptance constituted a contract, not merely a licence: *Gore v Van der Lann* [1967] 2 QB 31 at 41-42, sub nom *Gore v Van der Lann (Liverpool Corp'n Intervening)* [1967] 1 All ER 360 at 366, CA, per Wilmer LJ, and at 44 and 367 per Salmon LJ. As to the formalities of contract see CONTRACT vol 9(1) (Reissue) PARA 620 et seq.

2 For the meaning of 'public service vehicle' see PARA 1136 ante.

3 As to the general duty of care to passengers see *Fletcher v United Counties Omnibus Co Ltd* [1998] PIQR P154, CA; and CARRIAGE AND CARRIERS vol 7 (2008) PARA 39 et seq; NEGLIGENCE vol 78 (2010) PARA 71. The driver of a public service vehicle may be personally liable for negligence: *Mayor v Ribble Motor Services Ltd* (1958) Times, 16 October, CA. As to the liability of an employer for his employee's torts see PARA 235 ante.

4 Public Passenger Vehicles Act 1981 s 29. As to void and illegal contracts see CONTRACT vol 9(1) (Reissue) PARA 836 et seq.

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## ***D. PASSENGERS ON SCHOOL BUSES***

### **1176. Fare-paying passengers on school buses.**

A local education authority<sup>1</sup> may<sup>2</sup>: (1) use a school bus<sup>3</sup>, when it is being used to provide free school transport, to carry as fare-paying passengers persons other than those for whom the free school transport is provided<sup>4</sup>; and (2) use a school bus belonging to the authority, when it is not being used to provide free school transport, to provide a local service<sup>5</sup>. However, provisions relating to the requirement for a certificate of initial fitness for use as a public service vehicle<sup>6</sup>, the powers of, and facilities for, inspection of public service vehicles<sup>7</sup>, and the carriage of passengers for hire or reward under a PSV operator's licence<sup>8</sup> do not apply to a school bus belonging to a local education authority in the course of its use by the authority in accordance with this provision<sup>9</sup>.

The above provisions do not affect the duties of a local education authority in relation to the provision of free school transport or authorise a local education authority to make any charge for the carriage of a pupil on a journey which he is required to make in the course of his education at a school maintained by such authority<sup>10</sup>.

1 As to the powers and duties of local education authorities see EDUCATION vol 15(1) (2006 Reissue) PARA 20 et seq.

2 Public Passenger Vehicles Act 1981 s 46(1), which is expressed to be subject to s 46(2) (see the text to note 10 infra).

3 'School bus' in relation to a local education authority, means a motor vehicle which is used by that authority to provide free school transport: *ibid* s 46(3). For the meaning of 'motor vehicle' see PARA 210 ante. 'Free school transport' means transport provided by a local education authority free of charge, in pursuance of arrangements under the Education Act 1996 s 509(1), s 509(1A) (as added), s 509AA(7)(b) (as added) or s 509AA(9)(a) (as added) (see EDUCATION vol 15(1) (2006 Reissue) PARA 534), or otherwise, in the exercise of any function of the authority, for the purpose of facilitating the attendance of persons receiving education or training at any premises: Public Passenger Vehicles Act 1981 s 46(3) (definition substituted by the Education Act 2002 s 215(1), Sch 21 para 4). As from a day to be appointed, the definition of 'free school transport' also covers transport provided under the Education Act 1996 s 508B(1) (as added), s 508C(1) (as added) or s 508F(1) (as added), and transport provided in pursuance of arrangements made by the authority in pursuance of a scheme made by it under Sch 35C (as added) (school travel schemes): Public Passenger Vehicles Act 1981 s 46(3) (definition amended by the Education and Inspections Act 2006 s 85, Sch 10 para 1). At the date at which this volume states the law no such day had been appointed.

4 Public Passenger Vehicles Act 1981 s 46(1)(a).

5 *Ibid* s 46(1)(b) (amended by the Transport Act 1985 ss 1(3), 139(3), Sch 1 para 6, Sch 8). For the meaning of 'local service' see PARA 1177 post; definition applied by the Public Passenger Vehicles Act 1981 s 82(1) (amended by the Transport Act 1985 s 3(5), Sch 1 para 13, Sch 2 Pt II para 4(20)).

6 *Ie* the Public Passenger Vehicles Act 1981 s 6 (as amended): see PARA 1141 ante.

7 *Ie* *ibid* s 8 (as amended): see PARA 1142 ante.

8 *Ibid* s 12(1) (as substituted): see PARA 1144 ante. For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante.

9 *Ibid* s 46(1) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 7, Sch 3 para 3).

10 Public Passenger Vehicles Act 1981 s 46(2).

## **UPDATE**

### **1176 Fare-paying passengers on school buses**

NOTE 3--Definition of 'free school transport' in Public Passenger Vehicles Act 1981 s 46(3) further amended: Learner Travel (Wales) Measure 2008 Sch 1 para 1, Sch 2.

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## **(3) ROAD PASSENGER TRANSPORT**

### **(i) Local Services Outside London**

#### **A. REGISTRATION OF LOCAL SERVICES**

##### **1177. Meaning of 'local service'.**

For the purposes of the Transport Act 1985, 'local service' means a service, using one or more public service vehicles<sup>1</sup>, for the carriage of passengers by road<sup>2</sup> at separate fares<sup>3</sup> other than one<sup>4</sup>: (1) which is excluded<sup>5</sup>; or (2) in relation to which (except in an emergency) one or both of the conditions mentioned in heads (a) and (b) below are met with respect to every passenger using the service<sup>6</sup>. The conditions are that: (a) the place where he is set down is 15 miles or more, measured in a straight line, from the place where he was taken up<sup>7</sup>; and (b) some point on the route between those places is 15 miles or more, measured in a straight line, from either of those places<sup>8</sup>. Where a service consists of one or more parts with respect to which one or both of the conditions are met, and one or more parts with respect to which neither of them is met, each of those parts must be treated as a separate service for the purpose of the meaning of local service<sup>9</sup>. A service must not be regarded for the purposes of the Transport Act 1985 as a local service if: (i) the conditions relating to trips organised privately by persons acting independently of vehicle operators are met in respect of each journey made by the vehicles used in providing the service<sup>10</sup>; or (ii) every vehicle used in providing the service is so used under a permit relating to the use of buses by educational and other bodies<sup>11</sup>.

1 For the meaning of 'public service vehicle' see PARA 1136 ante; definition applied by the Transport Act 1985 s 137(1), (2).

2 For the meaning of 'road' see PARA 206 text to note 2 ante; definition applied by *ibid* s 137(1), (2).

3 The Public Passenger Vehicles Act 1981 s 1(5)(b), (c), (6) (meaning of 'fares') (see PARA 1136 note 7 ante) applies for the purposes of the Transport Act 1985 s 2: s 2(5).

4 *Ibid* s 2(1).



- 5 Ibid s 2(1)(a). The text refers to exclusion by s 2(4): see the text to notes 10-11 infra.
- 6 Ibid s 2(1)(b).
- 7 Ibid s 2(2)(a).
- 8 Ibid s 2(2)(b).
- 9 Ibid s 2(3).
- 10 Ibid s 2(4)(a).
- 11 Ibid s 2(4)(b). The text refers to a permit granted under s 19: see PARA 1183 post.

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### **1178. Provision and registration of local services.**

No service<sup>1</sup> may be provided in any traffic area<sup>2</sup> in which there is a stopping place<sup>3</sup> for the service unless<sup>4</sup>:

- 1770 (1) the prescribed particulars<sup>5</sup> of the service have been registered with the traffic commissioner<sup>6</sup> for that area by the operator of the service<sup>7</sup>;
- 1771 (2) the period of notice<sup>8</sup> in relation to the registration has expired<sup>9</sup>; and
- 1772 (3) the service is operated in accordance with the registered particulars<sup>10</sup>.

An application for registration may only be accepted from a person who either holds an unconditional<sup>11</sup> PSV operator's licence or a community bus permit<sup>12</sup> or is using, or proposing to use, a school bus belonging to that person for fare-paying passengers<sup>13</sup>. Any registration may be varied or cancelled on an application made by the operator of the service to which it relates<sup>14</sup>. The variation or cancellation of a registration becomes effective<sup>15</sup>:

- 1773 (a) on the expiry of the period beginning with the date on which the traffic commissioner accepts the application and ending with the date determined in accordance with regulations under this provision<sup>16</sup>; or
- 1774 (b) if later, on the day given to the traffic commissioner by the operator as the effective date for the variation or, as the case may be, cancellation<sup>17</sup>.

Regulations may be made for the purpose of carrying this provision into effect and any such regulations may, in particular, make provision<sup>18</sup>:

- 1775 (i) for permitting the variation of a registered service, in such circumstances as may be prescribed, without variation of the registration<sup>19</sup>.
- 1776 (ii) for excluding or modifying the application of the meaning of period of notice<sup>20</sup> or the variation or cancellation of a registration becoming effective<sup>21</sup> in such cases or classes of case as may be prescribed<sup>22</sup>;
- 1777 (iii) that in such cases or classes of case as may be prescribed: (A) heads (1) to (3) above have effect as if for the reference in head (2) above to the period of notice there were substituted a reference to such period as the traffic

- commissioner may determine; (B) the provision relating to the variation or cancellation of a registration becoming effective<sup>23</sup> has effect as if for the reference in head (a) above to the date on which the period mentioned in that head is to expire there were substituted a reference to such date as he may determine<sup>24</sup>;
- 1778 (iv) as to the procedure for applying for registration or for the variation or cancellation of a registration<sup>25</sup>;
- 1779 (v) for an application for registration or for the variation or cancellation of a registration not to be accepted by the traffic commissioner to whom it is made unless the applicant gives to the commissioner such information as he may reasonably require in connection with the application<sup>26</sup>;
- 1780 (vi) as to the traffic commissioner to whom an application for registration is to be made in the case of services which will run through the areas of two or more traffic commissioners<sup>27</sup>;
- 1781 (vii) as to the documents (if any) to be issued by a traffic commissioner with respect to registrations<sup>28</sup>;
- 1782 (viii) as to the cancellation of registrations relating to discontinued services<sup>29</sup>;
- 1783 (ix) for enabling a traffic commissioner to require the operator of a registered service, in such circumstances as may be prescribed, to keep records of such matters relating to the operation of the service, in such manner, as may be prescribed<sup>30</sup>;
- 1784 (x) for requiring the operator of a registered service who is required to keep records by regulations made by virtue of head (ix) above to make those records available to the traffic commissioner<sup>31</sup>;
- 1785 (xi) for requiring the operator or prospective operator of a registered service to give, to such persons and at such times as may be prescribed, such information as may be prescribed with respect to the service, or proposed service, or any proposal to vary or cancel the registration of the service<sup>32</sup>;
- 1786 (xii) for excluding from the application of this provision services which are excursions or tours<sup>33</sup>, or excursions or tours falling within a prescribed class<sup>34</sup>.

1 For the purposes of the Transport Act 1985 s 6, 'service' means a local service which is neither a London local service nor a service provided under an agreement entered into, where a railway service has been temporarily interrupted, with the Secretary of State, the Scottish Ministers or the Welsh Ministers under the Railways Act 2005 s 40 (substitution services provided for interrupted or discontinued railway services): Transport Act 1985 s 6(1) (amended by the Railways Act 2005 s 59(1), Sch 12 para 8). For the meaning of 'local service' see PARA 1177 ante; and for the meaning of 'London local service' see PARA 1231 post. As to railway services see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

As from a day to be appointed, the definition of 'service' is amended to exclude a service which falls within the Transport Act 1985 s 6(1A) (prospectively added): s 6(1) (amended by the Education and Inspections Act 2006 s 85, Sch 10 para 2(1), (2)). A service falls within the Transport Act 1985 s 6(1A) (as prospectively added) if conditions A and B are satisfied in relation to it: s 6(1A) (s 6(1A)-(1C) added by the Education and Inspections Act 2006 Sch 10 para 2(3)). Condition A is satisfied if the service is provided in pursuance of: (1) the obligation placed on a local education authority by the Education Act 1996 s 508B(1) (as added), s 508F(1) (as added), s 509(1), s 509(1A) (as added), s 509AA(7)(b) (as added) or s 509AA(9)(a) (as added) (provision of transport etc); (2) the exercise of the power of a local education authority under s 508C(1); or (3) arrangements made by a local education authority in pursuance of a scheme made by it under Sch 35C (school travel schemes): Transport Act 1985 s 6(1B) (as so added). Condition B is satisfied if the service is for the carriage of any of the following persons (and no other): (a) a person receiving education or training at premises to or from which transport is provided in pursuance of the obligation, the exercise of the power or the arrangements, as the case may be, mentioned in head (1), (2) or (3) supra; (b) a person supervising or escorting any such person while he is using such transport; (c) a person involved with the provision of education or training at any such premises: s 6(1C) (as so added). At the date at which this volume states the law no such day had been appointed.

2 'Traffic area' means a traffic area constituted for the purposes of the Public Passenger Vehicles Act 1981 (see PARA 1138 ante), and s 80 (as amended) (construction of references to traffic areas) (see PARA 1138 ante) applies to references in the Transport Act 1985 to the South-Eastern and Metropolitan Traffic Area: s 137(1); Traffic Areas (Reorganisation) Order 1991, SI 1991/288, art 5(2).

3 'Stopping place' means, in relation to any service or part of a service, a point at which passengers are (or, in the case of a proposed service, are proposed to be) taken up or set down in the course of that service or part: Transport Act 1985 s 137(1).

4 Ibid s 6(2), which is expressed to be subject to regulations made under s 6 (as amended). 'Regulations' means regulations made by the Secretary of State: s 137(1). In exercise of this power the Public Service Vehicles (Registration of Local Services) Regulations 1986, SI 1986/1671 (as amended) have been made. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 'Prescribed' means prescribed by regulations: Transport Act 1985 s 137(1). As to the prescribed particulars see the Public Service Vehicles (Registration of Local Services) Regulations 1986, SI 1986/1671, reg 4, Schedule (substituted by SI 2004/10).

6 As to traffic commissioners see PARA 1139 ante.

7 Transport Act 1985 s 6(2)(a).

8 'The period of notice', in relation to any registration, means, subject to regulations under ibid s 6 (as amended) the period prescribed for the purposes of s 6(3), or if longer, the period beginning with the registration and ending with the date given to the traffic commissioner by the operator as the date on which the service will begin: s 6(3). The period of notice prescribed for the purposes of s 6(3) is, in the case of a community bus service, 28 days commencing on the date on which the traffic commissioner accepts the application, and in the case of any other service, 56 days commencing with the date on which the traffic commissioner accepts the application: see the Public Service Vehicles (Registration of Local Services) Regulations 1986, SI 1986/1671, reg 5(1)(a) (substituted by SI 2004/10). As to exceptions to this period of notice see the Public Service Vehicles (Registration of Local Services) Regulations 1986, SI 1986/1671, reg 7 (amended by SI 1988/1879; SI 1989/1064; SI 2004/10); and the Public Service Vehicles (Registration of Local Services) Regulations 1986, SI 1986/1671, reg 8 (amended by SI 1989/1064; SI 2004/10).

9 Transport Act 1985 s 6(2)(b).

10 Ibid s 6(2)(c).

11 'Unconditional', in relation to a PSV operator's licence, means a licence which does not have attached to it a condition imposed under ibid s 26(1) (see PARA 1187 post) prohibiting, or having the effect of prohibiting, the operator from using vehicles under the licence to provide the service to which the application in question relates: s 6(5). For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante; definition applied by s 137(1), (2).

12 Ie under ibid s 22: see PARA 1185 post.

13 Ibid s 6(4). The text refers to the use of a school bus for fare paying passengers in accordance with the Public Passenger Vehicles Act 1981 s 46(1) (as amended): see PARA 1176 ante.

As to the power to prescribe fees for the registration of services under the Transport Act 1985 s 6 (as amended) see the Public Passenger Vehicles Act 1981 s 52(1), (2) (as amended) (see PARA 1170 ante); applied by the Transport Act 1985 s 126(1)(a).

As to the duty to keep records of registrations under s 6 (as amended) see the Public Passenger Vehicles Act 1981 s 56 (as amended) (see PARA 1168 ante); applied by the Transport Act 1985 s 126(3)(a).

14 Ibid s 6(7). As to the power to prescribe fees for the variation of registrations under s 6 (as amended) see the Public Passenger Vehicles Act 1981 s 52(1), (2) (as amended) (see PARA 1170 ante); applied by the Transport Act 1985 s 126(1)(a).

15 Ibid s 6(8), which is expressed to be subject to regulations under s 6 (as amended). A registered service may be varied without variation of the registration: see the Public Service Vehicles (Registration of Local Services) Regulations 1986, SI 1986/1671, reg 9 (amended by SI 1988/1879; SI 1989/1064; SI 1994/3271; SI 2002/182; SI 2004/10). As to the cancellation of registration see the Public Service Vehicles (Registration of Local Services) Regulations 1986, SI 1986/1671, reg 9A (added by SI 1988/1879; and amended by SI 1989/1064).

16 Transport Act 1985 s 6(8)(a). The period mentioned ends with the last day of the period of notice prescribed in the Public Service Vehicles (Registration of Local Services) Regulations 1986, SI 1986/1671, reg 5(1)(a) (as substituted) (see note 8 supra): see reg 5(1)(b) (substituted by SI 2004/10). As to exceptions to this period of notice see the Public Service Vehicles (Registration of Local Services) Regulations 1986, SI 1986/1671, regs 7, 8 (as amended: see note 8 supra).

17 Transport Act 1985 s 6(8)(b).

18 Ibid s 6(9). As to the power to prescribe fees for the issue of any documents issued in accordance with regulations under s 6 (as amended) with respect to registrations under s 6 (as amended) see the Public Passenger Vehicles Act 1981 s 52(1), (2) (as amended) (see PARA 1170 ante); applied by the Transport Act 1985 s 126(1)(b). As to the prescribed fees see the Public Service Vehicles (Registration of Local Services) Regulations 1986, SI 1986/1671, reg 12 (substituted by SI 1989/1064; and amended by SI 1993/2752; SI 2002/2536; SI 2004/10; SI 2004/2250; SI 2005/2355; SI 2007/690).

19 Transport Act 1985 s 6(9)(a). See note 18 supra.

20 Ie the application of ibid s 6(3): see note 8 supra.

21 Ie the application of ibid s 6(8): see the text to notes 15-17 supra.

22 Ibid s 6(9)(b). See note 18 supra.

23 Ie ibid s 6(8): see the text to notes 15-17 supra.

24 Ibid s 6(9)(c). See note 18 supra.

25 Ibid s 6(9)(d). See note 18 supra.

26 Ibid s 6(9)(e). See note 18 supra.

27 Ibid s 6(9)(f). See note 18 supra.

28 Ibid s 6(9)(g). See note 18 supra.

29 Ibid s 6(9)(h). See note 18 supra.

30 Ibid s 6(9)(i). See note 18 supra. As to the keeping of records of registrations see PARA 1168 ante.

31 Ibid s 6(9)(j). See note 18 supra.

32 Ibid s 6(9)(k). See note 18 supra.

33 'Excursion or tour' means a service for the carriage of passengers by road at separate fares on which the passengers travel together on a journey, with or without breaks, from one or more places to one or more other places and back: ibid s 137(1). For the meaning of 'road' see PARA 206 text to note 2 ante; definition applied by s 137(1), (2). For the meaning of 'fares' see PARA 1136 note 7 ante; definition applied by s 137(1), (2).

34 Ibid s 6(9)(l). See note 18 supra.

## UPDATE

### 1178 Provision and registration of local services

TEXT AND NOTES--Where (1) any registration restrictions imposed under the Transport Act 2000 s 114(3A) (see PARA 1200) are in force; and (2) an application for registration is made in respect of a service in relation to which those restrictions have effect, the Transport Act 1985 s 6A (see PARA 1178A) has effect in relation to the application: Transport Act 1985 s 6(2A) (added by the Local Transport Act 2008 s 48(2)). Where (a) a quality contracts scheme under the Transport Act 2000 s 124 (see PARA 1209) is in force; (b) an operator proposes to provide a local service which is to have one or more stopping places within the area to which the scheme relates; (c) the proposed service is not excluded from the scheme by virtue of s 127(4); and (d) the operator does not propose to provide the service under a quality contract by virtue of the scheme, the Transport Act 1985 s 6B (see PARA 1178B) has effect with respect to registration of that service: Transport Act 1985 s 6(2B) (added by the Local Transport Act 2008 s 49(2)). Where (i) a quality contracts scheme under the Transport Act 2000 s 124 is in force; (ii) the operator of a local service registered under s 124 proposes to vary the registration; (iii) the service, as proposed to be varied, is to have one or more stopping places

within the area to which the scheme relates; (iv) the service, as proposed to be varied, is not excluded from the scheme by virtue of the Transport Act 2000 s 127(4); and (v) the operator does not propose to provide the service, as proposed to be varied, under a quality contract by virtue of the scheme, the Transport Act 1985 s 6B has effect with respect to the variation of the registration: Transport Act 1985 s 6(7A) (added by the Local Transport Act 2008 s 49(3)).

NOTE 1--Transport Act 1985 s 6(1B), (1C) amended: Learner Travel (Wales) Measure 2008 Sch 1 para 2(2), (3), Sch 2.

TEXT AND NOTES 8, 9, 15--See the Public Service Vehicles (Registration Restrictions) (England and Wales) Regulations 2009, SI 2009/443, reg 6.

NOTES 8, 9--The period of notice for a new registration during the period between the making of a quality contracts scheme (see PARA 1209) and its coming into force, is prescribed, together with exceptions, by the Public Service Vehicles (Registration of Local Services) (Quality Contracts Schemes) (England and Wales) Regulations 2009, SI 2009/3245, regs 1-4, 7, 8 (in force as respects Wales on the coming into force in Wales of the Transport Act 2000 s 127 (see PARA 1212)). SI 1986/1671 regs 5, 7, 8 do not apply to any application to register particulars of a local service or to vary or cancel an existing registration to which SI 2009/3245 Pt 2 (regs 1-9) applies: SI 1986/1671 reg 4A (added by SI 2009/3245) (in force as respects Wales on the coming into force in Wales of the Transport Act 2000 s 127).

NOTE 8--SI 1986/1671 regs 5(1), 7, 8 further amended: SI 2009/3245 (in force as respects Wales on the coming into force in Wales of the Transport Act 2000 s 127 (see PARA 1212)).

NOTES 13, 14--Transport Act 1985 s 126(1)(a) amended: Local Transport Act 2008 s 52(2).

NOTE 13--Transport Act 1985 s 126(3) amended: Local Transport Act 2008 s 61.

NOTES 15-17--Transport Act 1985 s 6(8) amended: Local Transport Act 2008 s 49(4). The periods of notice for the cancellation or variation of a registration during the period between the making of a quality contracts scheme (see PARA 1209) and its coming into force, are prescribed, together with exceptions, by the Public Service Vehicles (Registration of Local Services) (Quality Contracts Schemes) (England and Wales) Regulations 2009, SI 2009/3245, regs 1-3, 5-8 (in force as respects Wales on the coming into force in Wales of the Transport Act 2000 s 127 (see PARA 1212)).

NOTE 15--SI 1986/1671 reg 9A further amended: SI 2009/3245 (in force as respects Wales on the coming into force in Wales of the Transport Act 2000 s 127 (see PARA 1212)).

TEXT AND NOTES 18-34--Transport Act 1985 s 6(9)(ka), 6(10) added: Local Transport Act 2008 s 65(3), (4).

NOTE 18--SI 1986/1671 reg 12 further amended: SI 2008/1470, SI 2009/878.

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### **1178A. Applications for registration etc where restrictions are in force.**

Where (1) any registration restrictions imposed under the Transport Act 2000 s 114(3A) (see PARA 1200) are in force in the case of a quality partnership scheme; (2) an application for registration, or for variation or cancellation of registration, is made under the Transport Act 1985 s 6 (see PARA 1178) to a traffic commissioner in respect of a local service in relation to which those restrictions have effect; and (3) the application is one which would fall to be accepted by the traffic commissioner, the traffic commissioner, before deciding whether to accept the application, must give each relevant authority, and each relevant operator a notice: Transport Act 1985 s 6A(1), (2) (s 6A added by the Local Transport Act 2008 s 48(3)). As to the meaning of 'relevant authority' and 'relevant operator', see the Transport Act 1985 s 6A(12). The notice must (a) identify the application and state that it has been made; (b) provide prescribed particulars of the application; and (c) inform the persons to whom it is required to be sent of the right of each of them to make relevant representations to the traffic commissioner about the application: s 6A(3). 'Relevant representations' means representations that the effect of accepting the application would be detrimental to the provision of services under the scheme, having regard to the registration criteria: s 6A(12). If no relevant representations are made, the application is to be accepted: s 6A(4).

If any relevant representations are made by a relevant authority or a relevant operator, the traffic commissioner must decide whether the effect of accepting the application would be detrimental to the provision of local services under the scheme, and may decide that question only after (i) considering those representations; (ii) taking account of any other relevant applications and any relevant representations made in relation to those applications; (iii) holding such inquiries under the Public Passenger Service Vehicles Act 1981 s 54 (see PARA 1166) as the traffic commissioner may think fit; and (iv) applying the registration criteria: Transport Act 1985 s 6A(5), (6). If the traffic commissioner decides that the effect of accepting the application would not be detrimental to the provision of such services, the application is to be accepted: s 6A(7). If s 6A(7) does not apply, the traffic commissioner may (A) refuse to accept the application; (B) require the applicant to amend the application in such respects as the traffic commissioner may require before submitting it again; and (C) if the applicant has not given a written undertaking under the Transport Act 2000 s 118(4) (see PARA 1178) in relation to the scheme, require the applicant to give such an undertaking before the application may be accepted: Transport Act 1985 s 6A(8).

Regulations may be made for the purposes of carrying the Transport Act 1985 s 6A into effect: s 6A(11). See the Public Service Vehicles (Registration Restrictions) (England and Wales) Regulations 2009, SI 2009/443.

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### **1178B. Applications for registration where a quality contracts scheme is in force.**

An operator may apply to a traffic commissioner (1) by virtue of the Transport Act 1985 s 6(2B) (see PARA 1178), for registration of the proposed service under s 6 (see PARA 1178); and (2) by virtue of s 6(7A) (see PARA 1178), for variation of the registration under s 6(7A), notwithstanding anything in the Transport Act 2000 s 129(1)(a) (see PARA 1214): Transport Act 1985 s 6B(1), (2) (s 6B added by the Local Transport Act 2008 s 49(5)). The traffic commissioner must not accept the application except in accordance with the Transport Act 1985 s 6B(4)-(6): s 6B(3). On

receipt of the application, the traffic commissioner must consult the authority or authorities who made the quality contracts scheme: s 6B(4). If, within the prescribed time, the traffic commissioner receives from the authority or authorities a clearance certificate in respect of the application, the traffic commissioner must (a) in relation to registration of the proposed local service mentioned in s 6(2B), register the service under s 6; or (b) in relation to the proposed variation of the registration mentioned in s 6(7A), vary the registration under s 6(7A): s 6B(5). As to the meaning of 'clearance certificate', see s 6B(8). The prescribed time for the authority to submit a clearance certificate to the traffic commissioner for these purposes is 28 days, commencing on the date on which it receives notice of consultation from the traffic commissioner: Public Service Vehicles (Registration of Local Services) (Quality Contracts Schemes) (England and Wales) Regulations 2009, SI 2009/3245, regs 1, 2, 10 (in force as respects Wales on the coming into force in Wales of the Transport Act 2000 s 127 (see PARA 1212)). If the traffic commissioner does not receive such a certificate within that time, the application must be rejected: s 6B(6). In relation to the proposed variation of the registration mentioned in s 6(7A), regulations may prescribe cases in which s 6B(3)-(6) do not apply: s 6B(7). For the cases so prescribed, see Public Service Vehicles (Registration of Local Services) (Quality Contracts Schemes) (England and Wales) Regulations 2009, SI 2009/3245, regs 1, 2, 11 (in force as respects Wales on the coming into force in Wales of the Transport Act 2000 s 127 (see PARA 1212)).

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### **1179. Application of traffic regulation conditions to local services subject to registration.**

If a traffic authority<sup>1</sup> asks him to exercise his powers<sup>2</sup> in relation to a particular traffic problem, the traffic commissioner<sup>3</sup> for any traffic area<sup>4</sup> may determine traffic regulation conditions which must be met in the provision of services<sup>5</sup> in the area to which the conditions are expressed to apply<sup>6</sup>. The area to which traffic regulation conditions may be expressed to apply is any part of the traffic area of the traffic commissioner determining them<sup>7</sup>. A traffic commissioner may not determine traffic regulation conditions unless he is satisfied, after considering the traffic in the area in question, that such conditions are required in order to prevent danger to road<sup>8</sup> users, reduce severe traffic congestion or reduce or limit noise or air pollution<sup>9</sup>. In considering what traffic regulation conditions to apply to a particular area a traffic commissioner must have regard in particular to the interests of<sup>10</sup>:

- 1787 (1) those who have registered<sup>11</sup> services which are or will be operated in the area<sup>12</sup>;
- 1788 (2) those who are, or are likely to be, users of such services<sup>13</sup>; and
- 1789 (3) persons who are elderly or disabled<sup>14</sup>.

The purposes for which traffic regulation conditions may be determined are the regulation of: (a) the routes of services<sup>15</sup>; (b) the stopping places<sup>16</sup> for services<sup>17</sup>; (c) when vehicles used in providing services may stop at such stopping places and for how long they may do so<sup>18</sup>; and (d) such other matters as may be prescribed<sup>19</sup>. Traffic regulation conditions apply to all services operated in the area to which the conditions are expressed to apply, or to such class of service operated there as may be specified in the conditions<sup>20</sup>. However, where the traffic

commissioner for any traffic area is satisfied that traffic regulation conditions applying generally to a particular part of his traffic area would be inappropriate as a means of achieving the regulation of traffic which he considers is required there, he may determine traffic regulation conditions which apply only to the service or services specified in the conditions<sup>21</sup>.

Before determining any traffic regulation conditions, a traffic commissioner must hold an inquiry if he has received (within the prescribed period) a request for an inquiry from<sup>22</sup>:

- 1790 (i) the traffic authority which made the request<sup>23</sup>;
- 1791 (ii) any other traffic authority likely to be affected by traffic regulation conditions determined in response to that request<sup>24</sup>; or
- 1792 (iii) any person who has registered<sup>25</sup> a service which is or will be operated in the area in question<sup>26</sup>,

and the request has not been withdrawn<sup>27</sup>. However, this does not apply where the traffic commissioner is satisfied that the conditions should be determined without delay<sup>28</sup>. Where<sup>29</sup> a traffic commissioner so determines traffic regulation conditions without first holding an inquiry, he must hold one as soon as is reasonably practicable if any person mentioned in head (i) or head (iii) above or any other traffic authority affected by the conditions has, before the end of the prescribed period, asked him to do so<sup>30</sup>.

Before asking a traffic commissioner to exercise his powers in relation to a road for which the Secretary of State<sup>31</sup> is the highway authority<sup>32</sup>, a traffic authority must obtain leave of the Secretary of State; but such leave being given must not be taken to indicate the Secretary of State's approval of any conditions determined by the traffic commissioner in response to the request<sup>33</sup>.

Traffic regulation conditions may make different provision with respect to the operation of any service to which they apply during different periods of the year, on different days of the week, or at different times during any period of 24 hours<sup>34</sup>.

A traffic commissioner may vary or revoke any traffic regulation conditions determined by him on being requested to do so by any traffic authority, or the operator of any service affected by the conditions<sup>35</sup>.

1 'Traffic authority' means the council of any metropolitan district or non-metropolitan county: Transport Act 1985 s 7(15)(a). For the purposes of the Transport Act 1985: (1) any reference to a county is to be construed in relation to Wales as including a reference to a county borough; (2) any reference to a county council is to be construed in relation to Wales as including a reference to a county borough council; and (3) the Local Government (Wales) Act 1994 s 17(4), (5) (references to counties and districts to be construed generally in relation to Wales as references to counties and county boroughs) does not apply: Transport Act 1985 s 137(2A) (added by the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 39(10)). 'Non-metropolitan county' means a county other than a metropolitan county: Local Government Act 1972 s 270(2). See further LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

2 le under the Transport Act 1985 s 7 (as amended).

3 As to traffic commissioners see PARA 1139 ante.

4 For the meaning of 'traffic area' see PARA 1178 note 2 ante.

5 For these purposes, 'service' means any local service to which the Transport Act 1985 s 6 (as amended) (see PARA 1178 ante) applies: s 7(2). For the meaning of 'local service' see PARA 1177 ante.

6 Ibid s 7(1). As to the duty to keep records of traffic regulation conditions determined under s 7 (as amended) see the Public Passenger Vehicles Act 1981 s 56 (as amended) (see PARA 1168 ante); applied by the Transport Act 1985 s 126(3)(b).

7 Ibid s 7(3).



8 For the meaning of 'road' see PARA 206 text to note 2 ante; definition applied by *ibid* s 137(1), (2).

9 *Ibid* s 7(4) (amended by the Transport Act 2000 ss 142, 274, Sch 31 Pt II).

10 Transport Act 1985 s 7(5).

11 *Ie* under *ibid* s 6 (as amended) (see PARA 1178 ante). Any reference to a service registered under s 6 (as amended) is a reference to a service in respect of which the prescribed particulars are registered under s 6 (as amended): s 6(6). For the meaning of 'prescribed' see PARA 1178 note 5 ante. As to the prescribed particulars see the Public Service Vehicles (Registration of Local Services) Regulations 1986, SI 1986/1671, reg 4, Schedule (substituted by SI 2004/10).

12 Transport Act 1985 s 7(5)(a).

13 *Ibid* s 7(5)(b).

14 *Ibid* s 7(5)(c).

15 *Ibid* s 7(6)(a).

16 For the meaning of 'stopping place' see PARA 1178 note 3 ante.

17 Transport Act 1985 s 7(6)(b).

18 *Ibid* s 7(6)(c).

19 *Ibid* s 7(6)(d). In addition to the purposes set out in heads (a), (b) and (c) in the text, traffic regulation conditions may be determined for the purposes of: (1) regulating the roads to be used and the manoeuvres to be performed when turning a vehicle in the provision of a service; (2) limiting the number of vehicles which may be used, or the frequency at which vehicles may be operated, in the provision of a service along all or part of its route whether generally or during particular periods or at particular times; (3) regulating the emission levels of vehicles used in providing services; and (4) regulating the noise pollution levels that may result from the operation, in vehicles used in providing services, of a loudspeaker or other type of public address system: Public Service Vehicles (Traffic Regulation Conditions) (England and Wales) Regulations 2004, SI 2004/2682, reg 4.

20 Transport Act 1985 s 7(7), which is expressed to be subject to s 7(8) (see the text to note 21 *infra*).

21 *Ibid* s 7(8).

22 *Ibid* s 7(9). The prescribed period is 28 days commencing immediately after the date of publication in Notices and Proceedings of the request for such a determination: see the Public Service Vehicles (Traffic Regulation Conditions) (England and Wales) Regulations 2004, SI 2004/2682, reg 6(1).

23 Transport Act 1985 s 7(9)(a). The text refers to a request made under s 7(1): see the text to note 6 *supra*.

24 *Ibid* s 7(9)(b).

25 *Ie* under *ibid* s 6 (as amended): see PARA 1178 ante.

26 *Ibid* s 7(9)(c).

27 *Ibid* s 7(9).

28 *Ibid* s 7(10).

29 *Ie* in reliance on *ibid* s 7(10): see the text to note 28 *supra*.

30 *Ibid* s 7(11). The prescribed period is 28 days commencing immediately after the date of publication in Notices and Proceedings of the determination: see the Public Service Vehicles (Traffic Regulation Conditions) (England and Wales) Regulations 2004, SI 2004/2682, reg 6(2). As to the meaning of 'reasonably practicable' see PARA 1161 note 7 ante.

31 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

32 As to highway authorities see HIGHWAYS, STREETS AND BRIDGES vol 21 (Reissue) PARA 49 et seq.

33 Transport Act 1985 s 7(12) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 Pt IV para 117).

34 Transport Act 1985 s 7(13).

35 Ibid s 7(14).

## UPDATE

### **1179 Application of traffic regulation conditions to local services subject to registration**

TEXT AND NOTES 1-6--Transport Act 1985 s 7(1) amended: Local Transport Act 2008 s 50(2).

NOTE 6--Transport Act 1985 s 126(3) amended: Local Transport Act 2008 s 61.

TEXT AND NOTES 8, 9--Transport Act 1985 s 7(4) amended: Local Transport Act 2008 s 50(3).

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### **1180. Enforcement of traffic regulation conditions.**

Where traffic regulation conditions<sup>1</sup> have been determined<sup>2</sup>, it is the duty of the traffic commissioner<sup>3</sup> by whom any relevant licence or permit<sup>4</sup> has been granted to attach the conditions to that licence or, as the case may be, to that permit<sup>5</sup>. Where the traffic commissioner who determined the traffic regulation conditions and the traffic commissioner who granted the relevant licence or permit are different, it is the duty of the commissioner determining the conditions to send to the other commissioner<sup>6</sup>: (1) details of the conditions<sup>7</sup>; and (2) the name of the person registering the particulars of the local service<sup>8</sup>. If traffic regulation conditions which have been attached to a licence or permit under this provision are subsequently varied or revoked, it is the duty of the traffic commissioner or commissioners concerned to secure that the conditions as so attached are correspondingly varied or, as the case may be, removed<sup>9</sup>. Traffic regulation conditions are of no effect to the extent to which they are incompatible with any provision made by or under any enactment prohibiting or restricting the use of any road<sup>10</sup> by traffic<sup>11</sup>. Where the operator of a local service is unable both to operate the service in accordance with the particulars of the service<sup>12</sup> and to comply with<sup>13</sup>: (a) traffic regulation conditions<sup>14</sup>; or (b) any other provision made by or under any enactment prohibiting or restricting the use of any road by traffic<sup>15</sup>, any failure to operate the service in accordance with those particulars which occurs at any time before the expiry of the prescribed period<sup>16</sup> beginning with the coming into force of the conditions or provision must be disregarded to the extent to which it is attributable to his having to comply with the conditions or provision<sup>17</sup>.

1 As to the meaning of 'traffic regulation conditions' see PARA 1179 ante.

2 I.e. under the Transport Act 1985 s 7 (as amended): see PARA 1179 ante.

3 As to traffic commissioners see PARA 1139 ante.

4 'Licence' means a PSV operator's licence, and 'permit' means a community bus permit under the Transport Act 1985 s 22 (see PARA 1185 post); and a licence or permit is relevant for the purposes of s 8 if a local service registered under s 6 (as amended) (see PARA 1178 ante) by the holder of the licence or permit is affected by the conditions: s 8(2). For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante; definition applied by s 137(1), (2). For the meaning of 'local service' see PARA 1177 ante.

5 Ibid s 8(1).

6 Ibid s 8(3).

7 Ibid s 8(3)(a).

8 Ibid s 8(3)(b).

9 Ibid s 8(4).

10 For the meaning of 'road' see PARA 206 text to note 2 ante; definition applied by ibid 137(1), (2).

11 Ibid s 8(5).

12 Is registered under ibid s 6 (as amended): see PARA 1178 ante.

13 Ibid s 8(6).

14 Ibid s 8(6)(a).

15 Ibid s 8(6)(b).

16 The prescribed period during which failure to operate a service in accordance with the registered particulars is disregarded in specified circumstances is 28 days: see the Public Service Vehicles (Registration of Local Services) Regulations 1986, SI 1986/1671, reg 11.

17 Transport Act 1985 s 8(6).

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### **1181. Appeals against traffic regulation conditions.**

In relation to any determination, variation or revocation of conditions any person who has registered<sup>1</sup> a local service<sup>2</sup> which is, or is likely to be, affected by them and any traffic authority<sup>3</sup> aggrieved by the decision in question, and, in relation to any refusal to comply with a request, the person making the request<sup>4</sup>, may appeal to the Secretary of State<sup>5</sup> against: (1) the determination, variation or revocation of any traffic regulation conditions<sup>6</sup>; or (2) the refusal by a traffic commissioner<sup>7</sup> to comply with a request duly made<sup>8</sup> to determine, vary or revoke any such conditions<sup>9</sup>.

Such an appeal must be made within the prescribed time<sup>10</sup> and in the prescribed manner, and provision may be made by regulations<sup>11</sup> as to the procedure to be followed in connection with such appeals<sup>12</sup>. On the determination of such an appeal, the Secretary of State may confirm, vary or reverse the decision appealed against and may give such directions as he thinks fit<sup>13</sup> to the traffic commissioner for giving effect to his decision<sup>14</sup>.

An appeal lies to the High Court at the instance of: (a) the person who appealed to the Secretary of State<sup>15</sup>; (b) any person who had a right to appeal to him against the relevant decision of the traffic commissioner but did not exercise that right<sup>16</sup>; (c) any traffic authority

aggrieved by the decision<sup>17</sup>; and (d) the traffic commissioner whose decision was appealed against<sup>18</sup>, on any point of law arising from a decision of the Secretary of State on such an appeal<sup>19</sup>.

1 le under the Transport Act 1985 s 6 (as amended): see PARA 1178 ante.

2 For the meaning of 'local service' see PARA 1177 ante.

3 For the meaning of 'traffic authority' see PARA 1179 note 1 ante; definition applied by the Transport Act 1985 s 9(10).

4 Ibid s 9(2).

5 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 Transport Act 1985 s 9(1)(a). The text refers to traffic regulation conditions under s 7 (as amended): see PARA 1179 ante. As to the meaning of 'traffic regulation conditions' see PARA 1179 ante.

7 As to traffic commissioners see PARA 1139 ante.

8 le under the Transport Act 1985 s 7 (as amended): see PARA 1179 ante.

9 Ibid s 9(1)(b).

10 For the meaning of 'prescribed' see PARA 1178 note 5 ante. An appeal under ibid s 9 must be made so as to be received by the Secretary of State before the expiry of 28 days commencing with the day immediately following the date on which either: (1) notice of the refusal by a traffic commissioner to comply with a request to determine, vary or revoke any traffic regulation conditions is sent to the person making the request; or (2) notice of the determination, variation or revocation of any such conditions is published in Notices and Proceedings: Public Service Vehicles (Traffic Regulation Conditions) (England and Wales) Regulations 2004, SI 2004/2682, reg 7(2).

11 For the meaning of 'regulations' see PARA 1178 note 4 ante.

12 Transport Act 1985 s 9(3). As to the prescribed manner and procedure see the Public Service Vehicles (Traffic Regulation Conditions) (England and Wales) Regulations 2004, SI 2004/2682, reg 7.

13 See PARA 1138 note 5 ante. It is the duty of any person to whom the Secretary of State gives directions under the Transport Act 1985 to give effect to those directions: s 136(1). Any direction given by the Secretary of State under any provision of the Transport Act 1985, including a direction specifying a period or date for any purposes of Pt IV (ss 57-87) (as amended), may be varied or revoked by a subsequent direction given under that provision: s 136(2). Any direction given by the Secretary of State under the Transport Act 1985 must be in writing: s 136(3).

14 Ibid s 9(4).

15 Ibid s 9(6)(a).

16 Ibid s 9(6)(b).

17 Ibid s 9(6)(c).

18 Ibid s 9(6)(d).

19 Ibid s 9(5). If on an appeal under s 9(5) the High Court is of opinion that the decision appealed against was erroneous in point of law, it must remit the matter to the Secretary of State with the opinion of the court for re-hearing and determination by him: s 9(7).

No appeal to the Court of Appeal may be brought from a decision of the High Court under s 9 except with the leave of the High Court or Court of Appeal: s 9(8).

## UPDATE

### 1181 Appeals against traffic regulation conditions

TEXT AND NOTES 1-9--Transport Act 1985 s 9(1) amended: Local Transport Act 2008 s 51(2); SI 2009/1885.

TEXT AND NOTES 10-14--Transport Act 1985 s 9(3), (4) repealed: Local Transport Act 2008 ss 51(3), 131, Sch 7 Pt 3.

TEXT AND NOTES 15-19--Transport Act 1985 s 9(5) omitted: SI 2009/1885. Transport Act 1985 s 9(6) amended: Local Transport Act 2008 s 51(4), (5); SI 2009/1885.

NOTE 19--Transport Act 1985 s 9(7), (8) repealed: Local Transport Act 2008 ss 51(6), 131, Sch 7 Pt 3.

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## ***B. PERMITS***

### **1182. Exemption from public service vehicle operator and driver licensing requirements of vehicles used under permits.**

The requirement for operators of public service vehicles<sup>1</sup> for the carriage of passengers<sup>2</sup> to be licensed does not apply<sup>3</sup>:

1793 (1) to the use of any vehicle under a permit granted in relation to the use of buses by educational and other bodies<sup>4</sup>, if and so long as certain requirements<sup>5</sup> are met<sup>6</sup>; or

1794 (2) to the use of any vehicle under a community bus permit<sup>7</sup>.

Where a holder of a licence under Part III of the Road Traffic Act 1988<sup>8</sup> was first granted such a licence before 1 January 1997, he may drive any small bus<sup>9</sup> at a time when it is being used as mentioned in head (1) or head (2) above, notwithstanding that his licence under Part III does not authorise him to drive a small bus when it is being so used<sup>10</sup>. Where: (a) a holder of a licence under Part III was first granted such a licence on or after 1 January 1997<sup>11</sup>; or (b) a Community licence<sup>12</sup> holder is authorised<sup>13</sup> to drive in Great Britain<sup>14</sup> a motor vehicle of any class<sup>15</sup>, he may drive any small bus<sup>16</sup> at a time when it is being used as mentioned in head (1) or head (2) above, notwithstanding that he is not authorised by his licence<sup>17</sup> to drive such a bus<sup>18</sup>.

1 For the meaning of 'public service vehicle' see PARA 1136 ante; definition applied by the Transport Act 1985 s 137(1), (2).

2 Ie the Public Passenger Vehicles Act 1981 s 12(1) (as substituted): see PARA 1144 ante.

3 Transport Act 1985 s 18(1) (s 18 amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 ss 7, 16, Sch 3 para 4, Sch 6; and renumbered and amended by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 4, Sch 3 para 1).

4 Ie under the Transport Act 1985 s 19: see PARA 1183 post.

5 Ie under ibid s 19(2): see PARA 1183 post.

6 Ibid s 18(1)(a) (as renumbered and amended: see note 3 supra).

7 Ibid s 18(1)(b) (as renumbered: see note 3 supra). The text refers to a permit granted under s 22: see PARA 1185 post.

8 Ie the Road Traffic Act 1988 Pt III (ss 87-109) (as amended): see PARA 444 et seq ante.

9 'Small bus' means a vehicle which is adapted to carry more than eight but not more than 16 passengers: Transport Act 1985 s 19(1); definition applied by s 18(5) (added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 3 para 1).

10 Transport Act 1985 s 18(2) (s 18(2)-(4) added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, Sch 3 para 1).

11 Transport Act 1985 s 18(3)(a) (as added: see note 10 supra).

12 For the meaning of 'Community licence' see PARA 415 note 16 ante; definition applied by ibid s 18(5) (as added: see note 10 supra).

13 Ie by virtue of the Road Traffic Act 1988 s 99A(1) (as added): see PARA 473 ante.

14 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

15 Transport Act 1985 s 18(3)(b) (as added: see note 10 supra).

16 Ibid s 18(4) (as added) applies to any small bus which, when laden with the heaviest load which it is constructed to carry, weighs: (1) not more than 3.5 tonnes, excluding any part of that weight which is attributable to specialised equipment intended for the carriage of disabled passengers; and (2) not more than 4.25 tonnes otherwise: s 18(4) (as added: see note 10 supra).

17 Ie under the Road Traffic Act 1988 Pt III (as amended) (see PARA 444 et seq ante) or by virtue of s 99A (as added and amended) (see PARA 473 ante), as the case may be.

18 Transport Act 1985 s 18(3) (as added: see note 10 supra).

## UPDATE

### **1182 Exemption from public service vehicle operator and driver licensing requirements of vehicles used under permits**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **1183. The grant of a permit in relation to the use of buses by educational and other bodies.**

The requirements that must be met in relation to the use of a bus<sup>1</sup> under a permit<sup>2</sup> for the exemption in relation to the use of buses by educational and other bodies<sup>3</sup> to apply are that the bus<sup>4</sup>:

1795 (1) is being used by a body<sup>5</sup> to whom a permit has been granted<sup>6</sup>;

- 1796 (2) is not being used for the carriage of members of the general public nor with a view to profit nor incidentally to an activity which is itself carried on with a view to profit<sup>7</sup>;
- 1797 (3) is being used in every respect in accordance with any conditions attached to the permit<sup>8</sup>; and
- 1798 (4) is not being used in contravention<sup>9</sup> of any provision of regulations<sup>10</sup>.

A permit in relation to the use of a small bus may be granted by a body designated by an order<sup>11</sup> either to itself or to any other body to whom, in accordance with the order, it is entitled to grant a permit<sup>12</sup>. A permit in relation to the use of a small bus may be granted by a traffic commissioner<sup>13</sup> to any body appearing to him<sup>14</sup> to be eligible<sup>15</sup> and to be carrying on in his area an activity which makes it so eligible<sup>16</sup>.

A permit in relation to the use of a large bus<sup>17</sup> may be granted by a traffic commissioner to any body which assists and co-ordinates the activities of bodies within his area which appear to him to be concerned with education, religion, social welfare, or other activities of benefit to the community<sup>18</sup>. A traffic commissioner must not grant a permit in relation to the use of a large bus unless satisfied that there will be adequate facilities or arrangements for maintaining any bus used under the permit in a fit and serviceable condition<sup>19</sup>.

The Secretary of State may by order designate bodies appearing to him to be eligible<sup>20</sup>; and, with respect to any body designated by it, any such order<sup>21</sup>:

- 1799 (a) must specify the classes of body to whom the designated body may grant permits<sup>22</sup>;
- 1800 (b) may impose restrictions with respect to the grant of permits by the designated body and, in particular, may provide that no permit may be granted, either generally or in such cases as may be specified in the order, unless there are attached to the permit such conditions as may be so specified<sup>23</sup>; and
- 1801 (c) may require the designated body to make returns with regard to the permits granted by it<sup>24</sup>.

A body may hold more than one permit but may not use more than one bus at any one time under the same permit<sup>25</sup>.

1 'Bus' means a vehicle which is adapted to carry more than eight passengers: Transport Act 1985 s 19(1).

2 'Permit' means a permit granted under *ibid* s 19 in relation to the use of a bus for carrying passengers for hire or reward: s 19(1). As to vehicles being used to carry passengers for hire or reward see *PARA 1136* note 6 ante.

As to the power to prescribe fees for the applications for, and the grant of, permits under s 19 see the Public Passenger Vehicles Act 1981 s 52(1), (2) (as amended) (see *PARA 1170* ante); applied by the Transport Act 1985 s 126(1)(c). As to the offence of forging or misusing documents see *PARA 1304* ante; and as to the offence of making a false statement to obtain the grant of a permit see *PARA 1305* post.

3 *Ie* under *ibid* s 18(1)(a) (as amended and renumbered): see *PARA 1182* ante.

4 *Ibid* s 19(2).

5 'Body' means a body of persons, whether corporate or unincorporate: *ibid* s 137(1).

6 *Ibid* s 19(2)(a).

7 *Ibid* s 19(2)(b).

8 *Ibid* s 19(2)(c).

9 As to the meaning of 'contravention' see *PARA 1141* note 11 ante; definition applied by *ibid* s 137(1), (2).

10 Ibid s 19(2)(d). The text refers to regulations made under s 21. Regulations may prescribe: (1) the conditions to be fulfilled by any person driving a bus while it is being used under a permit; (2) the conditions as to fitness which are to be fulfilled by any small bus used under a permit; (3) the form of permits; and (4) the documents, plates and marks to be carried by any bus while it is being used under a permit and the manner and position in which they are to be carried: s 21(1). Such provision is made by the Minibus and Other Section 19 Permit Buses Regulations 1987, SI 1987/1230 (amended by SI 1996/3088; SI 1997/2916; SI 2002/2534; SI 2004/2251; SI 2005/2354; SI 2007/691). For the meaning of 'regulations' see PARA 1178 note 4 ante; and for the meaning of 'small bus' see PARA 1182 note 9 ante. For the meaning of 'prescribed' see PARA 1178 note 5 ante. Such regulations may contain such transitional provisions as the Secretary of State thinks fit: s 21(3). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. Where regulations are made by virtue of head (2) supra, the Public Passenger Vehicles Act 1981 s 6 (as amended) (certificates of initial fitness for public service vehicles) (see PARA 1141 ante) does not apply in relation to any small bus subject to the regulations: Transport Act 1985 s 21(2).

11 Ie under ibid s 19(7): see the text to notes 21-24 infra.

12 Ibid s 19(3).

13 As to traffic commissioners see PARA 1139 ante.

14 See PARA 1138 note 5 ante.

15 A body is eligible in accordance with the Transport Act 1985 s 19(8) if it is concerned with education, religion, social welfare, recreation, or other activities of benefit to the community: s 19(8).

16 Ibid s 19(4).

17 'Large bus' means a vehicle which is adapted to carry more than 16 passengers: ibid s 19(1).

18 Ibid s 19(5).

19 Ibid s 19(6).

20 See note 15 supra.

21 Transport Act 1985 s 19(7). As to the order that has been made see the Section 19 Minibus (Designated Bodies) Order 1987, SI 1987/1229 (amended by SI 1990/1708; SI 1995/1540; SI 1997/535).

22 Transport Act 1985 s 19(7)(a).

23 Ibid s 19(7)(b).

24 Ibid s 19(7)(c).

25 Ibid s 19(9).

## UPDATE

### **1183 The grant of a permit in relation to the use of [public service vehicles] by educational and other bodies**

TEXT AND NOTES--Regulations may provide that any permit granted under the Transport Act 1985 s 19 on or after a date specified in the regulations is to be for such period not exceeding five years as may be identified in the permit by the person granting it: Transport Act 1985 s 23A(1) (s 23A(1), (2) added by the Local Transport Act 2008 s 60(1)). Nothing in the Transport Act 1985 s 23A(1) or any regulations made by virtue of s 23A(1) prevents the grant of subsequent permits under s 19 to any person for further such periods: s 23A(2).

TEXT AND NOTES 1-10--Transport Act 1985 s 19(2) amended: Local Transport Act 2008 s 57(3).

NOTE 2--Definition of 'permit' amended: Local Transport Act 2008 s 57(2).



NOTE 10--Transport Act 1985 s 21(1) amended, s 21(4) added: Local Transport Act 2008 s 58(4)-(6). SI 1987/1230 replaced: Section 19 Permit Regulations 2009, SI 2009/365.

TEXT AND NOTES 11, 12--Transport Act 1985 s 19(3) amended: Local Transport Act 2008 s 57(4).

TEXT AND NOTES 13-16--Transport Act 1985 s 19(4) amended: Local Transport Act 2008 s 57(5).

TEXT AND NOTE 24--Transport Act 1985 s 19(7)(c) amended: Local Transport Act 2008 s 57(6).

TEXT AND NOTE 25--Transport Act 1985 s 19(9) amended: Local Transport Act 2008 s 57(7).

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#### **1184. Details and conditions of the permit in relation to the use of buses by educational and other bodies.**

A permit<sup>1</sup> must specify the body<sup>2</sup> to whom it is granted<sup>3</sup>. It may be granted to a named individual on behalf of a body if, having regard to the nature of that body, it appears to the traffic commissioner<sup>4</sup> or body granting the permit appropriate to do so<sup>5</sup>. Where a permit is granted to a named individual on behalf of a body, it must be treated<sup>6</sup> as granted to that body<sup>7</sup>.

In addition to any conditions attached to such a permit<sup>8</sup>, the traffic commissioner or other body granting such a permit may attach to it such conditions as he or that body considers appropriate<sup>9</sup>, including, in particular, conditions<sup>10</sup>:

- 1802 (1) limiting the passengers who may be carried in any bus<sup>11</sup> used under the permit to persons falling within such classes as may be specified in the permit<sup>12</sup>; and
- 1803 (2) with respect to such other matters as may be prescribed<sup>13</sup>.

A permit may be varied or revoked<sup>14</sup>: (a) by the traffic commissioner or body who granted it<sup>15</sup>; and (b) in the case of a permit granted by a designated body<sup>16</sup>, after consultation with that body, by the traffic commissioner for any traffic area<sup>17</sup> in which any bus has been used under the permit<sup>18</sup>. A permit may not be varied so as to substitute another body for the body to whom it was granted<sup>19</sup>.

A permit remains in force until it is revoked<sup>20</sup>, or in the case of a permit granted by a designated body<sup>21</sup>, that body ceases to be so designated<sup>22</sup>.

1 For the meaning of 'permit' see PARA 1183 note 2 ante.

2 For the meaning of 'body' see PARA 1183 note 5 ante.

3 Transport Act 1985 s 20(1), which is expressed to be subject to s 20(2) (see the text to note 5 infra).

4 As to traffic commissioners see PARA 1139 ante.

- 5 Transport Act 1985 s 20(2).
- 6 le for the purposes of *ibid* ss 19, 20: see PARA 1183 ante.
- 7 *Ibid* s 20(3).
- 8 le by virtue of *ibid* s 19(7)(b): see PARA 1183 text to note 23 ante.
- 9 See PARA 1138 note 5 ante.
- 10 Transport Act 1985 s 20(4).
- 11 For the meaning of 'bus' see PARA 1183 note 1 ante.
- 12 Transport Act 1985 s 20(4)(a).
- 13 *Ibid* s 20(4)(b). For the meaning of 'prescribed' see PARA 1178 note 5 ante. At the date at which this volume states the law no such regulations had been made.
- 14 *Ibid* s 20(5), which is expressed to be subject to s 20(6) (see the text to note 19 *infra*).
- 15 *Ibid* s 20(5)(a).
- 16 le designated under *ibid* s 19(7): see PARA 1183 ante.
- 17 For the meaning of 'traffic area' see PARA 1178 note 2 ante.
- 18 Transport Act 1985 s 20(5)(b).
- 19 *Ibid* s 20(6).
- 20 le under *ibid* s 20(5): see the text and notes 14-18 *supra*.
- 21 le designated under *ibid* s 19(7): see PARA 1183 ante.
- 22 *Ibid* s 20(7).

## UPDATE

### **1184 Details and conditions of the permit in relation to the use of buses by educational and other bodies**

TEXT AND NOTES 8-13--Transport Act 1985 s 20(4)(a) amended: Local Transport Act 2008 s 58(2).

TEXT AND NOTES 14-18--Transport Act 1985 s 20(5)(b) amended: Local Transport Act 2008 s 58(3).

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### **1185. The grant of a community bus permit.**

A community bus permit<sup>1</sup> may be granted by the traffic commissioner<sup>2</sup> for the area in which the operating centre<sup>3</sup> for any vehicle used under the permit will be<sup>4</sup>. A traffic commissioner must not grant a community bus permit unless he is satisfied that there will be adequate facilities or arrangements for maintaining in a fit and serviceable condition any vehicle used under the

permit<sup>5</sup>. A body may hold more than one community bus permit but may not use more than one vehicle at any one time under the same permit<sup>6</sup>.

1 'Community bus permit' means a permit granted under the Transport Act 1985 s 22 in relation to the use of a public service vehicle in providing a community bus service, or in providing a community bus service and (other than in the course of a local service) carrying passengers for hire or reward where the carriage of those passengers will directly assist the provision of the community bus service by providing financial support for it: s 22(1). For the meaning of 'public service vehicle' see PARA 1136 ante; definition applied by s 137(1), (2). 'Community bus service' means a local service provided: (1) by a body concerned for the social and welfare needs of one or more communities; (2) without a view to profit, either on the part of that body or of anyone else; and (3) by means of a vehicle adapted to carry more than eight but not more than 16 passengers: s 22(1). For the meaning of 'local service' see PARA 1177 ante; and for the meaning of 'body' see PARA 1183 note 5 ante. As to vehicles being used to carry passengers for hire or reward see PARA 1136 note 6 ante.

2 As to traffic commissioners see PARA 1139 ante.

3 For the meaning of 'operating centre' see PARA 1144 note 7 ante; definition applied by the Transport Act 1985 s 137(1), (2).

4 Ibid s 22(2). As to the power to prescribe fees for the applications for, and the grant of, permits under s 22 see the Public Passenger Vehicles Act 1981 s 52(1), (2) (as amended) (see PARA 1170 ante); applied by the Transport Act 1985 s 126(1)(c). As to the offence of forging or misusing documents see PARA 1304 ante; and as to the offence of making a false statement to obtain the grant of a permit see PARA 1305 post.

5 Ibid s 22(3).

6 Ibid s 22(4).

## UPDATE

### 1185 The grant of a community bus permit

TEXT AND NOTES--Regulations may provide that any permit granted under the Transport Act 1985 s 22 on or after a date specified in the regulations is to be for such period not exceeding five years as may be identified in the permit by the person granting it: Transport Act 1985 s 23A(1) (s 23A(1), (2) added by the Local Transport Act 2008 s 60(1)). Nothing in the Transport Act 1985 s 23A(1) or any regulations made by virtue of s 23A(1) prevents the grant of subsequent permits under s 22 to any person for further such periods: s 23A(2).

NOTE 1--Definition of 'community bus service' amended: Local Transport Act 2008 ss 59(2), 131, Sch 7 Pt 3.

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### 1186. Details and conditions of community bus permits.

The requirements that:

- 1804 (1) the driver receives no payment for driving except: (a) reimbursement of any reasonable expenses incurred by him in making himself available to drive; and (b) an amount representing any earnings lost as a result of making himself available to drive in exceptional circumstances<sup>1</sup>;

- 1805 (2) the driver either holds a passenger-carrying vehicle driver's licence or PCV Community licence (within the meaning of Part IV of the Road Traffic Act 1988)<sup>2</sup> or fulfils any conditions prescribed<sup>3</sup> in relation to a person driving a vehicle which is being used under a community bus permit<sup>4</sup>; and
- 1806 (3) any vehicle used under the permit fulfils any prescribed conditions of fitness for such use<sup>5</sup>,

must be conditions of every community bus permit<sup>6</sup> and apply in relation to any use of a vehicle under such a permit<sup>7</sup>.

A traffic commissioner<sup>8</sup> may at any time attach to a community bus permit granted by him such conditions (or additional conditions) of a prescribed description as he thinks fit for restricting or regulating the use of any vehicle under the permit<sup>9</sup>. The traffic commissioner by whom a community bus permit was granted may at any time while the permit is in force vary or remove any condition so attached to it<sup>10</sup>. If a condition attached to a community bus permit is contravened<sup>11</sup>, the holder of the permit is liable<sup>12</sup> on summary conviction to a fine<sup>13</sup>.

The traffic commissioner by whom a community bus permit was granted may at any time revoke the permit on the ground<sup>14</sup>:

- 1807 (i) that he is no longer satisfied with respect to the adequacy of facilities or arrangements for maintaining in a fit and serviceable condition any vehicle used under the permit<sup>15</sup>;
- 1808 (ii) that there has been a contravention of any condition attached to the permit<sup>16</sup>; or
- 1809 (iii) that a prohibition<sup>17</sup> has been imposed with respect to a vehicle used under the permit which has its operating centre<sup>18</sup> in his area<sup>19</sup>.

Regulations may prescribe the form of community bus permits, and the documents, plates and marks to be carried by any vehicle while it is being used under a community bus permit and the manner and position in which they are to be carried<sup>20</sup>.

1 Transport Act 1985 s 23(2)(a).

2 I.e. the Road Traffic Act 1988 Pt IV (ss 110-122) (as substituted and amended) (see PARA 490 et seq ante). For the meaning of 'passenger-carrying vehicle driver's licence' see PARA 490 note 7 ante; and for the meaning of 'PCV Community licence' see PARA 492 note 4 ante.

3 For the meaning of 'prescribed' see PARA 1178 note 5 ante. As to the conditions prescribed see the Community Bus Regulations 1986, SI 1986/1245 (amended by SI 1990/1020; SI 1996/3087; SI 1997/2917).

4 Transport Act 1985 s 23(2)(b) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 ss 7, 16, Sch 3 para 5, Sch 6; and the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 4, Sch 3 para 2).

5 Transport Act 1985 s 23(2)(c). Where regulations are made by virtue of s 23(2)(c), the Public Passenger Vehicles Act 1981 s 6 (as amended) (certificates of initial fitness for public service vehicles) (see PARA 1141 ante) does not apply in relation to any vehicle subject to the regulations: Transport Act 1985 s 23(7). For the meaning of 'public service vehicle' see PARA 1136 ante; definition applied by s 137(1), (2).

6 For the meaning of 'community bus permit' see PARA 1185 note 1 ante.

7 Transport Act 1985 s 23(1).

8 As to traffic commissioners see PARA 1139 ante.

9 Transport Act 1985 s 23(3).

10 Ibid s 23(4).

- 11 As to the meaning of 'contravened' see PARA 1141 note 11 ante; definition applied by *ibid* s 137(1), (2).
- 12 It is a defence for a person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of any such offence: Public Passenger Vehicles Act 1981 s 68(3); applied by the Transport Act 1985 s 127(4).
- 13 *Ibid* s 23(5). The fine must not exceed level 3 on the standard scale: s 23(5). As to the standard scale see PARA 230 note 3 ante.
- 14 *Ibid* s 23(6).
- 15 *Ibid* s 23(6)(a).
- 16 *Ibid* s 23(6)(b).
- 17 *Ie* under the Public Passenger Vehicles Act 1981 s 9 (now repealed) (power to prohibit driving of unfit public service vehicles).
- 18 For the meaning of 'operating centre' see PARA 1144 note 7 ante; definition applied by the Transport Act 1985 s 137(1), (2).
- 19 *Ibid* s 23(6)(c).
- 20 *Ibid* s 23(8). See further the Community Bus Regulations 1986, SI 1986/1245 (as amended: see note 3 *supra*).

## UPDATE

### 1186 Details and conditions of community bus permits

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTE 1--Transport Act 1985 s 23(2)(a) repealed: Local Transport Act 2008 ss 59(4), 131, Sch 7 Pt 3.

NOTE 3--SI 1986/1245 replaced: Community Bus Regulations 2009, SI 2009/366.

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## ***C. RESTRICTIONS ON PUBLIC SERVICE VEHICLE OPERATORS' LICENCES***

### **1187. Conditions attached to a public service vehicle operators' licence.**

Where it appears to a traffic commissioner<sup>1</sup>, in relation to a person ('the operator') to whom he has granted or is proposing to grant a PSV operator's licence<sup>2</sup>, that<sup>3</sup>:

- 1810 (1) the operator has failed to operate a registered local service<sup>4</sup>; or  
 1811 (2) the operator has operated a local service in contravention<sup>5</sup> of the provisions relating to registration<sup>6</sup>; or

- 1812 (3) the operator has failed to comply with requirements as to arrangements for a ticketing scheme or to provide required information about bus services<sup>7</sup>;
- 1813 (4) the arrangements for maintaining the vehicles used under the licence in a fit and serviceable condition are not adequate for the use of those vehicles in providing the local service or services in question<sup>8</sup>; or
- 1814 (5) the operator, or any employee or agent of his, has: (a) intentionally interfered with the operation of a local service provided by another operator; (b) operated a local service in a manner dangerous to the public; or (c) been guilty of any other serious misconduct (whether or not constituting a criminal offence) in relation to the operation of a local service<sup>9</sup>; or
- 1815 (6) a condition attached<sup>10</sup> to the operator's licence has been contravened<sup>11</sup>,

he may (on granting the licence or at any later time) attach to it either a condition prohibiting the operator from using vehicles under the licence to provide any local service of a description specified in the condition or one prohibiting him from so using vehicles to provide local services of any description<sup>12</sup>. The commissioner may attach such a condition to a PSV operator's licence, by reference to circumstances falling within head (1) or head (2) above if, but only if, it appears to him that the operator did not have a reasonable excuse for his conduct or that it is appropriate to attach the condition in view of the danger to the public involved in the operator's conduct<sup>13</sup>, or the frequency of conduct of the kind in question on the part of the operator<sup>14</sup>. Where the effect of a condition so attached to a PSV operator's licence is that the operator of a registered local service<sup>15</sup> is prohibited from using vehicles under the licence to provide that service, the traffic commissioner attaching the condition may<sup>16</sup>: (i) cancel the registration<sup>17</sup>; or (ii) where the service is registered with another traffic commissioner, direct that it be cancelled<sup>18</sup>. Where a direction is given under head (ii) above, it is the duty of the traffic commissioner with whom the service is registered to cancel the registration<sup>19</sup>.

Where it appears to the commissioner that:

- 1816 (A) vehicles used under the licence (or under any PSV operator's licence previously held by the operator) have not been maintained in a fit and serviceable condition<sup>20</sup>; or
- 1817 (B) the operator has been involved in arrangements with any other operator for the use of each other's vehicles with a view to hindering enforcement of any requirements of the law relating to the operation of those vehicles<sup>21</sup>,

he may (on granting the licence or at any later time) attach to the licence a condition restricting the vehicles which the operator may use under the licence to vehicles specified in the condition<sup>22</sup>. Such a condition attached to a licence must apply only to vehicles which have their operating centre in the traffic area<sup>23</sup> for which the commissioner acts, and is in addition to (and not be taken as prejudicing in any way) any conditions attached to the licence<sup>24</sup> as to the maximum number of vehicles which the operator may at any one time use under the licence<sup>25</sup>.

Before attaching any such condition to a PSV operator's licence, a traffic commissioner must hold an inquiry if he has, within the prescribed period<sup>26</sup>, received a request for an inquiry from the holder of, or, as the case may be, applicant for, the licence<sup>27</sup>. This does not apply where the traffic commissioner is satisfied that the condition should be attached without delay<sup>28</sup>. Where<sup>29</sup> a traffic commissioner attaches any such condition to a PSV operator's licence without first holding an inquiry, he must hold one as soon as is reasonably practicable<sup>30</sup> if the holder of the licence has, before the end of such period as may be prescribed, asked him to do so<sup>31</sup>.

1 As to traffic commissioners see PARA 1139 ante.

2 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante; definition applied by the Transport Act 1985 s 137(1), (2).

3 Ibid s 26(1).

4 Ibid s 26(1)(a). The text refers to a service registered under s 6 (as amended): see PARA 1178 ante. Where a traffic commissioner finds that a licence holder has failed to run a service, any conditions attached should reflect the traffic commissioner's evaluation of the number of services affected, the proportion of breaches and the total route mileage for the registered local service: *Evans Coaches Ltd* (1991) RLR 109. For the meaning of 'local service' see PARA 1177 ante.

5 As to the meaning of 'contravention' see PARA 1141 note 11 ante; definition applied by the Transport Act 1985 s 137(1), (2).

6 Ibid s 26(1)(b) (amended by the Transport Act 2000 s 161, Sch 11 paras 9, 10(1), (2)). The text refers to the operation of a local service in contravention of the Transport Act 1985 s 6 (as amended) or the Transport Act 2000 s 118(4) or s 129(1)(b): see PARAS 1178 ante, 1214 post.

7 Transport Act 1985 s 26(1)(ba) (added by the Transport Act 2000 Sch 11 para 10(3)). The text refers to failing to comply with the Transport Act 2000 s 138 or s 140(3): see PARAS 1223-1224 post.

8 Transport Act 1985 s 26(1)(c).

9 Ibid s 26(1)(d).

10 Ie under ibid s 8: see PARA 1180 ante.

11 Ibid s 26(1)(e).

12 Ibid s 26(1). See *Ribble Motor Services Ltd v Traffic Comr for the North West Traffic Area* [2001] EWCA Civ 267, [2001] RTR 564. As to breach of the Transport Act 1985 s 26 see *Jones (t/a Shamrock Coaches) v Department of Transport Welsh Traffic Area* [2005] EWCA Civ 58, [2005] All ER (D) 124 (Jan).

13 Where an operator delegates the management of his vehicles to an employee, lack of knowledge of the operations, however trusted the employee, will not constitute a reasonable excuse: *Michael Jeal (t/a Panther Buses)* (1992) RLR 18.

14 Transport Act 1985 s 26(2).

15 Ie registered under ibid s 6 (as amended): see PARA 1178 ante.

16 Ibid s 26(3).

17 Ibid s 26(3)(a).

18 Ibid s 26(3)(b).

19 Ibid s 26(4).

20 Ibid s 26(5)(a).

21 Ibid s 26(5)(b).

22 Ibid s 26(5).

23 For the meaning of 'traffic area' see PARA 1178 note 2 ante.

24 Ie under the Public Passenger Vehicles Act 1981 s 16 (as amended): see PARA 1153 ante.

25 Transport Act 1985 s 26(6). For the purposes of the Public Passenger Vehicles Act 1981 s 16(5) (as amended) (traffic commissioner's power to vary or remove conditions attached under s 16(3) (as amended) to a PSV operator's licence) (see PARA 1153 ante), a condition attached under the Transport Act 1985 s 26 must be treated as attached under the Public Passenger Vehicles Act 1981 s 16(3) (as amended): Transport Act 1985 s 27(4). Nothing in s 26 may be taken as prejudicing the generality of the power under the Public Passenger Vehicles Act 1981 to prescribe descriptions of conditions for the purposes of s 16(3) (as amended): Transport Act 1985 s 27(5).

26 For the meaning of 'prescribed' see PARA 1178 note 5 ante. As to the prescribed period see the Public Service Vehicles (Operators' Licences) Regulations 1995, SI 1995/2908, reg 9.

27 Transport Act 1985 s 27(1). A rival operator who has complained about the way in which the licence holder runs the services may be treated as party to the proceedings and may, at the discretion of the traffic commissioner and within the confines of natural justice, be allowed to present evidence and cross-examine the licence holder's witnesses: *Michael Jeal (t/a Panther Buses)* (1992) RLR 18.

28 Transport Act 1985 s 27(2).

29 Ie in reliance on *ibid* s 27(2).

30 As to the meaning of 'reasonably practicable' see PARA 1161 note 7 ante.

31 Transport Act 1985 s 27(3). As to the prescribed period see the Public Service Vehicles (Operators' Licences) Regulations 1995, SI 1995/2908, reg 9.

## UPDATE

### 1187 Conditions attached to a public service vehicle operators' licence

TEXT AND NOTES--Transport Act 1985 s 26(7) added: Local Transport Act 2008 s 62(10). Where it appears to a traffic commissioner that an operator has, or may have, failed to operate a local service registered under the Transport Act 1985 s 6 (see PARA 1178), or has, or may have, failed to operate such a service in accordance with the particulars registered under s 6, the traffic commissioner may direct a local traffic authority to provide him, within a specified period, with specified information connected with any aspect of the performance of its duties under the Traffic Management Act 2004 s 16 or 17 (see PARA 771): Transport Act 1985 s 27A(1), (2) (ss 27A, 27B added by the Local Transport Act 2008 s 63(1)). As to the information that may be specified in a direction, see the Transport Act 1985 s 27B. If the traffic commissioner holds an inquiry in connection with deciding whether to (1) attach a condition under the Transport Act 1985 s 26; or (2) make an order under the Transport Act 2000 s 155, the Local Government Act 1972 s 250(2), (3) (see LOCAL GOVERNMENT vol 69 (2009) PARA 105) applies to the inquiry as it applies to an inquiry under the Transport Act 2000 s 155: Transport Act 1985 s 27A(3). If the traffic commissioner identifies any remedial measures which, in the traffic commissioner's opinion, could be taken (a) by the operator; or (b) by a local traffic authority, the traffic commissioner may prepare a report recommending the implementation of those measures: s 27A(4). As to the remedial measures, see s 27A(5). A traffic commissioner who prepares a report under s 27A(4) (i) must send a copy of the report to the operator and, if any of the recommended remedial measures are for implementation by a local traffic authority, to that authority; (ii) must, if the implementation of any of the measures in the report would affect the operation of bus services in an integrated transport area, send a copy of the report to the Integrated Transport Authority for that area; (iii) may send a copy of the report to the appropriate national authority, any local traffic authority, Integrated Transport Authority or combined authority which the traffic commissioner considers appropriate, and any other persons whom the traffic commissioner considers appropriate; and (iv) may publish the report: s 27A(6), (7) (s 27A(7) amended by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 63).

TEXT AND NOTES 1-12--Transport Act 1985 s 26(1) amended, s 26(1A)-(1C) added: Local Transport Act 2008 ss 44(2) (in force in relation to England: SI 2009/3242), 62(2), (3).

TEXT AND NOTES 13, 14--Transport Act 1985 s 26(2) amended, s 26(2A) added: Local Transport Act 2008 s 62(4), (5).

TEXT AND NOTES 15-18--Transport Act 1985 s 26(3) amended: Local Transport Act 2008 s 62(6).



TEXT AND NOTES 20-22--Transport Act 1985 s 26(5) amended, s 26(5A)-(5C) added: Local Transport Act 2008 s 62(7), (8).

TEXT AND NOTES 23-25--Transport Act 1985 s 26(6) amended: Local Transport Act 2008 s 62(9).

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### **1188. Power to disqualify public service vehicle operators.**

Where the traffic commissioner<sup>1</sup> for any traffic area<sup>2</sup> revokes a PSV operator's licence<sup>3</sup>, he may order the former holder to be disqualified, indefinitely or for such period as he thinks fit, from holding or obtaining a PSV operator's licence<sup>4</sup>. So long as a disqualification so imposed is in force with respect to any person<sup>5</sup>:

- 1818 (1) any PSV operator's licence held by him at the date of the making of such an order (other than the licence revoked) is suspended (that is, it remains in force subject to the limitation that no vehicles are authorised to be used under it)<sup>6</sup>; and
- 1819 (2) no PSV operator's licence may be granted to him<sup>7</sup>.

Such an order may be limited so as to apply only to the holding or obtaining of a PSV operator's licence in respect of the area of one or more specified traffic commissioners<sup>8</sup>. If a person obtains a PSV operator's licence while he is so disqualified, the licence is void<sup>9</sup>.

Where a traffic commissioner makes such an order with respect to any person, he may direct that if that person, at any time during such period as he may specify<sup>10</sup>:

- 1820 (a) is a director of, or holds a controlling interest<sup>11</sup> in, a company which holds a licence of the kind to which the order applies, or a company of which a company which holds such a licence is a subsidiary<sup>12</sup>; or
- 1821 (b) operates any public service vehicles<sup>13</sup> in partnership with a person who holds such a licence<sup>14</sup>,

the powers of revocation, suspension and variation of PSV operators' licences<sup>15</sup> are exercisable in relation to that licence by the traffic commissioner by whom it was granted<sup>16</sup>.

The powers conferred by this provision in relation to the person who was the holder of a licence are exercisable also: (i) where that person was a company, in relation to any officer of that company; and (ii) where that person operated the vehicles used under the licence in partnership with other persons, in relation to any of those other persons<sup>17</sup>.

A traffic commissioner must not make any such order or give any such direction without first holding an inquiry if any person affected by the proposed order or direction requests him to do so<sup>18</sup>. The traffic commissioner by whom any order disqualifying a person was made<sup>19</sup> may at any time<sup>20</sup>:

- 1822 (A) cancel that order together with any direction that was given<sup>21</sup> when the order was made<sup>22</sup>;
- 1823 (B) cancel any such direction<sup>23</sup>; or

1824 (c) with the consent of the person disqualified, vary the order or any such direction (or both the order and any such direction)<sup>24</sup>.

1 As to traffic commissioners see PARA 1139 ante.

2 For the meaning of 'traffic area' see PARA 1178 note 2 ante.

3 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante; definition applied by the Transport Act 1985 s 137(1), (2).

4 Ibid s 28(1).

5 Ibid s 28(2).

6 Ibid s 28(2)(a) (s 28(2)(a), (b) substituted by the Deregulation and Contracting Out Act 1994 s 67).

7 Transport Act 1985 s 28(2)(b) (as substituted: see note 6 supra), which is expressed to be notwithstanding the Public Passenger Vehicles Act 1981 s 14(4) (as amended) (see PARA 1146 ante).

8 Transport Act 1985 s 28(3). If the order is so limited, s 28(2) (as amended) applies only to any PSV operator's licence to which the order applies: s 28(3).

9 Ibid s 28(2A) (s 28(2A), (6A) added by the Deregulation and Contracting Out Act 1994 s 67).

10 Transport Act 1985 s 28(4).

11 For these purposes, a person holds a controlling interest in a company if he is the beneficial owner of more than half its equity share capital: *ibid* s 28(7). For the meaning of 'company' see PARA 1147 note 7 ante; definition applied by s 137(1), (2). For these purposes, 'equity share capital' has the same meaning as in the Companies Act 1985 s 744 (see COMPANIES vol 15 (2009) PARA 1047): Transport Act 1985 s 137(1). For the purposes of the Transport Act 1985, an interest in a company's equity share capital is a controlling interest if it subsists in more than half in nominal value of that capital: s 137(8).

12 Ibid s 28(4)(a). 'Subsidiary' means, in relation to any body corporate, a body corporate which is a subsidiary of the first-mentioned body corporate within the meaning of the Companies Act 1985 s 736 as originally enacted (and not as substituted by the Companies Act 1989 s 144(1)) (see COMPANIES vol 14 (2009) PARA 25): Transport Act 1985 s 137(1) (definition amended by the Companies Act 1989 s 144(4), Sch 18 para 39). As to bodies corporate see generally COMPANIES; CORPORATIONS.

13 For the meaning of 'public service vehicle' see PARA 1136 ante; definition applied by the Transport Act 1985 s 137(1), (2).

14 Ibid s 28(4)(b).

15 *Ie* under the Public Passenger Vehicles Act 1981 s 17(2) (as amended): see PARA 1155 ante.

16 Transport Act 1985 s 28(4).

17 Ibid s 28(5). Any reference in s 28(6A) (as added) to s 28(1) (see the text to note 4 supra) or to s 28(4) (see the text to note 10 supra) includes s 28(1) or s 28(4) as it applies by virtue of s 28(5): s 28(5) (amended by the Deregulation and Contracting Out Act 1994 s 67).

18 Transport Act 1985 s 28(6).

19 *Ie* under *ibid* s 28(1): see the text to notes 1-4 supra.

20 Ibid s 28(6A) (as added: see note 9 supra).

21 *Ie* under *ibid* s 28(4): see the text to notes 12-16 supra.

22 Ibid s 28(6A)(a) (as added: see note 9 supra).

23 Ibid s 28(6A)(b) (as added: see note 9 supra).

24 Ibid s 28(6A)(c) (as added: see note 9 supra).

**UPDATE****1188 Power to disqualify public service vehicle operators**

NOTE 11--Definition of 'equity share capital' amended: SI 2009/1941.

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**1189. Plying for hire by large public service vehicles.**

A public service vehicle<sup>1</sup> which is adapted to carry more than eight passengers must not be used on a road<sup>2</sup> in plying for hire as a whole<sup>3</sup>. If a vehicle is used in contravention<sup>4</sup> of this provision, the operator<sup>5</sup> of the vehicle is liable<sup>6</sup> on summary conviction to a fine<sup>7</sup>.

1 For the meaning of 'public service vehicle' see PARA 1136 ante; definition applied by the Transport Act 1985 s 137(1), (2).

2 For the meaning of 'road' see PARA 206 text to note 2 ante; definition applied by ibid s 137(1), (2).

3 Ibid s 30(1).

4 As to the meaning of 'contravention' see PARA 1141 note 11 ante; definition applied by ibid s 137(1), (2).

5 As to the meaning of 'operator' see PARA 1136 note 7 ante; definition applied by ibid s 137(1), (2).

6 It is a defence for a person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of an offence: Public Passenger Vehicles Act 1981 s 68(3); applied by the Transport Act 1985 s 127(4).

7 Ibid s 30(2). The fine must not exceed level 3 on the standard scale: s 30(2). As to the standard scale see PARA 230 note 3 ante.

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***D. LOCAL TRANSPORT PLANS AND BUS STRATEGIES*****1190. Local transport plans.**

Each local transport authority<sup>1</sup> must: (1) develop policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within its area; and (2) carry out its functions so as to implement those policies<sup>2</sup>. The transport facilities and services mentioned above are:

- 1825 (a) those required to meet the needs of persons living or working in the authority's area, or visiting or travelling through that area; and  
 1826 (b) those required for the transportation of freight,

and include facilities and services for pedestrians<sup>3</sup>. Each local transport authority whose area is in Wales must also: (i) develop policies for the implementation in its area of the Wales Transport Strategy<sup>4</sup>; and (ii) carry out its functions so as to implement those policies<sup>5</sup>. Each local transport authority must prepare a document, to be known as the local transport plan, containing its policies<sup>6</sup>.

1 In the Transport Act 2000 Pt II (ss 108-162) (as amended), 'local transport authority' means: (1) a county council in England; (2) a council of a non-metropolitan district in England comprised in an area for which there is no county council; (3) a passenger transport authority for a passenger transport area in England; or (4) a county council or county borough council in Wales: s 108(4). As to local government areas and authorities see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq. As to passenger transport authorities see PARA 247 ante. References in Pt II (as amended) to passenger transport authorities and to passenger transport areas are references respectively to the passenger transport authorities and to passenger transport areas for the purposes of the Transport Act 1968 Pt II (ss 9-23A) (as amended): Transport Act 2000 s 162(5).

2 Ibid s 108(1).

3 Ibid s 108(2).

4 As to the Wales Transport Strategy see PARA 239 ante.

5 Transport Act 2000 s 108(2A) (added by the Transport (Wales) Act 2006 s 3, Schedule paras 1, 2(1), (2)).

6 Transport Act 2000 s 108(3) (amended by the Transport (Wales) Act 2006 Schedule para 2(3)), which refers to the policies under the Transport Act 2000 s 108(1) and in the case of an authority whose area is in Wales, the policies under s 108(2A) (as added). Section 108(3) (as amended) does not apply to local transport authorities which have been classified as excellent authorities pursuant to an order made under the Local Government Act 2003 s 99(4) (see LOCAL GOVERNMENT vol 69 (2009) PARA 789): Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005, SI 2005/157, art 7(1). The Transport Act 2000 and the Transport Act 1985 are modified in relation to authorities which have been so classified: Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005, SI 2005/157, art 7(2), Sch 2. See further art 7(3)-(6).

References in the Transport Act 2000 Pt II (as amended) to the local transport plan of a passenger transport authority for a passenger transport area are to the local transport plan made jointly by the passenger transport authority and the councils for the metropolitan districts comprised in the area: s 162(6).

## UPDATE

### 1190 Local transport plans

TEXT AND NOTES--Each local transport authority whose area is in England must in developing policies in accordance with the Transport Act 2000 s 108(1)(a), and in carrying out its functions in accordance with s 108(1)(b), comply with certain duties: Transport Act 2000 s 108(2ZA) (s 108(2ZA)-(2ZC) added by the Local Transport Act 2008 s 8(4)). The duties are to take into account any policies announced by Her Majesty's Government, and to have regard to any guidance issued by the Secretary of State, with respect to mitigation of, or adaptation to, climate change or otherwise with respect to the protection or improvement of the environment: Transport Act 2000 s 108(2ZB). The power to issue guidance under s 108(2ZB) does not affect the generality of the power to issue guidance under s 112(1) (see PARA 1196): Transport Act 2000 s 108(2ZC).

TEXT AND NOTES 1, 2--Transport Act 2000 s 108(1) amended: Local Transport Act 2008 ss 8(2), 131, Sch 7 Pt 1.

NOTE 1--Reference to a passenger transport authority for a passenger transport area in England is now to an Integrated Transport Authority for an integrated transport area in England (see PARA 247); definition of 'local transport authority' amended: Transport Act 2000 s 108(4) (amended by the Local Transport Act 2008 Sch 4 para 42; Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 96). Transport Act 2000 s 162(5) amended: Local Transport Act 2008 Sch 4 para 46(3).

TEXT AND NOTE 3--Transport Act 2000 s 108(2) amended: Local Transport Act 2008 s 8(3).

NOTE 6--Each local transport authority whose area is in Wales must prepare a document to be known as the local transport plan containing its policies under the Transport Act 2000 s 108(1)(a), and its policies under s 108(2A): Transport Act 2000 s 108(3A) (s 108(3), (3A)-(3B) substituted for s 108(3) by the Local Transport Act 2008 s 9(1) (in force in relation to Wales: SI 2009/579). A local transport authority whose area is in England must, in complying with the duty under s 108(1)(b), have regard to the proposals contained in its plan: Transport Act 2000 s 108(3B). Transport Act 2000 s 162(6) repealed: Local Transport Act 2008 ss 12(5), 131, Sch 7 Pt 1.

NOTE 10--SI 2005/157 art 7(1)-(4), Sch 2 amended, art 7(6) substituted, art 7(7) added: SI 2009/714.

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### **1191. Further provision about plans: England.**

A local transport authority<sup>1</sup> whose area is in England must keep its local transport plan<sup>2</sup> under review and alter it if it considers it appropriate to do so<sup>3</sup>. The authority must replace the plan not later than five years after the date on which it was made<sup>4</sup>. As soon as practicable after any occasion when it prepares a new plan or alters its plan, the authority must: (1) publish the plan or the plan as altered in such manner as it thinks fit; and (2) send a copy of it to the Secretary of State<sup>5</sup> and to such other persons (if any) as may be specified in guidance<sup>6</sup>. The authority must also: (a) cause a copy of its local transport plan to be made available for inspection (at all reasonable hours) at such places as it thinks fit; (b) give notice, by such means as it thinks expedient for bringing it to the attention of the public, as to the places at which a copy of it may be inspected; and (c) supply a copy of it (or any part of it) to any person on request, either free of charge or at a charge representing no more than the cost of providing the copy<sup>7</sup>.

<sup>1</sup> In the Transport Act 2000 Pt II (ss 108-162) (as amended) 'local transport authority' has the meaning given in s 108(4) (see PARA 1190 note 1 ante): s 162(1).

<sup>2</sup> As to local transport plans see PARA 1190 ante.

<sup>3</sup> Transport Act 2000 s 109(1) (amended by the Transport (Wales) Act 2006 s 3, Schedule paras 1, 3(1), (3)).

<sup>4</sup> Transport Act 2000 s 109(2).

<sup>5</sup> As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 le guidance under the Transport Act 2000 s 112(1) (see PARA 1196 post): s 109(3) (amended by the Transport (Wales) Act 2006 Schedule para 3(4)).

7 Transport Act 2000 s 109(4).

Where a local transport authority whose area is in England had, before the coming into force of s 108 (ie before 1 February 2001), prepared and published a document: (1) containing policies developed by it for the purposes described in s 108(1)(a) (see PARA 1190 head (1) ante); and (2) prepared and published in accordance with guidance issued by the Secretary of State, that document was to be taken to be the authority's local transport plan: s 109(5) (amended by the Transport (Wales) Act 2006 Schedule para 3(5)). In the case of a document which was a local transport plan by virtue of the Transport Act 2000 s 109(5) (as amended), s 109(2) required its replacement not later than 31 March 2006 (rather than not later than five years after the date on which it was made): s 109(6) (amended by the Transport (Wales) Act 2006 Schedule para 3(6)).

## UPDATE

### 1191 Further provision about plans: England

TEXT AND NOTES 1-4--As to the duty to consult when preparing a local transport plan and keeping it under review, see the Transport Act 2000 s 109(2A)-(2D) (added by the Local Transport Act 2008 s 9(4)). Transport Act 2000 s 109(2A), (2B) amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 97.

TEXT AND NOTE 4--Transport Act 2000 s 109(2) substituted: Local Transport Act 2008 s 9(3) (in force in relation to Wales: SI 2009/579).

NOTE 7--Transport Act 2000 s 109(5), (6) repealed: Local Transport Act 2008 ss 9(5), 131, Sch 7 Pt 1.

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### 1192. Approval of plans: Wales.

A local transport authority whose area is in Wales must submit its local transport plan to the Welsh Ministers for approval<sup>1</sup>. If the Ministers refuse to approve a plan submitted by a local transport authority<sup>2</sup>: (1) the Ministers must give the local transport authority a statement of the reasons for the refusal; and (2) the authority must prepare another local transport plan and submit the plan to the Ministers for approval<sup>3</sup>. If the Ministers approve a local transport plan, the plan has effect when the approval is given<sup>4</sup>. The Ministers may approve a local transport plan if (but only if) they consider: (a) that the plan is consistent with the Wales Transport Strategy<sup>5</sup>; and (b) that the policies contained in the plan are adequate for the implementation in the authority's area of the Strategy<sup>6</sup>. The Ministers must not delegate their function of refusing to approve a local transport plan or making a statement of the reasons for their refusal to approve a local transport plan<sup>7</sup>.

1 Transport Act 2000 s 109A(1) (s 109A added by the Transport (Wales) Act 2006 s 3, Schedule paras 1, 4). As to the Welsh Ministers see PARA 237 ante.

2 le under the Transport Act 2000 s 109A (as added).

3 Ibid s 109A(2) (as added: see note 1 supra).

- 4 Ibid s 109A(3) (as added: see note 1 supra).
- 5 As to the Wales Transport Strategy see PARA 239 ante.
- 6 Transport Act 2000 s 109A(4) (as added: see note 1 supra).
- 7 Ibid s 109A(5) (as added: see note 1 supra).

## UPDATE

### 1192 Approval of plans: Wales

TEXT AND NOTE 7--Repealed: SI 2007/1388.

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### 1193. Further provision about plans: Wales.

A local transport authority whose area is in Wales must keep its local transport plan under review and alter it if it considers it appropriate to do so<sup>1</sup>. The authority must in particular review the plan as soon as practicable after the publication of the Wales Transport Strategy<sup>2</sup> or any revision of it<sup>3</sup>. The authority must replace its local transport plan not later than five years after the date on which the plan was approved<sup>4</sup>. As soon as practicable after its plan, or its plan as altered, has been approved<sup>5</sup>, a local transport authority whose area is in Wales must: (1) publish the plan or the plan as altered in such manner as it thinks fit; and (2) send a copy of it to such persons (if any) as may be specified in guidance<sup>6</sup>. The authority must also: (a) cause a copy of its local transport plan to be made available for inspection (at all reasonable hours) at such places as it thinks fit; (b) give notice, by such means as it thinks expedient for bringing it to the attention of the public, as to the places at which a copy of it may be inspected; and (c) supply a copy of it (or any part of it) to any person on request, either free of charge or at a charge representing no more than the cost of providing the copy<sup>7</sup>.

Transitional provision has been made<sup>8</sup>.

- 1 Transport Act 2000 s 109B(1) (s 109B added by the Transport (Wales) Act 2006 s 3, Schedule paras 1, 4).
- 2 As to the Wales Transport Strategy see PARA 239 ante.
- 3 Transport Act 2000 s 109B(2) (as added: see note 1 supra).
- 4 I.e. under ibid s 109A (as added) (see PARA 1192 ante); s 109B(3) (as added: see note 1 supra). Section 109A (as added) applies to a replacement plan and a plan as altered as it applies to a plan as originally prepared: s 109B(4) (as so added). A local transport authority whose area is in Wales will be taken to have complied with s 109B(3) (as added) if (but only if): (1) the authority submits its replacement plan to the Welsh Ministers for approval under s 109A (as added) before the end of the five year period mentioned in s 109B(3) (as added); and (2) the Welsh Ministers approve the plan under s 109A (as added) (whether the approval is given before or after the end of that five year period): s 109B(5) (as so added). If an authority fails to comply with s 109B(3) (as added) because it fails to submit its replacement plan to the Welsh Ministers for approval under s 109A (as added) before the end of the five year period mentioned in that provision, the authority must replace its local transport plan as soon as practicable after the expiry of the five year period: s 109B(6) (as so added). If an authority fails to comply with s 109B(3) (as added) because the Welsh Ministers refuse to approve a plan submitted under s 109A (as added), the authority must replace its local transport plan as soon as practicable after the refusal: s 109B(7) (as so added).

- 5 le under *ibid* s 109A (as added): see PARA 1192 ante.
- 6 le specified in guidance under *ibid* s 112(1) (see PARA 1196 post): s 109B(8) (as added: see note 1 supra).
- 7 *Ibid* s 109B(9) (as added: see note 1 supra).
- 8 See *ibid* s 109C (added by the Transport (Wales) Act 2006 Schedule para 4).

## UPDATE

### 1193 Further provision about plans: Wales

NOTE 8--See Regional Transport Planning (Wales) Order 2006, SI 2006/2993 (amended by SI 2008/1286, SI 2009/109).

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### 1194. Bus strategies.

Each local transport authority<sup>1</sup> must prepare a document to be known as the bus strategy containing its general policies as to how best to carry out its functions (or, in the case of a passenger transport authority<sup>2</sup> for a passenger transport area<sup>3</sup>, as to how the functions of the passenger transport executive<sup>4</sup> for its area would be best carried out) in order to secure that: (1) bus services<sup>5</sup> meet such of the transport requirements of persons within the authority's area as the authority considers should be met by such services; (2) bus services meeting such requirements are provided to the standards to which the authority considers that they should be provided; and (3) such additional facilities and services connected with bus services are provided as the authority considers should be provided<sup>6</sup>. The bus strategy is to form part of the authority's local transport plan<sup>7</sup>. In developing its bus strategy, the authority must have regard to any measures the authority is required or proposes to take for meeting transport requirements in carrying out any of its functions as a local education authority or any of its social services functions<sup>8</sup>. In developing its bus strategy, a passenger transport authority must seek and have regard to the advice of the passenger transport executive for its area<sup>9</sup>.

- 1 For the meaning of 'local transport authority' see PARA 1190 note 1 ante.
- 2 As to passenger transport authorities see PARA 1190 note 1 ante.
- 3 As to passenger transport areas see PARA 1190 note 1 ante.
- 4 References in the Transport Act 2000 Pt II (ss 108-162) (as amended) to passenger transport executives are references to the passenger transport executives for the purposes of the Transport Act 1968 Pt II (ss 9-23A) (as amended): Transport Act 2000 s 162(5).
- 5 In *ibid* Pt II (as amended) 'bus services' means services using public service vehicles: s 110(5). 'Public service vehicle' has the same meaning as in the Public Passenger Vehicles Act 1981 (see PARA 1136 ante): Transport Act 2000 s 162(2).
- 6 *Ibid* s 110(1). References in Pt II (as amended) to the bus strategy of a passenger transport authority for a passenger transport area are to the bus strategy made jointly by the passenger transport authority and the councils for the metropolitan districts comprised in the area: s 162(6).



7 Ibid s 110(2). As to local transport plans see PARA 1190 ante.

8 Ibid s 110(3), referring to social services functions within the meaning of the Local Authority Social Services Act 1970.

9 Transport Act 2000 s 110(4).

## UPDATE

### 1194 Bus strategies

TEXT AND NOTES--Transport Act 2000 s 110 repealed: Local Transport Act 2008 ss 10(2), 131, Sch 7 Pt 1.

NOTE 4--Transport Act 2000 s 162(5) amended: Local Transport Act 2008 Sch 4 para 46(3).

NOTE 6--Transport Act 2000 s 162(6) repealed: Local Transport Act 2008 ss 12(5), 131, Sch 7 Pt 1.

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### 1195. Consultation and publicity about bus strategies.

In complying with provision relating to bus strategies<sup>1</sup>, a local transport authority<sup>2</sup> must consult: (1) any other relevant local authority<sup>3</sup> whose area may, in the opinion of the authority, be affected by the bus strategy developed by it; (2) if the authority is a county council in England, the councils of the districts in the county (if any); (3) either operators of bus services<sup>4</sup> which are provided within the authority's area or organisations appearing to the authority to be representative of such operators; and (4) organisations appearing to the authority to be representative of users of such services<sup>5</sup>. When an authority publishes a statement of a new bus strategy or its strategy as altered<sup>6</sup>, it must send a copy of it to each authority, council, operator or organisation consulted<sup>7</sup> on the occasion in question<sup>8</sup>.

1 In complying with the Transport Act 2000 s 110: see PARA 1194 ante.

2 For the meaning of 'local transport authority' see PARA 1190 note 1 ante.

3 For the purpose of head (1) in the text the following are relevant local authorities: (1) local transport authorities; (2) metropolitan district councils; and (3) London transport authorities (except that, in the case of consultation by a passenger transport authority for a passenger transport area, a council for a metropolitan district comprised in the area is not a relevant local authority): Transport Act 2000 s 111(2). 'London transport authority' means the Greater London Authority, a London borough council or the Common Council of the City of London: s 162(1). As to the Greater London Authority see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq. As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq. As to passenger transport authorities and passenger transport areas see PARA 1190 note 1 ante.

4 'Bus services' has the meaning given in ibid s 110(5) (see PARA 1194 ante): s 162(1).

5 Ibid s 111(1).

6 le in accordance with *ibid* s 109(3)(a) (see PARA 1191 ante) or s 109B(8)(a) (as added) (see PARA 1193 ante).

7 le under *ibid* s 111(1).

8 *Ibid* s 111(3) (amended by the Transport (Wales) Act 2006 s 3, Schedule paras 1, 5).

## UPDATE

### 1195 Consultation and publicity about bus strategies

TEXT AND NOTES--Transport Act 2000 s 111 repealed: Local Transport Act 2008 ss 10(2), 131, Sch 7 Pt 1.

NOTE 4--Definition of 'bus services' substituted: Local Transport Act 2008 s 10(7).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(i) Local Services Outside London/D. LOCAL TRANSPORT PLANS AND BUS STRATEGIES/1196. Guidance as to plans and strategies.

### 1196. Guidance as to plans and strategies.

In carrying out its functions<sup>1</sup>, a local transport authority<sup>2</sup> must have regard to any guidance concerning: (1) the content of local transport plans<sup>3</sup> (and bus strategies<sup>4</sup>); (2) the preparation of such plans (and strategies); (3) the alteration and replacement of such plans (and strategies); and (4) the publication and making available of such plans (and strategies) as originally made and as altered or replaced, which is issued from time to time by the Secretary of State (as respects England) or the Welsh Ministers (as respects Wales)<sup>5</sup>. In developing its policies<sup>6</sup> and its bus strategy, a local transport authority must have regard to the transport needs of persons who are elderly<sup>7</sup> or have mobility problems<sup>8</sup>.

1 le under the Transport Act 2000 ss 108-111 (as amended): see PARAS 1190-1195 ante.

2 For the meaning of 'local transport authority' see PARA 1190 note 1 ante.

3 As to local transport plans see PARA 1190 ante.

4 As to bus strategies see PARA 1194 ante.

5 Transport Act 2000 s 112(1). As to the Secretary of State see PARA 236 ante. As to the Welsh Ministers see PARA 237 ante.

6 le under *ibid* s 108(1): see PARA 1190 ante.

7 In *ibid* Pt II (ss 108-162) (as amended) 'elderly person' means a person who has attained the age of 60 years: s 146 (amended by the Travel Concessions (Eligibility) Act 2002 s 1(3)).

8 Transport Act 2000 s 112(2).

## UPDATE

### 1196 Guidance as to plans and strategies

TEXT AND NOTES 1-5--Transport Act 2000 s 112(1) amended: Local Transport Act 2008 ss 10(4), 131, Sch 7 Pt 1.

TEXT AND NOTES 6-8--Transport Act 2000 s 112(2) amended: Local Transport Act 2008 ss 10(5), 11(2), 131, Sch 7 Pt 1.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(i) Local Services Outside London/D. LOCAL TRANSPORT PLANS AND BUS STRATEGIES/1197. Role of metropolitan district councils.

### **1197. Role of metropolitan district councils.**

The duties imposed<sup>1</sup> on a passenger transport authority<sup>2</sup> for a passenger transport area must be performed by: (1) that authority; and (2) the councils for the metropolitan districts comprised in the area, acting jointly<sup>3</sup>. The duties imposed<sup>4</sup> on a passenger transport authority for a passenger transport area are also duties of each of the councils for the metropolitan districts comprised in the area<sup>5</sup>.

1     le by the Transport Act 2000 s 108(1)(a), (3) (as amended) (see PARA 1190 ante), s 109(1)-(3) (as amended) (see PARA 1191 ante), s 110(1) (see PARA 1194 ante) and s 111(3) (as amended) (see PARA 1195 ante). As to passenger transport areas see PARA 1190 note 1 ante.

2     As to passenger transport authorities see PARA 1190 note 1 ante.

3     Transport Act 2000 s 113(1).

4     le by ibid s 108(1)(b) (see PARA 1190 ante), s 109(4) (see PARA 1191 ante), s 110(3) (see PARA 1194 ante) and s 112 (see PARA 1196 ante).

5     Ibid s 113(2).

Section 109(5) (see PARA 1191 ante) applies in the case of a passenger transport authority for a passenger transport area only if the document to which it refers has been prepared and published by: (1) that authority; and (2) the councils for the metropolitan districts comprised in the area, acting jointly: s 113(3).

## **UPDATE**

### **1197 Role of metropolitan district councils**

TEXT AND NOTES 1-3--Transport Act 2000 s 113(1) repealed: Local Transport Act 2008 ss 12(2), 131, Sch 7 Pt 1.

TEXT AND NOTES 4, 5--Transport Act 2000 s 113(2), (2A) substituted for s 113(2): Local Transport Act 2008 s 12(3). Transport Act 2000 s 113(2), (2A) amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 98.

NOTE 5--Transport Act 2000 s 113(3) repealed: Local Transport Act 2008 s 12(4), 131, Sch 7 Pt 1.

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Outside London/D. LOCAL TRANSPORT PLANS AND BUS STRATEGIES/1198. Modification of provisions about plans and strategies: Wales.

### **1198. Modification of provisions about plans and strategies: Wales.**

The Welsh Ministers<sup>1</sup> may by order modify the application of the provisions relating to plans and strategies<sup>2</sup> in relation to local transport authorities whose areas are in Wales for the purpose of: (1) permitting a local transport plan to be prepared in respect of part only of an authority's area; (2) permitting a local transport plan to be prepared by two or more authorities jointly in respect of an area comprising all or any part or parts of their areas<sup>3</sup>.

1 As to the Welsh Ministers see PARA 237 ante.

2 I.e. the application of the Transport Act 2000 ss 108-111 (as amended): see PARAS 1190-1195 ante.

3 Ibid s 113A(1) (s 113A added by the Transport (Wales) Act 2006 s 3, Schedule paras 1, 6). An order under the Transport Act 2000 s 113A(1) (as added) made for the purpose mentioned in head (2) in the text may in particular include provision for: (1) the plan to be prepared by one of the authorities concerned on behalf of both or all of them; (2) administrative arrangements, including the apportionment of the cost of preparing the plan between the authorities concerned: s 113A(2) (as so added). Before making an order under s 113A(1) (as added) the Welsh Ministers must consult the local transport authorities concerned and any other persons they consider appropriate: s 113A(3) (as so added).

### **UPDATE**

### **1198 Modification of provisions about plans and strategies: Wales**

NOTE 3--Transport Act 2000 s 113A(1) amended: Local Transport Act 2008 s 10(6).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(i) Local Services Outside London/D. LOCAL TRANSPORT PLANS AND BUS STRATEGIES/1199. Directions concerning plans and strategies: Wales.

### **1199. Directions concerning plans and strategies: Wales.**

The Welsh Ministers<sup>1</sup> may issue to a local transport authority whose area is in Wales general or specific directions as to the manner in which the authority is to carry out its functions<sup>2</sup>. Directions issued by the Welsh Ministers<sup>3</sup> may include in particular directions: (1) as to the timetable in accordance with which a local transport plan or alterations to a local transport plan must be prepared; (2) as to the action required to be taken to implement the policies contained in a local transport plan; (3) as to the steps required to be taken to remove the effects of action which is incompatible with those policies<sup>4</sup>. Directions must be in writing and may be varied or revoked by further directions under these provisions<sup>5</sup>. Before issuing, varying or revoking directions under these provisions the Welsh Ministers must consult the local transport authority concerned and any other persons they consider appropriate<sup>6</sup>.

1 As to the Welsh Ministers see PARA 237 ante.

2 I.e. its functions under the Transport Act 2000 ss 108-111 (as amended) (see PARAS 1190-1195 ante): s 113B(1) (s 113B added by the Transport (Wales) Act 2006 s 3, Schedule paras 1, 6).

3 le under the Transport Act 2000 s 113B(1) (as added): see the text and notes 1-2 supra.

4 Ibid s 113B(2) (as added: see note 2 supra).

5 le under ibid s 113B (as added): s 113B(3) (as added: see note 2 supra).

6 Ibid s 113B(4) (as added: see note 2 supra).

## **UPDATE**

### **1199 Directions concerning plans and strategies: Wales**

NOTES 1, 2--Transport Act 2000 s 113B(1) amended: Local Transport Act 2008 s 10(6).

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## ***E. SCHEMES FOR BUS SERVICES***

### **(A) QUALITY PARTNERSHIP SCHEMES**

#### **1200. Quality partnership schemes.**

A local transport authority<sup>1</sup>, or two or more such authorities acting jointly, may make a quality partnership scheme<sup>2</sup> if it is or they are satisfied that the scheme will to any extent implement the policies set out in its bus strategy<sup>3</sup> or their strategies<sup>4</sup>. A quality partnership scheme is a scheme under which: (1) the authority or authorities provide particular facilities in the whole or part of its area, or their combined area; and (2) operators of local services<sup>5</sup> who wish to use the facilities must undertake to provide local services of a particular standard when using them<sup>6</sup>. The authority or authorities must be satisfied that both the provision of those facilities and the provision of local services of that standard will: (a) improve the quality of local services provided in the whole or any part of its area, or their combined area, by bringing benefits to persons using those services; or (b) reduce or limit traffic congestion, noise or air pollution<sup>7</sup>.

A quality partnership scheme may not be made unless the authority has or the authorities have complied with notice and consultation requirements<sup>8</sup>. The facilities which may be specified in a scheme must be facilities provided at specific locations along routes served, or proposed to be served, by local services within the area to which the scheme relates, or facilities which are ancillary to such facilities, but may not be facilities which are required to be provided as a result of certain provisions<sup>9</sup>. The standard of services which may be specified in a scheme include requirements which the vehicles being used to provide the services must meet, but do not include requirements as to frequency or timing of the services<sup>10</sup>. If the provision of any of the facilities requires the making of a traffic regulation order<sup>11</sup> in respect of a road or other place in a metropolitan district (other than a road for which the Secretary of State is or the Welsh Ministers are the traffic authority<sup>12</sup>), the scheme may not be made unless it is made by: (i) the local transport authority or authorities; and (ii) the metropolitan district council for the district, acting jointly<sup>13</sup>. If the provision of any of the facilities requires the making of a traffic regulation order in respect of a road for which the Secretary of State is or the Welsh Ministers are the traffic authority, the scheme may not be made unless it is made by: (A) the local

transport authority or authorities; and (b) the Secretary of State or the Welsh Ministers, acting jointly<sup>14</sup>.

In carrying out their functions under Part II of the Transport Act 2000 in relation to quality partnership schemes, local transport authorities must co-operate with one another<sup>15</sup>. In considering whether to make a quality partnership scheme, a local transport authority must have regard to the desirability, in appropriate cases, of making a scheme jointly with another such authority<sup>16</sup>.

1 For the meaning of 'local transport authority' see PARA 1190 note 1 ante.

2 For the meaning of 'quality partnership scheme' see the text to note 6 infra.

3 As to bus strategies see PARA 1194 ante.

4 Transport Act 2000 s 114(1).

5 In *ibid* Pt II (ss 108-162) (as amended) 'local service' has the same meaning as in the Transport Act 1985 (see PARA 1177 ante): Transport Act 2000 s 162(3). References in Pt II (as amended) to the operator of a passenger transport service of any description are to be construed in accordance with the Transport Act 1985 s 137(7) (see PARA 1136 note 7 ante): Transport Act 2000 s 162(7).

6 *Ibid* s 114(2). Where a reference to an authority in head (1) in the text is to a passenger transport authority, it is to be construed as a reference to the passenger transport executive for the passenger transport area concerned; and where a reference to authorities in that head is to one or more passenger transport authorities, it is to be construed as a reference to the passenger transport executive or executives for the passenger transport area or areas concerned: s 162(4). As to passenger transport authorities and passenger transport areas see PARA 1190 note 1 ante. As to passenger transport executives see PARA 1194 note 4 ante.

7 *Ibid* s 114(3).

8 *Ibid* s 114(4), which refers to requirements imposed by s 115 (see PARA 1201 post).

9 *Ie* as a result of *ibid* s 139 or s 140 (see PARA 1224 post): see s 114(5).

10 *Ibid* s 114(6).

11 'Traffic regulation order' means an order under the Road Traffic Regulation Act 1984 or any other enactment (other than the Transport Act 2000) regulating the use of roads or other places by public service vehicles: s 162(1). In Pt II (as amended) 'road' has the same meaning as in the Public Passenger Vehicles Act 1981 (see PARA 206 ante): Transport Act 2000 s 162(2). As to the meaning of 'public service vehicle' see PARA 1194 note 5 ante.

12 As to the Secretary of State see PARA 236 ante. As to the Welsh Ministers see PARA 237 ante.

13 Transport Act 2000 s 114(7). See further note 14 infra.

14 *Ibid* s 114(8).

Where s 114(7) or (8) applies so that a metropolitan district council, the Secretary of State or the Welsh Ministers is or are a maker of the scheme, then (subject to s 121 (see PARA 1206 post)) the relevant references to the authority or authorities include (as well as the local transport authority or authorities) the metropolitan district council, the Secretary of State or the Welsh Ministers: s 11

4(9). For the purpose of s 114(9) the relevant references are those in s 114(2), (4), ss 115-120 (see PARAS 1201-1206 post), s 127(7) (see PARA 1212 post), and the Road Traffic Regulation Act 1984 s 124(1), Sch 9 para 27(3) (as added) (see PARA 739 ante): Transport Act 2000 s 114(10).

15 *Ibid* s 114(11).

16 *Ibid* s 114(12).

## UPDATE

### 1200 Quality partnership schemes

TEXT AND NOTES--As to the imposition of restrictions on the registration of any local services, or any local services of a particular description, see the Transport Act 2000 s 114(3A)-(3D) (added by the Local Transport Act 2008 s 13(4)). The power to make a quality partnership scheme includes power to provide for different facilities, or different standards of services, to be provided under the scheme as from different dates after the scheme comes into operation: Transport Act 2000 s 114(6C) (added by the Local Transport Act 2008 s 13(7)).

TEXT AND NOTES 1-4--Transport Act 2000 s 114(1) amended: Local Transport Act 2008 s 13(2).

NOTE 6--Reference to a passenger transport authority is now to an Integrated Transport Authority and reference to a passenger transport area is now to an integrated transport area: Transport Act 2000 s 162(4) (amended by the Local Transport Act 2008 Sch 4 para 46(2)).

TEXT AND NOTE 7--Transport Act 2000 s 114(3) amended: Local Transport Act 2008 s 13(3).

TEXT AND NOTE 10--Transport Act 2000 s 114(6) substituted: Local Transport Act 2008 s 13(5). The standard of services which may be specified in a scheme may also include requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, on services to which the scheme applies: Transport Act 2000 s 114(6A) (s 114(6A), (6B) added by the Local Transport Act 2008 s 13(6)). A scheme may include a requirement falling within the Transport Act 2000 s 114(6)(b) or 114(6A) only if there are no admissible objections to the requirement from relevant operators: s 114(6B).

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## **1201. Notice and consultation requirements.**

If an authority proposes or the authorities propose to make a quality partnership scheme<sup>1</sup>, it or they must give notice of the proposed scheme in at least one newspaper circulating in the area to which it relates<sup>2</sup>. The notice must either contain full details of the facilities and standards of services or state where such details may be inspected<sup>3</sup>. After giving notice of the proposed scheme, the authority or authorities must consult: (1) all operators<sup>4</sup> of local services<sup>5</sup> who would, in the opinion of the authority or authorities, be affected by it; (2) such organisations appearing to the authority or authorities to be representative of users of local services as it or they think fit; (3) any other relevant local authority any part of whose area would, in the opinion of the authority or authorities, be affected by it<sup>6</sup>; (4) the traffic commissioner<sup>7</sup> for each traffic area<sup>8</sup> covering the whole or part of the area to which it relates; (5) the chief officer of police for each police area covering the whole or part of that area; and (6) such other persons as the authority or authorities think fit<sup>9</sup>.

Where the proposed scheme specifies one or more existing facilities<sup>10</sup>, the authority must<sup>11</sup>: (a) state when it believes that each such facility was first provided and where two or more authorities propose to make the scheme the authority in whose area an existing facility is situated will be responsible for making that statement; and (b) specify the date by which an

objection to the specifying of an existing facility must be made, such date to be not less than 42 days from the date on which the notice is published<sup>12</sup>.

- 1 In the Transport Act 2000 Pt II (ss 108-162) (as amended) 'quality partnership scheme' is to be construed in accordance with s 114(2) (see PARA 1200 ante); s 162(1).
- 2 Ibid s 115(1).
- 3 Ibid s 115(2).
- 4 As to the 'operator' of a passenger transport service see PARA 1200 note 5 ante.
- 5 For the meaning of 'local service' see PARA 1200 note 5 ante.
- 6 For the purpose of head (3) in the text the following are relevant local authorities: (1) local transport authorities, (2) metropolitan district councils; and (3) London transport authorities: Transport Act 2000 s 115(4). For the meaning of 'local transport authority' see PARA 1190 note 1 ante. For the meaning of 'London transport authority' see PARA 1195 note 3 ante.
- 7 'Traffic commissioner' has the same meaning as in the Public Passenger Vehicles Act 1981 (see PARA 1138 note 7 ante): Transport Act 2000 s 162(2).
- 8 'Traffic area' has the same meaning as in the Transport Act 1985 (see PARA 1178 note 2 ante): Transport Act 2000 s 162(3).
- 9 Ibid s 115(3).
- 10 For provision as to existing facilities see further PARA 1205 post.
- 11 In the notice given under the Transport Act 2000 s 115(1): see the text and notes 1-2 supra.
- 12 Ibid s 115(5) (added in relation to England by the Quality Partnership Schemes (Existing Facilities) Regulations 2001, SI 2001/3317, reg 5; and in relation to Wales by the Quality Partnership Schemes (Existing Facilities) (Wales) Regulations 2002, SI 2002/3017, reg 5).

## UPDATE

### 1201 Notice and consultation requirements

TEXT AND NOTE 3--Transport Act 2000 s 115(2) amended: Local Transport Act 2008 s 14(2).

NOTE 6--Reference to metropolitan district councils is now to district councils in England: Transport Act 2000 s 115(4) (amended by the Local Transport Act 2008 s 14(3)).

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### 1202. Making of scheme.

If the authority decides or the authorities decide that it is appropriate to make the scheme<sup>1</sup>, it or they may make it as proposed or with modifications<sup>2</sup>. The scheme must specify: (1) the facilities to be provided under it by the authority or authorities; (2) the standard of services to be provided under it by operators<sup>3</sup> of local services<sup>4</sup>; (3) the date on which it is to come into



operation; and (4) the period for which it is to remain in operation, which must not be less than five years<sup>5</sup>. The scheme may provide that local services specified in it, or local services of a class specified in it, are to be excluded from the scheme, subject to such conditions (if any) as may be specified in it<sup>6</sup>. The date specified in the scheme as that on which it is to come into operation must not be earlier than the date by which, in the opinion of the authority or authorities, it will be reasonably practicable: (a) for the authority or authorities to provide the specified facilities; and (b) for operators of local services to provide the specified standard of services, and, in any event, must not be earlier than the date provided by the provision below<sup>7</sup>. That date is three months after the date on which the scheme is made, or if later, the date on which any traffic regulation order<sup>8</sup> required for the provision of any of the specified facilities is made or, if more than one such order is required for that purpose, the date on which the last of them is made<sup>9</sup>.

Not later than 14 days after the date on which the scheme is made, the authority or authorities must give notice in at least one newspaper circulating in the area to which the scheme relates and to all operators of local services who would, in the opinion of the authority or authorities, be affected by the scheme and the traffic commissioner<sup>10</sup> for each traffic area<sup>11</sup> covering the whole or part of the area to which the scheme relates<sup>12</sup>. The notice must either contain full details of the scheme or state where such details may be inspected and, if the scheme made is a modified version of that proposed, state that fact<sup>13</sup>.

1   le a quality partnership scheme: see PARA 1200 ante.

2   Transport Act 2000 s 116(1). 'Modification' has the same meaning as in the Public Passenger Vehicles Act 1981 (see PARA 1134 note 21 ante): Transport Act 2000 s 162(2).

3   As to the 'operator' of a passenger transport service see PARA 1200 note 5 ante.

4   For the meaning of 'local service' see PARA 1200 note 5 ante.

5   Transport Act 2000 s 116(2). See note 7 infra.

6   Ibid s 116(3).

7   le the date provided by ibid s 116(5) (see the text to note 9 infra): s 116(4). Where a reference to an authority in head (1) or head (a) in the text is to a passenger transport authority, it is to be construed as a reference to the passenger transport executive for the passenger transport area concerned; and where a reference to authorities in those heads is to one or more passenger transport authorities, it is to be construed as a reference to the passenger transport executive or executives for the passenger transport area or areas concerned: s 162(4). As to passenger transport authorities and passenger transport areas see PARA 1190 note 1 ante. As to passenger transport executives see PARA 1194 note 4 ante.

8   For the meaning of 'traffic regulation order' see PARA 1200 note 11 ante.

9   Transport Act 2000 s 116(5).

10   As to the meaning of 'traffic commissioner' see PARA 1201 note 7 ante.

11   For the meaning of 'traffic area' see PARA 1201 note 8 ante.

12   Transport Act 2000 s 116(6).

13   Ibid s 116(7).

## **UPDATE**

### **1202 Making of scheme**

TEXT AND NOTES 3-5--Transport Act 2000 s 116(2) amended: Local Transport Act 2008 ss 15(2)-(4), 131, Sch 7 Pt 2.

TEXT AND NOTES 7-9--Transport Act 2000 s 116(4), (4A)-(4E) substituted for s 116(4), (5): Local Transport Act 2008 s 15(5).

NOTE 7--Transport Act 2000 s 162(4) amended: Local Transport Act 2008 s 15(6). Reference to a passenger transport authority is now to an Integrated Transport Authority and reference to a passenger transport area is now to an integrated transport area: Transport Act 2000 s 162(4) (amended by the Local Transport Act 2008 Sch 4 para 46(2)).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(i) Local Services Outside London/E. SCHEMES FOR BUS SERVICES/(A) Quality Partnership Schemes/1203. Postponement of scheme.

### **1203. Postponement of scheme.**

If it appears to the authority or authorities appropriate to do so, it or they may decide that the date on which the scheme<sup>1</sup> would otherwise come into operation must be postponed by such period, not exceeding 12 months, as it thinks or they think fit<sup>2</sup>. Before making such a decision it or they must consult all operators<sup>3</sup> of local services<sup>4</sup> who would, in its or their opinion, be affected by the scheme<sup>5</sup>. Not later than 14 days after the date on which any such decision is made, it or they must give notice of the decision: (1) in at least one newspaper circulating in the area to which the scheme relates; and (2) to all operators of local services who would, in its or their opinion, be affected by the scheme and the traffic commissioner<sup>6</sup> for each traffic area<sup>7</sup> covering the whole or part of the area to which the scheme relates<sup>8</sup>.

1 le a quality partnership scheme: see PARA 1200 ante.

2 Transport Act 2000 s 117(1).

3 As to the 'operator' of a passenger transport service see PARA 1200 note 5 ante.

4 For the meaning of 'local service' see PARA 1200 note 5 ante.

5 Transport Act 2000 s 117(2).

6 As to the meaning of 'traffic commissioner' see PARA 1201 note 7 ante.

7 For the meaning of 'traffic area' see PARA 1201 note 8 ante.

8 Transport Act 2000 s 117(3).

## **UPDATE**

### **1203 Postponement of scheme**

TEXT AND NOTES 1, 2--If it appears to the authority or authorities appropriate to do so, it or they may decide that any of various specified dates are to be postponed by such period as it or they think fit: Transport Act 2000 s 117(1) (s 117(1), (1A) substituted for s 117(1) by the Local Transport Act 2008 s 16(1)). The dates are (1) the date on which the scheme is to come into operation; (2) the date as from which any particular facilities are to be provided under the scheme; and (3) the date as from which any particular services are to be provided to a particular standard under the scheme:

Transport Act 2000 s 117(1A). A date may not be postponed by a period or periods which in total exceed 12 months: s 117(1).

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#### **1204. Effect of scheme.**

The authority or authorities must: (1) provide the specified facilities not later than the date on which the scheme<sup>1</sup> is to come into operation; and (2) continue to provide them throughout the period during which it remains in operation<sup>2</sup>. The operator<sup>3</sup> of a local service<sup>4</sup> may not use facilities provided under a quality partnership scheme unless: (a) he has given a written undertaking to the traffic commissioner<sup>5</sup> for each traffic area<sup>6</sup> covering the whole or part of the area to which the scheme relates that he will provide the service to the standard specified in the scheme when using the facilities; and (b) he provides the service to that standard when using the facilities, except in relation to any period during which he is temporarily unable to do so owing to circumstances beyond his control<sup>7</sup>.

1    le a quality partnership scheme (see PARA 1200 ante).

2    Transport Act 2000 s 118(1). However, s 118(1) does not apply in relation to any period during which the authority is or authorities are temporarily unable to provide the facilities owing to circumstances beyond its or their control: s 118(2). Nor does it apply in the case of the Secretary of State or the Welsh Ministers if he is or they are unable to provide the facilities owing to the variation or revocation of a traffic regulation order: s 118(3). As to the Secretary of State see PARA 236 ante. As to the Welsh Ministers see PARA 237 ante. For the meaning of 'traffic regulation order' see PARA 1200 note 11 ante.

Where a reference to an authority in s 118(1), (2) is to a passenger transport authority, it is to be construed as a reference to the passenger transport executive for the passenger transport area concerned; and where a reference to authorities in those provisions is to one or more passenger transport authorities, it is to be construed as a reference to the passenger transport executive or executives for the passenger transport area or areas concerned: s 162(4). As to passenger transport authorities and passenger transport areas see PARA 1190 note 1 ante. As to passenger transport executives see PARA 1194 note 4 ante.

3    As to the 'operator' of a passenger transport service see PARA 1200 note 5 ante.

4    For the meaning of 'local service' see PARA 1200 note 5 ante.

5    For the meaning of 'traffic commissioner' see PARA 1201 note 7 ante.

6    For the meaning of 'traffic area' see PARA 1201 note 8 ante.

7    Transport Act 2000 s 118(4). Section 118(4) does not apply in relation to services which are excluded from the scheme as a result of any provision of the scheme made in accordance with s 116(3) (see PARA 1202 ante): s 118(5). Where the exclusion of a local service from the scheme is made subject to conditions as a result of such a provision, those conditions are to be treated, during any period in which the scheme is in operation, as if they were prescribed particulars registered under the Transport Act 1985 s 6 (registration of local services: see PARA 1178 ante) of the service concerned: Transport Act 2000 s 118(6).

### **UPDATE**

#### **1204 Effect of scheme**

TEXT AND NOTES 1, 2--Transport Act 2000 s 118(1) substituted: Local Transport Act 2008 s 17(2).

NOTE 2--Reference to a passenger transport authority is now to an Integrated Transport Authority (see PARA 247A) and reference to a passenger transport area is now to an integrated transport area: Transport Act 2000 s 162(4) (amended by the Local Transport Act 2008 Sch 4 para 46(2)).

TEXT AND NOTES 3-7--Transport Act 2000 s 118(4) amended: Local Transport Act 2008 s 17(3).

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### **1205. Regulations about schemes involving existing facilities.**

The appropriate national authority<sup>1</sup> may by regulations make provision about the specifying in quality partnership schemes of facilities which are already being provided before the schemes are proposed ('existing facilities')<sup>2</sup>. The regulations may in particular: (1) provide that existing facilities may not be specified if they were being provided before a date prescribed by, or determined in accordance with, the regulations; (2) provide that particular existing facilities or classes of existing facilities may not be specified (whenever they were first provided); (3) provide that particular existing facilities or classes of existing facilities may be specified only in circumstances prescribed by the regulations; (4) provide that, in circumstances prescribed by the regulations, particular existing facilities or classes of existing facilities may be specified only with the consent of a person prescribed by, or determined in accordance with, the regulations; and (5) make provision modifying any provision<sup>3</sup> in relation to schemes which specify existing facilities<sup>4</sup>.

1 In the Transport Act 2000 Pt II (ss 108-162) 'appropriate national authority', in relation to a quality partnership scheme, a quality contracts scheme or a ticketing scheme, means: (1) the Secretary of State, as respects a scheme relating to an area in England; (2) the Welsh Ministers, as respects a scheme relating to an area in Wales; or (3) the Secretary of State and the Welsh Ministers acting jointly, as respects a scheme relating to an area in England and Wales: s 162(1). For the meaning of 'quality partnership scheme' see PARA 1200 ante. 'Quality contracts scheme' is to be construed in accordance with s 124(3) (see PARA 1209 post): s 162(1). 'Ticketing scheme' is to be construed in accordance with s 135(3) (see PARA 1220 post): s 162(1). As to the Secretary of State see PARA 236 ante. As to the Welsh Ministers see PARA 237 ante.

2 Ibid s 119(1). See the Quality Partnership Schemes (Existing Facilities) Regulations 2001, SI 2001/3317. As to regulations under the Transport Act 2000 Pt II (as amended) see PARA 1226 post.

3 I.e. any provision of ibid ss 115-117 (as amended): see PARAS 1201-1203 ante.

4 Ibid s 119(2).

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## 1206. Variation or revocation of schemes.

The authority or authorities which made a quality partnership scheme<sup>1</sup> may vary the scheme if it decides or they decide that it is appropriate to do so<sup>2</sup>. The authority or authorities which made a scheme may revoke it before the end of the period for which it would otherwise remain in operation if all persons who have given an undertaking to provide a service to the standard specified in the scheme consent to the revocation of the scheme; and such consent must not be unreasonably withheld<sup>3</sup>. If the variation of a scheme<sup>4</sup> would require the making of a traffic regulation order<sup>5</sup>, the variation is subject to the same procedure as the making of a scheme<sup>6</sup>. Any other variation of a scheme<sup>7</sup>, or the revocation of a scheme<sup>8</sup>, is subject to that procedure, except to the extent that the procedure is modified by regulations<sup>9</sup>.

The relevant references<sup>10</sup> to the authority or authorities in relation to a quality partnership scheme<sup>11</sup>:

1827 (1) include a local transport authority<sup>12</sup> if it has been varied so that it relates to that authority's area; but

1828 (2) do not include a local transport authority if it has been varied so that it no longer relates to that authority's area<sup>13</sup>,

but if (although the scheme does not relate to a local transport authority's area) it would do by reason of a proposed variation, those references<sup>14</sup> include that authority<sup>15</sup>. The relevant references<sup>16</sup> to the authority or authorities in relation to a quality partnership scheme:

1829 (a) include a traffic regulation authority<sup>17</sup> if it has been varied so that it specifies traffic regulation facilities<sup>18</sup>; but

1830 (b) do not include a traffic regulation authority if it has been varied so that it no longer specifies such facilities<sup>19</sup>,

but if (although the scheme does not specify facilities which are traffic regulation facilities in relation to a traffic regulation authority) it would do by reason of a proposed variation, those references<sup>20</sup> include that authority<sup>21</sup>. If (although the scheme specifies facilities which are traffic regulation facilities in relation to a traffic regulation authority): (i) the traffic regulation order, or (where more than one) each of the traffic regulation orders, required to be made by that authority for the provision of those facilities has been revoked; and (ii) the scheme is proposed to be varied (but not so that it specifies other facilities which are traffic regulation facilities in relation to that authority), the relevant references<sup>22</sup> do not include that authority<sup>23</sup>.

1 For the meaning of 'quality partnership scheme' see PARA 1200 ante.

2 Transport Act 2000 s 120(1).

3 Ibid s 120(2).

4 Ie under ibid s 120(1): see the text and notes 1-2 supra.

5 For the meaning of 'traffic regulation order' see PARA 1200 note 11 ante.

6 Transport Act 2000 s 120(3).

7 Ie under ibid s 120(1): see the text and notes 1-2 supra.

8 Ie under ibid s 120(2): see the text and note 3 supra.

9 Ibid s 120(4), which refers to regulations made under s 122 (see PARA 1207 post). As to regulations under Pt II (ss 108-162) (as amended) see PARA 1226 post.

10 For the purposes of ibid s 121 the relevant references are those in s 114(1)-(4) (see PARA 1200 ante), ss 115-120 (see PARAS 1201-1205 ante; and the text to notes 1-9 supra), s 127(7) (see PARA 1212 post), and the Road Traffic Regulation Act 1984 s 124(1), Sch 9 para 27(3) (as added) (see PARA 739 ante); Transport Act 2000 s 121(6).

11 For the meaning of 'quality partnership scheme' see PARA 1200 ante.

12 For the meaning of 'local transport authority' see PARA 1190 note 1 ante.

13 Transport Act 2000 s 121(1).

14 Ie apart from those in ibid s 118: see PARA 1204 ante.

15 Ibid s 121(2).

16 Ie apart from those in ibid s 114(1), (3): see PARA 1200 ante.

17 In ibid s 121 'traffic regulation authority' means: (1) a metropolitan district council; (2) the Secretary of State; or (3) the Welsh Ministers: s 121(7). As to the Secretary of State see PARA 236 ante. As to the Welsh Ministers see PARA 237 ante.

18 For the purposes of ibid s 121, facilities are traffic regulation facilities, in relation to a traffic regulation authority and a quality partnership scheme, if that authority was required to be a maker of the scheme because it originally specified those facilities or would have been required to be a maker of it had it done so: s 121(8).

19 Ibid s 121(3).

20 Ie apart from those in ibid s 118: see PARA 1204 ante.

21 Ibid s 121(4).

22 Ie apart from those in ibid s 118: see PARA 1204 ante.

23 Ibid s 121(5).

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## **1207. Regulations about schemes.**

The appropriate national authority<sup>1</sup> may by regulations make further provision with respect to: (1) the procedure to be followed when making, varying or revoking quality partnership schemes<sup>2</sup>; (2) the local services<sup>3</sup> or classes of local services which must be, or may be, excluded from schemes; (3) the conditions which must be, or may be, attached to such exclusions; (4) the form and manner in which undertakings are to be given to the traffic commissioner<sup>4</sup> in connection with schemes; (5) the making of traffic regulation orders<sup>5</sup> in connection with schemes; and (6) such other incidental matters in connection with quality partnership schemes as the appropriate national authority thinks fit<sup>6</sup>. The regulations may in particular make provision with respect to: (a) giving notice of proposed schemes or proposed variations or revocation of schemes; (b) objections to such proposals; (c) the holding of inquiries or hearings into objections; (d) modifications<sup>7</sup> of such proposals; (e) the form of schemes or variations; and (f) giving notice of schemes which have been made or of the variation or revocation of schemes<sup>8</sup>.

- 1 For the meaning of 'appropriate national authority' see PARA 1205 note 1 ante.
- 2 For the meaning of 'quality partnership scheme' see PARA 1200 ante.
- 3 For the meaning of 'local service' see PARA 1200 note 5 ante.
- 4 As to the meaning of 'traffic commissioner' see PARA 1201 note 7 ante.
- 5 For the meaning of 'traffic regulation order' see PARA 1200 note 11 ante.
- 6 Transport Act 2000 s 122(1). As to regulations under Pt II (ss 108-162) (as amended) see PARA 1226 post.
- 7 As to the meaning of 'modification' see PARA 1202 note 2 ante.
- 8 Transport Act 2000 s 122(2).

## UPDATE

### 1207 Regulations about schemes

TEXT AND NOTES--Transport Act 2000 s 122(3)-(6) added: Local Transport Act 2008 s 18(3).

See the Quality Partnership Schemes (England) Regulations 2009, SI 2009/445 (amended by SI 2009/3248).

TEXT AND NOTES 1-6--Transport Act 2000 s 122(1) amended: Local Transport Act 2008 s 18(2).

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### 1208. Guidance about schemes.

The appropriate national authority<sup>1</sup> may issue guidance concerning the carrying out by local transport authorities<sup>2</sup> and metropolitan district councils of their functions under Part II of the Transport Act 2000<sup>3</sup> in relation to quality partnership schemes<sup>4</sup>. Those authorities and councils must have regard to any such guidance<sup>5</sup>.

- 1 For the meaning of 'appropriate national authority' see PARA 1205 note 1 ante.
- 2 For the meaning of 'local transport authority' see PARA 1190 note 1 ante.
- 3 Ie the Transport Act 2000 Pt II (ss 108-162) (as amended).
- 4 Ibid s 123(1). For the meaning of 'quality partnership scheme' see PARA 1200 ante.
- 5 Ibid s 123(2).

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1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(i) Local Services Outside London/E. SCHEMES FOR BUS SERVICES/(B) Quality Contracts Schemes/1209. Quality contracts schemes.

## (B) QUALITY CONTRACTS SCHEMES

### **1209. Quality contracts schemes.**

A local transport authority<sup>1</sup>, or two or more such authorities acting jointly, may make a quality contracts scheme<sup>2</sup> covering the whole or any part of its area, or their combined area, if it is or they are satisfied that: (1) making a quality contracts scheme is the only practicable way of implementing the policies set out in its bus strategy<sup>3</sup> or their strategies in the area to which the proposed scheme relates; and (2) the proposed scheme will implement those policies in a way which is economic, efficient and effective<sup>4</sup>.

A passenger transport authority<sup>5</sup>, or a passenger transport authority jointly with one or more other local transport authorities, may also make a quality contracts scheme covering the whole or part of its area or their combined area if it is or they are satisfied: (a) that making a quality contracts scheme is an appropriate way of securing that the transport needs of the potential users<sup>6</sup> of a relevant railway service<sup>7</sup> that has been or is to be reduced or discontinued are met; (b) that the making of the scheme will contribute, in an appropriate way, to meeting the transport needs of other persons living, working or studying in the localities served by that service; (c) that the scheme is compatible with the local transport plan<sup>8</sup> of the passenger transport authority which makes the scheme or (as the case may be) of each of the authorities which join in making the scheme; and (d) that the scheme will meet the needs of the persons mentioned in heads (a) and (b) above in a way which is economic, efficient and effective<sup>9</sup>. A local transport authority may join in making such a scheme by reference to the reduction or discontinuance of a railway passenger service only if: (i) it is the passenger transport authority, or one of the passenger transport authorities, by reference to which that service is a relevant railway service in relation to the scheme; (ii) the relevant railway service by reference to which the scheme is made is or was operating in the authority's area; or (iii) the persons who live, work or study in localities served by that service include persons living, working or studying in that area<sup>10</sup>.

A quality contracts scheme may not be made unless the authority or authorities has or have complied with the notice and consultation requirements<sup>11</sup>, and has or have obtained the approval of the appropriate national authority<sup>12</sup>. A quality contract may be made on terms: (A) which include provision for the making of payments by the authority or authorities to the person undertaking to provide the local service; and (B) requiring one or more of the parties to provide additional facilities or services<sup>13</sup>. The authority or authorities must keep under review the extent to which quality contracts entered into by it or them are complied with<sup>14</sup>.

In carrying out their functions under Part II of the Transport Act 2000 in relation to quality contracts schemes, local transport authorities must co-operate with one another<sup>15</sup>. In considering whether to make a quality contracts scheme, a local transport authority must have regard to the desirability, in appropriate cases, of making a scheme jointly with another authority<sup>16</sup>.

1 For the meaning of 'local transport authority' see PARA 1190 note 1 ante.

2 A quality contracts scheme is a scheme under which: (1) the authority determines or the authorities determine what local services should be provided in the area to which the scheme relates and any additional facilities or services which should be provided in that area; and (2) local services may only be provided in that area in accordance with quality contracts (subject to the Transport Act 2000 s 127(4) (see PARA 1212 post)): s 124(3). For the meaning of 'local service' see PARA 1200 note 5 ante. In Pt II (ss 108-162) (as amended) 'quality contract', in relation to a quality contracts scheme, means an agreement entered into under s 130 (see PARA



1215 post) or s 131 (see PARA 1216 post) under which: (a) the authority grants or the authorities grant to another person the exclusive right to operate the local services to which the contract relates; and (b) that person undertakes to provide the services on such terms (including in particular as to frequency, fares and standard of service) as may be specified in the agreement: s 124(4). See further note 14 infra. 'Fares' has the same meaning as in the Public Passenger Vehicles Act 1981 (see PARA 1136 note 7 ante): Transport Act 2000 s 162(2).

The Transport Act 1985 s 88(1) (as amended) (application to subsidy agreements of ss 89-92 (as amended): see PARA 1276 post) does not apply in relation to quality contracts: Transport Act 2000 s 124(6).

3 As to bus strategies see PARA 1194 ante.

4 Transport Act 2000 s 124(1). Section 124 (as amended) is in force in relation to England (Transport Act 2000 (Commencement No 7) Order 2001, SI 2001/3342), but in relation to Wales is in force only in relation to the powers to make regulations (Transport Act 2000 (Commencement No 1) (Wales) Order 2001, SI 2001/2788).

5 As to passenger transport authorities and passenger transport areas see PARA 1190 note 1 ante.

6 For these purposes, 'potential users', in relation to a relevant railway service (see note 7 infra), means persons who (but for the reduction or discontinuance of the service) would have made use of it: Transport Act 2000 s 124(12) (s 124(10)-(13) added by the Railways Act 2005 s 39(2)).

7 'Relevant railway service': (1) in relation to a scheme made by a single passenger transport authority acting alone, means: (a) a railway passenger service operating entirely within the area of that authority; or (b) the part of a railway passenger service so operating; (2) in relation to a scheme made jointly by more than one local transport authority, means: (a) a railway passenger service operating wholly or primarily within the area of a passenger transport authority who joins in making the scheme; (b) a railway passenger service operating wholly or primarily within the combined area of two or more passenger transport authorities who join in making the scheme; or (c) the part of a railway passenger service operating as mentioned in head (a) or (b) supra: Transport Act 2000 s 124(11) (as added: see note 6 supra). 'Railway passenger service' has the same meaning as in the Railways Act 1993 (see s 83(1); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 36): Transport Act 2000 s 124(12) (as so added). For the purposes of references in s 124 (as amended) to where a railway passenger service or part of such a service operates: (1) a service is to be treated as operating at each of the places where stops are made at stations for the purpose of allowing passengers to join or leave the service; and (2) a part of a service is any part of that service so far as it operates at any one or more of those places: s 124(13) (as so added).

8 The references to a local transport plan, in the case of a local transport authority not having a local transport plan, are references to the policies developed by that authority under *ibid* s 108(1)(a) (see PARA 1190 head (1) ante): s 124(10) (as added: see note 6 supra).

9 *Ibid* s 124(1A) (s 124(1A), (1B) added by the Railways Act 2005 s 39(1)).

10 Transport Act 2000 s 124(1B) (as added: see note 9 supra).

11 *Ie* imposed by *ibid* s 125: see PARA 1210 post.

12 *Ibid* s 124(2), which refers to approval in accordance with s 126 (see PARA 1211 post). For the meaning of 'appropriate national authority' see PARA 1205 note 1 ante.

13 *Ibid* s 124(5). See further note 14 infra.

14 *Ibid* s 124(7). Where a reference to an authority in s 124(4)(a) (see note 2 head (a) supra), s 124(5) (see the text and note 13 supra) and s 124(7) is to a passenger transport authority, it is to be construed as a reference to the passenger transport executive for the passenger transport area concerned; and where a reference to authorities in any of those provisions is to one or more passenger transport authorities, it is to be construed as a reference to the passenger transport executive or executives for the passenger transport area or areas concerned: s 162(4). As to passenger transport executives see PARA 1194 note 4 ante.

15 *Ibid* s 124(8).

16 *Ibid* s 124(9).

## UPDATE

### 1209 Quality contracts schemes

TEXT AND NOTES--The appropriate national authority may issue guidance concerning the performance by local transport authorities of their functions under the Transport Act 2000 Pt II (ss 108-162) in relation to quality contracts schemes, and the authorities must have regard to any such guidance: Transport Act 2000 s 134A (added by the Local Transport Act 2008 s 43 (in force in relation to England: SI 2009/3242)).

TEXT AND NOTES 1-4--Transport Act 2000 s 124(1) amended, s 124(9B) added: Local Transport Act 2008 s 19(2), (6) (in force in relation to England: SI 2009/3242).

NOTE 2--Transport Act 2000 s 124(3) amended: Local Transport Act 2008 s 19(4) (in force in relation to England: SI 2009/3242).

TEXT AND NOTES 5-9--Reference to a passenger transport authority is now to an Integrated Transport Authority (see PARA 247); and also includes a combined authority (TRADE AND INDUSTRY vol 97 (2010) PARA 1002 et seq): Transport Act 2000 s 124(1A) (amended by the Local Transport Act 2008 Sch 4 para 43(2), Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 99). Reference to a local transport plan is now to local transport policies: Transport Act 2000 s 124(1A) (amended by the Local Transport Act 2008 Sch 1 para 2(2)). 'Local transport policies' means policies developed under the Transport Act 2000 s 108(1)(a) (see PARA 1190): Transport Act 2000 s 108(5) (definition added by the Local Transport Act 2008 s 7(2)).

NOTE 6--Transport Act 2000 s 124(10) repealed: Local Transport Act 2008 ss 7, 131, Sch 1 para 2(3), Sch 7 Pt 1.

NOTE 7--Reference to a passenger transport authority is now to an Integrated Transport Authority (see PARA 247); and also includes a combined authority (TRADE AND INDUSTRY vol 97 (2010) PARA 1002 et seq): Transport Act 2000 s 124(11) (amended by the Local Transport Act 2008 Sch 4 para 43(4); Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 99).

TEXT AND NOTE 10--Reference to a passenger transport authority is now to an Integrated Transport Authority (see PARA 247); and also includes a combined authority (TRADE AND INDUSTRY vol 97 (2010) PARA 1002 et seq): Transport Act 2000 s 124(1B) (amended by the Local Transport Act 2008 Sch 4 para 43(3)).

TEXT AND NOTES 11, 12--A quality contracts scheme may not be made unless the authority or authorities (1) have complied with the requirements of the Transport Act 2000 s 125; (2) in the case of a scheme for an area in Wales, have obtained the approval of the Welsh Ministers in accordance with s 126; and (3) in the case of a scheme for an area in England, meet the requirements of s 124(2A): Transport Act 2000 s 124(2) (s 124(2), (2A) substituted for s 124(2) by the Local Transport Act 2008 s 19(3) (in force in relation to England: SI 2009/3242). The requirements are that the authority or authorities (a) have published under the Transport Act 2000 s 126C(5) the request which they sent to the quality contracts schemes board under s 126C(4); and (b) publish, in accordance with s 127(1A), a response prepared by them to the report published by the quality contracts schemes board under s 126D(5) in relation to the scheme: Transport Act 2000 s 124(2A).

NOTE 14--Reference to a passenger transport authority is now to an Integrated Transport Authority and reference to a passenger transport area is now to an integrated transport area: Transport Act 2000 s 162(4) (amended by the Local Transport Act 2008 Sch 4 para 46(2)).

NOTE 16--The power to make a scheme jointly may be exercised only if all the authorities are local transport authorities for areas in England or Wales, as the case may be: Transport Act 2000 s 124(9A) (added by the Local Transport Act 2008 s 19(5) (in force in relation to England: SI 2009/3242)).

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### **1210. Notice and consultation requirements.**

If an authority proposes or the authorities propose to make a quality contracts scheme<sup>1</sup>, it or they must give notice of the proposed scheme in at least one newspaper circulating in the area to which it relates<sup>2</sup>. The notice must: (1) describe the proposed scheme; (2) state where a copy of the scheme may be inspected; and (3) state the reasons for wishing to make the scheme<sup>3</sup>. After giving notice of the proposed scheme, the authority or authorities must consult: (a) all persons operating local services<sup>4</sup> in the area to which it relates; (b) all other persons holding a PSV operator's licence<sup>5</sup> or a community bus permit<sup>6</sup> who would, in the opinion of the authority or authorities, be affected by it; (c) such organisations appearing to the authority or authorities to be representative of users of local services as it thinks or they think fit; (d) any other relevant local authority any part of whose area would, in the opinion of the authority or authorities, be affected by it<sup>7</sup>; (e) the traffic commissioner<sup>8</sup> for each traffic area<sup>9</sup> covering the whole or part of the area to which it relates; (f) the chief officer of police<sup>10</sup> for each police area covering the whole or part of that area; and (g) such other persons as the authority thinks or the authorities think fit<sup>11</sup>. The authority or authorities may modify the proposed scheme following those consultations<sup>12</sup>.

1 As to quality contracts schemes see PARA 1209 ante.

2 Transport Act 2000 s 125(1). Section 125 is in force in relation to England (Transport Act 2000 (Commencement No 7) Order 2001, SI 2001/3342), but in relation to Wales is in force only in relation to the powers to make regulations (Transport Act 2000 (Commencement No 1) (Wales) Order 2001, SI 2001/2788).

3 Transport Act 2000 s 125(2).

4 For the meaning of 'local service' see PARA 1200 note 5 ante.

5 'PSV operator's licence' has the same meaning as in the Public Passenger Vehicles Act 1981 (see PARA 1136 note 7 ante): Transport Act 2000 s 162(2).

6 'Community bus permit' means a permit under the Transport Act 1985 s 22 (see PARA 1185 note 1 ante): Transport Act 2000 s 162(1).

7 For the purpose of head (d) in the text the following are relevant local authorities: (1) local transport authorities; (2) district councils in England; and (3) London transport authorities: *ibid* s 125(4). For the meaning of 'local transport authority' see PARA 1190 note 1 ante. For the meaning of 'London transport authority' see PARA 1195 note 3 ante.

8 As to the meaning of 'traffic commissioner' see PARA 1201 note 7 ante.

9 For the meaning of 'traffic area' see PARA 1201 note 8 ante.

10 As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

11 Transport Act 2000 s 125(3).

12 *Ibid* s 125(5).

### **UPDATE**

## 1210 Notice and consultation requirements

TEXT AND NOTES 1, 2--If an authority or authorities propose to make a quality contracts scheme, it or they must (1) publish, in such manner as it or they think fit, a consultation document; (2) supply a copy of that document to each of the persons specified in the Transport Act 2000 s 125(3); (3) give notice of the proposed scheme in at least one newspaper circulating in the area to which it relates; and (4) if the proposed scheme relates to an area in England, send a copy of that notice to the senior traffic commissioner as soon as reasonably practicable after its publication: Transport Act 2000 s 125(1) (amended by the Local Transport Act 2008 s 20(2) (in force in relation to England: SI 2009/3242)). As to the contents of a consultation document, see the Transport Act 2000 s 125(1A)-(1C) (added by the Local Transport Act 2008 s 20(3) (in force in relation to England: SI 2009/3242)).

TEXT AND NOTE 3--Transport Act 2000 s 125(2) amended: Local Transport Act 2008 ss 20(4), 131, Sch 7 Pt 2 (in force in relation to England: SI 2009/3242).

TEXT AND NOTES 4-11--Transport Act 2000 s 125(3) amended: Local Transport Act 2008 s 20(5) (in force in relation to England: SI 2009/3242).

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## 1211. Approval of proposed scheme.

If, having complied with the notice and consultation requirements<sup>1</sup>, the authority wishes or the authorities wish to proceed with the proposed quality contracts scheme<sup>2</sup>, it or they must apply to the appropriate national authority<sup>3</sup> for its approval<sup>4</sup>. The application must include: (1) the reasons for wishing to make the scheme; and (2) such other information as the appropriate national authority may reasonably require<sup>5</sup>. Any person consulted<sup>6</sup> may make written representations to the appropriate national authority about the scheme<sup>7</sup>. The appropriate national authority may approve the proposed scheme, with or without modifications<sup>8</sup>, if it is satisfied that: (a) certain conditions<sup>9</sup> are met; and (b) it is in the interests of the public that the scheme is made<sup>10</sup>. If the appropriate national authority proposes to approve the scheme with modifications, it must first inform the authority or authorities and it or they must: (i) consult such of the persons it or they consulted<sup>11</sup> as would, in its or their opinion, be affected by those modifications; and (ii) inform the appropriate national authority as to the outcome of that consultation<sup>12</sup>. After being informed of that outcome the appropriate national authority may approve the scheme either with those modifications or without modifications<sup>13</sup>.

1 le the Transport Act 2000 s 125: see PARA 1210 ante.

2 See PARA 1209 ante.

3 For the meaning of 'appropriate national authority' see PARA 1205 note 1 ante.

4 Transport Act 2000 s 126(1). Section 126 (as amended) is in force in relation to England (Transport Act 2000 (Commencement No 7) Order 2001, SI 2001/3342), but in relation to Wales is in force only in relation to the powers to make regulations (Transport Act 2000 (Commencement No 1) (Wales) Order 2001, SI 2001/2788).

5 Transport Act 2000 s 126(2).

- 6    Ie under *ibid* s 125(3): see PARA 1210 ante.
- 7    *Ibid* s 126(3).
- 8    As to the meaning of 'modification' see PARA 1202 note 2 ante.
- 9    Ie the conditions set out in the Transport Act 2000 s 124(1)(a), (b) or (1A)(a)-(d) (as added) (see PARA 1209 heads (1), (2), (a)-(d) ante).
- 10   *Ibid* s 126(4) (amended by the Railways Act 2005 s 39(3)).
- 11   Ie under the Transport Act 2000 s 125(3): see PARA 1210 ante.
- 12   *Ibid* s 126(5).
- 13   *Ibid* s 126(6).

## UPDATE

### 1211 Approval of proposed scheme

TEXT AND NOTES--The Transport Act 2000 s 126 now has effect in any case where the scheme or proposed scheme relates to an area in Wales only: Transport Act 2000 s 126(A1) (added by the Local Transport Act 2008 s 21(2) (in force in relation to England: SI 2009/3242)). Where the senior traffic commissioner receives a copy of a notice sent by the authority or authorities in relation to a proposed scheme that relates to an area in England, a quality contracts schemes board is to be constituted to discharge the functions of such a board in relation to the proposed scheme: Transport Act 2000 s 126A (ss 126A-126E added by the Local Transport Act 2008 s 22-25 (in force in relation to England: SI 2009/3242)). As to the advice that may be given by the board, see the Transport Act 2000 s 126B. As to the consideration of proposed schemes by the board, see the Transport Act 2000 s 126C, 126D. As to rules of practice and procedure applying to the board, see the Transport Act 2000 s 126E.

TEXT AND NOTES 1-4--Transport Act 2000 s 126(1) amended: Local Transport Act 2008 s 21(3) (in force in relation to England: SI 2009/3242).

TEXT AND NOTES 6, 7--Transport Act 2000 s 126(3) amended: Local Transport Act 2008 s 21(4) (in force in relation to England: SI 2009/3242).

TEXT AND NOTES 8-10--Transport Act 2000 s 126(4) amended: Local Transport Act 2008 ss 21(5), 131, Sch 7 Pt 2 (in force in relation to England: SI 2009/3242).

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### 1212. Making of scheme.

If the appropriate national authority<sup>1</sup> approves the quality contracts scheme<sup>2</sup>, the authority or authorities which proposed it may make it as approved at any time not later than six months after the date of the approval<sup>3</sup>. The scheme must specify: (1) the area to which it relates; (2) the date on which it is to come into operation<sup>4</sup>; and (3) the period for which it is to remain in operation, which must not be more than ten years<sup>5</sup>. The scheme must outline: (a) the local

services<sup>6</sup> which are to be provided under quality contracts<sup>7</sup>; and (b) the features of the proposed invitations to tender for quality contracts<sup>8</sup>. The scheme may provide that local services specified in it, or local services of a class specified in it, are to be excluded from the scheme, subject to such conditions (if any) as may be specified in it<sup>9</sup>. The scheme may contain such ancillary provisions as the authority thinks or the authorities think fit<sup>10</sup>. The scheme may include provision: (i) varying or revoking any quality partnership scheme<sup>11</sup> which only relates to the area of the authority, or the combined area of the authorities, by which the quality contracts scheme is made; or (ii) varying any other quality partnership scheme to the extent that it so relates<sup>12</sup>.

Not later than 14 days after the date on which the scheme is made, the authority or authorities must give notice in at least one newspaper circulating in the area to which the scheme relates and send a copy of the scheme to the traffic commissioner<sup>13</sup> for each traffic area<sup>14</sup> covering the whole or part of that area<sup>15</sup>. The notice must state that the scheme has been made, where a copy of the scheme may be inspected, and the date on which the scheme is to come into operation<sup>16</sup>.

1 For the meaning of 'appropriate national authority' see PARA 1205 note 1 ante.

2 See PARA 1209 ante.

3 Transport Act 2000 s 127(1). Section 127 (as amended) is in force in relation to England (Transport Act 2000 (Commencement No 7) Order 2001, SI 2001/3342), but in relation to Wales is in force only in relation to the powers to make regulations (Transport Act 2000 (Commencement No 1) (Wales) Order 2001, SI 2001/2788).

4 The Transport Act 2000 provides that the date on which the scheme is to come into operation must not be earlier than 21 months after the date on which it is made but, as respects quality contracts schemes relating to areas wholly in England, the period is varied to six months by the Transport Act 2000 (Commencement of Quality Contracts Schemes) (England) Order 2005, SI 2005/75, art 2. As to orders under the Transport Act 2000 Pt II (ss 108-162) (as amended) see PARA 1226 post.

5 Ibid s 127(2). The appropriate national authority may by order vary the period mentioned in head (2) in the text: s 127(10).

6 For the meaning of 'local service' see PARA 1200 note 5 ante.

7 'Quality contract' has the meaning given in the Transport Act 2000 s 124(4) (see PARA 1209 note 2 ante): s 162(1).

8 Ibid s 127(3).

9 Ibid s 127(4).

10 Ibid s 127(5).

11 For the meaning of 'quality partnership scheme' see PARA 1200 ante.

12 Transport Act 2000 s 127(6). If provision is made under head (ii) in the text to vary the quality partnership scheme so that it no longer so relates, such of the authorities by which it was made as did not make the quality contracts scheme: (1) may (subject to the provision so made) vary it if they decide that it is appropriate to do so; or (2) may revoke it if all persons who have given an undertaking to provide a service to a standard specified in the scheme consent to the revocation of the scheme (which consent must not be unreasonably withheld); and s 120(3), (4) (see PARA 1206 ante) applies to a variation or revocation under this provision: s 127(7).

13 As to the meaning of 'traffic commissioner' see PARA 1201 note 7 ante.

14 For the meaning of 'traffic area' see PARA 1201 note 8 ante.

15 Transport Act 2000 s 127(8).

16 Ibid s 127(9).

**UPDATE****1212 Making of scheme**

TEXT AND NOTES--As to appeals against the making of schemes for areas in England, see the Transport Act 2000 s 127A, 127B (added by the Local Transport Act 2008 s 27(1) (in force in relation to England: SI 2009/3242)). Where an appeal under the Transport Act 2000 s 127A against a decision to make a scheme is made to the Transport Tribunal and, on that appeal, the Tribunal directs the authority to vary the scheme in the manner specified by the Tribunal in the direction, nothing in s 132(5)-(9) (see para 1217) applies in relation to the varying of the scheme in the manner specified in the direction, unless the Tribunal otherwise directs: Transport Act 2000 s 132B(1)(a), (2) (added by the Local Transport Act 2008 s 39 (in force in relation to England: SI 2009/3242)). As to the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246, on the coming into force of a quality contract, see the Transport Act 2000 s 134B (added by the Local Transport Act 2008 s 44(1) (in force in relation to England: SI 2009/3242)).

TEXT AND NOTES 1-3--The authority or authorities who proposed the scheme may make it (1) in the case of a scheme for an area in England, in accordance with the requirements of the Transport Act 2000 s 127(1A); and (2) in the case of a scheme for an area in Wales, in accordance with the requirements of s 127(1B): Transport Act 2000 s 127(1) (s 127(1), (1A), (1B) substituted for s 127(1) by the Local Transport Act 2008 s 26(2) (in force in relation to England: SI 2009/3242)).

TEXT AND NOTES 4, 5--Transport Act 2000 s 127(2) amended, s 127(2A) added: Local Transport Act 2008 s 26(3)-(5) (in force in relation to England: SI 2009/3242).

NOTE 5--Transport Act 2000 s 127(10) substituted: Local Transport Act 2008 s 26(8) (in force in relation to England: SI 2009/3242). An authority which made a quality contracts scheme may, if it appears appropriate to do so, decide that the scheme should continue in operation for a further period, with or without modification: Transport Act 2000 s 131A(1) (ss 131A-131F added by the Local Transport Act 2008 ss 31-36 (in force in relation to England: SI 2009/3242)). Before making such a decision, the authority must, unless the proposal is an exempt continuation proposal, comply with the requirements of the Transport Act 2000 s 124(2)(b) (see PARA 1209), if the scheme is for an area in Wales, or s 124(2)(c), if the scheme is for an area in England: Transport Act 2000 s 131A(2). As to the meaning of 'exempt continuation proposal', see the Transport Act 2000 s 131B. In relation to the continuation of a scheme, s 125 (see PARA 1210) applies as it applies in relation to the making of a scheme, but with certain modifications set out in the Transport Act 2000 s 131A(3)-(5). As to the procedure to be followed in relation to the continuation in operation of a quality contracts scheme for an area in England, see the Transport Act 2000 s 131C. As to the procedure to be followed in relation to the continuation in operation of a quality contracts scheme for an area in Wales, see the Transport Act 2000 s 131D. Where an authority which proposes that a quality contracts scheme should continue in operation with or without modifications decides that the proposal is an exempt continuation proposal, and, acting on the basis of that decision, decides that the scheme should so continue in operation, any person who (1) was consulted under s 125(3); or (2) was not so consulted, but who, in the opinion of the Transport Tribunal, ought to have been so consulted may appeal to the Transport Tribunal against the decision of the authority that the proposal is an exempt continuation proposal, or the decision of the authority that the scheme is to continue in operation: Transport Act 2000 s 131E(1)-(3). Such an appeal may be on a point of law, or a question of fact: Transport Act 2000 s 131E(4). As to the Transport Tribunal's powers on an appeal, see the Transport Act 2000 s

131E(5)-(14). Where an authority (a) proposes that a quality contracts scheme for an area in England should continue in operation with or without modifications; (b) decides that the proposal is not an exempt continuation proposal; and (c) acting on the basis of that decision, decides that the scheme should so continue in operation, any person who (i) was consulted under s 125(3); or (ii) was not so consulted, but who, in the opinion of the QCS board ought to have been so consulted, may appeal to the Transport Tribunal against the decision of the authority that the scheme should continue in operation: Transport Act 2000 s 131F(1)-(3). Where an appeal under s 131E(2) or 131F(2) is made to the Transport Tribunal and, on that appeal, the Tribunal directs the authority to vary the scheme in the manner specified by the Tribunal in the direction, nothing in s 132(5)-(9) (see PARA 1217) applies in relation to the varying of the scheme in the manner specified in the direction, unless the Tribunal otherwise directs: Transport Act 2000 s 132B(1)(b)-(d), (2) (added by the Local Transport Act 2008 s 39 (in force in relation to England: SI 2009/3242)).

TEXT AND NOTES 6-8--The scheme must specify the date or dates on which it is proposed that the authority will issue invitations to tender for the provision of any services to which the scheme relates: Transport Act 2000 s 127(3A) (added by the Local Transport Act 2008 s 26(6) (in force in relation to England: SI 2009/3242)).

TEXT AND NOTE 16--Transport Act 2000 s 127(9) amended: Local Transport Act 2008 s 26(7) (in force in relation to England: SI 2009/3242).

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### **1213. Postponement of scheme.**

If it appears to the authority or authorities which made the quality contracts scheme<sup>1</sup> appropriate to do so, it or they may decide that the date on which the scheme would otherwise come into operation must be postponed by such period as it thinks or they think fit<sup>2</sup>. Before making such a decision, it or they must consult all operators<sup>3</sup> of local services<sup>4</sup> who would, in its or their opinion, be affected by the decision<sup>5</sup>. Not later than 14 days after the date on which any such decision is made, it or they must give notice of the decision: (1) in at least one newspaper circulating in the area to which the scheme relates; and (2) to all operators of local services who would, in its or their opinion, be affected by the decision and the traffic commissioner<sup>6</sup> for each traffic area<sup>7</sup> covering the whole or part of the area to which the scheme relates<sup>8</sup>. The appropriate national authority<sup>9</sup> may by regulations make provision with respect to postponements<sup>10</sup>. The regulations may in particular make provision: (a) as to the maximum period of postponements; and (b) requiring authorities to re-issue invitations to tender<sup>11</sup>.

1 See PARA 1209 ante.

2 Transport Act 2000 s 128(1), which is subject to s 128(4) (see the text and note 10 infra). Section 128 is in force in relation to England: Transport Act 2000 (Commencement No 7) Order 2001, SI 2001/3342. In relation to Wales, the Transport Act 2000 s 128(4) is in force, but the provisions of s 128(1)-(3), (5) are in force only in relation to the powers to make regulations: Transport Act 2000 (Commencement No 1) (Wales) Order 2001, SI 2001/2788.

3 As to the 'operator' of a passenger transport service see PARA 1200 note 5 ante.



- 4 For the meaning of 'local service' see PARA 1200 note 5 ante.
- 5 Transport Act 2000 s 128(2).
- 6 As to the meaning of 'traffic commissioner' see PARA 1201 note 7 ante.
- 7 For the meaning of 'traffic area' see PARA 1201 note 8 ante.
- 8 Transport Act 2000 s 128(3).
- 9 For the meaning of 'appropriate national authority' see PARA 1205 note 1 ante.
- 10 The postponements under the Transport Act 2000 s 128(1) (see the text and notes 1-2 supra); s 128(4). As to regulations under Pt II (ss 108-162) (as amended) see PARA 1226 post.
- 11 Ibid s 128(5), which refers to tender in accordance with s 130 (see PARA 1215 post).

## UPDATE

### 1213 Postponement of scheme

TEXT AND NOTES 1, 2--Transport Act 2000 s 128(1) amended: Local Transport Act 2008 s 28 (in force in relation to England: SI 2009/3242).

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### 1214. Effect of scheme.

During any period in which the quality contracts scheme<sup>1</sup> is in operation: (1) provisions relating to the registration of local services<sup>2</sup> do not have effect in relation to the area to which it relates; and (2) no local service<sup>3</sup> may be provided in that area (if there is a stopping place<sup>4</sup> for the service in that area) unless it is provided under a quality contract<sup>5</sup>. The authority or authorities must invite tenders<sup>6</sup> not later than: (a) three months; or (b) such other period as the appropriate national authority<sup>7</sup> may by order specify, after the scheme has been made<sup>8</sup>.

- 1 See PARA 1209 ante.
- 2 The Transport Act 1985 ss 6-9 (as amended): see PARAS 1178-1181 ante.
- 3 For the meaning of 'local service' see PARA 1200 note 5 ante.
- 4 'Stopping place' has the same meaning as in the Transport Act 1985 (see PARA 1178 note 3 ante): Transport Act 2000 s 162(3).
- 5 Ibid s 129(1). Section 129 is in force in relation to England (Transport Act 2000 (Commencement No 7) Order 2001, SI 2001/3342), but in relation to Wales is in force only in relation to the powers to make regulations (Transport Act 2000 (Commencement No 1) (Wales) Order 2001, SI 2001/2788). For the meaning of 'quality contract' see PARA 1209 note 2 ante. The Transport Act 2000 s 129(1) does not apply in relation to services which are excluded from the scheme as a result of any provision of the scheme made in accordance with s 127(4) (see PARA 1212 ante): s 129(2). Where the exclusion of a local service from the scheme is made subject to conditions as a result of such a provision, those conditions are to be treated, during any period in which the scheme is in operation, as if they were prescribed particulars registered under the Transport Act 1985 s 6 (see PARA 1178 ante) of the service concerned: Transport Act 2000 s 129(3).

6 In accordance with *ibid* s 130: see PARA 1215 post.

7 For the meaning of 'appropriate national authority' see PARA 1205 note 1 ante.

8 Transport Act 2000 s 129(4). As to orders under Pt II (ss 108-162) (as amended) see PARA 1226 post.

Where a reference to an authority in s 129(4) is to a passenger transport authority, it is to be construed as a reference to the passenger transport executive for the passenger transport area concerned; and where a reference to authorities in s 129(4) is to one or more passenger transport authorities, it is to be construed as a reference to the passenger transport executive or executives for the passenger transport area or areas concerned: s 162(4). As to passenger transport authorities and passenger transport areas see PARA 1190 note 1 ante. As to passenger transport executives see PARA 1194 note 4 ante.

## UPDATE

### 1214 Effect of scheme

TEXT AND NOTES 1-5--Transport Act 2000 s 129(1) amended: Local Transport Act 2008 s 29(2) (in force in relation to England: SI 2009/3242).

NOTE 5--Transport Act 2000 s 129(2) amended: Local Transport Act 2008 s 29(3) (in force in relation to England: SI 2009/3242).

TEXT AND NOTES 6-8--Transport Act 2000 s 129(4) repealed: Local Transport Act 2008 ss 29(4), 131, Sch 7 Pt 2 (in force in relation to England: SI 2009/3242).

NOTE 8--Transport Act 2000 s 162(4) repealed, in relation to s 129(4): Local Transport Act 2008 s 131, Sch 7 Pt 2 (in force in relation to England: SI 2009/3242).

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### 1215. Tendering for quality contracts.

The authority, or the authorities acting jointly, must invite tenders for the provision of services to which the quality contracts scheme<sup>1</sup> relates for such period and on such basis as may be specified in the invitation to tender<sup>2</sup>. The period specified must not exceed five years<sup>3</sup>. Such an invitation: (1) must be issued generally, in such manner as the authority considers or the authorities consider appropriate for bringing it to the attention of persons who may be interested; and (2) must also be issued individually to all persons who have given to that authority or any of those authorities a written notice indicating that they wish to receive invitations to tender for the provision of local services<sup>4</sup> of a description to which the invitation relates<sup>5</sup>. Such a notice must specify the address to which such an invitation is to be directed, and it is sufficient for the purposes of head (2) above if the authority sends or the authorities send the invitation to the person giving such a notice at the address so specified<sup>6</sup>. The authority or authorities may only accept a tender submitted by a person who is the holder of either a PSV operator's licence<sup>7</sup> or a community bus permit<sup>8</sup>.

After entering into a quality contract<sup>9</sup>, the authority or authorities must give notice to the traffic commissioner<sup>10</sup> for each traffic area<sup>11</sup> covering the whole or part of the area to which the scheme relates of: (a) the local services to be provided in accordance with the contract; and (b) the duration of the contract<sup>12</sup>. The appropriate national authority<sup>13</sup> may by regulations make provision requiring authorities to publish prescribed information about tenders submitted to

them in accordance with the above provisions or about their reasons for entering into particular quality contracts<sup>14</sup>.

1 See PARA 1209 ante.

2 Transport Act 2000 s 130(1). Section 130 is in force in relation to England: Transport Act 2000 (Commencement No 7) Order 2001, SI 2001/3342. In relation to Wales, the Transport Act 2000 s 130(8) is in force, but the provisions of s 130(1)-(7) are in force only in relation to the powers to make regulations: Transport Act 2000 (Commencement No 1) (Wales) Order 2001, SI 2001/2788.

3 Transport Act 2000 s 130(2).

4 For the meaning of 'local service' see PARA 1200 note 5 ante.

5 Transport Act 2000 s 130(3), which is subject to s 130(4) (see the text and note 6 infra).

6 Ibid s 130(4).

7 As to the meaning of 'PSV operator's licence' see PARA 1210 note 5 ante.

8 Transport Act 2000 s 130(5). For the meaning of 'community bus permit' see PARA 1210 note 6 ante. 'PSV operator's licence' does not include a licence to which a condition is attached under the Transport Act 1985 s 26 (as amended) (power of traffic commissioner to attach conditions to licences: see PARA 1187 ante) prohibiting the holder from using vehicles under the licence to provide local services of all descriptions or of any description to which the invitation relates: Transport Act 2000 s 130(6).

9 For the meaning of 'quality contract' see PARA 1209 note 2 ante.

10 As to the meaning of 'traffic commissioner' see PARA 1201 note 7 ante.

11 For the meaning of 'traffic area' see PARA 1201 note 8 ante.

12 Transport Act 2000 s 130(7).

13 For the meaning of 'appropriate national authority' see PARA 1205 note 1 ante.

14 Transport Act 2000 s 130(8). As to regulations under Pt II (ss 108-162) (as amended) see PARA 1226 post.

Where a reference to an authority in s 130 is to a passenger transport authority, it is to be construed as a reference to the passenger transport executive for the passenger transport area concerned; and where a reference to authorities in s 130 is to one or more passenger transport authorities, it is to be construed as a reference to the passenger transport executive or executives for the passenger transport area or areas concerned: s 162(4). As to passenger transport authorities and passenger transport areas see PARA 1190 note 1 ante. As to passenger transport executives see PARA 1194 note 4 ante.

## UPDATE

### 1215 Tendering for quality contracts

TEXT AND NOTES 1, 2--Transport Act 2000 s 130(1) amended: Local Transport Act 2008 s 30(2) (in force in relation to England: SI 2009/3242).

TEXT AND NOTE 3--Transport Act 2000 s 130(2) amended: Local Transport Act 2008 s 30(3) (in force in relation to England: SI 2009/3242).

NOTE 14--Reference to a passenger transport authority is now to an Integrated Transport Authority (see PARA 247A) and reference to a passenger transport area is now to an integrated transport area: Transport Act 2000 s 162(4) (amended by the Local Transport Act 2008 Sch 4 para 46(2)).

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### **1216. Tendering for quality contracts: exceptions.**

The provision relating to tendering for quality contracts<sup>1</sup> does not apply in any case where it appears to the authority or authorities that action is urgently required for the purpose of: (1) maintaining an existing service; (2) securing the provision of a service in place of a service which has ceased to operate; or (3) securing the provision of a service to meet any public transport requirement which has arisen unexpectedly and ought in the opinion of the authority or authorities to be met without delay<sup>2</sup>. The appropriate national authority<sup>3</sup> may by regulations make provision for further exceptions from provision relating to the tendering for quality contracts, including in particular with respect to: (a) cases in which no tender, or no acceptable tender, is submitted in response to an invitation to tender<sup>4</sup>; and (b) agreements of a prescribed description<sup>5</sup>. The appropriate national authority may by regulations make further provision with respect to exceptions from provision relating to the tendering for quality contracts<sup>6</sup>.

1   I.e. the Transport Act 2000 s 130 (see PARA 1215 ante). For the meaning of 'quality contract' see PARA 1209 note 2 ante.

2   Ibid s 131(1). See further note 5 infra. Section 131 is in force in relation to England: Transport Act 2000 (Commencement No 7) Order 2001, SI 2001/3342. In relation to Wales, the provisions of the Transport Act 2000 s 131(2)-(4) are in force, but those of s 131(1), (5) are in force only in relation to the powers to make regulations: Transport Act 2000 (Commencement No 1) (Wales) Order 2001, SI 2001/2788.

3   For the meaning of 'appropriate national authority' see PARA 1205 note 1 ante.

4   I.e. issued under the Transport Act 2000 s 130(1) (see PARA 1215 ante) or under any provision made by virtue of s 131(5)(a) (see note 6 head (1) infra).

5   Ibid s 131(2). The appropriate national authority may make regulations fixing the maximum duration of a quality contract entered into under s 131(1) or under any provision made by virtue of s 131(2): s 131(3). As to regulations under Pt II (ss 108-162) (as amended) see PARA 1226 post.

6   Ibid s 131(4). Regulations under s 131(4) may in particular: (1) require authorities to invite tenders for the provision of a service which is the subject of a quality contract made under s 131(1) (see the text and notes 1-2 supra) or under any provision made by virtue of s 131(2) (see the text and notes 3-5 supra); and (2) require authorities to publish prescribed information (including as to their reasons for entering into particular quality contracts) or to give notices: s 131(5).

Where a reference to an authority in s 131 is to a passenger transport authority, it is to be construed as a reference to the passenger transport executive for the passenger transport area concerned; and where a reference to authorities in s 131 is to one or more passenger transport authorities, it is to be construed as a reference to the passenger transport executive or executives for the passenger transport area or areas concerned: s 162(4). As to passenger transport authorities and passenger transport areas see PARA 1190 note 1 ante. As to passenger transport executives see PARA 1194 note 4 ante.

## **UPDATE**

### **1216 Tendering for quality contracts: exceptions**

NOTE 6--Reference to a passenger transport authority is now to an Integrated Transport Authority (see PARA 247A) and reference to a passenger transport area is now to an integrated transport area: Transport Act 2000 s 162(4) (amended by the Local Transport Act 2008 Sch 4 para 46(2)).

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### **1217. Variation or revocation of scheme.**

The authority or authorities which made the quality contracts scheme<sup>1</sup> (other than any to whose area the scheme no longer relates) may vary it by: (1) increasing the area to which it relates (to no greater than the whole of its area or their combined area) or adding to the description of local services<sup>2</sup> which are to be provided under quality contracts<sup>3</sup>; (2) reducing that area or reducing the description of services; or (3) providing for new exclusions from the scheme or for the variation or revocation of existing exclusions<sup>4</sup>.

The authority or authorities which made the scheme (other than any to whose area the scheme no longer relates) may revoke the scheme: (a) if the relevant conditions<sup>5</sup> are no longer met with respect to it; or (b) if it or they and one or more other authorities make a quality contracts scheme covering the whole or part of the area to which it relates<sup>6</sup>.

The variation or revocation of the scheme<sup>7</sup>: (i) requires the approval of the authority which approved the making of the scheme<sup>8</sup>; and (ii) is subject to the same procedure as the making of a scheme, except to the extent that that procedure is modified by regulations made by the appropriate national authority<sup>9</sup>. The appropriate national authority may by regulations provide that in prescribed circumstances quality contracts schemes may be revoked by that authority before coming into operation<sup>10</sup>.

1 See PARA 1209 ante.

2 For the meaning of 'local service' see PARA 1200 note 5 ante.

3 For the meaning of 'quality contract' see PARA 1209 note 2 ante.

4 Transport Act 2000 s 132(1). Section 132 (as amended) is in force in relation to England: Transport Act 2000 (Commencement No 7) Order 2001, SI 2001/3342. In relation to Wales, the Transport Act 2000 s 132(6) is in force, but the provisions of s 132(1)-(5) are in force only in relation to the powers to make regulations: Transport Act 2000 (Commencement No 1) (Wales) Order 2001, SI 2001/2788.

The scheme may not be varied under head (1) in the text unless the conditions set out in the Transport Act 2000 s 124(1)(a), (b) or (1A)(a)-(d) (as added) (see PARA 1209 heads (1), (2), (a)-(d) ante) are met with respect to the scheme as varied: s 132(2) (amended by the Railways Act 2005 s 39(4)(a)). The scheme may not be varied under head (2) in the text unless the relevant conditions (see note 5 infra): (1) are no longer met with respect to it; but (2) are met with respect to the scheme as varied: Transport Act 2000 s 132(3) (amended by the Railways Act 2005 s 39(4)(b)).

5 For these purposes, 'the relevant conditions' means: (1) in the case of a scheme made under the Transport Act 2000 s 124(1) and not subsequently varied under s 132(1)(a), the conditions set out in s 124(1)(a) and (b); (2) in the case of a scheme made under s 124(1A) (as added) and not subsequently varied under s 132(1)(a), the conditions set out in s 124(1A)(a)-(d) (as added); and (3) in the case of a scheme that has been varied under s 132(1)(a), the conditions by reference to which it was last so varied: s 132(4A) (added by the Railways Act 2005 s 39(4)(c), (5)).

6 Transport Act 2000 s 132(4) (amended by the Railways Act 2005 s 39(4)(b)).

7 ie under the Transport Act 2000 s 132(1) (see the text and notes 1-4 supra) or s 132(4) (as amended) (see the text and notes 5-6 supra).

8 As to approval of a scheme see PARA 1211 ante.

9 Transport Act 2000 s 132(5). Section 130 (see PARA 1215 ante) applies to a varied scheme but subject to regulations so made: s 132(5). For the meaning of 'appropriate national authority' see PARA 1205 note 1 ante. As to regulations under Pt II (ss 108-162) (as amended) see PARA 1226 post.

10 Ibid s 132(6).

## UPDATE

### 1217 Variation or revocation of scheme

TEXT AND NOTES--Where an authority which proposes to vary a quality contracts scheme decides that the proposal is an exempt variation for the purposes of the Transport Act 2000 s 132, and, acting on the basis of that decision, decides to vary the scheme, any person who (1) was consulted under s 125(3) (see PARA 1210); or (2) was not so consulted, but who, in the opinion of the Transport Tribunal, ought to have been so consulted, may appeal to the Transport Tribunal against the decision of the authority (a) that the variation is an exempt variation; or (b) as to the variation of the scheme under s 132: Transport Act 2000 s 132A(1)-(3) (s 132A added by the Local Transport Act 2008 s 38 (in force in relation to England: SI 2009/3242)). Such an appeal may be on a point of law, or on a question of fact: Transport Act 2000 s 132A(4). As to the powers of the Transport Tribunal on an appeal, see s 132A(5)-(13). Where an appeal is made to the Transport Tribunal under ss 132, 132A(2), and on that appeal, the Tribunal directs the authority to vary the scheme in the manner specified by the Tribunal in the direction, nothing in s 132(5)-(9) applies in relation to the varying of the scheme in the manner specified in the direction, unless the Tribunal otherwise directs: Transport Act 2000 s 132B(1)(e)-(g), (2) (added by the Local Transport Act 2008 s 39 (in force in relation to England: SI 2009/3242)). As to the power of authorities to provide services in exceptional circumstance and the period for which an interim service may be provided, see PARA 1217A.

NOTE 4--Transport Act 2000 s 132(2) amended: Local Transport Act 2008 s 37(2) (in force in relation to England: SI 2009/3242).

TEXT AND NOTES 5, 6--Also, head (aa) if the authority which made the scheme considers that the relevant conditions would no longer be met with respect to it if it were to act in accordance with a direction given by the Transport Tribunal under the Transport Act 2000 Pt II (ss 108-162): Transport Act 2000 s 132(4) (amended by the Local Transport Act 2008 s 37(3) (in force in relation to England: SI 2009/3242)).

NOTE 5--Transport Act 2000 ss 124(1A)(c) amended: Local Transport Act 2008 Sch 1 para 2(2). Transport Act 2000 s 124(1A)(a)-(c) amended: Transport Act 2008 Sch 4 para 43(2). Transport Act 2000 s 132(4A) amended: Local Transport Act 2008 s 37(4) (in force in relation to England: SI 2009/3242).

TEXT AND NOTES 7-10--Transport Act 2000 s 132(5)-(11) substituted for s 132(5), s 132(6) now s 132(12): Local Transport Act 2008 s 37(5) (in force in relation to England: SI 2009/3242).

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#### **1217A. Power of authorities to provide services in exceptional circumstances.**

Where a person who has agreed to provide a service (the 'old service') in accordance with a quality contract ceases to do so before the end of the period for which the contract was intended to have effect, the authority, or one of the authorities, who entered into the quality contract may provide a local service (an 'interim service') in place of the old service or any part of it: Transport Act 2000 s 132C(1)-(2) (ss 132C, 132D added by the Local Transport Act 2008 s 40(1) (in force in relation to England: SI 2009/3242)). As to the period for which an authority may provide an interim service, see the Transport Act 2000 s 132D. The authority's power to provide such services has effect notwithstanding any prohibition, restriction or limitation contained in any other enactment on the power of the authority to provide local services: Transport Act 2000 s 132C(3). An authority who provides an interim service of any description must hold a PSV operator's licence to which no condition is attached under the Transport Act 1985 s 26 (see PARA 1187) prohibiting the authority from using vehicles under the licence to provide services of that description: Transport Act 2000 s 132C(4).

If an authority provides an interim service in place of an old service or any part of an old service, and the authority which entered into the quality contract for the provision of the old service proposes to enter into a quality contract for the provision of a replacement service in place of that service or that part, the authority must invite tenders for the provision of the replacement service (1) as soon as reasonably practicable after the authority providing the interim service begins to do so; and (2) in any event no later than three months after the date on which provision of the old service ceased: Transport Act 2000 s 132C(5)-(6). However, s 132C(6) does not apply if the authority decides to secure the provision of the replacement service under s 131: s 132C(7).

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## **1218. Regulations about schemes.**

The appropriate national authority<sup>1</sup> may by regulations make further provision with respect to: (1) the procedure to be followed when making, varying or revoking quality contracts schemes<sup>2</sup>; (2) the approval of schemes; (3) the local services<sup>3</sup> or classes of local services which are to be, or may be, excluded from schemes; (4) the conditions which must be, or may be, attached to such exclusions; and (5) such other incidental matters in connection with quality contracts schemes as the appropriate national authority thinks fit<sup>4</sup>. The regulations may in particular make provision with respect to: (a) giving notice of proposed schemes or proposed variations or revocation of schemes; (b) objections to such proposals; (c) the holding of inquiries or hearings into objections; (d) modifications<sup>5</sup> of such proposals; (e) the form and manner of applications for approval of such proposals; (f) the form of schemes or variations; and (g) giving notice of schemes which have been made or of the variation or revocation of schemes<sup>6</sup>.

1 For the meaning of 'appropriate national authority' see PARA 1205 note 1 ante.

2 As to quality contracts schemes see PARA 1209 ante.

3 For the meaning of 'local service' see PARA 1200 note 5 ante.

4 Transport Act 2000 s 133(1). As to regulations under Pt II (ss 108-162) (as amended) see PARA 1226 post.

5 As to the meaning of 'modification' see PARA 1202 note 2 ante.

6 Transport Act 2000 s 133(2).

## UPDATE

### 1218 Regulations about schemes

TEXT AND NOTES--The appropriate national authority may also make regulations modifying or excluding the application of provisions of the Transport Act 2000 Pt II (ss 108-162) so far as relating to quality contracts schemes, in cases where a local transport authority, or two or more local transport authorities acting jointly (1) by virtue of s 126C(6), send to a QCS board a further request under s 126C(4) and modified proposals under s 126C(5); (2) propose or decide that a scheme should continue in operation, with or without modification, under s 131A; or (3) propose or decide to vary or revoke a scheme under s 132: Transport Act 2000 s 133(3) (s 133(3), (4) added by the Local Transport Act 2008 s 41(6) (in force in relation to England: SI 2009/3242)). Such regulations must not exclude any requirement for the authority (a) under the Transport Act 2000 s 126, to obtain the approval of the Welsh Ministers; or (b) under s 127(1A), to publish their response to the report of the QCS board: Transport Act 2000 s 133(4).

TEXT AND NOTES 1-4--Transport Act 2000 s 133(1) amended: Local Transport Act 2008 s 41(2)-(4) (in force in relation to England: SI 2009/3242).

TEXT AND NOTES 5, 6--Transport Act 2000 s 133(2) amended: Local Transport Act 2008 s 41(5) (in force in relation to England: SI 2009/3242).

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### 1219. Transitional provision about schemes.

The appropriate national authority<sup>1</sup> may by regulations make such transitional provision as it considers appropriate in connection with: (1) the coming into operation of quality contracts schemes<sup>2</sup>; (2) the variation of such schemes; and (3) the ending of such schemes (whether or not as a result of their revocation)<sup>3</sup>. The regulations may in particular provide that in prescribed circumstances: (a) any provision relating to the registration of local services<sup>4</sup> which would otherwise have effect is not to have effect or is to have effect with such modifications<sup>5</sup> as may be prescribed; or (b) any such provision which would not otherwise have effect is to have effect or is to have effect with such modifications as may be prescribed, in relation to the whole or any part of the area to which the scheme relates<sup>6</sup>.

1 For the meaning of 'appropriate national authority' see PARA 1205 note 1 ante.

2 As to quality contracts schemes see PARA 1209 ante.

3 Transport Act 2000 s 134(1). As to regulations under Pt II (ss 108-162) (as amended) see PARA 1226 post.

4 Ie any provision of the Transport Act 1985 ss 6-9 (as amended): see PARAS 1178-1181 ante.



5 As to the meaning of 'modification' see PARA 1202 note 2 ante.

6 Transport Act 2000 s 134(2).

## UPDATE

### 1219 Transitional provision about schemes

TEXT AND NOTES 1-3--Transport Act 2000 s 134(1) amended: Local Transport Act 2008 s 42(2), (3) (in force in relation to England: SI 2009/3242). Any regulations made under head (1) are not to have effect in the case of any quality contracts scheme as respects any time before the making of the scheme: Transport Act 2000 s 134(3) (added by the Local Transport Act 2008 s 42(5) (in force in relation to England: SI 2009/3242)).

TEXT AND NOTES 4-6--Transport Act 2000 s 134(2) amended: Local Transport Act 2008 s 42(4) (in force in relation to England: SI 2009/3242).

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## (C) TICKETING SCHEMES

### 1220. Joint and through ticketing schemes.

A local transport authority<sup>1</sup>, or two or more such authorities acting jointly, may make a ticketing scheme<sup>2</sup> covering the whole or any part of its area, or their combined area, if it considers or they consider that the proposed scheme: (1) would be in the interests of the public; and (2) would to any extent implement the policies set out in its or their bus strategy<sup>3</sup>. A ticketing scheme may not be made unless the authority has or the authorities have complied with notice and consultation requirements<sup>4</sup>. The descriptions of tickets which may be covered by a ticketing scheme are: (a) tickets entitling the holder to make more than one journey on particular local services or on local services of a class specified in the scheme (whether or not operated by the same person); (b) tickets entitling the holder to make a particular journey on two or more local services (whether or not operated by the same person); (c) where a particular journey could be made on local services provided by any of two or more operators, tickets entitling the holder to make the journey on whichever service the holder chooses; and (d) tickets entitling the holder to make a journey, or more than one journey, involving both travel on one or more local services and travel by one or more connecting rail or tram services<sup>5</sup>. Different arrangements may be specified in a ticketing scheme for different cases<sup>6</sup>. In carrying out their functions under Part II of the Transport Act 2000<sup>7</sup> in relation to ticketing schemes, local transport authorities must co-operate with one another<sup>8</sup>. In considering whether to make a ticketing scheme, a local transport authority must have regard to the desirability, in appropriate cases, of making a scheme jointly with another authority<sup>9</sup>.

1 For the meaning of 'local transport authority' see PARA 1190 note 1 ante.

2 A ticketing scheme is a scheme under which operators of local services of a class specified in it are required to make and implement arrangements under which persons may purchase, in a single transaction, a ticket (or tickets) of any of the descriptions which may be covered by a ticketing scheme and to which the

scheme applies: Transport Act 2000 s 135(3). For the meaning of 'local service', and as to the 'operator' of a passenger transport service, see PARA 1200 note 5 ante.

3 Ibid s 135(1). As to bus strategies see PARA 1194 note 6 ante.

4 Ie the notice and consultation requirements imposed by ibid s 136 (see PARA 1221 post): s 135(2).

5 Ibid s 135(4). A connecting rail or tram service, in relation to a ticketing scheme, is a service for the carriage of passengers by railway or by tramway (or by both) which runs between: (1) a station or stopping place at or in the vicinity of which local services stop and which serves any part of the area to which the ticketing scheme relates; and (2) any other place: s 135(5). 'Railway' and 'tramway' have the meanings given in the Transport and Works Act 1992 s 67(1) (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 302): Transport Act 2000 s 162(1). As to the meaning of 'stopping place' see PARA 1214 note 4 ante.

6 Ibid s 135(6).

7 Ie ibid Pt II (ss 108-162) (as amended).

8 Ibid s 135(7).

9 Ibid s 135(8).

## UPDATE

### 1220 Joint and through ticketing schemes

TEXT AND NOTES 1-3--Transport Act 2000 s 135(1) amended: Local Transport Act 2008 Sch 1 para 3.

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### 1221. Notice and consultation requirements.

If an authority proposes or authorities propose to make a ticketing scheme<sup>1</sup>, it or they must give notice of the proposed scheme in at least one newspaper circulating in the area to which it relates<sup>2</sup>. The notice must specify the date on which the scheme is proposed to come into operation<sup>3</sup>. After giving notice of the proposed scheme, the authority or authorities must consult: (1) all operators of local services<sup>4</sup> who would, in the opinion of the authority or authorities, be affected by it; (2) such organisations appearing to the authority or authorities to be representative of users of local services as it thinks or they think fit; and (3) the traffic commissioner<sup>5</sup> for each traffic area<sup>6</sup> covering the whole or part of the area to which it relates<sup>7</sup>.

1 For the meaning of 'ticketing scheme' see PARA 1220 note 2 ante.

2 Transport Act 2000 s 136(1).

3 Ibid s 136(2).

4 For the meaning of 'local service', and as to the 'operator' of a passenger transport service, see PARA 1200 note 5 ante.

5 As to the meaning of 'traffic commissioner' see PARA 1201 note 7 ante.

6 For the meaning of 'traffic area' see PARA 1201 note 8 ante.

7 Transport Act 2000 s 136(3).

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## **1222. Making of scheme.**

If the authority decides or authorities decide that it is appropriate to make a ticketing scheme<sup>1</sup>, it or they may make it as proposed or with modifications<sup>2</sup>. If the scheme applies to tickets entitling the holder to make a journey, or more than one journey, involving both travel on one or more local services<sup>3</sup> and travel by one or more connecting rail or tram services<sup>4</sup>, it may only be made with the agreement of the operators of the connecting rail or tram services concerned<sup>5</sup>. The scheme must specify the date on which it is to come into operation, which must not be earlier than three months after the date on which it is made<sup>6</sup>. Not later than 14 days after the date on which the scheme is made, the authority or authorities must give notice of it: (1) in at least one newspaper circulating in the area to which it relates; (2) to the traffic commissioner<sup>7</sup> for each traffic area<sup>8</sup> covering the whole or part of that area; (3) to all operators of local services<sup>9</sup> or services for the carriage of passengers by railway or by tramway (or by both) who would, in the opinion of the authority or authorities, be affected by it; (4) to the Secretary of State<sup>10</sup> if it applies to tickets entitling the holder to make a journey, or more than one journey, involving both travel on one or more local services and travel by one or more connecting rail or tram services<sup>11</sup>; and (5) in such other manner, or to such other persons or class of person (if any) as the appropriate national authority<sup>12</sup> may prescribe by regulations<sup>13</sup>. The notice must set out the terms of the scheme and the date on which it is to come into operation<sup>14</sup>. The authority or authorities may vary or revoke the scheme; and the variation or revocation is subject to the same procedure as the making of the scheme, except to the extent that that procedure is modified by regulations made by the appropriate national authority<sup>15</sup>.

1 For the meaning of 'ticketing scheme' see PARA 1220 note 2 ante.

2 Transport Act 2000 s 137(1). As to the meaning of 'modification' see PARA 1202 note 2 ante.

3 For the meaning of 'local service' see PARA 1200 note 5 ante.

4 I.e. tickets within the Transport Act 2000 s 135(4)(d): see PARA 1220 head (d) ante. 'Connecting rail or tram service' has the meaning given in s 135(5) (see PARA 1220 note 5 ante): s 162(1). As to the 'operator' of a passenger transport service see PARA 1200 note 5 ante.

5 Ibid s 137(2).

6 Ibid s 137(3).

7 As to the meaning of 'traffic commissioner' see PARA 1201 note 7 ante.

8 For the meaning of 'traffic area' see PARA 1201 note 8 ante.

9 For the meaning of 'local service' see PARA 1200 note 5 ante.

10 As to the Secretary of State see PARA 236 ante.

11 I.e. tickets within the Transport Act 2000 s 135(4)(d): see PARA 1220 head (d) ante.

12 For the meaning of 'appropriate national authority' see PARA 1205 note 1 ante.

13 Transport Act 2000 s 137(4) (amended by the Railways Act 2005 s 159(1), Sch 12 para 17(1), (2)). As to regulations under the Transport Act 2000 Pt II (ss 108-162) (as amended) see PARA 1226 post.

14 Ibid s 137(5).

15 Ibid s 137(6).

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### **1223. Effect of scheme.**

During any period in which a ticketing scheme<sup>1</sup> is in operation, operators<sup>2</sup> of local services<sup>3</sup> to which the scheme relates must make and implement the arrangements required by the scheme<sup>4</sup>.

1 For the meaning of 'ticketing scheme' see PARA 1220 note 2 ante.

2 As to the 'operator' of a passenger transport service see PARA 1200 note 5 ante.

3 For the meaning of 'local service' see PARA 1200 note 5 ante.

4 Transport Act 2000 s 138.

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## **(D) LOCAL BUS INFORMATION**

### **1224. Provision of information.**

Each local transport authority<sup>1</sup> must from time to time determine, having regard to its local transport plan<sup>2</sup>: (1) what local bus information<sup>3</sup> should be made available to the public ('the required information'); and (2) the way in which it should be made available ('the appropriate way')<sup>4</sup>. Before making such a determination, the authority must consult: (a) such organisations appearing to the authority to be representative of users of local services as it thinks fit; and (b) the traffic commissioner<sup>5</sup> for the traffic area<sup>6</sup> covering its area<sup>7</sup>. Each authority must from time to time ascertain whether the required information is being made available to the public in the appropriate way<sup>8</sup>. If an authority considers that: (i) the required information is not being made available to the public to any extent; or (ii) that information is not being made available to the public in the appropriate way, the authority must seek to make arrangements with the operators<sup>9</sup> of the local services concerned under which those operators agree to make the information available (or to make it available in that way)<sup>10</sup>.

If the authority is unable to make satisfactory arrangements with one or more of those operators, it: (A) must make available, or secure that there is made available, in the appropriate way such of the required information as is not being made available or is not being made available in that way<sup>11</sup>; and (B) may recover from that operator or those operators the reasonable costs incurred by it in doing so as a civil debt due to it<sup>12</sup>. In determining for the purposes of head (B) above what is reasonable in relation to a particular operator, the authority must have regard to the amount of information which has to be made available, and the way in which that information has to be made available, in respect of the local services provided by that operator<sup>13</sup>. If the authority requires an operator to provide information to it or to another person in order to perform its duty under head (A) above, the operator must provide the information at such times and in such manner as is specified by the authority<sup>14</sup>.

In considering how it should carry out its functions under the above provisions<sup>15</sup>, a local transport authority must have regard to a combination of economy, efficiency and effectiveness<sup>16</sup>. In carrying out those functions, local transport authorities must not act in such a way as to discriminate (whether directly or indirectly) against any operator, or class of operator, of local services, and must co-operate with one another<sup>17</sup>. A local transport authority must have regard to the desirability, in appropriate cases, of carrying out those functions jointly with another authority (whether as respects the whole or any part of their combined area)<sup>18</sup>.

1 For the meaning of 'local transport authority' see PARA 1190 note 1 ante.

2 As to local transport plans see PARA 1190 note 6 ante.

3 In the Transport Act 2000 s 139 'local bus information', in relation to a local transport authority, means: (1) information about routes and timetabling of local services to, from and within the authority's area; (2) information about fares for journeys on such local services; and (3) such other information about facilities for disabled persons, travel concessions, connections with other public passenger transport services or other matters of value to the public as the authority considers appropriate in relation to its area: s 139(6). For the meaning of 'local service' see PARA 1200 note 5 ante. As to the meaning of 'fares' see PARA 1209 note 2 ante. 'Disabled person' means a person who: (a) is blind or partially sighted; (b) is profoundly or severely deaf; (c) is without speech; (d) has a disability, or has suffered an injury, which has a substantial and long term adverse effect on his ability to walk; (e) does not have arms or has long term loss of the use of both arms; (f) has a learning disability, that is, a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning; or (g) would, if he applied for the grant of a licence to drive a motor vehicle under the Road Traffic Act 1988 Pt III (ss 87-109) (as amended), have his application refused pursuant to s 92 (as amended) (physical fitness: see PARA 455 ante) otherwise than on the ground of persistent misuse of drugs or alcohol: Transport Act 2000 s 146. In Pt II (ss 108-162) (as amended) 'public passenger transport services' has the same meaning as in the Transport Act 1985 (see PARA 1252 note 3 post): Transport Act 2000 s 162(3).

4 Ibid s 139(1).

5 As to the meaning of 'traffic commissioner' see PARA 1201 note 7 ante.

6 For the meaning of 'traffic area' see PARA 1201 note 8 ante.

7 Transport Act 2000 s 139(2).

8 Ibid s 139(3).

9 As to the 'operator' of a passenger transport service see PARA 1200 note 5 ante.

10 Transport Act 2000 s 139(4), (5).

Where a reference to an authority in s 139(5) is to a passenger transport authority, it is to be construed as a reference to the passenger transport executive for the passenger transport area concerned; and where a reference to authorities in s 139(5) is to one or more passenger transport authorities, it is to be construed as a reference to the passenger transport executive or executives for the passenger transport area or areas concerned: s 162(4). As to passenger transport authorities and passenger transport areas see PARA 1190 note 1 ante. As to passenger transport executives see PARA 1194 note 4 ante.

11 le whether by virtue of arrangements made under *ibid* s 139(5) (see the text and notes 9-10 *supra*) or otherwise.

12 *Ibid* s 140(1).

13 *Ibid* s 140(2).

14 *Ibid* s 140(3). The authority must give notice of any requirement imposed under s 140(3) to the traffic commissioner for the traffic area covering its area: s 140(4).

Where a reference to an authority in s 140 is to a passenger transport authority, it is to be construed as a reference to the passenger transport executive for the passenger transport area concerned; and where a reference to authorities in s 140 is to one or more passenger transport authorities, it is to be construed as a reference to the passenger transport executive or executives for the passenger transport area or areas concerned: s 162(4).

15 le under *ibid* ss 139, 140.

16 *Ibid* s 141(1).

17 *Ibid* s 141(2).

18 *Ibid* s 141(3).

## UPDATE

### 1224 Provision of information

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTES 1-4--Transport Act 2000 s 139(1) amended: Local Transport Act 2008 Sch 1 para 4.

NOTE 10--Reference to a passenger transport authority is now to an Integrated Transport Authority and reference to a passenger transport area is now to an integrated transport area: Transport Act 2000 s 162(4) (amended by the Local Transport Act 2008 Sch 4 para 46(2)).

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### 1225. Power to obtain information about local services.

A local transport authority<sup>1</sup> may, in connection with the exercise of any of its functions relating to public transport, require an operator<sup>2</sup> of local services<sup>3</sup> to provide it with any information relating to the matters specified below<sup>4</sup> which is in his possession or control<sup>5</sup>. The matters referred to above are: (1) the total number of journeys undertaken by passengers on the local services operated by the operator in the authority's area or any part of its area; (2) the structure of fares<sup>6</sup> for those journeys; and (3) the total distance covered by vehicles used by him in operating those local services<sup>7</sup>. The operator may be required to provide the information in any form in which, having regard to the manner in which the information is kept, it is reasonable to expect him to provide it<sup>8</sup>. No information which: (a) has been provided under

these provisions, or provided together with information so provided; and (b) relates to the affairs of an individual or to a particular business, may be disclosed during the lifetime of the individual or while the business continues to be carried on<sup>9</sup>.

- 1 For the meaning of 'local transport authority' see PARA 1190 note 1 ante.
- 2 As to the 'operator' of a passenger transport service see PARA 1200 note 5 ante.
- 3 For the meaning of 'local service' see PARA 1200 note 5 ante.
- 4 Ie specified in the Transport Act 2000 s 143(2): see heads (1)-(3) in the text.
- 5 Ibid s 143(1).
- 6 As the meaning of 'fares' see PARA 1209 note 2 ante.
- 7 Transport Act 2000 s 143(2).
- 8 Ibid s 143(3).
- 9 Ibid s 143(4). Section 143(4) does not apply to a disclosure made: (1) with the consent of the individual or the person for the time being carrying on the business; (2) in connection with the investigation of crime or for the purposes of criminal proceedings; (3) for the purposes of civil proceedings brought by virtue of the Transport Act 2000 or the Transport Act 1985; or (4) in order to comply with the order of a court or tribunal: Transport Act 2000 s 143(5). A person who discloses information in contravention of s 143(4) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 143(6). As to the standard scale see PARA 230 note 3.

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## (E) MAKING OF REGULATIONS AND ORDERS

### **1226. Regulations and orders.**

Any power to make regulations or orders under Part II of the Transport Act 2000<sup>1</sup>: (1) is exercisable by statutory instrument; (2) includes power to make different provision for different cases; and (3) may be exercised so as to make incidental, consequential, supplementary or transitional provision or savings<sup>2</sup>. A statutory instrument containing regulations or an order made by a Minister of the Crown under Part II of the Transport Act 2000 (whether alone or jointly with the Welsh Ministers) is subject to annulment in pursuance of a resolution of either House of Parliament<sup>3</sup>.

- 1 Ie the Transport Act 2000 Pt II (ss 108-162) (as amended).
- 2 Ibid s 160(1).
- 3 Ibid s 160(2).

### **UPDATE**

### **1226 Regulations and orders**

TEXT AND NOTE 3--Transport Act 2000 s 160(2) amended: Local Transport Act 2008 s 64(13).

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## ***F. LOCAL TRANSPORT FUNCTIONS: WALES***

### **1227. Arrangements for discharge of transport functions.**

The Welsh Ministers<sup>1</sup> may direct two or more local authorities in Wales<sup>2</sup> to enter into arrangements: (1) in the terms specified in the direction; and (2) in relation to the discharge of transport functions<sup>3</sup> specified in the direction<sup>4</sup>. The arrangements may in particular be or include arrangements for the joint discharge of transport functions<sup>5</sup>. In deciding whether to give a direction under these provisions<sup>6</sup> in relation to particular functions, the Welsh Ministers must in particular have regard to the interests of economy, efficiency and effectiveness in the discharge of the functions<sup>7</sup>. The Welsh Ministers may vary or revoke a direction given under these provisions in relation to particular functions by a further such direction, but only if they are satisfied that, on variation or revocation, satisfactory arrangements will be in place for the discharge of those functions<sup>8</sup>. Before giving, varying or revoking a direction under these provisions, the Welsh Ministers must consult the local authorities concerned and any other persons they consider appropriate<sup>9</sup>.

1 The Transport (Wales) Act 2006 refers to the National Assembly for Wales ('the Assembly' (see eg s 14(2)). Pursuant to the establishment of the Welsh Assembly Government under the Government of Wales Act 2006, the functions of the former Assembly are now generally the responsibility of the Welsh Ministers: see PARA 237 ante.

2 In the Transport (Wales) Act 2006, 'local authority in Wales' means a county council or county borough council in Wales: s 14(3).

3 'Transport function' means a function of a local authority in Wales relating to transport: *ibid* s 4(6).

4 *Ibid* s 4(1).

5 *Ibid* s 4(2).

6 *Ie* *ibid* s 4.

7 *Ibid* s 4(3).

8 *Ibid* s 4(4).

9 *Ibid* s 4(5).

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## 1228. Joint transport authorities.

The Welsh Ministers<sup>1</sup> may by order establish a body (to be known as a joint transport authority) to discharge specified<sup>2</sup> transport functions<sup>3</sup> for an area made up of all or any part or parts of the areas of two or more specified local authorities in Wales<sup>4</sup>. Before making such an order<sup>5</sup>, the Welsh Ministers must consult the local authorities concerned and any other persons they consider appropriate<sup>6</sup>. A joint transport authority must be established as a body corporate<sup>7</sup>. An order may include provision: (1) about the composition of the joint transport authority (including the appointment of members of the authority by the local authorities concerned and by the Welsh Ministers); (2) about the proceedings of the authority (including different provision in respect of the voting rights of different categories of member); (3) about the financing of the authority; (4) about the discharge of the functions of the authority (including provision for the discharge of functions by committees); (5) about officers of the authority; (6) about the acquisition, appropriation and disposal of land by the authority (including provision for the acquisition of land by agreement or compulsorily); (7) for the transfer of staff, property, rights and liabilities to the authority; (8) for the payment of compensation in respect of loss suffered by any person in consequence of the constitution of the authority; (9) for specified enactments relating to local authorities in Wales and transport functions to have effect, in relation to the authority and its functions, with any specified modifications<sup>8</sup>. If an order includes provision for the appointment of members of the authority by persons other than the local authorities concerned, the order must not provide for the total number of members so appointed to be equal to, or exceed, half the total number of members capable of being appointed<sup>9</sup>.

The Welsh Ministers may vary or revoke an order only if they are satisfied that, on variation or revocation, satisfactory arrangements will be in place for the discharge of the functions of the joint transport authority<sup>10</sup>. An order varying or revoking an order may include provision for the transfer of staff, property, rights and liabilities from the joint transport authority to one or more other joint transport authorities or local authorities in Wales<sup>11</sup>. Before varying or revoking an order the Welsh Ministers must consult: (a) any joint transport authorities and local authorities in Wales which appear to them likely to be affected; (b) any other persons they consider appropriate<sup>12</sup>.

1 See PARA 1227 note 1 ante.

2 In the Transport (Wales) Act 2006 s 5, 'specified', in relation to an order under s 5(1), means specified in the order: s 5(11).

3 In *ibid* s 5, 'transport function' means a function of a local authority in Wales relating to transport: s 5(11).

4 *Ibid* s 5(1). As to orders generally under the Transport (Wales) Act 2006 see s 13.

For the purposes of the Local Government Finance Act 1988 s 74 (levies): (1) a joint transport authority is to be treated as a levying body with respect to which regulations may be made under s 74(2); and (2) the reference in s 74(2) to the council concerned is to be treated as a reference to the local authorities specified in the order under the Transport (Wales) Act 2006 s 5(1) establishing the joint transport authority: s 5(10).

5 *Ie* an order under *ibid* s 5(1).

6 *Ibid* s 5(2).

7 *Ibid* s 5(3).

8 *Ibid* s 5(4).

9 *Ibid* s 5(5).

10 *Ibid* s 5(6).

11 Ibid s 5(7).

12 Ibid s 5(8).

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## **1229. Financial assistance: local transport functions.**

The Welsh Ministers<sup>1</sup> may give financial assistance to: (1) joint transport authorities; and (2) local authorities in Wales<sup>2</sup>, for the purpose of enabling or facilitating them to discharge their functions relating to transport<sup>3</sup>.

1 See PARA 1227 note 1 ante.

2 For the meaning of 'local authority in Wales' see PARA 1227 note 2 ante.

3 Transport (Wales) Act 2006 s 6(1). The Welsh Ministers may attach conditions to financial assistance under these provisions: s 6(2).

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## **(ii) Local Services in London**

### **A. INTRODUCTION**

#### **1230. Replacement of London Regional Transport with Transport for London; the transitional period.**

The Greater London Authority Act 1999 provides for the abolition of London Regional Transport and its replacement by a new body, Transport for London<sup>1</sup>, which is responsible for London bus services<sup>2</sup>. The Greater London Authority Act 1999 provides for the replacement of Part II of the Transport Act 1985<sup>3</sup>, dealing with the regulation of road passenger transport in London. Chapter V of Part IV of the Greater London Authority Act 1999 now provides for the regulation of bus services in Greater London<sup>4</sup>.

At the date at which this volume states the law the repeal of Part II of the Transport Act 1985 had not been brought into force<sup>5</sup>, although Chapter V of Part IV of the Greater London Authority Act 1999 was brought into force on 3 July 2000<sup>6</sup>. An order made by the Secretary of State<sup>7</sup> under the Greater London Authority Act 1999 provides for the transition from London local service licensing of bus services under the Transport Act 1985 to London local service agreements and London service permits under the Greater London Authority Act 1999<sup>8</sup>. The order provides that the application of Part II of the Transport Act 1985 is limited to existing licences (ie those in force on 3 July 2000) during the transitional period which runs from 3 July

2000 until those licences cease to be in force (through expiry or otherwise)<sup>9</sup>. After this transitional period Part II of the Transport Act 1985 will cease to have effect<sup>10</sup>. During this transitional period new licences may not be granted under Part II of the Transport Act 1985 in pursuance of applications received on or after 3 July 2000<sup>11</sup>.

The prohibition on provision of a London local service except in accordance with Chapter V of Part IV of the Greater London Authority Act 1999<sup>12</sup> is modified to allow services to continue to be provided under existing licences granted under Part II of the Transport Act 1985<sup>13</sup>.

1 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

2 See PARAS 1231-1245 post.

3 I.e. the Transport Act 1985 Pt II (ss 34-46) (as amended; prospectively repealed): see PARA 1246 post.

4 See the Greater London Authority Act 1999 Pt IV Ch V (ss 179-195) (as amended); and PARAS 1231-1245 post.

5 See *ibid* s 423, Sch 34 Pt II. Further amendments and repeals have been made by the Regulation of Bus Services in Greater London (Transitional Provisions) Order 2000, SI 2000/1462 (see arts 2, 3), which are in force.

6 See the Greater London Authority Act 1999 (Commencement No 4 and Adaptation) Order 2000, SI 2000/801, art 2, Schedule Pt III.

7 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

8 See the Regulation of Bus Services in Greater London (Transitional Provisions) Order 2000, SI 2000/1462.

9 See *ibid* arts 2, 3.

10 See *ibid* arts 2, 3.

11 See the Transport Act 1985 s 37(1A) (added by the Regulation of Bus Services in Greater London (Transitional Provisions) Order 2000, SI 2000/1462, art 3(1)(c), (2)).

12 I.e. under the Greater London Authority Act 1999 s 180(1): see PARA 1232 post.

13 See the Regulation of Bus Services in Greater London (Transitional Provisions) Order 2000, SI 2000/1462, art 4(2).

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## ***B. REGULATION OF BUS SERVICES IN GREATER LONDON FROM 3 JULY 2000***

### **(A) LONDON LOCAL SERVICES**

#### **1231. Meaning of 'London local service'.**

A 'London local service' is a local service<sup>1</sup> with one or more stopping places<sup>2</sup> in Greater London<sup>3</sup>. Where a local service is or is to be provided both inside and outside Greater London, any part of the service which is or is to be provided outside Greater London must be treated as a

separate service for the purposes of Part IV of the Greater London Authority Act 1999<sup>4</sup> if there is any stopping place for that part of the service outside Greater London<sup>5</sup>.

1 For the meaning of 'local service' see PARA 1177 ante; definition applied by the Greater London Authority Act 1999 s 179(1).

2 'Stopping place' means, in relation to any service or part of a service, a point at which passengers are (or, in the case of a proposed service, are proposed to be) taken up or set down in the course of that service or part: *ibid* s 195.

3 *Ibid* s 179(1). The provisions of Pt IV Ch V (ss 179-195) (as amended) apply after 3 July 2000: see PARA 1230 ante. As to the regulation of road passenger transport in London before 3 July 2000 see PARA 1246 post.

For the purposes of Pt IV (ss 141-303) (as amended), a service provided in pursuance of an agreement with the Secretary of State entered into under the Railways Act 2005 s 40 (substitution services provided for interrupted or discontinued railway services) is not a London local service: Greater London Authority Act 1999 s 179(3) (amended by the Railways Act 2005 s 59(1), Sch 12 para 14(1), (4)). As to railways see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES. As to the Secretary of State see PARA 236 ante.

4 *Ie* the Greater London Authority Act 1999 Pt IV (as amended): see PARAS 1232-1245 post; and LONDON GOVERNMENT.

5 *Ibid* s 179(2).

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## **1232. Provision of London local services.**

No London local service<sup>1</sup> may be provided except in accordance with the provisions relating to the regulation of bus services in Greater London<sup>2</sup>. If a London local service is provided in contravention of these provisions, the operator of the service is liable on summary conviction to a fine<sup>3</sup>. It is a defence for a person charged with such an offence to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence<sup>4</sup>.

1 For the meaning of 'London local service' see PARA 1231 ante.

2 Greater London Authority Act 1999 s 180(1). The text refers to the provisions in Pt IV Ch V (ss 179-195) (as amended): see PARAS 1231 ante, 1233-1245 post. Section 180(1) was modified for the duration of the transitional period (see PARA 1230 ante), so as to allow holders of London local service licences granted in accordance with the provisions of the Transport Act 1985 Pt II (ss 34-46) (as amended; prospectively repealed) (see PARAS 1230 ante, 1246 post) to continue operating under those licences after the introduction of London service permits: see the Regulation of Bus Services in Greater London (Transitional Provisions) Order 2000, SI 2000/1462, art 4(1), (2). For the meaning of 'London service permits' see PARA 1237 post.

The provisions of the Greater London Authority Act 1999 Pt IV Ch V (as amended) apply after 3 July 2000: see PARA 1230 ante. As to the regulation of road passenger transport in London before 3 July 2000 see PARA 1246 post.

3 *Ibid* s 180(2). The fine must not exceed level 3 on the standard scale: s 180(2). As to the standard scale see PARA 230 note 3 ante.

4 *Ibid* s 180(3).

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## (B) THE LONDON BUS NETWORK

### 1233. The London bus network.

Transport for London<sup>1</sup> must determine which London local services<sup>2</sup> are required for the purpose of providing safe, integrated, efficient and economic transport services in Greater London<sup>3</sup>. The determination so made by Transport for London must be kept under review and may be revised at any time<sup>4</sup>. The London local services which Transport for London determines are required are to be known collectively as the 'London bus network'<sup>5</sup>. A London local service which is part of the London bus network may be provided only<sup>6</sup>: (1) by Transport for London or any of its subsidiaries<sup>7</sup>; or (2) by any other person in pursuance of an agreement entered into by Transport for London<sup>8</sup> or in pursuance of a transport subsidiary's agreement<sup>9</sup>. Transport for London must so far as reasonably practicable provide or secure the provision of the London bus network<sup>10</sup>.

1 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

2 For the meaning of 'London local service' see PARA 1231 ante.

3 Greater London Authority Act 1999 s 181(1). The provisions of Pt IV Ch V (ss 179-195) (as amended) apply after 3 July 2000: see PARA 1230 ante. As to the regulation of road passenger transport in London before 3 July 2000 see PARA 1246 post.

4 Ibid s 181(2).

5 Ibid ss 181(3), 195.

6 Ibid s 181(4).

7 Ibid s 181(4)(a). For these purposes, 'subsidiary' has the same meaning as in the Companies Act 1985 s 736 (see COMPANIES vol 14 (2009) PARA 25): Greater London Authority Act 1999 s 424(1).

8 Ie under ibid s 156(2): see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 287.

9 Ibid s 181(4)(b). As to a transport subsidiary's agreement see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 288.

10 Ibid s 181(5).

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### 1234. London local service agreements.

Where a London local service<sup>1</sup> which is part of the London bus network<sup>2</sup> is provided in pursuance of an agreement entered into by Transport for London<sup>3</sup> or in pursuance of a

transport subsidiary's agreement<sup>4</sup>, the agreement is known as a London local service agreement<sup>5</sup>.

Where a London local service agreement relates to a local service<sup>6</sup> part of which is to be provided outside Greater London, any provision contained in the agreement with respect to the carriage of passengers other than those who are both taken up and set down in Greater London<sup>7</sup> is of no effect if or so far as it is inconsistent with any condition attached<sup>8</sup> to a PSV operator's licence<sup>9</sup> held by the operator of the service or to a community bus permit<sup>10</sup>.

1 For the meaning of 'London local service' see PARA 1231 ante.

2 For the meaning of 'London bus network' see PARA 1233 ante.

3 I.e. under the Greater London Authority Act 1999 s 156(2): see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 287. As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

4 As to a transport subsidiary's agreement see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 288.

5 Greater London Authority Act 1999 ss 182(1), 195. The provisions of Pt IV Ch V (ss 179-195) (as amended) apply after 3 July 2000: see PARA 1230 ante. As to the regulation of road passenger transport in London before 3 July 2000 see PARA 1246 post.

6 For the meaning of 'local service' see PARA 1177 ante; definition applied by ibid s 179(1).

7 Ibid s 182(2).

8 I.e. under the Transport Act 1985 s 8 (enforcement of traffic regulation conditions by a traffic commissioner): see PARA 1180 ante.

9 'PSV operator's licence' means a licence granted under the provisions of the Public Passenger Vehicles Act 1981 Pt II (ss 6-29) (as amended) (see PARAS 1141-1155, 1158-1162, 1172-1175 ante): Greater London Authority Act 1999 s 195.

10 Ibid s 182(3). The text refers to a community bus permit under the Transport Act 1985 s 22: see PARA 1185 ante.

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### **1235. Addition or variation of a network service.**

Where:

1831 (1) Transport for London<sup>1</sup> or any of its subsidiaries<sup>2</sup> proposes to provide a new London local service<sup>3</sup> or to vary an existing London local service<sup>4</sup>;

1832 (2) Transport for London proposes to enter into a London local service agreement<sup>5</sup> for the provision of a new London local service<sup>6</sup>; or

1833 (3) Transport for London proposes to agree to a variation in an existing London local service provided pursuant to a London local service agreement<sup>7</sup>,

and the proposal, if effected, would alter the London bus network<sup>8</sup>, Transport for London must, before making a decision about the proposal, consult<sup>9</sup>:

1834 (a) the commissioner or commissioners of police affected<sup>10</sup>;

- 1835 (b) the London authorities affected<sup>11</sup>;
- 1836 (c) the London Transport Users' Committee<sup>12</sup>; and
- 1837 (d) any other person whom Transport for London considers it appropriate to consult<sup>13</sup>,

about the following matters relating to the proposed new service or the service as proposed to be altered<sup>14</sup>, namely:

- 1838 (i) the route<sup>15</sup>;
- 1839 (ii) the terminal points<sup>16</sup>;
- 1840 (iii) the points at which passengers may or may not be taken up and set down<sup>17</sup>; and
- 1841 (iv) the place at which, or street by the use of which, vehicles used for the service may turn at a terminal point<sup>18</sup>.

1 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

2 As to the meaning of 'subsidiary' see PARA 1233 note 7 ante.

3 For the meaning of 'London local service' see PARA 1231 ante.

4 Greater London Authority Act 1999 s 183(1)(a). The provisions of Pt IV Ch V (ss 179-195) (as amended) apply after 3 July 2000: see PARA 1230 ante. As to the regulation of road passenger transport in London before 3 July 2000 see PARA 1246 post.

5 As to the meaning of 'London local service agreement' see PARA 1234 ante.

6 Greater London Authority Act 1999 s 183(1)(b).

7 Ibid s 183(1)(c). For the meaning of 'London bus network' see PARA 1233 ante.

8 Ibid s 183(1).

9 Ibid s 183(2). As to consultation see PARA 1243 post.

10 Ibid s 183(2)(a). For these purposes, a commissioner of police is affected by a proposal if he is the Metropolitan Police Commissioner, or the City of London Police Commissioner, and any part of the route in question, or any of the places mentioned in s 183(3)(b)-(d) (see heads (ii)-(iv) in the text), is situated in the police area for which he is the Commissioner: s 183(6). As to the Metropolitan Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 183 et seq; as to the City of London Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 187; and as to police areas see POLICE vol 36(1) (2007 Reissue) PARA 136 et seq.

11 Ibid s 183(2)(b). For these purposes, the London authorities affected by a proposal are the London authorities in whose area there is situated: (1) any part of the route in question; or (2) any of the places mentioned in s 183(3)(b)-(d) (see heads (ii)-(iv) in the text): s 183(4). A London authority is any London borough council or the Common Council of the City of London: ss 183(7), 195. As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

12 Ibid s 183(2)(c). As to the London Transport Users' Committee see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 322 et seq.

13 Ibid s 183(2)(d).

14 Ibid s 183(2).

15 Ibid s 183(3)(a).

16 Ibid s 183(3)(b).

17 Ibid s 183(3)(c).

18 Ibid s 183(3)(d). Where a place or street mentioned in s 183(3)(d) is situated in the area of a local authority other than a London authority, Transport for London is also required under s 183(2) to consult that local authority about the matter specified in s 183(d): s 183(5). For these purposes, 'local authority' has the same meaning as in the Local Government Act 1972 (see LOCAL GOVERNMENT vol 69 (2009) PARA 23): Greater London Authority Act 1999 s 424(1).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(ii) Local Services in London/B. REGULATION OF BUS SERVICES IN GREATER LONDON FROM 3 JULY 2000/(B) The London Bus Network/1236. Discontinuance of a network service.

### **1236. Discontinuance of a network service.**

Where: (1) Transport for London<sup>1</sup> or any of its subsidiaries<sup>2</sup> proposes to discontinue a London local service<sup>3</sup> which is part of the London bus network<sup>4</sup>; or (2) Transport for London proposes not to renew a London local service agreement<sup>5</sup> pursuant to which a London local service which is part of the London bus network is provided<sup>6</sup>, except where Transport for London proposes that a service replacing the London local service in question and equivalent to it will be provided (whether by Transport for London or any of its subsidiaries, or pursuant to a London local service agreement)<sup>7</sup>, Transport for London must before making a decision about the proposal consult<sup>8</sup> the London authorities<sup>9</sup> affected, the London Transport Users' Committee<sup>10</sup>, and any other person whom Transport for London considers it appropriate to consult<sup>11</sup>.

1 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

2 As to the meaning of 'subsidiary' see PARA 1233 note 7 ante.

3 For the meaning of 'London local service' see PARA 1231 ante.

4 Greater London Authority Act 1999 s 184(1)(a). For the meaning of 'London bus network' see PARA 1233 ante. The provisions of Pt IV Ch V (ss 179-195) (as amended) apply after 3 July 2000: see PARA 1230 ante. As to the regulation of road passenger transport in London before 3 July 2000 see PARA 1246 post.

5 For the meaning of 'London local service agreement' see PARA 1234 ante.

6 Greater London Authority Act 1999 s 184(1)(b).

7 Ibid s 184(1).

8 As to consultation see PARA 1243 post.

9 For the meaning of 'London authority' see PARA 1235 note 11 ante. For this purpose, the London authorities affected by a proposal are the London authorities in whose area there is situated any part of the route of the service in question: Greater London Authority Act 1999 s 184(3).

10 As to the London Transport Users' Committee see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 322 et seq.

11 Greater London Authority Act 1999 s 184(2).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(ii) Local Services in London/B. REGULATION OF BUS SERVICES IN GREATER LONDON FROM 3 JULY 2000/(C) Bus Services Outside the Network/1237. London service permits.



## (C) BUS SERVICES OUTSIDE THE NETWORK

### 1237. London service permits.

A London local service<sup>1</sup> which is not part of the London bus network<sup>2</sup> may be provided only by a person who is authorised to provide the service by a permit granted by Transport for London<sup>3</sup> ('a London service permit')<sup>4</sup>. The Mayor of London<sup>5</sup> must prepare and adopt a document ('the guidance document') containing the criteria by which applications for a London service permit will be considered<sup>6</sup>. He must keep the guidance document under review and may revise it at any time<sup>7</sup>. Where the guidance document is revised, the Mayor must adopt the document as revised<sup>8</sup>.

1 For the meaning of 'London local service' see PARA 1231 ante.

2 For the meaning of 'London bus network' see PARA 1233 ante.

3 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

4 Greater London Authority Act 1999 s 185(1). The provisions of Pt IV Ch V (ss 179-195) (as amended) apply after 3 July 2000: see PARA 1230 ante. As to the regulation of road passenger transport in London before 3 July 2000 see PARA 1246 post.

Section 185(1) was modified for the duration of the transitional period (see PARA 1230 ante), so as to allow holders of London local service licences to continue operating under those licences after the introduction of London service permits: see the Regulation of Bus Services in Greater London (Transitional Provisions) Order 2000, SI 2000/1462, art 4(1), (3).

The following provisions of the Public Passenger Vehicles Act 1981 apply in relation to the grant of London service permits, or to London service permits granted, under the Greater London Authority Act 1999 Pt IV (ss 141-303) (as amended) (see LONDON GOVERNMENT), as they apply in relation to the grant of PSV operators' licences, or PSV operators' licences granted, under the Public Passenger Vehicles Act 1981 (Greater London Authority Act 1999 s 194(1)): (1) the Public Passenger Vehicles Act 1981 s 57 (as amended) (death, bankruptcy of licence holder) (see PARA 1156 ante) taking the references to the traffic commissioner by whom the licence was granted as a reference to Transport for London (Greater London Authority Act 1999 s 194(2)(a)); and (2) the Public Passenger Vehicles Act 1981 s 58(2) (as amended) (grant of licences to unincorporated body or to persons jointly) (see PARA 1157 ante) (Greater London Authority Act 1999 s 194(2)(b)). The Public Passenger Vehicles Act 1981 s 84 (which relates to the effects of that Act in relation to general public interests) (see PARA 1146 ante) has effect as if the Greater London Authority Act 1999 Pt IV Ch V (as amended) were contained in the Public Passenger Vehicles Act 1981: Greater London Authority Act 1999 s 194(3).

5 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

6 Greater London Authority Act 1999 ss 185(2), 195. As to the preparation and publication of the guidance document see PARAS 1243-1244 post.

7 Ibid s 185(3).

8 Ibid s 185(4).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(ii) Local Services in London/B. REGULATION OF BUS SERVICES IN GREATER LONDON FROM 3 JULY 2000/(C) Bus Services Outside the Network/1238. Grant of London service permits.

### 1238. Grant of London service permits.

An application for a London service permit<sup>1</sup> must be made in such manner and accompanied by such supporting evidence as may be determined by Transport for London<sup>2</sup>. Transport for

London may charge a fee: (1) for processing the application for a London service permit<sup>3</sup>; (2) for granting a London service permit<sup>4</sup>; or (3) for both heads (1) and (2) above<sup>5</sup>.

In deciding whether to grant a London service permit, Transport for London: (a) must have regard to the criteria contained in the guidance document<sup>6</sup>; (b) must have regard to any other material considerations<sup>7</sup>; and (c) must consult<sup>8</sup> the London authorities affected<sup>9</sup>, the commissioner or commissioners of police affected<sup>10</sup>, the London Transport Users' Committee<sup>11</sup>, and any other person whom Transport for London considers it appropriate to consult<sup>12</sup>.

Where Transport for London grants a London service permit, it must send notice<sup>13</sup> of the grant, including particulars of the services authorised by the permit to be provided, to the London Transport Users' Committee, the London authorities affected, and the commissioner or commissioners of police affected<sup>14</sup>.

1 For the meaning of 'London service permit' see PARA 1237 ante.

2 Greater London Authority Act 1999 s 186(1). As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq. The provisions of Pt IV Ch V (ss 179-195) (as amended) apply after 3 July 2000: see PARA 1230 ante. As to the regulation of road passenger transport in London before 3 July 2000 see PARA 1246 post.

3 Ibid s 186(2)(a).

4 Ibid s 186(2)(b).

5 Ibid s 186(2)(c).

6 Ibid s 186(3)(a).

7 Ibid s 186(3)(b).

8 Ibid s 186(3)(c). As to consultation see PARA 1243 post.

9 Ibid s 186(4)(a). For this purpose, the London authorities affected are the London authorities in whose area there is situated any part of the route of the London local service to which the application for the London service permit relates: s 186(6). For the meaning of 'London authority' see PARA 1235 note 11 ante. For the meaning of 'London local service' see PARA 1231 ante.

10 Ibid s 186(4)(b). For this purpose, a commissioner of police is affected if he is the Metropolitan Police Commissioner, or the City of London Police Commissioner, and any part of the route of the London local service to which the application for the London service permit relates is situated in the police area for which he is the Commissioner: s 186(7). As to the Metropolitan Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 183 et seq; as to the City of London Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 187; and as to police areas see POLICE vol 36(1) (2007 Reissue) PARA 136 et seq.

11 Ibid s 186(4)(c). As to the London Transport Users' Committee see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 322 et seq.

12 Ibid s 186(4)(d).

13 'Notice' means notice in writing: ibid s 424(1).

14 Ibid s 186(5).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(ii) Local Services in London/B. REGULATION OF BUS SERVICES IN GREATER LONDON FROM 3 JULY 2000/(C) Bus Services Outside the Network/1239. Conditions attached to London service permits.

### **1239. Conditions attached to London service permits.**

Transport for London<sup>1</sup> may attach to a London service permit<sup>2</sup> such conditions as it thinks fit<sup>3</sup>. The conditions that may be attached to a London service permit include conditions for securing:

- 1842 (1) that suitable routes are used in providing any service authorised to be provided by the permit<sup>4</sup>;
- 1843 (2) that passengers are not taken up or are not set down except at specified points, or are not taken up or are not set down between specified points<sup>5</sup>; or
- 1844 (3) the safety and convenience of the public, including persons who have mobility problems<sup>6</sup>.

No condition as to fares may be so attached to a London service permit<sup>7</sup>.

Transport for London may at any time vary a London service permit: (a) by altering any condition attached to the permit<sup>8</sup>; (b) by removing any condition attached to the permit<sup>9</sup>; or (c) by attaching to the permit any condition<sup>10</sup>.

Compliance with any such condition attached to a London service permit may be temporarily dispensed with by Transport for London if it is satisfied:

- 1845 (i) that compliance with the condition would be unduly onerous by reason of circumstances not foreseen when the condition was attached, or, if the condition has been altered, when it was last altered<sup>11</sup>; and
- 1846 (ii) that such a dispensation would not adversely affect the safety and convenience of the public, including persons who have mobility problems<sup>12</sup>.

If any such condition attached to a London service permit is contravened, the holder of the permit is liable on summary conviction to a fine<sup>13</sup>. It is a defence for a person charged with such an offence to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence<sup>14</sup>.

1 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

2 If granted under the Greater London Authority Act 1999 s 186: see PARA 1238 ante. For the meaning of 'London service permit' see PARA 1237 ante.

3 Ibid s 187(1). The provisions of Pt IV Ch V (ss 179-195) (as amended) apply after 3 July 2000: see PARA 1230 ante. As to the regulation of road passenger transport in London before 3 July 2000 see PARA 1246 post.

4 Ibid s 187(2)(a).

5 Ibid s 187(2)(b).

6 Ibid s 187(2)(c).

7 Ibid s 187(3).

8 Ibid s 187(4)(a).

9 Ibid s 187(4)(b).

10 Ibid s 187(4)(c).

11 Ibid s 187(5)(a).

12 Ibid s 187(5)(b).

13 Ibid s 187(6). The fine must not exceed level 3 on the standard scale: s 187(6). As to the standard scale see PARA 230 note 3 ante.

14 Ibid s 187(7).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(ii) Local Services in London/B. REGULATION OF BUS SERVICES IN GREATER LONDON FROM 3 JULY 2000/(C) Bus Services Outside the Network/1240. Revocation of London service permits.

### **1240. Revocation of London service permits.**

A London service permit<sup>1</sup> may be revoked or suspended by Transport for London<sup>2</sup> on the ground that there has been a contravention of any condition<sup>3</sup> attached to it<sup>4</sup>. However, Transport for London must not revoke or suspend a London service permit unless, owing to: (1) the frequency of the breach of conditions<sup>5</sup>; or (2) the breach having been committed intentionally<sup>6</sup>; or (3) the danger to the public involved in the breach<sup>7</sup>, Transport for London is satisfied that the permit should be revoked or suspended<sup>8</sup>. On revoking or suspending a London service permit, Transport for London must send notice<sup>9</sup> of the revocation or suspension to each commissioner of police<sup>10</sup> and London authority<sup>11</sup> notified of the grant of the licence<sup>12</sup>. A London service permit so suspended is, during the period of suspension, of no effect<sup>13</sup>.

1 For the meaning of 'London service permit' see PARA 1237 ante.

2 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

3 As to conditions see PARA 1239 ante.

4 Greater London Authority Act 1999 s 188(1). This is expressed to be subject to s 188(2) (see the text and notes 5-8 infra). The provisions of Pt IV Ch V (ss 179-195) (as amended) apply after 3 July 2000: see PARA 1230 ante. As to the regulation of road passenger transport in London before 3 July 2000 see PARA 1246 post.

5 Ibid s 188(2)(a).

6 Ibid s 188(2)(b).

7 Ibid s 188(2)(c).

8 Ibid s 188(2).

9 For the meaning of 'notice' see PARA 1238 note 13 ante.

10 As to the Metropolitan Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 183 et seq; and as to the City of London Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 187.

11 For the meaning of 'London authority' see PARA 1235 note 11 ante.

12 Greater London Authority Act 1999 s 188(3). The text refers to notification in accordance with s 186(5): see PARA 1238 ante.

13 Ibid s 188(4).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(ii) Local Services

in London/B. REGULATION OF BUS SERVICES IN GREATER LONDON FROM 3 JULY 2000/(C) Bus Services Outside the Network/1241. Appeals in relation to the refusal to grant a London service permit.

### **1241. Appeals in relation to the refusal to grant a London service permit.**

Where Transport for London<sup>1</sup> refuses to grant a London service permit<sup>2</sup>, it must issue a notice<sup>3</sup> stating the reasons for the decision to do so to the person who made the application for it<sup>4</sup>. A person to whom such a notice has been issued may make an appeal against the decision in relation to which the notice was issued<sup>5</sup>. Where Transport for London: (1) attaches any condition<sup>6</sup> to a London service permit, or alters or removes any condition so attached<sup>7</sup>; or (2) revokes<sup>8</sup> or suspends a London service permit<sup>9</sup>, it must issue a notice to the holder of the permit stating the reasons for the decision to do so<sup>10</sup>. A holder of a London service permit to whom a notice has been issued may make an appeal against the decision in relation to which the notice was issued<sup>11</sup>.

An appeal against a decision of Transport for London must be made before the end of the period of 28 days beginning with the date of issue of the notice relating to the decision; but, subject to that, the procedure for the making of appeals under these provisions is to be such as the Secretary of State<sup>12</sup> may by regulations prescribe<sup>13</sup>. An appeal under these provisions is to be heard by a panel of persons appointed by the Lord Chancellor for the purpose of hearing such an appeal ('an appeal panel')<sup>14</sup>. The Secretary of State may make regulations providing for the charging of reasonable fees in respect of such appeals<sup>15</sup>.

A person is disqualified from being appointed to be, or being, a member of an appeal panel if he is<sup>16</sup>: (a) a London Assembly member<sup>17</sup>; (b) a member of staff of the Greater London Authority<sup>18</sup>; (c) a member of, or a member of staff of, Transport for London<sup>19</sup>; or (d) a director of a subsidiary<sup>20</sup> of Transport for London or a member of staff of such a subsidiary<sup>21</sup>.

The Secretary of State may pay to the members of an appeal panel such fees and expenses as he considers appropriate<sup>22</sup>.

An appeal panel must regulate its own procedure but, unless the person making the appeal requests otherwise, any appeal hearing is conducted on the basis of documentary evidence only<sup>23</sup>. An appeal panel which has heard an appeal against a decision may: (i) uphold the decision; (ii) quash the decision; or (iii) substitute for the decision such other decision which Transport for London had power to make as appears to the appeal panel to be appropriate<sup>24</sup>.

1 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

2 For the meaning of 'London service permit' see PARA 1237 ante.

3 For the meaning of 'notice' see PARA 1238 note 13 ante.

4 Greater London Authority Act 1999 s 189(1). The provisions of Pt IV Ch V (ss 179-195) (as amended) apply after 3 July 2000: see PARA 1230 ante. As to the regulation of road passenger transport in London before 3 July 2000 see PARA 1246 post.

5 Ibid s 189(2) (amended by the Transport Act 2000 s 267(1), (2)).

6 As to conditions see PARA 1239 ante.

7 Greater London Authority Act 1999 s 189(3)(a).

8 As to revocation of London service permits see PARA 1240 ante.

9 Greater London Authority Act 1999 s 189(3)(b).

10 Ibid s 189(3).

- 11 Ibid s 189(4) (amended by the Transport Act 2000 s 267(2)).
- 12 As to the Secretary of State see PARA 236 ante.
- 13 Greater London Authority Act 1999 s 189(5) (amended by the Transport Act 2000 s 267(3)). As to the prescribed procedure see the London Service Permits (Appeals) Regulations 2002, SI 2002/614.
- 14 Greater London Authority Act 1999 s 189(6) (substituted by the Transport Act 2000 s 267(4)). See further the Constitutional Reform Act 2005 s 85, Sch 14 Pt 3; and COURTS.
- 15 Greater London Authority Act 1999 s 189(7) (substituted by the Transport Act 2000 s 267(5)).
- 16 Greater London Authority Act 1999 s 189(8).
- 17 Ibid s 189(8)(a). As to the London Assembly see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 82.
- 18 Ibid s 189(8)(b). 'Member of staff', in relation to the Greater London Authority, means a person appointed under s 67(1) or (2) (see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 133-135): s 424(1). As to the Greater London Authority see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq.
- 19 Ibid s 189(8)(c).
- 20 As to the meaning of 'subsidiary' see PARA 1233 note 7 ante.
- 21 Greater London Authority Act 1999 s 189(8)(d).
- 22 Ibid s 189(9) (amended by the Transport Act 2000 s 267(6)).
- 23 Greater London Authority Act 1999 s 189(10).
- 24 Ibid s 189(11) (substituted by the Transport Act 2000 s 267(7)). An appeal panel which has heard an appeal may make an order about payment of the costs of the appeal; and such an order may require that Transport for London pay to the person who made the appeal a sum equal to the whole or part of any fee paid in accordance with regulations under the Greater London Authority Act 1999 s 189(7) (as substituted) (see the text and note 15 supra): s 189(12) (substituted by the Transport Act 2000 s 267(7)).

## UPDATE

### 1241 Appeals in relation to the refusal to grant a London service permit

TEXT AND NOTE 5--Greater London Authority Act 1999 s 189(2) amended: SI 2009/1885.

TEXT AND NOTE 11--Greater London Authority Act 1999 s 189(4) amended: SI 2009/1885.

TEXT AND NOTES 12-24--Greater London Authority Act 1999 s 189(5)-(10), (12) omitted, s 189(11) amended: SI 2009/1885.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(ii) Local Services in London/B. REGULATION OF BUS SERVICES IN GREATER LONDON FROM 3 JULY 2000/(C) Bus Services Outside the Network/1242. Duration of London service permits.

### 1242. Duration of London service permits.

The duration of a London service permit<sup>1</sup> must not be longer than five years<sup>2</sup>. If, on the date on which a London service permit is due to expire, an application has been made for the grant of a new London service permit in substitution for it and<sup>3</sup>:

- 1847 (1) Transport for London<sup>4</sup> has neither granted nor refused to grant the London service permit applied for<sup>5</sup>;
- 1848 (2) Transport for London has refused to grant the London service permit applied for but an appeal against the refusal has been made<sup>6</sup> and not disposed of<sup>7</sup>; or
- 1849 (3) Transport for London has granted the London service permit applied for but an appeal against a decision to attach a condition<sup>8</sup> to the permit has been made<sup>9</sup> and not disposed of<sup>10</sup>,

the existing London service permit continues in force<sup>11</sup>:

- 1850 (a) in a case falling within head (1) above, until Transport for London grants or refuses to grant the London service permit applied for<sup>12</sup>; or
- 1851 (b) in a case falling within head (2) or head (3) above, until the appeal has been disposed of<sup>13</sup>.

Where head (a) above applies, if Transport for London refuses to grant the London service permit applied for, or grants the London service permit applied for but at the time of the grant attaches any condition to the permit, the existing London service permit continues in force until any appeal which is made<sup>14</sup> against the decision in question has been disposed of<sup>15</sup>.

1 For the meaning of 'London service permit' see PARA 1237 ante.

2 Greater London Authority Act 1999 s 190(1). Section 190 is without prejudice to s 188 (see PARA 1240 ante): s 190(5). The provisions of Pt IV Ch V (ss 179-195) (as amended) apply after 3 July 2000: see PARA 1230 ante. As to the regulation of road passenger transport in London before 3 July 2000 see PARA 1246 post.

3 Ibid s 190(2).

4 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

5 Greater London Authority Act 1999 s 190(2)(a).

6 Ie under ibid s 189 (as amended): see PARA 1241 ante.

7 Ibid s 190(2)(b).

8 As to conditions see PARA 1239 ante.

9 Ie under the Greater London Authority Act 1999 s 189 (as amended): see PARA 1241 ante.

10 Ibid s 190(2)(c).

11 Ibid s 190(3).

12 Ibid s 190(3)(a).

13 Ibid s 190(3)(b).

14 Ie under ibid s 189 (as amended): see PARA 1241 ante.

15 Ibid s 190(4).

in London/B. REGULATION OF BUS SERVICES IN GREATER LONDON FROM 3 JULY 2000/(C) Bus Services Outside the Network/1243. Consultation.

### 1243. Consultation.

When preparing or revising the guidance document<sup>1</sup> and before finally determining the contents of the document or any revisions, the Mayor of London<sup>2</sup> must<sup>3</sup>:

1852 (1) publish a notice<sup>4</sup> in a newspaper circulating in the entire area of Greater London, stating where a draft of the guidance document (or the revisions, as the case may be) may be inspected<sup>5</sup>; and

1853 (2) consult: (a) each London authority<sup>6</sup>; (b) the local authority<sup>7</sup> for any other area which the Mayor of London<sup>8</sup> considers will be affected by the contents of the guidance document or the revisions, as the case may be<sup>9</sup>; (c) the Metropolitan Police Commissioner and the City of London Police Commissioner<sup>10</sup>; (d) the traffic commissioner for the Metropolitan Traffic area<sup>11</sup>; (e) the traffic commissioner for any other traffic area which the Mayor considers will be affected by the contents of the guidance document or the revisions, as the case may be<sup>12</sup>; (f) the London Transport Users' Committee<sup>13</sup>; and (g) any other person whom the Mayor considers it appropriate to consult<sup>14</sup>.

Where the Mayor is determining the contents of revisions to the guidance document and the revisions will not affect the entire area of Greater London, the obligation imposed under head (1) above does not have effect and instead a notice stating where a draft of the revisions can be inspected must be published in a newspaper circulating in the area or areas which the Mayor considers will be affected by the revisions<sup>15</sup>.

1 For the meaning of 'the guidance document' see PARA 1237 ante.

2 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

3 Greater London Authority Act 1999 s 191(1). The provisions of Pt IV Ch V (ss 179-195) (as amended) apply after 3 July 2000: see PARA 1230 ante. As to the regulation of road passenger transport in London before 3 July 2000 see PARA 1246 post.

4 For the meaning of 'notice' see PARA 1238 note 13 ante.

5 Greater London Authority Act 1999 s 191(1)(a).

6 Ibid s 191(1)(b), (2)(a). For the meaning of 'London authority' see PARA 1235 note 11 ante.

7 As to the meaning of 'local authority' for these purposes see PARA 1235 note 17 ante.

8 See note 2 supra.

9 Greater London Authority Act 1999 s 191(1)(b), (2)(b).

10 Ibid s 191(1)(b), (2)(c). As to the Metropolitan Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 183 et seq; and as to the City of London Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 187.

11 Ibid s 191(1)(b), (2)(d). 'Traffic commissioner for the Metropolitan Traffic area' means the traffic commissioner for the traffic area in which Greater London is for the time being situated by virtue of the Public Passenger Vehicles Act 1981 s 3 (as amended) (see PARA 1138 ante); Greater London Authority Act 1999 s 195. 'Traffic area' means a traffic area constituted for the purposes of the Public Passenger Vehicles Act 1981 (see PARA 1138 ante); Greater London Authority Act 1999 s 195.

12 Ibid s 191(1)(b), (2)(e).



13 Ibid s 191(1)(b), (2)(f). As to the London Transport Users' Committee see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 322 et seq.

14 Ibid s 191(1)(b), (2)(g).

15 Ibid s 191(3).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(ii) Local Services in London/B. REGULATION OF BUS SERVICES IN GREATER LONDON FROM 3 JULY 2000/(C) Bus Services Outside the Network/1244. Publication of the guidance document.

#### **1244. Publication of the guidance document.**

The Mayor of London<sup>1</sup> must publish the guidance document<sup>2</sup>, and where he revises the guidance document he must publish it as revised<sup>3</sup>. The guidance document must be published no later than 180 days after the Mayor has published the transport strategy<sup>4</sup> prepared by him<sup>5</sup>. The Mayor must send to the Common Council for the City of London and to each London borough council a copy of the current version of the guidance document<sup>6</sup>. A copy of the current version of the guidance document must be kept available by the Mayor for inspection by any person on request free of charge at the principal offices of the Greater London Authority<sup>7</sup>, and at such other places as the Mayor considers appropriate, at reasonable hours<sup>8</sup>. A copy of the current version of the guidance document, or any part of it, must be supplied to any person on request for such reasonable fee as the Mayor may determine<sup>9</sup>.

1 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

2 Greater London Authority Act 1999 s 192(1). For the meaning of 'the guidance document' see PARA 1237 ante. The provisions of Pt IV Ch V (ss 179-195) (as amended) apply after 3 July 2000: see PARA 1230 ante. As to the regulation of road passenger transport in London before 3 July 2000 see PARA 1246 post.

3 Ibid s 192(2). For the purposes of the Greater London Authority Act 1999, references to the guidance document include, except where the context otherwise requires, a reference to the current version of the guidance document: s 192(3).

4 For the purposes of the Greater London Authority Act 1999, references to the transport strategy include, except where the context otherwise requires, a reference to the transport strategy as revised: s 142(5).

5 Ibid s 192(4). The Mayor must prepare and publish a transport strategy containing his policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London: see ss 141, 142; and LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 262-263.

6 Ibid s 192(5). Any reference in s 192 to 'the current version' of the guidance document is a reference to the guidance document as last published, whether originally or as revised: s 192(8). As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

7 As to the Greater London Authority see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq.

8 Greater London Authority Act 1999 s 192(6).

9 Ibid s 192(7).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(ii) Local Services in London/B. REGULATION OF BUS SERVICES IN GREATER LONDON FROM 3 JULY 2000/(D) Validity of Agreements and Permits/1245. Validity of agreements and permits.

## (D) VALIDITY OF AGREEMENTS AND PERMITS

### **1245. Validity of agreements and permits.**

A London local service agreement<sup>1</sup> is of no effect at any time when the party to the agreement who is not Transport for London<sup>2</sup> does not hold<sup>3</sup> a PSV operator's licence<sup>4</sup> or a community bus permit<sup>5</sup>. A London service permit<sup>6</sup> is of no effect at any time when the holder of the permit does not hold such a licence or such a permit<sup>7</sup>.

1 As to the meaning of 'London local service agreement' see PARA 1234 ante.

2 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

3 Greater London Authority Act 1999 s 193(1). The provisions of Pt IV Ch V (ss 179-195) (as amended) apply after 3 July 2000: see PARA 1230 ante. As to the regulation of road passenger transport in London before 3 July 2000 see PARA 1246 post.

In any case where a local education authority is providing a service falling within the Public Passenger Vehicles Act 1981 s 46(1) (as amended) (see PARA 1176 text to note 2 ante) (no requirement for a PSV operator's licence where a school bus is being used to provide a service), the Greater London Authority Act 1999 s 193(1) does not apply in relation to any London local service agreement pursuant to which the local education authority is providing the service: s 193(3)(a). As to local education authorities see EDUCATION vol 15(1) (2006 Reissue) PARA 20 et seq.

4 Ibid s 193(1)(a). For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante.

5 Ibid s 193(1)(b). The text refers to a permit granted under the Transport Act 1985 s 22: see PARA 1185 ante.

6 For the meaning of 'London service permit' see PARA 1237 ante.

7 Greater London Authority Act 1999 s 193(2). In any case where a local education authority is providing a service falling within the Public Passenger Vehicles Act 1981 s 46(1) (as amended) (see PARA 1176 text to note 2 ante) (no requirement for a PSV operator's licence where a school bus is being used to provide a service), the Greater London Authority Act 1999 s 193(2) does not apply in relation to any London service permit by which the local education authority is authorised to provide the service: s 193(3)(b).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(ii) Local Services in London/C. REGULATION OF ROAD PASSENGER TRANSPORT IN LONDON BEFORE 3 JULY 2000/1246. Regulation of road passenger transport in London before 3 July 2000.

## ***C. REGULATION OF ROAD PASSENGER TRANSPORT IN LONDON BEFORE 3 JULY 2000***

### **1246. Regulation of road passenger transport in London before 3 July 2000.**

The traffic commissioner for the South-Eastern and Metropolitan Traffic Area<sup>1</sup> was responsible for granting London local service<sup>2</sup> licences under Part II of the Transport Act 1985<sup>3</sup>. The

commissioner may not grant a London local service licence in pursuance of any application received on or after 3 July 2000<sup>4</sup>.

Such a licence was of no effect at any time at which the holder did not also hold a PSV operator's licence<sup>5</sup> granted by the south-eastern and metropolitan traffic commissioner or by the traffic commissioner for any other traffic area or a community bus permit<sup>6</sup>.

Conditions could be attached to any such licence<sup>7</sup>. Whilst in force, a London local service licence could be varied<sup>8</sup>; and compliance with any condition attached to a London local service licence could be temporarily dispensed with by the commissioner<sup>9</sup>.

Provision was made for the revocation or suspension of a London local service licence<sup>10</sup>.

A London local service licence, unless previously revoked, continued in force until the end of the period of five years beginning with<sup>11</sup> the date on which it took effect, unless at the time of the granting of the licence the traffic commissioner for special reasons determined that it should continue in force only for a shorter period, in which case, unless previously revoked, it continued in force only until the end of that shorter period<sup>12</sup>.

Provision was made for appeal to the Secretary of State<sup>13</sup> against decisions of the commissioner<sup>14</sup>, and for an appeal to the High Court on any point of law<sup>15</sup> arising from a decision of the Secretary of State on such an appeal<sup>16</sup>. No appeal to the Court of Appeal could be brought from a decision of the High Court under this provision except with the leave of the High Court or the Court of Appeal<sup>17</sup>.

1 The commissioner is referred to in the Transport Act 1985 Pt II (ss 34-46) (as amended; prospectively repealed) as the south-eastern and metropolitan traffic commissioner: s 35(3); Traffic Areas (Reorganisation) Order 1990, SI 1991/288, art 5(2). As to traffic commissioners see PARA 1139 ante. As to traffic areas see PARA 1138 ante.

2 'London local service' means a local service with one or more stopping places in London: Transport Act 1985 s 34(1); and see s 34(3). For the meaning of 'local service' see PARA 1177 ante; and for the meaning of 'stopping place' see PARA 1178 note 3 ante.

3 Ibid s 35(3). As to the application for and grant of licences see the Transport Act 1985 s 37 (amended by the Regulation of Bus Services in Greater London (Transitional Provisions) Order 2000, SI 2000/1462, art 3(1)(c), (2)). As to the granting of licences for certain excursions or tours see the Transport Act 1985 s 39 (amended by the Statute Law (Repeals) Act 1995; and by virtue of the Traffic Areas (Reorganisation) Order 1990, SI 1991/288, art 5(2)).

As from a day to be appointed the Transport Act 1985 Pt II (as amended) is repealed by the Greater London Authority Act 1999 s 423, Sch 34 Pt II. At the date at which this volume states the law no such day had been appointed. As to the regulation of bus services in Greater London after 3 July 2000 see PARAS 1231-1245 ante. As to the transitional period, during which existing licences continued to be regulated by the Transport Act 1985 Pt II (as amended) see PARA 1230 ante.

4 Ibid s 35(1A) (added by the Regulation of Bus Services in Greater London (Transitional Provisions) Order 2000, SI 2000/1462, art 3(1)(c), (2)). See note 3 supra.

5 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante; definition applied by the Transport Act 1985 s 137(1), (2).

6 Ibid s 35(4) (amended by the Statute Law (Repeals) Act 1995); Traffic Areas (Reorganisation) Order 1990, SI 1991/288, art 5(2). However, the Transport Act 1985 s 35(4) (as amended) did not apply to a London local service licence held by a local education authority: s 35(5). As to local education authorities see EDUCATION vol 15(1) (2006 Reissue) PARA 20 et seq.

7 See ibid s 38(1)-(3); and the Traffic Areas (Reorganisation) Order 1990, SI 1991/288, art 5(2). If such a condition was contravened, the holder of the licence was liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 38(7). As to the standard scale see PARA 230 note 3 ante. It was a defence for a person charged with such an offence to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of any such offence: Public Passenger Vehicles Act 1981 s 68(3); Transport Act 1985 s 127(4).

8 Ibid s 38(4); Traffic Areas (Reorganisation) Order 1990, SI 1991/288, art 5(2). As to the exercise of the commissioner's powers see the Transport Act 1985 s 38(5).

9 Ibid s 38(6).

10 See ibid s 40; and the Traffic Areas (Reorganisation) Order 1991, SI 1991/288, art 5(2). See also *G Newton Ltd v Smith, WC Standerwick Ltd v Smith* [1962] 2 QB 278, [1962] 2 All ER 19. As to the termination of the licence on the death or bankruptcy of the licence holder see PARA 1156 ante.

11 The use of the words 'beginning with' make it clear that in computing this period the day from which it runs is to be included: see *Hare v Gocher* [1962] 2 QB 641, [1962] 2 All ER 763; *Trow v Ind Coope (West Midlands) Ltd* [1967] 2 QB 899 at 909, [1967] 2 All ER 900, CA. As to the computation of time see TIME vol 97 (2010) PARA 329 et seq.

12 Transport Act 1985 s 41(1); Traffic Areas (Reorganisation) Order 1991, SI 1991/288, art 5(2). See also the Transport Act 1985 s 41(2), (3).

13 As to the Secretary of State see PARA 236 ante.

14 See the Transport Act 1985 s 42 (amended by virtue of the Traffic Areas (Reorganisation) Order 1990, SI 1991/288, art 5(2)); the Tribunals and Inquiries Act 1992 s 10, Sch 1 para 40(a); the Public Service Vehicles (London Local Service Licences) Regulations 1986, SI 1986/1691, reg 19; and the Traffic Areas (Reorganisation) Order 1990, SI 1991/288, art 5(2). See also *Burton v Griffiths* (1843) 11 M & W 817; *Hick v Raymond and Reid* [1893] AC 22 at 29, HL, per Lord Herschell LC; *R v Minister of Transport, ex p Upminster Services Ltd* [1934] 1 KB 277, CA; *Alexander & Son v Minister of Transport* 1936 SLT 553.

15 As to whether a question is one of fact or law in various contexts see *Bracegirdle v Oxley* [1947] KB 349, [1947] 1 All ER 126; *Hemns v Wheeler* [1948] 2 KB 61, 92 Sol Jo 194, CA; *Edwards v Bairstow* [1956] AC 14, [1955] 3 All ER 48, HL; *Re Helbert Wagg & Co Ltd's Claim* [1956] Ch 323, [1956] 1 All ER 129; *Chivers & Sons Ltd v Cambridge County Council* [1957] 2 QB 68, [1957] 1 All ER 882, CA; *Global Plant Ltd v Secretary of State for Health and Social Security* [1972] 1 QB 139, [1971] 3 All ER 385. Many of the cases on this question are irreconcilable: see eg the review of the decisions in 62 LQR 248. The court may, however, treat as a question of fact what is described as a question of law: *Metropolitan Water Board v Kingston Union Assessment Committee* [1925] 2 KB 509, CA; affd sub nom *Kingston Union Assessment Committee v Metropolitan Water Board* [1926] AC 331, HL. A mixed question of law and fact is open to review by the court: *Great Western Rly Co v Bater* [1922] 2 AC 1, HL.

16 See the Transport Act 1985 s 43(1)-(3); and the Traffic Areas (Reorganisation) Order 1990, SI 1991/288, art 5(2).

17 Transport Act 1985 s 43(4).

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### **(iii) Local Passenger Transport Services**

#### **A. PASSENGER TRANSPORT AREAS**

##### **1247. Transfer of bus undertakings of passenger transport executives to companies owned by passenger transport authorities.**

Before such date as the Secretary of State<sup>1</sup> may specify in the case of any passenger transport executive<sup>2</sup> in a direction<sup>3</sup> given to that executive, the executive must form a company<sup>4</sup> for the purpose of carrying on<sup>5</sup>:

- 1854 (1) activities of any description carried on by the executive in or for the purposes of the provision of any service for the carriage of passengers by road<sup>6</sup> currently provided by the executive in exercise of any of its powers<sup>7</sup>; and
- 1855 (2) any activities which appear to the executive to be incidental to or connected with any activities within head (1) above or to be capable of being conveniently carried on in association with any such activities<sup>8</sup>.

Where the passenger transport executive for any passenger transport area<sup>9</sup> has formed a company in pursuance of this provision<sup>10</sup>, the executive must, before such date as the Secretary of State may specify in a direction given to the executive, submit to the Secretary of State a scheme providing for the transfer to the company of any property, rights or liabilities<sup>11</sup> of the executive, or of any of its wholly-owned subsidiaries<sup>12</sup>, which it appears to the executive to be appropriate to transfer to that company<sup>13</sup>. In preparing such a scheme the executive in question must take into account any advice given by the Secretary of State as to the provisions he regards as appropriate for inclusion in the scheme (and in particular as to the description of property, rights and liabilities it is in his view appropriate to transfer to the company)<sup>14</sup>. Such a scheme does not come into force until it has been approved by the Secretary of State or until such date as the Secretary of State may, in giving his approval, specify; and the Secretary of State may approve a scheme either without modifications<sup>15</sup> or with such modifications as, after consultation<sup>16</sup> with the passenger transport executive and with the passenger transport authority<sup>17</sup> for the area in question, he thinks fit<sup>18</sup>. If the Secretary of State is not satisfied that a scheme so submitted accords with any such advice given by him<sup>19</sup>, or would do so with appropriate modifications, he may, after consultation with the passenger transport executive and with the passenger transport authority for the area in question, instead of approving the scheme substitute for it a scheme of his own, to come into force on such date as may be specified in the scheme<sup>20</sup>. On the coming into force of such a scheme the property, rights and liabilities affected by the scheme must<sup>21</sup> be transferred and vest in accordance with the scheme<sup>22</sup>.

Following the transfer to the company of the property, rights and liabilities affected by the scheme, the passenger transport executive must, before such date as the Secretary of State may specify in a direction given to the executive, transfer all shares in or other securities of the company to the passenger transport authority for its area<sup>23</sup>. Without prejudice to any other restriction on its powers, the executive may not dispose of any shares in or other securities of a company formed by that executive<sup>24</sup> otherwise than in accordance with the above provision<sup>25</sup>.

Where the property, rights and liabilities so transferred include the whole of the undertaking of any wholly-owned subsidiary of the passenger transport executive, and it appears to the executive that no further action is required on the part of that subsidiary to perfect any such transfer, the executive must secure that that subsidiary is wound up<sup>26</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 As to passenger transport executives see PARA 247 ante.

3 As to directions given by the Secretary of State see PARA 1181 note 13 ante.

4 The company must be a company limited by shares registered under the Companies Act 1985: Transport Act 1985 s 59(2). As to the registration of companies see COMPANIES vol 14 (2009) PARA 131 et seq; and as to the formation of companies generally see COMPANIES.

5 Ibid s 59(1).

6 For the purposes of the Transport Act 1985 Pt IV (ss 57-87) (as amended) (see PARAS 1248-1275 post), a service for the carriage of passengers by road is a service which requires a PSV operator's licence if vehicles used in providing the service are used in such circumstances that a PSV operator's licence is required in respect

of that use: ss 66(7)(a), 87(c). For the meaning of 'road' see PARA 206 ante; and for the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante (definitions applied by s 137(1), (2)).

7 Ibid s 59(1)(a). The text refers to powers under the Transport Act 1968 s 10(1) (as amended): see PARA 249 text to note 3 ante.

8 Transport Act 1985 s 59(1)(b).

9 For the meaning of 'passenger transport area' see PARA 247 ante; definition applied by ibid s 137(5).

10 Ie ibid s 59.

11 'Liability' includes an obligation: ibid s 137(1).

12 'Wholly-owned subsidiary' means a subsidiary all the securities of which are owned by a body corporate of which it is a subsidiary, or by one or more other wholly-owned subsidiaries of that body, or partly by that body and partly by any wholly-owned subsidiary of that body: ibid s 137(1). For the meaning of 'subsidiary' see PARA 1188 note 12 ante. 'Securities', in relation to a body corporate, means any shares, stock, debentures, debenture stock, and any other security of a similar nature, of the body corporate: s 137(1). As to bodies corporate see generally COMPANIES; CORPORATIONS.

13 Ibid s 59(3). For general provisions as to schemes made under s 59 see PARA 1265 post.

14 Ibid s 59(4).

15 As to the meaning of 'modification' see PARA 1134 note 21 ante; definition applied by ibid s 137(1), (2).

16 As to consultation see PARA 1243 ante.

17 As to passenger transport authorities see PARA 247 ante.

18 Transport Act 1985 s 59(5).

19 Ie as is mentioned in ibid s 59(4): see the text to note 14 supra.

20 Ibid s 59(6).

21 Ie subject to ibid s 129: see PARA 1265 post.

22 Ibid s 59(7).

23 Ibid s 59(8).

24 Ie in pursuance of ibid s 59.

25 Ibid s 59(10). The text refers to s 59(8): see the text to note 23 supra.

26 Ibid s 59(9). As to the Secretary of State's power to direct the division of undertakings of companies formed under s 59 see PARA 1249 post; and as to compensation for loss of employment or loss or diminution of emoluments or pension rights in connection with any transfer of property, rights and liabilities under s 59 see PARA 1266 post.

## UPDATE

### **1247 Transfer of bus undertakings of passenger transport executives to companies owned by passenger transport authorities**

NOTE 9--Transport Act 1985 s 137(5) amended: Local Transport Act 2008 Sch 4 para 40.

Passenger Transport Services/A. PASSENGER TRANSPORT AREAS/1248. Exclusion of public sector co-operation requirements and bus operating powers.

**1248. Exclusion of public sector co-operation requirements and bus operating powers.**

Where, in the case of any passenger transport area<sup>1</sup>, a company ('the initial company') has been formed by the passenger transport executive<sup>2</sup> for that area<sup>3</sup>, and at any time after the Secretary of State<sup>4</sup> has given to the passenger transport executive a direction<sup>5</sup>, the Secretary of State may by order provide that the passenger transport executive is to cease, on a day specified in the order, to be under the duty to co-operate with the National Bus Company<sup>6</sup> and the Scottish Transport Group and to enter into agreements for that purpose<sup>7</sup>. Where such an order is made, any duty of the National Bus Company and the Scottish Transport Group<sup>8</sup> to co-operate with the passenger transport executive (or with each other) ceases on the day specified in the order to apply in relation to the passenger transport executive's area<sup>9</sup>. Any such order may include provision for the termination of any agreements<sup>10</sup> to which the passenger transport executive is a party, on such terms and such dates as may be specified in relation to those agreements in the order (and different terms and dates may be so specified in relation to different agreements)<sup>11</sup>.

At any time after the required transfer<sup>12</sup> of shares in or other securities<sup>13</sup> of the initial company to the passenger transport authority<sup>14</sup> for the passenger transport executive's area has taken place the Secretary of State may by order provide that the passenger transport executive is to cease, on a day specified in the order, to have the powers to carry passengers by road<sup>15</sup> and to let passenger vehicles on hire with or without trailers for the carriage of goods<sup>16</sup>.

1 For the meaning of 'passenger transport area' see PARA 247 ante; definition applied by the Transport Act 1985 s 137(5).

2 As to passenger transport executives see PARA 247 ante.

3 I.e. in pursuance of the Transport Act 1985 s 59: see PARA 1247 ante.

4 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 I.e. under the Transport Act 1985 s 59(3): see PARA 1247 ante. As to directions given by the Secretary of State see PARA 1181 note 13 ante.

6 The National Bus Company was dissolved on 1 April 1991: see *ibid* ss 54, 55 (s 54 amended, and s 55 repealed, by the Statute Law (Repeals) Act 2004); and the National Bus Company (Dissolution) Order 1991, SI 1991/510 (amended by SI 1991/1997).

7 Transport Act 1985 s 60(1), (2). The text refers to the duty imposed by the Transport Act 1968 s 24(2) (as amended), but this provision is effectively repealed: see note 16 *infra*.

8 I.e. under *ibid* s 24(2) (as amended) (see notes 7 *supra*, 16 *infra*).

9 Transport Act 1985 s 60(3).

10 I.e. made under the Transport Act 1968 s 24(2) (as amended) (see notes 7 *supra*, 16 *infra*).

11 Transport Act 1985 s 60(4).

12 I.e. the transfer required under *ibid* s 59(8): see PARA 1247 ante.

13 For the meaning of 'securities' see PARA 1247 note 12 ante.

14 As to passenger transport authorities see PARA 247 ante.

15 For the meaning of 'road' see PARA 206 ante; definition applied by the Transport Act 1985 s 137(1), (2).

16 Ibid s 60(5). The text refers to the powers under the Transport Act 1968 s 10(1)(i), (viii) (as amended): see PARA 249 ante. Where an order is made under the Transport Act 1985 s 60(5) in relation to the passenger transport executive, the Transport Act 1968 s 16(2) (as amended) (which relates to the provision of special information in the annual report of passenger transport authorities and passenger transport executive as to certain businesses of providing services for the carriage of passengers by road) (see PARA 252 ante) will cease to apply in relation to any accounting period of the passenger transport executive beginning on or after the day specified in the order: Transport Act 1985 s 60(6).

The Secretary of State may by order provide for the repeal of the Transport Act 1968 s 24(2) (as amended) and s 10(1)(i), (viii) (as amended) (see PARA 249 ante) on the date on which, by virtue of the cumulative effect of orders made under the Transport Act 1985 s 60, there ceases to be any passenger transport executive in Great Britain which is under the duty imposed by the Transport Act 1968 s 24(2) (as amended) or has the powers under s 10(1)(i), (viii) (as amended): Transport Act 1985 s 60(7). For the meaning of 'Great Britain' see PARA 205 note 3 ante. Any order so made may contain such supplementary, incidental and consequential provisions (including provisions modifying any enactment contained in this or any other Act) as may appear to the Secretary of State to be necessary or expedient in consequence of any repeals made by the order: s 60(8). As to the meaning of 'modification' see PARA 1134 note 21 ante; definition applied by s 137(1), (2).

At the date at which this volume states the law the following orders had been made under s 60: the Tyne and Wear Passenger Transport Executive (Exclusion of Bus Operating Powers) Order 1986, SI 1986/1648; the Greater Manchester Passenger Transport Executive (Exclusion of Bus Operating Powers) Order 1986, SI 1986/1649; the Merseyside Passenger Transport Executive (Exclusion of Bus Operating Powers) Order 1986, SI 1986/1650; the South Yorkshire Passenger Transport Executive (Exclusion of Bus Operating Powers) Order 1986, SI 1986/1651; the West Midlands Passenger Transport Executive (Exclusion of Bus Operating Powers) Order 1986, SI 1986/1652; the West Yorkshire Passenger Transport Executive (Exclusion of Bus Operating Powers) Order 1986, SI 1986/1653; the West Midlands Passenger Transport Executive (Exclusion Co-operation Requirements) Order 1986, SI 1986/1672; the West Yorkshire Passenger Transport Executive (Exclusion of Co-operation Requirements) Order 1986, SI 1986/1673; the Tyne and Wear Passenger Transport Executive (Exclusion of Co-operation Requirements) Order 1986, SI 1986/1674; the South Yorkshire Passenger Transport Executive (Exclusion of Co-operation Requirements) Order 1986, SI 1986/1675; the Greater Manchester Passenger Transport Executive (Exclusion of Co-operation Requirements) Order 1986, SI 1986/1676; and the Merseyside Passenger Transport Executive (Exclusion of Co-operation Requirements) Order 1986, SI 1986/1677.

## **UPDATE**

### **1248 Exclusion of public sector co-operation requirements and bus operating powers**

TEXT AND NOTES 1-11--Transport Act 1985 s 60(2)-(4) repealed: Local Transport Act 2008 ss 66(5), 131, Sch 7 Pt 3.

NOTE 1--Transport Act 1985 s 137(5) amended: Local Transport Act 2008 Sch 4 para 40.

TEXT AND NOTES 7, 16--Transport Act 1968 s 24 repealed: Local Transport Act 2008 ss 66(6)(b), 131, Sch 7 Pt 3.

NOTE 16--An order made under the Transport Act 1985 s 60(5) is to cease to have effect to the extent that it provides that a passenger transport executive is to cease to have the power under the Transport Act 1968 s 10(1)(viii) (see PARA 249): Local Transport Act 2008 s 66(4). Transport Act 1985 s 60(7), (8) repealed: Local Transport Act 2008 ss 66(5), 131, Sch 7 Pt 3.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(iii) Local Passenger Transport Services/A. PASSENGER TRANSPORT AREAS/1249. Division of undertakings of specified companies.

### **1249. Division of undertakings of specified companies.**



Where in the case of any passenger transport area<sup>1</sup> the transfer required<sup>2</sup> of shares in or other securities<sup>3</sup> of the initial company<sup>4</sup> to the passenger transport authority<sup>5</sup> for that area has taken place, the Secretary of State<sup>6</sup> may by a direction<sup>7</sup> given to that authority require the authority to submit to him in accordance with the following provisions written<sup>8</sup> proposals for the division of the undertaking of the initial company among two or more companies to be formed in pursuance of the proposals<sup>9</sup>. Where the initial company has any wholly-owned subsidiaries<sup>10</sup>, the proposals may, instead of or, as the case may be, in addition to providing for the transfer to any one or more of those companies of the shares in or other securities of any such subsidiary comprised in the initial company's undertaking, provide for the division among those companies, or the transfer to any one of them, of the whole or any part of the undertaking, or of any property, rights or liabilities<sup>11</sup>, of that subsidiary<sup>12</sup>. The proposals must be submitted to the Secretary of State before the end of such period as may be specified in the direction<sup>13</sup>. The proposals must:

- 1856 (1) provide for each company to be formed in pursuance of the proposals ('transferee company') to be a company limited by shares and registered under the Companies Act 1985<sup>14</sup>;
- 1857 (2) broadly describe the manner in which the undertaking of the initial company, and the whole or any part of the undertaking of any wholly-owned subsidiary of the initial company to which the proposals relate, is to be divided among the transferee companies or, as the case may be, transferred in accordance with the proposals to any one of those companies<sup>15</sup>; and
- 1858 (3) provide for the winding up of the initial company, and of any wholly-owned subsidiary of the initial company the whole of whose undertaking is to be transferred in accordance with the proposals to any one or more of the transferee companies, on completion of the transfer of that company's or, as the case may be, of that subsidiary's undertaking<sup>16</sup>.

In preparing its proposals the passenger transport authority must take into account any advice given by the Secretary of State as to the provisions he regards as appropriate for inclusion in the proposals (and in particular as to the description of property, rights and liabilities of the initial company and of any wholly-owned subsidiary of the initial company it is in his view appropriate to transfer to each of the transferee companies)<sup>17</sup>. The Secretary of State may approve the proposals either without modifications<sup>18</sup> or with such modifications as, after consultation with the authority, he thinks fit<sup>19</sup>. If the Secretary of State is not satisfied that the proposals accord with any such advice given by him, or would do so with appropriate modifications, he may, after consultation with the authority, instead of approving the proposals substitute for them a plan of his own<sup>20</sup>. When the Secretary of State has approved the proposals or substituted for them a plan of his own, the authority must form each transferee company in accordance with the proposals as approved by the Secretary of State or, as the case may be, in accordance with the Secretary of State's plan, and secure the registration of that company under the Companies Act 1985, before such date as the Secretary of State may specify in relation to that company in giving his approval to the proposals or, as the case may be, in that plan<sup>21</sup>.

When all the transferee companies have been formed in accordance with the proposals as so approved or, as the case may be, in accordance with the Secretary of State's plan, the passenger transport authority must, before such date as the Secretary of State may specify in a direction given to the authority, submit to the Secretary of State a scheme providing for the transfer to each transferee company of any property, rights and liabilities of the initial company, and of the wholly-owned subsidiary of the initial company, which are to be transferred in accordance with those proposals or, as the case may be, in accordance with that plan to that transferee company<sup>22</sup>. Such a scheme does not come into force until it has been approved by the Secretary of State or until such date as the Secretary of State may, in giving

his approval, specify; and the Secretary of State may approve a scheme either without modifications or with such modifications as, after consultation with the authority, he thinks fit<sup>23</sup>. On the coming into force of such a scheme the property, rights and liabilities affected by the scheme must<sup>24</sup> be transferred and vest in accordance with the scheme<sup>25</sup>. When it appears to the authority that no further action is required on the part of the initial company to perfect any transfer effected by the scheme, the authority must secure that the initial company is wound up in accordance with the proposals as approved by the Secretary of State or, as the case may be, in accordance with the Secretary of State's plan<sup>26</sup>. This applies in relation to any subsidiary of the initial company the whole of whose undertaking is transferred under the scheme to one or more of the transferee companies as it applies in relation to the initial company<sup>27</sup>.

1 For the meaning of 'passenger transport area' see PARA 247 ante; definition applied by the Transport Act 1985 s 137(5).

2 *Ie* under *ibid* s 59(8): see PARA 1247 ante.

3 For the meaning of 'securities' see PARA 1247 note 12 ante.

4 For the meaning of 'the initial company' see PARA 1248 ante.

5 As to passenger transport authorities see PARA 247 ante.

6 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 As to directions given by the Secretary of State see PARA 1181 note 13 ante.

8 For the meaning of 'writing' see PARA 1139 note 11 ante.

9 Transport Act 1985 s 61(1). As to a company formed under s 61 see PARA 1267 post.

10 For the meaning of 'wholly-owned subsidiary' see PARA 1247 note 12 ante.

11 For the meaning of 'liability' see PARA 1247 note 11 ante.

12 Transport Act 1985 s 61(2).

13 *Ibid* s 61(3).

14 *Ibid* s 61(4)(a). As to the registration of companies see COMPANIES vol 14 (2009) PARA 131 et seq.

15 *Ibid* s 61(4)(b).

16 *Ibid* s 61(4)(c).

17 *Ibid* s 61(5).

18 As to the meaning of 'modification' see PARA 1134 note 21 ante; definition applied by *ibid* s 137(1), (2).

19 *Ibid* s 61(6).

20 *Ibid* s 61(7).

21 *Ibid* s 61(8).

22 *Ibid* s 61(9).

23 *Ibid* s 61(10).

24 *Ie* subject to *ibid* s 129: see PARA 1265 post.

25 *Ibid* s 61(11). As to the modification of the Transport Act 1968 Sch 4 (as amended) (supplementary provisions as to certain transfers of property, rights and liabilities) for the purpose of its application to transfers under the Transport Act 1985 s 61 see the Transport Act 1985 (Modifications in Schedule 4 to the Transport Act 1968) Order 1985, SI 1985/1903 (amended by SI 1987/337); the Transport Act 1985 (Modifications in Schedule

4 to the Transport Act 1968) (Further Modifications) Order 1993, SI 1993/2797 (amended by SI 1993/2909); and PARA 1265 post. See further the Constitutional Reform Act 2005 s 85, Sch 14 Pt 3.

26 Transport Act 1985 s 61(12).

27 Ibid s 61(13).

## UPDATE

### 1249 Division of undertakings of specified companies

NOTE 1--Transport Act 1985 s 137(5) amended: Local Transport Act 2008 Sch 4 para 40.

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### 1250. Protection of employee benefits on transfer and division of bus undertakings.

The passenger transport executive<sup>1</sup> for any passenger transport area<sup>2</sup> has power to make, in such manner as it thinks fit, such provision as appears to it to be appropriate in connection with either the first or the second transfer<sup>3</sup> for the maintenance to any extent of any concession, benefit or privilege of a description enjoyed immediately before the first transfer date by<sup>4</sup>: (1) persons who then were or had been employed in such part of the passenger transport executive's undertaking, or of the undertaking of any wholly-owned subsidiary<sup>5</sup> of the passenger transport executive, as was transferred on that date to the initial company<sup>6</sup>; or (2) members of the families of any such persons<sup>7</sup>.

The passenger transport authority for any passenger transport area has power to make, in such manner as it thinks fit, such provision as appears to it to be appropriate in connection with the second transfer for the maintenance to any extent of any concession, benefit or privilege of a description enjoyed immediately before the second transfer date by<sup>8</sup>: (a) persons who then were or had been employed in any undertaking or part of an undertaking transferred on that date to a company formed in pursuance of written proposals<sup>9</sup>; or (b) members of the families of any such persons<sup>10</sup>.

Where provision for the maintenance of a concession, benefit or privilege of any description may be so made<sup>11</sup> provision may instead be made, in any such cases or classes of case<sup>12</sup>, for the making of any payment or the provision of any other concession, benefit or privilege in compensation for loss or, as the case may be, for any reduction or limitation of concessions, benefits or privileges of that description<sup>13</sup>.

1 As to passenger transport executives see PARA 247 ante.

2 For the meaning of 'passenger transport area' see PARA 247 ante; definition applied by the Transport Act 1985 s 137(5).

3 For the purposes of ibid s 62, as it applies in relation to the passenger transport executive or, as the case may be, in relation to the passenger transport authority for any passenger transport area, 'the first transfer' means the transfer under s 59(7) (see PARA 1247 ante) to the initial company of property, rights and liabilities of the passenger transport executive for that area; and 'the second transfer' means the transfer under s 61(11) (see PARA 1249 ante) to companies formed under s 61 (see PARA 1249 ante) of property, rights and liabilities of

the initial company: s 62(1). For the meaning of 'the initial company' see PARA 1248 ante; and for the meaning of 'liability' see PARA 1247 note 11 ante.

4 Ibid s 62(2). For the purposes of s 62, as it applies in relation to the passenger transport executive or, as the case may be, in relation to the passenger transport authority for any passenger transport area, 'the first transfer date' and 'the second transfer date' mean respectively the date on which the first transfer and the date on which the second transfer takes effect: s 62(1).

5 For the meaning of 'wholly-owned subsidiary' see PARA 1247 note 12 ante.

6 Transport Act 1985 s 62(2)(a).

7 Ibid s 62(2)(b).

8 Ibid s 62(3). This provision does not apply to any concession, benefit or privilege of a description to which s 62(2) (see the text to notes 4-7 supra) applies: s 62(4). See also note 3 supra.

9 Ibid s 62(3)(a). The text refers to a company formed under s 61: see PARA 1249 ante.

10 Ibid s 62(3)(b).

11 Ie under ibid s 62(2) or (3): see the text and notes 1-10 supra.

12 Ie to which ibid s 62(2) or (3) applies: see the text and notes 1-10 supra.

13 Ibid s 62(5).

## UPDATE

### **1250 Protection of employee benefits on transfer and division of bus undertakings**

NOTE 2--Transport Act 1985 s 137(5) amended: Local Transport Act 2008 Sch 4 para 40.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(iii) Local Passenger Transport Services/A. PASSENGER TRANSPORT AREAS/1251. Incorporation of passenger transport executives in authorities for their area.

### **1251. Incorporation of passenger transport executives in authorities for their area.**

The Secretary of State<sup>1</sup> may by order make provision for the transfer of all functions<sup>2</sup>, property, rights and liabilities<sup>3</sup> of the passenger transport executive<sup>4</sup> for any passenger transport area<sup>5</sup> specified in the order to the passenger transport authority<sup>6</sup> for that area<sup>7</sup>. Such an order may contain such supplementary, incidental and consequential provisions as may appear to the Secretary of State to be necessary or expedient<sup>8</sup>. Any such order may, in particular provide for<sup>9</sup>: (1) enactments relating to the functions of passenger transport executives and passenger transport authorities respectively to have effect in relation to the passenger transport area specified in the order with such modifications<sup>10</sup> as may be so specified<sup>11</sup>; and (2) the dissolution of the passenger transport executive for that area<sup>12</sup>. The property, rights and liabilities to which such an order relates must<sup>13</sup> be transferred and vest in accordance with the order on such date as may be appointed by the order for that purpose<sup>14</sup>. No order may be so made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament<sup>15</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

- 2 For the meaning of 'functions' see PARA 1252 note 14 post.
- 3 For the meaning of 'liability' see PARA 1247 note 11 ante.
- 4 As to passenger transport executives see PARA 247 ante.
- 5 For the meaning of 'passenger transport area' see PARA 247 ante; definition applied by the Transport Act 1985 s 137(5).
- 6 As to passenger transport authorities see PARA 247 ante.
- 7 Transport Act 1985 s 85(1). At the date at which this volume states the law no such orders had been made.
- 8 Ibid s 85(2).
- 9 Ibid s 85(3). This is expressed to be without prejudice to the generality of s 85(2).
- 10 As to the meaning of 'modification' see PARA 1134 note 21 ante; definition applied by ibid s 137(1), (2).
- 11 Ibid s 85(3)(a). The Secretary of State may by order provide for the modifications in the enactments mentioned in s 85(3)(a), as those modifications apply for the time being in relation to passenger transport areas to which an order under s 85 applies, to have general effect on the date on which, by virtue of the cumulative effect of orders under s 85, they first have effect in relation to all such areas in Great Britain: s 86(1). For the meaning of 'Great Britain' see PARA 205 note 3 ante. Any order made under s 86 may contain such supplementary, incidental and consequential provisions (including provisions modifying any enactments contained in the Transport Act 1985 or any other Act) as may appear to the Secretary of State to be necessary or expedient in consequence of giving general effect to the modifications mentioned in s 86(1): s 86(2). At the date at which this volume states the law no such orders had been made.
- 12 Ibid s 85(3)(b).
- 13 Ie subject to ibid s 85(5): see note 14 infra.
- 14 Ibid s 85(4). Subject to s 85(6)-(8), the Transport Act 1968 Sch 4 (as amended) applies to any transfer under the Transport Act 1985 s 85(4); and s 85(4) has effect subject to the provisions of the Transport Act 1968 Sch 4 (as amended): Transport Act 1985 s 85(5). In the Transport Act 1968 Sch 4 (as amended) as it applies by virtue of the Transport Act 1985 s 85(5), any reference to a transfer by or a vesting by virtue of the Transport Act 1968 must be read as a reference to a transfer by or a vesting by virtue of the order, and the reference in the Transport Act 1968 Sch 4 para 13(5) to the relevant provisions of the Transport Act 1968 must be read as including a reference to the relevant provisions of the Transport Act 1985: s 85(6). Any order under s 85 may make modifications in the Transport Act 1968 Sch 4 (as amended) for the purposes of its application to a transfer effected by that order: Transport Act 1985 s 85(7).
- 15 Ibid s 85(8).

## UPDATE

### **1251 Incorporation of passenger transport executives in authorities for their area**

TEXT AND NOTES 1-7--Transport Act 1985 s 85(1) amended: Local Transport Act 2008 Sch 4 para 30(2).

NOTE 5--Transport Act 1985 s 137(5) amended: Local Transport Act 2008 Sch 4 para 40.

TEXT AND NOTES 9-12--Transport Act 1985 s 85(3) amended: Local Transport Act 2008 Sch 4 para 30(3).

NOTE 11--Transport Act 1985 s 86(1) amended: Local Transport Act 2008 Sch 4 para 31.

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## **B. OTHER AREAS**

### **1252. Functions of local councils with respect to passenger transport in areas other than passenger transport areas.**

In each non-metropolitan county<sup>1</sup> of England and Wales it is the duty of the county council<sup>2</sup> to secure the provision of such public passenger transport services<sup>3</sup> as the council considers it appropriate to secure to meet any public transport requirements within the county which would not in its view be met apart from any action taken by it for that purpose<sup>4</sup>.

A non-metropolitan district council<sup>5</sup> in England has power to secure the provision of such public passenger transport services as it considers appropriate to secure to meet any public transport requirements within its area which would not in its view be met apart from any action taken by it for that purpose<sup>6</sup>. For the purpose of securing the provision of certain services<sup>7</sup> any council has power to enter into an agreement providing for service subsidies<sup>8</sup>.

A non-metropolitan county council in England and Wales has power to take any measures that appears to it to be appropriate for the purpose of or in connection with promoting, so far as relates to its area<sup>9</sup>:

- 1859 (1) the availability of public passenger transport services other than subsidised services<sup>10</sup> and the operation of such services, in conjunction with each other and with any available subsidised services, so as to meet any public transport requirements the council considers appropriate to meet<sup>11</sup>; or
- 1860 (2) the convenience of the public (including persons who are elderly or disabled) in using all available public passenger transport services (whether subsidised or not)<sup>12</sup>.

It is the duty of a county council, in exercising such power, to have regard to a combination of economy, efficiency and effectiveness<sup>13</sup>.

It is the duty of any council, in exercising or performing any of its functions<sup>14</sup>, to have regard to the transport needs of members of the public who are elderly or disabled and to the appropriate bus strategy<sup>15</sup>.

1 For the meaning of 'non-metropolitan county' see PARA 1179 note 1 ante. As to the construction of references to counties in relation to Wales see PARA 1179 note 1 ante. As to local government areas and authorities see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

2 Transport Act 1985 s 63(2).

3 'Public passenger transport services' means all those services on which members of the public rely for getting from place to place, when not relying on private facilities of their own, including school transport but not: (1) services provided under permits under *ibid* s 19 (see PARA 1183 ante), other than services provided wholly or mainly to meet the needs of members of the public who are elderly or disabled; or (2) excursions or tours: s 63(10)(a). For the meaning of 'excursion or tour' see PARA 1178 note 33 ante. As to the interpretation of 'wholly or mainly' see PARA 1137 note 9 ante.

4 *Ibid* s 63(1) (amended by the Transport Act 2000 ss 161, 274, Sch 11 paras 9, 11(1), (2), Sch 31 Pt II). It is at the county council's discretion to determine what constitutes an appropriate provision when discharging its

duty under this provision, and in so determining, it is entitled to have regard to the availability of funds and their source: *R v Hertfordshire County Council, ex p Three River District Council* (1992) 90 LGR 526.

As to the power of a parish council or community council to investigate inter alia the provision and use of, and the need for, public passenger transport services in its area see the Local Government and Rating Act 1997 s 29; and PARA 1253 post.

As to the provision of public passenger transport services in Wales see PARA 1261 post.

5 'Non-metropolitan district' means any district other than a metropolitan district: Local Government Act 1972 s 270(2).

In relation to Wales, for the purposes of the Transport Act 1985 Pt IV (ss 57-87) (as amended), references to a district council must be read as references to a county council or county borough council, and references to a district must be read as references to a county or, as the case may be, county borough: s 87(f) (added by the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 39(8)). See further LOCAL GOVERNMENT vol 69 (2009) PARA 37 et seq.

6 Transport Act 1985 s 63(4) (amended by the Local Government (Wales) Act 1994 s 66(8), Sch 7 para 39(1), Sch 18).

7 Ie under the Transport Act 1985 s 63(1)(a) or, as the case may be, s 63(4).

8 Ibid s 63(5). However, its power to do so is to be exercisable only where the service in question would not be provided without subsidy (s 63(5)(a)), and is subject to ss 89-92 (as amended) (see PARAS 1277-1279 post) (s 63(5)(b)).

References, in relation to any passenger transport executive, non-metropolitan county or district council, to agreements providing for service subsidies are references to agreements under which any person undertakes to provide a public passenger transport service of any description on terms which include provision for the making of payments to that person by that executive or council: see ss 63(10)(b), 137(4). As to passenger transport executives see PARA 247 ante.

9 See ibid s 63(6).

10 References in ibid s 63(6) to subsidised services are references to services provided under an agreement providing for service subsidies entered into by the council in question or by any other county or district council under s 63 (as amended), or by the executive for any passenger transport area under the Transport Act 1968 s 9A(4) (as added) (see PARA 248 note 6 ante): see the Transport Act 1985 s 63(9). For the meaning of 'passenger transport area' see PARA 247 ante; definition applied by s 137(5).

11 Ibid s 63(6)(a).

12 Ibid s 63(6)(b).

13 See ibid s 63(7) (amended by the Transport Act 2000 s 161, Sch 11 para 11(4)). As to sanctions and remedies for breach of statutory duty see ADMINISTRATIVE LAW; STATUTES vol 44(1) (Reissue) PARA 1353 et seq.

14 Ie under ibid s 63(1)-(7) (as amended): see the text and notes 1-9 supra.

15 Ibid s 63(8) (amended by the Transport Act 2000 Sch 11 para 11(5)). In the Transport Act 1985 s 63(8) (as amended), 'the appropriate bus strategy' means: (1) in the case of a council which is a local transport authority (within the meaning of the Transport Act 2000 s 108(4): see PARA 1190 ante), its bus strategy; (2) in the case of a district council which is not such an authority, the bus strategy of the council for the county in which the district is situated: Transport Act 1985 s 63(8A) (added by the Transport Act 2000 Sch 11 para 11(6)).

## UPDATE

### **1252 Functions of local councils with respect to passenger transport in areas other than [integrated transport areas and] passenger transport areas**

NOTE 8--Transport Act 1985 s 63(5) amended, s 63(5A) added: Local Transport Act 2008 s 68(2), (3).

NOTE 10--Transport Act 1985 s 63(9) amended: Local Transport Act 2008 Sch 4 para 20(1). Transport Act 1985 s 137(5) amended: Local Transport Act 2008 Sch 4 para 40.

TEXT AND NOTES 14, 15--Transport Act 1985 s 63(8) amended: Local Transport Act 2008 ss 10(10)(a), 131, Sch 7 Pt 1.

NOTE 15--Transport Act 1985 s 63(8A) repealed: Local Transport Act 2008 ss 10(10)(b), 131, Sch 7 Pt 1.

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### **1253. Information about transport.**

A parish council<sup>1</sup> or community council<sup>2</sup> may investigate: (1) the provision and use of, and the need for, public passenger transport services in its area<sup>3</sup>; (2) the use of and need for roads in its area<sup>4</sup>; and (3) the management and control of traffic in its area<sup>5</sup>. It may also publicise information on public passenger transport services in its area or, on any conditions it thinks fit, assist others to do so<sup>6</sup>.

1 As to the constitution and powers of parish councils see LOCAL GOVERNMENT vol 69 (2009) PARA 27 et seq.

2 As to the constitution and powers of community councils see LOCAL GOVERNMENT vol 69 (2009) PARA 41 et seq.

3 Local Government and Rating Act 1997 s 29(1)(a). For these purposes, 'public passenger transport services' has the same meaning as in the Transport Act 1985 s 63(10) (see PARA 1252 note 3 ante): Local Government and Rating Act 1997 s 29(3).

4 Ibid s 29(1)(b).

5 Ibid s 29(1)(c).

6 Ibid s 29(2).

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### **1254. Co-operation.**

Any non-metropolitan county<sup>1</sup> or district council<sup>2</sup> and Transport for London or any of its subsidiaries<sup>3</sup> each has power to enter into any agreement or arrangements with the other under which that council or, as the case may be, Transport for London or that subsidiary undertakes to contribute towards any expenditure incurred by the other party to the agreement or arrangements in making payments to a person providing a public passenger transport service<sup>4</sup> under any agreement entered into by that other party in exercise of any power that other party may have to secure the provision of that service<sup>5</sup>. The agreement under which the payments are made must have been entered into in pursuance of the agreement or arrangements between the council in question and Transport for London or any of its subsidiaries<sup>6</sup>.



1 For the meaning of 'non-metropolitan county' see PARA 1179 note 1 ante. As to the construction of references to counties in relation to Wales see PARA 1179 note 1 ante.

2 For the meaning of 'non-metropolitan district' see PARA 1252 note 5 ante. As to the construction of references to districts in relation to Wales see PARA 1252 note 5 ante.

3 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq. As to the meaning of 'subsidiary' see PARA 1233 note 7 ante.

4 For the meaning of 'public passenger transport services' see PARA 1252 note 3 ante.

5 Transport Act 1985 s 65(1) (amended by the Transport for London (Consequential Provisions) Order 2003, SI 2003/1615, art 2, Sch 1 Pt 1 para 12(1), (2)(a)(i)). This is expressed to be subject to the Transport Act 1985 s 65(2), (3) (as amended) (see the text and note 6 infra).

6 Ibid s 65(2) (amended by the Transport for London (Consequential Provisions) Order 2003, SI 2003/1615, Sch 1 Pt 1 para 12(2)(b)). Transport for London may not exercise its powers under the Greater London Authority Act 1999 s 156(2) or (3) (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 287), and no subsidiary of Transport for London may enter into a transport subsidiary's agreement (within the meaning of s 169: see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 288), in pursuance of any agreement or arrangement entered into under the Transport Act 1985 s 65 (as amended) except in a case where the service in question would not be provided without a subsidy and in accordance with ss 89-92 (as amended) (see PARAS 1277-1279 post): s 65(3) (substituted by the Transport for London (Consequential Provisions) Order 2003, SI 2003/1615, Sch 1 Pt 1 para 12(2)(c)).

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### **1255. Exclusion of powers of certain councils, and the formation of companies, to run council bus undertakings.**

A non-metropolitan district council in England<sup>1</sup>, or a county council or county borough council in Wales<sup>2</sup> does not have power to provide a service for the carriage of passengers by road<sup>3</sup> which requires a PSV operator's licence<sup>4</sup>.

However, this does not have effect in relation to any council which, at the time when this provision comes into force<sup>5</sup>, is providing any such service until the end of such period as may be specified by order made by the Secretary of State<sup>6</sup>. Any such order may apply to all such councils<sup>7</sup> which are not for the time being exempt<sup>8</sup>, to any class of such councils, or to any such council specified in the order; and different periods may be specified by any such order in relation to different councils or classes of councils to which it applies<sup>9</sup>. Any such order must, in relation to every period specified in the order<sup>10</sup> ('the primary period'), also specify a period ending before the primary period as the period allowed to councils to which the primary period applies for complying with such of certain requirements<sup>11</sup> as are applicable to them<sup>12</sup>. Any order amending a previous order<sup>13</sup>, in so far as it extends any period specified in the previous order, may be framed so as to have effect from a date earlier than the making of the order<sup>14</sup>.

Where such an order is made, the council or, as the case may be, each of the councils to which the order applies must, before the end of that council's preparatory period, form (whether alone or jointly with any other council operating a bus undertaking<sup>15</sup>) one or more companies<sup>16</sup> for the purpose of carrying on<sup>17</sup>:

- 1861 (1) activities of any description included among the activities of the bus undertaking of that council or, as the case may be, of any of the councils concerned in the formation of the company or companies in question<sup>18</sup>;
- 1862 (2) activities of any other description included among the activities of any joint undertaking<sup>19</sup> of which that council's bus undertaking, or, as the case may be, the bus undertaking of any council so concerned, forms part<sup>20</sup>; and
- 1863 (3) any other activities which appear to the council or, as the case may be, to both or all of the councils so concerned to be incidental to or connected with any activities within head (1) or head (2) above or to be capable of being conveniently carried on in association with any such activities<sup>21</sup>.

A council's bus undertaking must be regarded for the purposes of Part IV of the Transport Act 1985<sup>22</sup> as forming part of a joint undertaking if the services for the carriage of passengers by road provided in the course of the activities of the council's bus undertaking are wholly or mainly provided under any agreement for<sup>23</sup>:

- 1864 (a) the provision or operation of those services by a body acting on the joint behalf of that council and one or more other councils<sup>24</sup>; or
- 1865 (b) the operation of those services by any company operating those services in conjunction with services for the carriage of passengers by road provided by that company<sup>25</sup>.

1 For the meaning of 'non-metropolitan district' see PARA 1252 note 5 ante. As to local government areas and authorities in England see LOCAL GOVERNMENT vol 69 (2009) PARA 24 et seq. As to the construction of references to districts in relation to Wales see PARA 1252 note 5 ante.

2 As to local government areas and authorities in Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 37 et seq.

3 As to services for the carriage of passengers by road see PARA 1247 note 6 ante. For the meaning of 'road' see PARA 206 ante; definition applied by the Transport Act 1985 s 137(1), (2).

4 See *ibid* s 66(1) (amended by the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 39(3)). This is expressed to be subject to the Transport Act 1985 s 71 (see PARA 1259 post) and s 66(2) (see the text to note 6 infra), but notwithstanding anything in any other statutory provision. For the meaning of 'statutory provision' see PARA 1152 note 3 ante; definition applied by s 137(1), (2). For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante; definition applied by s 137(1), (2).

5 *Ie* 6 January 1986: see the Transport Act 1985 (Commencement No 1) Order 1985, SI 1985/1887.

6 Transport Act 1985 ss 66(2). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. As to the order made see the Transport Act 1985 (Exclusion of Bus Operating Powers and Exemption for Councils Running Small Bus Undertakings) Order 1985, SI 1985/1902.

7 *Ie* all councils within the Transport Act 1985 s 66(2): see the text to note 6 supra.

8 *Ie* exempt by virtue of *ibid* s 71 (see PARA 1259 post) from s 66(1) (see the text to note 4 supra).

9 *Ibid* s 66(3).

10 *Ie* for the purposes of *ibid* s 66(2): see the text to note 6 supra.

11 *Ie* *ibid* ss 67-69: see PARAS 1256-1257 post.

12 *Ibid* s 66(4). A period specified by virtue of s 66(4) in an order under s 66(2) (see the text to note 6 supra) is referred to in ss 67-69 (see PARAS 1256-1257 post), in relation to any council to which it applies, as the council's preparatory period: s 66(5).

13 *Ie* under *ibid* s 66(2): see the text to note 6 supra.

14 *Ibid* s 66(6).

15 For the purposes of *ibid* ss 66-87 (as amended), references to a council operating a bus undertaking are references to any council to which s 66(2) (see the text to note 6 *supra*) applies: ss 66(2), 87(b).

References, in relation to any council operating a bus undertaking, to the council's bus undertaking are references (according to the context) to: (1) all activities carried on, whether by the council itself or by any other authority or person in pursuance of any such arrangements as are mentioned in s 66(7)(b) or otherwise, in or for the purposes of the provision by the council of any such service; or (2) all property of the council used or appropriated for use and all rights and liabilities of the council subsisting for the purposes of any such activities: ss 66(7)(c), 87(c). For the meaning of 'liability' see *PARA 1247* note 11 *ante*.

Any council which has made (whether alone or jointly with any other authority or authorities) arrangements under any enactment for the discharge by any other authority or person of that council's functions with respect to the operation of any such service must be taken to be providing that service at any time when it is being provided under those arrangements: ss 66(7)(b), 87(c). For the meaning of 'functions' see *PARA 1252* note 14 *ante*.

16 Any company so formed is a company limited by shares registered under the Companies Act 1985: Transport Act 1985 s 67(2). As to the registration of companies see *COMPANIES* vol 14 (2009) *PARA 131* *et seq*.

17 *Ibid* s 67(1).

18 *Ibid* s 67(1)(a).

19 For the purposes of *ibid* Pt IV (as amended), references, in relation to a council whose bus undertaking forms part of a joint undertaking, to the joint undertaking are references to all activities carried on, or (according to the context) to all property used or appropriated for use and all rights and liabilities subsisting for the purposes of any activities carried on, in pursuance of the agreement by reference to which that council falls within s 67(3) (see the text to notes 23-25 *infra*): ss 67(6), 87(d).

20 *Ibid* s 67(1)(b).

21 *Ibid* s 67(1)(c).

22 *Ie* *ibid* Pt IV (as amended).

23 *Ibid* s 67(3). This is expressed to be subject to s 67(4), (5) (see notes 24-25 *infra*).

24 *Ibid* s 67(3)(a). Section 67(3)(a) only applies where the agreement provides for the distribution among the parties on its termination of: (1) all assets, or the proceeds of all assets, used or appropriated for use for the purpose of providing services for the carriage of passengers by road under the agreement; or (2) all such assets or proceeds excluding only land or the proceeds of disposal of land: s 67(4).

25 *Ibid* s 67(3)(b). Section 67(3)(b) only applies where: (1) the agreement includes provision for securing that the parties on termination of the agreement hold shares of equal value in assets required to be brought into account on termination of the agreement; and (2) those assets include all assets so used or appropriated for use: s 67(5).

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## **1256. Schemes for transfer of individual council bus undertakings to companies.**

A council<sup>1</sup> must, before the end of that council's preparatory period<sup>2</sup>, submit to the Secretary of State<sup>3</sup> a scheme providing for the transfer to a company or companies formed by that council<sup>4</sup> of<sup>5</sup>: (1) such of the property, rights and liabilities<sup>6</sup> of the council comprised in the council's bus undertaking<sup>7</sup>; and (2) such other property, rights and liabilities of the council<sup>8</sup>, as it appears<sup>9</sup> to the council to be appropriate to transfer to the company or companies in question<sup>10</sup>. However, this does not apply to a council whose bus undertaking forms part of a joint undertaking<sup>11</sup>,

except where any of the activities of the council's bus undertaking ('the separate activities') are carried on by the council otherwise than in pursuance of any agreement<sup>12</sup>; and in the latter case the reference in head (1) above to property, rights and liabilities of the council must be read as limited to property used or appropriated for use and rights and liabilities subsisting for the purposes of the separate activities<sup>13</sup>.

In preparing such a scheme the council or councils concerned must take into account any advice given by the Secretary of State as to the provision he regards as appropriate for inclusion in the scheme (and in particular as to the description of property, rights and liabilities it is in his view appropriate to transfer to the company or companies in question)<sup>14</sup>.

Such a scheme may not come into force until it has been approved by the Secretary of State or until such date as the Secretary of State may, in giving his approval, specify<sup>15</sup>. The Secretary of State may approve a scheme either without modifications<sup>16</sup> or with such modifications as, after consultation with the council or councils concerned, he thinks fit<sup>17</sup>.

If the Secretary of State is not satisfied that a scheme so submitted accords with any such advice given by him, or would do so with appropriate modifications, he may, after consultation with the council or councils concerned, instead of approving the scheme substitute for it a scheme of his own, to come into force on such date as may be specified in the scheme<sup>18</sup>. On the coming into force of a scheme, the property, rights and liabilities affected by the scheme must<sup>19</sup> be transferred and vest in accordance with the scheme<sup>20</sup>.

1    Ie a council to which the Transport Act 1985 s 67(1) applies: see PARA 1255 ante.

2    As to the council's preparatory period see PARA 1255 text and note 12 ante.

3    As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4    Ie under the Transport Act 1985 s 67: see PARA 1255 ante.

5    Ibid s 68(1).

6    For the meaning of 'liability' see PARA 1247 note 11 ante.

7    Transport Act 1985 s 68(1)(a). As to references to the council's bus undertaking see PARA 1255 note 15 ante.

8    Ibid s 68(1)(b).

9    See PARA 1138 note 5 ante.

10   Transport Act 1985 s 68(1). This is expressed to be subject to s 68(2) (see the text to note 13 infra). As to orders specifying dates for compliance with the requirements of s 68 see the Transport Act 1985 (Exclusion of Bus Operating Powers and Exemption for Councils Running Small Bus Undertakings) Order 1985, SI 1985/1902; and PARA 1255 text and note 6 ante.

Two or more councils to which the Transport Act 1985 s 68 applies may submit a joint scheme for the purposes of s 68(1); and in any such case the scheme may provide for the transfer of any property, rights and liabilities within s 68(1) to a company or companies formed under s 67 (see PARA 1255 ante) by any other of those councils: s 68(3).

11   As to a joint undertaking of which any council's bus undertaking forms part see PARA 1255 ante.

12   Ie as is mentioned in the Transport Act 1985 s 67(3): see PARA 1255 ante.

13   Ibid s 68(2).

14   Ibid s 68(4).

15   Ibid s 68(5).

16   For the meaning of 'modification' see PARA 1134 note 21 ante; definition applied by ibid s 137(1), (2).

17 Ibid s 68(5).

18 Ibid s 68(6).

19 Ie subject to ibid s 129: see PARA 1265 post.

20 Ibid s 68(7). As to the modification of the Transport Act 1968 Sch 4 (as amended) (supplementary provisions as to certain transfers of property, rights and liabilities) for the purposes of its application to transfers under the Transport Act 1985 s 68(7) see the Transport Act 1985 (Modifications in Schedule 4 to the Transport Act 1968) Order 1985, SI 1985/1903 (as amended); and PARA 1249 ante.

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### **1257. Orders for transfer of joint undertakings to companies.**

A council<sup>1</sup> whose bus undertaking forms part of a joint undertaking<sup>2</sup> ('a council participating in a joint undertaking')<sup>3</sup> must, before the end of that council's preparatory period<sup>4</sup>, submit to the Secretary of State<sup>5</sup> written proposals for the transfer to a company or companies formed by that council<sup>6</sup> of<sup>7</sup>:

- 1866 (1) such of the property, rights and liabilities<sup>8</sup> comprised in that council's share of the joint undertaking (whether or not then vested in that council)<sup>9</sup>; and
- 1867 (2) such other property, rights and liabilities of the council<sup>10</sup>,

as it appears to the council to be appropriate to transfer to the company or companies in question<sup>11</sup>.

In certain cases<sup>12</sup> both or all the councils participating in the joint undertaking may submit joint proposals<sup>13</sup>, and in any such case the proposals<sup>14</sup>: (a) may relate to each council's share of the joint undertaking and (without prejudice to that) to all property, rights and liabilities of the body<sup>15</sup> carrying on that undertaking<sup>16</sup>; and (b) may provide for the transfer of any property, rights and liabilities<sup>17</sup> to a company or companies formed<sup>18</sup> by any one or more of those councils<sup>19</sup>.

Any proposals submitted to the Secretary of State under this provision must include proposals with respect to the terms on which the agreement under which the joint undertaking is carried on ('the operating agreement') should be terminated<sup>20</sup>. Individual proposals submitted to the Secretary of State under this provision by a single council participating in a joint undertaking must include proposals for the division of that undertaking between the parties to it and the determination of the property, rights and liabilities to be allocated to each as his share<sup>21</sup>. In preparing its written proposals<sup>22</sup> the council or councils concerned must take into account any advice given by the Secretary of State as to the provisions he regards as appropriate for inclusion in the proposals (and in particular as to the description of property, rights and liabilities it is in his view appropriate to transfer to the company or companies in question)<sup>23</sup>.

Where in relation to any joint undertaking the Secretary of State has received under this provision proposals submitted to him (whether individually or jointly) by the council or (if more than one) by both or all of the councils participating in the undertaking, he must, after considering those proposals and consulting the council or councils concerned, make an order<sup>24</sup>. Before making such an order in certain cases<sup>25</sup> the Secretary of State must give the company

carrying on the joint undertaking an opportunity of making written representations with respect to any proposals submitted to the Secretary of State in relation to that undertaking by the council concerned, and consider any such representations made to him within such time as he may allow for the purpose<sup>26</sup>.

An order made by the Secretary of State under this provision with respect to any joint undertaking may make provision<sup>27</sup>:

- 1868 (i) where joint proposals were submitted<sup>28</sup> with respect to that undertaking, for the transfer in accordance with the proposals of all property, rights and liabilities of the body carrying on that undertaking, and such of the property, rights and liabilities of the councils participating in the joint undertaking as may be specified in the order<sup>29</sup>;
- 1869 (ii) where individual proposals were submitted by any council participating in the joint undertaking, for the division of that undertaking between the parties to it and the determination of the property, rights and liabilities to be allocated to each as his share<sup>30</sup>;
- 1870 (iii) in a case within head (ii) above, for the transfer in accordance with the proposals submitted by any such council of such of the property, rights and liabilities comprised in that council's share of the joint undertaking as determined by or under the order (whether or not then vested in that council) as may be specified in the order, and such other property, rights and liabilities of that council as may be so specified<sup>31</sup>;
- 1871 (iv) for the transfer to such person as may be so specified from any council participating in the joint undertaking, or from the body carrying on the undertaking, of all such functions<sup>32</sup> as may be determined by or under the order, being functions conferred or imposed on that council or body under any Act for the purposes of or in connection with the joint undertaking<sup>33</sup>;
- 1872 (v) for determining the effect of any transfer under the order in relation to persons employed in the joint undertaking or any part of it<sup>34</sup>;
- 1873 (vi) for the protection of the interests of persons who by virtue of any transfer under the order fall to be treated as persons employed by the person taking that transfer<sup>35</sup>;
- 1874 (vii) for the termination of the operating agreement on such terms as may be specified in the order<sup>36</sup>; and
- 1875 (viii) in certain cases<sup>37</sup>, for the dissolution of the body carrying on the joint undertaking<sup>38</sup>.

An order made by the Secretary of State under this provision: (A) may give effect to the proposals submitted to him under this provision either without modifications<sup>39</sup> or with such modifications as, after consultation with the council or councils concerned, the Secretary of State thinks fit<sup>40</sup>; or (B) if the Secretary of State is not satisfied that the proposals accord with any such advice given by him<sup>41</sup>, or would do so with appropriate modifications, may make such provision in substitution for those proposals as the Secretary of State, after such consultation, thinks fit<sup>42</sup>.

1 le a council to which the Transport Act 1985 s 67(1) applies: see PARA 1255 ante.

2 As to a joint undertaking of which any council's bus undertaking forms part see PARA 1255 ante.

3 Transport Act 1985 s 69(1).

4 As to the council's preparatory period see PARA 1255 note 12 ante.

5 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

- 6    Ie under the Transport Act 1985 s 67: see PARA 1255 ante.
- 7    Ibid s 69(2).
- 8    For the meaning of 'liability' see PARA 1247 note 11 ante.
- 9    Transport Act 1985 s 69(2)(a).
- 10   Ibid s 69(2)(b).
- 11   Ibid s 69(2). See PARA 1255 ante.
- 12   Ie in any case within ibid s 67(3)(a): see PARA 1255 ante.
- 13   Ie for the purposes of ibid s 69(2): see the text to notes 7-10 supra.
- 14   Ibid s 69(3).
- 15   For the meaning of 'body' see PARA 1183 note 5 ante.
- 16   Transport Act 1985 s 69(3)(a).
- 17   Ie within ibid s 69(2): see the text to notes 7-10 ante.
- 18   Ie under ibid s 67: see PARA 1255 ante.
- 19   Ibid s 69(3)(b).
- 20   Ibid s 69(4).
- 21   Ibid s 69(5).
- 22   Ie for the purposes of ibid s 69(2): see the text and notes 7-10 supra.
- 23   Ibid s 69(6).
- 24   Ibid s 69(7). The order must be in accordance with s 69(8)-(10) (see the text and notes 25-42 infra), and s  
70 (see PARA 1258 post). At the date at which this volume states the law no such order had been made under s  
69.
- 25   Ie in any case within ibid s 67(3)(b): see PARA 1255 ante.
- 26   Ibid s 69(8).
- 27   Ibid s 69(9).
- 28   Ie under ibid s 69(3): see the text and notes 11-19 supra.
- 29   Ibid s 69(9)(a).
- 30   Ibid s 69(9)(b).
- 31   Ibid s 69(9)(c). An order made by the Secretary of State with respect to any joint undertaking may also  
make provision in any case within s 67(3)(b) (see PARA 1255 ante), for the transfer to the company carrying on  
the joint undertaking of any property, rights and liabilities of the council concerned which are comprised in that  
company's share as determined by or under the order: s 69(9)(c).
- 32   For the meaning of 'functions' see PARA 1252 note 14 ante.
- 33   Transport Act 1985 s 69(9)(d).
- 34   Ibid s 69(9)(e).
- 35   Ibid s 69(9)(f).
- 36   Ibid s 69(9)(g).

- 37 le in any case within ibid s 67(3)(a): see PARA 1255 ante.
- 38 Ibid s 69(9)(h).
- 39 For the meaning of 'modification' see PARA 1134 note 21 ante; definition applied by ibid s 137(1), (2).
- 40 Ibid s 69(10)(a).
- 41 le as is mentioned in ibid s 69(6): see the text to note 27 supra.
- 42 Ibid s 69(10)(b). References in s 69(9) (see the text to note 27 supra) to an order's making provision for the transfer of any property, rights and liabilities in accordance with any such proposals must be read as referring to those proposals as approved by the Secretary of State or to any provision made by the order by virtue of head (B) in the text, as the case may require: s 69(10).

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### **1258. General provisions contained in an order for the transfer of joint undertakings to companies.**

Any order for the transfer of joint undertakings<sup>1</sup> to companies formed to run council bus undertakings<sup>2</sup> may contain such supplementary, incidental and consequential provisions as the Secretary of State<sup>3</sup> thinks necessary or expedient for the purposes of the order, and in particular may include provision<sup>4</sup>:

- 1876 (1) for the assumption by any council participating in the joint undertaking<sup>5</sup> and by any person to whom any property, rights and liabilities<sup>6</sup> are transferred under the order of such liabilities to one another as may be determined by or under the order to be appropriate having regard to the financial arrangements of that council before the severance from the other activities of the council of the joint undertaking or, as the case may be, of any activities of that council for the purposes of the joint undertaking<sup>7</sup>;
- 1877 (2) for the settlement by a court or otherwise of any dispute or other matter arising in connection with the order<sup>8</sup>;
- 1878 (3) for making in any statutory provision<sup>9</sup> relating to, or to a class of undertakings which includes, the joint undertaking, such amendments or repeals as may appear<sup>10</sup> to the Secretary of State to be required in consequence of any transfer under the order<sup>11</sup>;
- 1879 (4) for the making by any person to whom any property, rights and liabilities are transferred under the order to any council participating in the joint undertaking of payments by way of contributions to the cost of any adjustments arising from the severance mentioned in head (1) above<sup>12</sup>; and
- 1880 (5) with respect to the consideration to be provided by any such person for any transfer under the order<sup>13</sup>.

Any property, rights and liabilities for the transfer of which provision is made by an order<sup>14</sup> must be transferred and vest in accordance with the order on such date or dates as may be appointed by the order for that purpose<sup>15</sup>.

1 As to a joint undertaking of which any council's bus undertaking forms part see PARA 1255 ante.



- 2    le any order under the Transport Act 1985 s 69: see PARA 1257 ante.
  - 3    As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
  - 4    Transport Act 1985 s 70(1).
  - 5    As to councils participating in joint undertakings see PARA 1257 text to note 3 ante.
  - 6    For the meaning of 'liability' see PARA 1247 note 11 ante.
  - 7    Transport Act 1985 s 70(1)(a).
  - 8    Ibid s 70(1)(b).
  - 9    For the meaning of 'statutory provision' see PARA 1152 note 3 ante; definition applied by ibid s 137(1), (2).
  - 10   See PARA 1138 note 5 ante.
  - 11   Transport Act 1985 s 70(1)(c).
  - 12   Ibid s 70(1)(d).
  - 13   Ibid s 70(1)(e).
  - 14   le an order under ibid s 69: see PARA 1257 ante.
  - 15   Ibid s 70(2). However, subject to s 70(4), the Transport Act 1968 Sch 4 (as amended) (supplementary provisions to certain transfers of property, rights and liabilities) applies to any transfer under the Transport Act 1985 s 70(2); and s 70(2) has effect subject to the provisions of the Transport Act 1968 Sch 4 (as amended): Transport Act 1985 s 70(3).
- In the Transport Act 1968 Sch 4 (as amended) as it applies by virtue of the Transport Act 1985 s 70(3): (1) any reference to a transfer by or a vesting by virtue of the Transport Act 1968 must be read as a reference to a transfer by or a vesting by virtue of the order; and (2) the reference in the Transport Act 1968 Sch 4 para 13(5) to the relevant provisions of the Transport Act 1968 must be read as including a reference to the relevant provisions of the Transport Act 1985: s 70(4).
- Any order under s 69 (see PARA 1257 ante) may make modifications in the Transport Act 1968 Sch 4 (as amended) for the purposes of its application to a transfer effected by that order: Transport Act 1985 s 70(5). As to the meaning of 'modification' see PARA 1134 note 21 ante; definition applied by s 137(1), (2).

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### **1259. Exemption for councils running small bus undertakings.**

Where in the case of any council operating a bus undertaking<sup>1</sup> the number of vehicles owned by the council<sup>2</sup> and used or appropriated for use in providing any service for the carriage of passengers by road<sup>3</sup> which requires a PSV operator's licence<sup>4</sup> does not exceed such number as may be specified by order<sup>5</sup> made by the Secretary of State<sup>6</sup>, the Secretary of State may on the application of that council grant to that council an exemption from the exclusion to run bus undertakings<sup>7</sup> for such period and on such terms and conditions as he thinks fit<sup>8</sup>.

Any such exemption ceases to have effect if any term or condition applicable to it is contravened<sup>9</sup>.

- 1 As to references to a council operating a bus undertaking see PARA 1255 note 15 ante.
- 2 Where a council operating a bus undertaking is in possession of a vehicle under an agreement for hire, hire-purchase, conditional sale or loan, that vehicle must be treated for the purposes of the Transport Act 1985 s 71(1) (see the text and notes 3-8 infra) as owned by the council: s 71(3).
- 3 For the meaning of 'road' see PARA 206 ante; definition applied by *ibid* s 137(1), (2).
- 4 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante; definition applied by *ibid* s 137(1), (2). See also PARA 1255 text and note 4 ante.
- 5 The number ten is specified by order for the purposes of *ibid* s 71(1): see the Transport Act 1985 (Exclusion of Bus Operating Powers and Exemption for Councils Running Small Bus Undertakings) Order 1985, SI 1985/1902, art 5.
- 6 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 7 Is an exclusion from the Transport Act 1985 s 66(1) (as amended): see PARA 1255 ante.
- 8 *Ibid* s 71(1).
- 9 *Ibid* s 71(2). As to the meaning of 'contravention' see PARA 1141 note 11 ante; definition applied by s 137(1), (2).

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## **1260. Power to run public service vehicles under local Acts or orders.**

A local authority<sup>1</sup> which under any local Act or order<sup>2</sup> is operating a tramway, light railway, trolley vehicle<sup>3</sup>, or omnibus undertaking, may as part of that undertaking run public service vehicles<sup>4</sup> on any road<sup>5</sup> inside or outside its district<sup>6</sup>. Nothing in the Road Traffic Act 1930 may authorise a local authority to run any public service vehicle<sup>7</sup>: (1) on any road on which it is for the time being prohibited by any local Act or order from running omnibuses<sup>8</sup>; or (2) except with the consent of the authority, on any road vested in a statutory dock authority as such or in a statutory harbour authority as such<sup>9</sup>; or (3) except with the consent of the company on any premises (not being part of a highway) belonging to a railway company and adjoining or giving access to a railway station<sup>10</sup>.

For the purposes of Part V of the Road Traffic Act 1930<sup>11</sup> a local authority may purchase and maintain such vehicles as may be necessary and may purchase by agreement, take on lease, and hold lands and may on any lands so purchased by it or leased to it or any lands lawfully appropriated by it for the purpose erect such buildings, sheds, and conveniences and may provide such plant and appliances as may be requisite or expedient for the establishment, running, equipment, maintenance and repair of its public service vehicles<sup>12</sup>.

A local authority authorised to run public service vehicles under Part V of the Road Traffic Act 1930 may: (a) demand and take for passengers and parcels carried on such vehicles such fares<sup>13</sup> and charges as it may think fit<sup>14</sup>; (b) if it thinks fit carry on such vehicles small parcels not exceeding a certain amount in weight<sup>15</sup> and dogs in the care of passengers, but it must not carry on such vehicles any other goods or animals<sup>16</sup>.

A local authority authorised<sup>17</sup> to run public service vehicles and any other local authority authorised to run such vehicles in any district adjacent to the district of the first-mentioned

authority, or adjacent to any district on any road in which the first-mentioned authority is for the time being authorised to run such vehicles, may make and carry into effect agreements for the management, working, and maintenance of any service which any party to the agreement is authorised to run<sup>18</sup>.

A local authority authorised to run public service vehicles and any other person, not being a local authority, may make and carry into effect agreements for the management, working, and maintenance of any service which any party to the agreement is for the time being authorised to run, either in the district of the local authority, or in any district on any road in which the authority is for the time being authorised to run such vehicles<sup>19</sup>. Agreements so entered into<sup>20</sup> may make provision with respect to all or any of the following matters<sup>21</sup>:

- 1881 (i) the working, user, management and maintenance of any vehicles, lands, depots, buildings, sheds, and property provided in connection with any services to which the agreement relates by any party to the agreement and the right to provide and use the same and to demand and take the fares and charges authorised in respect of such services<sup>22</sup>;
- 1882 (ii) the supply by any party to the agreement of vehicles and conveniences in connection therewith necessary for the purposes of such agreement and the employment of officers and servants<sup>23</sup>;
- 1883 (iii) the through running of vehicles<sup>24</sup>.

A local authority authorised to run public service vehicles may make and carry into effect agreements with any other local authority authorised to run such vehicles, and with any other person, not being a local authority, for all or any of the following purposes, so far as those purposes can be effectuated without any through running of vehicles, that is to say<sup>25</sup>:

- 1884 (A) the interchange, accommodation, conveyance, transmission and delivery of traffic arising on or coming from or destined for any service provided by any party to the agreement<sup>26</sup>;
- 1885 (B) the payment, collection and apportionment of the fares and charges and other receipts arising from any such service<sup>27</sup>.

Agreements may be made<sup>28</sup> notwithstanding any provision in any local Act or order by which the making of working agreements is restricted, but in running any service of public service vehicles on any route in pursuance of an agreement so made the local authority or other person operating the service must comply with the provisions of the Act or order, if any, by which the service is authorised<sup>29</sup>.

Where a local authority runs public service vehicles under Part V of the Road Traffic Act 1930 it must in the accounts relating to its transport undertakings distinguish, so far as may be practicable, receipts and expenditure relating to its public service vehicles from receipts and expenditure relating to any other transport undertaking, and in the receipts and expenditure relating to its public service vehicles must further distinguish receipts and expenditure on capital account from receipts and expenditure upon revenue account<sup>30</sup>.

1 For these purposes, the expression 'local authority' means: (1) the council of any county district; and (2) any joint board or joint committee which is so constituted as to include among its members representatives of the council of a county district: Road Traffic Act 1930 s 108(1) (amended by the Local Government Act 1972 s 272(1), Sch 30). The expression 'district' in relation to a joint board or joint committee means the area within which that board or committee is authorised to carry on a tramway, light railway, trolley vehicle or omnibus undertaking; and, save as aforesaid, means a county district: Road Traffic Act 1930 s 108(1) (amended by the Local Government Act 1972 s 272(1), Sch 30).

2 Certain local Acts and orders include provisions restricting or prohibiting the running of public service vehicles by persons other than local authorities.

3 For the meaning of 'trolley vehicle' see PARA 219 ante.

4 References in the Road Traffic Act 1930 to public service vehicles must be construed in like manner as if they were contained in the Public Passenger Vehicles Act 1981: s 121(1B) (added by the Statute Law (Repeals) Act 1993 s 1(2), Sch 2 para 22). For the meaning of 'public service vehicle' see PARA 1136 ante.

5 For the meaning of 'road' see PARA 206 ante.

6 Road Traffic Act 1930 s 101(1) (amended by the Transport Act 1968 s 31(1)). Without prejudice to any powers apart from the Transport Act 1968 s 37 (as amended), any local authority within the meaning of the Road Traffic Act 1930 Pt V (as amended) which, under powers conferred by s 101(1) (as amended) or by any local Act or order, is running public service vehicles may: (1) acquire by agreement the whole or any part of a public service vehicle undertaking carried on by any other person; or (2) dispose of the whole or any part of the authority's public service vehicle undertaking to any other person, whether by purchase or sale, by lease, or by exchange: Transport Act 1968 s 37(1) (amended by the Local Government Act 1974 ss 35, 42, Sch 6 para 22(10)).

7 Road Traffic Act 1930 s 101(2). The Road Traffic Act 1930 does not extend to Northern Ireland: s 123(3).

8 Ibid s 101(2)(b).

9 Ibid s 101(2)(c).

10 Ibid s 101(2)(d).

11 Ie ibid Pt V (ss 101-108) (as amended).

12 Ibid s 103.

13 'Fares' includes sums payable in respect of a contract ticket or a season ticket: ibid s 121(1).

14 Ibid s 104(1) (s 104(1), (2) amended by the Transport Charges etc (Miscellaneous Provisions) Act 1954 s 14(1), Sch 2 Pt II).

15 Ie not exceeding 56 pounds in weight: Road Traffic Act 1930 s 104(2).

16 Ibid s 104(2) (as amended: see note 14 supra).

17 'Authorised' means authorised otherwise than by virtue of an agreement under ibid s 105: s 105(6).

18 Ibid s 105(1).

19 Ibid s 105(2).

20 Ie under either s 105(1) (see the text to note 18 supra) or s 105(2) (see the text to note 19 supra).

21 Ibid s 105(3).

22 Ibid s 105(3)(a).

23 Ibid s 105(3)(b).

24 Ibid s 105(3)(c).

25 Ibid s 105(4).

26 Ibid s 105(4)(a).

27 Ibid s 105(4)(b).

28 Ie under ibid s 105.

29 Ibid s 105(5).

30 Ibid s 106. The expenses of a local authority under Pt V (as amended) must be defrayed, in the case of a joint board or joint committee, in the same manner as the general expenses of the board or committee: s 107(1)(b). A local authority may from time to time with the consent of the Secretary of State borrow such sums

as may be required for the purposes of Pt V (as amended) including the repayment of any sums previously borrowed for such purposes in the case of a joint board or joint committee in the manner in which it is authorised to borrow for the purposes of their other powers and duties: s 107(2)(b). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

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### ***C. PUBLIC PASSENGER TRANSPORT SERVICES: WALES***

#### **1261. Provision of public passenger transport services.**

The Welsh Ministers<sup>1</sup> may secure the provision of any public passenger transport services<sup>2</sup> which they consider appropriate for the purpose of meeting any public transport requirements within Wales which would not in their view otherwise be met<sup>3</sup>. In exercising this power<sup>4</sup> the Welsh Ministers must have regard to: (1) a combination of economy, efficiency and effectiveness, (2) the Wales Transport Strategy<sup>5</sup>; and (3) the transport needs of members of the public who are elderly or disabled<sup>6</sup>. For the purpose of securing the provision of a service<sup>7</sup>, the Welsh Ministers may enter into agreements providing for service subsidies<sup>8</sup>. But the Welsh Ministers may not enter into such an agreement unless the service in question would not be provided without a subsidy<sup>9</sup>.

1 See PARA 1227 note 1 ante.

2 'Public passenger transport services' means all those services on which members of the public rely for getting from place to place, when not relying on private facilities of their own, including school transport but not including: (1) services provided under permits under the Transport Act 1985 s 19 (permits in relation to use of buses by educational and other bodies: see PARA 1183 ante) other than services provided wholly or mainly to meet the needs of members of the public who are elderly or disabled; (2) excursions or tours: Transport (Wales) Act 2006 s 7(5). 'Excursion or tour' has the meaning given in the Transport Act 1985 s 137(1) (see PARA 1178 note 33 ante); Transport (Wales) Act 2006 s 7(7).

3 Ibid s 7(1).

4 Ie under ibid s 7(1).

5 As to the Wales Transport Strategy see PARA 239 ante.

6 Transport (Wales) Act 2006 s 7(2).

7 Ie under ibid s 7(1).

8 Ibid s 7(3). 'Agreements providing for service subsidies' are agreements under which any person undertakes to provide public passenger transport services of any description on terms which include provision for the making of payments to that person by the Welsh Ministers: s 7(6).

9 Ibid s 7(4).

### **UPDATE**

#### **1261 Provision of public passenger transport services**

TEXT AND NOTE 9--Transport (Wales) Act 2006 s 7(4) amended, s 7(4A) added: Local Transport Act 2008 s 69(2), (3).

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## **1262. Public Transport Users' Committee for Wales.**

The Welsh Ministers<sup>1</sup> may by order establish a body corporate, to be known as the Public Transport Users' Committee for Wales or Pwyllgor Defnyddwyr Trafnidiaeth Gyhoeddus Cymru<sup>2</sup>. The Welsh Ministers may by order provide for a body established under the above provision<sup>3</sup> to be known by a different name<sup>4</sup>. A body established under the above provision<sup>5</sup> is referred to in the Transport (Wales) Act 2006 as the Committee<sup>6</sup>. An order<sup>7</sup> may include provision: (1) about the status and membership of the Committee (including how members are to be appointed); (2) about the proceedings of the Committee; (3) about officers and staff of the Committee; (4) about the discharge of functions of the Committee (including provision for the discharge of functions by sub-committees with members who are not all members of the Committee); (5) about the making of reports by the Committee to the Welsh Ministers; (6) about the making of payments to or in respect of officers, staff and members of the Committee; (7) about the payment of pensions and the making of other payments to or in respect of former officers and staff of the Committee; (8) about the keeping of accounts by the Committee and their audit and submission to the Welsh Ministers; (9) about the acquisition and disposal by the Committee of property, rights and liabilities (including land); (10) authorising the Committee to charge for any services it provides in the discharge of any of its functions; (11) for the transfer of staff, property, rights and liabilities to the Committee<sup>8</sup>. The Welsh Ministers may make payments to the Committee of such amounts, at such times, and on such conditions (if any) as they consider appropriate<sup>9</sup>. The Welsh Ministers may by order make provision for the transfer of staff, property, rights and liabilities from the Committee to any other person<sup>10</sup>.

1 See PARA 1227 note 1 ante.

2 Transport (Wales) Act 2006 s 8(1). As to orders generally under the Transport (Wales) Act 2006 see s 13.

3 Ie under ibid s 8(1).

4 Ibid s 8(2).

5 Ie under ibid s 8(1).

6 Ibid s 8(3).

7 Ie under ibid s 8(1).

8 Ibid s 8(4).

9 Ibid s 8(5).

10 Ibid s 8(6).

## **UPDATE**

## **1262-1264 Public Transport Users' Committee for Wales ... Guidance and directions to the Committee**

In exercise of the powers conferred by Transport (Wales) Act 2006 ss 8-10, the Welsh Ministers have made Public Transport Users' Committee for Wales (Establishment) Order 2009, SI 2009/2816, which establishes the Committee (see art 3) and provides for its constitution and membership (art 4). Provision is also made for the allowances and expenses of Committee members (art 5), the appointment of staff (art 6), and the establishment of sub-committees (art 7 (amended by SI 2009/2915)). The Committee may regulate its own procedure (SI 2009/2816 art 8 (amended by SI 2009/2915)) and must submit annual reports to the Welsh Ministers (SI 2009/2816 art 9). As to the Public Transport Users' Committee for England see PARA 259A.

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### **1263. Functions of the Committee.**

The Committee<sup>1</sup> may consider and make recommendations to the Welsh Ministers<sup>2</sup> about any matter relating to public passenger transport services or facilities<sup>3</sup> to, from or within Wales<sup>4</sup>. The Committee must consider and make recommendations to the Welsh Ministers about any such matter if asked to do so by the Welsh Ministers<sup>5</sup>. The Welsh Ministers may by order: (1) confer further functions on the Committee; (2) remove functions from the Committee; (3) make changes to any functions of the Committee; (4) transfer any functions of the Committee to another person (including to the Welsh Ministers)<sup>6</sup>. Such an order<sup>7</sup> may confer a function on the Committee, or make changes to a function of the Committee, only if the new function, or the function as changed, relates to public passenger transport services or facilities to, from or within Wales<sup>8</sup>. The functions that may be conferred on the Committee under head (1) above include a power: (a) to enter into arrangements with another body for discharging functions on behalf of that body in relation to Wales; (b) to give effect to any such arrangements; (c) to enter into arrangements with another body for that body to discharge any functions of the Committee on behalf of the Committee<sup>9</sup>. The discharge of a function by the Committee on behalf of another body does not affect the responsibility of the body for the discharge of the function<sup>10</sup>. The discharge of a function by another body on behalf of the Committee does not affect the responsibility of the Committee for the discharge of the function<sup>11</sup>. The provision that may be made in an order<sup>12</sup> includes provision amending or repealing any provision of an enactment conferring functions on the Committee<sup>13</sup>. The Committee may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions<sup>14</sup>.

1 As to the Committee see PARA 1262 ante.

2 See PARA 1227 note 1 ante.

3 In the Transport (Wales) Act 2006 s 9, 'public passenger transport services' has the meaning given in s 7 (see PARA 1261 note 2 ante); and 'public passenger transport facilities' means facilities for public passenger transport services: s 9(10).

4 Ibid s 9(1).

5 Ibid s 9(2).

- 6 Ibid s 9(3). As to orders generally under the Transport (Wales) Act 2006 see s 13.
- 7 Ie an order under ibid s 9(3).
- 8 Ibid s 9(4).
- 9 Ibid s 9(5).
- 10 Ibid s 9(6).
- 11 Ibid s 9(7).
- 12 Ie under ibid s 9(3).
- 13 Ibid s 9(8).
- 14 Ibid s 9(9).

## **UPDATE**

### **1262-1264 Public Transport Users' Committee for Wales ... Guidance and directions to the Committee**

In exercise of the powers conferred by Transport (Wales) Act 2006 ss 8-10, the Welsh Ministers have made Public Transport Users' Committee for Wales (Establishment) Order 2009, SI 2009/2816, which establishes the Committee (see art 3) and provides for its constitution and membership (art 4). Provision is also made for the allowances and expenses of Committee members (art 5), the appointment of staff (art 6), and the establishment of sub-committees (art 7 (amended by SI 2009/2915)). The Committee may regulate its own procedure (SI 2009/2816 art 8 (amended by SI 2009/2915)) and must submit annual reports to the Welsh Ministers (SI 2009/2816 art 9). As to the Public Transport Users' Committee for England see PARA 259A.

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### **1264. Guidance and directions to the Committee.**

The Welsh Ministers<sup>1</sup> may: (1) issue guidance to the Committee<sup>2</sup> as to how it is to discharge its functions; (2) give directions to the Committee as to how it is to discharge its functions<sup>3</sup>. The Committee must: (a) have regard to any guidance issued under head (1) above; (2) comply with any directions given under head (2) above<sup>4</sup>. Guidance or directions under these provisions<sup>5</sup> must be in writing<sup>6</sup>. The Welsh Ministers may vary or revoke directions given under the above provisions<sup>7</sup>.

- 1 See PARA 1227 note 1 ante.
- 2 As to the Committee see PARA 1262 ante.
- 3 Transport (Wales) Act 2006 s 10(1).
- 4 Ibid s 10(2).



5    Ie under *ibid* s 10.

6    *Ibid* s 10(3).

7    *Ibid* s 10(4).

## UPDATE

### **1262-1264 Public Transport Users' Committee for Wales ... Guidance and directions to the Committee**

In exercise of the powers conferred by Transport (Wales) Act 2006 ss 8-10, the Welsh Ministers have made Public Transport Users' Committee for Wales (Establishment) Order 2009, SI 2009/2816, which establishes the Committee (see art 3) and provides for its constitution and membership (art 4). Provision is also made for the allowances and expenses of Committee members (art 5), the appointment of staff (art 6), and the establishment of sub-committees (art 7 (amended by SI 2009/2915)). The Committee may regulate its own procedure (SI 2009/2816 art 8 (amended by SI 2009/2915)) and must submit annual reports to the Welsh Ministers (SI 2009/2816 art 9). As to the Public Transport Users' Committee for England see *PARA 259A*.

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## ***D. TRANSFER SCHEMES***

### **1265. Transfer schemes.**

A transfer scheme<sup>1</sup> may define the property, rights and liabilities<sup>2</sup> to be transferred by the scheme<sup>3</sup> by specifying the property, rights or liabilities in question<sup>4</sup>, or by referring to all the property, rights and liabilities comprised in the whole or any specified part of the transferor's undertaking<sup>5</sup>, or partly in one way and partly in the other, and may contain such supplementary, incidental and consequential provisions as may appear to the authority making the scheme to be necessary or expedient, including in particular provision with respect to the consideration to be provided by the transferee for any transfer under the scheme<sup>6</sup>.

1    Ie any scheme under the Transport Act 1985 s 50(2) (repealed), s 59 (see *PARA 1247 ante*), s 61(9) (see *PARA 1249 ante*) or s 68 (see *PARA 1256 ante*): s 129(1).

2    For the meaning of 'liability' see *PARA 1247 note 11 ante*.

3    Transport Act 1985 s 129(2).

4    *Ibid* s 129(2)(a).

5    *Ibid* s 129(2)(a).

6    *Ibid* s 129(2). Subject to s 129(4), (5), the Transport Act 1968 Sch 4 (as amended) (supplementary provisions as to certain transfers of property, rights and liabilities) applies to any transfer under the Transport Act 1985 s 50(4) (repealed), s 59(7) (see *PARA 1247 ante*), s 61(11) (see *PARA 1249 ante*) or s 68(7) (see *PARA 1256 ante*), and each of those provisions has effect subject to the provisions of the Transport Act 1968 Sch 4 (as amended): Transport Act 1985 s 129(3). In the Transport Act 1968 Sch 4 (as amended), as it applies by

virtue of the Transport Act 1985 s 129(3), any reference to a transfer by or a vesting by virtue of the Transport Act 1968 must be read as a reference to a transfer by or a vesting by virtue of the transfer scheme in question, and the reference in Sch 4 para 13(5) to the relevant provisions of the Transport Act 1968 must be read as including a reference to the relevant provisions of the Transport Act 1985: s 129(4). See further the Constitutional Reform Act 2005 s 85, Sch 14 Pt 3.

The Secretary of State may by order make modifications in the Transport Act 1968 Sch 4 (as amended) for the purposes of its application to transfers under the Transport Act 1985 s 50(4) (repealed), s 59(7), s 61(11) or s 68(7): s 129(5). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. As to the meaning of 'modification' see PARA 1134 note 21 ante; definition applied by s 137(1), (2). At the date at which this volume states the law the following orders had been made under s 129: the Transport Act 1985 (Modifications in Schedule 4 to the Transport Act 1968) Order 1985, SI 1985/1903 (amended by SI 1987/337; SI 1993/2797); and the Transport Act 1985 (Modifications in Schedule 4 to the Transport Act 1968) (Further Modification) Order 1993, SI 1993/2797 (amended by SI 1993/2909).

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### **1266. Compensation for loss of employment.**

Regulations<sup>1</sup> may provide for the payment, by such persons as may be prescribed<sup>2</sup> by or determined under the regulations, in such cases and to such extent as may be so prescribed or determined, of pensions<sup>3</sup>, allowances or gratuities by way of compensation to or in respect of persons who have suffered loss of employment or loss or diminution of emoluments or pension rights<sup>4</sup> by reason of<sup>5</sup>:

- 1886 (1) the disposal<sup>6</sup> of any interests held by a passenger transport authority<sup>7</sup> or district council<sup>8</sup> in a public transport company<sup>9</sup>;
- 1887 (2) the disposal by any such company of the whole or any part of that company's undertaking<sup>10</sup>; or
- 1888 (3) any transfer of property, rights and liabilities<sup>11</sup>.

Regulations may:

- 1889 (a) include provision as to the manner in which and the persons to whom any claim for compensation is to be made, and for the determination of all questions arising under the regulations<sup>12</sup>;
- 1890 (b) make or authorise the Secretary of State<sup>13</sup> to make exceptions and conditions in relation to any classes of persons or any circumstances to which the regulations apply<sup>14</sup>; and
- 1891 (c) be framed so as to have effect from a date earlier than the making of the regulations<sup>15</sup>.

Regulations may include all or any of the following provisions, namely<sup>16</sup>:

- 1892 (i) provision authorising the payment, without probate, and without other proof of title, of any sum due under the regulations in respect of a person who has died to his personal representatives or such other persons as may be prescribed by the regulations<sup>17</sup>;

- 1893 (ii) provision rendering void any assignment, or any agreement to assign or charge, any benefit under the regulations, and provision that on the bankruptcy of, or granting of a trust deed for creditors by, a person entitled to such a benefit no part of it may pass to any trustee or other person acting on behalf of the creditors except in accordance with an order made by a court in pursuance of any enactment specified in the regulations<sup>18</sup>; and
- 1894 (iii) such incidental, supplementary, consequential and transitional provisions as appear to the Secretary of State to be necessary or expedient<sup>19</sup>.

Where such regulations have made provision for the payment of pensions, allowances or gratuities<sup>20</sup>, compensation in respect of any such loss of employment or loss or diminution of emoluments or pension rights<sup>21</sup> must be paid only in accordance with those regulations in any case to which those regulations apply, and accordingly such compensation must not be paid under any other statutory provision<sup>22</sup>, or by virtue of any provision in a contract or otherwise<sup>23</sup>. However, this does not prevent any person from making any payment to which a person is entitled by virtue of contractual rights acquired by him before such date as the Secretary of State may by order specify<sup>24</sup>.

1 For the meaning of 'regulations' see PARA 1178 note 4 ante. At the date at which this volume states the law no such regulations had been made.

2 For the meaning of 'prescribed' see PARA 1178 note 5 ante.

3 'Pension', in relation to a person, means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of him, and includes: (1) a gratuity so payable; (2) a return of contributions to a pension fund, with or without interest on or any other addition to those contributions; and (3) any sums payable on or in respect of the death of that person: Transport Act 1985 s 137(1).

4 'Pension rights' includes, in relation to any person, all forms of right to or eligibility for the present or future payment of a pension, and any expectation of the accrual of a pension under any customary practice, and includes a right of allocation in respect of the present or future payment of a pension: *ibid* s 137(1).

5 *Ibid* s 84(1).

6 *Ie* under *ibid* s 75(2): see PARA 1269 post.

7 As to passenger transport authorities see PARA 247 ante.

8 As to the construction of references to district councils in relation to Wales see PARA 1252 note 5 ante.

9 See the Transport Act 1985 s 84(1)(a).

10 *Ibid* s 84(1)(b).

11 *Ibid* s 84(1)(c). The text refers to any transfer of property, rights and liabilities under s 59 (see PARA 1247 ante), s 61 (see PARA 1249 ante), s 68 (see PARA 1256 ante) or s 70 (see PARA 1258 ante). For the meaning of 'liability' see PARA 1247 note 11 ante.

12 *Ibid* s 84(2)(a).

13 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

14 Transport Act 1985 s 84(2)(b).

15 *Ibid* s 84(2)(c). However, regulations having effect from a date earlier than their making must not place any individual who is qualified to participate in the benefits for which the regulations provide in a worse position than he would have been in if the regulations had been so framed as to have effect only from the date of their making: s 84(2).

16 *Ibid* s 84(3).

- 17 Ibid s 84(3)(a).
- 18 Ibid s 84(3)(b).
- 19 Ibid s 84(3)(c).
- 20 Ie as mentioned in ibid s 84(1): see the text and notes 1-11 supra.
- 21 See note 20 supra.
- 22 For the meaning of 'statutory provision' see PARA 1152 note 3 ante; definition applied by the Transport Act 1985 s 137(1), (2).
- 23 Ibid s 84(4). This is expressed to be subject to s 84(5) (see the text and note 24 infra).
- 24 Ibid s 84(5). At the date at which this volume states the law no such order had been made.

## UPDATE

### 1266 Compensation for loss of employment

TEXT AND NOTES 1-11--Transport Act 1985 s 84(1)(a) amended: Local Transport Act 2008 Sch 4 para 29.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(iii) Local Passenger Transport Services/E. PUBLIC TRANSPORT COMPANIES/1267. Control over constitution and activities of public transport companies.

## ***E. PUBLIC TRANSPORT COMPANIES***

### **1267. Control over constitution and activities of public transport companies.**

It is the duty of any public transport company's<sup>1</sup> controlling authority to exercise its control over that company so as to ensure that the directors of the company include no more than the permitted maximum number of persons who are not full-time employees of the company<sup>2</sup>. Following the transfer to a public transport company of its initial undertaking<sup>3</sup>, it is the duty of that company's controlling authority to exercise its control over that company so as to ensure that the directors of the company include not less than the required minimum number of persons who are full-time employees of the company holding positions of responsibility for the management of the company's business or any part of it<sup>4</sup>.

It is the duty of any public transport company's controlling authority to exercise its control over the company so as to ensure that the company<sup>5</sup>:

- 1895 (1) does not engage in activities in which the controlling authority has no power to engage or permit any body corporate which is its subsidiary to engage in any such activities<sup>6</sup>;
- 1896 (2) does not borrow money from any person other than the controlling authority, or permit any body corporate which is its subsidiary to borrow money from any person other than the company, any other subsidiary of the company, or the controlling authority, with the exception in each case of borrowing by way of temporary loan or overdraft<sup>7</sup>; and

1897 (3) does not raise money by the issue of shares or stock to any person other than the controlling authority, or permit any body corporate which is its subsidiary to raise money by the issue of shares or stock to any person other than the company<sup>8</sup>.

Where a public transport company's controlling authority is a composite authority<sup>9</sup>, the duties imposed<sup>10</sup> are joint duties of both or all of the component councils of that authority<sup>11</sup>; and heads (1) to (3) above apply in any such case as if head (1) above referred to activities in which none of the component councils has power to engage<sup>12</sup>, and references in heads (2) and (3) above to the controlling authority were references to the component councils<sup>13</sup>.

1 References in the Transport Act 1985 Pt IV (ss 57-87) (as amended) to a public transport company are references to any of the following:

- 1285 (1) any company which was formed under s 59 (see PARA 1247 ante) by the passenger transport executive for any passenger transport area and is for the time being a subsidiary of that executive or of the passenger transport authority for that area (ss 72(1)(a), 87(e));
- 1286 (2) any company which was formed under s 61 (see PARA 1249 ante) by the passenger transport authority for any passenger transport area and is for the time being a subsidiary of that authority (ss 72(1)(b), 87(e)); and
- 1287 (3) any company which was formed by one or more councils under s 67 (see PARA 1255 ante) and is for the time being under local authority control (ss 72(1)(c), 87(e)).

As to passenger transport executives see PARA 247 ante. For the meaning of 'passenger transport area' see PARA 247 ante; definition applied by s 137(5). For the meaning of 'subsidiary' see PARA 1188 note 12 ante. As to passenger transport authorities see PARA 247 ante.

A company formed under s 67 (see PARA 1255 ante) is to be treated for the purposes of head (3) supra as under local authority control at any time when either: (a) it is a subsidiary of a single district council; or (b) if two or more such councils who are members of the company were a single body corporate, it would be a subsidiary of that body corporate: see s 72(2). As to the construction of references to district councils in relation to Wales see PARA 1252 note 5 ante. As to bodies corporate see generally COMPANIES; CORPORATIONS.

References in Pt IV (as amended) to a public transport company's controlling authority: (i) in relation to a company within head (1) or head (2) supra, are references to the passenger transport executive or, as the case may be, the passenger transport authority of whom it is a subsidiary; and (ii) in relation to a company within head (3) supra, are references to the council or councils referred to in heads (a) and (b) supra: ss 72(3), 87(e).

2 Ibid s 73(1). The Secretary of State may by order prescribe for the purposes of s 73(1) the permitted maximum number: see s 73(6). The permitted maximum number is seven: Public Transport Companies (Permitted Maximum and Required Minimum Numbers of Directors) Order 1985, SI 1985/1901, art 2. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 The reference in the Transport Act 1985 s 73(2) to the transfer to a public transport company of its initial undertaking is a reference, in relation to any such company, to the transfer or (if more than one) the first transfer of property, rights and liabilities to that company under s 59(7) (see PARA 1247 ante), s 61(11) (see PARA 1249 ante), s 68(7) (see PARA 1256 ante) or s 70(2) (see PARA 1258 ante): s 73(2). For the meaning of 'liability' see PARA 1247 note 11 ante.

4 Ibid s 73(2). The Secretary of State may by order prescribe the required minimum number for the purposes of s 73(2): see s 73(6). The required minimum number is: (1) where the number of vehicles owned by the company and used or appropriated for use in providing any service for the carriage of passengers by road which requires a PSV operator's licence is less than 50, two; and (2) where the number of such vehicles is 50 or more, three: Public Transport Companies (Permitted Maximum and Required Minimum Numbers of Directors) Order 1985, SI 1985/1901, art 3. For the purposes of art 3, a vehicle is treated as owned by the company if it is owned by a subsidiary of the company, or in the possession of the company, or of any subsidiary of the company, under an agreement for hire, hire-purchase, conditional sale or loan: art 4. For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante; definition applied by the Transport Act 1985 s 137(1), (2).

5 Ibid s 73(3). This is expressed to be subject to s 73(5) (see note 6 infra).

6 Ibid s 73(3)(a). Section 73(3)(a) does not apply: (1) in the case of a public transport company whose controlling authority is the passenger transport authority for any passenger transport area, in relation to activities within the powers of the passenger transport executive for that area or activities which were formerly within those powers but have ceased to be so by virtue of any order made under s 60 (see PARA 1248 ante); (2) in the case of a public transport company within s 72(1)(c) (see note 1 supra), in relation to activities which were formerly within the powers of the council which formed or of any council which participated in forming that company but have ceased to be so by virtue of s 66(1) (as amended) (see PARA 1255 ante): s 73(5).

7 Ibid s 73(3)(b).

8 Ibid s 73(3)(c).

9 References in ibid Pt IV (as amended) to a composite authority are references to a controlling authority consisting of two or more such councils as are referred to in s 72(2) (see note 1 supra), and the councils concerned are referred to as the component councils of that authority: ss 72(4), 87(e).

10 Ie by ibid s 73(1)-(3): see the text and notes 1-8 supra.

11 Ibid s 73(4).

12 Ibid s 73(4)(a).

13 Ibid s 73(4)(b).

## UPDATE

### **1267 Control over constitution and activities of public transport companies**

NOTE 1--Transport Act 1985 s 137(5) amended: Local Transport Act 2008 Sch 4 para 40.

NOTE 6--Transport Act 1985 s 73(5) amended: Local Transport Act 2008 Sch 4 para 23.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(iii) Local Passenger Transport Services/E. PUBLIC TRANSPORT COMPANIES/1268. Disabilities of directors of public transport companies.

### **1268. Disabilities of directors of public transport companies.**

A director of a public transport company<sup>1</sup> who is paid for acting as such or is an employee of the public transport company or a subsidiary<sup>2</sup> of the public transport company is disqualified for being elected or being a member<sup>3</sup>: (1) of any council which is that company's controlling authority<sup>4</sup>; or (2) where that company's controlling authority is a composite authority<sup>5</sup>, of any of the component councils<sup>6</sup>.

Where a public transport company's controlling authority is a passenger transport authority<sup>7</sup> for a passenger transport area<sup>8</sup>, a director of that company who is paid for acting as such or is an employee of that company or a subsidiary of that company is disqualified for being appointed or being a member of that passenger transport authority<sup>9</sup>.

If a director of a public transport company is a member of any such council as is mentioned in head (1) or head (2) above or of any such passenger transport authority as is mentioned above<sup>10</sup> he must not at any meeting of that council or authority<sup>11</sup>: (a) take part in the consideration or discussion of any contract or proposed contract with, or any other matter relating to the activities of, the public transport company or a subsidiary of that company<sup>12</sup>; or (b) vote on any question with respect to any such contract, proposed contract or other matter<sup>13</sup>. Where a director of a public transport company is a member of the executive of a relevant

controlling or component council which is operating executive arrangements<sup>14</sup>, he may not, in the discharge of any function which is the responsibility of the executive, take any action in the consideration, or the making of any decision with respect to any contract or proposed contract with, or any other matter relating to the activities of, the public transport company or a subsidiary thereof<sup>15</sup>. However, none of the above prohibitions prohibits a person from taking part in the consideration or discussion of, or from voting on any question with respect to, a local transport plan or bus strategy<sup>16</sup>. The Secretary of State<sup>17</sup> may grant a written dispensation from the prohibitions above<sup>18</sup> in the case of any individual member, except that no such dispensation may be granted in the case of a member of a council's executive acting alone<sup>19</sup>. Any such dispensation: (i) may extend both to the consideration or discussion of any such contract, proposed contract or other matter and to voting with respect to it, or to either alone<sup>20</sup>; (ii) may relate to contracts, proposed contracts or other matters of all descriptions or of any particular description specified in the dispensation<sup>21</sup>; and (iii) may be withdrawn or varied at any time by a notice in writing given by the Secretary of State to the member in question<sup>22</sup>. The Secretary of State may confer exemptions from the prohibitions above either generally or in the case of any class or description of members except that no such exemption may be granted in the case of a member of a council's executive acting alone<sup>23</sup>; and heads (i) and (ii) above will apply in relation to any such exemption as they apply in relation to any dispensation that may be granted<sup>24</sup>; and any such exemption may be withdrawn or varied at any time by the Secretary of State<sup>25</sup>.

A council which is a public transport company's controlling authority or one of the component councils of such an authority, and any passenger transport authority for a passenger transport area which is a public transport company's controlling authority, may by standing orders provide for the exclusion of a member of that council or authority who is a director of that company from a meeting of that council or authority while any contract or proposed contract with, or any other matter relating to the activities of, the public transport company or a subsidiary of that company is under consideration<sup>26</sup>.

If any person fails to comply with the above provisions<sup>27</sup> he is for each offence liable on summary conviction to a fine<sup>28</sup>, unless he proves that he did not know that a contract or proposed contract with, or any other matter relating to the activities of, the company concerned was the subject of consideration at the meeting in question<sup>29</sup>. A prosecution for an offence under this provision must not be instituted except by or on behalf of the Director of Public Prosecutions<sup>30</sup>.

1 As to public transport companies see PARA 1267 note 1 ante. The Transport Act 1985 s 74 (as amended) (see the text and notes 2-30 infra) applies in relation to a director of a subsidiary (see note 2 infra) of a public transport company as it applies in relation to a director of such a company: s 74(13).

2 For the meaning of 'subsidiary' see PARA 1188 note 12 ante.

3 Transport Act 1985 s 74(1).

4 Ibid s 74(1)(a). As to references to a public transport company's controlling authority see PARA 1267 note 1 ante.

5 As to composite authorities see PARA 1267 note 9 ante.

6 Transport Act 1985 s 74(1)(b). As to component councils of a composite authority see PARA 1267 note 9 ante.

7 As to passenger transport authorities see PARA 247 ante.

8 For the meaning of 'passenger transport area' see PARA 247 ante; definition applied by the Transport Act 1985 s 137(5).

9 Ibid s 74(2).

10 I.e. as is mentioned in ibid s 74(2): see the text to notes 7-9 supra.

11 Ibid s 74(3). This is expressed to be subject to s 74(4)-(13) (see the text and notes 15-26 *infra*).

12 Ibid s 74(3)(a).

13 Ibid s 74(3)(b).

14 *Ie* under the Local Government Act 2000 Pt II (ss 10-48): see LOCAL GOVERNMENT vol 69 (2009) PARA 303 *et seq.*

15 Transport Act 1985 s 74(3A) (added by the Transport Act 2000 s 161, Sch 11 paras 9, 13; and substituted in relation to England by the Local Authorities (Executive and Alternative Arrangements) Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, arts 1(2), 2(e), 13(a); and in relation to Wales by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Further Provisions) (Wales) Order 2002, SI 2002/808, arts 2(d), 12(a)).

16 Transport Act 1985 s 74(3B) (added in relation to England by the Local Authorities (Executive and Alternative Arrangements) Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 13(a); and in relation to Wales by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Further Provisions) (Wales) Order 2002, SI 2002/808, art 12(a)).

17 As to the Secretary of State see PARA 236 *ante*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 *ante*.

18 *Ie* the Transport Act 1985 s 74(3), (3A) (as added): see the text to notes 10-15 *supra*.

19 Ibid s 74(4) (substituted in relation to England by the Local Authorities (Executive and Alternative Arrangements) Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 13(b); and in relation to Wales by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Further Provisions) (Wales) Order 2002, SI 2002/808, art 12(b)).

20 Transport Act 1985 s 74(5)(a).

21 Ibid s 74(5)(b).

22 Ibid s 74(5)(c).

23 Ibid s 74(6) (substituted in relation to England by the Local Authorities (Executive and Alternative Arrangements) Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 13(c); and in relation to Wales by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Further Provisions) (Wales) Order 2002, SI 2002/808, art 12(c)).

24 Transport Act 1985 s 74(6)(a) (as substituted: see note 23 *supra*).

25 Ibid s 74(6)(b) (as substituted: see note 23 *supra*).

26 Ibid s 74(9). For the purposes of the Local Government Act 1972 s 94 (as amended) (disability of members of authorities for voting on account of interest in contracts) (see LOCAL GOVERNMENT vol 69 (2009) PARAS 286, 288) a member of any such council or passenger transport authority as is mentioned in the Transport Act 1985 s 74(9) who is a director of the public transport company in question must not be treated as having a pecuniary interest in any contract or proposed contract with, or in any other matter relating to the activities of, the public transport company or a subsidiary of that company by reason only of any interest of his in that company or in a subsidiary of that company: s 74(12).

Section 74(3) (see the text and notes 10-13 *supra*) and s 74(9) apply as respects members of a committee of any such council or passenger transport authority as is mentioned in s 74(9) or a joint committee of two or more local authorities one or more of whom is such a council or passenger transport authority (including in either case a sub-committee) as they apply in respect of members of that council or authority but with the substitution of references to meetings of any such committee for references to meetings of that council or authority: s 74(10). For these purposes, 'local authority' has the same meaning as in the Local Government Act 1972 (see LOCAL GOVERNMENT vol 69 (2009) PARA 23), except that it includes also a metropolitan county passenger transport authority: Transport Act 1985 s 74(11).

27 *Ie* *ibid* s 74(3), (3A) (as added): see the text to notes 10-15 *supra*.

28 Ibid s 74(7) (amended in relation to England by the Local Authorities (Executive and Alternative Arrangements) Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 13(d); and in relation to Wales by the Local Authorities (Executive and Alternative Arrangements) (Modification of



Enactments and Further Provisions) (Wales) Order 2002, SI 2002/808, art 12(d)). The fine must not exceed level 4 on the standard scale: Transport Act 1985 s 74(7). As to the standard scale see PARA 230 note 3 ante.

29 Ibid s 74(7). As to the legal burden of proof on the accused see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1370, 1372. As to the meaning of 'knowledge' see PARA 1155 text and note 20 ante.

30 Ibid s 74(8). As to the Director of Public Prosecutions see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 544; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 1066, 1079 et seq.

## UPDATE

### 1268 Disabilities of directors of public transport companies

TEXT AND NOTES 7-9--Transport Act 1985 s 74(2) amended: Local Transport Act 2008 Sch 4 para 24.

NOTE 8--Transport Act 1985 s 137(5) amended: Local Transport Act 2008 Sch 4 para 40.

TEXT AND NOTES 10-30--Transport Act 1985 s 74(3)-(12) repealed: Local Transport Act 2008 ss 71(2), 131, Sch 7 Pt 3.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(iii) Local Passenger Transport Services/E. PUBLIC TRANSPORT COMPANIES/1269. Powers of investment and disposal in relation to public transport companies.

### 1269. Powers of investment and disposal in relation to public transport companies.

Without prejudice to the powers of a passenger transport executive<sup>1</sup>, a passenger transport authority<sup>2</sup> or a district council<sup>3</sup>:

1898 (1) to subscribe for shares on formation of a company formed by them (whether alone or jointly with any other council) in pursuance of any provision of Part IV of the Transport Act 1985<sup>4</sup>; or

1899 (2) to acquire any shares in or other securities<sup>5</sup> of a company so formed by way of consideration for any transfer of property, rights and liabilities<sup>6</sup> to that company required or authorised under any such provision<sup>7</sup>,

any such authority or council has power at any time to subscribe for, take up or acquire, as the case may be, any shares in or other securities of any associated company<sup>8</sup>.

Any such authority or council also has power to provide for the disposal, in such manner as it thinks fit, of any such shares or other securities<sup>9</sup>.

The exercise of the powers under the above provisions requires the consent of the Secretary of State<sup>10</sup>, and a public transport company's controlling authority may not, without that consent, in exercise of its control over that company permit<sup>11</sup>: (a) the disposal by that company of the whole of that company's undertaking<sup>12</sup>; (b) any disposal by that company of any shares in or other securities of a body corporate which is that company's subsidiary<sup>13</sup>; or (c) any disposal by that company of any part of that company's undertaking, or of any assets of that company (other than shares or securities within head (b) above) which appears to that authority (or, in the case of a composite authority, to both or all of the component councils) to affect materially the structure of the company's business<sup>14</sup>.

- 1 As to passenger transport executives see PARA 247 ante.
- 2 As to passenger transport authorities see PARA 247 ante.
- 3 See the Transport Act 1985 s 75(1). As to the construction of references to district councils in relation to Wales see PARA 1252 note 5 ante.
- 4 Ibid s 75(1)(a). The text refers to Pt IV (ss 57-87) (as amended).
- 5 For the meaning of 'securities' see PARA 1247 note 12 ante.
- 6 For the meaning of 'liability' see PARA 1247 note 11 ante.
- 7 Transport Act 1985 s 75(1)(b).
- 8 Ibid s 75(1). For the purposes of Pt IV (as amended), a public transport company is an associated company: (1) in relation to a passenger transport authority if that authority or the passenger transport executive for that authority's area is its controlling authority; (2) in relation to a passenger transport executive if that executive or the passenger transport authority for that executive's area is its controlling authority; and (3) in relation to a district council, if that council is its controlling authority or one of the component councils of a composite authority who is its controlling authority: see ss 72(5), 87(e). As to public transport companies see PARA 1267 note 1 ante. As to component councils of a composite authority see PARA 1267 note 9 ante. As to composite authorities see PARA 1267 note 9 ante.
- 9 Ibid s 75(2). A passenger transport authority or a district council which is a public transport company's controlling authority or, as the case may be, both or all of the component councils of a composite authority which is a public transport company's controlling authority may, in exercising the power under s 75(2) in relation to the disposal of any shares in or other securities of that company, provide for an employees' share scheme to be established in respect of that company; and any such scheme may provide for the transfer of shares without consideration: see s 75(4). As to references to a public transport company's controlling authority see PARA 1267 note 1 ante. 'Employees' share scheme' means a scheme for encouraging or facilitating the holding of shares or debentures in a company by or for the benefit of: (1) the bona fide employees or former employees of the company or of a subsidiary of the company; or (2) the wives, husbands, widows, widowers or children or step-children under the age of 18 of such employees or former employees: s 137(1). For the meaning of 'company' see PARA 1147 note 7 ante; definition applied by s 137(1), (2). For the meaning of 'subsidiary' see PARA 1188 note 12 ante.
- 10 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 11 Transport Act 1985 s 75(3).
- 12 Ibid s 75(3)(a).
- 13 Ibid s 75(3)(b).
- 14 Ibid s 75(3)(c).

## UPDATE

### **1269 Powers of investment and disposal in relation to public transport companies**

TEXT AND NOTES 1-8--Transport Act 1985 s 75(1) amended: Local Transport Act 2008 Sch 4 para 25(2).

NOTE 9--Transport Act 1985 s 75(4) amended: Local Transport Act 2008 Sch 4 para 25(3).

TEXT AND NOTES 10-14--Transport Act 1985 s 75(3) repealed: Local Transport Act 2008 ss 71(3)(a), 131, Sch 7 Pt 3.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(iii) Local Passenger Transport Services/E. PUBLIC TRANSPORT COMPANIES/1270. Audit of accounts of public transport companies.

### **1270. Audit of accounts of public transport companies.**

It is the duty of any public transport company's<sup>1</sup> controlling authority<sup>2</sup> to exercise its control over that company so as to ensure that the company appoints only auditors who, in addition to being eligible for such appointment in accordance with Part II of the Companies Act 1989<sup>3</sup>, are approved for appointment as auditors of that company by the Audit Commission<sup>4</sup>. Where a public transport company's controlling authority is a composite authority<sup>5</sup>, the duty so imposed is a joint duty of both or all of the component councils<sup>6</sup> of that authority<sup>7</sup>.

1 As to public transport companies see PARA 1267 note 1 ante.

2 As to references to a public transport company's controlling authority see PARA 1267 note 1 ante.

3 I.e. the Companies Act 1989 Pt II (ss 24-54). As to the appointment of auditors see COMPANIES vol 15 (2009) PARA 912 et seq.

4 Transport Act 1985 s 76(1) (amended by the Companies Act 1989 (Eligibility for Appointment as Company Auditor) (Consequential Amendments) Regulations 1991, SI 1991/1997, reg 2, Schedule para 57). As to the Audit Commission see LOCAL GOVERNMENT vol 69 (2009) PARA 744 et seq.

5 As to composite authorities see PARA 1267 note 9 ante.

6 As to component councils of a composite authority see PARA 1267 note 9 ante.

7 Transport Act 1985 s 76(2).

### **UPDATE**

### **1270 Audit of accounts of public transport companies**

TEXT AND NOTES 3, 4--1985 Act s 76(1) further amended to take account of the coming into force of the Companies Act 2006: SI 2008/948.

TEXT AND NOTE 4--1985 Act s 76(1) further amended: Local Government and Public Involvement in Health Act 2007 Sch 9 para 2(2)(a).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(iii) Local Passenger Transport Services/E. PUBLIC TRANSPORT COMPANIES/1271. Provision of services for public transport companies.

### **1271. Provision of services for public transport companies.**

A passenger transport executive<sup>1</sup> and a district council<sup>2</sup> each has power to enter into an agreement with any associated company<sup>4</sup>, or with any subsidiary<sup>5</sup> of an associated company, for the provision by that passenger transport executive or council for that company or, as the case may be, for that subsidiary of any administrative, professional or technical services<sup>6</sup>. Any

such agreement must include provision for payment of proper commercial charges in respect of services to be provided under the agreement<sup>7</sup>.

- 1 As to passenger transport executives see PARA 247 ante.
- 2 As to the construction of references to district councils in relation to Wales see PARA 1252 note 5 ante.
- 4 For the meaning of 'associated company' see PARA 1269 note 8 ante.
- 5 For the meaning of 'subsidiary' see PARA 1188 note 12 ante.
- 6 See the Transport Act 1985 s 78(1).
- 7 Ibid s 78(2).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(iii) Local Passenger Transport Services/E. PUBLIC TRANSPORT COMPANIES/1272. Financial backing for establishment and operations of public transport companies.

### **1272. Financial backing for establishment and operations of public transport companies.**

A passenger transport authority<sup>1</sup> and a district council<sup>2</sup> each has power to make loans to any associated company<sup>3</sup>, or to guarantee loans<sup>4</sup> made to any associated company by any other person, for the provision of working capital<sup>5</sup>. The exercise of such power, otherwise than in pursuance of any provision made by any scheme or order under Part IV of the Transport Act 1985<sup>6</sup> in connection with any transfer of property, rights and liabilities<sup>7</sup> to the company in question for which that scheme or order provides, requires the consent of the Secretary of State<sup>8</sup>.

A passenger transport authority and a district council each has power to make loans:

- 1900 (1) to any associated company<sup>9</sup>; or
- 1901 (2) to any subsidiary<sup>10</sup> of an associated company<sup>11</sup>,

for the purpose of meeting any expenses incurred or to be incurred by that company or subsidiary in connection with the provision or improvement of assets in connection with its business<sup>12</sup>. Any such loan under heads (1) and (2) above must be made on terms, both as to rates of interest and otherwise, no more favourable than the terms on which the authority making the loan would itself be able to borrow at the time when the loan is made<sup>13</sup>.

A passenger transport authority and a district council each has power to give any guarantees and do any other things which appear to that authority or, as the case may be, to that council to be necessary or expedient for the purpose of or in connection with<sup>14</sup>: (a) any authorised disposal<sup>15</sup>; or (b) any disposal by any associated company of the whole or any part of that company's undertaking, or of any property, rights or liabilities of that company<sup>16</sup>. Where any such disposal requires or, as the case may be, may not be permitted without the consent of the Secretary of State, such power to give guarantees<sup>17</sup> may not be exercised in relation to that disposal without the consent of the Secretary of State<sup>18</sup>.

A passenger transport authority and a district council each has power, with the consent of the Secretary of State, to provide financial assistance by way of grants, loans or guarantees for any associated company which has incurred losses affecting the viability of its business<sup>19</sup>. However,

this power may only be exercised for the purpose of any plan approved by the Secretary of State for improving efficiency of the company's operations and its commercial performance generally so as to enable it to carry on business without further assistance from the authority or council concerned or from any other council which is a member of the company<sup>20</sup>.

A passenger transport authority and a district council each has power, where on the winding up of any associated company the assets of the company are not sufficient to meet the company's liabilities, to make to the creditors of the company such payments as may be necessary to meet the balance of those liabilities (and may accordingly give to persons dealing or proposing to deal with any such company such guarantees with respect to the exercise of this power in relation to that company as it thinks fit)<sup>21</sup>.

1 As to passenger transport authorities see PARA 247 ante.

2 As to the construction of references to district councils in relation to Wales see PARA 1252 note 5 ante.

3 For the meaning of 'associated company' see PARA 1269 note 8 ante.

4 The reference in the Transport Act 1985 s 79(1) to guaranteeing loans is a reference to guaranteeing the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any such loans: s 79(2).

5 See *ibid* s 79(1).

6 *Ie* *ibid* Pt IV (ss 57-87) (as amended).

7 For the meaning of 'liability' see PARA 1247 note 11 ante.

8 Transport Act 1985 s 79(3). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

9 *Ibid* s 79(4)(a).

10 For the meaning of 'subsidiary' see PARA 1188 note 12 ante.

11 Transport Act 1985 s 79(4)(b).

12 See *ibid* s 79(4).

13 *Ibid* s 79(5).

14 See *ibid* s 79(6).

15 *Ibid* s 79(6)(c). The text refers to any disposal authorised by s 75(2): see PARA 1269 ante.

16 *Ibid* s 79(6)(b).

17 *Ie* under *ibid* s 79(6): see the text to notes 14-16 *supra*.

18 *Ibid* s 79(7).

19 See *ibid* s 79(8). This is expressed to be subject to s 79(9) (see the text to note 20 *infra*).

20 *Ibid* s 79(9).

21 See *ibid* s 79(10).

## UPDATE

### 1272 Financial backing for establishment and operations of public transport companies

TEXT AND NOTES 1-5--Transport Act 1985 s 79(1) amended: Local Transport Act 2008 Sch 4 para 26(2).

TEXT AND NOTES 6-8--Transport Act 1985 s 79(3) repealed: Local Transport Act 2008 ss 71(3)(b), 131, Sch 7 Pt 3.

TEXT AND NOTES 9-12--Transport Act 1985 s 79(4) amended: Local Transport Act 2008 Sch 4 para 26(2).

TEXT AND NOTES 14-16--Transport Act 1985 s 79(6) amended: Local Transport Act 2008 Sch 4 para 26(2).

TEXT AND NOTES 17, 18--Transport Act 1985 s 79(7) repealed: Local Transport Act 2008 ss 71(3)(c), 131, Sch 7 Pt 3.

TEXT AND NOTE 19--Transport Act 1985 s 79(8) amended: Local Transport Act 2008 ss 71(3)(d), 131, Sch 4 para 26(3), Sch 7 Pt 3.

TEXT AND NOTE 21--Transport Act 1985 s 79(10) amended: Local Transport Act 2008 Sch 4 para 26(2).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(iii) Local Passenger Transport Services/F. COMPETITION FOR PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES/1273. Duty of passenger transport authority not to inhibit competition.

## ***F. COMPETITION FOR PROVISION OF PUBLIC PASSENGER TRANSPORT SERVICES***

### **1273. Duty of passenger transport authority not to inhibit competition.**

A passenger transport authority<sup>1</sup>, in exercising its functions:

- 1902 (1) in relation to the formation of companies<sup>2</sup> and the formation of proposals<sup>3</sup>;
- 1903 (2) in relation generally to the exercise of rights in relation to any public transport company<sup>4</sup> arising from the holding of any shares in or other securities<sup>5</sup> of that company<sup>6</sup>;
- 1904 (3) in relation in particular to the exercise of control by virtue of any such rights over any disposal by any such company of the whole or any part of that company's undertaking, or of any property, rights or liabilities<sup>7</sup> of that company<sup>8</sup>; and
- 1905 (4) in relation to any disposal<sup>9</sup>,

must so conduct itself as not to inhibit competition between persons providing or seeking to provide public passenger transport services<sup>10</sup> in its area<sup>11</sup>.

1 As to passenger transport authorities see PARA 247 ante.

2 Ie under the Transport Act 1985 s 61: see PARA 1249 ante.

3 Ibid s 80(a). The text refers to the formation of proposals under s 61: see PARA 1249 ante.

4 As to public transport companies see PARA 1267 note 1 ante.

- 5 For the meaning of 'securities' see PARA 1247 note 12 ante.
- 6 Transport Act 1985 s 80(b).
- 7 For the meaning of 'liability' see PARA 1247 note 11 ante.
- 8 Transport Act 1985 s 80(c).
- 9 Ibid s 80(d). The text refers to any disposal under s 75(2); see PARA 1269 ante.
- 10 For the meaning of 'public passenger transport services' see PARA 1252 note 3 ante.
- 11 Transport Act 1985 s 80. For provisions applying a competition test in relation to the exercise of functions relating to quality partnership schemes (see PARA 1200 et seq ante), ticketing schemes (see PARA 1220 et seq ante) and subsidised local services (see PARAS 1277-1278 post) see the Transport Act 2000 s 153, Sch 10 (as amended).

## UPDATE

### **1273 Duty of [Integrated Transport Authority or] passenger transport authority not to inhibit competition**

TEXT AND NOTES--Transport Act 1985 s 80 amended: Local Transport Act 2008 Sch 4 para 27.

NOTE 11--Transport Act 2000 s 153 substituted: Local Transport Act 2008 s 46, Sch 2. Transport Act 2000 Sch 10 amended: Local Transport Act 2008 ss 46, 131, Sch 2, Sch 7 Pt 2.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(iii) Local Passenger Transport Services/G. BUS STATIONS/1274. Provision, maintenance and operation of bus stations.

## **G. BUS STATIONS**

### **1274. Provision, maintenance and operation of bus stations.**

A passenger transport executive<sup>1</sup> for any passenger transport area<sup>2</sup> has power: (1) to provide bus stations<sup>3</sup> and associated facilities<sup>4</sup> at any place in or in the vicinity of its area<sup>5</sup>; and (2) to maintain, repair and operate bus stations and associated facilities provided under head (1) above or under its former powers<sup>6</sup>.

Where a council which, at 6 January 1986<sup>7</sup>, was providing a service for the carriage of passengers by road<sup>8</sup> which requires a PSV operator's licence<sup>9</sup> has ceased<sup>10</sup> to have power to provide such a service, that council has power to maintain, repair and operate bus stations and associated facilities provided by it under its former powers<sup>11</sup>.

Where, immediately before 1 April 1996, a council (the 'former council') had power<sup>12</sup>, to maintain, repair and operate a bus station and any associated facilities, that power is, on and after that date, exercisable<sup>13</sup>:

- 1906 (a) where the bus station and any such associated facilities was or were, immediately before 1 April 1996, situated wholly within the area of the former

council, and is or are, on and after that date, situated wholly within a single Welsh county or county borough, by the council of that county or county borough<sup>14</sup>; and 1907 (b) in any other case, by such Welsh county council or county borough council as may be designated<sup>15</sup> by order<sup>16</sup>.

Any charges for the use of accommodation for public service vehicles at any bus station provided by the passenger transport executive for any passenger transport area or provided by any other person under any agreement entered into by any such executive<sup>17</sup> must be reasonable<sup>18</sup>. Any such council<sup>19</sup> has power: (i) to make reasonable charges for the use of accommodation for public service vehicles at any bus station provided under its former powers<sup>20</sup>; and (ii) to make reasonable charges for the use of, or let on hire to any person, any associated facilities provided by it in connection with any bus station so provided<sup>21</sup>. Any Welsh county council or county borough council by which any power is exercisable in relation to a bus station and any associated facilities<sup>22</sup> has power: (A) to make reasonable charges for the use of accommodation for public service vehicles at that bus station<sup>23</sup>; and (B) to make reasonable charges for the use of, or let on hire to any person, those facilities (if any)<sup>24</sup>.

If any person who is the holder of a PSV operator's licence in respect of any vehicles using accommodation for public service vehicles at any such bus station<sup>25</sup> considers that charges for the use of that accommodation are unreasonable, that person may apply to the traffic commissioner<sup>26</sup> for the traffic area<sup>27</sup> in which the bus station is situated (or, where it is situated partly in one area and partly in another, to the traffic commissioner for such of those areas as may be agreed between the traffic commissioners concerned or, in default of agreement, determined by the Secretary of State)<sup>28</sup>. On any such application the traffic commissioner may determine the charges to be made in respect of the applicant's vehicles for such period and on such terms as he thinks fit<sup>29</sup>.

1 As to passenger transport executives see PARA 247 ante.

2 For the meaning of 'passenger transport area' see PARA 247 ante; definition applied by the Transport Act 1985 s 137(5).

3 For the purposes of ibid ss 81, 82, 'bus station' means a parking place which may be used by public service vehicles (including any such parking place which forms part of any interchange facilities for enabling passengers travelling by one means of transport to continue their journey by another): s 83(5)(a). For the meaning of 'public service vehicle' see PARA 1136 ante; definition applied by s 137(1), (2).

4 For the purposes of ibid ss 81, 82, 'associated facilities' means, in relation to a bus station, any amenities or facilities provided for use in connection with that station: s 83(5)(b).

5 Ibid s 81(1)(a).

6 Ibid s 81(1)(b). References in s 81 to the former powers of any such council as is mentioned in s 81(2) are references to any powers which have ceased to be exercisable by that council by virtue of the application to that council of s 66(1) (as amended) (see PARA 1255 ante); and references in ss 81, 82 (see PARA 1275 post) to the former powers of a passenger transport executive are references to any powers which have ceased to be exercisable by that executive by virtue of any order under s 60(5) (see PARA 1248 ante): s 83(1).

7 I.e. the date on which ibid s 66 (as amended) (see PARA 1255 ante) came into force: Transport Act 1985 (Commencement No 1) Order 1985, SI 1985/1887.

8 For the meaning of 'road' see PARA 206 ante; definition applied by the Transport Act 1985 s 137(1), (2).

9 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante; definition applied by ibid s 137(1), (2).

10 I.e. by virtue of ibid s 66(1) (as amended): see PARA 1255 ante.

11 Ibid s 81(2). See note 6 supra.

12 I.e. by virtue of ibid s 81(2): see the text and notes 7-11 supra.



- 13 Ibid s 81(2A) (s 81(2A), (5A) added by the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 39).
- 14 Transport Act 1985 s 81(2A)(a) (as added: see note 13 supra). As to county councils and county borough councils in Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 37 et seq.
- 15 The Transport Act 1985 refers to designation by the Secretary of State, but as to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. As to the Secretary of State see PARA 236 ante.
- 16 Ibid s 81(2A)(b) (as added: see note 13 supra).
- 17 Ie under the Transport Act 1968 s 10(1)(xv) (as amended) (contracting-out powers): see PARA 249 ante.
- 18 Transport Act 1985 s 81(3). Section 81(3) only applies where the charges are made by the passenger transport executive in question under the Transport Act 1968 s 10(1)(xiii) (as amended) (see PARA 249 ante) or by a person who is operating the bus station under any such agreement otherwise than as agent for the executive: Transport Act 1985 s 81(4).
- 19 Ie as is mentioned in ibid s 81(2): see the text and notes 7-11 supra.
- 20 Ibid s 81(5)(a).
- 21 Ibid s 81(5)(b).
- 22 Ie by virtue of ibid s 81(2A) (as added): see the text and notes 12-16 supra.
- 23 Ibid s 81(5A)(a) (as added: see note 13 supra).
- 24 Ibid s 81(5A)(b) (as added: see note 13 supra).
- 25 Ie as is mentioned in ibid s 81(3), (5) or (5A) (as added): see the text and notes 18-24 supra.
- 26 As to traffic commissioners see PARA 1139 ante.
- 27 For the meaning of 'traffic area' see PARA 1178 note 2 ante.
- 28 Transport Act 1985 s 81(6) (amended by the Local Government (Wales) Act 1994 Sch 7 para 39).
- 29 Transport Act 1985 s 81(7).

## UPDATE

### 1274 Provision, maintenance and operation of bus stations

TEXT AND NOTES 1-6--Transport Act 1985 s 81(1) amended: Local Transport Act 2008 Sch 4 para 28.

NOTE 2--Transport Act 1985 s 137(5) amended: Local Transport Act 2008 Sch 4 para 40.

TEXT AND NOTES 17, 18--Transport Act 1985 s 81(3) amended: Local Transport Act 2008 Sch 4 para 28.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(iii) Local Passenger Transport Services/G. BUS STATIONS/1275. Restrictions on discriminatory practices.

### 1275. Restrictions on discriminatory practices.

Neither a passenger transport executive<sup>1</sup> nor a local authority<sup>2</sup> may, in the exercise of any of its powers:

- 1908 (1) in relation to the provision or operation of bus stations<sup>3</sup> or any associated facilities<sup>4</sup>; or
- 1909 (2) without prejudice to head (1) above, in relation in particular to the charges to be made for the use of any accommodation at a bus station or of any associated facilities<sup>5</sup>,

act in such a way as to discriminate (whether directly or indirectly) against any holder, or class of holder, of a PSV operator's licence<sup>6</sup>.

Where under any agreement (other than an agency agreement<sup>7</sup>) entered into by a passenger transport executive<sup>8</sup> a person is operating a bus station or any associated facilities provided by that executive or provided by that or any other person under any such agreement, that person must not<sup>9</sup>:

- 1910 (a) in relation to the operation of that bus station or, as the case may be, of those facilities<sup>10</sup>; or
- 1911 (b) without prejudice to head (a) above, in relation in particular to the charges to be made for the use of any accommodation at that station or, as the case may be, for the use of those facilities<sup>11</sup>,

act in such a way as to discriminate (whether directly or indirectly) against any holder, or class of holder, of a PSV operator's licence<sup>12</sup>.

The reservation of the whole or any part of the accommodation for public service vehicles at any bus station for such vehicles used in providing local services<sup>13</sup> or, as the case may be, for such vehicles used in providing services other than local services must not be taken to be prohibited discrimination<sup>14</sup>. Nothing done pursuant to a quality partnership scheme<sup>15</sup> by a passenger transport executive, a local authority or a person operating a bus station or associated facilities is to be taken to be discrimination prohibited by the above provisions<sup>16</sup>.

Notwithstanding anything in the Transport Act 1983 as to the obligation to accept tenders for carrying on activities of passenger transport executives in certain circumstances<sup>15</sup>, a passenger transport executive may not in exercise of its contracting-out powers<sup>16</sup> enter into an agreement (other than an agency agreement) for<sup>17</sup>: (i) the provision of any bus station or associated facilities the executive has power<sup>18</sup> to provide<sup>19</sup>; or (ii) the operation of any bus station or associated facilities so provided by the executive or provided under its former powers<sup>20</sup> or provided by any other person under any agreement entered into by the executive<sup>21</sup>, by a person who is the operator of any public passenger transport services<sup>22</sup> or a person connected with any such operator<sup>23</sup>. Any such agreement as is mentioned in head (ii) above entered into after 6 January 1986<sup>24</sup> must include provision for ensuring that it will come to an end if the person who under the agreement is to operate the bus station or associated facilities to which it applies becomes the operator of any public passenger transport services or a person connected with any such operator<sup>25</sup>.

1 As to passenger transport executives see PARA 247 ante.

2 For these purposes, 'local authority' means the council of a county, London borough or district or the Common Council of the City of London: Transport Act 1985 s 83(4). As to the construction of references to county and district councils in relation to Wales see PARAS 1179 note 1, 1252 note 5 ante. As to local government areas and authorities see local government vol 29(1) (Reissue) PARA 23 et seq; as to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq; and as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

3 For the meaning of 'bus station' see PARA 1274 note 3 ante.

4 For the meaning of 'associated facilities' see PARA 1274 note 4 ante.

5 Transport Act 1985 s 82(1)(a).

6 Ibid s 82(1)(b). For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante; definition applied by s 137(1), (2). In relation to a local authority, the powers in question under s 82(1) include in particular (without prejudice to the generality of s 82(1)) its powers under the Road Traffic Regulation Act 1984 s 38 (as amended) (appointment of parking places provided under s 32 (as amended) (see PARA 784 ante) as stations for public service vehicles and provision of accommodation in connection with places so appointed) (see PARA 795 ante); Transport Act 1985 s 82(2). For the meaning of 'public service vehicle' see PARA 1136 ante; definition applied by s 137(1), (2).

7 'Agency agreement' means, in relation to any agreement under the Transport Act 1968 s 10(1)(xv) (contracting-out powers) (see PARA 249 ante), an agreement with any person for the carrying on of activities by that person as agent for the passenger transport executive concerned: Transport Act 1985 s 82(6).

8 Ie under the Transport Act 1968 s 10(1)(xv): see PARA 249 ante.

9 Transport Act 1985 s 82(3).

10 Ibid s 82(3)(a).

11 Ibid s 82(3)(b).

12 Ibid s 82(3).

13 For the meaning of 'local service' see PARA 1177 ante.

14 Transport Act 1985 s 82(4). The text refers to discrimination prohibited by s 82(1) (see the text and notes 1-6 supra) or s 82(3) (see the text and notes 8-12 supra).

15 Ie under the Transport Act 2000 Pt II (ss 108-162) (as amended): see PARA 1200 et seq ante.

16 Transport Act 1985 s s 82(4A) (added by the Transport Act 2000 s 161, Sch 11 paras 9, 14).

17 Ie the Transport Act 1983 s 8 (as amended): see PARA 252 ante.

18 Ie under the Transport Act 1968 s 10(1)(xv): see PARA 249 ante.

10 Transport Act 1985 s 82(5).

20 Ie under ibid s 81 (as amended): see PARA 1274 ante.

21 Ibid s 82(5)(a).

22 As to the construction of references to the former powers of a passenger transport executive see PARA 1274 note 6 ante.

23 Transport Act 1985 s 82(5)(b). The text refers to agreements under the Transport Act 1968 s 10(1)(xv): see PARA 249 ante.

24 For the meaning of 'public passenger transport services' see PARA 1252 note 3 ante.

25 Transport Act 1985 s 82(5). For the purposes of s 82 a person is a person connected with the operator of any public passenger transport services if that person is a member of a group of interconnected bodies corporate any one or more of which is such an operator: s 83(2). For the purposes of s 83(2), any two bodies corporate are to be treated as interconnected if one of them is a body corporate of which the other is a subsidiary or if both of them are subsidiaries of the same body corporate: s 83(3). For the purposes of s 83(2), 'group of interconnected bodies corporate' means a group consisting of two or more bodies corporate all of which are interconnected with each other in the sense given above: s 83(3). For the meaning of 'subsidiary' see PARA 1188 note 12 ante. As to bodies corporate see generally COMPANIES; CORPORATIONS.

On and after 6 January 1986 (ie the date on which s 82 came into force), s 82(5) applies in relation to any such agreement as is there mentioned entered into by the passenger transport executive for any passenger transport area before that date as if s 82 had come into force on 11 July 1985: s 82(8). For the meaning of 'passenger transport area' see PARA 247 ante; definition applied by s 137(5).

26 See note 23 *supra*.

27 Transport Act 1985 s 82(7).

## **UPDATE**

### **1275 Restrictions on discriminatory practices**

NOTE 25--Transport Act 1985 s 137(5) amended: Local Transport Act 2008 Sch 4 para 40.

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## **(iv) Financial Provisions**

### ***A. EXPENDITURE ON PUBLIC PASSENGER TRANSPORT SERVICES***

#### **1276. Expenditure on public passenger transport services.**

Any power conferred on any authority responsible for expenditure on public passenger transport services<sup>1</sup> to enter into agreements providing for service subsidies<sup>2</sup>, however framed, and whether arising under the Transport Act 1985 or under any other enactment, is subject to certain provisions of the Transport Act 1985<sup>3</sup>.

It is the duty: (1) of all such authorities, in exercising and performing their functions<sup>4</sup> with respect to securing the provision of public passenger transport services<sup>5</sup>; and (2) of all authorities who are local education authorities<sup>6</sup>, or local authorities<sup>7</sup> exercising social services functions<sup>8</sup>, in relation to any expenditure on transport for the purposes of or in connection with the exercise and performance of their functions as local education authorities or, as the case may be, of their social services functions, to co-operate with one another so as to secure, in the interests of the ratepayers of their areas, the best value for money from their expenditure on public passenger transport, taken as a whole<sup>9</sup>. It is the duty of all such authorities to afford to one another such information as may be reasonably required for the purpose of the co-operation required of them<sup>10</sup>. Where, as a result of any such co-operation, any such authority incurs expenditure which it would not otherwise have incurred, or receives less revenue than it would otherwise have done, that authority may, by notice to the other authority or authorities concerned, require that other authority or, as the case may be, those other authorities to reimburse the amount of that expenditure or of that reduction in revenue<sup>11</sup>. If: (a) any amount in respect of which, in accordance with such a notice, any such authority or authorities are required to reimburse another such authority<sup>12</sup>; or (b) where two or more such authorities are required by any such notice to reimburse another such authority, the share of that amount payable by each authority concerned<sup>13</sup>, is not determined by agreement between both or all the authorities concerned within six months of the receipt of the notice, or such longer period as may be agreed between them, that amount and, where head (b) above applies, the share payable by each authority concerned must be determined by an arbitrator<sup>14</sup>. Any such arbitrator must be appointed either by agreement between the authorities concerned or, in default of such agreement, by the President of the Chartered Institute of Public Finance and Accountancy<sup>15</sup>.

1 References in the Transport Act 1985 Pt V (ss 88-112) (as amended) (see PARAS 1277 et seq post) to authorities responsible for expenditure on public passenger transport services are references to passenger transport executives and non-metropolitan county and district councils (ss 88(8)(a), (b), 112(1)(a)); and in ss 89-92 (as amended) (see PARAS 1277-1279 post) include references to Transport for London in relation to any exercise of its power under the Greater London Authority Act 1999 s 156(2) or (3) (powers to make agreements for carrying out certain activities: see LONDON GOVERNMENT vol 29(1) (Reissue) PARA 287) which by virtue of the Transport Act 1985 s 65(3) (see PARA 1254 ante) is subject to ss 89-92 (as amended) (ss 88(8), 112(1)(a) (s 88(8) amended by the Transport for London (Consequential Provisions) Order 2003, SI 2003/1615, art 2, Sch 1 Pt 1 para 12(1), (3)). For the meaning of 'public passenger transport services' see PARA 1252 note 3 ante. As to passenger transport executives see PARA 247 ante. For the meaning of 'non-metropolitan county' see PARA 1179 note 1 ante. As to references to counties and district councils in relation to Wales see PARA 1179 note 1 ante. As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

2 As to agreements providing for service subsidies see PARA 1252 note 10 ante. References to service subsidies are references to the payments that fall to be made by any such authority as is mentioned in the Transport Act 1985 s 88(8) (as amended) (see note 1 supra) under any agreement providing for service subsidies: s 112(1)(b).

3 Ibid s 88(1). The text refers to the provisions of ss 89-92 (as amended): see PARAS 1277-1279 post.

4 For the meaning of 'functions' see PARA 1252 note 14 ante.

5 Transport Act 1985 s 88(2)(a).

6 As to local education authorities see EDUCATION vol 15(1) (2006 Reissue) PARA 20 et seq.

7 For these purposes, 'local authority' has the same meaning as in the Local Authority Social Services Act 1970 s 1 (as amended) (see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1005): Transport Act 1985 s 88(3)(a).

8 Ibid s 88(2)(b). For the meaning of 'social service functions' see PARA 1252 text and note 14 ante.

9 Ibid s 88(2). As to sanctions and remedies for breach of statutory duty see ADMINISTRATIVE LAW; STATUTES vol 44(1) (Reissue) PARA 1353 et seq.

10 Ibid s 88(4).

11 Ibid s 88(5).

12 Ibid s 88(6)(a).

13 Ibid s 88(6)(b).

14 Ibid s 88(6). As to arbitration generally see ARBITRATION vol 2 (2008) PARA 1201 et seq.

15 Ibid s 88(7).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(iv) Financial Provisions/A. EXPENDITURE ON PUBLIC PASSENGER TRANSPORT SERVICES/1277. Obligation to invite tenders for subsidised services.

### **1277. Obligation to invite tenders for subsidised services.**

An authority responsible for expenditure on public passenger transport services<sup>1</sup> may not enter into an agreement providing for service subsidies<sup>2</sup> under which a local service<sup>3</sup> is to be provided except by accepting a tender invited in pursuance of these provisions<sup>4</sup>. Where any such authority proposes to secure the provision of any local service by entering into any such

agreement, the authority must invite tenders for the provision of that service for such period and on such basis as may be specified in the invitation to tender<sup>5</sup>. Any such invitation<sup>6</sup>:

- 1912 (1) must be issued generally, in such manner as the authority issuing the invitation considers appropriate for bringing it to the attention of persons who may be interested<sup>7</sup>; and
- 1913 (2) must also be issued individually to all persons who have given to that authority a written notice indicating that they wish to receive invitations to tender for the provision of local services for that authority's area or, as the case may be, for the provision of such services of any description to which the invitation relates<sup>8</sup>.

Any such notice must specify the address to which any such invitation is to be directed, and it is sufficient for the purposes of head (2) above if the authority sends the invitation to the person giving any such notice at the address so specified<sup>9</sup>. An authority issuing such an invitation to tender must not accept any tender submitted by a person who is not the holder of either<sup>10</sup>:

- 1914 (a) a PSV operator's licence<sup>11</sup>, not being a licence to which any condition is attached<sup>12</sup> prohibiting the holder from using vehicles under the licence to provide local services of all descriptions or, as the case may be, of any description to which the invitation relates<sup>13</sup>; or
- 1915 (b) a community bus permit<sup>14</sup>.

An authority issuing an invitation to tender must, in determining whether to accept a tender submitted in response to the invitation or which (if any) of several such tenders to accept, have regard in particular to: (i) a combination of economy, efficiency and effectiveness; (ii) the implementation of the policies set out in the appropriate bus strategy<sup>15</sup>; and (iii) the reduction or limitation of traffic congestion, noise or air pollution<sup>16</sup>.

1 As to authorities responsible for expenditure on public passenger transport services see PARA 1276 note 1 ante. For the meaning of 'public passenger transport services' see PARA 1252 note 3 ante.

2 As to agreements providing for service subsidies see PARA 1252 note 10 ante. For the meaning of 'service subsidies' see PARA 1276 note 2 ante.

3 For the meaning of 'local service' see PARA 1177 ante.

4 Transport Act 1985 s 89(1). This is expressed to be subject to s 90 (see PARA 1278 post) and s 91 (see PARA 1278 post). For service subsidy agreements excluded from this provision see, in relation to England, the Service Subsidy Agreements (Tendering) (England) Regulations 2002, SI 2002/2090 (amended by SI 2004/609); and, in relation to Wales, the Service Subsidy Agreements (Tendering) Regulations 1985, SI 1985/1921 (amended by SI 1989/464; SI 1994/1227; SI 1998/2197; SI 2002/520).

5 Transport Act 1985 s 89(2).

6 Ibid s 89(4). This is expressed to be subject to s 89(5) (see the text to note 10 infra).

7 Ibid s 89(4)(a).

8 Ibid s 89(4)(b). For the meaning of 'writing' see PARA 1139 note 11 ante.

9 Ibid s 89(5).

10 Ibid s 89(6).

11 For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante; definition applied by ibid s 137(1), (2).

12 Ie under ibid s 26: see PARA 1187 ante.

13 Ibid s 89(6)(a) (amended by the Statute Law (Repeals) Act 1995).

14 Transport Act 1985 s 89(6)(b). The text refers to a permit under s 22: see PARA 1185 ante.

15 'The appropriate bus strategy' means: (1) in the case of a local transport authority (within the meaning of ibid s 108(4): see PARA 1190 ante), its bus strategy; (2) in the case of a district council which is not such an authority, the bus strategy of the council for the county in which the district is situated; and (3) in the case of a passenger transport executive for a passenger transport area, the bus strategy made jointly by the passenger transport authority for the area and the councils for the metropolitan districts comprised in the area: s 89(8) (substituted by the Transport Act 2000 s 152(1), (2)).

16 Transport Act 1985 s 89(7) (substituted by the Transport Act 2000 s 152(2)).

## UPDATE

### 1277 Obligation to invite tenders for subsidised services

TEXT AND NOTES 15, 16--Transport Act 1985 s 89(7) amended: Local Transport Act 2008 ss 10(11), 131, Sch 7 Pt 1.

NOTE 15--Transport Act 1985 s 89(8) repealed: Local Transport Act 2008 ss 10(11), 131, Sch 7 Pt 1.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(iv) Financial Provisions/A. EXPENDITURE ON PUBLIC PASSENGER TRANSPORT SERVICES/1278. Further provisions and exceptions to the obligation to invite tenders for subsidised services.

### 1278. Further provisions and exceptions to the obligation to invite tenders for subsidised services.

The period specified in any invitation to tender<sup>1</sup> as the period for which a service to which the invitation relates is to be provided must not exceed five years beginning with the date on which any agreement entered into by accepting a tender submitted in response to the invitation is concluded<sup>2</sup>. Such information as may be prescribed<sup>3</sup> with respect to any tenders submitted in response to any such invitation to tender must be published by the authority issuing the invitation in such manner as may be prescribed<sup>4</sup>. On entering into an agreement by accepting any such tender, that authority must publish in such manner as may be prescribed its reasons for considering that the payment of service subsidies<sup>5</sup> to secure the service in question in accordance with the terms of that tender accords with the statutory objectives<sup>6</sup>.

Regulations<sup>7</sup> may provide for treating a specification of terms of service, in such form as may be prescribed<sup>8</sup>:

- 1916 (1) prepared, with reference to any invitation to tender<sup>9</sup> by any authority responsible for expenditure on public passenger transport services<sup>10</sup>, by the authority issuing the invitation with respect to the provision of that service by a company to be formed in pursuance of any requirement under Part IV of the Transport Act 1985<sup>11</sup> to carry on any business which includes any current activities of that authority<sup>12</sup>; and
- 1917 (2) ratified by that company after its formation within such period and in such manner as may be prescribed<sup>13</sup>,

as if it were a tender submitted in response to that invitation by that company within any period allowed for the submission of tenders in accordance with that invitation<sup>14</sup>.

Regulations may provide for excluding from the obligation to invite tenders for subsidised services<sup>15</sup> agreements of any description specified in the regulations, and any such description may be framed by reference to<sup>16</sup>:

- 1918 (a) the description of service to which the agreement relates<sup>17</sup>;
- 1919 (b) the description of persons proposing to operate the service<sup>18</sup>;
- 1920 (c) the period for which the service is to be provided under the agreement<sup>19</sup>;
- 1921 (d) the aggregate amount of the service subsidies provided for under the agreement<sup>20</sup>; or
- 1922 (e) any other relevant circumstances<sup>21</sup>.

The obligation to invite tenders for subsidised services<sup>22</sup> does not apply in any case where it appears to an authority responsible for expenditure on public passenger transport services that action is urgently required for the purpose of<sup>23</sup>:

- 1923 (i) maintaining an existing service<sup>24</sup>;
- 1924 (ii) securing the provision of a service in place of a service which has ceased to operate<sup>25</sup>; or
- 1925 (iii) securing the provision of a service to meet any public transport requirement which has arisen unexpectedly and ought in the opinion of the authority to be met without delay<sup>26</sup>,

and that it is necessary for that purpose to enter into an agreement providing for service subsidies<sup>27</sup> in order to secure that service<sup>28</sup>. On entering into any such agreement an authority must publish in such manner as may be prescribed either a statement that no tender was submitted in response to that invitation to tender, or a statement of its reasons for considering that no tender so submitted was acceptable, as the case may require<sup>29</sup>.

1    Ie issued under the Transport Act 1985 s 89 (as amended): see PARA 1277 ante.

2    Transport Act 1985 s 90(1). As to the period within which an act must be done see TIME vol 97 (2010) PARAS 336-341.

3    For the meaning of 'prescribed' see PARA 1178 note 5 ante.

4    Transport Act 1985 s 90(2). As to the information to be published see, in relation to England, the Service Subsidy Agreements (Tendering) (England) Regulations 2002, SI 2002/2090 (amended by SI 2004/609); and, in relation to Wales, the Service Subsidy Agreements (Tendering) Regulations 1985, SI 1985/1921 (amended by SI 1989/464; SI 1994/1227; SI 1998/2197; SI 2002/520).

5    For the meaning of 'service subsidies' see PARA 1276 note 2 ante.

6    Transport Act 1985 s 90(3) (amended by the Transport Act 2000 s 152(1), (3)). The tender must accord with the Transport Act 1985 s 89(7) (as substituted): see PARA 1277 ante.

7    For the meaning of 'regulations' see PARA 1178 note 4 ante. At the date at which this volume states the law no such regulations had been made.

8    Transport Act 1985 s 90(4).

9    Ie issued under *ibid* s 89: see PARA 1277 ante.

10   As to authorities responsible for expenditure on public passenger transport services see PARA 1276 note 1 ante. For the meaning of 'public passenger transport services' see PARA 1252 note 3 ante.

11   Ie the Transport Act 1985 Pt IV (ss 57-87) (as amended): see PARAS 1247-1275 ante.



12 Ibid s 90(4)(a). The reference to any current activities of an authority responsible for expenditure on public passenger transport services is a reference to any activities which at the time when the specification of terms of service is prepared are currently carried on by or on behalf of that authority, or by any body of which that authority is a member or to which it appoints any members: s 90(5). For the meaning of 'body' see PARA 1183 note 5 ante.

13 Ibid s 90(4)(b).

14 Ibid s 90(4).

15 Ie the obligation under ibid s 89(1): see PARA 1277 ante.

16 Ibid s 91(1). As to the exclusion of certain agreements see, in relation to England, the Service Subsidy Agreements (Tendering) (England) Regulations 2002, SI 2002/2090 (amended by SI 2004/609); and, in relation to Wales, the Service Subsidy Agreements (Tendering) Regulations 1985, SI 1985/1921 (amended by SI 1989/464; SI 1994/1227; SI 1998/2197; SI 2002/520).

17 Transport Act 1985 s 91(1)(a).

18 Ibid s 91(1)(b).

19 Ibid s 91(1)(c).

20 Ibid s 91(1)(d).

21 Ibid s 91(1)(e).

22 Ie under ibid s 89(1): see PARA 1277 ante.

23 Ibid s 91(2).

24 Ibid s 91(2)(a).

25 Ibid s 91(2)(b).

26 Ibid s 91(2)(c).

27 As to agreements providing for service subsidies see PARA 1252 note 10 ante.

28 Transport Act 1985 s 91(2). Where, by virtue of s 91(2), any such authority enters into an agreement to which s 89(1) (see PARA 1277 ante) does not apply, the authority must as soon as possible invite tenders for the provision of the service which is the subject of that agreement for such period and on such basis as may be specified in the invitation to tender; and s 89(3)-(8) (as amended) (see PARA 1277 ante) and s 90 (see notes 1-14 supra) apply in any such case as if the invitation had been issued under s 89(2) (see PARA 1277 ante): s 91(3). Any agreement entered into by virtue of s 91(2) must be made so as to remain in force no later than the end of the period of three months beginning with the day immediately following the end of the period allowed for the submission of tenders in accordance with the invitation to tender issued under s 91(3): s 91(4).

Subject to s 91(6), (7) (see the text to note 29 infra), where: (1) an invitation to tender for the provision of any service is issued under s 89(2) or s 91(3); and (2) no tender, or no tender which the authority issuing the invitation considers acceptable, is submitted in response to that invitation, any power of that authority to enter into an agreement providing for service subsidies in order to secure that service ceases to be subject to s 89(1): s 91(5). Any agreement which by virtue of s 91(5) is entered into by an authority responsible for expenditure on public passenger transport services otherwise than by acceptance of a tender invited in pursuance of s 89 (as amended) (see PARA 1277 ante) or s 91(3) must be made so as to remain in force no later than the end of the period specified in pursuance of s 90(1) in the invitation to tender mentioned in head (1) supra: s 91(6).

29 Ibid s 91(7). See note 17 supra.

## UPDATE

### 1278 Further provisions and exceptions to the obligation to invite tenders for subsidised services

TEXT AND NOTES 1, 2--Transport Act 1985 s 90(1) amended: Local Transport Act 2008 s 70.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/ (iv) Financial Provisions/A. EXPENDITURE ON PUBLIC PASSENGER TRANSPORT SERVICES/1279. General provisions with respect to the exercise of service subsidy functions.

### **1279. General provisions with respect to the exercise of service subsidy functions.**

An authority responsible for expenditure on public passenger transport services<sup>1</sup> must, in the exercise and performance of its functions<sup>2</sup> in relation to agreements providing for service subsidies<sup>3</sup>, have regard to the interests of the public and of persons providing public passenger transport services in its area<sup>4</sup>.

Regulations<sup>5</sup>: (1) may make further provision for regulating the exercise and performance by authorities responsible for expenditure on public passenger transport services of their functions in relation to agreements providing for service subsidies<sup>6</sup>; and (2) may make provision for limiting to an amount specified in the regulations the aggregate amount of the service subsidies any such authority may agree to pay under any one such agreement<sup>7</sup>; and (3) may make provision for exceptions<sup>8</sup> in such cases as may be prescribed<sup>9</sup>.

1 As to authorities responsible for expenditure on public passenger transport services see PARA 1276 note 1 ante. For the meaning of 'public passenger transport services' see PARA 1252 note 3 ante.

2 For the meaning of 'functions' see PARA 1252 note 14 ante.

3 As to agreements providing for service subsidies see PARA 1252 note 10 ante. For the meaning of 'service subsidies' see PARA 1276 note 2 ante.

4 Transport Act 1985 s 92(1) (amended by the Transport Act 2000 s 152(1), (4)). In *R v Merseyside Passenger Transport Authority, ex p Crosville Motor Services Ltd* (1988) Times, 3 March, CA, the applicant sought judicial review of the authority's decision to apply a scale of maximum fares for subsidised public passenger transport, on the ground that the authority was in breach of its duty under this provision so to conduct itself as not to inhibit competition; the Court of Appeal held that real evidence was required that the application of the scale was inhibiting competition before it would be entitled in its discretion to grant relief; a strong but not irresistible inference to that effect was not sufficient.

5 For the meaning of 'regulations' see PARA 1178 note 4 ante.

6 Transport Act 1985 s 92(2)(a).

7 Ibid s 92(2)(b).

8 I.e. exceptions from ibid 89(4): see PARA 1277 ante.

9 Ibid s 92(2)(c). For the meaning of 'prescribed' see PARA 1178 note 5 ante. The provisions of ss 89-91 (as amended) (see PARAS 1277-1278 ante) are subject to s 92 and any provision made by regulations under s 92: s 92(3). At the date at which this volume states the law no such regulations had been made.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/ (iv) Financial Provisions/B. TRAVEL CONCESSION SCHEMES/1280. Travel concession schemes.

## ***B. TRAVEL CONCESSION SCHEMES***

### **1280. Travel concession schemes.**

Any local authority<sup>1</sup>, or any two or more local authorities acting jointly, may establish a travel concession scheme for the provision of travel concessions<sup>2</sup> on journeys on public passenger transport services<sup>3</sup>:

- 1926 (1) between places in the principal area covered by the scheme<sup>4</sup>;
- 1927 (2) between such places and places outside but in the vicinity of that area<sup>5</sup>; or
- 1928 (3) between places outside but in the vicinity of that area<sup>6</sup>, by operators of such services participating in the scheme<sup>7</sup>.

Any travel concession scheme so established must define:

- 1929 (a) the travel concessions which are for the time being to be provided by operators participating in the scheme<sup>8</sup>;
- 1930 (b) the description of persons eligible<sup>9</sup> to receive travel concessions under any such scheme who are for the time being to qualify for travel concessions provided under the scheme<sup>10</sup>; and
- 1931 (c) the dates in any year currently adopted as the dates on which operators may be admitted to participate in the scheme<sup>11</sup> ('the standard admission dates')<sup>12</sup>,

and may include particulars of any other arrangements for the time being adopted by the authority or authorities concerned in establishing the scheme with respect to the operation, scope and application of the scheme<sup>13</sup>.

Any such scheme may define the standard admission dates by specifying particular dates, or by referring to dates of any specified description or separated by intervals of any specified length, but those dates, however determined, must not be separated by intervals of a length exceeding such period as may be prescribed<sup>14</sup>. Arrangements adopted by the authority or authorities concerned in establishing any such scheme with respect to the operation, scope and application of the scheme, including the matters specifically mentioned in heads (a) to (c) above, may differ for different descriptions of concessions or services to which the scheme applies<sup>15</sup>. Where an operator participating in any such scheme in respect of any services operated by him provides travel concessions in accordance with the scheme for persons travelling on those services, the authority responsible for administration of the scheme<sup>16</sup> or, as the case may be, the authorities so responsible in such proportions respectively as they may agree among themselves must reimburse that operator for providing those concessions<sup>17</sup>.

The persons eligible to receive travel concessions under a travel concession scheme are:

- 1932 (i) persons who have attained the age of 60 years<sup>18</sup>;
- 1933 (ii) persons whose age does not exceed 16 years<sup>19</sup>;
- 1934 (iii) persons whose age exceeds 16 years but does not exceed 18 years and who are undergoing full-time education<sup>20</sup>;
- 1935 (iv) persons who are blind<sup>21</sup>;
- 1936 (v) persons who are partially sighted<sup>22</sup>;
- 1937 (vi) persons who are deaf<sup>23</sup>;
- 1938 (vii) persons who are without speech<sup>24</sup>;
- 1939 (viii) persons who have a disability, or have suffered an injury, which has a substantial and long term adverse effect on their ability to walk<sup>25</sup>;

- 1940 (ix) persons who do not have arms or have long term loss of the use of both arms<sup>26</sup>;
- 1941 (x) persons who have a learning disability, that is, a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning<sup>27</sup>;
- 1942 (xi) persons who, if they applied for the grant of a licence to drive a motor vehicle<sup>28</sup> under Part III of the Road Traffic Act 1988, would have their applications refused pursuant to the provisions relating to physical fitness<sup>29</sup> otherwise than on the ground of persistent misuse of drugs or alcohol<sup>30</sup>;
- 1943 (xii) any person travelling as the companion of a person who is eligible to receive travel concessions by virtue of any of heads (i) to (xi) above and requires the assistance of a companion in order to travel on journeys on public passenger transport services<sup>31</sup>; and
- 1944 (xiii) such other classes of persons as the Secretary of State<sup>32</sup> may by order specify<sup>33</sup>.

Where a passenger transport authority has established such a scheme, whether alone or jointly with any other authority or authorities, it must notify the passenger transport executive for its area of any proposal to vary the scheme, giving particulars of the proposed variation<sup>34</sup>.

1 'Local authority' means the council of a county or district, and includes also a metropolitan county passenger transport authority: Transport Act 1985 s 93(8). As to the construction of references to counties and district councils in relation to Wales see PARA 1179 note 1 ante. As to local government areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; LONDON GOVERNMENT. For provision as to mandatory travel concessions see PARA 1289 et seq post. For provision as to travel concessions in Greater London see further LONDON GOVERNMENT vol 29(2) (Reissue) PARA 396 et seq.

2 'Travel concession' means the reduction or waiver of a fare either absolutely or subject to terms, limitations or conditions: *ibid* s 112(1)(f).

3 *Ibid* s 93(1). For the meaning of 'public passenger transport services' see PARA 1252 note 3 ante.

4 *Ibid* s 93(1)(a). For the purposes of s 93, the principal area covered by a scheme under s 93 is: (1) the area of the local authority concerned or, where two or more such authorities are concerned, the area comprising the areas of both or all those authorities (s 93(2)(a)); or (2) if an area comprised within the area which would be the principal area under head (1) *supra* is specified in the scheme as being the principal area to which the scheme applies, the area so specified (s 93(2)(b)).

5 *Ibid* s 93(1)(b).

6 *Ibid* s 93(1)(c).

7 *Ibid* s 93(1). As to the power of local authorities to impose charges in connection with travel concessions see the Local Authorities (Transport Charges) Regulations 1998, SI 1998/948 (amended by SI 2003/1615).

8 Transport Act 1985 s 93(3)(a).

9 *Ie* in accordance with *ibid* s 93(7) (as amended): see the text to notes 18-33 *infra*.

10 *Ibid* s 93(3)(b).

11 *Ie* under *ibid* s 96: see PARA 1283 post.

12 *Ibid* s 93(3)(c).

13 *Ibid* s 93(3).

14 *Ibid* s 93(4). For the meaning of 'prescribed' see PARA 1178 note 5 ante. For the purposes of s 93(4), the prescribed period is three months: see the Travel Concession Schemes Regulations 1986, SI 1986/77, reg 34.

15 Transport Act 1985 s 93(5).

16 Unless the context otherwise requires, references in *ibid* s 93 (as amended) and in Pt V (ss 88-112) (as amended) to the authority or authorities responsible for administration of a scheme under s 93 (s 93(9)) are references:

1288 (1) except in a case to which head (2) *infra* applies, to the authority concerned in establishing the scheme or, where two or more authorities are so concerned, to both or all those authorities acting jointly (s 93(9)(a)); or

1289 (2) where the authority or one of the authorities concerned in establishing the scheme is a passenger transport authority for a passenger transport area, to the passenger transport executive for that authority's area or, as the case may require, to that executive and the other authority or authorities so concerned acting jointly (s 93(9)(b)).

As to passenger transport authorities see *PARA 247 ante*. For the meaning of 'passenger transport area' see *PARA 247 ante*; definition applied by s 137(5). As to passenger transport executives see *PARA 247 ante*.

17 *Ibid* s 93(6). This is expressed to be subject to s 94 (see *PARA 1281 post*).

18 *Ibid* s 93(7)(a) (substituted by the Travel Concessions (Eligibility) Act 2002 s 1(1)).

19 Transport Act 1985 s 93(7)(b). A person attains a particular age expressed in years at the commencement of the relevant anniversary of the date his birth: see the Family Law Reform Act 1969 s 9(1); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) *PARA 2*.

20 Transport Act 1985 s 93(7)(c).

21 *Ibid* s 93(7)(d) (s 93(7)(d), (e) substituted, and s 93(7)(ea)-(eg) added, by the Transport Act 2000 s 161, Sch 11 paras 9, 15).

22 Transport Act 1985 s 93(7)(e) (as substituted: see note 21 *supra*).

23 *Ibid* s 93(7)(ea) (as added: see note 21 *supra*).

24 *Ibid* s 93(7)(eb) (as added: see note 21 *supra*).

25 *Ibid* s 93(7)(ec) (as added: see note 21 *supra*).

26 *Ibid* s 93(7)(ed) (as added: see note 21 *supra*).

27 *Ibid* s 93(7)(ee) (as added: see note 21 *supra*).

28 *Ie* under the Road Traffic Act 1988 Pt III (ss 87-109C) (as amended).

29 *Ie* pursuant to *ibid* s 92 (as amended) (physical fitness) see *PARA 455 ante*.

30 Transport Act 1985 s 93(7)(ef) (as added: see note 21 *supra*).

31 *Ibid* s 93(7)(eg) (as added: see note 21 *supra*).

32 As to the Secretary of State see *PARA 236 ante*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see *PARA 237 ante*.

33 Transport Act 1985 s 93(7)(f).

34 *Ibid* s 93(10). See note 16 *supra*.

## UPDATE

### 1280 Travel concession schemes

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) *PARA 196A*.

NOTE 1--In definition of 'local authority' reference to a metropolitan county passenger transport authority is now to an Integrated Transport Authority for an integrated transport area (see PARA 247) and a combined authority (TRADE AND INDUSTRY vol 97 (2010) PARA 1002): Transport Act 1985 s 93(8) (amended by the Local Transport Act 2008 Sch 4 para 32(2); Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 65).

NOTE 16--Head (2). Reference to a Passenger Transport Authority for a passenger transport area now to an Integrated Transport Authority for an integrated transport area (see PARA 247): Transport Act 1985 s 93(9)(b) (amended by the Local Transport Act 2008 Sch 4 para 32(3)). Transport Act 1985 s 137(5) amended: Local Transport Act 2008 Sch 4 para 40.

TEXT AND NOTE 34--Transport Act 1985 s 93(10) amended: Local Transport Act 2008 Sch 4 para 32(4).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(iv) Financial Provisions/B. TRAVEL CONCESSION SCHEMES/1281. Administration of schemes.

## **1281. Administration of schemes.**

Regulations<sup>1</sup> may make provision with respect to any of the following matters:

- 1945 (1) the factors to be taken into account by the authority or authorities responsible for administration of a travel concession scheme<sup>2</sup> in determining the aggregate amount that may be made available for the purpose of reimbursing operators participating in the scheme for providing travel concessions<sup>3</sup> during any period<sup>4</sup>;
- 1946 (2) the determination by the authority or authorities so responsible of the amounts to be paid to individual operators participating in the scheme, or to any class of such operators, by way of reimbursement for providing such concessions<sup>5</sup>;
- 1947 (3) the manner of making any payments due to operators by way of such reimbursement<sup>6</sup>;
- 1948 (4) the provisions or descriptions of provisions that are to be or, as the case may be, may or may not be included in arrangements agreed with operators or adopted by the authority or authorities so responsible with respect to participation of operators in the scheme<sup>7</sup>; and
- 1949 (5) the terms on which and the extent to which the authority or authorities so responsible may employ any person as its agent for the purposes of the administration of the scheme and the descriptions of persons who may be so employed<sup>8</sup>.

Subject to any provision of regulations made by virtue of head (4) above and to the following provisions, the arrangements with respect to participation of operators in any such scheme are such as may from time to time be agreed between the authority or authorities responsible for administration of the scheme and individual operators<sup>9</sup>.

Subject to: (a) any provision of regulations under heads (1) to (5) above<sup>10</sup>; (b) any modifications<sup>11</sup> that may<sup>12</sup> be agreed between the authority or authorities responsible for administration of any such scheme and any individual operator<sup>13</sup>; and (c) any modifications applied in the case of any individual operator<sup>14</sup>, the arrangements with respect to

reimbursement<sup>15</sup> and terms of withdrawal from participation in the scheme applicable to operators of eligible services participating in the scheme must be such as the authority or authorities responsible for administration may from time to time adopt and must be the same in the case of all such operators<sup>16</sup>.

1    le regulations under the Transport Act 1985 s 94: see the text and notes 2-16 infra. As to such regulations see the Travel Concession Schemes Regulations 1986, SI 1986/77 (amended by SI 1996/2711). For the meaning of 'regulations' see PARA 1178 note 4 ante.

2    le under the Transport Act 1985 s 93 (as amended): see PARA 1280 ante. As to the authority or authorities responsible for administration of a scheme see PARA 1280 note 16 ante.

3    For the meaning of 'travel concession' see PARA 1280 note 2 ante.

4    Transport Act 1985 s 94(1)(a).

5    Ibid s 94(1)(b).

6    Ibid s 94(1)(c).

7    Ibid s 94(1)(d).

8    Ibid s 94(1)(e).

9    Ibid s 94(2).

10   Ibid s 94(3)(a).

11   As to the meaning of 'modification' see PARA 1134 note 21 ante; definition applied by ibid s 137(1), (2).

12   le by virtue of any provision of regulations made by virtue of head (4) in the text (see the text to note 7 supra), or in accordance with ibid s 96 (see PARA 1283 post).

13   Ibid s 94(3)(b).

14   le by a direction given under ibid s 98: see PARA 1285 post.

15   The arrangements currently adopted by the authority or authorities responsible for administration of any such scheme with respect to reimbursement of operators of eligible services participating in the scheme are referred to in ibid ss 95-112 (as amended) (see PARA 1282 et seq post) as the current reimbursement arrangements for eligible service operators participating in the scheme: ss 94(5), 112(1)(c). In relation to operators participating in any such scheme, references in s 94 to arrangements with respect to reimbursement are references to conditions of entitlement of such operators to, and the method of determination and manner of payment of, reimbursement in respect of travel concessions provided under the scheme: s 94(6). For the purposes of the provisions of Pt V (ss 88-112) (as amended) relating to schemes under s 93 (as amended) (see PARA 1280 ante), 'eligible service' means a service using public service vehicles of a class specified in an order made by the Secretary of State (as respects England) or the Welsh Ministers (as respects Wales): s 94(4) (amended by the Transport Act 2000 ss 161, 274, Sch 11 paras 9, 16, Sch 31 Pt II).

16   Transport Act 1985 s 94(3).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/ (iv) Financial Provisions/B. TRAVEL CONCESSION SCHEMES/1282. Publicity requirements for schemes and reimbursement arrangements.

## **1282. Publicity requirements for schemes and reimbursement arrangements.**

On or before the date on which a travel concession<sup>1</sup> scheme<sup>2</sup> comes into operation or, where it comes into operation on different dates with respect to different concessions to be provided under the scheme, on or before the first of those dates<sup>3</sup>:

- 1950 (1) the authority or authorities concerned in establishing it must publish particulars of the scheme<sup>4</sup>; and
- 1951 (2) the authority or authorities responsible for administration of the scheme<sup>5</sup> must publish particulars of the current reimbursement arrangements for eligible service<sup>6</sup> operators<sup>7</sup> participating in the scheme as they are to apply on initial establishment of the scheme<sup>8</sup>,

in such manner, in either case, as the authority or authorities concerned may think fit<sup>9</sup>.

Particulars of any subsequent variations must be published: (a) in the case of variations of the scheme, by the authority or authorities concerned in establishing the scheme<sup>10</sup>; and (b) in the case of variations of the arrangements, by the authority or authorities responsible for administration of the scheme<sup>11</sup>.

Following publication under head (1) above or, as the case may be, under head (2) above of particulars of any scheme or arrangements<sup>12</sup>:

- 1952 (i) copies of the scheme or, as the case may be, of the arrangements, with any subsequent variations, must be made available at the principal office of the authority or, as the case may be, of each authority concerned<sup>13</sup>; and
- 1953 (ii) a copy must be supplied to any person on request, whether at that office or by post, either free of charge or at a charge representing the cost of providing the copy<sup>14</sup>.

Where the authority or any of the authorities concerned in establishing such a scheme is a passenger transport authority<sup>15</sup>, it must notify the passenger transport executive<sup>16</sup> for its area<sup>17</sup> of any proposal to publish particulars of the scheme in advance of its coming into operation, giving the proposed date of publication<sup>18</sup>.

1 For the meaning of 'travel concession' see PARA 1280 note 2 ante.

2 Ie under the Transport Act 1985 s 93 (as amended): see PARA 1280 ante.

3 Ibid s 95(1).

4 Ibid s 95(1)(a).

5 As to the authority or authorities responsible for administration of a scheme see PARA 1280 note 16 ante.

6 For the meaning of 'eligible service' see PARA 1281 note 15 ante.

7 As to the current reimbursement arrangements for eligible service operators see PARA 1281 note 15 ante.

8 Transport Act 1985 s 95(1)(b).

9 Ibid s 95(1).

10 Ibid s 95(2)(a).

11 Ibid s 95(2)(b).

12 Ibid s 95(3).



13 Ibid s 95(3)(a). The principal office of a body corporate is the place where it is managed and controlled as a whole: *Garton v Great Western Rly Co* (1858) EB & E 837; *Palmer v Caledonian Rly Co* [1892] 1 QB 823, CA; *Clokey v London and North-Western Rly Co* [1905] 2 IR 251.

14 Transport Act 1985 s 95(3)(b).

15 As to passenger transport authorities see PARA 247 ante.

16 As to passenger transport executives see PARA 247 ante.

17 For the meaning of 'passenger transport area' see PARA 247 ante; definition applied by the Transport Act 1985 s 137(5).

18 Ibid s 95(4).

## UPDATE

### 1282 Publicity requirements for schemes and reimbursement arrangements

TEXT AND NOTES 15-18--Transport Act 1985 s 95(4) amended: Local Transport Act 2008 Sch 4 para 33.

NOTE 17--Transport Act 1985 s 137(5) amended: Local Transport Act 2008 Sch 4 para 40.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/ (iv) Financial Provisions/B. TRAVEL CONCESSION SCHEMES/1283. Right of eligible service operators to participate in travel concession schemes.

### 1283. Right of eligible service operators to participate in travel concession schemes.

Where any operator or prospective operator of an eligible service<sup>1</sup> which runs or will run between places within the limits covered by any travel concession<sup>2</sup> scheme<sup>3</sup> applies to the authority or authorities responsible for administration of that scheme<sup>4</sup> to be admitted to participate in it in respect of that service, the authority or authorities in question are obliged to admit that operator to participation in the scheme in respect of that service as from any standard admission date<sup>5</sup> under the scheme not later than the one next following<sup>6</sup>: (1) the end of such period as may be prescribed<sup>7</sup> beginning with the date of his application<sup>8</sup>; or (2) the date on which the service begins<sup>9</sup>, whichever last occurs<sup>10</sup>. The Secretary of State<sup>11</sup> may, on the application of the authority or authorities responsible for administration of any such scheme, exempt the authority or authorities in question from the obligation<sup>12</sup> in relation to any service or description of services, and the Secretary of State may at any time withdraw or vary any exemption so granted<sup>13</sup>. Such an exemption may not be granted on the application of a passenger transport executive<sup>14</sup>, or on the joint application of authorities who include such an executive, unless the application is made with the consent of the passenger transport authority<sup>15</sup> for that executive's area<sup>16</sup>.

Subject to certain regulations<sup>17</sup>, where it appears to the authority or authorities responsible for administration of any such scheme, in the case of any operator or prospective operator of an eligible service who applies to be admitted to participate in the scheme in respect of that service, that fares<sup>18</sup> currently charged or proposed to be charged by that operator for relevant journeys<sup>19</sup> on that service include a special amenity element<sup>20</sup>, the authority or authorities in

question may not be required<sup>21</sup> to admit that operator to participation in the scheme in respect of that service unless that operator agrees to appropriate modifications<sup>22</sup> of the current reimbursement arrangements for eligible service operators<sup>23</sup> participating in the scheme<sup>24</sup>. Subject to any such regulations, where it appears to the authority or authorities responsible for administration of any such scheme, in the case of any operator of an eligible service participating in the scheme, that fares currently charged by that operator for relevant journeys on that service include a special amenity element, the authority or authorities in question may by notice of not less than such period as may be prescribed exclude that operator from participation in the scheme in respect of that service unless before the end of that period that operator agrees to appropriate modifications of the current reimbursement arrangements for eligible service operators participating in the scheme<sup>25</sup>.

1 For the purposes of the Transport Act 1985 ss 96, 97 (see PARA 1284 post), references to a prospective operator of an eligible service are references to a person who has registered a local service under s 6 (as amended) (see PARA 1178 ante) but is not yet operating that service: s 96(9). For the meaning of 'eligible service' see PARA 1281 note 15 ante; and for the meaning of 'local service' see PARA 1177 ante.

2 For the meaning of 'travel concession' see PARA 1280 note 2 ante.

3 Ie under the Transport Act 1985 s 93 (as amended): see PARA 1280 ante.

4 As to the authority or authorities responsible for administration of a scheme see PARA 1280 note 16 ante.

5 For the meaning of 'the standard admission date' see PARA 1280 ante.

6 Transport Act 1985 s 96(1). This is expressed to be subject to s 96(2)-(9) (see the text and notes 1 supra, 11-25 infra).

7 For the meaning of 'prescribed' see PARA 1178 note 5 ante. For the purposes of *ibid* s 96(1)(a), the prescribed period is 28 days: see the Travel Concession Schemes Regulations 1986, SI 1986/77, reg 35.

8 Transport Act 1985 s 96(1)(a).

9 *Ibid* s 96(1)(b).

10 *Ibid* s 96(1).

11 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

12 Ie under the Transport Act 1985 s 96(1): see the text to notes 1-10 supra.

13 *Ibid* s 96(2).

14 As to passenger transport executives see PARA 247 ante.

15 As to passenger transport authorities see PARA 247 ante.

16 Transport Act 1985 s 96(3). For the meaning of 'passenger transport area' see PARA 247 ante; definition applied by s 137(5).

17 Ie any regulations under *ibid* s 94(1)(d): see PARA 1281 ante. For the meaning of 'regulations' see PARA 1178 note 4 ante.

18 For the meaning of 'fares' see PARA 1136 note 7 ante; definition applied by *ibid* s 137(1), (2).

19 'Relevant journeys' are journeys on which travel concessions are to be provided under the scheme in question: *ibid* s 96(8).

20 For the purposes of *ibid* s 96(4), (5) (see the text to notes 24-25 infra), fares for relevant journeys are to be regarded as including a special amenity element if they are significantly high in relation to the general level of fares for comparable journeys in the principal area covered by the scheme (within the meaning of s 93 (as amended): see PARA 1280 ante): s 96(6). For the meaning of 'principal area covered by a scheme' see PARA 1280 note 4 ante.

21 le by *ibid* s 96(1): see the text to notes 1-10 *supra*.

22 References in *ibid* s 96(4), (5) (see the text to notes 24-25 *infra*) to appropriate modifications of the reimbursement arrangements there mentioned are references to such modifications of those arrangements as the authority or authorities concerned may consider appropriate for providing reimbursement in respect of travel concessions provided for relevant journeys on the service in question by reference to the general level of fares mentioned in s 96(6) (see note 20 *supra*) instead of by reference to the actual fares charged, or proposed to be charged, for those journeys: s 96(7). As to the meaning of 'modification' see PARA 1134 note 21 *ante*; definition applied by s 137(1), (2).

23 As to the current reimbursement arrangements for eligible service operators see PARA 1281 note 15 *ante*.

24 Transport Act 1985 s 96(4).

25 *Ibid* s 96(5). For the purposes of s 96(5), the prescribed period is 42 days: see the Travel Concession Schemes Regulations 1986, SI 1986/77, reg 35.

## UPDATE

### **1283 Right of eligible service operators to participate in travel concession schemes**

TEXT AND NOTES 14-16--Transport Act 1985 s 96(3) amended: Local Transport Act 2008 Sch 4 para 34.

NOTE 16--Transport Act 1985 s 137(5) amended: Local Transport Act 2008 Sch 4 para 40.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/(iv) Financial Provisions/B. TRAVEL CONCESSION SCHEMES/1284. Compulsory participation in travel concession schemes.

### **1284. Compulsory participation in travel concession schemes.**

Where the arrangements currently adopted by the authority or authorities responsible for administration of a travel concession<sup>1</sup> scheme<sup>2</sup> with respect to the terms on which operators of eligible services<sup>3</sup> may withdraw from participation in the scheme require such an operator to give notice before withdrawing from the scheme in respect of any such service, any such operator is obliged to provide any travel concessions required by the scheme on journeys on any such service in respect of which he is participating in the scheme until he gives the required notice of withdrawal and the period of notice has expired<sup>4</sup>. The authority or authorities responsible for administration of any such scheme may at any time by notice in writing served on any operator or prospective operator<sup>5</sup> of an eligible service, including an operator already participating in the scheme, impose on him an obligation to provide travel concessions in accordance with the scheme on journeys on any such service operated by that operator to which the notice applies<sup>6</sup>. Such a notice is referred to in Part V of the Transport Act 1985<sup>7</sup> as a participation notice<sup>8</sup>. The power to serve such a participation notice is not exercisable in relation to any such scheme until after the date, or whichever last occurs of the respective dates, of first publication<sup>9</sup> of particulars of the scheme and of the current reimbursement arrangements for eligible service operators<sup>10</sup> participating in the scheme as they are to apply on initial establishment of the scheme<sup>11</sup>. An obligation imposed by a participation notice is<sup>12</sup> effective in relation to any service to which the obligation applies as from the appropriate

commencement date<sup>13</sup> for that service until the end of such period beginning with that date as may be specified in the participation notice<sup>14</sup>.

The exercise of the power to serve a participation notice on any person by a passenger transport executive<sup>15</sup>, or by authorities responsible for administration of a scheme<sup>16</sup> who include such an executive, requires the consent of the passenger transport authority<sup>17</sup> for the passenger transport executive's area<sup>18</sup>.

Where it is proposed to vary a travel concession scheme<sup>19</sup>, or to vary the current reimbursement arrangements for eligible service operators participating in any such scheme, the authority or authorities responsible for administration of the scheme may, not less than such period before the variation is to take effect as may be prescribed<sup>20</sup>, by notice served on any operator of any such service who is under an obligation<sup>21</sup> to provide travel concessions in accordance with the scheme, require him to indicate, within such period and in such manner as may be prescribed, whether or not he is willing to continue to participate in the scheme after the variation takes effect<sup>22</sup>. Any such notice must give particulars of the proposed variation<sup>23</sup>. Where an operator indicates that he is not willing to continue to participate in the scheme after the variation takes effect, any obligation of that operator to provide travel concessions in accordance with the scheme which was current at the date of the notice<sup>24</sup> and would still apart from this provision be in force on the date when the variation takes effect ceases on the latter date (without prejudice, however, to the service of a new participation notice)<sup>25</sup>.

1 For the meaning of 'travel concession' see PARA 1280 note 2 ante.

2 Ie under the Transport Act 1985 s 93 (as amended): see PARA 1280 ante. As to the authority or authorities responsible for administration of a scheme see PARA 1280 note 16 ante.

3 For the meaning of 'eligible service' see PARA 1281 note 15 ante.

4 Transport Act 1985 s 97(1). This is expressed to be subject to s 97(8) (see the text and notes 24-25 infra).

5 For the meaning of 'prospective operator' see PARA 1283 note 1 ante.

6 Transport Act 1985 s 97(2). This is expressed to be subject to s 97(3)-(10) (see the text and notes 9-25 infra).

7 Ie *ibid* Pt V (ss 88-112) (as amended).

8 *Ibid* ss 97(2), 112(1)(d).

9 Ie under *ibid* s 95: see PARA 1282 ante.

10 As to the current reimbursement arrangements for eligible service operators see PARA 1281 note 15 ante.

11 Transport Act 1985 s 97(3).

12 Ie subject to s 97(8) (see the text and notes 24-25 infra), s 98 (see PARA 1285 post), and s 99 (see PARA 1286 post).

13 Subject to *ibid* s 97(9) (see note 25 infra), for the purposes of s 97(4) the appropriate commencement date for any service to which an obligation imposed by a participation notice applies is the date immediately following the end of such period of notice as may be specified in the participation notice, or the date when the service begins, whichever last occurs: s 97(5).

14 *Ibid* s 97(4).

15 As to passenger transport executives see PARA 247 ante.

16 Ie under the Transport Act 1985 s 93 (as amended): see PARA 1280 ante.

17 As to passenger transport authorities see PARA 247 ante.

18 Transport Act 1985 s 97(10). For the meaning of 'passenger transport area' see PARA 247 ante; definition applied by s 137(5).

19 Ie under ibid s 93 (as amended): see PARA 1280 ante.

20 For the meaning of 'prescribed' see PARA 1178 note 5 ante. As to the prescribed period of notice see the Travel Concession Schemes Regulations 1986, SI 1986/77, reg 36.

21 Ie under the Transport Act 1985 s 97.

22 Ibid s 97(6).

23 Ibid s 97(7).

24 Ie under ibid s 97(6): see the text and notes 19-22 supra.

25 Ibid s 97(8). Where a notice is served on an operator under s 97(6) (see the text and notes 19-22 supra), the provisions of s 97(1)-(8) apply, on and after the date when the variation in question takes effect, in relation to any obligation of that operator under s 97(2) (see the text and notes 5-8 supra) to provide travel concessions in accordance with the scheme in question which: (1) was current at the date of the notice; and (2) does not cease (by virtue of s 97(8) or otherwise) before the date when that variation takes effect, as if the latter date were the appropriate commencement date for the purposes of s 97(4) (see the text and notes 12-14 supra) for each service to which the obligation applies: s 97(9).

## UPDATE

### 1284 Compulsory participation in travel concession schemes

TEXT AND NOTES 15-18--Transport Act 1985 s 97(10) amended: Local Transport Act 2008 Sch 4 para 35.

NOTE 18--Transport Act 1985 s 137(5) amended: Local Transport Act 2008 Sch 4 para 40.

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### 1285. Further provisions with respect to participation notices.

The authority or authorities by which a participation notice<sup>1</sup> is served on any person must send to that person, together with the notice, a copy of<sup>2</sup>: (1) such particulars of the scheme to which the notice relates and of any variations of that scheme<sup>3</sup>; and (2) such particulars of the current reimbursement arrangements for eligible service<sup>4</sup> operators<sup>5</sup> participating in the scheme and of any variations of those arrangements<sup>6</sup>, as have been published<sup>7</sup> before the date of the notice<sup>8</sup>.

A person on whom a participation notice has been served may apply to the Secretary of State<sup>9</sup> for cancellation or variation of that notice on either or both of the following grounds<sup>10</sup>, namely, that: (a) there are special reasons why his participation in the scheme in question in respect of the service or any of the services to which the notice applies would be inappropriate<sup>11</sup>; and (b) any provision of the scheme or of any such arrangements as are mentioned in head (2) above are inappropriate for application in relation to operators other than operators voluntarily participating in the scheme<sup>12</sup>. Such an application may be made by notice in writing given to the Secretary of State before the end of the period of 28 days beginning<sup>13</sup> with the date of the participation notice<sup>14</sup>. A person may not make such an application unless he has given notice in

writing of his intention to do so to the authority or authorities by whom the participation notice was served<sup>15</sup>: (i) if a period allowed for that purpose is specified in the participation notice, before the end of that period<sup>16</sup>; or (ii) in any other case, at any time before the date of the notice given to the Secretary of State<sup>17</sup>.

Where on any such application the Secretary of State finds the ground mentioned in head (a) above established, he may cancel the participation notice or, as the case may require, vary it by excluding from it any service operated by the applicant in respect of which he considers<sup>18</sup> the applicant's participation in the scheme would be inappropriate<sup>19</sup>. Where on any such application the Secretary of State finds the ground mentioned in head (b) above established, he must cancel the participation notice unless he considers that a direction as mentioned below would meet the case<sup>20</sup>. Where on any such application the Secretary of State does not cancel the participation notice, he may direct that the current arrangements for reimbursement of eligible service operators participating in the scheme are to apply in the case of the applicant or, as the case may require, in the case of any service operated by the applicant to which the participation notice applies with such modifications<sup>21</sup> as may be specified in the direction<sup>22</sup>.

If the Secretary of State cancels a participation notice<sup>23</sup> he must give to the authority or authorities by whom the notice was served a notice in writing indicating in what respects the scheme or, as the case may be, the current reimbursement arrangements for eligible service operators participating in the scheme are inappropriate for application in relation to operators other than operators voluntarily participating in the scheme<sup>24</sup>. Any obligation to provide travel concessions<sup>25</sup> which has come into effect before the determination of any application<sup>26</sup> with respect to the participation notice by which that obligation was imposed<sup>27</sup>:

- 1954 (A) ceases to have effect, if the notice is cancelled<sup>28</sup>; or
- 1955 (B) has effect, if the notice is varied, subject to a corresponding variation<sup>29</sup>,

on such date as may be specified by the Secretary of State in determining the application<sup>30</sup>.

1 For the meaning of 'participation notice' see PARA 1284 text to note 8 ante.

2 Transport Act 1985 s 98(1).

3 Ibid s 98(1)(a).

4 For the meaning of 'eligible service' see PARA 1281 note 15 ante.

5 As to the current reimbursement arrangements for eligible service operators see PARA 1281 note 15 ante.

6 Transport Act 1985 s 98(1)(b).

7 Ie under ibid s 95: see PARA 1282 ante.

8 Ibid s 98(1).

9 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

10 Transport Act 1985 s 98(2). This is expressed to be subject to s 98(3)-(9) (see the text and notes 13-30 infra).

11 Ibid s 98(2)(a).

12 Ibid s 98(2)(b).

13 As to the computation of periods of time see TIME vol 97 (2010) PARA 329 et seq.

14 Transport Act 1985 s 98(3). This is expressed to be subject to s 98(4) (see the text to notes 15-17 *infra*). In relation to the national travel concession (see PARA 1289 text and notes 15-27 *ante*), if the participation notice was served on the person by one or more authorities in England only, s 98(3) has effect as if, instead of the reference to 28 days beginning with the date of the participation notice, it referred to 56 days beginning with the date provided for in relation to the participation notice by virtue of s 97(5)(a) (see PARA 1284 note 13 *ante*): s 98(4A)(a) (added by the Concessionary Bus Travel Act 2007 s 13, Sch 2 para 1, 2).

15 Transport Act 1985 s 98(4).

16 *Ibid* s 98(4)(a). In relation to the national travel concession (see PARA 1289 text and notes 15-27 *ante*), if the participation notice was served on the person by one or more authorities in England only, s 98(4)(a) (see head (i) in the text) has effect as if it provided 'if the person is required by the participation notice to give a prescribed number of days' notice (or, if no number of days is prescribed, seven days' notice), at least that number of days before the date of the notice given to the Secretary of State' (ie under s 98(3): see the text and note 14 *supra*): s 98(4A)(b) (added by the Concessionary Bus Travel Act 2007 Sch 2 para 1, 2).

17 Transport Act 1985 s 98(4)(b). The text refers to any time before the date of the notice given to the Secretary of State under s 98(3): see the text to note 14 *supra*.

18 See PARA 1138 note 5 *ante*.

19 Transport Act 1985 s 98(5).

20 *Ibid* s 98(6). As to directions given by the Secretary of State see PARA 1181 note 13 *ante*.

21 As to the meaning of 'modification' see PARA 1134 note 21 *ante*; definition applied by *ibid* s 137(1), (2).

22 *Ibid* s 98(7).

23 *Ie* under *ibid* s 98(6): see the text to note 20 *supra*.

24 *Ibid* s 98(8).

25 *Ie* under *ibid* s 97(2): see PARA 1284 *ante*. For the meaning of 'travel concession' see PARA 1280 note 2 *ante*.

26 *Ie* under *ibid* s 98.

27 *Ibid* s 98(9).

28 *Ibid* s 98(9)(a).

29 *Ibid* s 98(9)(b).

30 *Ibid* s 98(9).

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### **1286. Release from compulsory participation.**

The authority or authorities responsible for administration of a travel concession<sup>1</sup> scheme<sup>2</sup> may, at any time by notice in writing served on any operator who is under an obligation<sup>3</sup> to provide travel concessions in accordance with the scheme on journeys on any eligible service<sup>4</sup> operated by him, release him from that obligation in respect of that service<sup>5</sup>. Any such operator may at any time by notice in writing apply to the Secretary of State<sup>6</sup> to be released from that obligation in respect of any such service on the ground that the authority or authorities responsible for administration of the scheme have failed to comply with the obligation of reimbursement<sup>7</sup>.

An operator may not make such an application unless he has given notice in writing of his intention to do so to the authority or authorities responsible for administration of the scheme not less than 28 days before the date of the application<sup>8</sup>.

A notice<sup>9</sup> must give particulars of any alleged failures of the authority or authorities in question to comply with the obligation of reimbursement<sup>10</sup> of which the operator complains<sup>11</sup>. On any such application the Secretary of State may, if he finds the applicant's ground of complaint established, determine that the applicant's obligation to provide travel concessions<sup>12</sup> is to cease on such date as may be specified in the determination<sup>13</sup>.

1 For the meaning of 'travel concession' see PARA 1280 note 2 ante.

2 Ie under the Transport Act 1985 s 93 (as amended): see PARA 1280 ante. As to the authority or authorities responsible for administration of a scheme see PARA 1280 note 16 ante.

3 Ie under ibid s 97(2): see PARA 1284 ante.

4 For the meaning of 'eligible service' see PARA 1281 note 15 ante.

5 Transport Act 1985 s 99(1).

6 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 Transport Act 1985 s 99(2). This is expressed to be subject to s 99(3)-(5) (see the text and notes 8-13 infra). The text refers to the obligation under s 93(6): see PARA 1280 ante.

8 Ibid s 99(3).

9 Ie under ibid s 99(2) (see the text to notes 6-7 supra) or s 99(3) (see the text to note 8 supra).

10 Ie under ibid s 93(6): see PARA 1280 ante.

11 Ibid s 99(4).

12 Ie under ibid s 97(2): see PARA 1284 ante.

13 Ibid s 99(5).

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### **1287. Further provisions with respect to eligible service operators participating in travel concession schemes.**

Regulations<sup>1</sup> may make provision as to:

- 1956 (1) the maximum or, as the case may be, minimum period that may for certain purposes<sup>2</sup> be specified in a participation notice<sup>3</sup>;
- 1957 (2) the form and contents of participation notices and other notices required<sup>4</sup>;  
and
- 1958 (3) the manner in which any such notice is to be served<sup>5</sup>.



Where the Secretary of State<sup>6</sup> cancels or varies a participation notice<sup>7</sup> after the obligation imposed by that notice has come into effect he may award compensation to the applicant<sup>8</sup> if it appears to him that the applicant has suffered<sup>9</sup>: (a) in a case where the notice is cancelled, any loss attributable to his participation in the scheme in question<sup>10</sup>; or (b) in a case where the notice is varied by excluding from it any service operated by the applicant, any loss attributable to his participation in that scheme in respect of that service<sup>11</sup>. Where on determining an application for release from compulsory participation<sup>12</sup> the Secretary of State finds that the authority or authorities responsible for administration of the scheme<sup>13</sup> in question has or have failed to comply with the obligation of reimbursement<sup>14</sup>, he may award compensation to the applicant<sup>15</sup> if it appears to him that the applicant has suffered any loss attributable to that failure<sup>16</sup>. In certain cases<sup>17</sup> the Secretary of State may by notice in writing require the authority responsible for administration of the scheme in question or, as the case may be, the authorities so responsible in such proportions as may be specified in the notice to pay to the applicant such an amount by way of compensation in respect of the loss there mentioned as may be so specified<sup>18</sup>.

Regulations may prescribe the procedure to be followed in connection with applications with respect to participation notices<sup>19</sup> and may in particular include provision<sup>20</sup>:

- 1959 (i) as to the conduct of any proceedings held in connection with any such application<sup>21</sup>; and
- 1960 (ii) enabling the Secretary of State to require either the applicant or the authority or authorities responsible for administration of the scheme in question, or both or all of them, to pay such sum as the Secretary of State may determine towards any expenses incurred by him in connection with the determination of the application<sup>22</sup>.

Any sums paid to the Secretary of State by virtue of head (ii) above must be paid into the Consolidated Fund<sup>23</sup>.

1 As the regulations that have been made see the Travel Concession Schemes Regulations 1986, SI 1986/77 (amended by SI 1996/2711). For the meaning of 'regulations' see PARA 1178 note 4 ante.

2 Ie for the purposes of any provision of the Transport Act 1985 s 97 (see PARA 1284 ante), or s 98 (see PARA 1285 ante).

3 Ibid s 100(1)(a). For the meaning of 'participation notice' see PARA 1284 text to note 8 ante.

4 Ibid s 100(1)(b). The text refers to the requirement for any purposes of ss 96-99: see PARAS 1283-1286 ante.

5 Ibid s 100(1)(c).

6 The Secretary of State may if he thinks fit appoint a person to determine an application under ibid s 98 (see PARA 1285 ante) or s 99 (see PARA 1286 ante) on his behalf, and references in ss 98-99 and in s 100(2)-(4) (see the text and notes 7-18 infra) to the Secretary of State must be read as including references to a person so appointed: s 100(5). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 Ie under ibid s 98: see PARA 1285 ante.

8 Ie under ibid s 100(4): see the text to note 18 infra.

9 Ibid s 100(2).

10 Ibid s 100(2)(a).

11 Ibid s 100(2)(b).

12 Ie under ibid s 99: see PARA 1286 ante.

13 As to the authority or authorities responsible for administration of a scheme see PARA 1280 note 16 ante.

14 Ie under the Transport Act 1985 s 93(6): see PARA 1280 ante.

15 See note 6 supra.

16 Transport Act 1985 s 100(3).

17 Ie in any case to which ibid s 100(2) (see the text and notes 7-11 supra) or s 100(3) (see the text and notes 12-16 supra) applies.

18 Ibid s 100(4). Where a requirement under s 100(4) is imposed on more than one authority, the liability of the authorities concerned to the applicant: (1) extends to the whole of the amount specified in the notice imposing the requirement; and (2) is both joint and several, but if any such authority makes any payment, in or towards the discharge of that liability, of an amount exceeding the amount representing any proportion specified in the notice as that authority's share, that authority is entitled to recover an appropriate contribution, determined by reference to the proportions specified in that notice, from the other authority or authorities concerned: s 100(7).

19 Ie applications under ibid s 98 (see PARA 1285 ante) and s 99 (see PARA 1286 ante).

20 Ibid s 100(6).

21 Ibid s 100(6)(a).

22 Ibid s 100(6)(b).

23 Ibid s 100(8). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/ (iv) Financial Provisions/B. TRAVEL CONCESSION SCHEMES/1288. Enforcement of participation in travel concession schemes.

### **1288. Enforcement of participation in travel concession schemes.**

If during any period an operator of any service who is under an obligation<sup>1</sup> to provide travel concessions<sup>2</sup> in accordance with a scheme<sup>3</sup> for persons travelling on that service systematically fails to comply with that obligation he is liable on summary conviction to a fine<sup>4</sup>.

Where such an offence committed by a body corporate<sup>5</sup> is proved to have been committed with the consent<sup>6</sup> or connivance<sup>7</sup> of, or to have been attributable to any neglect<sup>8</sup> on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act<sup>9</sup> in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly<sup>10</sup>. Where the affairs of a body corporate are managed by its members, the above provision applies in relation to the acts and defaults of a member in connection with his functions<sup>11</sup> of management as if he were a director of the body corporate<sup>12</sup>.

Proceedings for such an offence may not be instituted except by the authority, or any one of the authorities, responsible for administration of the scheme<sup>13</sup> in question or by or with the consent of the Director of Public Prosecutions<sup>14</sup>, and any such authority who would not apart from this provision<sup>15</sup> have power to bring such proceedings accordingly has that power<sup>16</sup>.

1 Ie under the Transport Act 1985 s 97: see PARA 1284 ante.

- 2 For the meaning of 'travel concession' see PARA 1280 note 2 ante.
- 3 le under the Transport Act 1985 s 93: see PARA 1280 ante.
- 4 Ibid s 101(1). The fine must not exceed level 3 on the standard scale: s 101(1). As to the standard scale see PARA 230 note 3 ante.
- 5 As to bodies corporate see generally COMPANIES; CORPORATIONS. As to offences by bodies corporate see PARA 1313 post.
- 6 As to the meaning of 'consent' see PARA 1313 note 4 post.
- 7 As to the meaning of 'connivance' see PARA 1313 note 5 post.
- 8 As to the meaning of 'neglect' see PARA 1313 note 6 post.
- 9 As to the meaning of 'purporting to act' see PARA 1313 note 9 post.
- 10 Transport Act 1985 s 101(2).
- 11 For the meaning of 'functions' see PARA 1252 note 14 ante.
- 12 Transport Act 1985 s 101(3).
- 13 As to the authority or authorities responsible for administration of a scheme see PARA 1280 note 16 ante.
- 14 As to the Director of Public Prosecutions see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 544; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 637.
- 15 le apart from the Transport Act 1985 s 101(4).
- 16 Ibid s 101(4).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/ (iv) Financial Provisions/C. MANDATORY TRAVEL CONCESSIONS/1289. Mandatory concessions.

### ***C. MANDATORY TRAVEL CONCESSIONS***

#### **1289. Mandatory concessions.**

The following provisions apply until 1 April 2008<sup>1</sup>.

Any person to whom a current statutory travel concession permit has been issued by a travel concession authority<sup>2</sup> and who travels on an eligible service<sup>3</sup> on a journey: (1) between places in the authority's area; and (2) beginning at a relevant time<sup>4</sup>, is entitled, on production of the permit, to be provided, in relation to England, with a concession consisting of a waiver of the fare for the journey, or, in relation to Wales, with a half-price travel concession<sup>5</sup>, by the operator of the service<sup>6</sup>. A travel concession authority must, on an application made to it by any person who appears to the authority to be an elderly<sup>7</sup> or disabled person<sup>8</sup> residing in its area, issue to the person free of charge a permit, in such form and for such period as the authority considers appropriate, indicating that he is entitled to the concession specified in the above provision<sup>9</sup>. The Secretary of State (as respects England) or the Welsh Ministers (as respects Wales) may issue guidance to travel concession authorities to which they must have regard in determining<sup>10</sup> whether a person is a disabled person<sup>11</sup>. A person entitled to be issued with a statutory travel concession permit by a travel concession authority may agree with the authority that he is not to be entitled to the concession<sup>12</sup> for a period in return for being entitled

during that period to receive travel concessions under a scheme<sup>13</sup> (if the scheme provides that a person may not receive travel concessions under the scheme unless he so agrees)<sup>14</sup>.

The following provisions apply as from 1 April 2008<sup>15</sup>.

Any person to whom a current statutory travel concession permit<sup>16</sup> has been issued and who travels on an eligible journey on an eligible service<sup>17</sup> is entitled, on production of the permit, to a concession consisting of a waiver of the fare for the journey by the operator of the service<sup>18</sup>. A travel concession authority<sup>19</sup> in England other than a London authority must, on an application made to it by any person who appears to the authority to be an elderly or disabled person whose sole or principal residence is in the authority's area, issue to the person free of charge a permit indicating that he is entitled to the concession specified in the above provision<sup>20</sup>. Such a permit must be issued in such form and for such period: (a) as may be specified in regulations made by the Secretary of State; and (b) subject to that, as the authority issuing the permit considers appropriate<sup>21</sup>. The Secretary of State may issue guidance to travel concession authorities in England to which they must have regard in determining for these purposes whether a person is a disabled person<sup>22</sup>; and he may also issue guidance to travel concession authorities in England to which they must have regard in determining for these purposes whether a person has his sole or principal residence in an authority's area<sup>23</sup>. A person entitled to be issued with a statutory travel concession permit by a travel concession authority may agree with the authority that he is not to be entitled to the concession<sup>24</sup> for a period in return for being entitled during that period to receive travel concessions under a scheme under the Transport Act 1985<sup>25</sup> to which the authority is a party (if the scheme provides that a person may not receive travel concessions under the scheme unless he so agrees)<sup>26</sup>. Similar provision is made in relation to Wales<sup>27</sup>.

1 The Transport Act 2000 s 145 (as amended) is replaced, as from a day to be appointed, by s 145A (as added) so as to introduce a new national travel concession: see the Concessionary Bus Travel Act 2007 s 1. The Concessionary Bus Travel Act 2007 came into force for certain purposes on 17 October 2007, but for remaining purposes it is to come into force on 1 April 2008: see s 15; and the Concessionary Bus Travel Act 2007 (Commencement and Transitional Provisions) Order 2007, SI 2007/2799. See further note 15 infra.

2 In the Transport Act 2000 s 145 (as amended), 'statutory travel concession permit' means a permit issued pursuant to s 145(2) (see the text and note 9 infra): s 145(3). In Pt II (ss 108-162) (as amended), 'travel concession authority' means: (1) a non-metropolitan district council in England; (2) a council of a county in England so far as it is the council for an area for which there are no district councils; (3) a passenger transport executive for a passenger transport area in England; or (4) a county council or county borough council in Wales: s 146. In relation to the national travel concession (see the text and notes 15-27 infra), this definition also includes a London authority (see note 16 infra) and the Council of the Isles of Scilly: see s 146 (amended by the Concessionary Bus Travel Act 2007 ss 2(1), (3), 13, Sch 3). References in the Transport Act 2000 Pt II (as amended) to passenger transport executives are references to passenger transport executives for the purposes of the Transport Act 1968 Pt II (ss 9-23A) (as amended): Transport Act 2000 s 162(5).

3 'Eligible service' means a bus service of a class specified in an order made by the Secretary of State (as respects England) or the Welsh Ministers (as respects Wales): *ibid* s 146 (amended by s 274, Sch 31 Pt II). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

The following classes of service are specified as an eligible service: (1) a local service provided or secured by a local education authority pursuant to arrangements made under the Education Act 1996 s 509 (see EDUCATION vol 15(1) (2006 Reissue) PARA 534), or for elderly persons or disabled persons (see notes 7, 8 infra), and in respect of which: (a) seats on the vehicle by means of which the service is provided are normally available to members of the general public and the service is regularly used by such members; (b) the stopping places (other than those to or from which the service is mainly provided) are situated at locations where they are likely to be used with reasonable frequency by members of the general public; (c) such members are able to make a single journey between any two stopping places on payment of a fare which is not a deliberate deterrent to their use of the service; (d) such members are able to pay the fare at a place and in a manner which is not a deliberate deterrent to their use of the service; and (e) arrangements are made which afford members of the general public a reasonable opportunity to inform themselves of the existence of the service, the times of its operation, and the places which it serves; (2) a local service, other than a service described in head (1) supra which is provided by means of a vehicle adapted to carry more than eight passengers (or by a smaller vehicle, but only if the services are operated in accordance with a timetable), and in respect of which: (a) at least half of

the accommodation on the vehicle by means of which the service is provided is normally available to members of the general public and the service is regularly used by such members; (b) the stopping places are situated at locations where they are likely to be used with reasonable frequency by members of the general public; (c) such members are able to make a single journey between any two stopping places on payment of a fare which is not a deliberate deterrent to their use of the service; (d) such members are able to pay the fare at a place and in a manner which is not a deliberate deterrent to their use of the service; (e) there is not displayed on the vehicle by means of which the service is provided any sign or description intended or likely to convey the impression that the service is only available to a particular category of person; and (f) arrangements are made which afford members of the general public a reasonable opportunity to inform themselves of the existence of the service, times of its operation and the places which it serves: Travel Concessions (Eligible Services) Order 2002, SI 2002/1016, reg 3 (England); Travel Concessions (Eligible Services) (Wales) Order 2002, SI 2002/2023, reg 3 (Wales).

4 'Relevant time' means: (1) any time on a Saturday or Sunday or on any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971 (see *TIME* vol 97 (2010) PARA 321); or (2) a time during the period from 9.30 am to 11 pm on any other day: Transport Act 2000 s 146.

5 'A half-price travel concession', in relation to a journey, means reduction of the fare for the journey to not more than one-half of that applicable to an adult who is not entitled to any reduction: *ibid* s 146 (definition repealed, in relation to England, by the Travel Concessions (Extension of Entitlement) (England) Order 2005, SI 2005/3224, art 3(1), (3), (5)). In relation to the national travel concession (see the text and notes 15-27 *infra*), this definition is applied to England as in relation to Wales: see the Concessionary Bus Travel Act 2007 s 13, Sch 2 paras 12, 15.

6 Transport Act 2000 s 145(1) (amended, in relation to England, by the Travel Concessions (Extension of Entitlement) (England) Order 2005, SI 2005/3224, art 3(5)). However, where a person's current statutory travel concession permit has been issued by a travel concession authority in Wales, the Transport Act 2000 s 145(1) has effect: (1) as if it referred to a journey (beginning at any time): (a) between places in the authority's area; (b) between a place in the authority's area and a place outside, but in the vicinity of that area; or (c) between places outside, but in the vicinity of that area; and (2) as if it provided for waiver of the fare for the journey: s 145(1A) (s 145(1A), (1B) added, in relation to Wales, by the Travel Concessions (Extension of Entitlement) (Wales) Order 2001, SI 2001/3765, arts 3, 4). If the permit is in a form approved by the Welsh Ministers for these purposes, the Transport Act 2000 s 145(1A) (as added) has effect as if each reference in it to the authority's area were to Wales: s 145(1B) (as so added).

As to the 'operator' of a passenger transport service see PARA 1200 note 5 *ante*.

7 In *ibid* Pt II (as amended), 'elderly person' means a person who has attained the age of 60 years: s 146 (amended by the Travel Concessions (Eligibility) Act 2002 s 1(3)).

8 'Disabled person' means a person who: (1) is blind or partially sighted; (2) is profoundly or severely deaf; (3) is without speech; (4) has a disability, or has suffered an injury, which has a substantial and long term adverse effect on his ability to walk; (5) does not have arms or has long term loss of the use of both arms; (6) has a learning disability, that is, a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning; or (7) would, if he applied for the grant of a licence to drive a motor vehicle under the Road Traffic Act 1988 Pt III (ss 87-109) (as amended) (see PARA 442 *et seq ante*), have his application refused pursuant to s 92 (as amended) (physical fitness: see PARA 455 *ante*) otherwise than on the ground of persistent misuse of drugs or alcohol: Transport Act 2000 s 146.

9 *Ibid* s 145(2). The text refers to the concession specified in s 145(1) (as amended): see the text and notes 2-6 *supra*.

If it appears to a travel concession authority in Wales issuing a statutory travel concession permit to a disabled person that the person requires the assistance of a companion to travel on journeys on public transport services, the authority must mark that clearly on the permit: s 145(3A) (s 145(3A), (3B) added, in relation to Wales, by the Travel Concessions (Extension of Entitlement) (Wales) Order 2001, SI 2001/3765, art 6). Where a person, whose current travel concession permit is so marked, is entitled under the Transport Act 2000 s 145 (as amended) to waiver of the fare for a journey, one companion travelling on the journey with the person (and nominated by the person as the person's companion for that journey) is also entitled to waiver of the fare for the journey: s 145(3B) (as so added).

10 *Ie* for the purposes of *ibid* s 145(2): see the text and note 9 *supra*.

11 *Ibid* s 145(4). Before issuing guidance under s 145(4) the Secretary of State or the Welsh Ministers must consult: (1) the Disabled Persons Transport Advisory Committee (see PARA 259 *ante*); (2) associations representative of travel concession authorities; and (3) such other persons as he or they may think fit: s 145(5).

12 *Ie* specified in *ibid* s 145(1) (as amended): see the text and notes 2-6 *supra*.

13 le under the Transport Act 1985 s 93 (see PARA 1280 ante).

14 Transport Act 2000 s 145(6). The Secretary of State (as respects England) or the Welsh Ministers (as respects Wales) may by regulations make provision about agreements within s 145(6): s 145(7). The regulations may in particular make provision: (1) requiring the serving of notices before an agreement is made; (2) about the form of agreements; and (3) as to the period for which a person may agree not to be entitled to the concession specified in s 145(1) (as amended) (see the text and notes 2-6 supra): s 145(8). As to regulations under the Transport Act 2000 Pt II (as amended) see PARA 1226 ante.

The Secretary of State (as respects England) or the Welsh Ministers (as respects Wales) may by order amend either or both of s 145 (as amended) and s 146 (as amended) (definitions) for or in connection with securing that s 145(1) (as amended): (a) applies to any person for the time being eligible to receive travel concessions under a scheme under the Transport Act 1985 s 93 (see PARA 1280 ante) or to any such person of a specified description (as well as to any elderly person and any disabled person); (b) applies to travel on any public passenger transport service or to travel on any such service of a specified description (as well as to travel on an eligible service); (c) applies to a journey between a place in a travel concession authority's area and a place outside but in the vicinity of that area or to a journey between places outside but in the vicinity of that area (as well as to a journey between places in that area); (d) provides for the reduction of fares to less than one half of those applicable to adults who are not entitled to any reduction or for waiver of fares; or (e) applies, or does not apply, to a journey beginning at a specified time: Transport Act 2000 s 147. See eg the Travel Concessions (Extension of Entitlement) (Wales) Order 2001, SI 2001/3765, and the Travel Concessions (Extension of Entitlement) (England) Order 2005, SI 2005/3224 (both revoked by the Concessionary Bus Travel Act 2007 Sch 3). For the meaning of 'public passenger transport services' see PARA 1224 note 3 ante. As to orders under the Transport Act 2000 Pt II (as amended) generally see PARA 1226 ante.

In relation to the national travel concession (see the text and notes 15-27 infra), the Transport Act 2000 s 147 is amended so that the power to amend may be exercised by the Welsh Ministers only, and the power extends to amending either or both of s 145B (as added) (see the text and note 27 infra) and s 146 (as amended) (definitions) in connection with securing that s 145B(1) (as added) applies or provides as described in heads (a)-(e) supra: see s 147 (amended by the Concessionary Bus Travel Act 2007 Sch 2 para 13). As to the variation of the scope of the national travel concession (see the text and notes 15-27 infra) by the Secretary of State see the Concessionary Bus Travel Act 2007 s 8, which provides that the Secretary of State may by order amend the Transport Act 2000 Pt II (as amended) and the Greater London Authority Act 1999 Pt IV Ch VIII (ss 240-244) (as amended) (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 396 et seq) for or in connection with securing that the national concession: (i) applies to any person for the time being eligible to receive travel concessions under a scheme under the Transport Act 1985 s 93 (as amended) (see PARA 1280 ante) or to any such person of a specified description (as well as to any elderly person and any disabled person); (ii) applies to travel on any public passenger transport service or to travel on any such service of a specified description (as well as to travel on an eligible service and the London bus network); (iii) in relation to any person to whom the national concession applies by virtue of head (i) supra, provides for a concession not amounting to a waiver of the fare; (iv) in relation to any person to whom the national concession applies by virtue of head (i) supra, applies, or does not apply, to a journey beginning at a specified time; or (v) in relation to any elderly person or any disabled person, applies to a journey beginning at a specified time (as well as to a journey beginning at a relevant time): Concessionary Bus Travel Act 2007 s 8(1). In s 8, 'the national concession' means the travel concession to which certain persons whose sole or principal residence is in England are entitled under the Transport Act 2000 s 145A(1) (as added) (see the text and note 18 infra) or by virtue of the Greater London Authority Act 1999 s 242(8) (as substituted) or Sch 16 para A1 (as added) (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 396 et seq): Concessionary Bus Travel Act 2007 s 8(2). In s 8, 'London bus network' has the meaning given by the Greater London Authority Act 1999 s 181 (see PARA 1233 ante): Concessionary Bus Travel Act 2007 s 8(3). Expressions used in s 8 and in the Transport Act 2000 Pt II (as amended) have the same meaning in the Concessionary Bus Travel Act 2007 s 8 as in the Transport Act 2000 Pt II (as amended): Concessionary Bus Travel Act 2007 s 8(4).

15 See note 1 supra. The new national travel concession is to come into force on 1 April 2008, but the Concessionary Bus Travel Act 2007 was brought into force on 17 October 2007 for the following purposes: to permit the Secretary of State to issue guidance in relation to the new bus concession arrangements; to permit the making of regulations as to the form of travel concession permits; to permit the issue of permits before the new concession becomes available so that the permits may be used by those entitled as soon as the Act comes fully into force; to permit travel concession authorities to determine the arrangements in relation to reimbursement of bus operators; to permit the Secretary of State to take any such steps as are required to determine applications by bus operators in respect of such arrangements and to direct the travel concession authorities with regard to the outcome of those applications; to permit London authorities and Transport for London to make any arrangements necessary in relation to the new concessions and any arrangements for the joint exercise by London authorities of their functions; and to require Transport for London to take account of the new concessionary arrangements when forming its view as to whether or not the statutory free travel scheme is to have effect and when notifying authorities of the charges they are to pay where it does apply: see the Concessionary Bus Travel Act 2007 (Commencement and Transitional Provisions) Order 2007, SI 2007/2799, arts 2, 3. As to travel concessions in London see further LONDON GOVERNMENT vol 29(2) (Reissue) PARA 396 et seq. As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq. For

transitional provisions see art 4. As to the power to vary the provisions relating to the national travel concession see note 14 supra.

Any power to make an order under the Concessionary Bus Travel Act 2007 is exercisable by statutory instrument: see s 11(1). An order under the Concessionary Bus Travel Act 2007 may make different provision for different cases, purposes or areas: s 11(2). An order under s 8 (see note 14 supra), s 9 (see note 19 infra), s 10 (see note 18 infra) or s 13 (power to amend, repeal or revoke enactments in consequence of any provision of the Concessionary Bus Travel Act 2007) may include appropriate incidental, supplementary, consequential or transitional provision or savings (including provision amending the Concessionary Bus Travel Act 2007): s 11(3). A statutory instrument containing an order under s 8 is subject to annulment in pursuance of a resolution of either House of Parliament: s 11(4). An order may not be made by the Secretary of State under s 9, s 10 or s 13 (whether alone or concurrently with the Welsh Ministers) unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament: s 11(5). An order may not be made by the Welsh Ministers under s 10 (whether alone or concurrently with the Secretary of State) unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the National Assembly for Wales: s 11(6).

16 In the Transport Act 2000 s 145A (as added), 'statutory travel concession permit' means: (1) a permit issued pursuant to s 145A(4) (as added) (see the text and note 20 infra); (2) a permit issued by a London authority relating to the travel concession specified in the Greater London Authority Act 1999 s 242(8) (as substituted) and s 242(8A) (as added) (travel concessions on journeys beginning on the London bus network etc: see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 397); or (3) a permit issued by a London authority pursuant to Sch 16 para 4(2) (as amended) (free travel scheme in Greater London: see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 404): Transport Act 2000 s 145A(3) (s 145A added by the Concessionary Bus Travel Act 2007 s 1). For these purposes, 'London authority' means a London borough council or the Common Council of the City of London: Transport Act 2000 ss 146, 162 (definition added by the Concessionary Bus Travel Act 2007 s 2(1), (2), Sch 2 para 15). As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

17 In the Transport Act 2000 s 145A(1) (as added), 'eligible journey' means a journey on one public service vehicle (in one direction) which: (1) is between places in England; (2) begins at a relevant time; and (3) is not one to which the Greater London Authority Act 1999 s 242(8) (as substituted) (journeys beginning on the London bus network: see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 397) applies: Transport Act 2000 s 145A(2) (as added: see note 16 supra). As to the meaning of 'eligible service' see note 3 supra.

18 Ibid s 145A(1) (as added: see note 16 supra). As to the power to make reciprocal arrangements enabling recognition of English, Welsh, Scottish and Northern Ireland travel permits see the Concessionary Bus Travel Act 2007 s 10.

19 See note 2 supra. The Secretary of State may by order amend the Transport Act 2000 Pt II (as amended) for or in connection with securing that: (1) the obligation of travel concession authorities in England to reimburse operators for providing concessions under s 145A(1) (as added) (see the text and note 18 supra) is instead imposed on the Secretary of State; (2) the functions of travel concession authorities in England under s 145A (as added) and s 148 (as amended) (see PARA 1290 post) are instead imposed on the Secretary of State: Concessionary Bus Travel Act 2007 s 9(1). As to reimbursement of operators see PARA 1291 post. As to the provision that may be made under head (1) supra see s 9(3), (4). As to the provision that may be made under head (2) supra see s 9(5).

The Secretary of State may by order amend the Transport Act 2000 Pt II (as amended) for or in connection with securing that: (a) the obligation to reimburse operators for providing concessions under s 145A(1) (as added), so far as imposed on a non-unitary district council, is instead imposed on the county council for the area in which the district is situated; (b) the functions of a non-unitary district council under s 145A (as added) and s 148 (as amended) are instead imposed on the county council for the area in which the district is situated: Concessionary Bus Travel Act 2007 s 9(2). In s 9, 'non-unitary district council' means a council of a non-metropolitan district in England comprised in an area for which there is a county council: s 9(8).

If the Secretary of State makes an order under s 9(1)(a) (see head (1) supra) or s 9(2)(a) (see head (a) supra), he may also by order amend the Transport Act 1985 for or in connection with securing that: (i) non-unitary district councils or metropolitan district councils in England cease to be local authorities for the purposes of s 93 (as amended) (see PARA 1280 ante); or (ii) a non-unitary district council or a metropolitan district council in England may not establish a travel concession scheme under s 93 (as amended) unless it does so jointly with the county council or passenger transport authority for the area in which the district is situated (whether or not the scheme is also established jointly with other local authorities): Concessionary Bus Travel Act 2007 s 9(6). An order under head (ii) supra may include provision for or in connection with securing that: (A) any specified function that a non-unitary district council establishing such a scheme would, but for this provision, have had as an authority responsible for administration of the scheme is instead to be exercised by the county council concerned; (B) any specified function that a metropolitan district council establishing such a scheme would, but for this provision, have had as an authority responsible for administration of the scheme is instead to be

exercised by the passenger transport executive for the area of the passenger transport authority concerned: s 9(7).

20 Transport Act 2000 s 145A(4) (as added: see note 16 supra). The text refers to the concession specified in s 145A(1) (as added) (see the text and note 18 supra).

21 Ibid s 145A(5) (as added: see note 16 supra). At the date at which this volume states the law no such regulations had been made.

22 Ibid s 145A(6) (as added: see note 16 supra). Before issuing such guidance the Secretary of State must consult: (1) the Disabled Persons Transport Advisory Committee; (2) associations representative of travel concession authorities; and (3) such other persons as he thinks fit: s 145A(7) (as so added).

23 Ibid s 145A(8) (as added: see note 16 supra).

24 Ie the concession specified in ibid s 145A(1) (as added) (see the text and note 18 supra) and the concession provided by virtue of the Greater London Authority Act 1999 s 242(8) (as substituted) (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 397) or Sch 16 para A1 (as added) (see LONDON GOVERNMENT).

25 Ie a scheme under the Transport Act 1985 s 93 (see PARA 1280 ante).

26 Transport Act 2000 s 145A(9) (as added: see note 16 supra). The Secretary of State may by regulations make provision about agreements within s 145A(9) (as added): s 145A(10) (as so added). The regulations may in particular make provision: (1) requiring the serving of notices before an agreement is made; (2) about the form of agreements; and (3) as to the period for which a person may agree not to be entitled to the concessions mentioned in s 145A(9)(a), (b) (see note 24 supra): s 145A(11) (as so added). At the date at which this volume states the law no such regulations had been made.

27 See ibid s 145B (added by the Concessionary Bus Travel Act 2007 Sch 2 paras 10, 11).

## UPDATE

### 1289 Mandatory concessions

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 2--In definition of 'travel concession authority' reference to a passenger transport area is now to an integrated transport area (see PARA 247): Transport Act 2000 s 146 (amended by the Local Transport Act 2008 Sch 4 para 44). Transport Act 2000 s 162(5) amended: Local Transport Act 2008 Sch 4 para 46(3).

NOTE 3--SI 2002/1016 art 3 amended, art 4 added: SI 2009/575. SI 2002/2023 amended: SI 2010/194.

NOTE 19--Reference to a passenger transport authority is now to an Integrated Transport Authority (see PARA 247): Concessionary Bus Travel Act 2007 s 9(6), (7) (amended by the Local Transport Act 2008 Sch 4 para 67). Concessionary Bus Travel Act 2007 s 9(6) amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 120.

TEXT AND NOTE 21--The Concessionary Bus Travel (Permits) (England) Regulations 2008, SI 2008/417 (amended by SI 2008/2091), have been made under the Transport Act 2000 s 145A(5).



1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/ (iv) Financial Provisions/C. MANDATORY TRAVEL CONCESSIONS/1290. Enforcement.

### **1290. Enforcement.**

An operator<sup>1</sup> commits an offence if he systematically fails to comply with the obligation relating to mandatory travel concessions<sup>2</sup> during any period<sup>3</sup>. A person guilty of such an offence is liable on summary conviction to a fine<sup>4</sup>. Proceedings for an offence must not be instituted except: (1) by a travel concession authority<sup>5</sup>; or (2) by or with the consent of the Director of Public Prosecutions<sup>6</sup>, and any authority who would not otherwise have power to bring such proceedings will accordingly have that power<sup>7</sup>.

1 As to the 'operator' of a passenger transport service see PARA 1200 note 5 ante.

2 le under the Transport Act 2000 s 145(1) (as amended) or, in relation to the national travel concession (see PARA 1289 text and notes 15-27 infra), under s 145A(1) (as added) or s 145B(1) (as added): see PARA 1289 ante.

3 Ibid s 148(1).

4 Ibid s 148(2). The fine must not exceed level 3 on the standard scale: see s 148(2). As to the standard scale see PARA 230 note 3 ante.

5 'Travel concession authority' has the meaning given in ibid s 146 (as amended) (see PARA 1289 note 2 ante): s 162(1).

6 As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

7 Transport Act 2000 s 148(3).

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### **1291. Reimbursement of operators.**

Where an operator<sup>1</sup> provides concessions<sup>2</sup> for persons who reside in a travel concession authority's<sup>3</sup> area, the authority must reimburse the operator for providing the concessions<sup>4</sup>. Subject to regulations<sup>5</sup>, the arrangements with respect to reimbursement must be: (1) such as the travel concession authority may agree with the operators who provide concessions for persons who reside in its area; or (2) in the absence of agreement, such as may be determined by the authority (being the same in the case of all of those operators) not later than 28 days before the date on which the arrangements, or any variations of the arrangements, are to come into operation<sup>6</sup>. The Secretary of State (as respects England) or the Welsh Ministers (as respects Wales) may by regulations make provision: (a) with respect to the determination by travel concession authorities of the amounts to be paid to individual operators, or to any class of operators, by way of reimbursement; (b) as to the manner of making any payments due to operators by way of reimbursement; and (c) about the terms on which, and the extent to which, travel concession authorities may employ any person as their agent for the purpose of making payments due to operators by way of reimbursement and the descriptions of persons who may be so employed<sup>7</sup>.

1 As to the 'operator' of a passenger transport service see PARA 1200 note 5 ante.

2 le under the Transport Act 2000 s 145(1) (as amended): see PARA 1289 ante.

3 For the meaning of 'travel concession authority' see PARA 1289 note 2 ante.

4 Transport Act 2000 s 149(1). As to the procedure for reimbursement arrangements see PARA 1292 post.

In relation to the national travel concession (see PARA 1289 text and notes 15-27 ante), s 149(1) is substituted so as to provide that where: (1) an operator provides concessions under s 145A(1) (as added) (see PARA 1289 text and notes 16-18 ante) in respect of eligible journeys beginning in the area of a travel concession authority in England; or (2) an operator provides concessions under s 145B(1) (as added) (see PARA 1289 text and note 27 ante) for persons who reside in the area of a travel concession authority in Wales, the authority must reimburse the operator for providing the concessions: see s 149(1) (substituted by the Concessionary Bus Travel Act 2007 s 3(1), (2)). As to the meaning of 'eligible journey' see PARA 1289 note 17 ante. As to the power to vary reimbursement arrangements in relation to the national travel concession see the Concessionary Bus Travel Act 2007 s 9; and PARA 1289 note 19 ante.

5 le under the Transport Act 2000 s 149(3): see the text and note 7 infra.

6 Ibid s 149(2). As to regulations under Pt II (ss 108-162) (as amended) see PARA 1226 ante.

In relation to the national travel concession (see PARA 1289 text and notes 15-27 ante), head (1) in the text is substituted so that, instead of referring to concessions for persons who reside in their area, it refers to concessions in respect of eligible journeys beginning in the authority's area (if the authority is in England), or for persons who reside in the authority's area (if the authority is in Wales): see s 149(2) (amended by the Concessionary Bus Travel Act 2007 s 3(1), (3)).

7 Transport Act 2000 s 149(3). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. See, in relation to Wales, the Mandatory Travel Concessions (Reimbursement Arrangements) (Wales) Regulations 2001, SI 2001/3764.

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## **1292. Procedure for reimbursement arrangements determined by authority.**

At least four months before the coming into operation of, or of any variations of, any arrangements with respect to reimbursement determined by a travel concession authority<sup>1</sup>, the authority must publish the proposed arrangements, or the proposed variations, in such manner as it considers appropriate<sup>2</sup>. Following publication: (1) copies of the published material must be made available at the principal office of the authority; (2) a copy of it must be supplied to every operator<sup>3</sup> of local services<sup>4</sup> who would, in the opinion of the authority, be affected by the proposals; and (3) a copy of it must be supplied to any person on request (whether at the principal office or by post), either free of charge or at a charge representing no more than the cost of providing the copy<sup>5</sup>. An operator who considers that he may be prejudicially affected by the proposals may apply to: (a) the Secretary of State (in the case of arrangements determined by a travel concession authority in England); or (b) the Welsh Ministers (in the case of arrangements determined by such an authority in Wales)<sup>6</sup>, for a modification of the proposed arrangements, or proposed variations, on the grounds that there are special reasons why they would be inappropriate with respect to one or more local services provided by him<sup>7</sup>. The Secretary of State (as respects England) or the Welsh Ministers (as respects Wales): (i) may make regulations as to the form and content of notices under these provisions and the manner in which they are to be given; (ii) may appoint a person to determine an application<sup>8</sup> on his or their behalf; and (iii) may by regulations make provision as to the procedure to be followed in

connection with applications<sup>9</sup>. On an application<sup>10</sup> the Secretary of State or the Welsh Ministers, or (if a person is appointed under head (ii) above to determine the application) the person so appointed, may direct: (A) that the arrangements, or varied arrangements, are to have effect with such modifications as are specified in the direction from the time so specified; and (B) that the authority must make a payment of an amount specified in the direction to the applicant<sup>11</sup>.

1 In accordance with the Transport Act 2000 s 149(2)(b) (see PARA 1291 head (2) ante). For the meaning of 'travel concession authority' see PARA 1289 note 2 ante.

2 Ibid s 150(1).

3 As to the 'operator' of a passenger transport service see PARA 1200 note 5 ante.

4 For the meaning of 'local service' see PARA 1200 note 5 ante.

5 Transport Act 2000 s 150(2).

6 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 Transport Act 2000 s 150(3). An application under s 150(3) must be made by notice in writing given not later than 28 days after the date on which the arrangements, or the variations, come into operation: s 150(4). In relation to the national travel concession (see PARA 1289 text and notes 15-27 ante), s 150(4) is amended so as to refer to s 150(3)(a) (see head (a) in the text) only and so as to refer to 56 days instead of 28 days (see s 150(4) (amended by the Concessionary Bus Travel Act 2007 s 3(4), (5))); and the Transport Act 2000 s 150(4A) is added to provide that an application under s 150(3)(b) (see head (b) in the text) must be made by notice in writing given not later than 28 days after the date on which the arrangements, or the variations, come into operation (see s 150(4A) (added by the Concessionary Bus Travel Act 2007 s 3(4), (6))).

An application under the Transport Act 2000 s 150(3) may not be made unless the applicant has previously given notice in writing of his intention to make the application to the travel concession authority by which the arrangements, or varied arrangements, are being, or have been, determined: s 150(5).

8 Ie under ibid s 150(3): see the text and notes 6-7 supra.

9 Ibid s 150(6), which refers to applications under s 150(3) (see the text and notes 6-7 supra). Regulations made under head (iii) in the text may in particular make provision: (1) as to the conduct of any proceedings held in connection with applications under s 150(3); and (2) for applicants or travel concession authorities, or both, to make payments towards the expenses incurred in connection with the determination of such applications: s 150(7). As to regulations under Pt II (ss 108-162) see PARA 1226 ante.

See, in relation to Wales, the Mandatory Travel Concessions (Reimbursement Arrangements) (Wales) Regulations 2001, SI 2001/3764.

10 Ie under the Transport Act 2000 s 150(3): see the text and notes 6-7 supra.

11 Ibid s 150(8).

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## ***D. OTHER TRAVEL CONCESSIONS***

### **1293. Subsidies for travel concessions.**

The payments provided for under an agreement providing for service subsidies<sup>1</sup> entered into by an authority responsible for expenditure on public passenger transport services<sup>2</sup> may not generally include payments in respect of the provision of travel concessions<sup>3</sup>. However,

provision may be included in any such agreement for the making of payments by the authority in question to the person providing the service to which the agreement relates in respect of the provision of travel concessions on journeys on that service or any part of it for any description of persons eligible<sup>4</sup> to receive travel concessions under a travel concession scheme<sup>5</sup>. This only applies where the concessions in question are not available, or not available to that description of persons, under any such scheme administered by the authority concerned or by that authority acting jointly with any other authority or authorities or in relation to mandatory concessions outside Greater London<sup>6</sup>.

1 As to agreements providing for service subsidies see PARA 1252 note 10 ante. For the meaning of 'service subsidies' see PARA 1276 note 2 ante.

2 As to authorities responsible for expenditure on public passenger transport services see PARA 1276 note 1 ante. For the meaning of 'public passenger transport services' see PARA 1252 note 3 ante.

3 Transport Act 1985 s 103(1). For the meaning of 'travel concession' see PARA 1280 note 2 ante.

4 le in accordance with *ibid* s 93(7) (as amended): see PARA 1280 ante.

5 *Ibid* s 103(2), which is expressed to be subject to s 103(3) (see the text to note 6 infra). The text refers to a travel concession scheme under s 93 (as amended): see PARA 1280 ante.

6 *Ibid* s 103(3) (amended by the Transport Act 2000 s 161, Sch 11 paras 9, 17). The text refers to mandatory concessions under the Transport Act 2000 s 145(1) (as amended) or, in relation to the national travel concession (see PARA 1289 text and notes 15-27 ante), s 145A(1) (as added) or s 145B(1) (as added): see s 103(3) (as so amended; and further amended by the Concessionary Bus Travel Act 2007 s 13, Sch 2 para 3); and see PARA 1289 ante.

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#### **1294. Travel concessions on services provided by passenger transport executives.**

A passenger transport executive<sup>1</sup> may not in exercise of its powers to charge for services and waive its charges<sup>2</sup>, provide travel concessions<sup>3</sup> for persons travelling on any public passenger transport service<sup>4</sup> provided by the passenger transport executive otherwise than in accordance with a scheme<sup>5</sup> or mandatory concession arrangements<sup>6</sup>, except where those concessions are provided under any agreement or arrangements under which the whole of the cost of providing those concessions is to be met by a person other than that passenger transport executive or the passenger transport authority<sup>7</sup> for that passenger transport executive's area<sup>8</sup>.

The approval of the passenger transport authority for a passenger transport area required for alterations by the passenger transport executive in the general level of charges and for the reduction or waiver of charges by the passenger transport executive<sup>9</sup> is not required for travel concessions granted by the passenger transport executive for that area for persons travelling on any public passenger transport service provided by the passenger transport executive if those concessions are granted<sup>10</sup>:

1961 (1) in accordance with any scheme<sup>11</sup> by any authority other than the passenger transport authority for that passenger transport executive's area or, as the case may be, by authorities who do not include that passenger transport authority<sup>12</sup>;

1962 (2) in accordance with the granting of mandatory travel concessions<sup>13</sup>; or

1963 (3) where that passenger transport executive's area is in England and Wales, in pursuance of arrangements made with that passenger transport executive by any local authority<sup>14</sup> in exercise of its powers regarding the welfare arrangements for handicapped persons<sup>15</sup>,

or correspond to travel concessions under any scheme<sup>16</sup> by the passenger transport authority for that passenger transport executive's area or, as the case may be, by authorities who include that passenger transport authority<sup>17</sup>.

1 As to passenger transport executives see PARA 247 ante.

2 le under the Transport Act 1968 s 10(1)(xiii) (as amended): see PARA 249 ante.

3 For the meaning of 'travel concession' see PARA 1280 note 2 ante.

4 For the meaning of 'public passenger transport services' see PARA 1252 note 3 ante.

5 le established under the Transport Act 1985 s 93(7) (as amended): see PARA 1280 ante.

6 le in accordance with the Transport Act 2000 s 145(1) (as amended) or, in relation to the national travel concession (see PARA 1289 text and notes 15-27 ante), s 145A(1) (as added): see the Transport Act 1985 s 104(1) (amended by the Transport Act 2000 s 161, Sch 11 paras 9, 18(1), (2); and further amended by the Concessionary Bus Travel Act 2007 s 13, Sch 2 para 4); and see PARA 1289 ante.

7 As to passenger transport authorities see PARA 247 ante.

8 Transport Act 1985 s 104(1) (as amended: see note 6 supra). For the meaning of 'passenger transport area' see PARA 247 ante; definition applied by s 137(5).

9 le under the Transport Act 1968 s 15(2) (as amended): see PARA 251 ante.

10 Transport Act 1985 s 104(2). For the purposes of s 104(2) (as amended), travel concessions granted by the passenger transport executive for a passenger transport area on any such service correspond to travel concessions under any such scheme if they are: (1) of the same value; (2) available subject to the same terms, limitations or conditions; and (3) available to persons of the same description, as the travel concessions provided under that scheme: s 104(3).

11 le established under ibid s 93 (as amended): see PARA 1280 ante.

12 Ibid s 104(2)(a) (amended by the Transport Act 2000 s 274, Sch 31 Pt II).

13 le under the Transport Act 2000 s 145(1) (as amended) or, in relation to the national travel concession (see PARA 1289 text and notes 15-27 ante), s 145A(1) (as added): Transport Act 1985 s 104(2)(aa) (added by the Transport Act 2000 Sch 11 para 18(3); and amended by the Concessionary Bus Travel Act 2007 Sch 2 para 4); and see PARA 1289 ante.

14 For these purposes, 'local authority' has the same meaning as in the National Assistance Act 1948 s 64(1) (as amended) (see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1005): Transport Act 1985 s 104(2)(b).

15 Ibid s 104(2)(b). The text refers to the exercise of powers under the National Assistance Act 1948 s 29 (as amended): see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1020.

16 le established under the Transport Act 1985 s 93 (as amended): see PARA 1280 ante.

17 Ibid s 104(2).

## UPDATE

### **1294 Travel concessions on services provided by passenger transport executives**

TEXT AND NOTES--Reference to a passenger transport authority is now to an Authority: Transport Act 1985 s 104(1), (2) (amended by the Local Transport Act 2008 Sch 4 para 36(2)). 'Authority', in relation to an area, means the Integrated Transport Authority or, as the case may be, the Passenger Transport Authority for that area (see PARA 247): Transport Act 1985 s 104(4) (added by the Local Transport Act 2008 Sch 4 para 36(4)).

NOTE 8--Transport Act 1985 s 137(5) amended: Local Transport Act 2008 Sch 4 para 40.

TEXT AND NOTES 9-17--Transport Act 1985 s 104(2) amended: Local Transport Act 2008 Sch 4 para 36(3).

NOTE 10--Transport Act 1985 s 104(3) amended: Local Transport Act 2008 Sch 4 para 36(3).

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### **1295. Travel concessions on services provided by local authorities.**

Where the council of any county<sup>1</sup> or district<sup>2</sup> is operating any public passenger transport service<sup>3</sup>, it has the power to provide travel concessions<sup>4</sup> for persons travelling on that service in accordance with a scheme<sup>5</sup> or in accordance with the requirements<sup>6</sup> as to mandatory travel concessions<sup>7</sup>. In respect of travel concessions so provided, any such council may, if it thinks fit, from time to time transfer to the credit of the account of its transport undertaking sums from the general fund<sup>8</sup>. Sums so transferred must not exceed the cost to the council concerned of providing the concessions or so much of that cost as would not apart from the above provision fall to be met out of that fund<sup>9</sup>.

1 As to the construction of references to county councils in relation to Wales see PARA 1179 note 1 ante.

2 As to the construction of references to district councils in relation to Wales see PARA 1179 note 1 ante.

3 For the meaning of 'public passenger transport services' see PARA 1252 note 3 ante.

4 For the meaning of 'travel concession' see PARA 1280 note 2 ante.

5 I.e. established under the Transport Act 1985 s 93(7) (as amended): see PARA 1280 ante.

6 I.e. in accordance with the Transport Act 2000 s 145(1) (as amended) or, in relation to the national travel concession (see PARA 1289 text and notes 15-27 ante), s 145A(1) (as added) or s 145B(1) (as added): Transport Act 1985 s 105(1) (amended by the Transport Act 2000 s 161, Sch 11 paras 9, 19; and further amended by the Concessionary Bus Travel Act 2007 s 13, Sch 2 para 5); and see PARA 1289 ante.

7 Transport Act 1985 s 105(1) (as amended: see note 6 supra).

8 Ibid s 105(2) (amended by the Local Government Finance (Miscellaneous Amendments and Repeal) Order 1990, SI 1990/1285, art 2). For the purposes of the Transport Act 1985 s 105(2) (as amended), the reference to the general fund must be read, in relation to Wales, as a reference to the council fund: s 105(2A) (added by the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 39(9)).

9 Transport Act 1985 s 105(3).

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## ***E. GRANTS***

### **1296. Grants for transport facilities and services.**

Any passenger transport authority<sup>1</sup> or passenger transport executive<sup>2</sup>, the council of any county or district<sup>3</sup>, or the council of a London borough or the Common Council of the City of London<sup>4</sup>, or any two or more such authorities acting jointly, may make, in such cases and subject to such terms and conditions as it or they may think fit, grants to any other person towards expenditure incurred or to be incurred by that person in providing, maintaining or improving<sup>5</sup>:

- 1964 (1) any vehicle, equipment or other facilities provided wholly or mainly for the purpose of facilitating travel by members of the public who are disabled<sup>6</sup>; or
- 1965 (2) any equipment or other facilities specially designed or adapted for that purpose which are incorporated in any vehicle, equipment or other facilities not provided wholly or mainly for that purpose<sup>7</sup>.

Any such authority, or any two or more such authorities acting jointly, may make, in such cases and subject to such terms and conditions as it or they may think fit, grants to any person providing public passenger transport services<sup>8</sup> towards expenditure incurred or to be incurred by that person for the purpose of<sup>9</sup>:

- 1966 (a) maintaining or improving facilities for public passenger transport, other than facilities provided wholly or mainly for use for the purpose of or in connection with excepted services<sup>10</sup>; or
- 1967 (b) facilitating or improving the operation of public passenger transport services, other than excepted services<sup>11</sup>,

in the area of that authority or, as the case may be, in the area comprising the areas of both or all those authorities<sup>12</sup>.

1 As to passenger transport authorities see PARA 247 ante.

2 Transport Act 1985 s 106(4)(a). As to passenger transport executives see PARA 247 ante.

3 Ibid s 106(4)(b). As to the construction of references to county and district councils in relation to Wales see PARA 1179 note 1 ante.

4 Ibid s 106(4)(c).

5 Ibid s 106(1).

6 Ibid s 106(1)(a).

7 Ibid s 106(1)(b).

8 For the meaning of 'public passenger transport services' see PARA 1252 note 3 ante.

9 Transport Act 1985 s 106(2). This is expressed to be subject to s 106(3) (see note 12 infra).

10 Ibid s 106(2)(a). 'Excepted services' means services for the carriage of passengers by road which require a PSV operator's licence, within the meaning of Pt IV (ss 57-87) (as amended) (see PARAS 1247-1275 ante): s

106(2). For the meaning of 'road' see PARA 206 ante; definition applied by s 137(1), (2). For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante; definition applied by s 137(1), (2).

11 Ibid s 106(2)(b).

12 Ibid s 106(2). However, this does not apply in relation to expenditure appearing to the authority or authorities in question to be of a capital nature: s 106(3).

## UPDATE

### 1296 Grants for transport facilities and services

TEXT AND NOTES 1-7--Transport Act 1985 s 106(4)(a) amended: Local Transport Act 2008 Sch 4 para 37. Transport Act 1985 s 106(4)(aa) added: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 66.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/ (iv) Financial Provisions/E. GRANTS/1297. Grants for bus services.

### 1297. Grants for bus services.

A parish council or community council may make grants to any body towards expenditure incurred or to be incurred by that body in connection with the operation of<sup>1</sup>: (1) a bus service appearing to the council to be wholly or mainly for the benefit of members of the public who are elderly or disabled<sup>2</sup>; or (2) a community bus service<sup>3</sup>. This power may only be exercised if: (a) the bus service benefits, or appears to the council likely to benefit, persons living in the council's area<sup>4</sup>; and (b) a permit in relation to the use of the vehicle by means of which the service is, or is to be, provided has been granted to the body concerned<sup>5</sup>. Such grants may be made in such cases and subject to such terms and conditions as the council thinks fit<sup>6</sup>.

1 Transport Act 1985 s 106A(1) (s 106A added by the Local Government and Rating Act 1997 s 27).

2 Transport Act 1985 s 106A(1)(a) (as added: see note 1 supra).

3 Ibid s 106A(1)(b) (as added: see note 1 supra). For the meaning of 'community bus service' see PARA 1185 note 1 ante.

4 Ibid s 106A(2)(a) (as added: see note 1 supra).

5 Ibid s 106A(2)(b) (as added: see note 1 supra). The text refers to a permit for the use of buses by educational or other bodies under s 19 (see PARA 1183 ante) or a community bus permit under s 22 (see PARA 1185 ante).

6 Ibid s 106A(3) (as added: see note 1 supra). See PARA 1138 note 5 ante.

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### 1298. Grants to bus service operators.



The Secretary of State with the approval of the Treasury (as respects England) or the Welsh Ministers (as respects Wales)<sup>1</sup> may make grants to operators of eligible bus services<sup>2</sup> towards their costs in operating those services<sup>3</sup>, and may make provision by regulations as to the method of calculation of grants<sup>4</sup>. Subject to the provisions of any such regulations, grants under these provisions must be of such amount and subject to such conditions (including conditions requiring their repayment in specified circumstances) as may be determined by: (1) the Secretary of State with the approval of the Treasury (as respects England), or (2) the Welsh Ministers (as respects Wales)<sup>5</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the Welsh Ministers see PARA 237 ante.

2 In relation to England, a bus service is an eligible bus service if it is of one of the following classes: (1) a local service provided or secured by a local education authority pursuant to arrangements made under the Education Act 1996 s 509 (see EDUCATION vol 15(1) (2006 Reissue) PARA 534), or for persons who have attained the age of 60 years or disabled persons, and in respect of which: (a) seats on the vehicle by means of which the service is provided are normally available to members of the general public and the service is regularly used by such members; (b) all the fixed stopping places (whether marked or otherwise generally recognised) other than at the service termini are located where they are likely to be used with reasonable frequency by members of the general public, and in any section of the area of operation where there are no fixed stopping places the arrangements for determining when and where passengers may be taken up and set down are such that members of the general public may take advantage of them with reasonable frequency; (c) members of the general public are able to make a single journey between two stopping places (to the extent that such journeys are provided for in the registered particulars having regard to boarding and alighting restrictions) on payment of a fare which is not a deliberate deterrent to their use of the service, and in the case of a flexible service the advance booking arrangements are such that they do not act as a deterrent to members of the general public wishing to make a single journey which is otherwise provided for in the particulars of registration; (d) members of the general public are able to pay the fare at a place and in a manner which is not a deliberate deterrent to their use of the service; and (e) arrangements are made which afford members of the general public a reasonable opportunity to inform themselves of the existence of the service, the times of its operation, and the places which it serves; (2) a local service, other than a service described in head (1) supra which is provided by means of a vehicle adapted to carry more than eight passengers (or by a smaller vehicle, but only if the services are operated in accordance with a time table) and in respect of which: (a) at least half of the accommodation on the vehicle by means of which the service is provided is normally available to members of the general public and the service is regularly used by such members; (b) the fixed stopping places are located where they are likely to be used with reasonable frequency by members of the general public, and in any section of the area of operation where there are no fixed stopping places the arrangements for determining when and where passengers may be taken up and set down are such that members of the general public may take advantage of them with reasonable frequency; (c) members of the general public are able to make a single journey between two stopping places (to the extent that such journeys are provided for in the registered particulars having regard to boarding and alighting restrictions) on payment of a fare which is not a deliberate deterrent to their use of the service, and in the case of a flexible service, the advance booking arrangements are such that they do not act as a deterrent to members of the general public wishing to make a single journey which is otherwise provided for in the particulars of registration; (d) members of the general public are able to pay the fare at a place and in a manner which is not a deliberate deterrent to their use of the service; (e) there is not displayed on the vehicle by means of which the service is provided any sign or description intended or likely to convey the impression that the service is only available to a particular category of person; and (f) arrangements are made which afford members of the general public a reasonable opportunity to inform themselves of the existence of the service, times of its operation and the places which it serves; (3) a bus service being provided by an operator to whom a permit under the Transport Act 1985 s 19 (see PARA 1183 ante) has been issued and remains in force, and which is used wholly or mainly by: (a) persons who have attained the age of 60 years; (b) disabled persons; (c) persons in receipt of income support; (d) persons in receipt of jobseeker's allowance; (e) persons suffering a degree of social exclusion by virtue of unemployment, poverty or other economic factors, homelessness, geographical remoteness, ill-health, or religious or cultural mores; (f) persons who believe that it would be unsafe for them to use any public passenger transport services; or (g) carers or persons under 16 years of age accompanying any of the foregoing; (4) a domestic coach service, to the extent of its travel in England, and in respect of which: (a) the service provides half-price travel concessions (other than to persons travelling on an apex fare), on no fewer than 290 days per year, on no fewer than 21 days in any month except December, and on no fewer than 12 days in December (or pro rata if the service runs for part only of a year or month, the requirement being rounded down, as necessary, to the nearest whole number of days) to: (i) persons who have attained the age of 60 years; and (ii) any person to whom a current statutory travel concession permit has been issued on production of the permit, or to any person who can demonstrate that he would be entitled to a statutory travel concession permit but for an agreement under the Transport Act 2000 s 145(6); (b) the service runs at least once per week for a period of

not less than six consecutive weeks; (c) seats on the vehicle by means of which the service is provided are normally available to members of the general public and the service is regularly used by such members; (d) the service is operated in accordance with a timetable; and (e) arrangements are made which afford members of the general public a reasonable opportunity to inform themselves of the existence of the service, times of its operation and the places which it serves: s 154(5); Bus Service Operators Grant (England) Regulations 2002, SI 2002/1015, reg 3 (amended by SI 2003/1036; SI 2004/9). For the meaning of 'disabled person' for these purposes see DISCRIMINATION vol 13 (2007 Reissue) PARA 511. 'Fixed stopping place' and 'flexible service' have the same meanings as in the Public Service Vehicles (Registration of Local Services) Regulations 1986, SI 1986/1671 (as amended); Bus Service Operators Grant (England) Regulations 2002, SI 2002/1015, reg 2 (definitions added by SI 2004/9). 'Public passenger transport services' means all those services on which members of the public rely for getting from place to place, when not relying on private facilities of their own: Bus Service Operators Grant (England) Regulations 2002, SI 2002/1015, reg 2. 'Domestic coach service' means a bus service which: (A) carries passengers at separate fares; (B) operates between two scheduled stops in England and Wales (at least one of which is in England), whether or not the service terminates at one or both of these stops; and (C) is not a local service: reg 2 (definition added by SI 2003/1036). 'Statutory travel concession permit' has the same meaning as in the Transport Act 2000 s 145 (prospectively repealed) (see PARA 1289 note 1 ante); Bus Service Operators Grant (England) Regulations 2002, SI 2002/1015, reg 2 (definition added by SI 2003/1036).

Similar provision is made in relation to Wales: see the Bus Service Operators Grant (Wales) Regulations 2002, SI 2002/2022 (amended by SI 2003/943; SI 2004/1827).

3 Transport Act 2000 s 154(1).

4 Ibid s 154(2).

5 Ibid s 154(3). A determination under s 154(3) may be made either generally or in relation to particular cases or classes of case: s 154(4).

## UPDATE

### 1298 Grants to bus service operators

NOTE 2--SI 2002/1015 reg 3 further amended: SI 2008/1879. SI 2002/2022 further amended: SI 2008/1879, SI 2010/193.

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### 1299. Non-metropolitan transport grants.

The Secretary of State with the approval of the Treasury (as respects England) or the Welsh Ministers (as respects Wales)<sup>1</sup> may make a grant to a non-metropolitan transport authority<sup>2</sup> for the purpose of: (1) securing the establishment, continuance or improvement of any public passenger transport service<sup>3</sup> which in his or their opinion is or will be for the benefit of persons residing in its area; or (2) securing the provision of new facilities for, or new services ancillary to, any such service which in his or their opinion are or will be for the benefit of such persons<sup>4</sup>. Grants under these provisions must be of such amount and subject to such conditions (including conditions requiring their repayment in specified circumstances) as may be determined by: (a) the Secretary of State with the approval of the Treasury (as respects England); or (b) the Welsh Ministers (as respects Wales)<sup>5</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the Welsh Ministers see PARA 237 ante.

2 In the Transport Act 2000 s 156, 'non-metropolitan transport authority' means: (1) a county council in England; (2) a council of a non-metropolitan district in England comprised in an area for which there is no county council; or (3) a county council or county borough council in Wales: s 156(4).

3 For the meaning of 'public passenger transport services' see PARA 1224 note 3 ante.

4 Transport Act 2000 s 156(1).

5 Ibid s 156(2). A determination under s 156(2) may be made either generally or in relation to particular cases or classes of case: s 156(3).

## UPDATE

### 1299 Non-metropolitan transport grants

TEXT AND NOTES--Transport Act 2000 s 156 repealed: Local Transport Act 2008 s 131, Sch 7 Pt 4.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/12. PUBLIC PASSENGER VEHICLES/(3) ROAD PASSENGER TRANSPORT/ (iv) Financial Provisions/E. GRANTS/1300. Grants to passenger transport authorities in England.

### 1300. Grants to passenger transport authorities in England.

The Secretary of State<sup>1</sup> may, with the approval of the Treasury, make grants to the passenger transport authority<sup>2</sup> for a passenger transport area<sup>3</sup> in England for the purpose of enabling the authority, or the passenger transport executive<sup>4</sup> for the area, to carry out any of its functions<sup>5</sup>. Grants under these provisions must be of such amount and subject to such conditions (including conditions requiring their repayment in specified circumstances) as the Secretary of State may, with the approval of the Treasury, determine<sup>6</sup>.

1 As to the Secretary of State see PARA 236 ante.

2 As to passenger transport authorities see PARA 1190 note 1 ante.

3 As to passenger transport areas see PARA 1190 note 1 ante.

4 As to passenger transport executives see PARA 1194 note 4 ante.

5 Transport Act 2000 s 157(1).

6 Ibid s 157(2). A determination under s 157(2) may be made either generally or in relation to particular cases or classes of case: s 157(3).

## UPDATE

### 1300 Grants to [Integrated Transport Authorities] in England

TEXT AND NOTES 1-5--Reference to the passenger transport authority for a passenger transport area is now to the Integrated Transport Authority for an integrated transport area: Transport Act 2000 s 157(1) (amended by the Local Transport Act 2008 Sch 4 para 45). Such grants may also be made to a combined authority: Transport Act 2000 s 157(1A) (added by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 100).

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## **F. TAX**

### **1301. Corporation tax and capital gains tax.**

The provision of the Finance Act 1970 which excludes precept income and grants in computing the profits of a passenger transport executive<sup>1</sup> chargeable to corporation tax<sup>2</sup> does not apply with respect to any accounting period beginning on or after 30 October 1985<sup>3</sup>.

For the purposes of the Taxation of Chargeable Gains Act 1992<sup>4</sup>, the transfer<sup>5</sup> of any asset from a passenger transport executive to a passenger transport authority<sup>6</sup> is deemed to be for a consideration such that no gain or loss accrues to the passenger transport executive<sup>7</sup>.

If, under the provision relating to the transfer of bus undertakings of passenger transport executives to companies owned by passenger transport authorities<sup>8</sup>, a company is formed by a passenger transport executive and the shares in or securities<sup>9</sup> of that company are subsequently transferred to a passenger transport authority, the provisions of the Taxation of Chargeable Gains Act 1992 relating to the deemed disposals of assets for capital gains purposes where a member leaves a group<sup>10</sup> do not have effect as respects any of the assets of the company on its ceasing to be a 75 per cent subsidiary<sup>11</sup> of the passenger transport executive<sup>12</sup>.

1 As to passenger transport executives see PARA 247 ante.

2 Ie the Finance Act 1970 s 16(1)(a). As to corporation tax see INCOME TAXATION vol 23(1) (Reissue) PARA 835 et seq.

3 Transport Act 1985 s 130(1). This is the date the Transport Act 1985 received the Royal Assent. In computing for the purposes of the Corporation Tax Acts the profit or loss of a passenger transport executive for any accounting period beginning on or after 30 October 1985, the loss of any earlier accounting period must be computed as if the Finance Act 1970 s 16(1)(a) (repealed) had not been enacted: Transport Act 1985 s 130(2). For the meaning of 'the Corporation Tax Acts' see INCOME TAXATION vol 23(1) (Reissue) PARA 21; STATUTES vol 44(1) (Reissue) PARA 1385. As to accounting periods see INCOME TAXATION vol 23(1) (Reissue) PARA 837.

4 See generally CAPITAL GAINS TAXATION.

5 Ie under the Transport Act 1985 s 59(8) (see PARA 1247 ante) or s 85(4) (see PARA 1251 ante).

6 As to passenger transport authorities see PARA 247 ante.

7 Transport Act 1985 s 130(3) (amended by the Taxation of Chargeable Gains Act 1992 s 290(1), Sch 10 para 11). The Taxation of Chargeable Gains Act 1992 Sch 2 (as amended) (assets held on 6 April 1965) (see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 50 et seq) has effect in relation to any asset so transferred as if the acquisition or provision of it by the passenger transport executive had been the acquisition or provision of it by the passenger transport authority: Transport Act 1985 s 130(3) (as so amended).

8 Ie under ibid s 59: see PARA 1247 ante.

9 For the meaning of 'securities' see PARA 1247 note 12 ante.

10 Ie the Taxation of Chargeable Gains Act 1992 s 178 (repealed) or s 179 (as amended): see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARAS 191-192.

11 le a 75% subsidiary within the meaning of the Tax Acts. For the meaning of 'the Tax Acts' see INCOME TAXATION vol 23(1) (Reissue) PARA 21; STATUTES vol 44(1) (Reissue) PARA 1385. For the meaning of '75% subsidiary' see INCOME TAXATION vol 23(2) (Reissue) PARA 952.

12 Transport Act 1985 s 130(4) (amended by the Taxation of Chargeable Gains Act 1992 Sch 10 para 11).

## UPDATE

### 1301 Corporation tax and capital gains tax

TEXT AND NOTES 4-7--Transport Act 1985 s 130(3) further amended: Local Transport Act 2008 Sch 4 para 38.

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### 1302. Stamp duty.

Stamp duty is not chargeable:

- 1968 (1) on certain schemes<sup>1</sup>; or
- 1969 (2) on any instrument which is certified to the Commissioners for Revenue and Customs<sup>2</sup> by the transferring authority or, as the case may be, by both or all the transferring authorities as having been made or executed in pursuance of certain provisions of the Transport Act 1968<sup>3</sup> as they apply by virtue of any provision of the Transport Act 1985 in relation to a transfer in pursuance of any such scheme or order<sup>4</sup>; or
- 1970 (3) on any instrument which is so certified as having been made or executed for the purpose of giving effect to any transfer authorised<sup>5</sup> or, as the case may be, required<sup>6</sup>.

No such instrument as is mentioned in head (2) or head (3) above may be treated as duly stamped unless it is stamped with the duty to which it would, but for heads (1) to (3) above, be liable or it has, in accordance with the provisions of the Stamp Act 1891 relating to adjudication by the Commissioners<sup>7</sup>, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it is duly stamped<sup>8</sup>.

1 Transport Act 1985 s 131(6)(a). The text refers to any scheme made under s 50(2) (repealed), or on any scheme or order made under any provision of Pt IV (ss 57-87) (as amended): see PARAS 1247-1275 ante. As to stamp duty see generally STAMP DUTIES AND STAMP DUTY RESERVE TAX.

2 As to the Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900.

3 le the provisions of the Transport Act 1968 Sch 4 (as amended).

4 Transport Act 1985 s 131(6)(b) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

5 le by the Transport Act 1985 s 50(1) (repealed).

6 Ibid s 131(6)(c). The text refers to a transfer required under s 59(8): see PARA 1247 ante.

7 le in accordance with the provisions of the Stamp Act 1891 s 12 (as substituted): see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1111.

8 Transport Act 1985 s 131(7).

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## ***G. EXPENSES AND RECEIPTS***

### **1303. Expenses and receipts.**

The following are authorised expenses and receipts for the purposes of the Transport Act 1985:

- 1971 (1) the payment out of money provided by Parliament of any expenditure incurred by the Secretary of State under certain provisions of the Transport Act 1985<sup>1</sup> or in making certain grants<sup>2</sup>;
- 1972 (2) any increase in payments out of money so provided arising from any increase in administrative expenses of the Secretary of State or the expenses of local authorities attributable to the provisions of the Transport Act 1985<sup>3</sup>; and
- 1973 (3) any increase attributable to the Transport Act 1985 in the sums payable into the Consolidated Fund by virtue of fees received by traffic commissioners<sup>4</sup>.

1 le under the Transport Act 1985 s 54(4) or Sch 4 para 7 (as amended): see PARA 255 text to note 3 ante. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Ibid s 138(a). The text refers to grants under ss 108, 109 (rural buses in Scotland), or s 124 (prospectively repealed) (reimbursement of expenses in securing bus substitution services).

3 Ibid s 138(b).

4 Ibid s 138(c). The text refers to sums payable by virtue of the Public Passenger Vehicles Act 1981 s 52(3) (as amended): see PARA 1170 ante. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031. As to traffic commissioners see PARA 1139 ante.

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## **(4) OFFENCES AND LEGAL PROCEEDINGS**

### **1304. Forgery and misuse of documents.**

A person who, with intent to deceive<sup>1</sup> forges<sup>2</sup> or alters, or uses or lends to, or allows to be used by, any other person, a document or other thing<sup>3</sup>, or makes or has in his possession<sup>4</sup> any document or other thing so closely resembling a document or other thing as to be calculated to

deceive<sup>5</sup>, is liable on conviction on indictment to imprisonment and on summary conviction to a fine<sup>6</sup>.

1 Public Passenger Vehicles Act 1981 s 65(2). As to the meaning of 'with intent to deceive' see PARA 1370 note 3 post.

2 'Forges' means makes a false document or other thing in order that it may be used as genuine: *ibid* s 65(3) (definition substituted by the Forgery and Counterfeiting Act 1981 s 12). As to forgery see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 346 et seq.

3 Public Passenger Vehicles Act 1981 s 65(2)(a). The text refers to: (1) a licence under Pt II (ss 6-29) (as amended) (see PARA 1141 et seq ante); (2) a control document issued under EC Council Regulation 12/98 (OJ L4, 8.1.98, p 10) laying down the conditions under which non-resident carriers may operate national road passenger transport services within a member state, art 6; (3) a certificate of initial fitness under the Public Passenger Vehicles Act 1981 s 6 (as amended) (see PARA 1141 ante); (4) a certificate under s 10 (as amended) (see PARA 1143 ante) that a vehicle conforms to a type vehicle; (5) an operator's disc under s 18 (as amended) (see PARA 1159 ante); and (6) a certificate under s 21 (as amended) (see PARA 1162 ante) as to repute, financial standing or professional competence of any person: s 65(1) (amended by the Transport Act 1985 s 139(3), Sch 8; the Road Traffic Act 1991 s 83, Sch 8; and the Road Transport (Passenger Vehicles Cabotage) Regulations 1999, SI 1999/3413, reg 10(3)). The text also refers to: (a) a permit under the Transport Act 1985 s 19 (see PARA 1183 post) or s 22 (see PARA 1185 ante); and (b) a London local service licence (see PARA 1246 ante): s 127(1).

As to certificates of initial fitness see PARA 1141 ante. As to the meaning of 'operator' see PARA 1136 note 7 ante.

4 As to the meaning of 'possession' see PERSONAL PROPERTY vol 35 (Reissue) PARAS 1211-1226.

5 Public Passenger Vehicles Act 1981 s 65(2)(b).

6 *Ibid* s 65(2). Such a person is liable on conviction on indictment to imprisonment for a term not exceeding two years, and on summary conviction to a fine not exceeding the statutory maximum: see s 65(2). As to the statutory maximum see PARA 359 note 11 ante.

As to the time within which summary proceedings must be commenced see PARA 1312 post.

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### **1305. False statements to obtain licence.**

A person who knowingly<sup>1</sup> makes a false<sup>2</sup> statement for the purpose of<sup>3</sup>:

- 1974 (1) obtaining the grant of a licence<sup>4</sup> to himself or any other person, obtaining the variation of any such licence, preventing the grant or variation of any such licence or procuring the imposition of a condition or limitation in relation to any such licence<sup>5</sup>;
- 1975 (2) obtaining the issue of a certificate of initial fitness<sup>6</sup>;
- 1976 (3) obtaining the issue of a certificate that a vehicle conforms to a type vehicle<sup>7</sup>;
- 1977 (4) obtaining the issue of an operator's disc<sup>8</sup>;
- 1978 (5) obtaining the issue of a certificate as to the repute, financial standing or professional competence of any person<sup>9</sup>;
- 1979 (6) obtaining the issue of a control document<sup>10</sup>;
- 1980 (7) obtaining the grant of a permit in relation to the use of buses by educational and other bodies<sup>11</sup>;
- 1981 (8) obtaining the grant of a community bus permit<sup>12</sup>;
- 1982 (9) obtaining the grant of a London local service licence<sup>13</sup>,

is guilty of an offence and liable on summary conviction to a fine<sup>14</sup>.

- 1 As to the meaning of 'know' see PARAS 1161 note 20 ante, 1335 note 5 post.
  - 2 As to the meaning of 'false' see PARA 1155 note 10 ante.
  - 3 Public Passenger Vehicles Act 1981 s 66.
  - 4 le under ibid Pt II (ss 6-29) (as amended): see PARA 1141 et seq ante.
  - 5 Ibid s 66(a) (amended by the Transport Act 1985 s 139(3), Sch 8).
  - 6 Public Passenger Vehicles Act 1981 s 66(b). The text refers to a certificate of initial fitness under s 6 (as amended): see PARA 1141 ante.
  - 7 Ibid s 66(c). The text refers to a certificate under s 10 (as amended): see PARA 1143 ante.
  - 8 Ibid s 66(d). The text refers to an operator's disc under s 18 (as amended): see PARA 1159 ante. As to the meaning of 'operator' see PARA 1136 note 7 ante.
  - 9 Ibid s 66(e). The text refers to a certificate under s 21 (as amended): see PARA 1162 ante.
  - 10 Ibid s 66(f) (added by the Road Transport (Passenger Vehicles Cabotage) Regulations 1999, SI 1999/3413, reg 10(4)). The text refers to a control document under EC Council Regulation 12/98 (OJ L4, 8.1.98, p 10) laying down the conditions under which non-resident carriers may operate national road passenger transport services within a member state, art 6.
  - 11 Transport Act 1985 s 127(2). The text refers to a permit under s 19: see PARA 1183 ante.
  - 12 Ibid s 127(2). The text refers to a permit under s 22: see PARA 1185 ante.
  - 13 Ibid s 127(2). As to London local service licences see PARAS 1230, 1246 ante.
  - 14 Public Passenger Vehicles Act 1981 s 66; Transport Act 1985 s 127(2). The fine must not exceed level 4 on the standard scale: Public Passenger Vehicles Act 1981 s 66 (amended by virtue of the Criminal Justice Act 1982 ss 37, 46); Transport Act 1985 s 127(2). As to the standard scale see PARA 230 note 3 ante.
- As to the time within which summary proceedings must be commenced see PARA 1312 post.

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### **1306. Issue of false documents.**

The following provisions apply as from a day to be appointed<sup>1</sup>.

If a person issues a certificate of initial fitness<sup>2</sup> or a notice removing a prohibition<sup>3</sup> which he knows to be false<sup>4</sup> in a material particular<sup>5</sup>, he is liable on summary conviction to a fine<sup>6</sup>.

If a constable<sup>7</sup>, an examiner<sup>8</sup> or an authorised inspector<sup>9</sup> has reasonable cause to believe<sup>10</sup> that a document produced to him or carried on a vehicle by its driver is a document in relation to which an offence has been committed<sup>11</sup>, he may seize the document<sup>12</sup>. The power to seize such a document includes power to detach a document carried on a vehicle from the vehicle<sup>13</sup>.

1 The Public Passenger Vehicles Act 1981 s 66A is added by the Transport Act 1982 s 24(4) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.



2 le under the Public Passenger Vehicles Act 1981 s 6 (as amended): see PARA 1141 ante.

3 le under *ibid* s 9(1) (repealed).

4 As to the meaning of 'know' see PARA 1161 note 20 ante. As to the meaning of 'false' see PARA 1155 note 10 ante.

5 As to the materiality of a particular see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 302.

6 Public Passenger Vehicles Act 1981 s 66A(1) (as added: see note 1 supra). The fine must not exceed level 4 on the standard scale: s 66A(1) (as so added; and amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see PARA 230 note 3 ante.

As from a day to be appointed the Public Passenger Vehicles Act 1981 s 66A(1) (as added) no longer applies to a person who issues a notice removing a prohibition under s 9(1) (repealed): s 66A(1) (as so added; and amended by the Road Traffic Act 1991 s 83, Sch 8). At the date at which this volume states the law no such day had been appointed.

7 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

8 le an examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended): see PARA 698 ante.

9 For the meaning of 'authorised inspector' see PARA 1141 note 6 ante.

10 It is submitted that these words require not only that the person in question has reasonable cause to believe but also that he does actually believe: see *R v Banks* [1916] 2 KB 621, CCA; *R v Harrison* [1938] 3 All ER 134, 159 LT 95, CCA; and see also *Nakkuda Ali v MF De S Jayaratne* [1951] AC 66, PC.

The existence of the reasonable cause and of the belief founded on it is ultimately a question of fact to be tried on evidence and the grounds on which the person acted must be sufficient to induce in a reasonable person the required belief: see *McArdle v Egan* (1933) 150 LT 412, CA; *Nakkuda Ali v MF De S Jayaratne* supra; *Registrar of Restrictive Trading Agreements v WH Smith & Son Ltd* [1969] 3 All ER 1065 at 1070, [1969] 1 WLR 1460 at 1468, CA, per Lord Denning MR; *R v IRC, ex p Rossminster Ltd* [1980] AC 952, sub nom *IRC v Rossminster Ltd* [1980] 1 All ER 80, HL.

11 le under the Public Passenger Vehicles Act 1981 s 66A (as added).

12 *Ibid* s 66A(2) (as added (see note 1 supra); and amended by the Road Traffic Act 1991 s 48, Sch 4 para 22(1), (3)).

13 Public Passenger Vehicles Act 1981 s 66A(3) (as added: see note 1 supra).

## UPDATE

### 1306 Issue of false documents

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### 1307. Penalty for breach of regulations.

If a person acts in contravention<sup>1</sup> of, or fails to comply with, any regulations made by the Secretary of State<sup>2</sup> under the Public Passenger Vehicles Act 1981 or under Part I or Part II of the Transport Act 1985<sup>3</sup> and contravention of them, or failure to comply with them, is not made an offence under any other provision of the Public Passenger Vehicles Act 1981, he is, for each offence, liable<sup>4</sup> on summary conviction to a fine<sup>5</sup>.

1 As to the meaning of 'contravention' see PARA 1141 note 11 ante.

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 I.e. the Transport Act 1985 Pt I (ss 1-30) (as amended) (see PARAS 1177-1189 ante), or Pt II (ss 34-46) (as amended; prospectively repealed) (see PARAS 1230, 1246 ante).

4 It is a defence for a person charged to prove that there was a reasonable excuse for the act or omission in respect of which he is charged: Public Passenger Vehicles Act 1981 s 68(1), (2).

5 Ibid s 67 (amended by the Transport Act 1985 s 139(3), Sch 8); Transport Act 1985 s 127(3). The fine must not exceed level 2 on the standard scale: Public Passenger Vehicles Act 1981 s 67 (amended by virtue of the Criminal Justice Act 1982 ss 37, 39(1), 46, Sch 2); Transport Act 1985 s 127(3). As to the standard scale see PARA 230 note 3 ante.

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### **1308. Restriction on institution of proceedings.**

Proceedings for an offence under Part II of the Public Passenger Vehicles Act 1981<sup>1</sup> or Part I or Part II of the Transport Act 1985<sup>2</sup> may not be instituted except by or on behalf of the Director of Public Prosecutions<sup>3</sup> or by a person authorised in that behalf by a traffic commissioner<sup>4</sup>, a chief officer of police<sup>5</sup>, or the council of a county or district<sup>6</sup>.

1 I.e. the Public Passenger Vehicles Act 1981 Pt II (ss 6-29) (as amended): see PARA 1141 et seq ante.

2 I.e. the Transport Act 1985 Pt I (ss 1-30) (as amended) (see PARAS 1177-1189 ante), or Pt II (ss 34-46) (as amended; prospectively repealed) (see PARAS 1230, 1246 ante).

3 As to the Director of Public Prosecutions see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 544; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

4 As to traffic commissioners see PARA 1139 ante.

5 As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

6 Public Passenger Vehicles Act 1981 s 69(1) (amended by the Transport Act 1985 ss 3(5), 139(3), Sch 2 Pt II para 4(19), Sch 8); Transport Act 1985 s 127(5), (6). This does not apply to proceedings for the breach of regulations having effect by virtue of the Public Passenger Vehicles Act 1981 s 25 (as amended) (regulation of conduct of passengers) (see PARA 1173 ante) or s 26 (as amended) (control of number of passengers) (see PARA 1174 ante): s 69(2).

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1663)/12. PUBLIC PASSENGER VEHICLES/(4) OFFENCES AND LEGAL PROCEEDINGS/1309. Duty to give information as to identity of driver.

### 1309. Duty to give information as to identity of driver.

Where the driver<sup>1</sup> of a vehicle is alleged<sup>2</sup> to be guilty of an offence<sup>3</sup> under Part II of the Public Passenger Vehicles Act 1981<sup>4</sup> or Part I or Part II of the Transport Act 1985<sup>5</sup>: (1) the person keeping the vehicle must give such information as to the identity of the driver as he may be required to give by or on behalf of a chief officer of police<sup>6</sup>; and (2) any other person must if so required give any information which it is in his power to give and may lead to the identification of the driver<sup>7</sup>.

A person who fails to comply with head (1) above is, unless he shows to the satisfaction of the court that he did not know and could not with reasonable diligence ascertain who the driver of the vehicle was, liable on summary conviction to a fine<sup>8</sup>. A person who fails to comply with head (2) above<sup>9</sup> is liable<sup>10</sup> on summary conviction to a fine<sup>11</sup>.

1 For the meaning of 'driver' see PARA 207 ante.

2 A person required to give information has no right to ask for information about the alleged offence before complying with the requirement: see *Pulton v Leader* [1949] 2 All ER 747, 113 JP 537; applied in *Jacob v Garland* [1974] RTR 40, 117 Sol Jo 915.

3 As to the inclusion within the scope of this provision of offences against regulations under specified provisions cf *Bingham v Bruce* [1962] 1 All ER 136, [1962] 1 WLR 70; *Rathbone v Bundock* [1962] 2 QB 260, [1962] 2 All ER 257.

4 Ie the Public Passenger Vehicles Act 1981 Pt II (ss 6-29) (as amended): see PARA 1141 et seq ante.

5 Ibid s 70(1) (amended by the Transport Act 1985 s 139(3), Sch 8); Transport Act 1985 s 127(5), (6). The text refers to the Transport Act 1985 Pt I (ss 1-30) (as amended) (see PARAS 1177-1189 ante), or Pt II (ss 34-46) (as amended; prospectively repealed) (see PARAS 1230, 1246 ante).

6 Public Passenger Vehicles Act 1981 s 70(1)(a); Transport Act 1985 s 127(5), (6). As to delegation of authority from the chief officer see *Record Tower Cranes Ltd v Gisbey* [1969] 1 All ER 418, [1969] 1 WLR 148; *Nelms v Roe* [1969] 3 All ER 1379, [1970] 1 WLR 4. As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

7 Public Passenger Vehicles Act 1981 s 70(1)(b); Transport Act 1985 s 127(5), (6).

8 Public Passenger Vehicles Act 1981 s 70(2); Transport Act 1985 s 127(5), (6). The fine must not exceed level 3 on the standard scale: Public Passenger Vehicles Act 1981 s 70(2) (s 70(2), (3) amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46); Transport Act 1985 s 127(5), (6). As to the standard scale see PARA 230 note 3 ante.

9 An owner of a vehicle, at least if he has not previously objected on that ground, cannot complain on a case stated that he was charged in respect of the second requirement instead of the first: *Pulton v Leader* [1949] 2 All ER 747, 113 JP 537. The words 'any other person' mean any person other than the person keeping the vehicle, not any person other than the driver: *Bingham v Bruce* [1962] 1 All ER 136, [1962] 1 WLR 70. Those words include a doctor who may be required to give information about a patient which may lead to the identification of the driver: cf *Hunter v Mann* [1974] QB 767, [1974] 2 All ER 414.

10 It is a defence for a person charged to prove that there was a reasonable excuse for the act or omission in respect of which he is charged: Public Passenger Vehicles Act 1981 s 68(1), (2).

11 Ibid s 70(3); Transport Act 1985 s 127(5), (6). The fine must not exceed level 3 on the standard scale: Public Passenger Vehicles Act 1981 s 70(3) (as amended: see note 7 supra); Transport Act 1985 s 127(5), (6). Where a person keeping a vehicle is charged with failure to give information as to the identity of the driver, and disputes that the vehicle was driven at the time and place stated, the first question for the justices to decide is whether they are satisfied according to the ordinary standard of proof in a criminal case that the vehicle involved was the vehicle kept by that person; if they are not so satisfied the information should be dismissed; if they are so satisfied they must then go on to consider whether the person keeping the vehicle has shown on the limited burden of proof on him that he did not know and could not with reasonable diligence have

ascertained who the driver was: *Neal v Fior* [1968] 3 All ER 865, [1968] 1 WLR 1875. As to the burden of proof in criminal cases see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1368 et seq.

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### **1310. Evidence by certificate.**

In any proceedings for an offence under Part II of the Public Passenger Vehicles Act 1981<sup>1</sup> or Part I or Part II of the Transport Act 1985<sup>2</sup>, a certificate in the prescribed<sup>3</sup> form, purporting to be signed by a constable<sup>4</sup> and certifying that the person specified in the certificate stated to the constable<sup>5</sup>:

- 1983 (1) that a particular motor vehicle<sup>6</sup> was being driven<sup>7</sup> or used by, or belonged to, that person on a particular occasion<sup>8</sup>; or
- 1984 (2) that a particular motor vehicle on a particular occasion was used by or belonged to a firm in which that person also stated that he was at the time of the statement a partner<sup>9</sup>; or
- 1985 (3) that a particular motor vehicle on a particular occasion was used by or belonged to a company of which that person also stated that he was at the time of the statement a director, officer or employee<sup>10</sup>,

is admissible as evidence for the purpose of determining by whom the vehicle was being driven or used or to whom it belonged, as the case may be, on that occasion<sup>11</sup>.

The above provision<sup>12</sup> is not deemed to make a certificate admissible as evidence in proceedings for an offence<sup>13</sup>:

- 1986 (a) except in a case where and to the like extent to which oral evidence to the like effect would have been admissible in those proceedings<sup>14</sup>;
- 1987 (b) unless a copy of it has, not less than seven days before the hearing or trial, been served in the prescribed manner on the person charged with the offence<sup>15</sup>; or
- 1988 (c) if that person, not later than three days before the hearing or trial or within such further time as the court may in special circumstances allow, serves a notice in the prescribed form and manner on the prosecutor requiring attendance at the trial of the person who signed the certificate<sup>16</sup>.

1    le under the Public Passenger Vehicles Act 1981 Pt II (ss 6-29) (as amended): see PARA 1141 et seq ante.

2    le under the Transport Act 1985 Pt I (ss 1-30) (as amended) (see PARAS 1177-1189 ante), or Pt II (ss 34-46) (as amended; prospectively repealed) (see PARAS 1230, 1246 ante).

3    For these purposes, 'prescribed' means prescribed by rules made by statutory instrument: Public Passenger Vehicles Act 1981 s 71(4).

4    As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

5    Public Passenger Vehicles Act 1981 s 71(1) (amended by the Transport Act 1985 s 139(3), Sch 8); Transport Act 1985 s 127(5), (6).

6    For the meaning of 'motor vehicle' see PARA 210 ante.

7    For the meaning of 'drive' see PARA 207 ante.

- 8 Public Passenger Vehicles Act 1981 s 71(1)(a); Transport Act 1985 s 127(5), (6).
- 9 Public Passenger Vehicles Act 1981 s 71(1)(b); Transport Act 1985 s 127(5), (6).
- 10 Public Passenger Vehicles Act 1981 s 71(1)(c); Transport Act 1985 s 127(5), (6).
- 11 Public Passenger Vehicles Act 1981 s 71(1); Transport Act 1985 s 127(5), (6).
- 12 I.e. the Public Passenger Vehicles Act 1981 s 71(1) (as amended): see the text to notes 1-11 *supra*.
- 13 *Ibid* s 71(2), (3); Transport Act 1985 s 127(5), (6).
- 14 Public Passenger Vehicles Act 1981 s 71(2); Transport Act 1985 s 127(5), (6).
- 15 Public Passenger Vehicles Act 1981 s 71(3)(a); Transport Act 1985 s 127(5), (6).
- 16 Public Passenger Vehicles Act 1981 s 71(3)(b); Transport Act 1985 s 127(5), (6).

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### **1311. Proof in summary proceedings of identity of driver of vehicle.**

Where on a summary trial of an information for an offence under Part II of the Public Passenger Vehicles Act 1981<sup>1</sup> or Part I or Part II of the Transport Act 1985<sup>2</sup>:

- 1989 (1) it is proved to the satisfaction of the court, on oath or in a manner prescribed by rules<sup>3</sup>, that a requirement to give information as to the identity of the driver<sup>4</sup> of a particular vehicle on the particular occasion to which the information relates has been served on the accused by post<sup>5</sup>; and
- 1990 (2) a statement in writing is produced to the court purporting to be signed by the accused that the accused was the driver of that vehicle on that occasion<sup>6</sup>,

the court may accept that statement as evidence that the accused was the driver of that vehicle on that occasion<sup>7</sup>.

1 I.e. the Public Passenger Vehicles Act 1981 Pt II (ss 6-29) (as amended): see PARA 1141 *et seq* *ante*.

2 *Ibid* s 72 (amended by the Transport Act 1985 s 139(3), Sch 8); Transport Act 1985 s 127(5), (6). The text refers to the Transport Act 1985 Pt I (ss 1-30) (as amended) (see PARAS 1177-1189 *ante*) or Pt II (ss 34-46) (as amended; prospectively repealed) (see PARAS 1230, 1246 *ante*).

3 The Public Passenger Vehicles Act 1981 s 72 refers to rules made under the Justices of the Peace Act 1949 s 15, but this provision has been repealed: see now the Courts Act 2003 s 69 (amended by the Constitutional Reform Act 2005 ss 15(1), 146, Sch 4 Pt 1 paras 308, 322, Sch 18 Pt 2); and the CrimPR r 4.11 (substituted by SI 2007/699).

4 I.e. a requirement under the Public Passenger Vehicles Act 1981 s 70(1) (as amended): see PARA 1309 *ante*. For the meaning of 'driver' see PARA 207 *ante*.

5 *Ibid* s 72(a); Transport Act 1985 s 127(5), (6).

6 Public Passenger Vehicles Act 1981 s 72(b); Transport Act 1985 s 127(5), (6).

7 Public Passenger Vehicles Act 1981 s 72; Transport Act 1985 s 127(5), (6).

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### **1312. Time within which summary proceedings for certain offences may be commenced.**

Summary proceedings for an offence relating to forgery and misuse of documents<sup>1</sup> or an offence relating to false statements made to obtain a licence<sup>2</sup> may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge<sup>3</sup>. However, no such proceedings may be brought more than three years after the commission of the offence<sup>4</sup>.

A certificate signed by or on behalf of the prosecutor and stating the date on which such evidence as stated above came to his knowledge is conclusive evidence of that fact, and a certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved<sup>5</sup>.

1    Ie under Public Passenger Vehicles Act 1981 s 65 (as amended); see PARA 1304 ante.

2    Ie under *ibid* s 66 (as amended); see PARA 1305 ante.

3    Ibid s 73. Where this provision applies it also applies to aiding and abetting: see *Homolka v Osmond* [1939] 1 All ER 154.

4    Public Passenger Vehicles Act 1981 s 73.

5    Ibid s 73. As to evidence see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1359 et seq.

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### **1313. Offences by companies.**

Where an offence under Part II of the Public Passenger Vehicles Act 1981<sup>1</sup> or Part I or Part II of the Transport Act 1985<sup>2</sup> committed by a company<sup>3</sup> is proved to have been committed with the consent<sup>4</sup> or connivance<sup>5</sup> of, or to be attributable to any neglect<sup>6</sup> on the part of, any director<sup>7</sup>, manager<sup>8</sup>, secretary or other similar officer of the company, or any person who was purporting to act<sup>9</sup> in any such capacity, he, as well as the company, is guilty of that offence and is liable to be proceeded against and punished accordingly<sup>10</sup>.

Where the affairs of a company are managed by its members, the above provision applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the company<sup>11</sup>.

1    Ie the Public Passenger Vehicles Act 1981 Pt II (ss 6-29) (as amended); see PARA 1141 et seq ante.

2 le the Transport Act 1985 Pt I (ss 1-30) (as amended) (see PARAS 1177-1189 ante) or Pt II (ss 34-46) (as amended; prospectively repealed) (see PARAS 1230, 1246 ante).

3 For the meaning of 'company' see PARA 1147 note 7 ante. As to the criminal liability of corporations see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1280; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 38.

4 There is authority for saying that this presupposes knowledge: see *Re Caughey, ex p Ford* (1876) 1 Ch D 521 at 528, CA, per Jessel MR; *Lamb v Wright & Co* [1924] 1 KB 857 at 864 per McCardie J. It seems, however, that actual knowledge is not necessary: cf para 1161 note 20 ante.

5 Although there are many decisions on the meaning of 'connivance' in matrimonial law (see eg *Godfrey v Godfrey* [1965] AC 444, [1964] 3 All ER 154, HL) there is little authority as to its meaning in the context in which it appears in this provision: see *Gregory v Walker* (1912) 77 JP 55, 29 TLR 51; and Glanville Williams *Criminal Law: The General Part* (1953) PARA 222. It is thought that the word implies knowledge of, and acquiescence in, the offence committed. It seems that positive knowledge is not necessary and suspicion is enough although not mere negligence or inattention: *Rogers v Rogers* (1830) 3 Hag Ecc 57. See also note 6 infra.

6 'Neglect' implies failure to perform a duty of which the person knows or ought to know: see *Re Hughes, Rea v Black* [1943] Ch 296 at 298, [1943] 2 All ER 269 at 271 per Simmonds J. For circumstances in which an offence was held to be attributable to neglect on the part of a director see *Crickitt v Kursaal Casino Ltd (No 2)* [1968] 1 All ER 139 at 146-147, [1968] 1 WLR 53 at 67-68, HL, per Lord Pearson. For circumstances where the opposite was held see *Huckerby v Elliott* [1970] 1 All ER 189, (1969) 113 Sol Jo 1001.

7 For the meaning of 'director' see PARA 1147 note 11 ante.

8 The intended scope of the Public Passenger Vehicles Act 1981 s 74(1) (as amended) is to fix with criminal liability only those who are in a position of real authority and who are responsible for putting proper procedures in place, that is the decision-makers within the company who have both the power and responsibility to decide corporate policy and strategy; a person who is only responsible for the day to day running of a business is therefore not a 'manager' for the present purposes: *R v Boal* [1992] QB 591, [1992] 3 All ER 177, CA.

9 The reference to any person who was purporting to act in any such capacity is introduced in view of *Dean v Hiesler* [1942] 2 All ER 340, 106 JP 282, where a person who had not been duly appointed a director, although performing some of the duties of a director and who described himself as such was held not to be a director of the company.

10 Public Passenger Vehicles Act 1981 s 74(1) (amended by the Transport Act 1985 s 139(3), Sch 8); Transport Act 1985 s 127(5), (6).

11 Public Passenger Vehicles Act 1981 s 74(2); Transport Act 1985 s 127(5), (6).

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### **1314. Power of Secretary of State to modify or revoke restrictions in local Acts.**

Where the running of public service vehicles<sup>1</sup> is restricted or prohibited by any provision contained in a local Act<sup>2</sup> (including an Act confirming a provisional order) or an instrument<sup>3</sup> made under any such local Act, the Secretary of State<sup>4</sup> may, on the application of any person affected by the restriction or prohibition, by order made by statutory instrument modify<sup>5</sup> or revoke the restriction or prohibition<sup>6</sup>.

1 For the meaning of 'public service vehicle' see PARA 1136 ante.

2 le passed before 6 October 1980 (ie the date on which the Transport Act 1980 s 43(2) (now repealed) came into force).

3 le made before 6 October 1980: see note 2 supra.

4 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 As to the meaning of 'modification' see PARA 1134 note 21 ante.

6 Public Passenger Vehicles Act 1981 s 78. Orders under this provision are local in nature, and are not recorded in this work.

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### **1315. Vehicles excluded from regulation as private hire vehicles.**

At any time when a vehicle would otherwise<sup>1</sup> be a public service vehicle<sup>2</sup>, it must continue to be treated as such for the purposes only of provisions contained in a local Act, in the Private Hire Vehicles (London) Act 1998 or in Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>3</sup>, which regulate the use of private hire vehicles<sup>4</sup> provided for hire with the services of a driver<sup>5</sup> for the purpose of carrying passengers and exclude public service vehicles from the scope of that regulation<sup>6</sup>.

1 Ie apart from the Public Passenger Vehicles Act 1981 s 1(4): see PARA 1136 ante.

2 For the meaning of 'public service vehicle' see PARA 1136 ante.

3 Ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended): see PARA 1433 et seq post.

4 For the purposes of ibid Pt II (as amended), 'private hire vehicle' means a motor vehicle constructed or adapted to seat fewer than nine passengers, other than a hackney carriage or public service vehicle or a London cab, which is provided for hire with the services of a driver for the purpose of carrying passengers: s 80(1) (definition amended by the Transport Act 1980 s 43, Sch 5 Pt II; and the Transport Act 1985 s 139(2), Sch 7 para 17(3)).

5 For the meaning of 'driver' see PARA 207 ante.

6 Public Passenger Vehicles Act 1981 s 79 (amended by the Transport Act 1985 Sch 7 para 21(10); the Private Hire Vehicles (London) Act 1998 s 39(1), Sch 1 para 2; and the Transport Act 2000 s 265(1)). As to small public service vehicles subject to regulation as private hire vehicles see PARA 1316 post.

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### **1316. Small public service vehicles subject to regulation as private hire vehicles.**

If a small bus<sup>1</sup> is being provided for hire with the services of a driver for the purpose of carrying passengers otherwise than at separate fares, it is not to be regarded as a public service vehicle<sup>2</sup> for the purpose of Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>3</sup> or of any local Act applying in any area in England and Wales which regulates the use of private hire vehicles provided for hire with the services of a driver for the purpose of carrying



passengers and excludes public service vehicles from the scope of that regulation<sup>4</sup>. If a small bus is being made available with a driver to the public for hire for the purpose of carrying passengers otherwise than at separate fares, it is not to be regarded as a public service vehicle for the purpose of the Private Hire Vehicles (London) Act 1998<sup>5</sup>; but the provisions above<sup>6</sup> do not apply where the vehicle is being so provided or made available in the course of a business of carrying passengers by motor vehicles all but a small part of which involves the operation of large buses<sup>7</sup>.

1 In the Public Passenger Vehicles Act 1981 s 79A (as added), 'small bus' means a public service vehicle within s 1(1)(b) (see PARA 1136 ante); s 79A(4) (s 79A added by the Transport Act 2000 s 265(2)).

2 For the meaning of 'public service vehicle' see PARA 1136 ante.

3 In the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 post.

4 Public Passenger Vehicles Act 1981 s 79A(1) (as added: see note 1 supra).

5 Ibid s 79A(2) (as added: see note 1 supra). As to the Private Hire Vehicles (London) Act 1998 see PARA 1500 et seq post.

6 In the Public Passenger Vehicles Act 1981 s 79A(1), (2) (as added).

7 Ibid s 79A(3) (as added: see note 1 supra). In s 79A (as added), 'large buses' means public service vehicles within s 1(1)(a) (see PARA 1136 ante); s 79A(4) (as so added).

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### **1317. Nuisance.**

Nothing in the Public Passenger Vehicles Act 1981<sup>1</sup> or Part I and Part II of the Transport Act 1985<sup>2</sup> may authorise a person to use on a road<sup>3</sup> a vehicle so constructed or used as to cause a public or private nuisance<sup>4</sup>, or affect the liability, whether under statute or common law, of the driver<sup>5</sup> or owner<sup>6</sup> so using such a vehicle<sup>7</sup>.

1 See PARAS 1136-1176, 1304-1316 ante.

2 In the Transport Act 1985 Pt I (ss 1-30) (as amended) (see PARAS 1177-1189 ante) and Pt II (ss 34-46) (as amended; prospectively repealed) (see PARAS 1230, 1246 ante).

3 For the meaning of 'road' see PARA 206 ante.

4 As to nuisance see generally NUISANCE.

5 For the meaning of 'driver' see PARA 207 ante.

6 For the meaning of 'owner' see PARA 207 ante.

7 Public Passenger Vehicles Act 1981 s 85; Transport Act 1985 s 128.

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1663)/12. PUBLIC PASSENGER VEHICLES/(5) SMOKE-FREE VEHICLES/1318. Regulations relating to smoke-free vehicles.

## **(5) SMOKE-FREE VEHICLES**

### **1318. Regulations relating to smoke-free vehicles.**

Under the Health Act 2006, the appropriate national authority<sup>1</sup> may make regulations providing for vehicles<sup>2</sup> to be smoke-free<sup>3</sup>. The regulations may in particular make provision: (1) for the descriptions of vehicle which are to be smoke-free; (2) for the circumstances in which they are to be smoke-free; (3) for them to be smoke-free only in specified<sup>4</sup> areas, or except in specified areas; and (4) for exemptions<sup>5</sup>. Regulations have been made providing that, subject to the following provisions, an enclosed<sup>6</sup> vehicle and any enclosed part of a vehicle is to be smoke-free if it is used: (a) by members of the public or a section of the public (whether or not for reward or hire); or (b) in the course of paid or voluntary work<sup>7</sup> by more than one person (even if those persons use the vehicle at different times, or only intermittently)<sup>8</sup>.

Regulations made by the appropriate national authority may provide for a duty to be imposed on persons, or on persons of a description, specified in the regulations to make sure that no-smoking signs complying with the statutory requirements<sup>9</sup> are displayed in smoke-free<sup>10</sup> vehicles in accordance with those requirements<sup>11</sup>. A person who fails to comply with such duty commits an offence<sup>12</sup>. However, it is a defence for a person charged with such an offence to show: (a) that he did not know, and could not reasonably have been expected to know, that the vehicle was smoke-free; or (b) that he did not know, and could not reasonably have been expected to know, that no-smoking signs complying with the statutory requirements were not being displayed in accordance with those requirements; or (c) that on other grounds it was reasonable for him not to comply with the duty<sup>13</sup>.

A person who smokes in a smoke-free place<sup>14</sup> commits an offence<sup>15</sup>. It is a defence for a person charged with such an offence to show that he did not know, and could not reasonably have been expected to know, that it was a smoke-free place<sup>16</sup>.

Regulations made by the appropriate national authority may provide for a duty to be imposed on persons, or on persons of a description, specified in the regulations to cause a person smoking in a smoke-free<sup>17</sup> vehicle to stop smoking<sup>18</sup>. A person who fails to comply with such duty commits an offence<sup>19</sup>. It is a defence for a person charged with such an offence to show: (i) that he took reasonable steps to cause the person in question to stop smoking; or (ii) that he did not know, and could not reasonably have been expected to know, that the person in question was smoking; or (iii) that on other grounds it was reasonable for him not to comply with the duty<sup>20</sup>.

Provision is made as to the enforcement of the statutory provisions and regulations<sup>21</sup>.

1 In the Health Act 2006, 'the appropriate national authority' means: (1) in relation to England, the Secretary of State; and (2) in relation to Wales, the Welsh Ministers: s 82(1). As to the Secretary of State see PARA 236 ante. As to the Welsh Ministers see PARA 237 ante.

2 In *ibid* Pt 1 Ch 1 (ss 1-12), 'vehicle' means every type of vehicle, including train, vessel, aircraft and hovercraft: ss 5(5), 12(1).

3 See *ibid* s 5(1); and PROTECTION OF THE ENVIRONMENT AND PUBLIC HEALTH. In Pt 1 Ch 1: (1) 'smoking' refers to smoking tobacco or anything which contains tobacco, or smoking any other substance; and (2) smoking includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked: s 1(2). In Pt 1 Ch 1, 'smoke' and other related expressions are to be read in accordance with s 1(2): s 1(3). As to regulations under the Health Act 2006 see s 79.

4 'Specified', in relation to regulations, means specified in the regulations: s 12(1).

5 Ibid s 5(2). The power to make regulations is not exercisable in relation to: (1) any ship or hovercraft in relation to which regulations could be made under the Merchant Shipping Act 1995 s 85 (safety and health on ships), including s 85 as applied by any Order in Council under the Hovercraft Act 1968 s 1(1)(h) (as amended); or (2) persons on any such ship or hovercraft: Health Act 2006 s 5(3). The Smoke-free (Exemptions and Vehicles) Regulations 2007, SI 2007/765 (which apply only in England: see reg 1(2)), have been made under the Health Act 2006 s 5.

6 A vehicle or part of a vehicle is enclosed for these purposes where it is enclosed wholly or partly by a roof and by any door or window that may be opened: Smoke-free (Exemptions and Vehicles) Regulations 2007, SI 2007/765, reg 11(2). 'Roof' in reg 11(2) includes any fixed or moveable structure or device which is capable of covering all or part of the vehicle, including any canvas, fabric or other covering: reg 11(3). However, in relation to a vehicle that is engaged in conveying persons, 'roof' does not include any fixed or moveable structure or device which is completely stowed away so that it does not cover all or any part of the vehicle: reg 11(4).

7 A vehicle is not used in the course of paid or voluntary work for the purposes of ibid reg 11(1)(b) where it is used primarily for the private purposes of a person who: (1) owns it; or (2) has a right to use it which is not restricted to a particular journey: reg 11(5).

8 Ibid reg 11(1). Regulation 11 applies to all vehicles other than: (1) aircraft; or (2) ships or hovercraft in respect of which regulations could be made under the Merchant Shipping Act 1995 s 85 (safety and health on ships), including s 85 as applied by any Order in Council under the Hovercraft Act 1968 s 1(1)(h) or to persons on any such ships or hovercraft: Smoke-free (Exemptions and Vehicles) Regulations 2007, SI 2007/765, reg 11(6).

9 Ie the Health Act 2006 s 6.

10 The references in ibid s 6, however expressed, to vehicles which are smoke-free, are to those vehicles so far as they are smoke-free under or by virtue of Pt 1 Ch 1: s 6(9).

11 Ibid s 6(1), (2). The signs must be displayed in accordance with any requirements contained in regulations made by the appropriate national authority: s 6(3). The signs must conform to any requirements specified in regulations made by the appropriate national authority (eg requirements as to content, size, design, colour, or wording): s 6(4). See the Smoke-free (Signs) Regulations 2007, SI 2007/923. Any person with management responsibilities for a smoke-free vehicle is under a duty corresponding to that in the Health Act 2006 s 6(1) to ensure that at least one no-smoking sign is displayed in a prominent position in each compartment of his vehicle: Smoke-free (Signs) Regulations 2007, SI 2007/923, reg 3(1). 'No-smoking sign' means a sign which displays the no-smoking symbol: reg 3(2). 'Compartment' includes each part of a vehicle which: (1) is constructed or adapted to accommodate persons; and (2) is, or may from time to time be, wholly or partly covered by a roof; and 'roof' includes any fixed or moveable structure or device which is capable of covering all or part of a compartment, including any canvas, fabric or other covering, but where a vehicle is engaged in conveying persons, it does not include any fixed or moveable structure or device which is completely stowed away so that it does not cover all or any part of a compartment: reg 3(2).

12 Health Act 2006 s 6(5). A person guilty of an offence under s 6(5) is liable on summary conviction to a fine not exceeding a level on the standard scale specified in regulations made by the Secretary of State: s 6(8). The level specified for the purposes of s 6(8) is level 3: see the Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/764, reg 2(1). As to the standard scale see PARA 230 note 3 ante.

13 Health Act 2006 s 6(6). If a person charged with an offence under s 6(5) relies on a defence in s 6(6), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not: s 6(7).

14 For these purposes, 'smoke-free place' means a vehicle, so far as it is smoke-free by virtue of ibid s 5 (see the text and notes 1-5 supra): s 7(1).

15 Ibid s 7(2). A person guilty of an offence under s 7 is liable on summary conviction to a fine not exceeding a level on the standard scale specified in regulations made by the Secretary of State: s 7(6). The level specified for the purposes of s 7(6) is level 1: see the Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/764, reg 2(2). In respect of an offence alleged under the Health Act s 7(2), the amount of the penalty specified for the purposes of Sch 1 para 5 (fixed penalty) is £50 and the discounted amount specified for the purposes of Sch 1 para 8 is £30: Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/764, reg 7(5). As to fixed penalties under the Health Act 2006 see s 9; and PROTECTION OF THE ENVIRONMENT AND PUBLIC HEALTH.

16 Health Act 2006 s 7(4). If a person charged with an offence under s 7 relies on a defence in s 7(4), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not: s 7(5).

17 The references in *ibid* s 8, however expressed, to vehicles which are smoke-free, are to those vehicles so far as they are smoke-free under or by virtue of Pt 1 Ch 1: s 8(8).

18 *Ibid* s 8(1), (3). See the Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007, SI 2007/760.

19 Health Act 2006 s 8(4). A person guilty of an offence under s 8 is liable on summary conviction to a fine not exceeding a level on the standard scale specified in regulations made by the Secretary of State: s 8(7). The level specified for the purposes of s 8(7) is level 4: see the Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/764, reg 2(3).

20 Health Act 2006 s 8(5). If a person charged with an offence under s 8 relies on a defence in s 8(5), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not: s 8(6).

21 See *ibid* ss 10, 11; and PROTECTION OF THE ENVIRONMENT AND PUBLIC HEALTH.

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## **13. GOODS VEHICLES**

### **(1) INTRODUCTION**

#### **1319. The legislation.**

The Goods Vehicles (Licensing of Operators) Act 1995<sup>1</sup> makes provision as to the licensing of operators of certain<sup>2</sup> goods vehicles<sup>3</sup>. The Secretary of State<sup>4</sup> is empowered under various provisions of the Goods Vehicles (Licensing of Operators) Act 1995<sup>5</sup> to make regulations<sup>6</sup> in respect of applications for an operator's licence<sup>7</sup>, operating centres<sup>8</sup>, inquiries held by traffic commissioners<sup>9</sup> and other related matters<sup>10</sup>.

The Transport Act 1985<sup>11</sup> provides for the reconstitution of the Transport Tribunal, which deals with appeals from any determination of a traffic commissioner under the Goods Vehicles (Licensing of Operators) Act 1995<sup>12</sup> and provision is also made in the Transport Act 1985 with respect to the constitution, powers and proceedings of the tribunal<sup>13</sup>.

The provisions relating to the regulation of the use of goods vehicles are dealt with elsewhere in this title<sup>14</sup>.

1 Except for the Goods Vehicles (Licensing of Operators) Act 1995 s 50 and Sch 5, the Goods Vehicles (Licensing of Operators) Act 1995 was brought into force on 1 January 1996 by the Goods Vehicles (Licensing of Operators) Act 1995 (Commencement and Transitional Provisions) Order 1995, SI 1995/2181. At the date at which this volume states the law no order bringing the excepted provisions into force had been made under the Goods Vehicles (Licensing of Operators) Act 1995 s 50(2).

2 As to the goods vehicles to which the Goods Vehicles (Licensing of Operators) Act 1995 applies see PARA 1329 post.

3 See PARAS 1329-1379 post. For the meaning of 'goods vehicle' see PARA 1329 note 3 post.

4 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 *Ie* the Goods Vehicles (Licensing of Operators) Act 1995 ss 2, 5(3), (8), 8(3)-(5), 10, 11(2), 12(2), (3), (6), (7), 14(5), 17(2), 18(3), 19(9), (10), 23(2), 30(1), (4), 31(5), 33, 34(1), 35(3), 36(2), (3), 46(1), (2), 47, 48(2)-(4), 57(1)-(9), Sch 4 paras 1, 3.

- 6 As to regulations and orders see PARA 1321 note 2 post.
- 7 For the meaning of 'operator's licence' see PARA 1329 post.
- 8 For the meaning of 'operating centre' see PARA 1332 note 12 post.
- 9 As to the functions of traffic commissioners see PARA 1326 post.
- 10 See the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869 (as amended); and PARA 1321 et seq post.
- 11 Ie the Transport Act 1985 s 117: see PARA 253 ante.
- 12 See *ibid* s 117(2), Sch 4 para 9; and PARA 256 ante.
- 13 See *ibid* Sch 4; and PARAS 253, 256 ante.
- 14 As to the licensing of drivers of large goods vehicles see the Road Traffic Act 1988 ss 110-122 (as added and amended); and PARA 489 et seq ante. As to the issue of test certificates see ss 49-53 (as amended); the Goods Vehicles (Plating and Testing) Regulations 1988, SI 1988/1478 (as amended); and PARAS 676-683 ante. As to inspection of goods vehicles and the prohibition of unfit and overloaded vehicles see the Road Traffic Act 1988 ss 68-73 (as amended); the Road Vehicles (Prohibition) Regulations 1992, SI 1992/1285 (as amended); and PARAS 686-692 ante. As to an operator's duty to inspect goods vehicles and keep records of inspection see the Road Traffic Act 1988 s 74 (as amended); and PARA 693 ante. As to the parking of heavy commercial vehicles see ss 19, 20; and PARAS 220, 997 ante. As to false statements and the withholding of material information in respect of an operator's duty of inspection and record-keeping see s 174 (as amended); and PARA 1013 ante. As to the regulation and restriction of the use on roads of heavy commercial vehicles see the Road Traffic Regulation Act 1984 s 122(2)(b); and PARA 734 ante. As to drivers' hours and records see the Transport Act 1968 Pt VI (ss 95-103) (as amended); and PARA 1380 et seq post. As to the charge in respect of use of roads by lorries see PARA 936 ante. As to provision for international road haulage permits see the International Road Haulage Permits Act 1975 ss 1, 2 (both as amended); and PARA 1637 post. As to carriage of goods see CARRIAGE AND CARRIERS.  
  
The Goods Vehicles (Authorisation of International Journeys) (Fees) Regulations 2001, SI 2001/3606 (amended by SI 2004/1883), made under the Finance Act 1973 s 56(1), (2) (see WEIGHTS AND MEASURES vol 50 (2005 Reissue) PARA 36), prescribe the fees payable for the issue of documents authorising the operation of goods vehicles on journeys: (1) between the United Kingdom and other member countries of the European Conference of Ministers of Transport; (2) between the United Kingdom and certain states with which bilateral agreements or arrangement have been concluded; (3) in transit through Austria; and (4) in Switzerland.

## UPDATE

### 1319 The legislation

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 14--SI 2001/3606 further amended: SI 2008/1576, SI 2009/855.

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### 1320. Transitional provision.

The substitution of the Goods Vehicles (Licensing of Operators) Act 1995 for the provisions repealed and revoked by it does not affect the continuity of the law<sup>1</sup>. In so far as any thing done (including any subordinate legislation made or other instrument issued) under a provision

repealed or revoked by the Goods Vehicles (Licensing of Operators) Act 1995 could have been done under the corresponding provision of that Act, it has effect as if done under that corresponding provision<sup>2</sup>. Any reference (express or implied) in the Goods Vehicles (Licensing of Operators) Act 1995 or any other enactment, instrument or document to any provision of the Goods Vehicles (Licensing of Operators) Act 1995, or things done or falling to be done under or for the purposes of any provision of that Act, is, so far as the nature of the reference permits, to be construed as including, in relation to the times, circumstances or purposes in relation to which the corresponding provision repealed or revoked by the Goods Vehicles (Licensing of Operators) Act 1995 had effect, a reference to that corresponding provision or (as the case may be) to things done or falling to be done under or for the purposes of that corresponding provision<sup>3</sup>. Any reference (express or implied) in any enactment, instrument or document to a provision repealed or revoked by the Goods Vehicles (Licensing of Operators) Act 1995, or things done or falling to be done under or for the purposes of such a provision, is, so far as the nature of the reference permits, to be construed as including, in relation to the times, circumstances or purposes in relation to which the corresponding provision of that Act has effect, a reference to that corresponding provision or (as the case may be) to things done or falling to be done under or for the purposes of that corresponding provision<sup>4</sup>.

1 Goods Vehicles (Licensing of Operators) Act 1995 s 59(1), Sch 6 para 1. See note 4 infra.

2 Ibid Sch 6 para 2. See note 4 infra.

3 Ibid Sch 6 para 3. See note 4 infra.

4 Ibid Sch 6 para 4. Schedule 6 paras 1-4 have effect, in relation to the substitution of the Goods Vehicles (Licensing of Operators) Act 1995 for the provisions repealed and revoked by it, in place of the Interpretation Act 1978 s 17(2) (see STATUTES vol 44(1) (Reissue) PARA 1303) (but without prejudice to any other provision of the Interpretation Act 1978): Goods Vehicles (Licensing of Operators) Act 1995 Sch 6 para 5. Without prejudice to the generality of Sch 6 paras 2-4, an existing licence continues in force as if it had been issued under the Goods Vehicles (Licensing of Operators) Act 1995; and in that Act or any other enactment, instrument or document, any reference to, or including a reference to, an operator's licence issued under the Act is, so far as the nature of the reference permits, to be construed as including a reference to an existing licence: s 59(2). For these purposes, 'existing licence' means any operator's licence within the meaning of the Transport Act 1968 Pt V (ss 59-94) (repealed) which was in force immediately before the commencement of the Goods Vehicles (Licensing of Operators) Act 1995: s 59(3). For the meaning of 'operator's licence' see PARA 1329 post. As to the commencement of the Goods Vehicles (Licensing of Operators) Act 1995 see PARA 1319 note 1 ante.

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### **1321. Regulations and orders.**

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> for any purpose for which regulations may be made under the Goods Vehicles (Licensing of Operators) Act 1995, and for prescribing<sup>3</sup> anything which may be prescribed under the Act, and generally for carrying the Act into effect<sup>4</sup>. In particular, the Secretary of State may make regulations with respect to the following matters:

- 1991 (1) the procedure on applications for, and the determination of questions in connection with, the issuing and variation of operators' licences<sup>5</sup> and the procedure under, and the determination of questions for specified purposes<sup>6</sup>;
- 1992 (2) the issue of operators' licences and the issue on payment of the prescribed fee of copies of such licences in the case of licences lost or defaced<sup>7</sup>;

- 1993 (3) the forms which operators' licences are to take in order to show a distinction:
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201. (a) between a standard licence<sup>8</sup> and a restricted licence<sup>9</sup>; and
202. (b) between a licence covering both international and national transport operations<sup>10</sup> and a licence covering national transport operations only<sup>11</sup>;
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- 1994 (4) the means by which vehicles may be identified, whether by plates, marks or otherwise, as being used or authorised to be used under an operator's licence<sup>12</sup>;
- 1995 (5) the custody, production, return and cancellation of operators' licences and of documents, plates and any other means of identification prescribed under head (4) above<sup>13</sup>;
- 1996 (6) the payment of a prescribed fee in respect of any document, plate or other means of identification so prescribed that has been lost, defaced or broken<sup>14</sup>;
- 1997 (7) the notification to a traffic commissioner<sup>15</sup> of vehicles which have ceased to be used under an operator's licence<sup>16</sup>;
- 1998 (8) the repayment (or partial repayment) in the prescribed circumstances of fees paid under the Goods Vehicles (Licensing of Operators) Act 1995<sup>17</sup>;
- 1999 (9) the circumstances in which goods<sup>18</sup> are to be treated for the purposes of the Goods Vehicles (Licensing of Operators) Act 1995 as carried for hire or reward and the circumstances in which goods are to be treated for those purposes as carried by any person for or in connection with a trade or business carried on by him<sup>19</sup>.

The power under head (1) above includes power to require a person applying for an operator's licence to state in his application whether his application is for a standard licence or a restricted licence<sup>20</sup>, and, if his application is for a standard licence, whether his application is for a licence to cover both international and national transport operations or for one to cover national transport operations only<sup>21</sup>.

The power under head (4) above includes power to require that any means of identification prescribed for a vehicle must be carried notwithstanding that for the time being the vehicle is not being used for a purpose for which an operator's licence is required<sup>22</sup>. The power under head (4) above also includes power to make provision with respect to the means by which:

- 2000 (i) any vehicle may be identified as being used under a standard licence or, as the case may be, a restricted licence<sup>23</sup>; and
- 2001 (ii) any vehicle which is being used under a standard licence may be identified as being used under a licence that permits it to be used for both international and national transport operations<sup>24</sup>, or for national transport operations only<sup>25</sup>.

The Secretary of State may make regulations for providing that any provision of the Goods Vehicles (Licensing of Operators) Act 1995, in relation to vehicles brought temporarily into Great Britain, has effect subject to such modifications<sup>26</sup> as may be prescribed<sup>27</sup>. Regulations under the Act may make different provision for different cases or classes of case and different circumstances<sup>28</sup> and regulations made by virtue of head (4) above may make different provision for different traffic areas<sup>29</sup>. Regulations may make transitional provisions<sup>30</sup>. A definition or description of a class of vehicles for the purposes of any regulation under the Goods Vehicles (Licensing of Operators) Act 1995 may be framed by reference to any characteristic of the vehicles or to any other circumstances whatever<sup>31</sup>.

Any person who contravenes<sup>32</sup> a provision of regulations<sup>33</sup>, a contravention of which is declared by the regulations to be an offence, is guilty of an offence<sup>34</sup>. Any regulations made by the Secretary of State under the Goods Vehicles (Licensing of Operators) Act 1995<sup>35</sup> are subject to

annulment in pursuance of a resolution of either House of Parliament<sup>36</sup>. Before making any regulations under the Goods Vehicles (Licensing of Operators) Act 1995 the Secretary of State must consult with such representative organisations as he thinks fit<sup>37</sup>. Any power to make orders or regulations conferred on the Secretary of State by any provision of the Goods Vehicles (Licensing of Operators) Act 1995 is exercisable by statutory instrument<sup>38</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 'Regulations' means regulations made under the Goods Vehicles (Licensing of Operators) Act 1995: s 58(1). As to the regulations made see note 38 infra.

3 For the meaning of 'prescribed' see PARA 1332 note 7 post.

4 Goods Vehicles (Licensing of Operators) Act 1995 s 57(1).

5 For the meaning of 'operator's licence' see PARA 1329 post.

6 Goods Vehicles (Licensing of Operators) Act 1995 s 57(2)(a). The purposes referred to in the text are those of ss 26-32 (see PARAS 1356-1363 post) and s 36 (see PARA 1368 post).

7 Ibid s 57(2)(b).

8 For the meaning of 'standard licence' see PARA 1330 note 2 post.

9 Goods Vehicles (Licensing of Operators) Act 1995 s 57(2)(c)(i). For the meaning of 'restricted licence' see PARA 1330 note 3 post.

10 For the meaning of 'international transport operations' see PARA 1330 note 11 post. As to the meaning of 'national transport operations' see PARA 1330 note 11 post.

11 Goods Vehicles (Licensing of Operators) Act 1995 s 57(2)(c)(ii).

12 Ibid s 57(2)(d). As to the meaning of 'using a vehicle' see PARA 1329 note 2 post. As to the meaning of 'being authorised to use a vehicle under an operators' licence' see PARA 1330 note 10 post.

13 Ibid s 57(2)(e).

14 Ibid s 57(2)(f).

15 As to the functions of traffic commissioners see PARA 1326 post.

16 Goods Vehicles (Licensing of Operators) Act 1995 s 57(2)(g).

17 Ibid s 57(2)(h). As to the refund of fees in prescribed circumstances see the Goods Vehicles (Licensing of Operators) (Fees) Regulations 1995, SI 1995/3000, reg 4.

18 For the meaning of 'goods' see PARA 1329 note 3 post.

19 Goods Vehicles (Licensing of Operators) Act 1995 s 57(2)(i).

20 Ibid s 57(3)(a).

21 Ibid s 57(3)(b).

22 Ibid s 57(4).

23 Ibid s 57(5)(a).

24 Ibid s 57(5)(b)(i).

25 Ibid s 57(5)(b)(ii).

26 For the meaning of 'modification' see PARA 1347 note 32 post.



- 27 Goods Vehicles (Licensing of Operators) Act 1995 s 57(6). In exercise of this power the Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) Regulations 1996, SI 1996/2186 (amended by SI 2001/1149; SI 2004/462) have been made.
- 28 Goods Vehicles (Licensing of Operators) Act 1995 s 57(7)(a).
- 29 Ibid s 57(7). For the meaning of 'traffic area' see PARA 1326 note 1 post.
- 30 Ibid s 57(7)(b).
- 31 Ibid s 57(8).
- 32 For the meaning of 'contravenes' see PARA 1329 note 16 post.
- 33 Ie under the Goods Vehicles (Licensing of Operators) Act 1995 s 57.
- 34 Ibid s 57(9). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 57(9). As to the standard scale see PARA 230 note 3 ante.
- 35 Ie other than regulations under ibid s 30(3): see PARA 1361 post.
- 36 Ibid s 57(11).
- 37 Ibid s 57(12).
- 38 Ibid s 57(13). The following regulations have been made under this provision: the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869 (amended by SI 2003/2096; SI 2004/3168; SI 2006/594); the Goods Vehicles (Licensing of Operators) (Fees) Regulations 1995, SI 1995/3000 (amended by SI 2005/2345; SI 2007/687); the Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) Regulations 1996, SI 1996/2186 (amended by SI 2001/1149; SI 2004/462).

## UPDATE

### 1321 Regulations and orders

NOTES 7, 14--See the Department for Transport (Fees) Order 2009, SI 2009/711 (amended by SI 2009/1885), which specifies for the purposes of the Finance (No 2) Act 1987 s 102(3) the functions to be taken into account in the determination of the fees to be fixed by the Secretary of State.

NOTE 17--SI 1995/3000 reg 4 amended: SI 2009/804.

NOTE 38--SI 1995/3000 further amended: SI 2008/1474, SI 2009/804.

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### 1322. Protection of public interest.

Nothing in the Goods Vehicles (Licensing of Operators) Act 1995 is to be treated as conferring on the holder of an operator's licence<sup>1</sup> any right to the continuance of any benefits arising from the Act or from any such licence or from any conditions attached to any such licence<sup>2</sup>.

<sup>1</sup> For the meaning of 'operator's licence' see PARA 1329 post.

<sup>2</sup> Goods Vehicles (Licensing of Operators) Act 1995 s 55. As to conditions attached to operator licences see PARAS 1351-1353 post.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/13. GOODS VEHICLES/(1) INTRODUCTION/1323. Holding companies and subsidiaries.

### **1323. Holding companies and subsidiaries.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> make provision for the purpose of enabling any company or other body corporate<sup>3</sup> which has one or more subsidiaries<sup>4</sup> to hold an operator's licence<sup>5</sup> under which the vehicles authorised to be used<sup>6</sup> consist of or include vehicles belonging to or in the possession of any of its subsidiaries<sup>7</sup>. Such regulations<sup>8</sup> may modify<sup>9</sup> or supplement any of the provisions of the Goods Vehicles (Licensing of Operators) Act 1995, other than the excepted provisions<sup>10</sup>, so far as appears to the Secretary of State to be necessary or expedient for or in connection with the purpose mentioned above<sup>11</sup>, and may contain such other supplementary and incidental provisions as appear to the Secretary of State to be requisite<sup>12</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 As to regulations and orders see PARA 1321 ante.

3 As to bodies corporate generally see COMPANIES; CORPORATIONS.

4 As to the meaning of 'subsidiary' see PARA 1330 note 5 ante.

5 For the meaning of 'operator's licence' see PARA 1329 post.

6 As to the meaning of 'using a vehicle' see PARA 1329 note 2 post. As to being authorised to use a vehicle under an operators' licence see PARA 1330 note 10 post.

7 Goods Vehicles (Licensing of Operators) Act 1995 s 46(1).

8 *Ie* under *ibid* s 46.

9 For the meaning of 'modify' see PARA 1347 note 32 post.

10 'The excepted provisions' are set out in the Goods Vehicles (Licensing of Operators) Act 1995 s 46(3) and are provisions that reproduce the effect of provisions of the Goods Vehicles (Operators' Licences, Qualifications and Fees) Regulations 1984, SI 1984/176 (revoked). They are as follows:

1290 (1) the Goods Vehicles (Licensing of Operators) Act 1995 s 3 (see PARA 1330 post), s 4 (see PARA 1331 post), s 9(2), (3)(b) (see PARA 1335 post), s 13(3) (see PARA 1339 post), s 15(5), (6) (see PARA 1345 post), s 20 (see PARA 1350 post), s 22(2)-(5) (see PARA 1352 post), s 27 (see PARA 1357 post) and s 49 (see PARA 1376 post);

1291 (2) in s 58(1) the definitions of 'international transport operations' (see PARA 1330 note 11 post), 'national transport operations' (see PARA 1330 note 11 post), 'road transport undertaking' (see PARA 1341 note 2 post) and 'transport manager' (see PARA 1335 note 5 post), and s 58(4) (see PARA 1376 post); and

1292 (3) s 13, Sch 3 (see PARAS 1340-1343 post).

11 *Ibid* s 46(2)(a).

12 *Ibid* s 46(2)(b). As to modifications in relation to holding companies and subsidiaries see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 30, Sch 2.

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### **1324. Partnerships.**

Regulations<sup>1</sup> may provide for the Goods Vehicles (Licensing of Operators) Act 1995 to apply in relation to partnerships with such modifications<sup>2</sup> as may be specified in the regulations<sup>3</sup>.

1 As to regulations and orders see PARA 1321 ante.

2 For the meaning of 'modification' see PARA 1347 note 32 post.

3 Goods Vehicles (Licensing of Operators) Act 1995 s 47. Nothing in any such regulations may make modifications in any of the excepted provisions (ie excepted provisions within the meaning given in s 46(3): see PARA 1323 note 10 ante): s 47. As to the application of the Goods Vehicles (Licensing of Operators) Act 1995 to partnerships see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 29.

## **UPDATE**

### **1324 Partnerships**

TEXT AND NOTES--SI 1995/2869 reg 29 amended: SI 2007/1898.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/13. GOODS VEHICLES/(1) INTRODUCTION/1325. Operators' licences not to be transferable or assignable.

### **1325. Operators' licences not to be transferable or assignable.**

Subject to regulations<sup>1</sup>, an operator's licence<sup>2</sup> is neither transferable nor assignable<sup>3</sup>. Regulations may make provision enabling a traffic commissioner<sup>4</sup>, where the holder of an operator's licence issued by him has died or has become a person who lacks capacity within the meaning of the Mental Capacity Act 2005<sup>5</sup> to use a vehicle under the licence, to direct that the licence be treated:

- 2002 (1) as not having terminated at the time when the licence holder died or became a person who lacked capacity in that respect but as having been suspended (that is, as having remained in force but subject to the limitation that no vehicles were authorised to be used<sup>6</sup> under it) from that time until the time when the direction comes into force<sup>7</sup>; and
- 2003 (2) as having effect from the time when the direction comes into force for a specified<sup>8</sup> period and as being held during that period (for such purposes and to such extent as may be specified) not by the person to whom it was issued but by such other person carrying on that person's business, or part of that person's business, as may be specified<sup>9</sup>.

Regulations may make provision enabling a traffic commissioner in prescribed<sup>10</sup> circumstances to direct that any operator's licence issued by him is to be treated (for such purposes, for such period and to such extent as may be specified) as held not by the person to whom it was issued

but by such other person carrying on that person's business, or part of that person's business, as may be specified<sup>11</sup>.

Regulations may make provision enabling a traffic commissioner to direct, for the purpose of giving effect to or supplementing a direction given by him<sup>12</sup>, that the Goods Vehicles (Licensing of Operators) Act 1995 is to apply with specified modifications<sup>13</sup> in relation to the person who is to be treated under the direction as the holder of an operator's licence, but nothing in any such regulations permits the commissioner to modify the operation of any of the excepted provisions<sup>14</sup>.

1     le any regulations under the Goods Vehicles (Licensing of Operators) Act 1995 s 46: see PARA 1323 ante. As to these regulations see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 31 (amended by SI 2003/2096); and note 9 infra. As to regulations and orders see PARA 1321 ante.

2     For the meaning of 'operator's licence' see PARA 1329 post.

3     Goods Vehicles (Licensing of Operators) Act 1995 s 48(1).

4     As to the functions of traffic commissioners see PARA 1326 post.

5     As to persons who lack capacity see MENTAL HEALTH vol 30(2) (Reissue) PARA 641 et seq. In the Goods Vehicles (Licensing of Operators) Act 1995 s 48(2), references to a person becoming a person lacking capacity include references to a curator bonis being appointed in respect of him in Scotland on the ground that he is incapable, by reason of mental disorder, of adequately managing and administering his property and affairs: Goods Vehicles (Licensing of Operators) Act 1995 s 48(5) (amended by the Mental Capacity Act 2005 s 67(1), Sch 6 para 40). By virtue of the Adults with Incapacity (Scotland) Act 2000 s 88(2), Sch 5 para 1, the reference to a curator bonis is to be construed as a reference to a guardian with similar powers appointed under that Act.

6     As to the meaning of 'using a vehicle' see PARA 1329 note 2 post. As to being authorised to use a vehicle under an operators' licence see PARA 1330 note 10 post.

7     Goods Vehicles (Licensing of Operators) Act 1995 s 48(2)(a) (amended by the Mental Capacity Act 2005 Sch 6 para 40).

8     For these purposes, 'specified', in relation to a direction, means specified in the regulations under which the direction was given (Goods Vehicles (Licensing of Operators) Act 1995 s 48(6)(a)), or in the direction in accordance with those regulations (s 48(6)(b)).

9     Ibid s 48(2)(b). As to the continuance of licence on death, bankruptcy etc see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 31 (amended by SI 2003/2096).

10    For the meaning of 'prescribed' see PARA 1332 note 7 post.

11    Goods Vehicles (Licensing of Operators) Act 1995 s 48(3).

12    le by virtue of ibid s 48(2) (as amended) or s 48(3): see the text and notes 4-11 supra.

13    For the meaning of 'modification' see PARA 1347 note 32 post.

14    Goods Vehicles (Licensing of Operators) Act 1995 s 48(4). As to the excepted provisions see s 46(3); and PARA 1323 note 10 ante.

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### **1326. Functions of traffic commissioners.**

The traffic commissioner<sup>1</sup> for any traffic area constituted for the purposes of the Public Passenger Vehicles Act 1981<sup>2</sup> is to exercise the functions<sup>3</sup> conferred on him by the Goods

Vehicles (Licensing of Operators) Act 1995<sup>4</sup>. In the exercise of such functions a traffic commissioner must act under the general directions of the Secretary of State<sup>5</sup>.

1 Anything required or authorised by the Goods Vehicles (Licensing of Operators) Act 1995 to be done by or to a traffic commissioner by whom a licence was issued may be done by or to any person for the time being acting as traffic commissioner for the area for which the first-mentioned commissioner was acting at the time of the issuing of the licence: s 58(5). 'Area', in relation to a traffic commissioner, means the traffic area for which he is the traffic commissioner: s 58(1). 'Traffic area' means a traffic area constituted for the purposes of the Public Passenger Vehicles Act 1981: Goods Vehicles (Licensing of Operators) Act 1995 s 58(1). As to the constitution of traffic areas for the purposes of the Public Passenger Vehicles Act 1981 see s 3 (as amended); and PARA 1138 ante.

2 See PARA 1139 ante.

3 'Functions' includes powers, duties and obligations: Goods Vehicles (Licensing of Operators) Act 1995 s 58(1).

4 Ibid s 1(1).

5 Ibid s 1(2). As to the Secretary of State see PARA 236 ante. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

## UPDATE

### 1326 Functions of traffic commissioners

TEXT AND NOTE 5--1995 Act s 1(2) amended: Local Transport Act 2008 s 3(2).

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### 1327. Assessors.

In considering any financial question which appears to him to arise in relation to the exercise of his functions<sup>1</sup> under the Goods Vehicles (Licensing of Operators) Act 1995, the traffic commissioner<sup>2</sup> may be assisted by an assessor drawn from a panel of persons appointed for the purpose by the Secretary of State<sup>3</sup>. The Secretary of State must pay to any such assessor in respect of his services such remuneration as may be determined by the Secretary of State with the consent of the Treasury<sup>4</sup>.

1 As to the meaning of 'functions' see PARA 1326 note 3 ante.

2 As to the functions of traffic commissioners see PARA 1326 ante.

3 Goods Vehicles (Licensing of Operators) Act 1995 s 44(1). As to the Secretary of State see PARA 236 ante. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 Ibid s 44(2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-

1663)/13. GOODS VEHICLES/(1) INTRODUCTION/1328. Dissolution of the National Freight Corporation and establishment of the National Freight Co Ltd.

### **1328. Dissolution of the National Freight Corporation and establishment of the National Freight Co Ltd.**

With a view to privatisation, the National Freight Corporation<sup>1</sup> was dissolved in 1980 and its property, rights, liabilities and obligations were transferred to the National Freight Co Ltd<sup>2</sup>. Road haulage of freight is now a private sector industry.

1 The National Freight Corporation was established by the Transport Act 1968 s 1, Sch 1 (repealed), to exercise its powers, in conjunction with the British Railways Board, so as to provide properly integrated services for the carriage of goods by road and rail: see s 1(1) (repealed). It was empowered to carry goods by road, to arrange for the carriage of goods by rail, to act as agents for the railways board, to consign and store goods, to provide goods depots, to operate harbours, to hire vehicles and vessels, and, with ministerial consent, to provide transport services by sea: see s 2 (repealed). Certain securities, rights and liabilities of the former Transport Holding Company were transferred to the corporation by s 4, Sch 3 (repealed)

2 See the Transport Act 1980 ss 45, 51(1), Sch 6 (amended by the Statute Law (Repeals) Act 2004; and prospectively amended by the Transport Act 2000 s 274, Sch 31 Pt IV); and the National Freight Corporation (Transfer of Undertaking) Order 1980, SI 1980/1380. See also the Transport Act 1980 s 48 (repealed). There was an initial government holding in the National Freight Co Ltd: see s 46 (amended by the Finance Act 1988 s 148, Sch 14 Pt XI; and the Statute Law (Repeals) Act 2004). Transitional provision was made with respect to reserves of the National Freight Corporation: see the Transport Act 1980 s 47 (repealed). Particular provision was made for the transfer to the National Freight Co Ltd of certain obligations of the National Freight Corporation relating to pensions and travel concessions: see the Transport Act 1980 ss 49, 50.

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## **(2) GOODS VEHICLE LICENSING**

### **(i) Licensing of Operators**

#### **1329. Obligation to hold operator's licence.**

Subject to certain exceptions<sup>1</sup>, no person may use<sup>2</sup> a goods vehicle<sup>3</sup> on a road<sup>4</sup> for the carriage of goods for hire or reward<sup>5</sup>, or for or in connection with any trade or business carried on by him<sup>6</sup>, except under a licence issued under the Goods Vehicles (Licensing of Operators) Act 1995<sup>7</sup> (an 'operator's licence')<sup>8</sup>. These provisions<sup>9</sup> do not apply to:

- 2004 (1) the use of a small goods vehicle<sup>10</sup>;
- 2005 (2) the use of a goods vehicle for international carriage by a haulier established<sup>11</sup> in a member state other than the United Kingdom<sup>12</sup> and not established in the United Kingdom<sup>13</sup>;
- 2006 (3) the use of a goods vehicle for international carriage by a haulier established in Northern Ireland and not established in Great Britain<sup>14</sup>; or
- 2007 (4) the use of a vehicle of any class specified in regulations<sup>15</sup>.

A person who uses a vehicle in contravention<sup>16</sup> of this provision<sup>17</sup> is guilty of an offence<sup>18</sup>.

1 le the Goods Vehicles (Licensing of Operators) Act 1995 s 2(2) (see the text and notes 10-15 infra), s 4 (see PARA 1331 post): see s 2(1).

2 For the purposes of the Goods Vehicles (Licensing of Operators) Act 1995, the driver of a vehicle, if it belongs to him or is in his possession under an agreement for hire, hire-purchase or loan, and in any other case the person whose servant or agent the driver is, is deemed to be the person using the vehicle; and references to using a vehicle are to be construed accordingly: s 58(2). See also *Sykes v Millington* [1953] 1 QB 770, [1953] 1 All ER 1098, DC; *Tribe v Burton* (1956) 31 Traf Cas 1; *Ready Mixed Concrete (East Midlands) Ltd v Yorkshire Traffic Area Licensing Authority* [1970] 2 QB 397, [1970] 1 All ER 890.

The Divisional Court of the High Court has expressed the view that where the driver of an unlicensed vehicle is an employee not responsible for the licensing of the vehicle, it is not the driver but the owner of the vehicle who should be prosecuted: *Carpenter v Campbell* [1953] 1 All ER 280. The Goods Vehicles (Licensing of Operators) Act 1995 s 58(2) was applied in *Interlink Express Parcels Ltd v Night Trunkers Ltd* [2001] EWCA Civ 360, [2001] RTR 338 (where under an agreement with the claimant the defendant supplied drivers to drive the claimant's vehicles but as the defendant allocated the drivers to particular routes and remained responsible for their wages, holiday entitlement and discipline, correctly applying the test of control to the facts of the case, the drivers were temporary deemed employees of the claimant, so that the defendant did not need to hold the relevant operator's licence). For the meanings of 'driver' and 'drive' see PARA 207 ante. For the meaning of 'motor vehicle' see PARA 210 ante.

3 'Goods vehicle' means a motor vehicle constructed or adapted for use for the carriage of goods, or a trailer so constructed or adapted, but does not include a tramcar or trolley vehicle within the meaning of the Road Traffic Act 1988 (see PARA 219 ante): Goods Vehicles (Licensing of Operators) Act 1995 s 58(1). For the meaning of 'trailer' see PARA 210 ante. As to the meaning of 'constructed or adapted' see PARA 1174 text and note 4 ante.

The question whether an adaptation of a vehicle has rendered it a goods vehicle is answered by assuming that the vehicle was originally constructed in the form to which it has been adapted, and then considering, objectively, if such vehicles are usually used to carry goods or passengers and goods: *Flower Freight v Hammond* [1963] 1 QB 275, [1962] 3 All ER 950, DC; *Vincent v Whitehead* [1966] 1 All ER 917, [1966] 1 WLR 975, DC. A goods vehicle may include a vehicle used to empty and clean septic tanks: *Sweetway Sanitary Cleaners Ltd v Bradley* [1962] 2 QB 108, [1961] 2 All ER 821, DC.

'Carriage of goods' includes haulage of goods: Goods Vehicles (Licensing of Operators) Act 1995 s 58(1). 'Goods' includes goods or burden of any description: s 58(1). 'Goods' have been held to include tools connected with trade, such as window cleaners ladders and buckets (*Clarke v Cherry* [1953] 1 All ER 267, [1953] 1 WLR 268, DC); effluent from septic tanks (*Sweetway Sanitary Cleaners Ltd v Bradley* supra); building site rubbish (*Spittle v Thames Grit and Aggregates Ltd* [1937] 4 All ER 101, 107 LJB 200, DC; *Hammond v Hall and Ham River Ltd* [1965] AC 1049, [1965] 2 All ER 811, HL); and telegraph poles (*North West Traffic Area Licensing Authority v Post Office* [1982] RTR 304, DC). In *Booth v DPP* [1993] RTR 379, DC, a trailer was held to be 'goods' because the defendant's business was that of repairing and testing trailers.

4 For the meaning of 'road' see PARA 206 ante.

5 A vehicle is being used for the carriage of goods for hire or reward where the carriage is for a consideration, whether direct or indirect, which benefits the owner or user of the vehicle: *Wurzel v Houghton Main Home Delivery Service Ltd* [1937] 1 KB 380, [1936] 3 All ER 311, DC; *Siddle C Cook Ltd v Service Engines (Newcastle) Ltd* (1962) 112 Ljo 306, Transport Tribunal; *Hammond v Hall and Ham River Ltd* [1965] AC 1049, [1965] 2 All ER 811, HL. In the context of passenger insurance under the Road Traffic Act 1960 s 203(4) (repealed), 'hire or reward' was held to be disjunctive: *Albert v Motor Insurers Bureau* [1972] AC 301 at 319, [1971] 2 All ER 1345 at 1254, HL, per Lord Donovan. As to the carriage of goods by mutual benefit societies for their members see *Wurzel v Houghton Main Home Delivery Service Ltd* supra. As to the carriage of effluent by a vehicle used to empty and clean septic tanks for a standard charge see *Sweetway Sanitary Cleaners Ltd v Bradley* [1962] 2 QB 108, [1961] 2 All ER 821, DC. Quaere whether a person can carry his own goods 'for hire or reward' within the meaning of this provision: see *Sweetway Sanitary Cleaners* supra. Regulations may prescribe the circumstances in which goods are to be treated for the purposes of the Goods Vehicles (Licensing of Operators) Act 1995 as carried for hire or reward (see s 57(2)(i); and PARA 1321 ante), but at the date at which this volume states the law no such regulations had been made.

6 A vehicle is being used for or in connection with the user's trade or business when it is carrying any goods, tools or equipment for that purpose: *Clarke v Cherry* [1953] 1 All ER 267, [1953] 1 WLR 268, DC; *Hammond v Hall and Ham River Ltd* [1965] AC 1049, [1965] 2 All ER 811, HL. As to the meaning of 'trade or business' see *Stirk v McKenna* [1984] RTR 330, DC. The words 'carry on business' denote something of a permanent character, not merely an isolated transaction and a business is carried on only where there is some degree of management or control: see *Brown v London and North-Western Rly Co* (1863) 32 LJB 318; *Graham v Lewis* (1888) 22 QBD 1, CA; *Cain v Butler* [1916] 1 KB 759 at 762, DC, per Lush J; but contrast *Cornelius v Phillips* [1918] AC 199, HL. See also *Kirkwood v Gadd* [1910] AC 422 at 423, HL, per Lord Loreburn LC; *Newman v Oughton* [1911] 1 KB 792; *Transport and General Credit Corp Ltd v Morgan* [1939] Ch 531, [1939] 2 All ER 17;

*Re Brauch (a debtor), ex p Britannic Securities and Investments Ltd* [1978] Ch 316, [1978] 1 All ER 1004, CA; *Re Sarflax Ltd* [1979] Ch 592, [1979] 1 All ER 529. Although there is some authority for saying that the expressions 'trade' and 'business' are synonymous (see, in particular, *Grainger & Son v Gough* [1896] AC 325 at 343, HL, per Lord Morris), the balance of authority is to the effect that 'business' is a wider term than 'trade' (see, in particular, *Re A Debtor (No 3 of 1926)* [1927] 1 Ch 97 at 103, CA, per Lord Hanworth MR; *Re A Debtor (No 490 of 1935)* [1936] Ch 237 at 239, CA, per Lord Wright MR). In fact it has been said that 'the word 'business' means almost anything which is an occupation, as distinguished from a pleasure - anything which is an occupation or duty which requires attention is a business' (*Rolls v Miller* (1884) 27 ChD 71 at 88, CA, per Lindley LJ) and it has also been said that neither the making of a profit nor any commercial activity is essential (*Rael-Brook Ltd v Minister of Housing and Local Government* [1967] 2 QB 65, [1967] 1 All ER 262, DC). Yet the term 'business' has perhaps to be confined to a regularly conducted commercial enterprise: see *IRC v Marine Steam Turbine Co Ltd* [1920] 1 KB 193 at 202-204; *Re A Debtor (No 3 of 1926)* supra at 106 and 341 per Scrutton LJ; *Lord Advocate v Glasgow Corp* 1958 SLT 2 at 8, 1958 SC 12; *Abernethie v AM & J Kleiman Ltd* [1970] 1 QB 10, [1969] 2 All ER 790, CA; *Customs and Excise Comrs v Royal Exchange Theatre Trust* [1979] 3 All ER 797; *Customs and Excise Comrs v Lord Fisher* [1981] 2 All ER 147, [1981] STC 238. On the other hand, the term 'business' is clearly wide enough to include a profession: see *Re Williams' Will Trusts*, *Chartered Bank of India, Australia and China v Williams* [1953] Ch 138, [1953] 1 All ER 536; *R v Breeze* [1973] 2 All ER 1141, [1973] 1 WLR 994, CA; but see *Stuchbery v General Accident, Fire and Life Assurance Corp Ltd* [1949] 2 KB 256, [1949] 1 All ER 1026, CA. For the purposes of the Goods Vehicles (Licensing of Operators) Act 1995, the performance by a local or public authority of its functions constitutes the carrying on of a business: see s 2(4). For the meaning of 'functions' see PARA 1326 note 3 ante.

7 Ibid s 2(1). As to the legality of a contract performed in contravention of this provision see *Archbalds (Freightage) Ltd v S Spanglett Ltd (Randall, third party)* [1961] 1 QB 374, [1961] 1 All ER 417, CA.

8 Goods Vehicles (Licensing of Operators) Act 1995 s 2(1).

9 Ie ibid s 2(1): see the text and notes 1-8 supra.

10 Ibid s 2(2)(a). For the purposes of s 2 a small goods vehicle is a goods vehicle within the meaning given in s 2, Sch 1: s 2(2)(a). For the purposes of s 2, a small goods vehicle is a goods vehicle falling within any of Sch 1 paras 2-4: Sch 1 para 1.

A goods vehicle falls within Sch 1 para 2 if it does not form part of a vehicle combination and: (1) it has a relevant plated weight not exceeding 3.5 tonnes (Sch 1 para 2(a)); or (2) if it does not have a relevant plated weight, it has an unladen weight not exceeding 1525 kg (Sch 1 para 2(b)). 'Vehicle combination' means a combination of goods vehicles made up of one or more motor vehicles and one or more trailers all of which are linked together when travelling: s 58(1). In any provision of Sch 1 paras 2-4, 'relevant plated weight' means a plated weight of the description specified in relation to that provision by regulations: Sch 1 para 5. 'Plated weight', in relation to a vehicle, means a weight required to be marked on it by means of a plate in pursuance of regulations made by virtue of the Road Traffic Act 1988 s 41 (as amended) (see PARA 260 ante) or required to be so marked by s 57 (as amended) (see PARA 705 ante) or s 58 (see PARA 706 ante): Goods Vehicles (Licensing of Operators) Act 1995 s 58(1). For the meaning of 'regulations' see PARA 1321 note 2 ante. As to the relevant plated weight specified in relation to Sch 1 by regulations see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995 2869, reg 33(2). As to regulations and orders see PARA 1321 ante.

A goods vehicle falls within the Goods Vehicles (Licensing of Operators) Act 1995 Sch 1 para 3 if it forms part of a vehicle combination, other than an articulated combination, and the combination is such that:

- 1293 (a) in a case where all the vehicles comprised in it, or all of those vehicles except any small trailer, have relevant plated weights, the aggregate of the relevant plated weights of those vehicles, exclusive of any such trailer, does not exceed 3.5 tonnes (Sch 1 para 3(1)(a)); or
- 1294 (b) in any other case, the aggregate of the unladen weights of the vehicles comprised in the combination, exclusive of any small trailer, does not exceed 1525 kg (Sch 1 para 3(1)(b)).

'Articulated combination' means a combination made up of a motor vehicle which is so constructed that a trailer may by partial superimposition be attached to the vehicle in such a manner as to cause a substantial part of the weight of the trailer to be borne by the vehicle, and a trailer attached to it as so described: s 58(1). In Sch 1 para 3, 'small trailer' means a trailer having an unladen weight not exceeding 1020 kg: Sch 1 para 3(2).

A goods vehicle falls within Sch 1 para 4 if it forms part of an articulated combination which is such that:

- 1295 (i) in a case where the trailer comprised in the combination has a relevant plated weight, the aggregate of the unladen weight of the motor vehicle comprised in the combination, and the relevant plated weight of that trailer, does not exceed 3.5 tonnes (Sch 1 para 4(a)); or
- 1296 (ii) in any other case, the aggregate of the unladen weights of the motor vehicle and the trailer comprised in the combination does not exceed 1525 kg (Sch 1 para 4(b)).



11 In *ibid* s 2(2)(b), (c), 'established', 'haulier' and 'international carriage' have the same meanings as in EEC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) concerning access to the market in the carriage of goods by road within the Community to or from the territory of a member state or passing across the territory of one or more member states: Goods Vehicles (Licensing of Operators) Act 1995 s 2(3). As to the meaning of 'member state' see PARA 1149 note 18 ante.

12 For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

13 Goods Vehicles (Licensing of Operators) Act 1995 s 2(2)(b).

14 *Ibid* s 2(2)(c).

15 *Ibid* s 2(2)(d). As to the classes of exempt goods vehicles see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 33(1), Sch 3 Pt I.

16 'Contravention', in relation to any condition or provision, includes a failure to comply with the condition or provision; and 'contravenes' is to be construed accordingly: Goods Vehicles (Licensing of Operators) Act 1995 s 58(1).

17 *Ie* *ibid* s 2 (as amended): see s 2(5).

18 *Ibid* s 2(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 2(5) (amended by the Transport Act 2000 s 261(1)). As to the standard scale see PARA 230 note 3 ante. It is an essential ingredient of an offence under this provision that the vehicle is carrying goods at the relevant time: *Robertson v Crew* [1977] RTR 141, DC (a case under similar legislation (now repealed)). The offence is regarded as one of absolute or strict liability, accordingly no *mens rea* is required to be proved and mistake is no defence: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 8, 15, 18.

Provision is made with respect to the detention, removal and disposal of goods vehicles in respect of which it appears that the Goods Vehicles (Licensing of Operators) Act 1995 s 2 (as amended) is contravened: see s 2A, Sch 1A (added by the Transport Act 2000 s 262, Sch 30); and the Goods Vehicles (Enforcement Powers) Regulations 2001, SI 2001/3981.

## UPDATE

### 1329 Obligation to hold operator's licence

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 11--Regulation 881/92 replaced with effect in part from 14 May 2010 and in part from 4 December 2011: see PARA 1657.

NOTE 15--As to the interpretation of the exemption in SI 1995/2869 reg 33(1), Sch 3 Pt I para 5 relating to a vehicle which is being used for funerals, see *Vehicle and Operator Services Agency v Clayton* [2010] All ER (D) 106 (Jan), DC.

NOTE 18--Goods Vehicles (Licensing of Operators) Act 1995 Sch 1A amended: SI 2009/1885; Local Transport Act 2008 s 126. SI 2001/3981 amended: SI 2008/2683, SI 2009/1885, SI 2009/1965.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/13. GOODS VEHICLES/(2) GOODS VEHICLE LICENSING/(i) Licensing of Operators/1330. 'Standard' and 'restricted' licences.

### 1330. 'Standard' and 'restricted' licences.

An operator's licence<sup>1</sup> may be either a standard licence<sup>2</sup> or a restricted licence<sup>3</sup>. A company may use a goods vehicle<sup>4</sup> on a road for the carriage of goods for hire or reward under a restricted licence instead of a standard licence if (but only if) the goods concerned are the property of a company which is a subsidiary<sup>5</sup> of the first company<sup>6</sup>, a holding company<sup>7</sup> for the first company<sup>8</sup>, or a subsidiary of a company which is a holding company both for that subsidiary and for the first company<sup>9</sup>. A standard licence may authorise a goods vehicle to be used for the carriage of goods<sup>10</sup> on both national and international transport operations<sup>11</sup>, or on national transport operations only<sup>12</sup>.

Subject to specified exceptions<sup>13</sup>, a person who uses a goods vehicle under a restricted licence for carrying goods for hire or reward is guilty of an offence<sup>14</sup>. A person who uses a goods vehicle for carrying goods for hire or reward on international transport operations under a standard licence which covers the carriage of goods on national transport operations only is guilty of an offence<sup>15</sup>.

1 For the meaning of 'operator's licence' see PARA 1329 ante.

2 A 'standard licence' is an operator's licence under which a goods vehicle may be used on a road for the carriage of goods for hire or reward (Goods Vehicles (Licensing of Operators) Act 1995 s 3(2)(a)), or for or in connection with any trade or business carried on by the holder of the licence (s 3(2)(b)). For the meaning of 'goods vehicle' see PARA 1329 note 3 ante. As to the meaning of 'using a vehicle' see PARA 1329 note 2 ante. For the meaning of 'road' see PARA 206 ante. For the meaning of 'carriage of goods' see PARA 1329 note 3 ante. For the meaning of 'goods' see PARA 1329 note 3 ante. As to the meaning of 'hire or reward' see PARA 1329 note 5 ante. As to the meaning of 'trade or business' see PARA 1329 note 6 ante.

3 Ibid s 3(1). A 'restricted licence' is an operator's licence under which a goods vehicle may be used on a road for the carriage of goods for or in connection with any trade or business carried on by the holder of the licence, other than that of carrying goods for hire or reward: s 3(3).

4 Ie notwithstanding ibid s 3(2), (3): see s 3(4).

5 For the meaning of 'subsidiary' see the Companies Act 1985 s 736 (as substituted); and COMPANIES vol 14 (2009) PARA 25 (definition applied by the Goods Vehicles (Licensing of Operators) Act 1995 s 58(1)). For the purposes of the Goods Vehicles (Licensing of Operators) Act 1995 as it applies in relation to licences granted before 11 November 1990 (ie the date on which the Companies 1989 s 144(1) came into force), the expressions 'holding company' and 'subsidiary' have the meanings given by the Companies Act 1985 s 736 (as originally enacted): Goods Vehicles (Licensing of Operators) Act 1995 s 59, Sch 6 para 7.

6 Ibid s 3(4)(a).

7 For the meaning of 'holding company' see the Companies Act 1985 s 736 (as substituted); and COMPANIES vol 14 (2009) PARA 25 (definition applied by the Goods Vehicles (Licensing of Operators) Act 1995 s 58(1)). See also note 5 supra.

8 Ibid s 3(4)(b).

9 Ibid s 3(4)(c).

10 In the Goods Vehicles (Licensing of Operators) Act 1995 references to vehicles being authorised to be used under an operator's licence are to be read in accordance with s 5 (see PARA 1332 post): s 58(3).

11 Ibid s 3(5)(a). The Goods Vehicles (Licensing of Operators) Act 1995 s 58(1) provides that 'international transport operations' and 'national transport operations' have the same meanings as in EEC Council Directive 74/561 (OJ L308, 19.11.74, p 18), but this Directive has been repealed: see now EC Council Directive 96/26 (OJ L124, 23.05.96, p 1) (as amended).

12 Goods Vehicles (Licensing of Operators) Act 1995 s 3(5)(b).

13 Ie except as provided in ibid s 3(4) (see the text and notes 4-9 supra) and subject to s 4 (see PARA 1331 post).

14 Ibid s 3(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding £500: s 3(6).

15 Ibid s 3(7). A person guilty of such an offence is liable on summary conviction to a fine not exceeding £500: s 3(7).

## UPDATE

### 1330 'Standard' and 'restricted' licences

NOTE 5--In definition of 'subsidiary' reference to Companies Act 1985 s 736 now to Companies Act 2006 s 1159 (see COMPANIES vol 14 (2009) PARA 25): Goods Vehicles (Licensing of Operators) Act 1995 s 58(1) (definition amended by SI 2009/1941).

NOTE 7--In definition of 'holding company' reference to Companies Act 1985 s 736 now to Companies Act 2006 s 1159 (see COMPANIES vol 14 (2009) PARA 25): Goods Vehicles (Licensing of Operators) Act 1995 s 58(1) (definition amended by SI 2009/1941).

NOTE 11--Directive 96/26 replaced with effect from 4 December 2011: European Parliament and EC Council Regulation 1071/2009 (OJ L300, 14.11.2009, p 51).

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### 1331. Temporary exemptions from requirements to hold a licence.

A traffic commissioner<sup>1</sup> may, for the purpose of enabling an emergency to be dealt with, or enabling some other special need to be met, by notice in writing<sup>2</sup> grant to a person<sup>3</sup> a temporary exemption from any requirement to hold a standard licence<sup>4</sup> which would otherwise be imposed on him<sup>5</sup> in respect of any vehicle specified in the notice or any vehicle of a class so specified<sup>6</sup> if that person is engaged exclusively in national transport operations<sup>7</sup> which have only a minor impact on the transport market because of the nature of the goods<sup>8</sup> carried or the short distances over which goods are carried<sup>9</sup>. A temporary exemption granted<sup>10</sup> permits the person to whom it is granted to use the specified vehicle or (as the case may be) any vehicle of the specified class for the carriage of goods<sup>11</sup> for hire or reward for the purposes of certain transport operations<sup>12</sup>.

1 As to the functions of traffic commissioners see PARA 1326 ante.

2 For the meaning of 'writing' see PARA 1139 note 11 ante.

3 Ie any person falling within the Goods Vehicles (Licensing of Operators) Act 1995 s 4(2): see the text and notes 7-9 infra.

4 For the meaning of 'standard licence' see PARA 1330 note 2 ante.

5 Ie by the Goods Vehicles (Licensing of Operators) Act 1995 s 2 (as amended) (see PARA 1329 ante) and s 3 (see PARA 1330 ante).

6 Ibid s 4(1). Section 4(4) provides that a temporary exemption has effect until consultations with the European Commission for the purposes of EEC Council Directive 74/561 (OJ L308, 19.11.74, p 18) art 2(2) are completed, but this Directive has been repealed: see now EC Council Directive 96/26 (OJ L124, 23.05.96, p 1) (as amended).

7 As to the meaning of 'national transport operations' see PARA 1330 note 11 ante.

8 For the meaning of 'goods' see PARA 1329 note 3 ante.

9 Goods Vehicles (Licensing of Operators) Act 1995 s 4(2).

10 *le* under *ibid* s 4(1): see the text and notes 1-6 *supra*.

11 For the meaning of 'carriage of goods' see PARA 1329 note 3 *ante*.

12 Goods Vehicles (Licensing of Operators) Act 1995 s 4(3). The reference in the text to certain transport operations is to such of those as are referred to in s 4(2) (see the text and note 9 *supra*). Accordingly, s 2(1) (see PARA 1329 *ante*) and s 3(6) (see PARA 1330 *ante*) do not to that extent apply to that person's use of goods vehicles: s 4(3). For the meaning of 'goods vehicle' see PARA 1329 note 3 *ante*.

## UPDATE

### 1331 Temporary exemptions from requirements to hold a licence

NOTE 6--Directive 96/26 replaced with effect from 4 December 2011: European Parliament and EC Council Regulation 1071/2009 (OJ L300, 14.11.2009, p 51).

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## (ii) Vehicles Authorised to be used under a Licence

### 1332. Vehicles authorised to be used under operator's licence.

Subject to certain provisions<sup>1</sup>, the vehicles authorised to be used<sup>2</sup> under an operator's licence<sup>3</sup> are any motor vehicle<sup>4</sup> in the lawful possession of the licence holder (whether that motor vehicle is specified in the licence or not)<sup>5</sup> and any trailer<sup>6</sup> in the lawful possession of the licence holder<sup>7</sup>.

An operator's licence may provide:

2008 (1) that no motor vehicle, or no trailer, whose relevant weight<sup>8</sup> exceeds a weight specified in the licence is authorised to be used under it<sup>9</sup>;

2009 (2) that no trailers are authorised to be used under the licence<sup>10</sup>; or

2010 (3) that no motor vehicle that is not specified in the licence is authorised to be used under it<sup>11</sup>.

An operator's licence must not authorise the use of any vehicle unless the place which is for the time being its operating centre<sup>12</sup> is in the area<sup>13</sup> of the traffic commissioner by whom the licence was issued<sup>14</sup>, or is outside that area but has not been the operating centre of that vehicle for a period of more than three months<sup>15</sup>. A motor vehicle specified in an operator's licence cannot, while it remains so specified, be capable of being effectively specified in any other operator's licence<sup>16</sup>. Where it comes to the knowledge of the traffic commissioner by whom an operator's licence ('the first licence') was issued that a vehicle specified in that licence has ceased to be used under the licence (otherwise than because of a fluctuation in business or because it is undergoing repair or maintenance)<sup>17</sup>, or is specified in another operator's licence<sup>18</sup>, he may vary the first licence by directing that the vehicle be removed from it<sup>19</sup>.

1 *le* subject to the provisions of the Goods Vehicles (Licensing of Operators) Act 1995.

2 As to the meaning of 'using a vehicle' see PARA 1329 note 2 ante.

3 For the meaning of 'operator's licence' see PARA 1329 ante.

4 For the meaning of 'motor vehicle' see PARA 210 ante.

5 Goods Vehicles (Licensing of Operators) Act 1995 s 5(1)(a). See note 7 infra.

6 For the meaning of 'trailer' see PARA 210 ante.

7 Goods Vehicles (Licensing of Operators) Act 1995 s 5(1)(b).

A motor vehicle which is not specified in an operator's licence is not authorised to be used under that licence by virtue of s 5(1) after the period of one month beginning with: (1) the day on which the vehicle was first in the lawful possession of the licence holder (s 5(6)(a)); or (2) if later, the day on which the licence came into force (s 5(6)(b)), unless, during that period, the licence holder has given to the traffic commissioner by whom the licence was issued a notice in such form and containing such information about the vehicle as the commissioner may require, and has paid to him a prescribed fee (s 5(6)). 'Prescribed' means prescribed by regulations: s 58(1). At the date at which this volume states the law no regulations had been made for the purposes of s 5(6). Where notice of a vehicle has been duly given and the prescribed fee has been duly paid under s 5(6), the traffic commissioner must vary the licence by directing that the vehicle be specified in it: s 5(7). As to the functions of traffic commissioners see PARA 1326 ante.

As from a day to be appointed, a motor vehicle which is not specified in an operator's licence is not authorised to be used under that licence by virtue of s 5(1) unless the licence holder: (a) has given to the traffic commissioner by whom the licence was issued a notice in such form and containing such information about the vehicle as the commissioner may require; and (b) has paid to him a prescribed fee: s 5(6) (substituted by the Transport Act 2000 s 263). At the date at which this volume states the law no such day had been appointed.

8 'Relevant weight', in relation to a motor vehicle or trailer of any prescribed class, means a weight of the description specified in relation to motor vehicles or trailers of that class by regulations: see the Goods Vehicles (Licensing of Operators) Act 1995 s 5(3); and the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 36.

9 Goods Vehicles (Licensing of Operators) Act 1995 s 5(2)(a).

10 Ibid s 5(2)(b).

11 Ibid s 5(2)(c).

12 Ibid s 5(4). 'Operating centre', in relation to any vehicle, means the base or centre at which the vehicle is normally kept; and references to an operating centre of the holder of an operator's licence are references to any place which is an operating centre for vehicles used under that licence: s 7(3).

13 For the meaning of 'area' see PARA 1326 note 1 ante.

14 Goods Vehicles (Licensing of Operators) Act 1995 s 5(4)(a).

15 Ibid s 5(4)(b). For the purposes of s 5(4)(b), two or more successive periods which are not separated from each other by an interval of at least three months are to be treated as a single period having a duration equal to the total duration of those periods: s 5(5).

16 Ibid s 5(8).

17 Ibid s 5(9)(a).

18 Ibid s 5(9)(b).

19 Ibid s 5(9).

## UPDATE

### 1332 Vehicles authorised to be used under operator's licence

NOTE 7--Goods Vehicles (Licensing of Operators) Act 1995 s 5(6), (7) amended: Local Transport Act 2008 s 125(1). Transport Act 2000 s 263 amended: Local Transport Act 2008 s 125(3).

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### **1333. Maximum numbers of vehicles.**

An operator's licence<sup>1</sup>: (1) must specify a maximum number for motor vehicles<sup>2</sup>; and (2) may specify a maximum number for motor vehicles whose relevant weight<sup>3</sup> exceeds a weight specified in the licence<sup>4</sup>. Certain operators' licences<sup>5</sup>: (a) must specify a maximum number for trailers<sup>6</sup>; and (b) may specify a maximum number for trailers whose relevant weight exceeds a weight specified in the licence<sup>7</sup>.

The number of motor vehicles which at any one time are being used under an operator's licence while not specified in that licence may not exceed the maximum number specified in the licence under head (1) above less however many motor vehicles are specified in the licence<sup>8</sup>.

Where, under head (2) above, an operator's licence specifies a maximum number for motor vehicles whose relevant weight exceeds a specified weight<sup>9</sup>:

- 2011 (i) the number of such motor vehicles which at any one time are being used under the licence while not specified in it may not exceed that maximum number less however many motor vehicles whose relevant weight exceeds the specified weight are specified in the licence<sup>10</sup>; and
- 2012 (ii) the number of such motor vehicles that are specified in the licence and are being used under it at any one time may not exceed that maximum number<sup>11</sup>.

The number of trailers being used under an operator's licence at any one time may not exceed the maximum number specified in the licence under head (a) above<sup>12</sup>. Where, under head (b) above, an operator's licence specifies a maximum number for trailers whose relevant weight exceeds a specified weight, the number of such trailers being used under the licence at any one time may not exceed that maximum number<sup>13</sup>.

If any of the above provisions<sup>14</sup> are contravened<sup>15</sup>, the licence holder is guilty of an offence<sup>16</sup>.

1 For the meaning of 'operator's licence' see PARA 1329 ante.

2 Goods Vehicles (Licensing of Operators) Act 1995 s 6(1)(a). For the meaning of 'motor vehicle' see PARA 210 ante.

3 For the meaning of 'relevant weight' see PARA 1332 note 8 ante; definition applied by ibid s 6(7).

4 Ibid s 6(1)(b).

5 ie those that do not contain a provision such as is mentioned in ibid s 5(2)(b): see PARA 1332 head (2) ante.

6 Ibid s 6(2)(a). For the meaning of 'trailer' see PARA 210 ante.

7 Ibid s 6(2)(b).

8 Ibid s 6(3).

9 Ibid s 6(4).

10 Ibid s 6(4)(a).

11 Ibid s 6(4)(b).

12 Ibid s 6(5).

13 Ibid s 6(6).

14 Ie ibid s 6(3) (see the text and note 8 supra), s 6(4)(a) (see the text and note 10 supra), s 6(4)(b) (see the text and note 11 supra), s 6(5) (see the text and note 12 supra) or s 6(6) (see the text and note 13 supra).

15 For the meaning of 'contravened' see PARA 1329 note 16 ante.

16 Goods Vehicles (Licensing of Operators) Act 1995 s 6(8). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 6(8). As to the standard scale see PARA 230 note 3 ante.

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### **(iii) Applications for Operators' Licences**

#### **1334. Applications for operators' licences.**

An application for an operator's licence<sup>1</sup> must be made to the traffic commissioner<sup>2</sup> for each area<sup>3</sup> in which, if the licence is issued, the applicant will have an operating centre<sup>4</sup> or operating centres<sup>5</sup>. Accordingly, a person may hold separate operators' licences in respect of different areas, but he must not at any time hold more than one such licence in respect of the same area<sup>6</sup>. A person applying for an operator's licence must give to the traffic commissioner a statement<sup>7</sup>:

2013 (1) containing such particulars as the commissioner may require of the motor vehicles<sup>8</sup> proposed to be used<sup>9</sup> under the licence and stating the number and type of any trailers<sup>10</sup> proposed to be used under the licence<sup>11</sup>; and

2014 (2) containing such particulars as the commissioner may require of each place in the area of the commissioner which will be an operating centre of the applicant if the licence is issued<sup>12</sup>.

A person applying for an operator's licence must also give to the traffic commissioner any further information which the commissioner may reasonably require for the discharge of his duties in relation to the application, and in particular must, if required by the commissioner to do so, give to him any of the following information<sup>13</sup>:

2015 (a) such particulars as the traffic commissioner may require with respect to the purposes for which the vehicles referred to in the statement<sup>14</sup> are proposed to be used<sup>15</sup>;

2016 (b) particulars of the arrangements for securing that Part VI of the Transport Act 1968<sup>16</sup> (drivers' hours) and the applicable Community rules, within the meaning of that Part, will be complied with in the case of those vehicles<sup>17</sup>;

- 2017 (c) particulars of the arrangements for securing that those vehicles will not be overloaded<sup>18</sup>;
- 2018 (d) particulars of the facilities and arrangements for securing that those vehicles will be maintained in a fit and serviceable condition<sup>19</sup>;
- 2019 (e) particulars of any relevant activities<sup>20</sup> carried on, at any time before the making of the application, by any relevant person<sup>21</sup>;
- 2020 (f) particulars of any notifiable convictions<sup>22</sup> which have occurred during the five years preceding the making of the application<sup>23</sup>;
- 2021 (g) particulars of the financial resources which are or are likely to be available to the applicant<sup>24</sup>;
- 2022 (h) where the applicant is a company, the names of the directors and officers of the company<sup>25</sup>, and any company of which that company is a subsidiary<sup>26</sup>;
- 2023 (i) where the vehicles referred to in the statement<sup>27</sup> are proposed to be operated by the applicant in partnership with other persons, the names of those other persons<sup>28</sup>.

A person applying for an operator's licence must also<sup>29</sup>, if required by the traffic commissioner to do so, give to him such particulars as he may require with respect to the use which the applicant proposes to make, for vehicles used under the licence, of any place referred to in the statement under head (2) above<sup>30</sup>. Any statement, information or particulars to be given to a traffic commissioner<sup>31</sup> must be given in such form as the commissioner may require<sup>32</sup>.

1 For the meaning of 'operator's licence' see PARA 1329 ante.

2 As to the functions of traffic commissioners see PARA 1326 ante.

3 For the meaning of 'area' see PARA 1326 note 1 ante.

4 For the meaning of 'operating centre' see PARA 1332 note 12 ante.

5 Goods Vehicles (Licensing of Operators) Act 1995 s 8(1). As to applications for licences see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, regs 4-9.

6 Goods Vehicles (Licensing of Operators) Act 1995 s 8(2).

7 Ibid s 8(3).

8 For the meaning of 'motor vehicle' see PARA 210 ante.

9 As to the meaning of 'using a vehicle' see PARA 1329 note 2 ante. See also *Great Western Rly Co v West Midlands Traffic Area Licensing Authority* [1936] AC 128, HL; *Munson v British Railways Board* [1966] 1 QB 813, [1965] 3 All ER 441, CA (cases under similar legislation (now repealed)).

10 For the meaning of 'trailer' para 210 ante.

11 Goods Vehicles (Licensing of Operators) Act 1995 s 8(3)(a).

12 Ibid s 8(3)(b).

13 Ibid s 8(4).

14 Ie under ibid s 8(3): see the text and notes 7-12 supra.

15 Ibid Sch 2 para 1(a). See *Great Western Rly Co v West Midlands Traffic Area Licensing Authority* [1936] AC 128, HL; *Munson v British Railways Board* [1966] 1 QB 813, [1965] 3 All ER 441, CA (cases under similar legislation (now repealed)).

16 Ie the Transport Act 1968 Pt VI (ss 95-103) (as amended): see PARA 1380 et seq post.

17 Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 1(b). For the meaning of 'the applicable Community rules' see the Transport Act 1968 s 103(1) (as substituted); and PARA 1380 note 1 post.



- 18 Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 1(c).
- 19 Ibid Sch 2 para 1(d).
- 20 'Relevant activities' means any of the following:
- 1297 (1) activities in carrying on any trade or business in the course of which vehicles of any description are operated (ibid Sch 2 para 3(a));
  - 1298 (2) activities as a person employed for the purposes of any such trade or business (Sch 2 para 3(b)); or
  - 1299 (3) activities as a director of a company carrying on any such trade or business (Sch 2 para 3(c)).
- 21 Ibid Sch 2 para 1(e). 'Relevant person' means any of the following persons, namely:
- 1300 (1) the applicant (Sch 2 para 2(a));
  - 1301 (2) any company of which the applicant is or has been a director (Sch 2 para 2(b));
  - 1302 (3) where the applicant is a company, any person who is a director of the company (Sch 2 para 2(c));
  - 1303 (4) where the applicant proposes to operate the vehicles referred to in the statement under s 8(3) (see the text and notes 7-12 supra) in partnership with other persons, any of those other persons (Sch 2 para 2(d));
  - 1304 (5) any company of which any such person as is mentioned in head (3) or head (4) supra is or has been a director (Sch 2 para 2(e)); or
  - 1305 (6) where the applicant is a company, any company of which the applicant is a subsidiary (Sch 2 para 2(f)).

For the meaning of 'subsidiary' see PARA 1330 note 5 ante.

22 The following are 'notifiable convictions': (1) any conviction of a relevant person of an offence such as is mentioned in heads (a)-(j) infra (Sch 2 para 4(a)); and (2) any conviction of a servant or agent of a relevant person of an offence such as is mentioned in head (a), (b), (d), (f), (g), (i) or (j) infra (Sch 2 para 4(b)). The offences are:

- 1306 (a) an offence under the Road Traffic Act 1988 s 53 (prospectively amended) (see PARA 676 ante) (plating certificates and goods vehicle test certificates) (Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 5(a));
- 1307 (b) an offence committed in relation to a goods vehicle consisting in the contravention of any provision (however expressed) contained in or having effect under any enactment (including any enactment passed after the Goods Vehicles (Licensing of Operators) Act 1995) (Sch 2 para 5(b)) relating to:
  - 24. (i) the maintenance of vehicles in a fit and serviceable condition (Sch 2 para 5(b)(i));
  - 25. (ii) limits of speed and weight laden and unladen, and the loading of goods vehicles (Sch 2 para 5(b)(ii)); or
  - 26. (iii) the licensing of drivers (Sch 2 para 5(b)(iii));
  - 1308 (c) an offence under:
    - 27. (i) the Goods Vehicles (Licensing of Operators) Act 1995 (Sch 2 para 5(c)(i));
    - 28. (ii) the Transport Act 1968 Pt V (ss 59-94) (repealed) or the Road Traffic Act 1960 s 233 (repealed) or s 235 (repealed) so far as applicable (by virtue of the Transport Act 1968 s 94, Sch 10 (repealed)) to licences or means of identification under Pt V (repealed) (Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 5(c)(ii));

28

29. (iii) the Goods Vehicles (Operators' Licences, Qualifications and Fees) Regulations 1984, SI 1984/176, reg 33(2) or (3) (revoked) (Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 5(c)(iii)); or  
29
30. (iv) any regulation made under the Goods Vehicles (Licensing of Operators) Act 1995 or the Transport Act 1968 (see PARA 1380 et seq post) which is prescribed for the purposes of the Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 5 (Sch 2 para 5(c)(iv));  
30
- 1309 (d) an offence under, or of conspiracy to contravene, the Transport Act 1968 Pt VI (as amended) (see PARA 1380 et seq post) (drivers' hours) committed in relation to a goods vehicle (Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 5(d));
- 1310 (e) an offence under, or of conspiracy to contravene, the Hydrocarbon Oil Duties Act 1979 s 13 (as amended) (see CUSTOMS AND EXCISE vol 12(2) (2007 Reissue) PARA 537) (unlawful use of rebated fuel oil) committed in relation to a goods vehicle (Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 5(e));
- 1311 (f) an offence under the Road Traffic Act 1988 s 173 (as amended) (see PARA 1012 ante) or s 174 (as amended) (see PARA 1013 ante) (forgery, false statements and withholding of information) committed in relation to an international road haulage permit within the meaning of that Act (see PARA 1012 note 27 ante) (Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 5(f));
- 1312 (g) an offence under the International Road Haulage Permits Act 1975 s 2 (as amended) (removing, or causing or permitting the removal of, a goods vehicle or trailer from the United Kingdom in contravention of a prohibition imposed under s 2 (as amended)) (Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 5(g));
- 1313 (h) an offence under the Road Traffic Act 1988 s 74 (as amended) (see PARA 693 ante) (operator's duty to inspect, and keep records of inspection of, goods vehicles) (Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 5(h));
- 1314 (i) an offence under:
31. (i) the Control of Pollution Act 1974 s 3 (repealed) (Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 5(i)(i));  
31
32. (ii) the Refuse Disposal (Amenity) Act 1978 s 2 (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 742) (Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 5(i)(ii));  
32
33. (iii) the Control of Pollution (Amendment) Act 1989 s 1 (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 709) (Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 5(i)(iii)); or  
33
34. (iv) the Environmental Protection Act 1990 s 33 (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 655) (Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 5(i)(iv));  
34
- 1315 (j) an offence committed in relation to a goods vehicle consisting in the contravention of:
35. (i) any provision (however expressed) prohibiting or restricting the waiting of vehicles which is contained in an order made under the Road Traffic Regulation Act 1984 s 1 (as amended) (see PARA 742 ante), s 6 (as amended) (see PARA 748 ante), s 9 (as amended) (see PARA 751 ante) or s 12 (repealed), including any such order made by virtue of s 124, Sch 9 para 3 (as amended) (see PARA 736 ante) (local authority powers to be exercisable also by Secretary of State) (Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 5(j)(i)); or  
35
36. (ii) any provision which is contained in a traffic regulation order, within the meaning of the Road Traffic Regulation Act 1984 s 1 (as amended) (see PARA 742 ante), by virtue of s 2(4) (as amended) (see PARA 743 ante) (lorry routes) (Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 5(j)(ii)).  
36

In Sch 2 para 5 any reference to an offence under a provision of the Road Traffic Act 1988 (see PARA 963 et seq ante) includes a reference to an offence under any corresponding provision of the Road Traffic Act 1972 (repealed): Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 6(1). In Sch 2 para 5(j) (see head (j) supra):

1316 (A) the reference to a provision contained in an order made under the Road Traffic Regulation Act 1984 s 1, s 2, s 6, s 9 (all as amended) or s 12 (repealed) includes a reference to a provision contained in an order made under any enactment repealed by that Act and re-enacted by any of those provisions, including any such order made by virtue of the Road Traffic Regulation Act 1967 s 84A(2) (repealed) (Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 6(2)(a)); and

1317 (B) the reference to a provision contained in a traffic regulation order by virtue of the Road Traffic Regulation Act 1984 s 2(4) includes a reference to a provision included in such an order by virtue of the Road Traffic Regulation Act 1967 s 1(3AA) (repealed) (Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 6(2)(b)).

For the meaning of 'goods vehicle' see PARA 1329 note 3 ante. For the meaning of 'contravention' see PARA 1329 note 16 ante. For the meaning of 'driver' see PARA 207 ante. For the meaning of 'carrying on any trade or business' see PARA 1329 note 6 ante. As to the servant (or employee) of another see EMPLOYMENT vol 39 (2009) PARAS 2-4; and as to an agent who has authority to act for another see AGENCY. For the meaning of 'prescribed' see PARA 1332 note 7 ante.

23 Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 1(f). As from a day to be appointed, there is also a requirement to give particulars of any notifiable fixed penalty notices which have been issued during those five years: Sch 2 para 1(fa) (added by the Road Safety Act 2006 s 6(1), (6)). 'Notifiable fixed penalty notice' means any fixed penalty notice or conditional offer under the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended) (see PARA 1093 et seq ante): (1) issued to a relevant person in respect of an offence such as is mentioned in the Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 5 (see note 22 supra); or (2) issued to a servant or agent of a relevant person in respect of an offence within Sch 2 para 4(b) (see note 22 head (2) supra): Sch 2 para 7 (added by the Road Safety Act 2006 s 6(7)). At the date at which this volume states the law no such day had been appointed.

24 Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 1(g).

25 As to companies generally see COMPANIES.

26 Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 1(h). As to the meaning of 'subsidiary' see PARA 1330 note 5 ante.

27 Ie under ibid s 8(3): see the text and notes 7-12 supra.

28 Ibid Sch 2 para 1(i).

29 Ie without prejudice to ibid s 8(4): see the text and note 13 supra.

30 Ibid s 8(5).

31 Ie under ibid s 8: see s 8(6).

32 Ibid s 8(6).

## UPDATE

### 1334 Applications for operators' licences

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 22--Good Vehicles (Licensing of Operators) Act 1995 Sch 2 para 5(ia) added: SI 2007/3538.

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### **1335. Convictions subsequent to the making of an application.**

A person who has made an application for an operator's licence<sup>1</sup> must forthwith<sup>2</sup> notify the traffic commissioner<sup>3</sup> to whom it was made if, in the interval between the making of the application and the date on which it is disposed of<sup>4</sup>, there occurs a notifiable conviction<sup>5</sup>. A person who has made an application for a standard licence<sup>6</sup>, and has included in that application particulars of a transport manager<sup>7</sup>, must forthwith notify the traffic commissioner to whom the application was made if, in the interval between the making of the application and the date on which it is disposed of, there occurs any event affecting any information about the transport manager given to the commissioner<sup>8</sup>.

1 For the meaning of 'operator's licence' see PARA 1329 ante.

2 As to the meaning of 'forthwith' see TIME vol 97 (2010) PARA 352.

3 As to the functions of traffic commissioners see PARA 1326 ante.

4 For the purposes of the Goods Vehicles (Licensing of Operators) Act 1995 s 9, an application is to be taken to be disposed of:

1318 (1) in a case where the traffic commissioner is required, by virtue of regulations under s 57(2) (a) (see PARA 1321 ante), to cause a statement containing his decision on the application to be issued, on the date on which that statement is issued (s 9(4)(a)); and

1319 (2) in any other case, on the date on which the applicant receives notice from the traffic commissioner of his decision on the application (s 9(4)(b)).

As to regulations and orders see PARA 1321 ante.

5 Ibid s 9(1). The text refers to a notifiable conviction within the meaning given in s 8, Sch 2 para 4: see PARA 1334 note 22 ante.

As from a day to be appointed, there is also a requirement to notify the traffic commissioner if there is issued a notifiable fixed penalty notice: s 9(1) (amended by the Road Safety Act 2006 s 6(1), (2)). For the meaning of 'notifiable fixed penalty notice' see PARA 1334 note 23 ante. At the date at which this volume states the law no such day had been appointed.

A person is guilty of an offence if he knowingly fails to comply with the Goods Vehicles (Licensing of Operators) Act 1995 s 9(1): s 9(3)(a). A person who is guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 9(3). As to the standard scale see PARA 230 note 3 ante. Knowledge is an essential ingredient of the offence and must generally be proved by the prosecution: see, in particular, *Gaumont British Distributors Ltd v Henry* [1939] 2 KB 711, [1939] 2 All ER 808. As to when the court may infer that the defendant had the requisite knowledge, however, see *Westminster City Council v Croyalgrange Ltd* [1986] 2 All ER 353 at 359, [1986] 1 WLR 674 at 684, HL, per Lord Brightman. As to the meaning of 'knowledge' see PARA 1161 note 20 ante. As to when the knowledge of an employee or agent may be imputed to his employer or principal see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 59-64. 'Transport manager', in relation to a business, means an individual who is in, or who is engaged to enter into, the employment of the holder of a standard licence and who, either alone or jointly with one or more other persons, has continuous and effective responsibility for the management of the transport operations of the business in so far as they relate to the carriage of goods: Goods Vehicles (Licensing of Operators) Act 1995 s 58(1). For the meaning of 'carriage of goods' see PARA 1329 note 3 ante.

The Road Traffic Offenders Act 1988 s 6 (see PARA 1031 ante) (time for bringing summary proceedings for certain offences) applies to an offence under the Goods Vehicles (Licensing of Operators) Act 1995 s 9(3)(a) or (b): s 51.

6 Ibid s 9(2)(a). For the meaning of 'standard licence' see PARA 1330 note 2 ante.

7 Ibid s 9(2)(b).

8 Ibid s 9(2). The text refers to the giving of information about the transport manager to the commissioner under s 8 (see PARA 1334 ante): see s 9(2). A person is guilty of an offence if he knowingly fails to comply with s 9(2) in a case where the event which occurs as mentioned in s 9(2) is the conviction of the transport manager of an offence such as is mentioned in s 8, Sch 2 para 5 (see PARA 1334 note 22 ante): s 9(3)(b). A person who is guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 9(3). See also note 5 supra.

As from a day to be appointed, knowingly failing to comply with s 9(2) in a case where the event which occurs is the issue to the transport manager of a fixed penalty notice or conditional offer under the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended) (see PARA 1093 et seq ante) in respect of such an offence is also an offence: Goods Vehicles (Licensing of Operators) Act 1995 s 9(3)(b) (amended by the Road Safety Act 2006 s 6(3)). At the date at which this volume states the law no such day had been appointed.

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### **1336. Publication by traffic commissioner of notice of application for licence.**

A traffic commissioner<sup>1</sup> must publish in the prescribed<sup>2</sup> manner notice of any application for an operator's licence<sup>3</sup> made to him<sup>4</sup>. The notice must state the time within which<sup>5</sup>, and the manner in which<sup>6</sup>, any objection to, or representations against, the grant of the application is or are to be made<sup>7</sup>.

1 As to the functions of traffic commissioners see PARA 1326 ante.

2 For the meaning of 'prescribed' see PARA 1332 note 7 ante. As to the prescribed manner of publication see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, regs 7(1), 21.

3 For the meaning of 'operator's licence' see PARA 1329 ante.

4 Goods Vehicles (Licensing of Operators) Act 1995 s 10(1).

5 Ibid s 10(2)(a).

6 Ibid s 10(2)(b).

7 Ibid s 10(2). The reference in the text to the time within which and the manner in which any objection to, or representations against, the grant of the application is or are to be made is to the time and manner prescribed under s 12(6) (see PARA 1338 post) or, as the case may be, s 12(7) (see PARA 1338 post): see s 10(2).

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### **1337. Publication in locality affected of notice of application for licence.**

Subject to certain exceptions<sup>1</sup>, the traffic commissioner<sup>2</sup> to whom an application for an operator's licence<sup>3</sup> is made must refuse the application without considering the merits unless he is satisfied in respect of each locality affected by the application<sup>4</sup> that within the period beginning 21 days<sup>5</sup> before the date on which the application is made and ending 21 days after

that date, notice of the application in such form and containing such information as may be prescribed<sup>6</sup> has been published in one or more local newspapers circulating in the locality<sup>7</sup>. However, the traffic commissioner is not required<sup>8</sup> to refuse an application if:

2024 (1) he is satisfied as mentioned above<sup>9</sup>, save only that the form or contents of the notice of application as published in any newspaper did not comply with the prescribed requirements<sup>10</sup>; and

2025 (2) he is satisfied that no person's interests are likely to have been prejudiced by the failure to comply with those requirements<sup>11</sup>.

1 The subject to the Goods Vehicles (Licensing of Operators) Act 1995 s 11(3): see the text and notes 8-11 *infra*.

2 As to the functions of traffic commissioners see PARA 1326 *ante*.

3 For the meaning of 'operator's licence' see PARA 1329 *ante*.

4 Goods Vehicles (Licensing of Operators) Act 1995 s 11(1). For the purposes of s 11, a locality is affected by an application for an operator's licence if it contains any place in the area of the traffic commissioner that will be an operating centre of the licence holder if the application is granted: s 11(4). For the meaning of 'area' see PARA 1326 note 1 *ante*. For the meaning of 'operating centre' see PARA 1332 note 12 *ante*. As to the meaning of 'operating centre of the holder of an operator's licence' see PARA 1332 note 12 *ante*.

5 As to the period within which an act must be done see TIME vol 97 (2010) PARAS 336-341; and as to the calculation of a prescribed period of time see TIME vol 97 (2010) PARA 329 *et seq*.

6 For the meaning of 'prescribed' see PARA 1332 note 7 *ante*.

7 See the Goods Vehicles (Licensing of Operators) Act 1995 s 11(1), (2). As to the prescribed information to be given in the notice of application see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 7(2), Sch 1.

8 The Goods Vehicles (Licensing of Operators) Act 1995 s 11.

9 The same as mentioned in *ibid* s 11(1): see the text and notes 1-7 *supra*.

10 *Ibid* s 11(3)(a).

11 *Ibid* s 11(3)(b). 'Likely' has been construed as meaning a 'reasonable prospect' of something happening (*Dunning v Board of Governors of the United Liverpool Hospitals* [1973] 2 All ER 454 at 460, sub nom *Dunning v United Liverpool Hospitals' Board of Governors* [1973] 1 WLR 586, CA, per James LJ (overruled on another point by *Mclvor v Southern Health and Social Services Board* [1978] 2 All ER 625, [1978] 1 WLR 757, HL)), but it has also been said that it is capable of covering a whole range of possibilities from 'it's on the cards' to 'it's more probable than not' (*R v Sheppard* [1981] AC 394 at 405, [1980] 3 All ER 899 at 904, HL, per Lord Diplock).

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### **1338. Objections to, and representations against, issue of operators' licences.**

Any of the persons mentioned in heads (a) to (d) below<sup>1</sup> may make an objection to the grant of an application for an operator's licence<sup>2</sup> on the ground:

2026 (1) that any of specified requirements<sup>3</sup> are not satisfied in the case of the application<sup>4</sup>; or

2027 (2) that any place in the traffic commissioner's<sup>5</sup> area<sup>6</sup> which, if the licence is issued, will be an operating centre<sup>7</sup> of the holder of the licence<sup>8</sup> will be unsuitable on environmental grounds for use as such<sup>9</sup>.

The persons who may make such an objection are: (a) a prescribed<sup>10</sup> trade union<sup>11</sup> or association<sup>12</sup>; (b) a chief officer of police<sup>13</sup>; (c) a local authority<sup>14</sup>; and (d) a planning authority<sup>15</sup>. The trade unions and associations which may be prescribed for the above purposes are trade unions or associations<sup>16</sup> whose membership consists of or includes persons holding operators' licences<sup>17</sup>, or employees of any such persons<sup>18</sup>.

Where an application for an operator's licence is made, any person who is the owner<sup>19</sup> or occupier of land in the vicinity of any place in the traffic commissioner's area which, if the licence is issued, will be an operating centre of the holder of the licence may make representations against the grant of the application on the ground that that place will be unsuitable on environmental grounds for use as such<sup>20</sup>. A person may not make such representations<sup>21</sup> unless any adverse effects on environmental conditions arising from the use of the place in question as an operating centre of the holder of the licence would be capable of prejudicially affecting the use or enjoyment of the land so mentioned<sup>22</sup>.

Where the traffic commissioner considers there to be exceptional circumstances that justify his doing so, he may direct that an objection or representations be treated for the purposes of the Goods Vehicles (Licensing of Operators) Act 1995 as duly made<sup>23</sup>, notwithstanding that the objection was not, or the representations were not, made within the prescribed time or in the prescribed manner<sup>24</sup>. Any objection under head (1) or head (2) above must contain in the case of an objection under head (1) above, particulars of the ground on which it is made<sup>25</sup>, and in the case of an objection under head (2) above, particulars of any matters alleged by the person making the objection to be relevant to the issue to which it relates<sup>26</sup>. Any representations<sup>27</sup> must contain particulars of any matters alleged by the person making the representations to be relevant to the issue to which they relate<sup>28</sup>.

1     Ie any of the persons mentioned in Goods Vehicles (Licensing of Operators) Act 1995 s 12(2): see the text and notes 12-15 infra.

2     Ibid s 12(1). For the meaning of 'operator's licence' see PARA 1329 ante.

3     Ie any of the requirements of ibid s 13: see PARA 1339 post. In s 12(1) the reference to 'the requirements of section 13' is a reference:

1320 (1)     in the case of an application for a standard licence, to the requirements of s 13(3), (5), (6) (see PARA 1339 post) (s 12(11)(a)); and

1321 (2)     in the case of an application for a restricted licence, to the requirements of s 13(4), (5), (6) (see PARA 1339 post) (s 12(11)(b)).

For the meaning of 'standard licence' see PARA 1330 note 2 ante. For the meaning of 'restricted licence' see PARA 1330 note 3 ante.

4     Ibid s 12(1)(a). Any objection under head (1) in the text must be made within the prescribed time (s 12(6)(a)), and in the prescribed manner (s 12(6)(b)). As to the making and consideration of objections and representations see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, regs 11-13. As to the period within which an act must be done see TIME vol 97 (2010) PARAS 336-341.

5     As to the functions of traffic commissioners see PARA 1326 ante. In relation to any application for an operator's licence, references to the traffic commissioner are references to the traffic commissioner to whom the application has been made: Goods Vehicles (Licensing of Operators) Act 1995 s 12(12).

6     For the meaning of 'area' see PARA 1326 note 1 ante.

7     For the meaning of 'operating centre' see PARA 1332 note 12 ante.

8     As to the meaning of 'operating centre of the holder of an operator's licence' see PARA 1332 note 12 ante.

9 Goods Vehicles (Licensing of Operators) Act 1995 s 12(1)(b). Any objection under head (2) above or representations under s 12(4) (see the text and note 20 *infra*) must be made within the prescribed time after the making of the application to which they relate (s 12(7)(a)), and in the prescribed manner (s 12(7)(b)).

In *Crewe and Nantwich Borough Council v Yoxall* (1993) RLR 208, the following propositions were stated: it is not a pre-condition to a valid objection that the relevant section and subsection should be quoted; it is essential, if the objection is to be accepted as valid, that it is so worded that it makes clear whether: (1) it is made under the Goods Vehicles (Licensing of Operators) Act 1995 s 12(1)(a), in which case it must go on to identify which of the requirements of s 13 the objector says that the applicant cannot meet; or (2) it is made under s 12(1)(b). In every case, if the objection is to be accepted as valid, it must also set out sufficient details of what the objector proposes to say to enable the applicant to know the case that he will have to meet. Where the objector wishes to advance more than one ground of objection the better practice is to set out each ground of objection in a separate paragraph, and failure to do so runs the risk that the objection will be ruled to be invalid on the grounds of ambiguity or uncertainty. Where an objector has advanced different grounds which have been set out in separate paragraphs, each paragraph should be treated as a separate objection, and if one paragraph discloses a valid objection but another is ruled to be invalid the valid objection should be allowed to stand while the invalid objection should be struck out. Once a valid objection has been made it is permissible to add 'further and better particulars' (ie a preliminary request for further information or clarification) at a later date, subject to the over-riding consideration that the object of the exercise is to give proper notice of the case which the applicant has to meet. The ability to add further and better particulars (ie a preliminary request for further information or clarification) is not to be treated as a licence to take the applicant by surprise by furnishing those particulars at a very late stage. It is not possible, after the time for objecting has expired, to amend or add to an invalid objection in order to convert it into a valid objection.

10 For the meaning of 'prescribed' see PARA 1332 note 7 *ante*.

11 For these purposes, 'trade union' has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992 (see EMPLOYMENT vol 40 (2009) PARA 846); definition applied by the Goods Vehicles (Licensing of Operators) Act 1995 s 12(12).

12 *Ibid* s 12(2)(a). As to prescribed trade unions and associations see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 10.

13 Goods Vehicles (Licensing of Operators) Act 1995 s 12(2)(b). As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 *et seq*.

14 *Ibid* s 12(2)(c). 'Local authority' means as respects England, the council of a county, district or London borough and the Common Council of the City of London; and as respects Wales, the council of a county or county borough: s 12(12). As to local government areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 *et seq*. As to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 *et seq*. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 *et seq*.

15 *Ibid* s 12(2)(d). 'Planning authority' means any body other than a local authority which by virtue of any statutory provision for the time being in force is the local planning authority for any area for the purpose of determining applications for planning permission under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (general planning control) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 217 *et seq*): Goods Vehicles (Licensing of Operators) Act 1995 s 12(12). 'Statutory provision' means a provision contained in an Act or in subordinate legislation within the meaning of the Interpretation Act 1978 (see STATUTES vol 44(1) (Reissue) PARA 1232): Goods Vehicles (Licensing of Operators) Act 1995 s 58(1).

16 *Ibid* s 12(3).

17 *Ibid* s 12(3)(a).

18 *Ibid* s 12(3)(b).

19 'Owner', in relation to any land in England and Wales, means a person, other than a mortgagee not in possession, who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let: *ibid* s 58(1).

20 *Ibid* s 12(4). The meaning of the word 'occupier' may vary according to the purposes of the legislation in which it is used; but it seems that in general a person is an occupier if he has a sufficient degree of control over the state of the premises or over the activities of persons thereon, and that, in order to be an occupier, it is not necessary for a person to have entire control over the premises, but it is sufficient for him to share the control with others: *Wheat v E Lacon & Co Ltd* [1966] AC 552, [1966] 1 All ER 582, HL. See also *H & N Emanuel Ltd v GLC* [1971] 2 All ER 835, 115 Sol Jo 226, CA; *Harris v Birkenhead Corpn (Pascoe, third party)* [1976] 1 All ER 341, [1976] 1 WLR 279, CA; *Jackson v Hall* [1980] AC 854, [1980] 1 All ER 177, HL. The expression 'occupier'



includes a person who has a licence entitling him to occupation (*Stevens v Bromley London Borough Council* [1972] Ch 400, [1972] 1 All ER 712, CA; *R v Tao* [1977] QB 141, [1976] 3 All ER 65, CA) and a statutory tenant (*Brown v Ministry of Housing and Local Government* [1953] 2 All ER 1385, [1953] 1 WLR 1370), but not, it is thought, a person whose entry on the premises was unlawful and forcible (*Woodcock v South Western Electricity Board* [1975] 2 All ER 545, [1975] 1 WLR 983), nor a person whose occupation is transient, such as a person who enters the land for a few days or weeks solely to do some work on it (*Howard v Grass Products Ltd* [1972] 3 All ER 530, [1972] 1 WLR 1323; *Southern Water Authority v Nature Conservancy Council* [1992] 3 All ER 481, [1992] 1 WLR 775, HL). See further NEGLIGENCE vol 78 (2010) PARA 30. 'Land' includes buildings and other structures, land covered by water, and any estate, interest, easement, servitude or right over land: Interpretation Act 1978 s 5, Sch 1.

- 21    le under the Goods Vehicles (Licensing of Operators) Act 1995 s 12(4): see the text and note 20 supra.
- 22    Ibid s 12(5).
- 23    le under ibid s 12.
- 24    Ibid s 12(8). See also *Crewe and Nantwich Borough Council v Yoxall* (1993) RLR 208.
- 25    Goods Vehicles (Licensing of Operators) Act 1995 s 12(9)(a).
- 26    Ibid s 12(9)(b).
- 27    le under ibid s 12(4): see note 20 supra.
- 28    Ibid s 12(10).

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## **(iv) Determination of Applications**

### **1339. Determination of applications for operators' licences.**

Subject to specified provisions<sup>1</sup>, on an application for a standard licence<sup>2</sup> a traffic commissioner<sup>3</sup> must consider<sup>4</sup>:

- 2028   (1)   whether he is satisfied that the applicant is:
- 119
- 203.   (a)   of good repute<sup>5</sup>;
- 204.   (b)   of the appropriate financial standing<sup>6</sup>; and
- 205.   (c)   professionally competent<sup>7</sup>;
- 120
- 2029   (2)   whether he is satisfied that it is possible (taking into account the traffic commissioner's powers<sup>8</sup> to issue a licence in terms that differ from those applied for) to issue a licence on the application in relation to which the following requirements apply<sup>9</sup>:
- 121
- 206.   (a)   there are satisfactory arrangements for securing that Part VI of the Transport Act 1968<sup>10</sup> (drivers' hours), and the applicable Community rules<sup>11</sup>, are complied with in the case of the vehicles used under the licence<sup>12</sup>;
- 207.   (b)   there are satisfactory arrangements for securing that the vehicles used under the licence are not overloaded<sup>13</sup>;
- 208.   (c)   there are satisfactory facilities and arrangements for maintaining the vehicles used under the licence in a fit and serviceable condition<sup>14</sup>;

209. (d) at least one place in the traffic commissioner's area<sup>15</sup> is specified in the licence as an operating centre<sup>16</sup> of the licence holder<sup>17</sup>, and each place so specified is available and suitable for use as such an operating centre (disregarding any respect in which it may be unsuitable on environmental grounds)<sup>18</sup>;
210. (e) the capacity of the place so specified (if there is only one) or both or all the places so specified taken together (if there are more than one) is sufficient to provide an operating centre for all the vehicles used under the licence<sup>19</sup>;
- 122
- 2030 (3) if he thinks fit, whether he is satisfied the provision of such facilities and arrangements as are mentioned in head (2)(c) above are not prejudiced by reason of the applicant's having insufficient financial resources for that purpose<sup>20</sup>.

Subject to specified provisions<sup>21</sup>, on an application for a restricted licence<sup>22</sup>, a traffic commissioner must consider<sup>23</sup>:

- 2031 (i) whether he is satisfied that the applicant is not unfit to hold an operator's licence<sup>24</sup> by reason of any activities or convictions of which particulars may be required to be given<sup>25</sup>, or any conviction required to be notified<sup>26</sup>;
- 2032 (ii) whether the requirements of head (2) above are satisfied<sup>27</sup>;
- 2033 (iii) if he thinks fit, whether the requirements of head (3) above are satisfied<sup>28</sup>.

In considering whether any of the requirements of heads (1) to (3) above are satisfied, the traffic commissioner must have regard to any objection duly made<sup>29</sup> in respect of the application<sup>30</sup>. In considering whether the requirements of head (2) above are satisfied, the traffic commissioner may take into account any undertaking given by the applicant (or procured by him to be given) for the purposes of the application, and may assume that those undertakings will be fulfilled<sup>31</sup>.

In considering whether head (2)(d) above will apply in relation to a licence, the traffic commissioner may take into account any conditions that could be attached to the licence<sup>32</sup>, and may assume that any conditions so attached will not be contravened<sup>33</sup>.

In considering whether head (2)(d) or head (2)(e) above will apply in relation to a licence, the traffic commissioner may take into account (if that is the case) that any proposed operating centre of the applicant would be used as an operating centre of the holders of other operators' licences as well as of the applicant<sup>34</sup>, or by the applicant or by other persons for purposes other than keeping vehicles used under the licence<sup>35</sup>.

If the traffic commissioner determines that any of the requirements that he has taken into consideration<sup>36</sup> are not satisfied he must refuse the application, but in any other case he must<sup>37</sup> grant the application<sup>38</sup>.

1 le subject to the Goods Vehicles (Licensing of Operators) Act 1995 s 11 (see PARA 1337 ante) and s 45(2) (see PARA 1375 post).

2 For the meaning of 'standard licence' see PARA 1330 note 2 ante.

3 As to the functions of traffic commissioners see PARA 1326 ante.

4 Goods Vehicles (Licensing of Operators) Act 1995 s 13(1).

5 Ibid s 13(1)(a), (3)(a).

6 Ibid s 13(1)(a), (3)(b).

7 Ibid s 13(1)(a), (3)(c). The traffic commissioner must determine whether the applicant fulfils the requirements of head (1) in the text in accordance with s 13, Sch 3 (see PARAS 1340-1343 post): s 13(3). As to

the meaning of 'good repute' see PARA 1340 post; for the meaning of 'appropriate financial standing' see PARA 1341 post; and for the meaning of 'professionally competent' see PARA 1342 note 1 post.

8 le under ibid s 15(3): see PARA 1345 post.

9 Ibid s 13(1)(a), (5).

10 le the Transport Act 1968 Pt VI (ss 95-103) (as amended): see PARA 1380 et seq post.

11 le within the meaning of ibid Pt VI (as amended): see PARA 1380 note 1 post.

12 Goods Vehicles (Licensing of Operators) Act 1995 s 13(1)(a), (5)(a).

13 Ibid s 13(1)(a), (5)(b).

14 Ibid s 13(1)(a), (5)(c). See also *WA Glendinning Ltd* (1970) 33 Traf Cas 88.

15 For the meaning of 'area' see PARA 1326 note 1 ante.

16 For the meaning of 'operating centre' see PARA 1332 note 12 ante.

17 As to the meaning of 'operating centre of the holder of an operator's licence' see PARA 1332 note 12 ante.

18 Goods Vehicles (Licensing of Operators) Act 1995 s 13(1)(a), (5)(d).

19 Ibid s 13(1)(a), (5)(e). There is no obligation to house all vehicles in the operating centre at the same time, as the operator's business may allow for a smaller capacity: see *Mr & Mrs DW Burns (t/a John Burns & Sons)* (1995) RLR 331. See also *James Irlam & Sons Ltd* (1993) RLR 26, in which the Transport Tribunal said: 'It was clearly the object of the legislation [ie the Transport Act 1968] that the authorised vehicles should be kept at their operating centre when not in use; and it is probable that in most cases the Licensing Authority will need to be satisfied that all can be accommodated at the operating centre if that objective is to be achieved. But in some cases it may be clear from the pattern of business activity that the objective can be achieved notwithstanding that the operator's operating centre or centres cannot accommodate his entire fleet at any one time'.

In deciding the suitability of a proposed operating centre, the safety and suitability of any private road or track connecting the operating centre to the public highway must be considered: *Crewe and Nantwich Borough Council v Yoxall* (1993) RLR 208.

In considering whether the requirements of Goods Vehicles (Licensing of Operators) Act 1995 s 13(5) are satisfied, the traffic commissioner may take into account any undertakings given by the applicant (or procured by him to be given) for the purposes of the application, and may assume that those undertakings will be fulfilled: s 13(8).

20 Ibid s 13(1)(b), (6).

21 le subject to ibid s 11 (see PARA 1337 ante) and s 45(2) (see PARA 1375 post).

22 For the meaning of 'restricted licence' see PARA 1330 note 3 ante.

23 Goods Vehicles (Licensing of Operators) Act 1995 s 13(2).

24 Ibid s 13(2)(a), (4). For the meaning of 'operator's licence' see PARA 1329 ante.

25 Ibid s 13(2)(a), (4)(a). The text refers to any activities or convictions of which particulars may be required to be given under s 8(4) by virtue of s 8, Sch 2 para 1(e) or (f) (see PARA 1334 ante): s 13(4)(a).

26 Ibid s 13(2)(a), (4)(b). The text refers to any conviction required to be notified under s 9(1) (see PARA 1335 ante): s 13(4)(b).

27 Ibid s 13(2)(a), (5).

28 Ibid s 13(2)(b). See also *WA Glendinning Ltd* (1970) 33 Traf Cas 88.

29 le under the Goods Vehicles (Licensing of Operators) Act 1995 s 12(1)(a): see PARA 1338 ante). 'Have regard', in the words of Lord Hanworth MR in *Cohen v West Ham Corpn* [1933] Ch 814 at 833, CA, 'is intended to be a loose and indefinite term'.

30 Goods Vehicles (Licensing of Operators) Act 1995 s 13(7).

- 31 Ibid s 13(8).
- 32 Ie under ibid s 21: see PARA 1351 post.
- 33 Ibid s 13(9).
- 34 Ibid s 13(10)(a).
- 35 Ibid s 13(10)(b).
- 36 Ie in accordance with ibid s 13(1) or (2): see the text and notes 4-28 supra.
- 37 Ie subject to ibid s 14 (see PARA 1344 post) and s 45(2) (see PARA 1375 post).
- 38 Ibid s 13(11).

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### **1340. Good repute.**

In determining whether an individual is of good repute, a traffic commissioner<sup>1</sup> may have regard to any matter<sup>2</sup> but must, in particular, have regard to any relevant convictions<sup>3</sup> of the individual or of his servants or agents<sup>4</sup>, and any other information in his possession which appears to him to relate to the individual's fitness to hold a licence<sup>5</sup>.

In determining whether a company is of good repute, a traffic commissioner must have regard to all the material evidence including, in particular, any relevant convictions of the company or of any of its officers, servants or agents<sup>6</sup>, and any other information in his possession as to the previous conduct of any of the company's officers, servants or agents, or any of its directors, in whatever capacity, if that conduct appears to him to relate to the company's fitness to hold a licence<sup>7</sup>.

Without prejudice to the generality of a traffic commissioner's power<sup>8</sup> to determine that a person is not of good repute, a commissioner must determine that an individual is not of good repute if that individual has more than one conviction of a serious offence<sup>9</sup>, or has been convicted of road transport offences<sup>10</sup>.

1 As to the functions of traffic commissioners see PARA 1326 ante.

2 Goods Vehicles (Licensing of Operators) Act 1995 s 13, Sch 3.

3 For the purposes of ibid Sch 3 para 1, the relevant convictions of any person are:

1322 (1) any conviction of that person of an offence such as is mentioned in s 8, Sch 2 para 5 (see PARA 1334 note 21 ante) (Sch 3 para 1(3)(a));

1323 (2) any conviction of that person of an offence under the law of Northern Ireland or of the law of any country or territory outside the United Kingdom corresponding to an offence such as is mentioned in Sch 2 para 5 (see PARA 1334 note 22 ante) (Sch 3 para 1(3)(b));

1324 (3) any conviction of that person of a serious offence within the meaning given in Sch 3 para 3 (Sch 3 para 1(3)(c)); and

1325 (4) any conviction of that person of a road transport offence given in Sch 3 para 4 (Sch 3 para 1(3)(d)).

Any reference in Sch 3 paras 1-4 to an offence under the law of any part of the United Kingdom includes a reference to a civil offence (wherever committed) within the meaning of the Army Act 1955, the Air Force Act 1955 or (as the case may be) the Naval Discipline Act 1957 (see ARMED FORCES vol 2(2) (Reissue) PARA 422): Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 5(1). For the meaning of 'United Kingdom' see PARA 224 note 5 ante. As from a day to be appointed, the following provisions will apply. In Sch 3 para 1(3)(a) (see head (1) supra), the reference to an offence mentioned in Sch 2 para 5 includes an offence under the Armed Forces Act 2006 s 43 as respects which the corresponding offence under the law of England and Wales (within the meaning given by s 43) is an offence mentioned in the Goods Vehicles (Licensing of Operators) Act 1995 Sch 2 para 5: Sch 3 para 5(1) (Sch 3 para 5(1) substituted, and Sch 3 para 5(1A), (1B) added, by the Armed Forces Act 2006 s 378(1), Sch 16 para 131). In the Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 paras 3, 4, references to an offence under the law of any part of the United Kingdom include an offence under the Armed Forces Act 2006 s 42: Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 5(1A) (as so added). In Sch 3 para 3(2)(c) the reference to a community order includes a service community order or overseas community order under the Armed Forces Act 2006: Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 5(1B) (as so added). At the date at which this volume states the law no such day had been appointed.

A person has a conviction of a 'serious offence' if he has been convicted of any offence under the law of any part of the United Kingdom or under the law of a country or territory outside the United Kingdom (Sch 3 para 3(1)(a)), and on such conviction there was imposed on him for that offence a punishment falling within Sch 3 para 3(2) (Sch 3 para 3(1)(b)). The punishments falling within Sch 3 para 3(2) are:

- 1326 (a) a sentence of imprisonment for a term exceeding three months (Sch 3 para 3(2)(a));
- 1327 (b) a fine exceeding level 4 on the standard scale (Sch 3 para 3(2)(b));
- 1328 (c) a community order requiring him to perform work for more than 60 hours (Sch 3 para 3(2)(c) (amended by the Criminal Justice Act 2003 s 304, Sch 32 Pt 1 para 68(1), (3))); and
- 1329 (d) in the case of an offence committed under the law of a country or territory outside the United Kingdom, any punishment corresponding to those mentioned in heads (a)-(c) supra (Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 3(2)(d)).

In head (a) supra the reference to a sentence of imprisonment includes a reference to any form of custodial sentence or order, other than one imposed under the enactments relating to mental health (Sch 3 para 3(3)(a)); and in head (c) supra 'community order' means a community order under the Criminal Justice Act 2003 s 177 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 163) or a community punishment order made under the Powers of Criminal Courts (Sentencing) Act 2000 s 46 (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1371) (Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 3(3)(b) (substituted by the Criminal Justice Act 2003 s 304, Sch 32 Pt 1 para 68(1), (4))). As to the standard scale see PARA 230 note 3 ante. As to the meaning of 'have regard' see PARA 1339 note 29 ante. As from a day to be appointed, head (a) supra is amended so that, instead of the reference to 'imprisonment for a term exceeding three months' it refers to 'imprisonment of 12 months or more or, before the commencement of the Criminal Justice Act 2003 s 181, a term exceeding three months': Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 3(2)(a) (amended by the Criminal Justice Act 2003 Sch 32 Pt 1 para 68(4)). At the date at which this volume states the law no such day had been appointed.

As to the relevance of vehicle excise duty transgressions to the determination of good repute see *O'Donovan (Waste Disposal) Ltd* (1992) RLR 23. If a penalty notice does not involve an obligatory endorsement, then fulfilment of the notice discharges any liability to conviction; however, a licensing authority should take into account any behaviour which results in the repeated issue of penalty notices: *MacPherson and Colburn Ltd* (1992) RLR 243. See also *J Aldridge* (1993) RLR 139.

'Road transport offence' means: (i) an offence under the law of any part of the United Kingdom relating to road transport including in particular: (A) an offence relating to drivers' hours of work or rest periods, the weights or dimensions of commercial vehicles, road or vehicle safety, or the protection of the environment; and (B) any other offence concerning professional liability; or (ii) any corresponding offence under the law of a country or territory outside the United Kingdom: Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 4 (substituted by the Goods Vehicle Operators (Qualifications) Regulations 1999, SI 1999/2430, reg 2). For the meaning of 'road' see PARA 206 ante. For the meaning of 'driver' see PARA 207 ante.

For the purposes of the Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 paras 1-4, convictions which are spent for the purposes of the Rehabilitation of Offenders Act 1974 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 661) must be disregarded: Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 5(2) (a). A traffic commissioner may also disregard an offence if such time as he thinks appropriate has elapsed since the date of the conviction: Sch 3 para 5(4)(b).

4 Ibid Sch 3 para 1(1)(a). As to the servant (or employee) of another see EMPLOYMENT vol 39 (2009) PARAS 2-4; and as to an agent who has authority to act for another see AGENCY.

5 Ibid Sch 3 para 1(1)(b). A traffic commissioner must balance the fitness of an individual to hold a licence against the right to the peaceful enjoyment of the licence as a possession under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 1 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 165): *Crompton (t/a David Crompton Haulage) v Department of Transport North Western Traffic Area* [2003] EWCA Civ 64, [2003] RTR 517.

6 Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 1(2)(a).

7 Ibid Sch 3 para 1(2)(b).

8 le under ibid Sch 3 para 1: see the text and notes 3-7 supra.

9 Ibid Sch 3 para 2(a) (Sch 3 para 2 substituted by the Goods Vehicle Operators (Qualifications) Regulations 1999, SI 1999/2430, reg 2).

10 Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 2(b) (as substituted: see note 9 supra).

## UPDATE

### 1340 Good repute

NOTE 3--Appointed day for commencement of the Armed Forces Act 2006 Sch 16 para 131 is 31 October 2009: SI 2009/1167.

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### 1341. Appropriate financial standing.

An applicant for, or the holder of, a standard licence<sup>1</sup> is of the appropriate financial standing if he has available to him sufficient financial resources to ensure the establishment and proper administration of the road transport undertaking<sup>2</sup> carried on, or proposed to be carried on, under the licence<sup>3</sup>. An applicant for, or the holder of, a standard licence is not to be considered to be of the appropriate financial standing unless he has available to him capital and reserves of an amount equal to or exceeding the aggregate of:

- 2034 (1) 9000 euros for the first or only vehicle which is to be or is authorised under the licence; or
- 2035 (2) 5000 euros for each additional vehicle which is to be or is so authorised<sup>4</sup>.

1 For the meaning of 'standard licence' see PARA 1330 note 2 ante.

2 'Road transport undertaking' means an undertaking which involves the use of goods vehicles under an operator's licence, or in accordance with the law of Northern Ireland or the law of any member state other than the United Kingdom: Goods Vehicles (Licensing of Operators) Act 1995 s 58(1). As to the meaning of 'using' a vehicle see PARA 1329 note 2 ante. For the meaning of 'goods vehicle' see PARA 1329 note 3 ante. For the meaning of 'operator's licence' see PARA 1329 ante. As to the meaning of 'member state' see PARA 1149 note 18 ante.

3 Ibid Sch 3 para 6(1).

4 Ibid Sch 3 para 6(2) (substituted by the Goods Vehicle Operators (Qualifications) Regulations 1999, SI 1999/2430, reg 3; and amended by the Goods Vehicle Operators (Qualifications) (Amendment) Regulations 2004, SI 2004/3222, reg 2).

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### **1342. Professional competence.**

The requirement of professional competence<sup>1</sup> falls to be satisfied by an individual<sup>2</sup>. Accordingly, where a company is required to satisfy that requirement, it does so if and so long as it has in respect of its road transport undertaking<sup>3</sup> a transport manager<sup>4</sup> or managers, and such number of them as the traffic commissioner<sup>5</sup> concerned may require<sup>6</sup>, and that transport manager, or (as the case may be) each such manager, is of good repute<sup>7</sup>, and professionally competent<sup>8</sup>. Where an individual is not himself professionally competent, he is regarded as satisfying the requirement of professional competence if and so long as he has as the transport manager of the transport undertaking which he carries on an individual who is of good repute<sup>9</sup>, and professionally competent<sup>10</sup>.

Where the holder of a standard licence<sup>11</sup> relies on a single transport manager to satisfy the requirement of professional competence and that manager: (1) dies; (2) ceases, by reason of physical disability or mental disorder, to be capable of discharging his duties as transport manager; (3) ceases to work for the business; or (4) ceases to be of good repute, the holder of the licence is not to be treated as failing to satisfy the requirement of professional competence until the expiry of such period (not exceeding 18 months) as, in the opinion of the traffic commissioner by whom the licence was issued, is reasonably required for the appointment of a new transport manager<sup>12</sup>.

Where the holder of a standard licence is a company which has two or more transport managers<sup>13</sup>, and any of those managers ceases to be of good repute<sup>14</sup>, the company is not to be treated as failing to satisfy the requirement of professional competence until the expiry of such period as, in the opinion of the traffic commissioner by whom the licence was issued, is reasonably required for that manager's removal or the appointment of another transport manager in his place<sup>15</sup>.

1 In the Goods Vehicles (Licensing of Operators) Act 1995 s 13, Sch 3 references to 'the requirement of professional competence' are references to any requirement imposed by a provision of the Goods Vehicles (Licensing of Operators) Act 1995 that a person be (or continue to be) professionally competent: Sch 3 para 7. An individual is to be regarded as professionally competent if, and only if:

1330 (1) he has demonstrated that he possesses the requisite skills by passing a written examination organised by an approved body and is the holder of a certificate to that effect issued by that body (Sch 3 para 13(1)(a)); or

1331 (2) he is the holder of any other certificate of competence, diploma or other qualification recognised for these purposes by the Secretary of State (Sch 3 para 13(1)(b)).

'The requisite skills' means knowledge corresponding to the level of training, for either national or international transport operations as the case may be, provided for in EC Council Directive 96/26 (OJ L124, 23.05.96, p 1) Annex I (as substituted) in the subjects there listed: Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 13(3) (amended by the Goods Vehicle Operators (Qualifications) Regulations 1999, SI 1999/2430, reg 4(2) (b)). 'Approved body' means: (a) a body approved by the Secretary of State for the purposes of the Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 13(1) (see heads (1), (2) supra); (b) a body approved by the Department of the Environment for Northern Ireland for the purposes of the Transport Act (Northern Ireland) 1967 s 46A(5)(c) (as added and amended); or (c) a body or authority designated for the purposes of EC Council Directive 96/26 (OJ L124, 23.05.96, p 1) art 3(4) (as amended) by a member state other than the United Kingdom: Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 13(3) (amended by the Goods Vehicle Operators (Qualifications) Regulations 1999, SI 1999/2430, reg 4(2)). As to the Secretary of State see PARA 236 ante.

The written examination mentioned in the Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 13(1)(a) (see head (1) *supra*) may be supplemented by an oral examination organised by the approved body in the form set out in EC Council Directive 96/26 (OJ L124, 23.05.96, p 1) Annex I (as substituted): Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 13(2) (amended by the Goods Vehicle Operators (Qualifications) Regulations 1999, SI 1999/2430, reg 4(1)). The certificate mentioned in the Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 13(1)(a) must take the form of the certificate set out in EC Council Directive 96/26 (OJ L124, 23.05.96, p 1) Annex 1a (as added): Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 13(2A) (added by the Goods Vehicle Operators (Qualifications) Regulations 1999, SI 1999/2430, reg 4(1)).

2 Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 8(1).

3 For the meaning of 'road transport undertaking' see PARA 1341 note 2 *ante*.

4 For the meaning of 'transport manager' see PARA 1335 note 5 *ante*.

5 As to the functions of traffic commissioners see PARA 1326 *ante*.

6 Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 8(2)(a).

7 *Ibid* Sch 3 para 8(2)(b)(i). As to the meaning of 'good repute' see PARA 1340 *ante*. Schedule 3 paras 1-5 (see PARA 1340 *ante*) have effect for the purposes of any provision of Sch 3 paras 8-11 by virtue of which it falls to be determined whether or not a transport manager is of good repute, as they have effect for the purpose of determining for the purposes of any other provision of the Goods Vehicles (Licensing of Operators) Act 1995 whether or not any other individual is of good repute, but disregarding the reference in Sch 3 para 1(1)(a) (see PARA 1340 text and note 4 *ante*) to the servants or agents of an individual: Sch 3 para 12.

8 *Ibid* Sch 3 para 8(2)(b)(ii).

9 *Ibid* Sch 3 para 9(a).

10 *Ibid* Sch 3 para 9(b).

11 For the meaning of 'standard licence' see PARA 1330 note 2 *ante*.

12 Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 10.

13 *Ibid* Sch 3 para 11(a).

14 *Ibid* Sch 3 para 11(b).

15 *Ibid* Sch 3 para 11.

## UPDATE

### 1342 Professional competence

NOTE 1--Directive 96/26 replaced with effect from 4 December 2011: European Parliament and EC Council Regulation 1071/2009 (OJ L300, 14.11.2009, p 51).

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### 1343. Transport manager to be notified of proceedings.

A traffic commissioner<sup>1</sup> must not in any proceedings under the Goods Vehicles (Licensing of Operators) Act 1995 make a finding that a transport manager<sup>2</sup> is not of good repute<sup>3</sup> or is not professionally competent<sup>4</sup> unless the commissioner is satisfied that the transport manager has been served with a notice<sup>5</sup>:



- 2036 (1) stating that the question whether he is of good repute or (as the case may be) professionally competent is an issue in the proceedings<sup>6</sup>;  
 2037 (2) setting out the nature of the allegations against him<sup>7</sup>; and  
 2038 (3) stating that he is entitled to make representations within 28 days beginning with the date on which the notice is served on him<sup>8</sup>.

Where a transport manager makes representations<sup>9</sup>, the traffic commissioner must consider the representations in considering whether or not to hold an inquiry<sup>10</sup>, and in determining whether the transport manager is of good repute or (as the case may be) professionally competent<sup>11</sup>.

1 As to the functions of traffic commissioners see PARA 1326 ante.

2 For the meaning of 'transport manager' see PARA 1335 note 5 ante.

3 As to the meaning of 'good repute' see PARA 1340 ante.

4 For the meaning of 'professionally competent' see PARA 1342 note 1 ante.

5 Goods Vehicles (Licensing of Operators) Act 1995 s 13, Sch 3 para 15(1).

6 Ibid Sch 3 para 15(1)(a).

7 Ibid Sch 3 para 15(1)(b).

8 Ibid Sch 3 para 15(1)(c). A notice is deemed for the purposes of Sch 3 para 15(1) to have been served on a transport manager on the date on which it would have been delivered in the ordinary course of post if it was sent by post addressed to him at his last known address, notwithstanding that the notice was returned as undelivered or was for any other reason not received by him: Sch 3 para 15(3). 'Ordinary course of post' means the general course of post with regard to the delivery of letters to persons resident in the district: see *Kemp v Wanklyn* [1894] 1 QB 583, CA. The words 'sent by post' bring into operation the provisions of the Interpretation Act 1978 s 7 (see CIVIL PROCEDURE vol 11 (2009) PARA 946) to the effect that service is deemed to be effected by properly addressing, prepaying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. Service may be effected by ordinary or registered letter: *T O Supplies (London) Ltd v Jerry Creighton Ltd* [1952] 1 KB 42, [1951] 2 All ER 992. It follows that it is permissible to use the recorded delivery service. In regard to the 'last known address', as a general rule an address which the person concerned is known to have left is not a proper address for service (*White v Weston* [1968] 2 QB 647, [1968] 2 All ER 842, CA), although the position is otherwise where the use of the last known address is expressly authorised (see *Re Follick, ex p Trustee* (1907) 97 LT 645). However, service at the last known address in England or Wales is not good if a later address abroad is known: *R v Farmer* [1892] 1 QB 637, CA. For other relevant cases see *Hanrott's Trustees v Evans* (1887) 4 TLR 128; *R v Webb* [1896] 1 QB 487; *Berry v Farrow* [1914] 1 KB 632; *Stylo Shoes Ltd v Prices Tailors Ltd* [1960] Ch 396, [1959] 3 All ER 901; *McGlynn v Stewart* 1974 SLT 230.

9 Ie under the Goods Vehicles (Licensing of Operators) Act 1995 Sch 3 para 15(1): see the text and notes 5-8 supra.

10 Ie as provided in ibid s 35: see PARA 1367 post.

11 Ibid Sch 3 para 15(2)(b).

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#### **1344. Determinations where objections are made on environmental grounds.**

A traffic commissioner<sup>1</sup> may refuse any application for an operator's licence<sup>2</sup> in respect of which any objection is duly made<sup>3</sup>, or any representations are duly made<sup>4</sup> on the ground that, as respects any place in his area<sup>5</sup> which, if the licence were issued, would be an operating centre<sup>6</sup> of the holder of the licence<sup>7</sup>:

- 2039 (1) the parking of vehicles used<sup>8</sup> under the licence at or in the vicinity of the place in question would cause adverse effects on environmental conditions in the vicinity of that place<sup>9</sup>; or
- 2040 (2) the place in question would be unsuitable for use as an operating centre of the holder of the licence on other environmental grounds<sup>10</sup>.

The traffic commissioner may not refuse an application for an operator's licence on the ground that any place would be unsuitable as mentioned in head (2) above<sup>11</sup> if:

- 2041 (a) on the date the application was made, that place was already specified in an operator's licence issued by the commissioner as an operating centre of the holder of that licence<sup>12</sup>; or
- 2042 (b) the applicant has produced to the commissioner a certificate in force in respect of that place under the Town and Country Planning Act 1990<sup>13</sup>, stating that its use as an operating centre for vehicles used under any operator's licence<sup>14</sup> is or would be lawful<sup>15</sup>.

Where in the case of any application for an operator's licence the traffic commissioner has power to refuse the application<sup>16</sup>, and any place other than a place that will be unsuitable for use as an operating centre is mentioned in the statement given by the applicant<sup>17</sup> as a proposed operating centre of his<sup>18</sup>, the commissioner may, instead of refusing the application, issue the licence but specify in it only such place or such places mentioned in that statement as will not be unsuitable for use as an operating centre<sup>19</sup>.

1 As to the functions of traffic commissioners see PARA 1326 ante.

2 For the meaning of 'operator's licence' see PARA 1329 ante.

3 Goods Vehicles (Licensing of Operators) Act 1995 s 14(1)(a), (2). The reference in the text to an objection duly made is to one so made under s 12(1)(b): see PARA 1338 ante. In order to be duly made, an objection must comply with the requirements of s 12(9)(b) (see PARA 1338 ante) and the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, regs 11, 12: *Hetherington v Gateshead Metropolitan Borough Council* (1991) RLR 86.

4 In the Goods Vehicles (Licensing of Operators) Act 1995 s 12(4): see PARA 1338 ante.

5 For the meaning of 'area' see PARA 1326 note 1 ante.

6 For the meaning of 'operating centre' see PARA 1332 note 12 ante.

7 Goods Vehicles (Licensing of Operators) Act 1995 s 14(1), (2). As to the meaning of 'operating centre of the holder of an operator's licence' see PARA 1332 note 12 ante.

8 As to the meaning of 'using a vehicle' see PARA 1329 note 2 ante.

9 Goods Vehicles (Licensing of Operators) Act 1995 s 14(2)(a).

10 Ibid s 14(2)(b).

11 Ibid s 14(3).

12 Ibid s 14(3)(a). See also note 15 infra. A place is not to be regarded for the purposes of s 14(3)(a) as being specified in an operator's licence by reason only that it forms part of a place so specified; and a place that

was, on the date mentioned in s 14(3)(a), a place specified in an operator's licence as mentioned in s 14(3)(a) must be disregarded for the purposes of s 14(3)(a) if, on that date:

- 1332 (1) the operator's licence in which that place was specified was an interim licence issued under s 24 (see PARA 1354 post) (s 14(5)(a)); or
- 1333 (2) that place was so specified by virtue of an interim direction such as is mentioned in s 25 (see PARA 1355 post) (s 14(5)(b)); or
- 1334 (3) such conditions relating to:
- 37. (a) the exercise of the right of any person to appeal against a place being specified in an operator's licence (s 14(5)(c)(i)); or  
37
- 38. (b) the review under s 36 (see PARA 1368 post) of any decision so to specify a place (s 14(5)(c)(ii)),  
38
- 1335 as may be prescribed were not satisfied in relation to that place (s 14(5)(c)).

As to the conditions to be satisfied in relation to specified operating centres see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 16.

An 'interim licence' is an operator's licence that (subject to its revocation or other termination under any provision of the Goods Vehicles (Licensing of Operators) Act 1995 or any other statutory provision) will continue in force until it terminates under s 24(4), (5) or (6) (see PARA 1354 post): s 24(2). An 'interim direction' is a direction under s 17(1) (see PARA 1347 post) that is expressed to continue in force until it ceases to have effect under s 25(3) or (4) (see PARA 1355 post): s 25(2). For the meaning of 'statutory provision' see PARA 1338 note 15 ante. For the meaning of 'prescribed' see PARA 1332 note 7 ante.

13 le the Town and Country Planning Act 1990 s 191 (as substituted) or s 192 (as substituted): see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARAS 586-587.

14 As to being authorised to use a vehicle under an operator's licence see PARA 1330 note 10 ante.

15 Goods Vehicles (Licensing of Operators) Act 1995 s 14(3)(b). Section 14(3) does not apply in relation to any place that, at the time the application is determined by the traffic commissioner, is specified in an operator's licence as an operating centre of the holder of that licence: s 14(4).

16 Ibid s 14(6)(a). The reference in the text to the traffic commissioner's power to refuse the application is a reference to the power under s 14(2): see the text and notes 3-10 supra.

17 le under ibid s 8(3): see PARA 1334 ante.

18 Ibid s 14(6)(b).

19 Ibid s 14(6). For the purposes of s 14(6), a place will be unsuitable for use as an operating centre if the traffic commissioner has power to refuse the application under s 14(2) (see the text and notes 3-10 supra) in consequence of the proposed use of that place as an operating centre: s 14(7).

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### **1345. Issue of operators' licences.**

Subject to certain provisions<sup>1</sup>, on granting an application for an operator's licence<sup>2</sup> a traffic commissioner<sup>3</sup> must issue that licence in the terms applied for<sup>4</sup>. Any undertakings taken into account by the traffic commissioner<sup>5</sup> that he considers to be material to the granting of the application must be recorded in the licence issued<sup>6</sup>. A statement must appear on the face of every operator's licence indicating whether it is a standard licence<sup>7</sup> or a restricted licence<sup>8</sup>. A

statement must also appear on the face of every standard licence indicating whether it covers both national and international transport operations<sup>9</sup> or national transport operations only<sup>10</sup>.

1     le subject to the Goods Vehicles (Licensing of Operators) Act 1995 s 15(2) (see note 4 infra), s 14(6) (see PARA 1344 ante), s 21 (see PARA 1351 post), s 22 (see PARA 1352 post), s 23 (see PARA 1353 post) and s 45(2) (see PARA 1375 post).

2     For the meaning of 'operator's licence' see PARA 1329 ante.

3     As to the functions of traffic commissioners see PARA 1326 ante.

4     Goods Vehicles (Licensing of Operators) Act 1995 s 15(1). If a traffic commissioner has determined that any of the requirements of s 13(5) (see PARA 1339 ante) or s 13(6) (see PARA 1339 ante) that he has taken into consideration in accordance with s 13(1) (see PARA 1339 ante) or (as the case may be) s 13(2) (see PARA 1339 ante) would not be satisfied unless he were to exercise any of his powers under s 15(3), he must exercise those powers accordingly: s 15(2). However, a traffic commissioner may issue the licence in terms that differ from the terms applied for in any of the following respects:

1336 (1)     more or fewer motor vehicles are specified in the licence (s 15(3)(a));

1337 (2)     different motor vehicles are specified in it (s 15(3)(b));

1338 (3)     it includes a provision such as is mentioned in s 5(2) (see PARA 1332 ante) (s 15(3)(c));

1339 (4)     it includes a provision such as is mentioned in s 6(1)(b) or s 6(2)(b) (see PARA 1333 ante) (s 15(3)(d));

1340 (5)     higher or lower maximum numbers are specified in it under s 6 (see PARA 1333 ante) (s 15(3)(e));

1341 (6)     fewer places are specified in it as operating centres of the licence holder (s 15(3)(f)).

For the meaning of 'motor vehicle' see PARA 210 ante. For the meaning of 'operating centre' see PARA 1332 note 12 ante.

5     le under ibid s 13(8): see PARA 1339 ante.

6     Ibid s 15(4).

7     For the meaning of 'standard licence' see PARA 1330 note 2 ante.

8     Goods Vehicles (Licensing of Operators) Act 1995 s 15(5). For the meaning of 'restricted licence' see PARA 1330 note 3 ante.

9     As to the meanings of 'national transport operations' and 'international transport operations' see PARA 1330 note 11 ante.

10    Goods Vehicles (Licensing of Operators) Act 1995 s 15(6).

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### **1346. Duration of operators' licences.**

The date on which an operator's licence<sup>1</sup> is to come into force must be specified in the licence<sup>2</sup>. Subject to its revocation or other termination under any provision of the Goods Vehicles (Licensing of Operators) Act 1995 or any other statutory provision<sup>3</sup>, an operator's licence (other than an interim licence<sup>4</sup>) continues in force indefinitely<sup>5</sup>. If the holder of an operator's licence requests the traffic commissioner<sup>6</sup> by whom it was issued to terminate it at any time, the

commissioner must, subject to certain provisions<sup>7</sup>, comply with the request<sup>8</sup>. The traffic commissioner may refuse to comply with the request if he is considering giving a direction in respect of the licence<sup>9</sup>. An operator's licence held by an individual terminates if he dies, or if he becomes a person who lacks capacity within the meaning of the Mental Capacity Act 2005<sup>10</sup>.

1 For the meaning of 'operator's licence' see PARA 1329 ante.

2 Goods Vehicles (Licensing of Operators) Act 1995 s 16(1).

3 For the meaning of 'statutory provision' see PARA 1338 note 15 ante.

4 If issued under the Goods Vehicles (Licensing of Operators) Act 1995 s 24: see PARA 1354 post. For the meaning of 'interim licence' see PARA 1344 note 12 ante.

5 Ibid s 16(2).

6 As to the functions of traffic commissioners see PARA 1326 ante.

7 If the provisions of Goods Vehicles (Licensing of Operators) Act 1995 s 16(4): see the text and note 9 infra.

8 Ibid s 16(3).

9 Ibid s 16(4). The reference in the text to the traffic commissioner giving a direction in respect of the licence is a reference to giving such a direction under s 26 (see PARA 1356 post) or s 27 (see PARA 1357 post): see s 16(4).

10 Ibid s 16(5) (amended by the Mental Capacity Act 2005 s 67(1), Sch 6 para 40). As to persons who lack capacity see MENTAL HEALTH vol 30(2) (Reissue) PARA 641 et seq.

An operator's licence held by an individual also terminates if, in Scotland, a curator bonis is appointed in respect of him on the ground that he is incapable, by reason of mental disorder, of adequately managing and administering his property and affairs: Goods Vehicles (Licensing of Operators) Act 1995 s 16(5). By virtue of the Adults with Incapacity (Scotland) Act 2000 s 88(2), Sch 5 para 1, the reference to a curator bonis is to be construed as a reference to a guardian with similar powers appointed under that Act.

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## **(v) Variation of Licences**

### **1347. Variation of operators' licences.**

Subject to certain provisions<sup>1</sup>, on the application of the holder of an operator's licence<sup>2</sup>, the traffic commissioner<sup>3</sup> by whom the licence was issued may vary the licence by directing:

2043 (1) that additional motor vehicles<sup>4</sup> be specified in the licence or that any maximum number specified in it<sup>5</sup> be increased<sup>6</sup>;

2044 (2) that any vehicle cease to be specified in the licence or that any maximum number specified in it<sup>7</sup> be reduced<sup>8</sup>;

2045 (3) that any provision in the licence concerning vehicles authorised to be used under an operator's licence<sup>9</sup> cease to have effect<sup>10</sup>;

2046 (4) that a provision concerning vehicles authorised to be used under an operator's licence<sup>11</sup> be included in the licence<sup>12</sup>;

2047 (5) that any provision in the licence concerning the maximum number of vehicles<sup>13</sup> cease to have effect<sup>14</sup>;

- 2048 (6) that a provision concerning the maximum number of vehicles<sup>15</sup> be included in the licence<sup>16</sup>;
- 2049 (7) that a new place in the traffic commissioner's area<sup>17</sup> be specified in the licence as an operating centre<sup>18</sup> of the licence holder<sup>19</sup>, or that any place cease to be so specified<sup>20</sup>;
- 2050 (8) that any undertaking recorded in the licence be varied or removed<sup>21</sup>;
- 2051 (9) that any condition attached to the licence be varied or removed<sup>22</sup>;
- 2052 (10) in the case of a restricted licence<sup>23</sup>, that it be converted into a standard licence<sup>24</sup> or, in the case of a standard licence, that it be converted into a restricted licence<sup>25</sup>;
- 2053 (11) in the case of a standard licence, that it cover both international and national transport operations<sup>26</sup> instead of national transport operations only, or vice versa<sup>27</sup>.

A person applying for the variation of an operator's licence<sup>28</sup> must give to the traffic commissioner, in such form as he may require, such information as he may reasonably require for disposing of the application<sup>29</sup>. The traffic commissioner must publish notice of any application for the variation<sup>30</sup> of an operator's licence (and must do so in the manner prescribed<sup>31</sup> for the publication of notices)<sup>32</sup> except:

- 2054 (a) where the application is for a direction under head (1) above that additional motor vehicles be specified in the licence<sup>33</sup>;
- 2055 (b) where the application is for a direction under head (2), (4) or (6) above<sup>34</sup>;
- 2056 (c) where the application is for a direction under head (7) above that a place cease to be specified in a licence as an operating centre of the licence holder<sup>35</sup>;
- 2057 (d) where the application is for a direction under head (10) above that a standard licence be converted into a restricted licence<sup>36</sup>;
- 2058 (e) where the application is for a direction under head (11) above that a licence cover national transport operations only, instead of both national and international transport operations<sup>37</sup>;
- 2059 (f) where the traffic commissioner is satisfied that the application is of so trivial a nature that it is not necessary that an opportunity should be given for objecting to it or making representations against it<sup>38</sup>.

1    Ie subject to the provisions of the Goods Vehicles (Licensing of Operators) Act 1995 s 18: see PARA 1348 post.

2    For the meaning of 'operator's licence' see PARA 1329 ante.

3    As to the functions of traffic commissioners see PARA 1326 ante.

4    For the meaning of 'motor vehicle' see PARA 210 ante.

5    Ie under the Goods Vehicles (Licensing of Operators) Act 1995 s 6: see PARA 1333 ante.

6    Ibid s 17(1)(a).

7    Ie under ibid s 6: see PARA 1333 ante.

8    Ibid s 17(1)(b).

9    Ie such as is mentioned in ibid s 5(2): see PARA 1332 ante.

10   Ibid s 17(1)(c).

11   Ie such as is mentioned in ibid s 5(2): see PARA 1332 ante.

12   Ibid s 17(1)(d).

- 13    le such as is mentioned in *ibid* s 6(1)(b) or s 6(2)(b): see PARA 1333 ante.
- 14    *Ibid* s 17(1)(e).
- 15    le such as is mentioned in *ibid* s 6(1)(b) or s 6(2)(b): see PARA 1333 ante.
- 16    *Ibid* s 17(1)(f).
- 17    For the meaning of 'area' see PARA 1326 note 1 ante.
- 18    For the meaning of 'operating centre' see PARA 1332 note 12 ante.
- 19    As to the meaning of 'operating centre of the holder of an operator's licence' see PARA 1332 note 12 ante.
- 20    Goods Vehicles (Licensing of Operators) Act 1995 s 17(1)(g).
- 21    *Ibid* s 17(1)(h).
- 22    *Ibid* s 17(1)(i).
- 23    For the meaning of 'restricted licence' see PARA 1330 note 3 ante.
- 24    For the meaning of 'standard licence' see PARA 1330 note 2 ante.
- 25    Goods Vehicles (Licensing of Operators) Act 1995 s 17(1)(j).
- 26    As to the meanings of 'national' and 'international transport operations' see PARA 1330 note 11 ante.
- 27    Goods Vehicles (Licensing of Operators) Act 1995 s 17(1)(k).
- 28    le under *ibid* s 17.
- 29    *Ibid* s 17(2).
- 30    le under *ibid* s 17.
- 31    For the meaning of 'prescribed' see PARA 1332 note 7 ante.
- 32    Goods Vehicles (Licensing of Operators) Act 1995 s 17(3). The reference in the text to the publication of notices is to such publication under s 10(1): see PARA 1336 ante. Where notice of an application is published under s 17(3), the following provisions, namely, s 10(2) (see PARA 1336 ante), s 12(1)(a), (6), (8), (9)(a) (see PARA 1338 ante), s 13 (see PARA 1339 ante) and s 15 (see PARA 1345 ante), with any necessary modifications and subject to s 19 (see PARA 1349 post), apply in relation to that application as they apply in relation to an application for an operator's licence of which notice is published under s 10(1) (see PARA 1336 ante): s 17(5). For the prescribed manner of publication of notices under s 10(1) see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 7(1). 'Modification' includes addition, omission and alteration; and related expressions are to be construed accordingly: Goods Vehicles (Licensing of Operators) Act 1995 s 58(1).
- 33    *Ibid* s 17(4)(a).
- 34    *Ibid* s 17(4)(b).
- 35    *Ibid* s 17(4)(c).
- 36    *Ibid* s 17(4)(d).
- 37    *Ibid* s 17(4)(e).
- 38    *Ibid* s 17(4)(f).

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### 1348. Publication of notice of applications for variation in any locality affected.

Subject to certain exceptions<sup>1</sup>, the traffic commissioner<sup>2</sup> to whom an application for any of specified directions<sup>3</sup> is made must refuse the application without considering the merits unless he is satisfied that in respect of each locality affected by the application<sup>4</sup> within the period beginning 21 days<sup>5</sup> before the date on which the application is made and ending 21 days after that date, notice of the application in such form and containing such information as may be prescribed<sup>6</sup> has been published in one or more local newspapers circulating in the locality<sup>7</sup>. The traffic commissioner is not required<sup>8</sup> to refuse an application if he is satisfied as to the above<sup>9</sup>, save only that the form or contents of the notice of application as published in any newspaper did not comply with the prescribed requirements<sup>10</sup>, and he is satisfied that no person's interests are likely to have been prejudiced by the failure to comply with those requirements<sup>11</sup>.

1    Ie subject to the provisions of the Goods Vehicles (Licensing of Operators) Act 1995 s 18(4): see the text and notes 8-11 infra.

2    As to the functions of traffic commissioners see PARA 1326 ante.

3    Ie any of the following directions:

1342 (1)   any direction under the Goods Vehicles (Licensing of Operators) Act 1995 s 17(1)(a) (see PARA 1347 ante) that a maximum number specified in a licence under s 6 (see PARA 1333 ante) be increased (s 18(2)(a));

1343 (2)   any direction under s 17(1)(c) or s 17(1)(e) (see PARA 1347 ante) (s 18(2)(b));

1344 (3)   any direction under s 17(1)(g) (see PARA 1347 ante) that a new place be specified in a licence as an operating centre of the licence holder (s 18(2)(c)); and

1345 (4)   any direction under s 17(1)(h) or s 17(1)(i) (see PARA 1347 ante) which might result in a material change in the use of any operating centre of the licence holder in the traffic commissioner's area (s 18(2)(d)).

For the meaning of 'operating centre' see PARA 1332 note 12 ante. As to the meaning of 'operating centre of the holder of an operator's licence' see PARA 1332 note 12 ante. For the meaning of 'operator's licence' see PARA 1329 ante. As to the meaning of 'material change of use' see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 222.

4    Ibid s 18(1). For the purposes of s 18, a locality is affected by an application for the variation of an operator's licence if:

1346 (1)   it contains any place in the area of the traffic commissioner that will be an operating centre of the licence holder if the application is granted (s 18(5)(a)); or

1347 (2)   it contains an existing operating centre of the licence holder in the area of the commissioner and:

39. (a)   the granting of the application would or could result in an increase in the number of vehicles, or the number of vehicles above a certain weight, that have that centre as their operating centre (s 18(5)(b)(i)); or

39

40. (b)   any undertaking recorded in, or condition attached to, the licence that the application seeks to have varied or removed relates to that centre (s 18(5)(b)(ii)).

40

For the meaning of 'area' see PARA 1326 note 1 ante.

5    As to the period within which an act must be done see TIME vol 97 (2010) PARAS 336-341; and as to the calculation of a prescribed period of time see TIME vol 97 (2010) PARA 329 et seq.

6    For the meaning of 'prescribed' see PARA 1332 note 7 ante. For the form of application and information required see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 7(2).



- 7 Goods Vehicles (Licensing of Operators) Act 1995 s 18(1), (3).
- 8 le required by ibid s 18.
- 9 le as mentioned in ibid s 18(1): see the text and notes 1-7 supra.
- 10 Ibid s 18(4)(a).
- 11 Ibid s 18(4)(b). For the meaning of 'likely' see PARA 1337 note 11 ante.

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### **1349. Objection to, and refusal of, applications to vary operators' licences on environmental grounds.**

Where notice of an application for the variation of an operator's licence<sup>1</sup> has been published<sup>2</sup> and the application relates to an existing operating centre<sup>3</sup> of the licence holder<sup>4</sup> in the traffic commissioner's<sup>5</sup> area<sup>6</sup>:

- 2060 (1) any of specified persons<sup>7</sup> may object to the grant of the application on the ground that the use of that operating centre in any manner which would be permitted if the application were granted would cause adverse effects on environmental conditions in the vicinity of that centre<sup>8</sup>;
- 2061 (2) subject to certain exceptions<sup>9</sup>, any person who is the owner<sup>10</sup> or occupier of any land in the vicinity of that operating centre may make representations against the grant of the application on the ground mentioned in head (1) above<sup>11</sup>; and
- 2062 (3) whether or not anyone objects or makes representations under head (1) or head (2) above, the traffic commissioner may refuse the application on the ground mentioned in head (1) above<sup>12</sup>.

Where the application is for a place in the traffic commissioner's area to be specified in the licence as an operating centre of the licence holder:

- 2063 (a) any of specified persons<sup>13</sup> may object to the grant of the application on the ground that that place will be unsuitable on environmental grounds for use as an operating centre of the licence holder<sup>14</sup>; and
- 2064 (b) subject to certain exceptions<sup>15</sup>, any person who is the owner or occupier of any land in the vicinity of that place may make representations against the grant of the application on that ground<sup>16</sup>.

If any person duly objects or makes representations<sup>17</sup> against an application for a place in the traffic commissioner's area to be specified in the licence as an operating centre of the licence holder, the commissioner may refuse the application:

- 2065 (i) on the ground that the parking of vehicles used<sup>18</sup> under the licence at or in the vicinity of that place would cause adverse effects on environmental conditions in the vicinity of that place<sup>19</sup>; or
- 2066 (ii) subject to certain provisions<sup>20</sup>, on the ground that that place would be unsuitable on environmental grounds other than the ground mentioned in head (i) above for use as an operating centre of the licence holder<sup>21</sup>.

The traffic commissioner may not refuse the application on the ground mentioned in head (ii) above if on the date the application was made, the place in question was already specified in an operator's licence<sup>22</sup> issued by the commissioner as an operating centre of the holder of that licence<sup>23</sup>, or the applicant has produced to the commissioner a certificate in force in respect of that place under the Town and Country Planning Act 1990<sup>24</sup>, stating that its use as an operating centre for vehicles used under any operator's licence is or would be lawful<sup>25</sup>.

Any objection or representations<sup>26</sup> must contain particulars of any matters alleged by the person making the objection or representations to be relevant to the issue to which the objection relates or the representations relate<sup>27</sup>, and must be made in the prescribed manner and within the prescribed time after the making of the application to which the objection relates or the representations relate<sup>28</sup>. Where the traffic commissioner considers there to be exceptional circumstances that justify his doing so, he may direct that an objection or representations be treated for the purposes of the Goods Vehicles (Licensing of Operators) Act 1995 as duly made<sup>29</sup>, notwithstanding that the objection was not, or the representations were not, made within the prescribed time or in the prescribed manner<sup>30</sup>.

1 For the meaning of 'operator's licence' see PARA 1329 ante.

2 Goods Vehicles (Licensing of Operators) Act 1995 s 19(1). The text refers to the publication under s 17(3): see PARA 1347 ante.

3 For the meaning of 'operating centre' see PARA 1332 note 12 ante.

4 As to the meaning of 'operating centre of the holder of an operator's licence' see PARA 1332 note 12 ante.

5 As to the functions of traffic commissioners see PARA 1326 ante.

6 For the meaning of 'area' see PARA 1326 note 1 ante.

7 I.e. any of the persons mentioned in the Goods Vehicles (Licensing of Operators) Act 1995 s 12(2): see PARA 1338 heads (a)-(d) ante.

8 Ibid s 19(1), (2)(a).

9 I.e. subject to ibid s 19(5): see note 11 infra.

10 For the meaning of 'owner' see PARA 1338 note 19 ante.

11 Goods Vehicles (Licensing of Operators) Act 1995 s 19(1), (2)(b). A person may not make representations under s 19(2)(b) or s 19(4)(b) unless any adverse effects on environmental conditions arising from the use of the operating centre or place in question would be capable of prejudicially affecting the use or enjoyment of the land there mentioned: s 19(5). For the meaning of 'owner' see PARA 1338 note 19 ante; and for the meaning of 'occupier' see PARA 1338 note 20 ante.

12 Ibid s 19(1), (2)(c). For the purposes of s 19(2), an application is taken to relate to an operating centre if granting it would or could result in an increase in the number of vehicles, or the number of vehicles above a certain weight, that have that centre as their operating centre (s 19(3)(a)); or any undertaking recorded in, or condition attached to, the licence that the application seeks to have varied or removed relates to that centre (s 19(3)(b)).

13 I.e. any of the persons mentioned in ibid s 12(2): see PARA 1338 heads (a)-(d) ante.

14 Ibid s 19(4)(a).

15 I.e. subject to ibid s 19(5): see note 11 supra.

16 Ibid s 19(4)(b). See also note 11 supra.

17 I.e. under ibid s 19(4): see the text and notes 13-16 supra.

18 As to the meaning of 'using a vehicle' see PARA 1329 note 2 ante.

19 Goods Vehicles (Licensing of Operators) Act 1995 s 19(6)(a).

20 Ie subject to the provisions of *ibid* s 19(7): see the text and notes 22-25 *infra*.

21 *Ibid* s 19(6)(b). The discretion of the licensing authority is not limited to environmental grounds: see *Hi-Line Transport Ltd* (1991) RLR 31.

22 A place is not to be regarded for the purposes of the Goods Vehicles (Licensing of Operators) Act 1995 s 19(7)(a) as being specified in an operator's licence by reason only that it forms part of a place so specified; and a place that was, on the date mentioned in s 19(7)(a), a place specified in an operator's licence as mentioned in s 19(7)(a) must be disregarded for the purposes of s 19(7)(a) if, on that date:

1348 (1) the operator's licence in which that place was specified was an interim licence issued under s 24 (see PARA 1354 *post*) (s 19(9)(a)); or

1349 (2) that place was so specified by virtue of an interim direction such as is mentioned in s 25 (see PARA 1355 *post*) (s 19(9)(b)); or

1350 (3) such conditions relating to the exercise of the right of any person to appeal against a place being specified in an operator's licence (s 19(9)(c)(i)) or the review under s 36 (see PARA 1368 *post*) of any decision so to specify a place (s 19(9)(c)(ii)) as may be prescribed were not satisfied in relation to that place (s 19(9)(c)).

As to the prescribed conditions for the purposes of head (3) *supra* see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 16. For the meaning of 'interim licence' see PARA 1344 note 12 *ante*. For the meaning of 'interim direction' see PARA 1344 note 12 *ante*. For the meaning of 'prescribed' see PARA 1332 note 7 *ante*.

23 Goods Vehicles (Licensing of Operators) Act 1995 s 19(7)(a). See also note 22 *supra*.

24 *Ibid* s 19(7)(b)(i). The text refers to the Town and Country Planning Act 1990 s 191 (as substituted) (see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 586) or s 192 (as substituted) (see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 587).

25 Goods Vehicles (Licensing of Operators) Act 1995 s 19(7)(b). Section 19(7)(b) does not apply in relation to any place that, at the time the application is determined by the traffic commissioner, is specified in an operator's licence as an operating centre of the holder of that licence: s 19(8). As to being authorised to use a vehicle under an operator's licence see PARA 1330 note 10 *ante*.

26 Ie under *ibid* s 19.

27 *Ibid* s 19(10)(a).

28 *Ibid* s 19(10)(b). As to the time and manner of making objections or representations see the Goods Vehicles (Operators' Licences) Regulations 1995, SI 1995/2869, regs 11-13.

29 Ie under the Goods Vehicles (Licensing of Operators) Act 1995 s 19.

30 *Ibid* s 19(11).

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### **1350. Further provisions relating to the variation of licences.**

Where the holder of a restricted licence<sup>1</sup> makes an application<sup>2</sup> to the traffic commissioner<sup>3</sup> by whom the licence was issued to vary it by directing that it be converted into a standard licence<sup>4</sup>:

- 2067 (1) specified provisions<sup>5</sup> apply in relation to that application as they apply in relation to an application for a standard licence<sup>6</sup>; and
- 2068 (2) if the application is granted, certain provisions<sup>7</sup> apply to the giving of the direction to vary the restricted licence as they apply to the issuing of a standard licence<sup>8</sup>.

Where the holder of a standard licence which covers only national transport operations<sup>9</sup> makes an application<sup>10</sup> to the traffic commissioner by whom the licence was issued for a direction that the licence be varied to cover both national and international transport operations<sup>11</sup> the applicant must include in his application particulars about the professional competence on which he intends to rely<sup>12</sup>, and the traffic commissioner must refuse to direct the variation applied for unless he is satisfied that the professional competence on which the applicant proposes to rely is sufficient for the purposes of international transport operations<sup>13</sup>.

1 For the meaning of 'restricted licence' see PARA 1330 note 3 ante.

2 Ie under the Goods Vehicles (Licensing of Operators) Act 1995 s 17: see PARA 1347 ante.

3 As to the functions of traffic commissioners see PARA 1326 ante.

4 Goods Vehicles (Licensing of Operators) Act 1995 s 20(1). For the meaning of 'standard licence' see PARA 1330 note 2 ante.

5 Ie ibid s 9(2), (3)(b) (see PARA 1335 ante), and (without prejudice to the generality of s 17(5) (see PARA 1347 ante)) s 13(1) (see PARA 1339 ante).

6 Ibid s 20(1)(a).

7 Ie ibid s 22(2): see PARA 1352 post.

8 Ibid s 20(1)(b).

9 As to the meaning of 'national transport operations' see PARA 1330 note 11 ante.

10 Ie under the Goods Vehicles (Licensing of Operators) Act 1995 s 17: see PARA 1347 ante.

11 As to the meaning of 'international transport operations' see PARA 1330 note 11 ante.

12 Goods Vehicles (Licensing of Operators) Act 1995 s 20(2)(a). For the meaning of 'professional competence' see PARA 1342 note 1 ante.

13 Ibid s 20(2)(b).

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## **(vi) Conditions attached to Licences**

### **1351. Conditions for securing road safety.**

On issuing an operator's licence<sup>1</sup>, or on varying such a licence<sup>2</sup>, a traffic commissioner<sup>3</sup> may attach to the licence such conditions as he thinks fit for preventing vehicles that are authorised to be used<sup>4</sup> under it from causing danger to the public<sup>5</sup>:

- 2069 (1) at any point where vehicles first join a public road<sup>6</sup> on their way from an operating centre<sup>7</sup> of the licence holder<sup>8</sup> (or last leave a public road on their way to such an operating centre)<sup>9</sup>; and
- 2070 (2) on any road<sup>10</sup> (other than a public road) along which vehicles are driven<sup>11</sup> between such a point and the operating centre<sup>12</sup>.

On varying an operator's licence<sup>13</sup> a traffic commissioner may vary or remove any condition attached to the licence<sup>14</sup>. The traffic commissioner must not attach to an operator's licence any condition<sup>15</sup>, or vary in such manner as imposes new or further restrictions or requirements any condition attached to an operator's licence<sup>16</sup>, without first giving the applicant for the licence or (as the case may be) the licence holder an opportunity to make representations to the commissioner with respect to the effect on his business of the proposed condition or variation<sup>17</sup>. The traffic commissioner must give special consideration to any such representations<sup>18</sup> in determining whether to attach the proposed condition or make the proposed variation<sup>19</sup>.

Any person who contravenes<sup>20</sup> any condition attached<sup>21</sup> to a licence of which he is the holder is guilty of an offence<sup>22</sup>.

1 For the meaning of 'operator's licence' see PARA 1329 ante.

2 *Ie* under the Goods Vehicles (Licensing of Operators) Act 1995 s 17: see PARA 1347 ante.

3 As to the functions of traffic commissioners see PARA 1326 ante.

4 As to being authorised to use a vehicle under an operator's licence see PARA 1330 note 10 ante. As to the meaning of 'using a vehicle' see PARA 1329 note 2 ante.

5 Goods Vehicles (Licensing of Operators) Act 1995 s 21(1). As to the meaning of 'public' see PARA 1137 note 10 ante.

6 For these purposes, 'public road' means a highway maintainable at the public expense for the purposes of the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 248): Goods Vehicles (Licensing of Operators) Act 1995 s 21(5)(a).

7 For the meaning of 'operating centre' see PARA 1332 note 12 ante.

8 As to the meaning of 'operating centre of the holder of an operator's licence' see PARA 1332 note 12 ante.

9 Goods Vehicles (Licensing of Operators) Act 1995 s 21(1)(a).

10 For the meaning of 'road' see PARA 206 ante.

11 For the meaning of 'drive' see PARA 207 ante.

12 Goods Vehicles (Licensing of Operators) Act 1995 s 21(1)(b).

13 *Ie* under *ibid* s 17: see PARA 1347 ante.

14 *Ibid* s 21(2). The reference in the text to any condition attached to the licence is to any condition so attached under s 21.

15 *Ibid* s 21(3)(a). The reference in the text to any condition is to such a condition as is mentioned in s 21.

16 *Ibid* s 21(3)(b). The reference in the text to any condition attached to the licence is to any condition so attached under s 21.

17 *Ibid* s 21(3).

18 *Ie* representations made under *ibid* s 21(3): see the text and notes 15-17 *supra*.

19 *Ibid* s 21(4).

20 For the meaning of 'contravene' see PARA 1329 note 16 ante.

21 le under the Goods Vehicles (Licensing of Operators) Act 1995 s 21.

22 Ibid s 21(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 21(6). As to the standard scale see PARA 230 note 3 ante.

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### **1352. Conditions as to matters required to be notified to traffic commissioner.**

On issuing an operator's licence<sup>1</sup>, a traffic commissioner<sup>2</sup> may attach to the licence such conditions as he thinks fit<sup>3</sup> for requiring the holder to inform him:

- 2071 (1) of any change of a kind specified in the conditions in the organisation, management or ownership of the trade or business<sup>4</sup> in the course of which vehicles are used<sup>5</sup> under the licence<sup>6</sup> or, if the licence is at any time suspended<sup>7</sup>, were used under the licence immediately before its suspension<sup>8</sup>;
- 2072 (2) where the licence holder is a company, of any change, or of any change of a kind specified in the conditions, in the persons holding shares in the company<sup>9</sup>; or
- 2073 (3) of any other event of a kind specified in the conditions which affects the licence holder and which is relevant to the exercise of any powers of the traffic commissioner in relation to the licence<sup>10</sup>.

On issuing a standard licence<sup>11</sup>, a traffic commissioner must attach to it the following conditions, namely:

- 2074 (a) a condition requiring the licence holder to inform the commissioner of any event which could affect the fulfilment by the licence holder of any of specified requirements<sup>12</sup>, and to do so within 28 days of the event<sup>13</sup>; and
- 2075 (b) a condition requiring the licence holder to inform the commissioner of any event which could affect the fulfilment by a relevant transport manager<sup>14</sup> of specified requirements<sup>15</sup>, and to do so within 28 days of the event coming to the licence holder's knowledge<sup>16</sup>.

In a case where the licence holder is a company, no condition attached<sup>17</sup> is to be taken to require the company to inform the traffic commissioner of any change in the identity of the persons holding shares in the company unless the change is such as to cause a change in the control of the company<sup>18</sup>.

Any person who contravenes<sup>19</sup> any condition attached<sup>20</sup> to a licence of which he is the holder is guilty of an offence<sup>21</sup>.

1 For the meaning of 'operator's licence' see PARA 1329 ante.

2 As to the functions of traffic commissioners see PARA 1326 ante.

3 Goods Vehicles (Licensing of Operators) Act 1995 s 22(1). Where the traffic commissioner has power to give a direction in respect of a licence under s 26(1) (see PARA 1356 post), the commissioner also has power to direct that a condition, or additional condition, such as is mentioned in s 22(1) be attached to the licence: s 26(2). In the Goods Vehicles (Licensing of Operators) Act 1995 any reference, in relation to an operator's

licence, to a condition attached to the licence under s 22(1) includes any condition attached to the licence under s 26(2): s 26(3).

4 For the meaning of 'trade or business' see PARA 1329 note 6 ante.

5 As to the meaning of 'using a vehicle' see PARA 1329 note 2 ante.

6 As to being authorised to use a vehicle under an operator's licence see PARA 1330 note 10 ante.

7 le under the Goods Vehicles (Licensing of Operators) Act 1995 s 26 (see PARA 1356 post) or s 28 (see PARA 1358 post).

8 Ibid s 22(1)(a).

9 Ibid s 22(1)(b).

10 Ibid s 22(1)(c).

11 For the meaning of 'standard licence' see PARA 1330 note 2 ante.

12 le the requirements of the Goods Vehicles (Licensing of Operators) Act 1995 s 13(3): see PARA 1339 ante.

13 Ibid s 22(2)(a).

14 The reference to a 'relevant transport manager' is a reference to any transport manager employed by the licence holder who is relied on by the licence holder to fulfil the requirements of ibid s 13(3)(c) (see PARA 1339 head (1)(c) ante): s 22(3). For the meaning of 'transport manager' see PARA 1335 note 5 ante.

15 le the requirements mentioned in ibid s 13(3)(a) or s 13(3)(c): see PARA 1339 heads (1)(a), (1)(c) ante.

16 Ibid s 22(2)(b). As to the period within which an act must be done see TIME vol 97 (2010) PARAS 336-341.

17 le under the Goods Vehicles (Licensing of Operators) Act 1995 s 22(2): see the text and notes 13-16 supra.

18 Ibid s 22(4). For the purposes of s 22(4), a change in the control of a company occurs when the beneficial ownership of more than half its equity share capital (as defined in the Companies Act 1985 s 744: see COMPANIES vol 15 (2009) PARA 1047) passes from one person to another person or from one group of persons to a wholly or substantially different group of persons: Goods Vehicles (Licensing of Operators) Act 1995 s 22(5).

19 For the meaning of 'contravenes' see PARA 1329 note 16 ante.

20 le under the Goods Vehicles (Licensing of Operators) Act 1995 s 22.

21 Ibid s 22(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 22(6). As to the standard scale see PARA 230 note 3 ante.

## UPDATE

### 1352 Conditions as to matters required to be notified to traffic commissioner

NOTE 18--Goods Vehicles (Licensing of Operators) Act 1995 s 22(5) amended: SI 2009/1941.

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### 1353. Conditions as to use of operating centres.

On issuing an operator's licence<sup>1</sup>, or on varying such a licence on an application of which notice has been published<sup>2</sup>, a traffic commissioner<sup>3</sup> may attach to the licence such conditions as he thinks fit for preventing or minimising any adverse effects on environmental conditions arising from the use of a place in his area<sup>4</sup> as an operating centre<sup>5</sup> of the licence holder<sup>6</sup>. The conditions which may be attached to a licence<sup>7</sup> must be of such description as may be prescribed<sup>8</sup>, and the descriptions which may be prescribed include conditions regulating:

- 2076 (1) the number, type and size of motor vehicles<sup>9</sup> or trailers<sup>10</sup> which may at any one time be at any operating centre of the licence holder in the area of the traffic commissioner for any prescribed purpose<sup>11</sup>;
- 2077 (2) the parking arrangements to be provided at or in the vicinity of any such centre<sup>12</sup>; and
- 2078 (3) the hours at which operations of any prescribed description may be carried on at any such centre<sup>13</sup>.

On varying an operator's licence on an application of which notice has been published<sup>14</sup>, a traffic commissioner may vary or remove any condition attached to the licence<sup>15</sup>. The traffic commissioner must not attach any such condition to an operator's licence<sup>16</sup>, or vary in such manner as imposes new or further restrictions or requirements any condition attached<sup>17</sup> to an operator's licence<sup>18</sup>, without first giving the applicant for the licence or (as the case may be) the licence holder an opportunity to make representations to the commissioner with respect to the effect on his business of the proposed condition or variation<sup>19</sup>. The traffic commissioner must give special consideration to any such representations in determining whether to attach the proposed condition or make the proposed variation<sup>20</sup>.

Any person who contravenes<sup>21</sup> any condition attached<sup>22</sup> to a licence of which he is the holder is guilty of an offence<sup>23</sup>.

1 For the meaning of 'operator's licence' see PARA 1329 ante.

2 Ie under the Goods Vehicles (Licensing of Operators) Act 1995 s 17(3): see PARA 1347 ante.

3 As to the functions of traffic commissioners see PARA 1326 ante.

4 For the meaning of 'area' see PARA 1326 note 1 ante.

5 For the meaning of 'operating centre' see PARA 1332 note 12 ante.

6 Goods Vehicles (Licensing of Operators) Act 1995 s 23(1). As to the meaning of 'operating centre of the holder of an operator's licence' see PARA 1332 note 12 ante. See also *Road Equipment Rental Ltd v GM Waldron* (1993) RLR 20; *HE Baldry* (1993) RLR 129.

7 Ie under the Goods Vehicles (Licensing of Operators) Act 1995 s 23.

8 For the meaning of 'prescribed' see PARA 1332 note 7 ante.

9 For the meaning of 'motor vehicle' see PARA 210 ante.

10 For the meaning of 'trailer' see PARA 210 ante.

11 Goods Vehicles (Licensing of Operators) Act 1995 s 23(2)(a). Section 23(2) is expressed to be without prejudice to the generality of s 23(1): see the text and notes 1-6 supra.

12 Ibid s 23(2)(b).

13 Ibid s 23(2)(c). See also note 11 supra. As to the conditions which may be attached see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 14.

14 Ie under the Goods Vehicles (Licensing of Operators) Act 1995 s 17(3): see PARA 1347 ante.



- 15 Ibid s 23(3). The reference in the text to a condition attached to a licence is to one so attached under s 23.
- 16 Ibid s 23(4)(a).
- 17 Ie under ibid s 23.
- 18 Ibid s 23(4)(b).
- 19 Ibid s 23(4).
- 20 Ibid s 23(5).
- 21 For the meaning of 'contravenes' see PARA 1329 note 16 ante.
- 22 Ie under the Goods Vehicles (Licensing of Operators) Act 1995 s 23.
- 23 Ibid s 23(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 23(6). As to the standard scale see PARA 230 note 3 ante.

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## **(vii) Interim Licences and Interim Variations**

### **1354. Interim operators' licences.**

On an application for an operator's licence<sup>1</sup> (a 'full' licence), a traffic commissioner<sup>2</sup> may, if the applicant so requests, issue to him an interim licence<sup>3</sup>. The traffic commissioner may issue an interim licence in the same terms as those applied for in relation to the full licence or in terms that differ from those terms in certain respects<sup>4</sup>. If the traffic commissioner grants the application and issues to the applicant a full licence that is in the terms applied for<sup>5</sup>, or is in those terms subject only to the attachment<sup>6</sup> of any conditions that are also attached to the interim licence<sup>7</sup>, the interim licence terminates on the date on which the full licence comes into force<sup>8</sup>.

If, on an appeal<sup>9</sup> arising out of the application, the Transport Tribunal orders the traffic commissioner to issue a full licence to the applicant, the interim licence terminates on the date on which the full licence issued in pursuance of the order comes into force<sup>10</sup>, or at the time at which the application is withdrawn or treated as withdrawn<sup>11</sup>. Where, in a specified case<sup>12</sup>, the application is granted, the full licence issued to the applicant is of no effect before the interim licence terminates (notwithstanding any statement in it to the contrary)<sup>13</sup>.

1 For the meaning of 'operator's licence' see PARA 1329 ante.

2 As to the functions of traffic commissioners see PARA 1326 ante.

3 Goods Vehicles (Licensing of Operators) Act 1995 s 24(1). For the meaning of 'interim licence' see PARA 1344 note 12 ante. A request for the issuing of an interim licence is not treated as an application for an operator's licence for the purposes of s 10 (see PARA 1336 ante), s 11 (see PARA 1337 ante), s 12 (see PARA 1338 ante), s 13 (see PARA 1339 ante), s 14 (see PARA 1344 ante), s 15(1)-(4) (see PARA 1345 ante), s 36 (see PARA 1368 post), s 37 (see PARA 1369 post) or s 33, Sch 4 (see PARA 1364 post) (s 24(8)(a)), but is treated as such an application for the purposes of any other provision of the Goods Vehicles (Licensing of Operators) Act 1995 (s 24(8)(b)).

4 Ibid s 24(3). The reference in the text to terms that differ in certain respects is to those that differ in any of the respects mentioned in s 15(3) (see PARA 1345 ante): see s 24(3).

5 Ibid s 24(4)(a).

6 Ie under ibid s 21 (see PARA 1351 ante), s 22 (see PARA 1352 ante) or s 23 (see PARA 1353 ante).

7 Ibid s 24(4)(b).

8 Ibid s 24(4).

9 Ie under ibid s 37: see PARA 1369 post.

10 Ibid s 24(5)(a). As to the Transport Tribunal see PARAS 253-258 ante.

11 Ibid s 24(5)(b). The reference in the text to when the application is withdrawn or treated as withdrawn is a reference to when it is withdrawn or treated as withdrawn by virtue of s 45(3): see PARA 1375 post. If neither s 24(4) nor s 24(5) applies, the interim licence terminates on the date on which the application is finally disposed of or such earlier date as the applicant may specify in a written request to the traffic commissioner: s 24(6). In ss 24, 25 references to the date on which an application is finally disposed of are references, subject to s 24(9)(b), to the earliest date by which the application and any appeal to the Transport Tribunal arising out of the application have been determined and any time for bringing such an appeal has expired (s 24(9)(a)), or, if the application is withdrawn or any such appeal is abandoned, to the date of the withdrawal or abandonment (s 24(9)(b)).

12 Ie in a case within ibid s 24(6): see note 11 supra.

13 Ibid s 24(7).

## UPDATE

### 1354 Interim operators' licences

TEXT AND NOTES 10, 11--References to Transport Tribunal are now to Upper Tribunal: Goods Vehicles (Licensing of Operators) Act 1995 s 24(5), (9)(a) (amended by SI 2009/1885).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/13. GOODS VEHICLES/(2) GOODS VEHICLE LICENSING/(vii) Interim Licences and Interim Variations/1355. Interim variations.

### 1355. Interim variations.

On an application for the variation<sup>1</sup> of an operator's licence<sup>2</sup>, if the applicant so requests the traffic commissioner<sup>3</sup> may, before he has determined the application, vary the licence by giving an interim direction<sup>4</sup> in respect of it<sup>5</sup>. If on determining the application the traffic commissioner varies the licence by giving a direction in the terms applied for and does not also attach or vary any conditions<sup>6</sup>, the interim direction ceases to have effect on the date on which the direction given on the application comes into force<sup>7</sup>. Otherwise<sup>8</sup>, the interim direction ceases to have effect on the date on which the application is finally disposed of<sup>9</sup> or such earlier date as the applicant may specify in a written request to the traffic commissioner<sup>10</sup>. Where, in that case<sup>11</sup>, on determining the application the traffic commissioner gives a direction varying the licence, that direction can be of no effect before the interim direction ceases to have effect<sup>12</sup>.

1 Ie under the Goods Vehicles (Licensing of Operators) Act 1995 s 17: see PARA 1347 ante.

- 2 For the meaning of 'operator's licence' see PARA 1329 ante.
- 3 As to the functions of traffic commissioners see PARA 1326 ante.
- 4 For the meaning of 'interim direction' see PARA 1344 note 12 ante.
- 5 Goods Vehicles (Licensing of Operators) Act 1995 s 25(1). A request for an interim direction to be given must not be treated as an application for the variation of an operator's licence for the purposes of s 17(3) (see PARA 1347 ante), s 37 (see PARA 1369 post) or s 33, Sch 4 (see PARA 1364 post) (s 25(6)(a)), but must be treated as such an application for the purposes of any other provision of the Goods Vehicles (Licensing of Operators) Act 1995 (s 25(6)(b)).
- 6 Ie under ibid s 21(1) or (2) (see PARA 1351 ante) or s 23(1) or (3) (see PARA 1353 ante).
- 7 Ibid s 25(3).
- 8 Ie if ibid s 25(3) does not apply: see the text and note 7 supra.
- 9 For these purposes, the reference to the date on which the application is finally disposed of is to be construed in accordance with ibid s 24(9) (see PARA 1354 note 11 ante): s 25(7).
- 10 Ibid s 25(4). For the meaning of 'written' see PARA 1139 note 11 ante.
- 11 Ie in a case within ibid s 25(4): see the text and note 10 supra.
- 12 Ibid s 25(5).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/13. GOODS VEHICLES/(2) GOODS VEHICLE LICENSING/(viii) Revocation, Suspension and Curtailment of Licences and Disqualification/1356. Revocation, suspension and curtailment of operators' licences.

## **(viii) Revocation, Suspension and Curtailment of Licences and Disqualification**

### **1356. Revocation, suspension and curtailment of operators' licences.**

The traffic commissioner<sup>1</sup> by whom an operator's licence<sup>2</sup> was issued may direct that it be revoked, suspended or curtailed<sup>3</sup> on any of the following grounds<sup>4</sup>:

- 2079 (1) that a place in the commissioner's area<sup>5</sup> has, at a time when it was not specified in the licence as an operating centre of the licence holder<sup>6</sup>, been used as an operating centre for vehicles authorised to be used under the licence<sup>7</sup>;
- 2080 (2) that the licence holder has contravened<sup>8</sup> any condition attached to the licence<sup>9</sup>;
- 2081 (3) that during the five years ending with the date on which the direction is given there has been:
  - 123 211. (a) a conviction of the licence holder of a certain type of offence<sup>10</sup>;
  212. (b) a conviction of a servant or agent of the licence holder of any such offence other than an excepted offence<sup>11</sup>; or
  213. (c) a prohibition under the Road Traffic Act 1988<sup>12</sup> of the driving<sup>13</sup> of a vehicle of which the licence holder was the owner<sup>14</sup> when the prohibition was imposed<sup>15</sup>;

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- 2082 (4) that during those five years, on occasions appearing to the commissioner to be sufficiently numerous to justify the giving of a direction<sup>16</sup>, there has been a conviction of the licence holder or a servant or agent of his of a specified offence<sup>17</sup>;
- 2083 (5) that the licence holder made, or procured to be made, for the purposes of:  
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214. (a) his application for the licence<sup>18</sup>;
215. (b) an application for the variation of the licence<sup>19</sup>; or
216. (c) a request for a direction<sup>20</sup>,  
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- 2084 a statement of fact that, whether to his knowledge or not, was false, or a statement of expectation that has not been fulfilled<sup>21</sup>;
- 2085 (6) that any undertaking recorded in the licence has not been fulfilled<sup>22</sup>;
- 2086 (7) that the licence holder, being an individual, has been adjudged bankrupt or, being a company, has gone into liquidation, other than voluntary liquidation for the purpose of reconstruction<sup>23</sup>;
- 2087 (8) that since the licence was issued or varied there has been a material change in any of the circumstances of the licence holder that were relevant to the issue or variation of the licence<sup>24</sup>;
- 2088 (9) that the licence is liable to revocation, suspension or curtailment by virtue of a direction<sup>25</sup>.

Where the existence of any of the grounds mentioned in heads (1) to (9) above is brought to the notice of the traffic commissioner in the case of the holder of any licence issued by him, the commissioner must consider whether or not to give such a direction in respect of that licence<sup>26</sup>.

Where the traffic commissioner directs that an operator's licence be suspended or curtailed, the commissioner may order:

- 2089 (i) in the case of a suspension, that any motor vehicle<sup>27</sup> specified in the licence may not be used under any other operator's licence notwithstanding the rules<sup>28</sup> as to the vehicles authorised to be used under an operator's licence<sup>29</sup>; or
- 2090 (ii) in the case of a curtailment having the effect of removing any motor vehicle from the licence, that the motor vehicle may not be used as mentioned in head (i) above and is not capable of being effectively specified in any other operator's licence<sup>30</sup>.

Such an order<sup>31</sup> ceases to have effect on such date, not being more than six months after the order is made, as may be specified in the order<sup>32</sup>, or if, before that date, the licence which is directed to be suspended or curtailed ceases to be in force, on the date on which it ceases to be in force<sup>33</sup>.

The traffic commissioner by whom any direction suspending or curtailing a licence under heads (1) to (9) above was given may at any time: (A) cancel the direction together with any order<sup>34</sup> that was made when the direction was given<sup>35</sup>; (B) cancel any such order<sup>36</sup>; or (C) with the consent of the licence holder, vary the direction or any such order (or both the direction and any such order)<sup>37</sup>.

Where an operator's licence is suspended<sup>38</sup>, the licence remains in force during the time of its suspension subject to the limitation that no vehicles are authorised to be used under it<sup>39</sup>.

1 As to the functions of traffic commissioners see PARA 1326 ante.

2 For the meaning of 'operator's licence' see PARA 1329 ante.

3 In the Goods Vehicles (Licensing of Operators) Act 1995 references to directing that an operator's licence be curtailed are references to directing (with effect for the remainder of the duration of the licence or for any shorter period) all or any of the following, that is to say:

- 1351 (1) that one or more of the vehicles specified in the licence be removed from it (s 26(11)(a));
- 1352 (2) that a provision such as is mentioned in s 5(2) (see PARA 1332 ante) or s 6(1)(b) or s 6(2)(b) (see PARA 1333 ante) be included in the licence (s 26(11)(b));
- 1353 (3) that any maximum number specified in the licence under s 6 (see PARA 1333 ante) be reduced (s 26(11)(c));
- 1354 (4) that any one or more of the places specified in the licence as operating centres be removed from it (s 26(11)(d)).

For the meaning of 'operating centre' see PARA 1332 note 12 ante.

4 Ibid s 26(1), which is expressed to be subject to ss 26(2)-(11), 29 (see PARA 1359 post). On the revocation of an operator's licence, it is for the traffic commissioner to establish the grounds of revocation, not for the licence holder to satisfy the commissioner to the contrary: *Re Muck It Ltd* [2005] EWCA Civ 1124, [2006] RTR 91.

5 For the meaning of 'area' see PARA 1326 note 1 ante.

6 For the meaning of 'operating centre of the holder of an operator's licence' see PARA 1332 note 12 ante.

7 Goods Vehicles (Licensing of Operators) Act 1995 s 26(1)(a). As to being authorised to use a vehicle under an operator's licence see PARA 1330 note 10 ante. As to the meaning of 'using a vehicle' see PARA 1329 note 2 ante.

8 For the meaning of 'contravened' see PARA 1329 note 16 ante.

9 Goods Vehicles (Licensing of Operators) Act 1995 s 26(1)(b).

10 Ibid s 26(1)(c)(i). The reference in the text to a certain type of offence is to an offence such as is mentioned in s 26, Sch 2 para 5(a)-(i): see PARA 1334 note 22 ante. Where, in a case falling within s 26(1)(c)(i):

- 1355 (1) the conviction in question is a conviction of the licence holder of an offence under s 3(6) (see PARA 1330 ante) or of the corresponding offence under the Goods Vehicles (Operators' Licences, Qualifications and Fees) Regulations 1984, SI 1984/176, reg 33(2) (revoked) (Goods Vehicles (Licensing of Operators) Act 1995 s 26(5)(a)); and
- 1356 (2) there has been, within the five years preceding that conviction, a previous conviction of the licence holder of an offence under either of those provisions (s 26(5)(b)),

the traffic commissioner must give a direction under the Goods Vehicles (Licensing of Operators) Act 1995 s 26(1) to revoke the licence: s 26(5).

In *Thomas Muir (Haulage) Ltd v Secretary of State for Environment, Transport and the Regions* 1999 SLT 666, Ct of Sess, the court considered the scope of the traffic commissioner's power to revoke, suspend or curtail an operator's licence under the Goods Vehicles (Licensing of Operators) Act 1995 s 26, and held that the proper question was whether the direction was appropriate in the public interest; although a direction was not to be treated as though it were a punishment, that did not prevent the traffic commissioner from taking into account disciplinary considerations in seeking to deter the operator from failing to comply with statutory obligations. See also *William Lewis Pattinson* (1963) 32 Traf Cas 240; *FC Brooks & Sons Ltd* (1971) 33 Traf Cas 105; *WF Miners & Sons* (1972) 33 Traf Cas 118; *Supertow Services Ltd* (1974) 33 Traf Cas 131; *Raymond and Marcus Lewis* (1975) 33 Traf Cas 150. See further *George Alexander Roedemer* (1994) RLR 331.

11 Goods Vehicles (Licensing of Operators) Act 1995 s 26(1)(c)(ii). The excepted offences are listed in Sch 2 para 5(c), (e), or (h): see PARA 1334 note 22 ante. As to the servant (or employee) of another see EMPLOYMENT vol 39 (2009) PARAS 2-4; and as to an agent who has authority to act for another see AGENCY.

12 In the Road Traffic Act 1988 s 69 (as substituted) (see PARA 688 ante) or s 70 (as amended) (see PARA 690 ante) (power to prohibit driving of unfit or overloaded vehicles).

13 For the meaning of 'drive' see PARA 207 ante.

14 For the meaning of 'owner' see PARA 1338 note 19 ante.

15 Goods Vehicles (Licensing of Operators) Act 1995 s 26(1)(c)(iii). As from a day to be appointed, s 26(1)(ca) is added by the Road Safety Act 2006 s 6(1), (4), so as to provide for another ground, namely, that during those five years a fixed penalty notice or conditional offer has been issued under the Road Traffic Offenders Act 1988 Pt III (ss 51-90) (as amended) (see PARA 1093 et seq ante) to the licence holder in respect of an offence within the Goods Vehicles (Licensing of Operators) Act 1995 s 26(1)(c)(i) (see head (3)(a) in the text) or to a servant or agent of the licence holder in respect of an offence within s 26(1)(c)(ii) (see head (3)(b) in the text). At the date at which this volume states the law no such day had been appointed.

16 le under the Goods Vehicles (Licensing of Operators) Act 1995 s 26(1).

17 Ibid s 26(1)(d). The reference in the text to a specified offence is to an offence such as is mentioned in Sch 2 para 5(j): see PARA 1334 note 22 head (j) ante. As from a day to be appointed, s 26(1)(d) is amended by the Road Safety Act 2006 s 6(5) so as to refer not only to conviction of such an offence, but also to the issue of a fixed penalty notice or conditional offer under the Road Traffic Offenders Act 1988 Pt III (as amended) to the licence holder or a servant or agent of his in respect of such an offence. At the date at which this volume states the law no such day had been appointed.

18 Goods Vehicles (Licensing of Operators) Act 1995 s 26(1)(e)(i).

19 Ibid s 26(1)(e)(ii).

20 Ibid s 26(1)(e)(iii). The text refers to a direction under s 33, Sch 4 para 1 (see PARA 1364 post) or Sch 4 para 3 (see PARA 1365 post).

21 Ibid s 26(1)(e). 'Procure' has been defined as 'obtain by care and effort' and, it has been said, 'can be more simply paraphrased as 'see to it': see *Re Royal Victoria Pavilion, Ramsgate, Whelan v FTS (Great Britain) Ltd* [1961] Ch 581 at 587, [1961] 3 All ER 83 at 86. Similarly, it has been held that 'to procure means to produce by endeavour. You procure a thing by setting out to see that it happens and taking the appropriate steps to produce that happening': see *A-G's Reference (No 1 of 1975)* [1975] QB 773 at 779, [1975] 2 All ER 684 at 686, CA; applied in *R v Broadfoot* [1976] 3 All ER 753, [1977] Crim LR 690, CA. As to the meaning of 'false' see PARA 1155 note 10 ante.

22 Goods Vehicles (Licensing of Operators) Act 1995 s 26(1)(f).

23 Ibid s 26(1)(g). As to bankruptcy and insolvency in general see BANKRUPTCY AND INDIVIDUAL INSOLVENCY; COMPANY AND PARTNERSHIP INSOLVENCY.

24 Ibid s 26(1)(h).

25 Ibid s 26(1)(i). The text refers to a direction under s 28(4): see PARA 1358 post. Where the traffic commissioner has power to give a direction in respect of a licence under s 26(1), the commissioner also has power to direct that a condition, or additional condition, such as is mentioned in s 22(1) (see PARA 1352 ante) be attached to the licence: s 26(2). In the Goods Vehicles (Licensing of Operators) Act 1995 any reference, in relation to an operator's licence, to a condition attached to the licence under s 22(1) includes any condition attached to the licence under s 26(2): s 26(3).

26 Ibid s 26(4). The text refers to a direction under s 26.

27 For the meaning of 'motor vehicle' see PARA 210 ante.

28 le in the Goods Vehicles (Licensing of Operators) Act 1995 s 5(1)(a): see PARA 1332 ante.

29 See ibid s 26(6)(a).

30 Ibid s 26(6)(b).

31 le under ibid s 26(6): see the text and notes 27-30 supra.

32 Ibid s 26(7)(a). As to the calculation of a prescribed period of time see TIME vol 97 (2010) PARA 329 et seq.

33 Ibid s 26(7)(b).

34 le under ibid s 26(6): see the text and notes 29-30 supra.

35 Ibid s 26(8)(a).

36 Ibid s 26(8)(b).

37 Ibid s 26(8)(c).

38 Ie under ibid s 26.

39 Ibid s 26(9).

## UPDATE

### 1356 Revocation, suspension and curtailment of operators' licences

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/13. GOODS VEHICLES/(2) GOODS VEHICLE LICENSING/(viii) Revocation, Suspension and Curtailment of Licences and Disqualification/1357. Revocation of standard licences.

### 1357. Revocation of standard licences.

The traffic commissioner<sup>1</sup> by whom a standard licence<sup>2</sup> was issued must direct that it be revoked if at any time it appears to him that the licence holder is no longer of good repute<sup>3</sup>, of the appropriate financial standing<sup>4</sup>, or professionally competent<sup>5</sup>.

Before giving such a direction in respect of a licence, the traffic commissioner must give to its holder notice in writing<sup>6</sup> that he is considering giving such a direction<sup>7</sup>. Such a notice must state the grounds on which the traffic commissioner is considering giving such a direction and must also state that written representations with respect to those grounds may be made to the commissioner by the licence holder<sup>8</sup>, and that any such representations must be received by the commissioner within 21 days of the date of the notice<sup>9</sup>, and the traffic commissioner must consider any representations duly made<sup>10</sup>.

1 As to the functions of traffic commissioners see PARA 1326 ante.

2 For the meaning of 'standard licence' see PARA 1330 note 2 ante.

3 Goods Vehicles (Licensing of Operators) Act 1995 s 27(1)(a). As to the meaning of 'good repute' see PARA 1340 ante.

4 Ibid s 27(1)(b). For the meaning of 'appropriate financial standing' see PARA 1341 ante.

5 Ibid s 27(1)(c). For the meaning of 'professional competence' see PARA 1342 note 1 ante. The traffic commissioner must determine whether or not that is the case in accordance with s 27, Sch 3: see s 27(1). See *Re Muck It Ltd* [2005] EWCA Civ 1124, [2006] RTR 91 (cited in PARA 1356 note 4 ante).

6 For the meaning of 'writing' see PARA 1139 note 11 ante.

7 Goods Vehicles (Licensing of Operators) Act 1995 s 27(2).

8 Ibid s 27(3)(a).

9 Ibid s 27(3)(b). As to the period within which an act must be done see TIME vol 97 (2010) PARAS 336-341; and as to the calculation of a prescribed period of time see TIME vol 97 (2010) PARA 329 et seq.

<sup>10</sup> Ibid s 27(3). The reference in the text to representations duly made is a reference to those so made under s 27(3). Section 27 has effect subject to s 29 (see PARA 1359 post): s 27(4). Nothing in s 27(3) is to be taken to affect a person's right under s 29(1) to require the holding of an inquiry: s 27(4).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/13. GOODS VEHICLES/(2) GOODS VEHICLE LICENSING/(viii) Revocation, Suspension and Curtailment of Licences and Disqualification/1358. Disqualification.

### **1358. Disqualification.**

Where a traffic commissioner<sup>1</sup> directs that an operator's licence<sup>2</sup> be revoked<sup>3</sup>, the commissioner may order the person who was the holder of the licence to be disqualified (either indefinitely or for such period as the commissioner thinks fit) from holding or obtaining an operator's licence<sup>4</sup>, and so long as the disqualification is in force any operator's licence held by him at the date of the making of the order (other than the licence revoked) must be suspended<sup>5</sup>, and, notwithstanding the provisions relating to the determination of applications for operators' licences and interim operators' licences<sup>6</sup>, no operator's licence may be issued to him<sup>7</sup>. If a person applies for or obtains an operator's licence while he is so disqualified<sup>8</sup> he is guilty of an offence<sup>9</sup>; and any operator's licence issued to him on the application, or (as the case may be) the operator's licence obtained by him, is void<sup>10</sup>.

Where the traffic commissioner makes an order<sup>11</sup> in respect of any person, the commissioner may direct that if that person, at any time or during such period as the commissioner may specify is a director of, or holds a controlling interest in, a company<sup>12</sup> which holds a licence of the kind to which the order in question applies<sup>13</sup>, or a company of which such a company is a subsidiary<sup>14</sup>, or operates any goods vehicles<sup>15</sup> in partnership with a person who holds such a licence<sup>16</sup>, that licence of that company or, as the case may be, of that person, is liable to revocation, suspension or curtailment<sup>17</sup>.

The powers of disqualification conferred<sup>18</sup> in relation to the person who was the holder of a licence are exercisable also where that person was a company, in relation to any director of that company<sup>19</sup>, and where that person operated vehicles under the licence in partnership with other persons, in relation to any of those other persons<sup>20</sup>.

The traffic commissioner by whom any such order disqualifying a person was made may at any time cancel that order together with any direction that was given<sup>21</sup> when the order was made<sup>22</sup>, cancel any such direction<sup>23</sup>, or, with the consent of the person disqualified, vary the order or any such direction (or both the order and any such direction)<sup>24</sup>. Where an operator's licence is suspended<sup>25</sup>, the licence remains in force during the time of its suspension subject to the limitation that no vehicles are authorised to be used under it<sup>26</sup>.

1 As to the functions of traffic commissioners see PARA 1326 ante.

2 For the meaning of 'operator's licence' see PARA 1329 ante.

3 Ie under the Goods Vehicles (Licensing of Operators) Act 1995 s 26(1) (see PARA 1356 ante) or s 27(1) (see PARA 1357 ante).

4 Ibid s 28(1).

5 Ibid s 28(1)(a). See note 7 infra.

6 Ie notwithstanding anything in ibid s 13 (see PARA 1339 ante) or s 24 (see PARA 1354 ante).



7 Ibid s 28(1)(b). An order under s 28(1) may be limited so as to apply only to the holding or obtaining of an operator's licence in respect of one or more specified traffic areas (s 28(3)) and, if the order is so limited, the provisions of s 28(1)(a), (b) and s 28(2) apply only to any operator's licence to which the order applies (s 28(3)(a)), but (notwithstanding s 5(4)(b) (see PARA 1332 ante)) no other operator's licence held by the person in question can authorise the use by him of any vehicle at a time when its operating centre is in a traffic area in respect of which he is disqualified by virtue of the order (s 28(3)(b)). For the meaning of 'traffic area' see PARA 1326 note 1 ante. As to the meaning of 'using a vehicle' see PARA 1329 note 2 ante. For the meaning of 'operating centre' see PARA 1332 note 12 ante.

8 le under ibid s 28(1): see the text and notes 1-7 supra.

9 Ibid s 28(2)(a). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 28(2)(a). As to the standard scale see PARA 230 note 3 ante.

10 Ibid s 28(2)(b).

11 le under ibid s 28(1): see the text and notes 1-7 supra.

12 For the purposes of ibid s 28, a person holds a controlling interest in a company if he is the beneficial owner of more than half its equity share capital (as defined in the Companies Act 1985 s 744 (see COMPANIES vol 15 (2009) PARA 1047)): Goods Vehicles (Licensing of Operators) Act 1995 s 28(8).

13 Ibid s 28(4)(a)(i).

14 Ibid s 28(4)(a)(ii). As to the meaning of 'subsidiary' see PARA 1330 note 5 ante.

15 For the meaning of 'goods vehicle' see PARA 1329 note 3 ante. For the meaning of 'goods' see PARA 1329 note 3 ante.

16 Goods Vehicles (Licensing of Operators) Act 1995 s 28(4)(b).

17 Ibid s 28(4). The reference in the text to a licence being liable to revocation, suspension or curtailment is a reference to revocation, suspension or curtailment under s 26: see PARA 1356 ante.

18 le under ibid s 28(1) (see the text and notes 1-7 supra) and s 28(4) (see the text and notes 13-17 supra).

19 Ibid s 28(5)(a).

20 Ibid s 28(5)(b). Any reference in s 28 or in s 26 (see PARA 1356 ante) or in s 29 (see PARA 1359 post) to s 28(1) (see the text and notes 1-7 supra) or to s 28(4) (see the text and notes 13-17 supra) includes a reference to that provision as it applies by virtue of s 28(5): s 28(5).

21 le under ibid s 28(4): see the text and notes 13-17 supra.

22 Ibid s 28(6)(a).

23 Ibid s 28(6)(b).

24 Ibid s 28(6)(c).

25 le under ibid s 28.

26 Ibid s 28(7). As to being authorised to use a vehicle under an operator's licence see PARA 1330 note 10 ante.

## UPDATE

### 1358 Disqualification

NOTE 12--Goods Vehicles (Licensing of Operators) Act 1995 s 28(8) amended: SI 2009/1941.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/13. GOODS VEHICLES/(2) GOODS VEHICLE LICENSING/(viii) Revocation, Suspension and Curtailment of Licences and Disqualification/1359. Supplementary provisions relating to revocation and disqualification.

### **1359. Supplementary provisions relating to revocation and disqualification.**

A traffic commissioner<sup>1</sup> must not give a direction<sup>2</sup> in respect of any licence<sup>3</sup>, or make an order<sup>4</sup> in respect of any vehicle<sup>5</sup>, or make an order or give a direction<sup>6</sup> in respect of any person<sup>7</sup>, without first holding an inquiry if the holder of the licence or (as the case may be) the person concerned requests him to do so<sup>8</sup>.

1 As to the functions of traffic commissioners see PARA 1326 ante.

2 I.e. under the Goods Vehicles (Licensing of Operators) Act 1995 s 26(1) or (2) (see PARA 1356 ante) or s 27(1) (see PARA 1357 ante).

3 Ibid s 29(1)(a).

4 I.e. under ibid s 26(6): see PARA 1356 ante.

5 Ibid s 29(1)(b).

6 I.e. under ibid s 28(1) or (4): see PARA 1358 ante.

7 Ibid s 29(1)(c).

8 Ibid s 29(1). The traffic commissioner may direct that any direction or order given or made by him under s 26(1), (2) or (6) (see PARA 1356 ante), s 27(1) (see PARA 1357 ante) or s 28(1) or (4) (see PARA 1358 ante) is not to take effect until the expiry of the time within which an appeal may be made to the Transport Tribunal against the direction or order and, if such an appeal is made, until the appeal has been disposed of: s 29(2). If the traffic commissioner refuses to give a direction under s 29(2) the holder of the licence or, as the case may be, the person in respect of whom the direction or order was given or made may apply to the Transport Tribunal for such a direction: s 29(3). The Transport Tribunal must give its decision on any application under s 29(3) within 14 days: s 29(4). As to the Transport Tribunal see PARA 253 et seq ante. As to appeals to the Transport Tribunal see PARA 1369 post.

## **UPDATE**

### **1359 Supplementary provisions relating to revocation and disqualification**

NOTE 8--References to Transport Tribunal are now to Upper Tribunal: Goods Vehicles (Licensing of Operators) Act 1995 s 29(2), (3) (amended by SI 2009/1885). Goods Vehicles (Licensing of Operators) Act 1995 s 29(4) omitted: SI 2009/1885.

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## **(ix) Operating Centres**

### **1360. Operating centres to be specified in operators' licences.**

A person may not use a place in the area<sup>1</sup> of any traffic commissioner<sup>2</sup> as an operating centre<sup>3</sup> for vehicles authorised to be used<sup>4</sup> under any operator's licence<sup>5</sup> issued to him by that commissioner unless that place is specified as an operating centre of his in that licence<sup>6</sup>. Any person who contravenes<sup>7</sup> this provision is guilty of an offence<sup>8</sup>.

1 For the meaning of 'area' see PARA 1326 note 1 ante.

2 As to the functions of traffic commissioners see PARA 1326 ante.

3 For the meaning of 'operating centre' see PARA 1332 note 12 ante.

4 As to using a vehicle see PARA 1329 note 2 ante.

5 As to being authorised to use a vehicle under an operator's licence see PARA 1330 note 10 ante. For the meaning of 'operator's licence' see PARA 1329 ante.

6 Goods Vehicles (Licensing of Operators) Act 1995 s 7(1).

7 For the meaning of 'contravene' see PARA 1329 note 16 ante.

8 Goods Vehicles (Licensing of Operators) Act 1995 s 7(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 7(2). As to the standard scale see PARA 230 note 3 ante.

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### **1361. Periods of review for operating centres.**

Within such time after any period of review as may be prescribed<sup>1</sup>, the traffic commissioner<sup>2</sup> by whom an operator's licence<sup>3</sup> was issued may serve a notice on the licence holder stating that the commissioner is considering whether to exercise any of his powers<sup>4</sup> in relation to a place specified in the licence as operating centre<sup>5</sup> of the licence holder<sup>6</sup>. The periods of review in relation to an operator's licence are the period of five years beginning with the date specified in the licence as the date on which it came into force<sup>7</sup>, and each consecutive period of five years<sup>8</sup>. Regulations may make provision as to the manner in which such notices are to be or may be served, including provision as to the circumstances in which, and the time at which, any such notice is to be treated as having been duly served (whether or not it has in fact been served)<sup>9</sup>.

1 For the meaning of 'prescribed' see PARA 1332 note 7 ante. As to the prescribed period of time see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 17.

2 As to the functions of traffic commissioners see PARA 1326 ante.

3 For the meaning of 'operator's licence' see PARA 1329 ante.

4 Under the Goods Vehicles (Licensing of Operators) Act 1995 s 31 (see PARA 1362 post) and s 32 (see PARA 1363 post).

5 For the meaning of 'operating centre' see PARA 1332 note 12 ante.

6 Goods Vehicles (Licensing of Operators) Act 1995 s 30(1). For the meaning of 'operating centre of the holder of an operator's licence' see PARA 1332 note 12 ante.

7 Ibid s 30(2)(a). As to the calculation of a prescribed period of time see TIME vol 97 (2010) PARA 329 et seq.

8 Ibid s 30(2)(b). Regulations may amend s 30(2) by substituting a higher or lower number (but not a number lower than five) for the number of years for the time being specified in s 30(2)(a), (b): s 30(3). No regulations may be made under s 30(3) unless a draft of them has been laid before, and approved by a resolution of, each House of Parliament: s 57(10). At the date at which this volume states the law no regulations had been made under s 30(3) and there were none having effect thereunder by virtue of s 59(1), Sch 6 para 2 (see PARA 1320 ante). As to regulations and orders see PARA 1321 ante.

9 Ibid s 30(4). As to the manner of service of notice see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, regs 18, 20, Sch 4 para 6.

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### **1362. Power to remove operating centres on review.**

If, having served notice<sup>1</sup> in respect of a place specified in an operator's licence<sup>2</sup>, the traffic commissioner<sup>3</sup> determines that the place is unsuitable: (1) on grounds other than environmental grounds<sup>4</sup>; or (2) on the ground that the parking of vehicles used<sup>5</sup> under the licence at or in the vicinity of the place causes adverse effects on environmental conditions in that vicinity, for use as an operating centre<sup>6</sup> of the licence holder<sup>7</sup>, he may<sup>8</sup> direct that it cease to be specified in the licence<sup>9</sup>. Where the only ground for giving a direction is the ground mentioned in head (2) above<sup>10</sup>, the traffic commissioner may not give such a direction unless during the period of review in question representations were made to him by a specified person<sup>11</sup>, or by a person who is the owner<sup>12</sup> or occupier of any land in the vicinity of the place in question<sup>13</sup>, as to the unsuitability of the place on environmental grounds for continued use as an operating centre for vehicles used under any operator's licence<sup>14</sup>. Any representations<sup>15</sup> must be made in the prescribed<sup>16</sup> manner<sup>17</sup>, and must contain particulars of any matters alleged by the person making the representations to be relevant to the issue to which they relate<sup>18</sup>, but where the traffic commissioner considers there to be exceptional circumstances that justify his doing so, he may direct that representations be treated for the purposes of the Goods Vehicles (Licensing of Operators) Act 1995 as duly made<sup>19</sup> notwithstanding that they were not made in the prescribed manner or within the period of review in question<sup>20</sup>.

1 Ibid under the Goods Vehicles (Licensing of Operators) Act 1995 s 30: see PARA 1361 ante.

2 For the meaning of 'operator's licence' see PARA 1329 ante.

3 As to the functions of traffic commissioners see PARA 1326 ante.

4 Goods Vehicles (Licensing of Operators) Act 1995 s 31(1)(a).

5 As to the meaning of 'using a vehicle' see PARA 1329 note 2 ante.

6 For the meaning of 'operating centre' see PARA 1332 note 12 ante.

7 For the meaning of 'operating centre of the holder of an operator's licence' see PARA 1332 note 12 ante.

8 Ibid subject to the Goods Vehicles (Licensing of Operators) Act 1995 s 31(3): see the text and notes 10-14 infra.

9 Ibid s 31(1), (2). See also PARA 1363 note 6 post.

10 Ibid mentioned under ibid s 31(2): see the text and note 9 supra.

11 Ibid s 31(3)(a). The text refers to such a person as is mentioned in s 12(2): see PARA 1338 text and notes 12-15 ante.

12 For the meaning of 'owner' see PARA 1338 note 19 ante.

13 Goods Vehicles (Licensing of Operators) Act 1995 s 31(3)(b). Representations made by a person such as is mentioned in s 31(3)(b) must be disregarded for the purposes of s 31 if, when they were made, any adverse effects on environmental conditions arising from the continued use of the place in question would not have been capable of prejudicially affecting the use or enjoyment of the land mentioned in s 31(3)(b): s 31(4).

14 Ibid s 31(3).

15 Ie under ibid s 31.

16 For the meaning of 'prescribed' see PARA 1332 note 7 ante.

17 Goods Vehicles (Licensing of Operators) Act 1995 s 31(5)(a). For the prescribed manner of making representations see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 19.

18 Goods Vehicles (Licensing of Operators) Act 1995 s 31(5)(b).

19 Ie under ibid s 31.

20 Ibid s 31(5).

## UPDATE

### 1362 Power to remove operating centres on review

TEXT AND NOTES--SI 1995/2869 reg 31 amended: SI 2007/1898.

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### 1363. Power to attach conditions on review.

If, having served notice<sup>1</sup> in respect of a place specified in an operator's licence<sup>2</sup>, the traffic commissioner<sup>3</sup> does not give a direction in respect of the place<sup>4</sup>, he may direct that conditions (or additional conditions)<sup>5</sup> be attached to the licence<sup>6</sup>, and that any conditions already attached to the licence<sup>7</sup> be varied<sup>8</sup>.

1 Ie under the Goods Vehicles (Licensing of Operators) Act 1995 s 30: see PARA 1361 ante.

2 For the meaning of 'operator's licence' see PARA 1329 ante.

3 As to the functions of traffic commissioners see PARA 1326 ante.

4 Ie under the Goods Vehicles (Licensing of Operators) Act 1995 s 31: see PARA 1362 ante.

5 Ie such as are mentioned in ibid s 21 (see PARA 1351 ante), s 22(1)(c) (see PARA 1352 ante) or s 23 (see PARA 1353 ante). In the Goods Vehicles (Licensing of Operators) Act 1995 any reference, in relation to an operator's licence, to a condition attached to the licence under s 21, s 22 or s 23 includes a reference to any condition such as is mentioned in s 21, s 22 or (as the case may be) s 23 attached to the licence under s 32(1)(a): s 32(5).

6 Ibid s 32(1)(a). Any conditions attached to the licence under s 32(1)(a) must relate or, in the case of conditions such as are mentioned in s 22(1)(c) (see PARA 1352 ante), must only require the traffic commissioner to be informed of events that relate: (1) only to the place referred to in s 32(1) (s 32(2)(a)); or (2) only to that place and any other places in respect of which the commissioner has power to attach conditions under s 32(1)

(s 32(2)(b)). Where the traffic commissioner gives a direction in respect of an operator's licence under s 31 (see PARA 1362 ante) or s 32(1)(a), he may also vary the licence by directing:

- 1357 (a) that any vehicle cease to be specified in the licence (s 32(4)(a));
- 1358 (b) that any maximum number specified in the licence under s 6 (see PARA 1333 ante) be reduced (s 32(4)(b));
- 1359 (c) that a provision such as is mentioned in s 5(2) (see PARA 1332 ante) be included in the licence (s 32(4)(c));
- 1360 (d) that a provision such as is mentioned in s 6(1)(b) or s 6(2)(b) (see PARA 1333 ante) be included in the licence (s 32(4)(d)).

7 le such as are mentioned in *ibid* s 21 (see PARA 1351 ante), s 22(1)(c) (see PARA 1352 ante) or s 23 (see PARA 1353 ante).

8 *Ibid* s 32(1)(b). Any variation under s 32(1)(b) must be such as imposes new or further restrictions or requirements only in relation to the place referred to in s 32(1) (s 32(3)(a)), or only in relation to that place and any other places in respect of which the commissioner has power to attach conditions under s 32(1) (s 32(3)(b)).

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### **1364. Transfers of operating centres in connection with new licences.**

Where in the case of any application for an operator's licence<sup>1</sup> the following requirements<sup>2</sup> are satisfied at the time when the application is made<sup>3</sup>, and the applicant so requests<sup>4</sup>, the traffic commissioner<sup>5</sup> may direct that certain provisions<sup>6</sup> are to apply in relation to the application<sup>7</sup>. The requirements to be satisfied are as follows:

- 2091 (1) each place referred to in the statement<sup>8</sup> as a proposed operating centre<sup>9</sup> of the applicant must already be specified in an operator's licence<sup>10</sup> as an operating centre of its holder<sup>11</sup>;
- 2092 (2) that licence must be the same in the case of each such place, and no such place may be specified in more than the one operator's licence<sup>12</sup>;
- 2093 (3) where any conditions<sup>13</sup> relating to any such place are attached to that licence, the applicant must have consented to conditions in the same terms being attached to the licence he is applying for<sup>14</sup>;
- 2094 (4) where any undertakings relating to any such place are recorded in that licence, undertakings in the same terms must have been given by the applicant (or have been procured by him to be given) for the purposes of the application<sup>15</sup>.

In determining whether to give a direction<sup>16</sup>, the traffic commissioner must take account of whether any new adverse effects on environmental conditions are likely to arise from the use as an operating centre of the applicant of any such place, and he may take account of any other matters he considers relevant<sup>17</sup>.

The provisions which apply in relation to any application for an operator's licence in respect of which such a direction has been given<sup>18</sup> provide as follows<sup>19</sup>: (a) the notice published<sup>20</sup> must state that the direction has been given<sup>21</sup>; (b) certain provisions of the Goods Vehicles (Licensing of Operators) Act 1995 do not apply<sup>22</sup>; (c) the traffic commissioner may refuse the application<sup>23</sup> if any statement of fact made by the applicant (or procured by him to be made) for the

purposes of the request for the direction<sup>24</sup> was false, whether to his knowledge or not<sup>25</sup>, or any undertaking given or statement of expectation made by the applicant (or procured by him to be given or made) for those purposes has not been fulfilled<sup>26</sup>; (d) if the application is granted, the traffic commissioner must attach to the licence issued to the applicant any conditions in respect of which the applicant has consented<sup>27</sup>, and must not attach any other conditions to the licence<sup>28</sup>; (e) if the application is granted, the traffic commissioner must record in the licence any undertakings given or procured to be given<sup>29</sup>, and any other undertakings given by the applicant (or procured by him to be given), whether for the purposes of the application or for the purposes of the request for the direction<sup>30</sup>, that the traffic commissioner considers to be material to his decision to give the direction (and that would not otherwise be required<sup>31</sup> to be recorded in the licence)<sup>32</sup>.

1 For the meaning of 'operator's licence' see PARA 1329 ante. In the Goods Vehicles (Licensing of Operators) Act 1995 s 33, Sch 4 para 1 'operator's licence' does not include an interim licence issued under s 24 (see PARA 1354 ante): Sch 4 para 1(8). For the meaning of 'interim licence' see PARA 1344 note 12 ante.

2 Ie the requirements of *ibid* Sch 4 para 1(2)-(5): see the text and notes 8-15 *infra*.

3 *Ibid* Sch 4 para 1(1)(a).

4 *Ibid* Sch 4 para 1(1)(b).

5 As to the functions of traffic commissioners see PARA 1326 ante.

6 Ie the provisions of the Goods Vehicles (Licensing of Operators) Act 1995 Sch 4 para 2: see the text and notes 18-32 *infra*.

7 *Ibid* Sch 4 para 1(1).

8 Ie the statement under *ibid* s 8(3): see PARA 1334 ante.

9 For the meaning of 'operating centre' see PARA 1332 note 12 ante.

10 A place is not to be regarded for the purposes of the Goods Vehicles (Licensing of Operators) Act 1995 Sch 4 para 1(2) as being specified in an operator's licence by reason only that it forms part of a place so specified; and a place that was, at the time mentioned in Sch 4 para 1(1)(a) (see the text and notes 1-3 *supra*), a place specified in an operator's licence as mentioned in Sch 4 para 1(2) must be disregarded for the purposes of Sch 4 para 1(2) if, at that time:

1361 (1) that place was so specified by virtue of an interim direction such as is mentioned in s 25 (see PARA 1355 ante) (Sch 4 para 1(7)(a)); or

1362 (2) such conditions relating to the exercise of the right of any person to appeal against a place being specified in an operator's licence, or the review under s 36 (see PARA 1368 post) of any decision so to specify a place, as may be prescribed were not satisfied in relation to that place (Sch 4 para 1(7)(b)).

As to the conditions to be satisfied see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 16. For the meaning of 'interim direction' see PARA 1344 note 12 ante. For the meaning of 'prescribed' see PARA 1332 note 7 ante.

11 Goods Vehicles (Licensing of Operators) Act 1995 Sch 4 para 1(2). For the meaning of 'operating centre of the holder of an operator's licence' see PARA 1332 note 12 ante.

12 *Ibid* Sch 4 para 1(3).

13 Ie under *ibid* s 21 (see PARA 1351 ante) or s 23 (see PARA 1353 ante).

14 *Ibid* Sch 4 para 1(4).

15 *Ibid* Sch 4 para 1(5).

16 Ie a direction under *ibid* Sch 4 para 1.

17 *Ibid* Sch 4 para 1(6). For the meaning of 'likely' see PARA 1337 note 11 ante.

- 18    Ie under ibid Sch 4 para 1: see the text and notes 1-17 supra.
- 19    See ibid Sch 4 para 2(1).
- 20    Ie the notice published under ibid s 10(1): see PARA 1336 ante.
- 21    Ibid Sch 4 para 2(2).
- 22    See ibid Sch 4 para 2(3). The provisions of the Goods Vehicles (Licensing of Operators) Act 1995 which do not apply are: s 11 (see PARA 1337 ante); s 12(1)(b), (4) (see PARA 1338 ante); s 13(5)(d) (see PARA 1339 ante) so far as relating to the suitability of any place specified in the licence for use as an operating centre of the licence holder; s 14 (see PARA 1344 ante); and s 15(3)(f) (see PARA 1345 ante): Sch 4 para 2(3).
- 23    Ie notwithstanding anything in ibid s 13(11): see PARA 1339 ante.
- 24    Ie under ibid Sch 4 para 1: see the text and notes 1-17 supra.
- 25    Ibid Sch 4 para 2(4)(a).
- 26    Ibid Sch 4 para 2(4)(b). For the meaning of 'procured' see PARA 1356 note 21 ante. As to the meaning of 'false' see PARA 1155 note 10 ante.
- 27    Ibid Sch 4 para 2(5)(a). The text refers to conditions in respect of which the applicant has consented under Sch 4 para 1(4): see the text and note 14 supra.
- 28    Ibid Sch 4 para 2(5)(b). Conditions are attached under s 21 (see PARA 1351 ante) or s 23 (see PARA 1353 ante).
- 29    Ibid Sch 4 para 2(6)(a). The text refers to any undertakings given or procured to be given under Sch 4 para 1(5): see the text and note 15 supra.
- 30    Ie under ibid Sch 4 para 1: see the text and notes 1-17 supra.
- 31    Ie by ibid s 15(4): see PARA 1345 ante.
- 32    Ibid Sch 4 para 2(6)(b).

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### **1365. Transfers of operating centres in connection with the variation of licences.**

Where in the case of an application for the variation of an operator's licence<sup>1</sup>: (1) the only direction applied for is that one or more new places be specified in the licence as an operating centre of the licence holder<sup>2</sup>; (2) the requirements set out in heads (a) to (d) below<sup>3</sup> are satisfied at the time when the application is made<sup>4</sup>; and (3) the applicant so requests<sup>5</sup>, the traffic commissioner<sup>6</sup> may direct that the provisions contained in heads (i) to (iii) below<sup>7</sup> are to apply in relation to that application<sup>8</sup>. The requirements referred to above are as follows:

- 2095 (a) each new place that is proposed to be specified in the licence<sup>9</sup> must already be specified in another operator's licence as an operating centre<sup>10</sup> of its holder<sup>11</sup>;
- 2096 (b) that other licence must be the same in the case of each such place, and no such place may be specified in more than the one other operator's licence<sup>12</sup>;
- 2097 (c) where any conditions<sup>13</sup> relating to any such place are attached to that other licence, the applicant must have consented to conditions in the same terms being attached to the licence he is applying to have varied<sup>14</sup>;



- 2098 (d) where any undertakings relating to any such place are recorded in that other licence, undertakings in the same terms must have been given by the applicant (or have been procured by him to be given) for the purposes of the application<sup>15</sup>.

In determining whether to give a direction<sup>16</sup>, the traffic commissioner must take account of whether any new adverse effects on environmental conditions are likely to arise from the use as an operating centre of the applicant of any such place, and may take account of any other matters he considers relevant<sup>17</sup>.

The following provisions have effect in relation to any application for the variation of an operator's licence in respect of which such a direction has been given<sup>18</sup>:

- 2099 (i) specified provisions of the Goods Vehicles (Licensing of Operators) Act 1995 do not apply<sup>19</sup>;
- 2100 (ii) if the application is granted, the traffic commissioner must attach to the licence as varied any conditions in respect of which the applicant has consented<sup>20</sup>, and must not attach any other conditions to the licence<sup>21</sup>;
- 2101 (iii) if the application is granted, the traffic commissioner must record in the licence as varied any undertakings given or procured to be given<sup>22</sup>, and any other undertakings given by the applicant (or procured by him to be given), whether for the purposes of the application or for the purposes of the request for the direction<sup>23</sup>, that the traffic commissioner considers to be material to his decision to give the direction<sup>24</sup>.

1    Ie under the Goods Vehicles (Licensing of Operators) Act 1995 s 17: see PARA 1347 ante. For the meaning of 'operator's licence' see PARA 1329 ante. In s 33, Sch 4 para 3 'operator's licence' does not include an interim licence issued under s 24 (see PARA 1354 ante): Sch 4 para 3(8). For the meaning of 'interim licence' see PARA 1344 note 12 ante.

2    Ibid Sch 4 para 3(1)(a). The reference in the text to the direction that one or more new places be specified in the licence as an operating centre of the licence holder is to such a direction under s 17(1)(g): see PARA 1347 ante.

3    Ie the requirements of ibid Sch 4 para 3(2)-(5): see the text and notes 11-15 infra.

4    Ibid Sch 4 para 3(1)(b).

5    Ibid Sch 4 para 3(1)(c).

6    As to the functions of traffic commissioners see PARA 1326 ante.

7    Ie the Goods Vehicles (Licensing of Operators) Act 1995 Sch 4 para 4: see the text and notes 18-24 infra.

8    Ibid Sch 4 para 3(1).

9    A place is not to be regarded for the purposes of ibid Sch 4 para 3(2) as being specified in an operator's licence by reason only that it forms part of a place so specified; and a place that was, at the time mentioned in Sch 4 para 3(1)(b) (see head (2) in the text), a place specified in an operator's licence as mentioned in Sch 4 para 3(2) must be disregarded for the purposes of Sch 4 para 3(2) if, at that time:

1363 (1) that place was so specified by virtue of an interim direction such as is mentioned in s 25 (see PARA 1355 ante) (Sch 4 para 3(7)(a)); or

1364 (2) such conditions relating to the exercise of the right of any person to appeal against a place being specified in an operator's licence, or the review under s 36 (see PARA 1368 post) of any decision so to specify a place, as may be prescribed were not satisfied in relation to that place (Sch 4 para 3(7)(b)).

For the meaning of 'interim direction' see PARA 1344 note 12 ante. For the meaning of 'prescribed' see PARA 1332 note 7 ante.

- 10 For the meaning of 'operating centre' see PARA 1332 note 12 ante.
- 11 Goods Vehicles (Licensing of Operators) Act 1995 Sch 4 para 3(2). For the meaning of 'operating centre of the holder of an operator's licence' see PARA 1332 note 12 ante.
- 12 Ibid Sch 4 para 3(3).
- 13 Ie under ibid s 21 (see PARA 1351 ante) or s 23 (see PARA 1353 ante).
- 14 Ibid Sch 4 para 3(4).
- 15 Ibid Sch 4 para 3(5).
- 16 Ie under ibid Sch 4 para 3 (see the text and notes 1-15 supra).
- 17 Ibid Sch 4 para 3(6).
- 18 Ibid Sch 4 para 4(1).
- 19 Ibid Sch 4 para 4(2). The provisions which do not apply are s 17(3) (see PARA 1347 ante) and s 18 (see PARA 1348 ante).
- 20 Ibid Sch 4 para 4(3)(a). The text refers to any conditions in respect of which the applicant has consented under Sch 4 para 3(4) (see head (c) in the text).
- 21 Ibid Sch 4 para 4(3)(b). The text refers to the attaching of conditions to the licence under s 21 (see PARA 1351 ante) or s 23 (see PARA 1353 ante).
- 22 Ibid Sch 4 para 4(4)(a). The text refers to conditions to which the applicant has consented under Sch 4 para 3(5).
- 23 Ie under ibid Sch 4 para 3 (see the text and notes 1-15 supra).
- 24 Ibid Sch 4 para 4(4)(b).

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## **(x) Environmental Matters**

### **1366. Determinations as to environmental matters.**

In making any determination of a description mentioned in heads (1) to (3) below<sup>1</sup>, a traffic commissioner<sup>2</sup> must have regard to such considerations as may be prescribed<sup>3</sup> as relevant to determinations of the description<sup>4</sup>. The determinations referred to are:

- 2102 (1) any determination with respect to the suitability of any place on environmental grounds for use as an operating centre<sup>5</sup> of the holder of an operator's licence<sup>6</sup>;
- 2103 (2) any determination with respect to attaching to an operator's licence any condition<sup>7</sup> or varying or removing any such condition attached to an operator's licence<sup>8</sup>; and
- 2104 (3) any determination with respect to the effect on environmental conditions in any locality of the use in any particular manner of any operating centre of the holder of an operator's licence<sup>9</sup>.

In making any such determination for the purposes of exercising any of his functions<sup>10</sup> in relation to an application for, or for the variation of, an operator's licence<sup>11</sup>, or any of the functions relating to the review of operating centres<sup>12</sup>, a traffic commissioner may take into account any undertakings given by the applicant or licence holder (or procured by him to be given) for the purposes of the application or the review<sup>13</sup>, and may assume that those undertakings will be fulfilled<sup>14</sup>.

In making for those purposes a determination of a description mentioned in head (1) or head (3) above, a traffic commissioner may take into account any of specified conditions<sup>15</sup> that could be attached to the licence in question, and may assume that any conditions so attached will not be contravened<sup>16</sup>.

Where a traffic commissioner grants an application for, or for the variation of, an operator's licence<sup>17</sup>, or having served notice<sup>18</sup> in respect of any place specified in such a licence, exercises or determines not to exercise any of his powers<sup>19</sup> in relation to that place<sup>20</sup>, any undertakings taken into account by the commissioner<sup>21</sup> that he considers to be material to the application or (as the case may be) to his decision<sup>22</sup> must be recorded in the licence in question<sup>23</sup>.

1    I.e. determinations of a description mentioned in the Goods Vehicles (Licensing of Operators) Act 1995 s 34(2): see the text and notes 5-9 *infra*.

2    As to the functions of traffic commissioners see PARA 1326 *ante*.

3    For the meaning of 'prescribed' see PARA 1332 note 7 *ante*. As to the prescribed considerations see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 15.

4    Goods Vehicles (Licensing of Operators) Act 1995 s 34(1). For the meaning of 'have regard' see PARA 1339 note 29 *ante*.

5    For the meaning of 'operating centre' see PARA 1332 note 12 *ante*.

6    Goods Vehicles (Licensing of Operators) Act 1995 s 34(2)(a). For the meaning of 'operating centre of the holder of an operator's licence' see PARA 1332 note 12 *ante*. For the meaning of 'operator's licence' see PARA 1329 *ante*.

7    I.e. any condition mentioned in *ibid* s 23: see PARA 1353 *ante*.

8    *Ibid* s 34(2)(b).

9    *Ibid* s 34(2)(c).

10   For the meaning of 'functions' see PARA 1326 note 3 *ante*.

11   Goods Vehicles (Licensing of Operators) Act 1995 s 34(3)(a).

12   *Ibid* s 34(3)(b). The text refers to functions relating to the review of operating centres under ss 30-32: see PARAS 1361-1363 *ante*.

13   I.e. under *ibid* ss 30-32: see PARAS 1361-1363 *ante*.

14   *Ibid* s 34(3). For the meaning of 'procured' see PARA 1356 note 21 *ante*.

15   I.e. any condition mentioned in *ibid* s 23: see PARA 1353 *ante*.

16   *Ibid* s 34(4). For the meaning of 'contravene' see PARA 1329 note 16 *ante*.

17   *Ibid* s 34(5)(a).

18   I.e. under *ibid* s 30: see PARA 1361 *ante*.

19   I.e. under *ibid* s 31 (see PARA 1362 *ante*) and s 32 (see PARA 1363 *ante*).

20   *Ibid* s 34(5)(b).

- 21    le under *ibid* s 34(3): see the text and notes 11-14 *supra*.
- 22    le under *ibid* s 31 (see PARA 1362 *ante*) and s 32 (see PARA 1363 *ante*).
- 23    *Ibid* s 34(5).

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## **(xi) Inquiries, Reviews and Appeals**

### **1367. Power of traffic commissioners to hold inquiries.**

A traffic commissioner<sup>1</sup> may hold such inquiries as he thinks necessary for the proper exercise of his functions<sup>2</sup> under the Goods Vehicles (Licensing of Operators) Act 1995<sup>3</sup>. Where, as respects the proposed exercise on any occasion of any of his powers with regard to the revocation, suspension and curtailment of operators' licences and the disqualification of holders of such licences<sup>4</sup>, a traffic commissioner receives a request for an inquiry<sup>5</sup> from two or more persons, he may hold a single inquiry in response to both or all of those requests<sup>6</sup>. Subject to any provision made by regulations<sup>7</sup>, any inquiry held by a traffic commissioner for the purposes of the Goods Vehicles (Licensing of Operators) Act 1995 must be held in public<sup>8</sup>. Information with respect to any particular trade or business<sup>9</sup> which is given at any such inquiry while admission to the inquiry is restricted in accordance with regulations must not, so long as that trade or business continues to be carried on, be disclosed<sup>10</sup> except:

- 2105 (1)   with the consent of the person for the time being carrying on that trade or business<sup>11</sup>;
- 2106 (2)   for the purpose of the discharge by any person of his functions under the Goods Vehicles (Licensing of Operators) Act 1995<sup>12</sup>; or
- 2107 (3)   with a view to the institution of, or otherwise for the purposes of, any legal proceedings pursuant to or arising out of the Goods Vehicles (Licensing of Operators) Act 1995, including proceedings before the Transport Tribunal<sup>13</sup>.

Any person who discloses any information in contravention of the above provisions<sup>14</sup> is guilty of an offence<sup>15</sup>.

1    As to the functions of traffic commissioners see PARA 1326 *ante*.

2    For the meaning of 'functions' see PARA 1326 note 3 *ante*.

3    Goods Vehicles (Licensing of Operators) Act 1995 s 35(1). The licensing authority must abide by the ordinary rules of natural justice: *Lowestoft Coaling Co Ltd v LG Perfect (Haulage) Ltd* (1964) 32 Traf Cas 323, Transport Tribunal.

4    le powers under the Goods Vehicles (Licensing of Operators) Act 1995 s 26 (see PARA 1356 *ante*), s 27 (see PARA 1357 *ante*) or s 28 (see PARA 1358 *ante*). For the meaning of 'operator's licence' see PARA 1329 *ante*.

5    le pursuant to *ibid* s 29(1): see PARA 1359 *ante*.

6    *Ibid* s 35(2).

7    As to the regulations concerning inquiries see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 20, Sch 4. As to regulations and orders see PARA 1321 *ante*.

- 8 For the meaning of 'trade or business' see PARA 1329 note 6 ante.
- 9 Goods Vehicles (Licensing of Operators) Act 1995 s 35(3).
- 10 Ibid s 35(4).
- 11 Ibid s 35(4)(a).
- 12 Ibid s 35(4)(b).
- 13 Ibid s 35(4)(c). As to the Transport Tribunal see PARAS 253-258 ante.
- 14 *Ibid* s 35(4): see the text and notes 10-13 supra. The disclosure powers under s 35(4) are extended by the Anti-terrorism, Crime and Security Act 2001 s 17, Sch 4 Pt 1 para 38.
- 15 Goods Vehicles (Licensing of Operators) Act 1995 s 35(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 35(5). As to the standard scale see PARA 230 note 3 ante.

## UPDATE

### 1367 Power of traffic commissioners to hold inquiries

NOTE 7--SI 1995/2869 Sch 4 amended: SI 2009/1307.

TEXT AND NOTE 13--Reference to Transport Tribunal is now to Upper Tribunal: Goods Vehicles (Licensing of Operators) Act 1995 s 35(4)(c) (amended by SI 2009/1885).

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### 1368. Review of decisions.

Subject to the restrictions in heads (1) to (3) below<sup>1</sup>, a traffic commissioner<sup>2</sup> may review and, if he thinks fit, vary or revoke any decision of his to grant or refuse an application for an operator's licence<sup>3</sup>, or an application for the variation of such a licence in a case where notice of the application to be published is required<sup>4</sup>, if he is satisfied that a procedural requirement imposed by or under any enactment has not been complied with in relation to the decision<sup>5</sup>. However, the traffic commissioner may review a decision<sup>6</sup> only:

- 2108 (1) if, within such period after taking the decision as may be prescribed<sup>7</sup>, he has given notice to the applicant or (as the case may be) the licence holder that he intends to review the decision<sup>8</sup>;
- 2109 (2) if, within that period, a person who appears to him to have an interest in the decision has requested him to review it<sup>9</sup>; or
- 2110 (3) where neither head (1) nor head (2) above applies, if he considers there to be exceptional circumstances that justify the review<sup>10</sup>.

Regulations may make provision as to the manner in which notices under head (1) above are to be or may be served, including provision as to the circumstances in which, and the time at which, any such notice is to be treated as having been duly served (whether or not it has in fact been served)<sup>11</sup>.

The variation or revocation<sup>12</sup> of any decision cannot make unlawful anything done in reliance on the decision before the variation or revocation takes effect<sup>13</sup>.

- 1    Ie subject to the provisions of the Goods Vehicles (Licensing of Operators) Act 1995 s 36(2): see the text and notes 8-10 infra.
- 2    As to the functions of traffic commissioners see PARA 1326 ante.
- 3    Goods Vehicles (Licensing of Operators) Act 1995 s 36(1)(a). For the meaning of 'operator's licence' see PARA 1329 ante.
- 4    Ibid s 36(1)(b). The text refers to the case where notice of the application to be published is required under s 17(3): see PARA 1347 ante.
- 5    Ibid s 36(1).
- 6    Ie under ibid s 36(1): see the text and notes 1-5 supra.
- 7    For the meaning of 'prescribed' see PARA 1332 note 7 ante. For the prescribed period see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 34.
- 8    Goods Vehicles (Licensing of Operators) Act 1995 s 36(2)(a).
- 9    Ibid s 36(2)(b).
- 10   Ibid s 36(2)(c).
- 11   Ibid s 36(3). As to the manner of service see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 35.
- 12   Ie under the Goods Vehicles (Licensing of Operators) Act 1995 s 35: see PARA 1367 ante.
- 13   Ibid s 36(4).

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### **1369. Rights of appeal to the Transport Tribunal in connection with operators' licences.**

An applicant for, or for the variation of, an operator's licence<sup>1</sup> may appeal to the Transport Tribunal<sup>2</sup> against the refusal of the application or (as the case may be) against the terms of the licence or of the variation<sup>3</sup>. The holder of an operator's licence may appeal to the tribunal against any of certain directions<sup>4</sup> given in respect of the licence<sup>5</sup>. The holder of an operator's licence may appeal to the tribunal against any order made<sup>6</sup> on the suspension or curtailment of the licence<sup>7</sup>. A person who has duly made an objection to an application for, or for a variation of, an operator's licence may appeal to the tribunal against the grant of the application<sup>8</sup>. A person who within the prescribed period<sup>9</sup> has made an application for a review<sup>10</sup>, and has been certified by the traffic commissioner as a certain category of person<sup>11</sup> may appeal to the tribunal against the refusal of the application<sup>12</sup>.

1    For the meaning of 'operator's licence' see PARA 1329 ante. In the Goods Vehicles (Licensing of Operators) Act 1995 s 37(1), (2), 'operator's licence' does not include an interim licence issued under s 24 (see PARA 1354 ante): s 37(7). For the meaning of 'interim licence' see PARA 1344 note 12 ante.

2 As to the constitution, powers and proceedings of, and appeals from, the Transport Tribunal see PARAS 253-258 ante.

3 Goods Vehicles (Licensing of Operators) Act 1995 s 37(1). See also *Norwood Ltd* (1989) RLR 23; *George Allinson (Transport) Ltd* (1991) RLR 46.

A person in respect of whom an order has been made under the Goods Vehicles (Licensing of Operators) Act 1995 s 28(1) (see PARA 1358 ante) (including s 28(1) as it applies by virtue of s 28(5) (see PARA 1358 ante)) may appeal to the tribunal against that order and against any direction given under s 28(4) (see PARA 1358 ante) (including s 28(4) as it so applies) when the order was made: s 37(4).

4 le given under *ibid* s 5(9) (see PARA 1332 ante), s 26(1) or (2) (see PARA 1356 ante), s 27(1) (see PARA 1357 ante), s 31 (see PARA 1362 ante) or s 32 (see PARA 1363 ante).

5 *Ibid* s 37(2).

6 le under *ibid* s 26(6): see PARA 1356 ante.

7 *Ibid* s 37(3).

8 *Ibid* s 37(5).

9 For the prescribed period see the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 34. For the meaning of 'prescribed' see PARA 1332 note 7 ante.

10 Goods Vehicles (Licensing of Operators) Act 1995 s 37(6)(a). The text refers to an application for a review under s 36: see PARA 1368 ante.

11 *Ibid* s 37(6)(b). The text refers to such a category of person as is mentioned in s 36(2)(b): see PARA 1368 head (2) ante. As to the functions of traffic commissioners see PARA 1326 ante.

12 *Ibid* s 37(6). For the procedure on an appeal under this provision see the Transport Tribunal Rules 2000, SI 2000/3226 (amended by SI 2001/4041; SI 2002/643).

## UPDATE

### 1369 Rights of appeal to the [Upper Tribunal] in connection with operators' licences

TEXT AND NOTES--References to Transport Tribunal are now to Upper Tribunal: Goods Vehicles (Licensing of Operators) Act 1995 s 37 (amended by SI 2009/1885).

NOTE 12--SI 2000/3226 further amended: SI 2008/2142.

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## (xii) Forgery and False Statements

### 1370. Forgery of documents, etc.

A person is guilty of an offence<sup>1</sup> if, with intent to deceive, he:

2111 (1) forges<sup>2</sup>, alters or uses a document or other thing<sup>3</sup>;

2112 (2) lends to, or allows to be used by, any other person a document or other thing<sup>4</sup>; or

2113 (3) makes or has in his possession any document or other thing so closely resembling a document or other thing as to be calculated to deceive<sup>5</sup>.

The documents and other things to which this applies are:

- 2114 (a) any operator's licence<sup>6</sup>;
- 2115 (b) any document, plate, mark or other thing by which, in pursuance of regulations<sup>7</sup>, a vehicle is to be identified as being authorised to be used<sup>8</sup>, or as being used, under an operator's licence<sup>9</sup>;
- 2116 (c) any document evidencing the authorisation of any person for certain purposes<sup>10</sup>;
- 2117 (d) any certificate of qualification<sup>11</sup>; and
- 2118 (e) any certificate or diploma<sup>12</sup>.

1 A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum (Goods Vehicles (Licensing of Operators) Act 1995 s 38(3)(a)), and on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both (s 38(3)(b)). As to the statutory maximum see PARA 359 note 11 ante. The Road Traffic Offenders Act 1988 s 6 (see PARA 1031 ante) (time for bringing summary proceedings for certain offences) applies to an offence under the Goods Vehicles (Licensing of Operators) Act 1995 s 38: s 51.

2 'Forges' means makes a false document or other thing in order that it may be used as genuine: *ibid* s 38(4).

3 *Ibid* s 38(1)(a). There is authority for saying that the words 'with intent to deceive' are not to be construed in any narrow sense, as deceiving any particular person: *R v Greenberg* [1942] 2 All ER 344 at 347, CA. See also *R v Clarke* (1918) 82 JP 295; *Brend v Wood* (1946) 175 LT 306; and cf *Welham v DPP* [1961] AC 103 at 134, [1960] 1 All ER 805 at 816, HL. As to proof of criminal intent generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 13. To deceive is 'to induce a man to believe that a thing is true which is false, and which the person practising the deceit knows or believes to be false': *Re London and Globe Finance Corp'n Ltd* [1903] 1 Ch 728 at 732 per Buckley J; cited with approval in *R v Wines* [1953] 2 All ER 1497, [1954] 1 WLR 64, CCA. This definition must now be read in the light of the observations of Lord Radcliffe in *Welham v DPP* *supra* at 126-127, from which it appears that deceit may involve inducing an individual to believe a thing to be false which is true as well as to believe to be true what is false.

4 Goods Vehicles (Licensing of Operators) Act 1995 s 38(1)(b).

5 *Ibid* s 38(1)(c). As to the meaning of 'possession' see PERSONAL PROPERTY vol 35 (Reissue) PARAS 1211-1226.

6 *Ibid* s 38(2)(a). For the meaning of 'operator's licence' see PARA 1329 ante.

7 As to regulations and orders see PARA 1321 ante.

8 As to the meaning of 'using a vehicle' see PARA 1329 note 2 ante. As to being authorised to use a vehicle under an operators' licence see PARA 1330 note 10 ante.

9 Goods Vehicles (Licensing of Operators) Act 1995 s 38(2)(b).

10 *Ibid* s 38(2)(c). The specified purposes are purposes of s 40 (see PARA 1372 post) and s 41 (see PARA 1373 post). As from a day to be appointed, s 38(2)(c) will provide that s 38 applies to any document evidencing the authorisation of any person for the purposes of s 40 (see PARA 1372 post), s 41 (see PARA 1373 post), and Sch 5 para 3 (see PARA 1378 post): s 38(2)(c) (amended by Sch 5 para 5(1)). At the date at which this volume states the law no such day had been appointed.

11 *Ibid* s 38(2)(d). The text refers to a certificate of qualification under s 49: see PARA 1376 post.

12 *Ibid* s 38(2)(e). The text refers to a certificate or diploma such as is mentioned in Sch 3 para 13(1): see PARA 1342 ante.



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### **1371. False statements.**

A person is guilty of an offence<sup>1</sup> if he knowingly makes a false statement<sup>2</sup> for the purpose of:

- 2119 (1) obtaining the issue to himself or any other person of an operator's licence<sup>3</sup>;
- 2120 (2) obtaining the variation of any such licence<sup>4</sup>;
- 2121 (3) preventing the issue or variation of any such licence<sup>5</sup>;
- 2122 (4) procuring the imposition of a condition or limitation in relation to any such licence<sup>6</sup>; or
- 2123 (5) obtaining the issue to himself or any other person of a certificate of qualification<sup>7</sup> or a certificate or diploma<sup>8</sup>.

1 A person guilty of an offence under the Goods Vehicles (Licensing of Operators) Act 1995 s 39(2) is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 39(2). As to the standard scale see PARA 230 note 3 ante. The Road Traffic Offenders Act 1988 s 6 (see PARA 1031 ante) (time for bringing summary proceedings for certain offences) applies to an offence under the Goods Vehicles (Licensing of Operators) Act 1995 s 39: s 51.

2 Ibid s 39(1). As to the meaning of 'false' see PARA 1155 note 10 ante.

3 Ibid s 39(1)(a). For the meaning of 'operator's licence' see PARA 1329 ante.

4 Ibid s 39(1)(b).

5 Ibid s 39(1)(c).

6 Ibid s 39(1)(d).

7 Ie under ibid s 49: see PARA 1376 post.

8 Ibid s 39(1)(e). The text refers to a certificate or diploma such as is mentioned in Sch 3 para 13(1): see PARA 1342 ante.

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### **(xiii) Administration and Enforcement**

#### **1372. Inspection of maintenance facilities.**

An officer<sup>1</sup> may, at any time which is reasonable<sup>2</sup> having regard<sup>3</sup> to the circumstances of the case, enter any premises of an applicant for an operator's licence<sup>4</sup> or of the holder of such a licence and inspect any facilities on those premises<sup>5</sup> for maintaining the vehicles used<sup>6</sup> under the licence in a fit and serviceable condition<sup>7</sup>. Any person who obstructs<sup>8</sup> an officer in the exercise of his powers<sup>9</sup> is guilty of an offence<sup>10</sup>.

1 In the Goods Vehicles (Licensing of Operators) Act 1995 ss 40, 41 (see PARA 1373 post), 'officer' means: (1) an examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 ante) (Goods Vehicles (Licensing of Operators) Act 1995 s 42(1)(a)); or (2) any person authorised for the purposes of ss 40, 41 by the traffic commissioner for any area (s 42(1)(b)). As from a day to be appointed, 'officer' means: (a) an examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 ante) (Goods Vehicles (Licensing of Operators) Act 1995 s 42(1)(a)); or (b) any person authorised for the purposes of ss 40, 41, 50, Sch 5 para 3 by the traffic commissioner for any area (s 42(1)(b) (amended by s 50(1), Sch 5 para 5(1))). At the date at which this volume states the law no such day had been appointed. As to the functions of traffic commissioners see PARA 1326 ante. For the meaning of 'area' see PARA 1326 note 1 ante. The powers conferred by ss 40, 41 on an officer are exercisable also by a police constable: s 42(2). As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

2 The time during which the premises in question are open for business will normally be deemed reasonable (cf *Davies v Winstanley* (1930) 144 LT 433) and presumably an officer would not be justified, except in special circumstances, in demanding that premises should be opened at an unusual time (*Small v Bickley* (1875) 32 LT 726).

3 As to the meaning of 'regard' see PARA 1339 note 29 ante.

4 For the meaning of 'operator's licence' see PARA 1329 ante.

5 The term 'premises', though originally possessing a very limited meaning (ie the parts of a deed which precede the habendum) is widely used in the popular sense as including land, houses, buildings etc: see eg *Metropolitan Water Board v Paine* [1907] 1 KB 285; *Whitley v Stumbles* [1930] AC 544, HL; *Bracey v Read* [1963] Ch 88, [1962] 3 All ER 472; *Maunsell v Olins* [1975] AC 373, [1975] 1 All ER 16, HL. In general, 'premises' would seem to have been construed as meaning a whole property in either one occupation or one ownership according to the context in which it is used: see eg *Cadbury Bros Ltd v Sinclair* [1934] 2 KB 389 at 393 (revsd on other grounds (1933) 103 LJB 29, CA); *Brickwood & Co v Reynolds* [1898] 1 QB 95, CA.

6 As to the meaning of 'using a vehicle' see PARA 1329 note 2 ante. As to being authorised to use a vehicle under an operators' licence see PARA 1330 note 10 ante.

7 Goods Vehicles (Licensing of Operators) Act 1995 s 40(1).

8 Obstruction need not involve physical violence: see, in particular, *Borrow v Howland* (1896) 74 LT 787; *Hinchcliffe v Sheldon* [1955] 3 All ER 406 at 408, [1955] 1 WLR 1207 per Lord Goddard CJ. In fact there is authority for saying that anything which makes it more difficult for a person to carry out any his duty amounts to obstruction: see *Hinchcliffe v Sheldon* supra. Thus merely giving a warning to some other person may amount to obstruction of the person carrying out his duty: see *Green v Moore* [1982] QB 1044, [1982] 1 All ER 428; *Moore v Green* [1983] 1 All ER 663. Yet standing by and doing nothing is not obstruction unless there is a legal duty to act: see *Swallow v LCC* [1916] 1 KB 224; and contrast *Baker v Ellison* [1914] 2 KB 762; but see *Rice v Connolly* [1966] 2 QB 414, [1966] 2 All ER 649. However, a positive act does not cease to be obstructive just because it is lawful in itself: see *Dibble v Ingleton* [1972] 1 QB 480, sub nom *Ingleton v Dibble* [1972] 1 All ER 275.

9 Ie under the Goods Vehicles (Licensing of Operators) Act 1995 s 40(1): see the text and note 7 supra.

10 Ibid s 40(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 40(2). As to the standard scale see PARA 230 note 3 ante.

## UPDATE

### 1372 Inspection of maintenance facilities

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1663)/13. GOODS VEHICLES/(2) GOODS VEHICLE LICENSING/(xiii) Administration and Enforcement/1373. Power to seize documents etc.

### 1373. Power to seize documents etc.

If an officer<sup>1</sup> has reason to believe<sup>2</sup> that a document or article carried on or by the driver<sup>3</sup> of a vehicle<sup>4</sup>, or a document produced to him in pursuance of the Goods Vehicles (Licensing of Operators) Act 1995<sup>5</sup>, is a document or article in relation to which an offence has been committed<sup>6</sup>, he may seize that document or article<sup>7</sup>. Where a document or article is so seized<sup>8</sup>, no person has, within six months of the date<sup>9</sup> on which the document or article was seized, been charged since that date with an offence in relation to it<sup>10</sup>, and the document or article is still detained<sup>11</sup>, then any of the following persons may make an application to a magistrates' court<sup>12</sup>:

- 2124 (1) an officer<sup>13</sup>;
- 2125 (2) the driver or owner<sup>14</sup> of the vehicle<sup>15</sup>; or
- 2126 (3) the person from whom the document was seized<sup>16</sup>.

On such an application, the magistrates' court must make such order respecting the disposal of the document or article<sup>17</sup>, and award such costs<sup>18</sup> as the justice of the case may require<sup>19</sup>.

1 For the meaning of 'officer' see PARA 1372 note 1 ante.

2 It is submitted that the words 'reason to believe' require not only that the person in question has reasonable cause to believe but also that he does actually believe: see *R v Banks* [1916] 2 KB 621, CA; *R v Harrison* [1938] 3 All ER 134, 159 LT 95, CA. See also *Nakkuda Ali v MF De S Jayaratne* [1951] AC 66, PC. The existence of the reasonable cause and of the belief founded on it is ultimately a question of fact to be tried on evidence and the grounds on which the person acted must be sufficient to induce in a reasonable person the required belief: see, in particular, *McArdle v Egan* (1933) 150 LT 412, CA; *Nakkuda Ali v MF De S Jayaratne* supra; *Registrar of Restrictive Trading Agreements v WH Smith & Son Ltd* [1969] 3 All ER 1065 at 1070, [1969] 1 WLR 1460 at 1468, CA, per Lord Denning MR; *R v IRC, ex p Rossminster Ltd* [1980] AC 952, sub nom *IRC v Rossminster Ltd* [1980] 1 All ER 80, HL.

3 For the meaning of 'driver' see PARA 207 ante.

4 Goods Vehicles (Licensing of Operators) Act 1995 s 41(1)(a).

5 Ibid s 41(1)(b).

6 Ie under ibid s 38 (see PARA 1370 ante) or s 39 (see PARA 1371 ante).

7 Ibid s 41(1). As from a day to be appointed s 41(1) is amended so as to provide that if an officer has reason to believe that a document or article carried on or by the driver of a vehicle, or a document produced to him in pursuance of the Goods Vehicles (Licensing of Operators) Act 1995, is a document or article in relation to which an offence has been committed under s 38 (see PARA 1370 ante) or s 39 (see PARA 1371 ante) or s 50, Sch 5 para 4(1) (see PARA 1379 post), he may seize that document or article: s 41(1) (amended by s 50(1), Sch 5 para 5(2)). At the date at which this volume states the law no such day had been appointed.

8 Ibid s 41(2)(a).

9 As to the period within which an act must be done see TIME vol 97 (2010) PARAS 336-341; and as to the day of expiry of periods of a month or a specified number of months see TIME vol 97 (2010) PARA 311.

10 Goods Vehicles (Licensing of Operators) Act 1995 s 41(2)(b). The text refers to an offence in relation to a document or article under s 38 (see PARA 1370 ante) or s 39 (see PARA 1371 ante). As from a day to be appointed s 41(2)(b) is amended so as to provide that where no person has, within six months of the date on which the document or article was seized, been charged since that date with an offence in relation to it under s 38 or s 39 or Sch 5 para 4(1), then any of the persons mentioned in s 41(3) (see heads (1)-(3) in the text) may make an application to the magistrates court: s 41(2)(b) (amended by s 50(1), Sch 5 para 5(2)). At the date at which this volume states the law no such day had been appointed.

- 11 Ibid s 41(2)(c).
- 12 Ibid s 41(2).
- 13 Ibid s 41(3)(a).
- 14 For the meaning of 'owner' see PARA 1338 note 19 ante.
- 15 Goods Vehicles (Licensing of Operators) Act 1995 s 41(3)(b).
- 16 Ibid s 41(3)(c).
- 17 Ibid s 41(4)(a).
- 18 Ibid s 41(4)(b).
- 19 Ibid s 41(4).

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### **1374. Evidence by certificate.**

In any proceedings for an offence under the Goods Vehicles (Licensing of Operators) Act 1995 a certificate is evidence of the facts stated in it<sup>1</sup> where it is signed by or on behalf of a traffic commissioner<sup>2</sup> and states:

- 2127 (1) that, on any date, a person was or was not the holder of an operator's licence<sup>3</sup> issued by the commissioner<sup>4</sup>;
- 2128 (2) that, by virtue of a direction given by the commissioner under regulations<sup>5</sup>, a person is to be treated as having been the holder of an operator's licence on any date<sup>6</sup>;
- 2129 (3) the date of the coming into force of any operator's licence issued by the commissioner<sup>7</sup>;
- 2130 (4) the date on which any operator's licence issued by the commissioner ceased to be in force<sup>8</sup>;
- 2131 (5) the terms and conditions of any operator's licence issued by the commissioner<sup>9</sup>;
- 2132 (6) that a person is by virtue of an order of the commissioner disqualified from holding or obtaining an operator's licence, either indefinitely or for a specified period<sup>10</sup>;
- 2133 (7) that a direction, having effect indefinitely or for a specified period, has been given by the commissioner<sup>11</sup> in relation to any person<sup>12</sup>;
- 2134 (8) that an operator's licence was on any date or during any specified period suspended by virtue of a direction given by the commissioner<sup>13</sup>; or
- 2135 (9) that, by virtue of a direction given by the commissioner under regulations<sup>14</sup>, an operator's licence is to be treated as having been suspended on any date or during any specified period<sup>15</sup>.

Any such certificate which purports to be signed by or on behalf of a traffic commissioner is taken to be so signed unless the contrary is proved<sup>16</sup>.

1 Goods Vehicles (Licensing of Operators) Act 1995 s 43(1).

- 2 As to the functions of 'traffic commissioners' see PARA 1326 ante.
- 3 For the meaning of 'operator's licence' see PARA 1329 ante.
- 4 Goods Vehicles (Licensing of Operators) Act 1995 s 43(2)(a).
- 5 le made under ibid s 48(2)(b) or (3): see PARA 1325 ante. As to regulations and orders see PARA 1321 ante.
- 6 Ibid s 43(2)(b).
- 7 Ibid s 43(2)(c).
- 8 Ibid s 43(2)(d).
- 9 Ibid s 43(2)(e).
- 10 Ibid s 43(2)(f).
- 11 le under ibid s 28(4): see PARA 1358 ante.
- 12 Ibid s 43(2)(g).
- 13 Ibid s 43(2)(h). The text refers to a direction given by the commissioner under s 26(1): see PARA 1356 ante.
- 14 le made under ibid s 48(2)(a): see PARA 1325 ante.
- 15 Ibid s 43(2)(i).
- 16 Ibid s 43(3).

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### **1375. Fees.**

Such fees, payable at such times, and whether in one sum or by instalments, as may be prescribed<sup>1</sup> are charged by a traffic commissioner<sup>2</sup> in respect of:

- 2136 (1) applications for, or for the variation of, operators' licences<sup>3</sup>;
- 2137 (2) the issue or variation of operators' licences<sup>4</sup>;
- 2138 (3) the continuation in force of operators' licences<sup>5</sup>;
- 2139 (4) any arrangements made with the holder of an operator's licence to treat the licence for certain administrative purposes as if it were two or more licences<sup>6</sup>.

A traffic commissioner may decline to proceed with any application for, or for the variation of, an operator's licence<sup>7</sup>, or the issue or variation of any operator's licence<sup>8</sup>, until any fee or instalment of a fee in respect of the application, issue or variation (as the case may be) is duly paid<sup>9</sup>. If, in the case of any application for, or for the variation of, an operator's licence, any fee or instalment of a fee in respect of the application or the issue or variation of the licence is not duly paid by the prescribed time, the application must be treated as withdrawn at that time<sup>10</sup>; and any decision made or direction given on the application, and any licence issued or variation effected in pursuance of such a direction, ceases to have effect or terminates at that time<sup>11</sup>. If any fee or instalment of a fee in respect of the continuation in force of an operator's licence is not duly paid by the prescribed time, the licence terminates at that time<sup>12</sup>. All fees payable

under the Goods Vehicles (Licensing of Operators) Act 1995<sup>13</sup> must be paid into the Consolidated Fund in such manner as the Treasury may direct<sup>14</sup>.

1 For the meaning of 'prescribed' see PARA 1332 note 7 ante. As to the payment of fees see the Goods Vehicles (Licensing of Operators) (Fees) Regulations 1995, SI 1995/3000, reg 3, Schedule (amended by SI 2005/2345; SI 2007/687).

2 Goods Vehicles (Licensing of Operators) Act 1995 s 45(1). As to the functions of 'traffic commissioners' see PARA 1326 ante.

3 Ibid s 45(1)(a). For the meaning of 'operator's licence' see PARA 1329 ante. As to applications for an operator's licence see PARA 1334 ante. As to variation of an operator's licence see PARA 1347 ante.

4 Ibid s 45(1)(b). As to issue of operators' licences see PARA 1345 ante. As to variation and interim variation of operators' licences see PARAS 1347-1350, 1355 ante.

5 Ibid s 45(1)(c).

6 Ibid s 45(1)(d).

7 Ibid s 45(2)(a).

8 Ibid s 45(2)(b).

9 Ibid s 45(2).

10 Ibid s 45(3)(a). See note 11 infra.

11 Ibid s 45(3)(b). The traffic commissioner may, if he considers there to be exceptional circumstances that justify his doing so in any case where s 45(3) or (4) has applied, direct that as from the time mentioned in that provision its effect in that case is to be disregarded: s 45(5). Where, by virtue of such a direction, the effect of s 45(3)(a) is to be disregarded in any case, any termination of an interim licence under s 24(5)(b) or (6) (see PARA 1354 ante), or of an interim direction under s 25(4) (see PARA 1355 ante), by virtue of the operation of s 45(3)(a) in that case before the direction was given must be cancelled with effect from the same time: s 45(6). For the meaning of 'interim licence' see PARA 1344 note 12 ante. For the meaning of 'interim direction' see PARA 1344 note 12 ante.

Where such a direction is given in respect of an operator's licence:

1365 (1) any condition attached to the licence under s 22 (see PARA 1352 ante) must be treated as having been of no effect during the period beginning with the time when the licence terminated by virtue of s 45(3) or (4) and ending with the time when the direction comes into force (s 45(7)(a)); and

1366 (2) subject to head (1) supra, the traffic commissioner may vary any such condition as it applies in relation to events occurring before the direction comes into force (s 45(7)(b)).

12 Ibid s 45(4). See also note 11 supra.

13 Ie other than those payable under ibid s 49 (as amended): see PARA 1376 post.

14 Ibid s 45(8). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

## UPDATE

### 1375 Fees

NOTES 1-6--See the Department for Transport (Fees) Order 2009, SI 2009/711 (amended by SI 2009/1885), which specifies for the purposes of the Finance (No 2) Act 1987 s 102(3) the functions to be taken into account in the fixing of fees.

NOTE 1--SI 1995/3000 reg 3 amended: SI 2009/804. SI 1995/3000 Schedule further amended: SI 2008/1474, SI 2009/804.

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### **1376. Certificates of qualification.**

On an application made to him by a person wishing to engage in a road transport undertaking<sup>1</sup> in a member state<sup>2</sup> other than the United Kingdom<sup>3</sup>, the appropriate person<sup>4</sup> must issue to the applicant a certificate of qualification<sup>5</sup> as to such matters relating to the applicant's reputation<sup>6</sup>, his professional competence<sup>7</sup>, or (where relevant) his financial standing<sup>8</sup>, as the appropriate person is satisfied he may properly certify and as appear to him to be of assistance to the applicant in satisfying any requirements imposed by the law of the other member state as regards the reputation, professional competence and financial standing of persons engaged in road transport undertakings in that member state<sup>9</sup>. A certificate of qualification must be in such form as the Secretary of State may specify<sup>10</sup>. No certificate of qualification may be issued before the fee has been paid<sup>11</sup>. The applicant must give to the appropriate person such information as that person may reasonably require for the discharge of his duties in relation to the application<sup>12</sup>. All fees payable under this provision must be paid into the Consolidated Fund<sup>13</sup>.

1 For the purposes of the Goods Vehicles (Licensing of Operators) Act 1995, a person who is an applicant for, or a holder of, a standard licence, or who is a transport manager, is regarded as being engaged in a road transport undertaking if:

1367 (1) in a case where that person is an individual, he is either:

41. (a) the holder, or one of the joint holders, of an operator's licence (s 58(4)(a)(i)); or  
41

42. (b) in the employment of a person who carries on a road transport undertaking and that undertaking gives him responsibility for the operation of goods vehicles used under an operator's licence (s 58(4)(a)(ii)); or  
42

1368 (2) in a case where that person is a company, either:

43. (a) the company is the holder of an operator's licence (s 58(4)(b)(i)); or  
43

44. (b) the company is a subsidiary of the holder of an operator's licence and goods vehicles used under that licence belong to the company or are in its possession (s 58(4)(b)(ii)).  
44

For the meaning of 'standard licence' see PARA 1330 note 2 ante. For the meaning of 'transport manager' see PARA 1335 note 5 ante. For the meaning of 'road transport undertaking' see PARA 1341 note 2 ante. For the meaning of 'operator's licence' see PARA 1329 ante. For the meaning of 'goods vehicle' see PARA 1329 note 3 ante. As to the meaning of 'subsidiary' see PARA 1330 note 5 ante.

2 As to the meaning of 'member state' see PARA 1149 note 18 ante.

3 For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

4 For these purposes, 'the appropriate person':

1369 (1) in relation to an applicant who holds only one operator's licence, means the traffic commissioner who issued that licence (Goods Vehicles (Licensing of Operators) Act 1995 s 49(5)(a));

1370 (2) in relation to an applicant who holds more than one such licence, means the traffic commissioner who issued any one of those licences (s 49(5)(b)); and

1371 (3) in relation to an applicant who holds no such licence, means the Secretary of State (s 49(5)(c)).

As to the functions of 'traffic commissioners' see PARA 1326 ante. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 Ibid s 49(1). As to offences of forging, altering etc a certificate of qualification or making a false statement for the purpose of obtaining the issue of a certificate of qualification see PARAS 1370-1371 ante.

6 Ibid s 49(1)(a).

7 Ibid s 49(1)(b).

8 Ibid s 49(1)(c). The Goods Vehicles (Licensing of Operators) Act 1995 s 49(5) provides that references to repute, professional competence or financial standing are to be construed in accordance with EC Council Directive 74/561 (OJ L308, 19.11.74, p 18), but that Directive has been repealed; references to repute, professional competence or financial standing on admission to the occupation of road haulage operator in national and international transport operations (see PARAS 1340-1342 ante) should now be construed in accordance with EC Council Directive 96/26 (OJ L124, 23.05.96, p 1) (as amended).

9 Goods Vehicles (Licensing of Operators) Act 1995 s 49(1).

10 Ibid s 49(2)(a) (amended by the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971, art 6(1), Schedule para 24). The certificate has effect for the purposes of EC Council Directive 77/796 (OJ L334, 24.12.77, p 37) art 3, 4 or 5 (amended by EEC Council Directive 80/1180 (OJ L350, 23.12.80, p 43; EEC Council Directive 89/438 (OJ L212, 22.07.89, p 101): Goods Vehicles (Licensing of Operators) Act 1995 s 49(2)(b).

11 Ibid s 49(3). The fee is £20: s 49(3).

12 Ibid s 49(4).

13 Ibid s 49(6). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

## UPDATE

### 1376 Certificates of qualification

NOTE 8--Directive 96/26 replaced with effect from 4 December 2011: European Parliament and EC Council Regulation 1071/2009 (OJ L300, 14.11.2009, p 51).

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## (xiv) Large Goods Vehicles

### 1377. Consignment notes required for carriage of goods on large goods vehicles.

The following provisions have effect as from a day to be appointed<sup>1</sup>.

Subject to certain exceptions<sup>2</sup>, no goods are to be carried on a large goods vehicle<sup>3</sup> unless a document (a 'consignment note') in the prescribed<sup>4</sup> form and containing the prescribed



particulars has been completed and signed in the prescribed manner and is carried by the driver<sup>5</sup> of the vehicle<sup>6</sup>. However, this requirement<sup>7</sup> does not apply to the carriage of goods<sup>8</sup> on any journey or on a vehicle of any class exempted by regulations<sup>9</sup>, or to any carriage of goods which is lawful without the authority of an operator's licence<sup>10</sup>. Subject to the provisions of regulations, a traffic commissioner<sup>11</sup> may dispense with the observance, as respects the carriage of goods under an operator's licence issued by him, of any of these requirements<sup>12</sup>, where he is satisfied that it is not reasonably practicable<sup>13</sup> for that requirement to be observed<sup>14</sup>. Such a dispensation may be granted generally<sup>15</sup>, as respects a particular vehicle<sup>16</sup>, or as respects the use of vehicles<sup>17</sup> for a particular purpose<sup>18</sup>. The consignment note relating to the goods carried on a vehicle on any journey must, at the conclusion of that journey, be preserved for the prescribed period by the person who used the vehicle for carrying the goods on that journey<sup>19</sup>.

1 The Goods Vehicles (Licensing of Operators) Act 1995 s 50 and Sch 5 are to come into force on such day as the Secretary of State may by order appoint, and different days may be appointed for different purposes and different provisions: s 50(2). At the date at which this volume states the law no such day had been appointed. As to regulations and orders see PARA 1321 ante. As to the Secretary of State see PARA 236 ante. As to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 le subject to *ibid* s 50, Sch 5 para 2(2): see the text and notes 9-10 *infra*.

3 A large goods vehicle is a goods vehicle, other than a hauling vehicle, falling within any of heads (1)-(3) *infra* (*ibid* Sch 5 para 1(1)):

1372 (1) a goods vehicle falls within this head if:

45. (a) it has a relevant plated weight exceeding 16,260 kg (Sch 5 para 1(2)(a)); or  
45

46. (b) in the case of a vehicle which does not have a relevant plated weight, it has an unladen weight exceeding 5,080 kg (Sch 5 para 1(2)(b));  
46

1373 (2) a goods vehicle falls within this head if it forms part of a vehicle combination, other than an articulated combination, and the combination is such that:

47. (a) in a case where all the vehicles comprised in the combination, or all those vehicles except any small trailer, have relevant plated weights, the aggregate of the relevant plated weights of the vehicles comprised in the combination, exclusive of any such trailer, exceeds 16,260 kg (Sch 5 para 1(3)(a)); or  
47

48. (b) in any other case, the aggregate of the unladen weights of the vehicles comprised in it, exclusive of any small trailer, exceeds 5,080 kg (Sch 5 para 1(3)(b));  
48

1374 (3) a goods vehicle falls within this head if it forms part of an articulated combination which is such that:

49. (a) in a case where the trailer comprised in the combination has a relevant plated weight, the aggregate of the unladen weight of the motor vehicle comprised in the combination, and the relevant plated weight of that trailer, exceeds 16,260 kg (Sch 5 para 1(4)(a)); or  
49

50. (b) in any other case, the aggregate of the unladen weights of the motor vehicles and the trailer comprised in the combination exceeds 5,080 kg (Sch 5 para 1(4)(b)).  
50

For the meaning of 'goods vehicle' see PARA 1329 note 3 ante. For the meaning of 'goods' see PARA 1329 note 3 ante. For these purposes, 'hauling vehicle' means a motor tractor, a light locomotive, a heavy locomotive or the motor vehicle comprised in an articulated combination; and 'motor tractor', 'light locomotive' and 'heavy locomotive' have the same meanings as in the Road Traffic Act 1960 (see PARAS 216-217 ante): Goods Vehicles (Licensing of Operators) Act 1995 Sch 5 para 1(6). For the meaning of 'articulated combination' see PARA 1329 note 10 ante. 'Relevant plated weight' means a plated weight of the description specified in relation to that provision by regulations: Sch 5 para 1(5). At the date at which this volume states the law no such regulations had been made. For the meaning of 'plated weight' see PARA 1329 note 10 ante. For the method of calculating

'unladen weight' see PARA 209 ante. For the meaning of 'vehicle combination' see PARA 1329 note 10 ante. For these purposes, 'small trailer' means a trailer having an unladen weight not exceeding 1,020 kg: Sch 5 para 1(3). For the meaning of 'trailer' see PARA 210 ante. For the meaning of 'motor vehicle' see PARA 210 ante.

4 For the meaning of 'prescribed' see PARA 1332 note 7 ante.

5 For the meaning of 'driver' see PARA 207 ante.

6 Goods Vehicles (Licensing of Operators) Act 1995 Sch 5 para 2(1). Any person who uses or drives a vehicle in contravention of Sch 5 para 2(1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: Sch 5 para 2(6). As to the standard scale see PARA 230 note 3 ante.

7 *Ibid* Sch 5 para 2(1): see the text and note 6 *supra*.

8 For the meaning of 'carriage of goods' see PARA 1329 note 3 ante.

9 Goods Vehicles (Licensing of Operators) Act 1995 Sch 5 para 2(2)(a).

10 *Ibid* Sch 5 para 2(2)(b).

11 As to the functions of traffic commissioners see PARA 1326 ante.

12 *Ie* any requirement of the Goods Vehicles (Licensing of Operators) Act 1995 Sch 5 para 2(1): see the text and note 6 *supra*.

13 As to the meaning of 'reasonably practicable' see PARA 1161 note 7 ante.

14 Goods Vehicles (Licensing of Operators) Act 1995 Sch 5 para 2(3).

15 *Ibid* Sch 5 para 2(4)(a).

16 *Ibid* Sch 5 para 2(4)(b).

17 As to the meaning of 'using a vehicle' see PARA 1329 note 2 ante.

18 Goods Vehicles (Licensing of Operators) Act 1995 Sch 5 para 2(4)(c).

19 *Ibid* Sch 5 para 2(5). Any person who fails to comply with Sch 5 para 2(5) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: Sch 5 para 2(6).

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### **1378. Powers of entry and inspection in relation to large goods vehicles.**

The following provisions have effect as from a day to be appointed<sup>1</sup>.

An officer<sup>2</sup> may require any person to produce and permit him to inspect and copy any document which is required<sup>3</sup> to be carried by that person as driver of a vehicle<sup>4</sup>, or any document which that person is so required to preserve<sup>5</sup>, and that document must, if the officer so requires by notice in writing<sup>6</sup> served on that person, be produced at the office of the traffic commissioner<sup>7</sup> specified in the notice within such time (not being less than 10 days) from the service of the notice as may be so specified<sup>8</sup>. An officer may at any time enter any large goods vehicle<sup>9</sup> and inspect that vehicle and any goods<sup>10</sup> carried on it<sup>11</sup>. Where an officer has reason to believe<sup>12</sup> that a large goods vehicle is being kept on any premises, or that certain documents<sup>13</sup> are to be found on any premises, he may, at any time which is reasonable having regard to the circumstances of the case<sup>14</sup>, enter those premises and inspect any such vehicle, and inspect and copy any such document, which he finds there<sup>15</sup>. These powers<sup>16</sup> are exercisable on production by the officer, if so required, of his authority<sup>17</sup>.

1 The Goods Vehicles (Licensing of Operators) Act 1995 s 50 and Sch 5 are to come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes and different provisions: s 50(2). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'officer' see *ibid* s 42(1) (as amended); and PARA 1372 note 1 ante (definition applied by s 50, Sch 5 para 3(7)). The powers conferred by Sch 5 para 3 on an officer are exercisable also by a police constable who is not, if wearing uniform, required to produce any authority: Sch 5 para 3(8).

3 *Ie* by or under *ibid* Sch 5 para 2: see PARA 1377 ante.

4 *Ibid* Sch 5 para 3(1)(a). For the meaning of 'driver' see PARA 207 ante. For the purpose of exercising his powers under Sch 5 para 3(1)(a), an officer may detain the vehicle in question during such time as is required for the exercise of that power: Sch 5 para 3(4). Any person who fails to comply with any requirement under Sch 5 para 3(1), or obstructs any officer in the exercise of his powers under Sch 5 para 3(4), is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: Sch 5 para 3(6). As to the standard scale see PARA 230 note 3 ante.

5 *Ibid* Sch 5 para 3(1)(b).

6 For the meaning of 'writing' see PARA 1139 note 11 ante.

7 As to the functions of traffic commissioners see PARA 1326 ante.

8 Goods Vehicles (Licensing of Operators) Act 1995 Sch 5 para 3(1).

9 For the meaning of 'large goods vehicle' see PARA 1377 note 3 ante.

10 For the meaning of 'goods' see PARA 1329 note 3 ante.

11 Goods Vehicles (Licensing of Operators) Act 1995 Sch 5 para 3(2). For the purpose of exercising his powers under Sch 5 para 3(2), an officer may detain the vehicle in question during such time as is required for the exercise of that power: Sch 5 para 3(4). Any person who obstructs any officer in the exercise of his powers under Sch 5 para 3(2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: Sch 5 para 3(6).

12 As to the meaning of 'reason to believe' see PARA 1373 note 2 ante.

13 *Ie* any such documents as are mentioned in the Goods Vehicles (Licensing of Operators) Act 1995 Sch 5 para 3(1): see the text and notes 2-8 supra.

14 As to the meaning of 'premises' see PARA 1372 note 5 ante. As to the meaning of 'at any time which is reasonable' see PARA 1372 note 2 ante.

15 Goods Vehicles (Licensing of Operators) Act 1995 Sch 5 para 3(3). Any person who obstructs any officer in the exercise of his powers under Sch 5 para 3(3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: Sch 5 para 3(6).

16 *Ie* the powers conferred by *ibid* Sch 5 para 3(1)-(4): see the text and notes 2-15 supra.

17 *Ibid* Sch 5 para 3(5). This does not mean that the right of entry can only be exercised if there is someone to whom the authority can be produced: *Grove v Eastern Gas Board* [1952] 1 KB 77, [1951] 2 All ER 1051, CA.

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### **1379. Falsification of consignment notes and records in relation to large goods vehicles.**

The following provisions have effect as from a day to be appointed<sup>1</sup>.

Any person who makes, or causes to be made, a consignment note<sup>2</sup> which he knows to be false<sup>3</sup>, or who, with intent to deceive, alters or causes any consignment note to be altered<sup>4</sup>, is guilty of an offence<sup>5</sup>.

1 The Goods Vehicles (Licensing of Operators) Act 1995 s 50 and Sch 5 are to come into force on such day as the Secretary of State may by order appoint, and different days may be appointed for different purposes and different provisions: s 50(2). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Ie a document required to be made under *ibid* s 50, Sch 5 para 2: see PARA 1377 ante.

3 *Ibid* Sch 5 para 4(1)(a).

4 *Ibid* Sch 5 para 4(1)(b).

5 *Ibid* Sch 5 para 4(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum (Sch 5 para 4(2)(a)), and on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both (Sch 5 para 4(2)(b)). As to the statutory maximum see PARA 359 note 11 ante.

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## **14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS**

### **(1) IN GENERAL**

#### **1380. Introduction.**

The hours which drivers engaged in the carriage of goods or passengers by road may drive and work and the records to be kept are regulated in the main by the applicable Community rules<sup>1</sup>. Part VI of the Transport Act 1968, which enacted provisions for the hours of driving and work of, and the records to be kept by, such drivers has been modified to take account of the application of the Community rules so that its provisions as to drivers hours and records apply only to driving or work to which the Community rules are not applicable<sup>2</sup>. However, the provisions in the Transport Act 1968 for inspection, enforcement, offences and penalties, as so modified, are applied to the Community rules<sup>3</sup>.

The Community rules apply to carriage by road within the European Community or between the Community, Switzerland and the countries party to the Agreement on the European Economic Area<sup>4</sup>: (1) of goods where the maximum permissible mass<sup>5</sup> of the vehicle, including any trailer, or semi-trailer, exceeds 3.5 tonnes; or (2) of passengers by vehicles which are constructed or permanently adapted for carrying more than nine persons including the driver, and are intended for that purpose<sup>6</sup>. In the Community rules, 'carriage by road' means any journey made entirely or in part on roads open to the public by a vehicle, whether laden or not, used for the carriage of passengers or goods<sup>7</sup>. 'Vehicle' means a motor vehicle, tractor, trailer or semi-trailer or a combination of these vehicles<sup>8</sup>. 'Motor vehicle' means any self-propelled vehicle travelling on the road, other than a vehicle permanently running on rails, and normally used for carrying passengers or goods; 'tractor' means any self-propelled vehicle travelling on the road, other

than a vehicle permanently running on rails, and specially designed to pull, push or move trailers, semi-trailers, implements or machines; 'trailer' means any vehicle designed to be coupled to a motor vehicle or tractor; and 'semi-trailer' means a trailer without a front axle coupled in such a way that a substantial part of its weight and of the weight of its load is borne by the tractor or motor vehicle<sup>9</sup>. In the Community rules, 'driver' means any person who drives the vehicle even for a short period, or who is carried in a vehicle as part of his duties to be available for driving if necessary<sup>10</sup>.

The provisions of Part VI of the Transport Act 1968, in so far as applicable, apply to passenger vehicles and goods vehicles<sup>11</sup>. For these purposes, 'passenger vehicles' means public service vehicles<sup>12</sup> and motor vehicles<sup>13</sup>, other than public service vehicles, constructed or adapted<sup>14</sup> to carry more than twelve passengers<sup>15</sup>. 'Goods vehicles' means: (a) heavy locomotives<sup>16</sup>, light locomotives<sup>17</sup>, motor tractors<sup>18</sup> and any motor vehicle so constructed that a trailer<sup>19</sup> may by partial superimposition be attached to the vehicle in such a manner as to cause a substantial part of its weight to be borne by the vehicle<sup>20</sup>; and (b) other motor vehicles<sup>21</sup> constructed or adapted to carry goods<sup>22</sup> other than the effects of passengers<sup>23</sup>. The provisions of Part VI of the Transport Act 1968 apply to 'a driver' which means<sup>24</sup>: (i) a person who drives<sup>25</sup> a vehicle<sup>26</sup> in the course of his employment (an 'employee-driver')<sup>27</sup>; and (ii) a person who drives a vehicle<sup>28</sup> for the purposes of a trade or business carried on by him (an 'owner-driver')<sup>29</sup>. The provisions of Part VI of the Transport Act 1968 apply to vehicles and persons in the public service of the Crown<sup>30</sup>, but do not apply: (A) in the case of motor vehicles owned by the Secretary of State for Defence and used for naval, military or air force purposes or in the case of vehicles so used while being driven by persons for the time being subject to the orders of a member of the armed forces of the Crown<sup>31</sup>; or (B) in the case of motor vehicles while being used for police or fire and rescue authority purposes<sup>32</sup>. The provisions of Part VI of the Transport Act 1968<sup>33</sup> do not apply to tramcars or trolley vehicles operated under statutory powers<sup>34</sup>.

1 For the purposes of the Transport Act 1968 Pt VI (ss 95-103) (as amended), 'the applicable Community rules' means any directly applicable Community provision for the time being in force about the driving of road vehicles and includes the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1 July 1970, as amended, as applied by the Community Drivers' Hours Regulation art 2(3); Transport Act 1968 s 103(1) (definition substituted by the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 s 2(1)(a); and amended by the Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819, regs 5, 8). The relevant Community rules are European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) on the harmonisation of certain social legislation relating to road transport; EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) on recording equipment in road transport (as amended); and European Parliament and EC Council Directive 2002/15 (OJ L80, 23.3.2002, p 35) concerning the organisation of the working time of persons performing mobile road transport activities (implemented by the Road Transport (Working Time) Regulations 2005, SI 2005/639 (see PARA 1398 et seq post)). EEC Regulation 1463/70 (OJ L164, 27.7.70, p 1) has been repealed, but art 3(1) continued, until 31 December 1989, to apply to vehicles and drivers employed in regular international passenger services in so far as the vehicles used for such services are not fitted with recording equipment used as prescribed in EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8): art 20. EEC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1) on the harmonisation of certain social legislation relating to road transport is repealed, but art 5(1) continues to apply until 10 September 2009 and art 5(2), (4) until 10 September 2008, ie the dates from which those provisions are repealed by EC Council Directive 2003/59 (OJ L226, 10.9.2003, p 4) art 15(1): see European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 28.

As to the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers see European Parliament and EC Council Directive 2003/59 (OJ L226, 10.9.2003, p 4).

EC Council Directive 93/104 (OJ L307, 13.12.93, p 18) concerning aspects of the organisation of working time does not apply to road transport: art 1(3).

As to the effect of EC Regulations and Directives in United Kingdom law see Case C-8/90 *Criminal Proceedings against Willy Kennes and Verkooyen PVBA* [1991] ECR I-4391, sub nom *Belgium v Verkooyen* [1993] 3 CMLR 735, ECJ (where the court ruled that EEC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1) art 18(2), under which references to EEC Council Regulation 543/69 (OJ L77, 29.3.69, p 49) (repealed by EEC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1)) were to be construed as references to EEC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1), was to be interpreted as meaning that it relates to references made by other Community measures but not to references to the repealed regulation appearing in provisions of national law for the implementation of it).

2 The Transport Act 1968 Pt VI (as amended) has effect with a view to securing the observance of proper hours or periods of work by persons engaged in the carriage of passengers or goods by road and thereby protecting the public against the risks which arise in cases where the drivers of motor vehicles are suffering from fatigue, but the Secretary of State may by regulations make such provision by way of substitution for or adaptation of the provisions of Pt VI (as amended), or supplemental or incidental to Pt VI (as amended), as he considers necessary or expedient to take account of any relevant Community provision: s 95(1) (amended by the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 s 2(1)(d)). No such regulations may be made unless a draft of the regulations has been laid before, and approved by resolution of, each House of Parliament: Transport Act 1968 s 101(3A) (added by the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 s 2(1)(i)). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. 'Relevant Community provision' means any Community provision for the time being in force about the driving of road vehicles, whether directly applicable or not: Transport Act 1968 s 103(1) (definition added by the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 s 2(1)(b)).

Such regulations may, in particular: (1) substitute different requirements for the requirements of the domestic drivers' hours code or add to, make exceptions from or otherwise modify any requirements of that code; (2) apply to journeys and work to which no relevant Community provision applies; (3) include provision as the circumstances in which a period of driving or duty to which a relevant Community provision or the domestic drivers' hours code applies is to be included or excluded in reckoning any period for the purposes of that code or any relevant Community provision respectively; and (4) contain such transitional, supplemental or consequential provisions as the Secretary of State thinks necessary or expedient: Transport Act 1968 s 95(1A) (added by the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 s 2(1)).

For these purposes, 'the domestic drivers' hours code' means the provisions of the Transport Act 1968 s 96(1)-(6) (see PARA 1389 et seq post), as for the time being in force and, in particular, as modified, added to or substituted by or under any instrument in force under s 95(1) (as amended), s 96(10) (as amended) or s 96(12): s 96(13) (added by the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 s 2(1)); Transport Act 1968 s 103(1) (definition added by the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 s 2(1)). As to modification of instruments under the Transport Act 1968 s 96(12) see PARA 1389 post; and for instruments under s 96(10) (as amended) see PARA 1395 post.

In exercise of the power to make regulations under s 95(1) (as amended), the following regulations have been made: the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746 (amended by SI 1984/144; SI 1986/1457; SI 1986/2076; SI 1996/941); the Drivers' Hours (Harmonisation with Community Rules) Regulations 1986, SI 1986/1458; and the Community Drivers' Hours and Recording Equipment (Amendment) Regulations 1998, SI 1998/2006. As to the making of regulations generally see PARA 1382 post.

3 See eg the Transport Act 1968 s 95(2)(c) (as added and substituted) (see note 11 infra), s 96(11) (as amended) (see PARA 1393 post), s 97AA (as added) (see PARA 1425 post), s 97B (as added and amended) (see PARA 1414 post), s 99 (as amended) (see PARA 1426 post). The effect of such amendments is to disapply the domestic drivers' hours code in the case of driving and work to which the Community rules apply but to apply the enforcement provisions of Pt VI (as amended) to the Community rules. EEC Council Directive 88/599 (OJ L325, 29.11.88, p 55) on standard checking procedures for the implementation of EEC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1) and EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) lays down standard checking procedures for the enforcement of the Community rules. As to the enforcement of the Community rules see Case C-7/90 *Criminal proceedings against Paul Vandevenne* [1991] ECR I-4371, sub nom *Belgium v Vadevenne* [1993] 3 CMLR 608, ECJ (in which the court ruled that neither the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 10 (renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ) nor EEC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1) art 17(1) (repealed) (cf European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 18) required a member state to introduce strict criminal liability for breaches of the Regulation provided the penalties imposed are effective, proportionate and dissuasive).

4 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 2(2). The European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (Geneva, 1 July 1970; TS 103 (1978); Cmnd 7401) ('the AETR') applies instead of the Community rules to international road transport operations undertaken in part outside the areas mentioned in the text to: (1) vehicles registered in the Community or in countries which are contracting parties to the AETR, for the whole journey; (2) vehicles registered in a third country which is not a contracting party to the AETR, only for the part of the journey on the territory of the Community or of countries which are contracting parties to the AETR: European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 2(3). The provisions of the AETR should be aligned with those of European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1), so that the main provisions in that Regulation apply, through the AETR, to such vehicles for any part of the journey made within the Community: art 2(3). See also: (1) TS 58 (1983) (Cmnd 9037); (2) TS 1 (1996) (Cm 3042); and (3) TS 5 (1996) (Cm 3135). In 1992 the AETR rules were brought into line with the Community rules: TS 5 (1996) (Cm 3135). A breach of the AETR rules has been held to be a breach of EEC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1) art 2(2) (repealed) (see now European Parliament and Council Regulation 561/2006 (OJ L102,

11.4.2006, p 1) art 2(3)) and thus an offence under the Transport Act 1968 s 96(11A) (as added and amended) (see PARA 1393 post): *Geldart v Brown* [1986] RTR 106, DC. European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 2(2) extends to carriage by road within the Community by vehicles registered in a member state in the course of journeys to or from third countries which are not parties to the AETR or in transit through such countries: Case C-313/92 *Criminal proceedings against Van Swieten BV* [1994] ECR I-2177, ECJ (referring to EEC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1) art 2(2) (repealed)).

5 'Maximum permissible mass' means the maximum authorised operating mass of a vehicle when fully laden: European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 4(m); EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 2 (substituted by European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 26(1)). This means, in relation to a vehicle combination, the aggregate of the maximum gross weights of the vehicle and trailer and not their maximum train weight: *Small v DPP* [1995] RTR 95, DC; but see *Laverick v DPP* [1999] RTR 417, DC (where it was held that it was the weight marked on the vehicle as the maximum permissible train weight which was decisive and since this was 3.5 metric tons the vehicle was within the exemption from the requirement for a tachograph in EEC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1) art 4(1) (now repealed); the court added that the definition of 'permissible maximum weight' in the Road Traffic Act 1988 s 108(1) (see PARA 478 note 16 ante) which applied to articulated vehicles was not relevant).

6 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 2(1).

7 Ibid art 4(a); EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 2 (as substituted: see note 5 supra). Where a coach was driven from its depot to the docks to pick up passengers, the journey to the docks of the empty coach was not 'positioning journey': *R W Appleby Ltd v Vehicle Inspectorate* [1994] RTR 380, DC. A 'road open to the public' means a road to which the public has access and not a road maintained and managed at the public expense: *DPP v Cargo Handling Ltd* [1992] RTR 318, 156 JP 486, DC. As to the meaning of 'used for the carriage of goods': *DPP v Ryan* [1992] RTR 13, (1991) 155 JP 456, DC.

8 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 4(b); EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 2 (as substituted: see note 5 supra).

9 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 4(b); EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 2 (as substituted: see note 5 supra).

10 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 4(c); EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 2 (as substituted: see note 5 supra). As to the minimum ages of drivers and crews see EC Council Directive 2003/59 (OJ L226, 10.9.2003, p 4) art 5.

11 See the Transport Act 1968 s 95(2)(a), (b). Part VI (as amended) also applies to vehicles not falling within s 95(2)(a) or (b) (see the text and notes 12-23 infra) which are vehicles within the meaning of the Community Drivers' Hours Regulation art 4 (see the text and note 8 supra) and which are not referred to in art 3 (see PARA 1384 note 1 post): Transport Act 1968 s 95(2)(c) (added by the Community Drivers' Hours and Recording Equipment (Amendment) Regulations 1998, SI 1998/2006, reg 2; and substituted by the Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819, regs 5, 6). 'The Community Drivers' Hours Regulation' means European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) as amended from time to time: Transport Act 1968 s 103(1) (definition added by the Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819, regs 5, 8).

The Transport Act 1968 Pt VI (as amended) does not apply to a person or vehicle in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(a). See PARA 1384 post for the corresponding provision in respect of the Community rules.

12 Transport Act 1968 s 95(2)(a)(i). For the meaning of 'public service vehicle' see PARA 1136 ante; definition applied by virtue of s 159(1) (amended by the Public Passenger Vehicles Act 1981 s 88, Sch 7 para 10).

13 For the meaning of 'motor vehicle' see PARA 210 ante.

14 'Constructed or adapted' seems to mean originally constructed or subsequently altered so as to make apt: *French v Champkin* [1920] 1 KB 76, DC; *Hubbard v Messenger* [1938] 1 KB 300 at 307, [1937] 4 All ER 48 at 50 per Lord Hewart. See *Taylor v Mead* [1961] 1 All ER 626, [1961] 1 WLR 435; *Maddox v Storer* [1963] 1 QB 451, [1962] 1 All ER 831, DC; *Flower Freight Co Ltd v Hammond* [1963] 1 QB 275, [1962] 3 All ER 950, DC; *Popperwell v Cockerton* [1968] 1 All ER 1038n, [1968] 1 WLR 438; *Backer v Secretary of State for the Environment* [1983] 2 All ER 1021, [1983] 1 WLR 1485; *R v Formosa* [1991] 2 QB 1, [1991] 1 All ER 131, CA. It was held that the mere attachment of a trailer on which there is a car to a motor vehicle did not convert it into a motor vehicle 'adapted' to carry goods (*National Trailer and Training Association Ltd v DPP* [1999] RTR 89, 163 JP 186, DC); the lacuna exposed by this case has been filled by the Transport Act 1968 s 95(2)(c) (as added) (see note 11 supra).

15 Ibid s 95(2)(a)(ii).

- 16 For the meaning of 'heavy locomotive' see PARA 217 ante.
- 17 For the meaning of 'light locomotive' see PARA 217 ante.
- 18 For the meaning of 'motor tractor' see PARA 216 ante.
- 19 For the meaning of 'trailer' see PARA 210 ante.
- 20 Transport Act 1968 s 95(2)(b)(i). See *DPP v Free's Land Drainage Co Ltd* [1990] RTR 37, 154 JP 925, DC.
- 21 Ie except those mentioned in the Transport Act 1968 s 95(2)(a): see the text and notes 12-15 supra.
- 22 For the meaning of 'goods' see PARA 249 note 9 ante.
- 23 Transport Act 1968 s 95(2)(b)(ii).
- 24 Ibid ss 95(3), 103(1). For the purposes of Pt VI (as amended), a director of a company is deemed to be employed by it: s 103(2).
- 25 For these purposes, references to a person driving a vehicle are references to his being at the driving controls of the vehicle for the purpose of controlling its movement, whether it is in motion or is stationary with the engine running: ibid s 103(3).
- 26 Ie a vehicle to which ibid Pt VI (as amended) applies.
- 27 Ibid ss 95(3)(a), 103(1).
- 28 See note 26 supra.
- 29 Transport Act 1968 ss 95(3)(b), 103(1). Stock car racing as a hobby supported by sponsorship money and in which the defendant competed for prize money was held not to be a trade or business: *Stirk v McKenna* [1984] RTR 330, DC.
- 30 Transport Act 1968 s 102(1). See further PARA 205 ante.
- 31 Ibid s 102(2). Where an offence under Pt VI (as amended) is alleged to have been committed in connection with a vehicle in the public service of the Crown, proceedings may be brought in respect of the offence against a person nominated for the purpose on behalf of the Crown; and, subject to s 102(3A) (as added), where any such offence is committed any person so nominated is also guilty of the offence as well as any person actually responsible for the offence (but without prejudice to proceedings against any person so responsible): s 102(3) (substituted by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 6). Where a person is convicted of an offence under the Transport Act 1968 s 102(3) (as substituted): (1) no order may be made on his conviction save an order imposing a fine; (2) payment of any fine imposed on him in respect of that offence may not be enforced against him; and (3) apart from the imposition of any such fine, the conviction is to be disregarded for all purposes other than any appeal (whether by way of case stated or otherwise): Transport Act 1968 s 102(3A) (added by the Transport Act 1982 s 64; and substituted by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 6).
- 32 Transport Act 1968 s 102(4) (amended by the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 25).
- 33 Ie under the Transport Act 1968 Pt VI (as amended) and the Road Traffic Act 1960 s 255 (as amended) (see PARA 209 ante) in its application to it.
- 34 Transport Act 1968 s 102A(1) (s 102A added by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 6(7)). For these purposes, 'operated under statutory powers' means, in relation to tramcars or trolley vehicles, that their use is authorised or regulated by special Act of Parliament or by an order having the force of an Act: Transport Act 1968 s 102A(2) (as so added). Section 102A(1) (as added) has effect subject to any such Act or order as is mentioned in s 102A(2) (as added), and any such Act or order may apply to the tramcars or trolley vehicles to which it relates any of the provisions excluded by s 102A(1) (as added): s 102A(3) (as so added).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours



As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

### **1380 Introduction**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 2--SI 1979/1746 further amended: SI 2010/892.

NOTE 3--See also Transport Act 1968 ss 97C-97H; and PARA 1425.

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### **1381. Power to give effect to international agreements.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> make, in relation to Great Britain<sup>3</sup> such provision as appears to him to be requisite for enabling the United Kingdom<sup>4</sup> to become a party to any international agreement relating to the drivers<sup>5</sup> or crews of vehicles used on international journeys, and such an order may<sup>6</sup>:

- 2140 (1) modify or exclude any of the provisions contained in or having effect under Part VI of the Transport Act 1968 or contained in or having effect under any other enactment passed before or after the Transport Act 1968<sup>7</sup>;
- 2141 (2) provide for exemptions from all or any of the provisions of the order<sup>8</sup>;
- 2142 (3) provide for the punishment of contraventions of any provision of the order<sup>9</sup>;
- 2143 (4) contain such supplementary, incidental or consequential provisions as appear to the Secretary of State to be necessary or expedient<sup>10</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 At the date at which this volume states the law no such order had been made.

3 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

4 For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

5 For the meaning of 'driver' see PARA 1380 ante.

6 Transport Act 1968 s 100(1). As to the provisions made in relation to Northern Ireland see s 100(2). No order may be made under s 100(1) unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament; and any regulations made under the Transport Act 1968 Pt VI (ss 95-103) (as amended) (except regulations made under s 95(1) (as amended) (see PARA 1380 ante) or by virtue of an order under s 100(2)) are subject to annulment in pursuance of a resolution of either House of Parliament: s 101(3) (amended by the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 s 2(1)).

7 Transport Act 1968 s 100(1)(a).

8 Ibid s 100(1)(b).

9 Ibid s 100(1)(c).

10 Ibid s 100(1)(d).

## **UPDATE**

### **1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/(1) IN GENERAL/1382. Orders and regulations under the Transport Act 1968.

### **1382. Orders and regulations under the Transport Act 1968.**

Any order or regulations under Part VI of the Transport Act 1968<sup>1</sup> may make different provision for different classes of case<sup>2</sup>. A definition or description of a class of vehicles for the purposes of any order or regulation under Part VI may be framed by reference to any characteristic of the vehicles or to any other circumstances whatsoever<sup>3</sup>.

Before making any order or regulations under Part VI the Secretary of State<sup>4</sup> must consult with such representative organisations as he thinks fit<sup>5</sup>.

1 Ibid the Transport Act 1968 Pt VI (ss 95-103) (as amended).

2 Ibid s 101(2). In relation to orders or regulations made under Pt VI (as amended), the provisions of s 101 (as amended) have effect in addition to the provisions of s 157 (see PARA 243 ante): s 101(1). As to the provisions made in relation to Northern Ireland see s 101(4).

3 Ibid s 101(5).

4 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 Transport Act 1968 s 101(6).

## **UPDATE**

### **1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-

1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/(1) IN GENERAL/1383.  
Classification of driving or work.

### **1383. Classification of driving or work.**

For the purposes of the regulation of drivers' hours<sup>1</sup>, their driving or work is classified either as Community driving or work or as domestic driving or work<sup>2</sup>. 'Community driving or work' means driving or, as the case may be, work to which the applicable Community rules<sup>3</sup> apply<sup>4</sup>. 'Domestic driving or work' means driving, or, as the case may be, work to which Part VI of the Transport Act 1968<sup>5</sup> applies and the applicable Community rules do not apply<sup>6</sup>.

1    le under the Drivers' Hours (Harmonisation with Community Rules) Regulations 1986, SI 1986/1458.

2    See *ibid* reg 2(2).

3    For the meaning of 'the applicable Community rules' see PARA 1380 note 1 *ante*.

4    Drivers' Hours (Harmonisation with Community Rules) Regulations 1986, SI 1986/1458, reg 2(6)(a).

5    le the Transport Act 1968 Pt VI (as amended). As to the vehicles to which Pt VI (as amended) applies see PARA 1380 *ante*.

6    Drivers' Hours (Harmonisation with Community Rules) Regulations 1986, SI 1986/1458, reg 2(6)(b). For vehicles the use of which is exempted from the applicable Community rules and which are therefore, unless in turn exempted by the domestic drivers' hours code, subject to that code see PARA 1384 *post*. For the meaning of 'the domestic drivers' hours code' see PARA 1380 note 2 *ante*. It had been held that in areas not covered by Community rules as to drivers' hours, member states remain competent to adopt rules on driving periods: Case C-335/94 *Action challenging an administrative fine brought by Hans Walter Mrozek and Bernhard Jäger* [1996] ECR I-1573, sub nom *HW Mrozek* [1996] 2 CMLR 764, ECJ.

The domestic drivers' hours code does not apply in relation to any Community driving or work of a driver of a vehicle to which the Transport Act 1968 Pt VI (ss 95-103) (as amended) applies: Drivers' Hours (Harmonisation with Community Rules) Regulations 1986, SI 1986/1458, reg 2(1).

## **UPDATE**

### **1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/(1) IN GENERAL/1384.  
Vehicles exempted from the Community rules.

### **1384. Vehicles exempted from the Community rules.**

The carriage by road of goods or passengers in certain vehicles is exempted<sup>1</sup> from the requirements of the Community rules as to drivers' hours and recording equipment<sup>2</sup>. The use of vehicles exempted is, therefore, classified as domestic driving or work<sup>3</sup> and is accordingly subject to the domestic drivers' hours code<sup>4</sup>.

The vehicles exempted from the requirements of the Community rules as to drivers' hours and recording equipment are:

- 2144 (1) vehicles used for the carriage of passengers on regular services<sup>5</sup> where the route covered by the service in question does not exceed 50 kilometres<sup>6</sup>;
- 2145 (2) vehicles with a maximum authorised speed not exceeding 40 kilometres per hour<sup>7</sup>;
- 2146 (3) vehicles owned or hired without a driver by the armed services, civil defence services, fire services, and forces responsible for maintaining public order when the carriage is undertaken as a consequence of the tasks assigned to these services and is under their control<sup>8</sup>;
- 2147 (4) vehicles, including vehicles used in the non-commercial transport of humanitarian aid, used in emergencies or rescue operations<sup>9</sup>;
- 2148 (5) specialised vehicles used for medical purposes<sup>10</sup>;
- 2149 (6) specialised breakdown vehicles operating within a 100 kilometre radius of their base<sup>11</sup>;
- 2150 (7) vehicles undergoing road tests for technical development, repair or maintenance purposes, and new or rebuilt vehicles which have not yet been put into service<sup>12</sup>;
- 2151 (8) vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7.5 tonnes used for the non-commercial carriage of goods<sup>13</sup>;
- 2152 (9) commercial vehicles, which have a historic status according to the legislation of the member state in which they are being driven and which are used for the non-commercial carriage of passengers or goods<sup>14</sup>.

Regular national passenger services and certain regular international passenger services were exempted from the Community rules as to recording equipment but must install such equipment by 31 December 2007<sup>15</sup>.

1 As to the vehicles exempted see European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) on the harmonisation of certain social legislation relating to road transport, art 3; EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) on recording equipment in road transport, art 3 (amended by European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 26(2)); and heads (1)-(9) in the text. Recording equipment must be installed and used in vehicles registered in a member state which are used for the carriage of passengers or goods by road, except the vehicles referred to in European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 3: EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 3(1) (as so amended). Vehicles referred to in European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 16(1) (see PARA 1421 post) and vehicles which were exempt from the scope of application of EEC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1) (repealed) but which are no longer exempt under European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) have until 31 December 2007 to comply with this requirement: EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 3(1) (as so amended).

The exemptions apply to types of vehicles, not to their use on any occasion: *DPP v Guy* [1998] RTR 82, (1997) 161 JP 727, CA. The burden of establishing the right to an exemption lies on the defendant on a balance of probabilities: *Gaunt v Nelson* [1987] RTR 1 at 11, DC.

2 I.e. European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) and EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) (as amended): see PARA 1380 ante.

3 See PARA 1383 ante.

4 See PARA 1380 text and note 2 ante.

5 'Regular passenger services' means national and international services defined in EEC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 1 on the introduction of common rules for the international carriage of passengers by coach and bus: European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 4(n); EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 2. A passenger transport service supplied on a number of occasions pursuant to a block reservation made by a tour operator and providing for a single journey from an airport to an hotel with a stop, on occasion, at a tourist attraction, where the precise route taken is not pre-determined, does not constitute a regular service: Case C-47/97 *Criminal proceedings against E*

*Clarke & Sons (Coaches) Ltd and DJ Ferne* [1998] ECR I-2147, sub nom *E Clarke & Sons (Coaches) Ltd and DJ Ferne* [1998] 2 CMLR 699, ECJ.

6 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 3(a); EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 3(1) (as substituted: see note 1 supra).

7 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 3(b); EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 3(1) (as substituted: see note 1 supra).

8 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 3(c); EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 3(1) (as substituted: see note 1 supra).

9 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 3(d); EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 3(1) (as substituted: see note 1 supra).

10 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 3(e); EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 3(1) (as substituted: see note 1 supra).

11 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 3(f); EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 3(1) (as substituted: see note 1 supra). A 'specialised breakdown vehicle' means a vehicle whose construction and permanent characteristics are such that it will be used mainly to recover vehicles that have broken down, and this will apply regardless of the use to which such a vehicle is put by its owner: *Case 79/86 RT Hamilton v Joseph Stanley Whitelock* [1987] ECR 2363, [1987] 3 CMLR 190, ECJ. A double-decked articulated car transporter used to collect accident-damaged vehicles on the instructions of insurance companies, and which never collected vehicles from the scenes of accidents, was held not to be a specialised breakdown vehicle: *Universal Salvage Ltd v Boothby* [1984] RTR 289, 148 JP 347, DC.

12 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 3(g); EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 3(1) (as substituted: see note 1 supra).

13 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 3(h); EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 3(1) (as substituted: see note 1 supra).

14 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 3(i); EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 3(1) (as substituted: see note 1 supra). For these purposes, a vehicle has a historic status if it is a vehicle which is by virtue of its construction and equipment suitable for carrying passengers or goods and which was manufactured more than 25 years before the date on which it is being driven: Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819, reg 3.

15 EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 3(1) (as substituted: see note 1 supra). In relation to drivers' hours see European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 16; and PARA 1421 post.

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

### 1384 Vehicles exempted from the Community rules

NOTE 5--Regulation 684/92 replaced with effect in part from 4 June 2010 and in part from 4 December 2011: European Parliament and EC Council Regulation 1073/2009 (OJ L300, 14.11.2009, p 88).

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1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/(1) IN GENERAL/1385. Further vehicle exemptions granted by the Secretary of State.

### **1385. Further vehicle exemptions granted by the Secretary of State.**

Further exemptions from the requirements of the Community rules as to drivers' hours and recording equipment<sup>1</sup> are granted by regulations made by the Secretary of State<sup>2</sup> in respect of:

- 2153 (1) certain vehicles owned or hired without a driver by a public authority to undertake carriage by road otherwise than in competition with private transport undertakings<sup>3</sup>;
- 2154 (2) certain vehicles used or hired without a driver by an agricultural, horticultural, forestry, farming or fishery undertaking for carrying goods as part of its entrepreneurial activity within a 100 kilometre radius from where the undertaking is based<sup>4</sup>;
- 2155 (3) any tractor which is used for agricultural or forestry work within a 100 kilometre radius of the base of the undertaking which owns, hires or leases the tractor<sup>5</sup>;
- 2156 (4) certain vehicles having a maximum permissible mass not exceeding 7.5 tonnes and used for carrying materials, equipment or machinery for the driver's use in the course of the driver's work<sup>6</sup>;
- 2157 (5) any vehicle which operates exclusively on an island which does not exceed 2300 square kilometres in area and is not linked to the rest of Great Britain by a bridge, ford or tunnel open for use by motor vehicles<sup>7</sup>;
- 2158 (6) any vehicle which is used by an undertaking for the carriage of goods within a 50 kilometre radius from where the undertaking is based, is propelled by means of natural or liquefied gas or electricity and has a maximum permissible mass, including the mass of any trailer or semi-trailer drawn by it, not exceeding 7.5 tonnes<sup>8</sup>;
- 2159 (7) certain vehicles used for driving instruction and examination with a view to obtaining a driving licence or certificate of professional competence<sup>9</sup>;
- 2160 (8) any vehicle which is being used in connection with: (a) sewerage, flood protection, water, gas or electricity maintenance services; (b) road maintenance or control; (c) door-to-door household refuse collection or disposal; (d) telegraph or telephone services; (e) radio or television broadcasting; or (f) the detection of radio or television transmitters or receivers<sup>10</sup>;
- 2161 (9) any vehicle with not more than seventeen seats, including the driver's seat, used exclusively for the non-commercial carriage of passengers<sup>11</sup>;
- 2162 (10) any specialised vehicle which is being used for transporting circus or funfair equipment<sup>12</sup>;
- 2163 (11) any mobile project vehicle the primary purpose of which is use as an educational facility when stationary and which is specially fitted for that purpose<sup>13</sup>;
- 2164 (12) any vehicle which is being used for the collection of milk from farms or for the return to farms of milk containers or milk products intended for animal feed<sup>14</sup>;
- 2165 (13) any vehicle which is being used to carry animal waste or carcasses which are not intended for human consumption<sup>15</sup>;
- 2166 (14) any vehicle which is used exclusively on roads inside hub facilities<sup>16</sup>;
- 2167 (15) any vehicle which is being used to carry live animals from a farm to a market, or from a market to a slaughterhouse, where the distance between the farm and the market, or between the market and the slaughterhouse, does not exceed 50 kilometres<sup>17</sup>;
- 2168 (16) any vehicle: (a) which has a maximum permissible mass not exceeding 7.5 tonnes; (b) which is being used to deliver items as part of a universal service by a universal service provider<sup>18</sup>; (c) which is being used within a 50 kilometre radius

from the base of the universal service provider; and (d) the driving of which does not constitute the driver's main activity<sup>19</sup>;

- 2169 (17) any vehicle used by the Royal National Lifeboat Institution for the purpose of hauling lifeboats<sup>20</sup>;
- 2170 (18) any vehicle which was manufactured before 1 January 1947<sup>21</sup>;
- 2171 (19) any vehicle which is propelled by steam<sup>22</sup>;
- 2172 (20) any vehicle being used for collecting sea coal<sup>23</sup>.

A vehicle falling within head (16) supra is exempted only from the Community rules as to drivers' hours<sup>24</sup>; and a vehicle falling within head (20) supra is exempted only from the Community rules as to recording equipment<sup>25</sup>.

Member states may, after authorisation by the European Commission, grant exceptions from the application of the provisions of the Community rules as to drivers' hours<sup>26</sup> to transport operations carried out in exceptional circumstances, if such exceptions do not prejudice the objectives of the Community rules as to drivers' hours<sup>27</sup>; and in urgent cases they may grant a temporary exception for a period not exceeding thirty days, which must be notified immediately to the European Commission<sup>28</sup>. The Commission must notify the other member states of any exception granted pursuant to this provision<sup>29</sup>.

1    le the requirements of European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) on the harmonisation of certain social legislation relating to road transport, arts 6-9 and of EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) on recording equipment in road transport (as amended): see PARA 1380 ante. Exemption from European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) arts 6-9 is granted pursuant to art 13(1), and exemption from EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) is granted pursuant to art 3(2), (3).

2    See the Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3    See the Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819, regs 2(1)(a), 4(1), Schedule para 1. In relation to an earlier similar provision, it was held that this exemption applies only to vehicles which are owned by or under the control of a public authority and not to vehicles owned by a private enterprise which has a private law contract to carry out work for the public authority (Case 47/79 *Städtereinigung K Nehlsen KG v Freie Hansestadt Bremen* [1979] ECR 3639, [1980] 2 CMLR 654, ECJ), but that this exemption does not apply where a passenger service is operated under an exclusive contract for a specified period, which has been granted following a competitive tender, to an undertaking wholly owned by a public authority (Case C-387/96 *Criminal proceedings against Anders Sjöberg* [1998] ECR I-1225, [1998] 2 CMLR 1304, ECJ).

4    See the Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819, regs 2(1)(a), 4(1), Schedule para 2.

5    See *ibid* regs 2(1)(a), 4(1), Schedule para 3. For the meaning of 'tractor' see PARA 1380 ante; definition applied by virtue of reg 1(3).

6    See *ibid* regs 2(1)(a), 4(1), Schedule para 4. In relation to an earlier similar provision, it was held that the stock in trade of a retailer is not 'material or equipment for the driver's use in the course of his work' (*DPP v Aston* [1989] 2 CMLR 297, [1989] RTR 198, DC), and that a vehicle registration document carried in a vehicle on the way to be sold did not constitute 'material or equipment for the driver's use in the course of his work' (*Vehicle Inspectorate v Norman* [1999] RTR 366, DC).

7    See the Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819, regs 2(1)(a), 4(1), Schedule para 5. For the meaning of 'Great Britain' see PARA 205 note 3 ante.

8    See *ibid* regs 2(1)(a), 4(1), Schedule para 6.

9    See *ibid* regs 2(1)(a), 4(1), Schedule para 7.

10   See *ibid* regs 2(1)(a), 4(1), Schedule para 8.

- 11 See *ibid* regs 2(1)(a), 4(1), Schedule para 9.
- 12 See *ibid* regs 2(1)(a), 4(1), Schedule para 10.
- 13 See *ibid* regs 2(1)(a), 4(1), Schedule para 11.
- 14 See *ibid* regs 2(1)(a), 4(1), Schedule para 12.
- 15 See *ibid* regs 2(1)(a), 4(1), Schedule para 13. In relation to an earlier similar provision, it was held that 'animal waste . . . not intended for human consumption' means the parts of animals which are not intended for human oral consumption: Case 90/83 *Michael Paterson v W Weddel & Co Ltd* [1984] ECR 1567, [1984] 2 CMLR 540, ECJ.
- 16 See the Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819, regs 2(1)(a), 4(1), Schedule para 14(1). For these purposes, examples of 'hub facilities' include ports, interports and railway terminals: Schedule para 14(2).
- 17 See *ibid* reg 2(1)(a), Schedule para 15.
- 18 *Ie* as defined in European Parliament and Council Directive 97/67/EC (OJ L15, 21.1.98, p 14) on common rules for the development of the internal market of Community postal services, art 2(13).
- 19 See the Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819, reg 2(1)(b).
- 20 See *ibid* regs 2(2), 4(2)(a), Schedule para 16.
- 21 See *ibid* regs 2(2), 4(2)(a), Schedule para 17.
- 22 See *ibid* regs 2(2), 4(2)(a), Schedule para 18.
- 23 See *ibid* reg 4(2)(b).
- 24 See note 19 *supra*.
- 25 See note 23 *supra*.
- 26 *Ie* European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1).
- 27 *Ibid* art 14(1).
- 28 *Ibid* art 14(2). For examples of a temporary exception from the application of the provisions of the Community rules as to drivers' hours see the Community Drivers' Hours (Passenger and Goods Vehicles) (Temporary Exception) Regulations 2000, SI 2000/2483 (amended by SI 2000/2658); and the Community Drivers' Hours and Working Time (Road Tankers) (Temporary Exception) Regulations 2006, SI 2006/17.
- 29 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 14(3).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

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## (2) DRIVERS' HOURS ON COMMUNITY DRIVING OR WORK

### 1386. Drivers' hours on Community driving or work.

The daily driving time<sup>1</sup> must not exceed nine hours, although it may be extended to at most ten hours not more than twice during the week<sup>2</sup>. Daily and weekly driving times must include all driving time on the territory of the Community or of a third country<sup>3</sup>. The weekly driving time<sup>4</sup> must not exceed 56 hours and must not result in the maximum weekly working times<sup>5</sup> being exceeded<sup>6</sup>. The total accumulated driving time during any two consecutive weeks must not exceed 90 hours<sup>7</sup>.

1 'Daily driving time' means the total accumulated driving time between the end of one daily rest period and the beginning of the following daily rest period or between a daily rest period and a weekly rest period: European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) on the harmonisation of certain social legislation relating to road transport, art 4(k); EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 2 (substituted by European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 26(1)). 'Driving time' means the duration of driving activity recorded automatically or semi-automatically by the recording equipment as defined in EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex I (as amended) and Annex IB (as added, substituted and amended), or manually as required by art 16(2): European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 4(j). 'Daily rest period' means the daily period during which a driver may freely dispose of his time and covers a 'regular daily rest period' and a 'reduced daily rest period': art 4(g). 'Regular daily rest period' means any period of rest of at least 11 hours; alternatively, this regular daily rest period may be taken in two periods, the first of which must be an uninterrupted period of at least three hours and the second an uninterrupted period of at least nine hours; 'reduced daily rest period' means any period of rest of at least nine hours but less than 11 hours: art 4(g). 'Weekly rest period' means the weekly period during which a driver may freely dispose of his time and covers a 'regular weekly rest period' and a 'reduced weekly rest period': art 4(h). 'Regular weekly rest period' means any period of rest of at least 45 hours; and 'reduced weekly rest period' means any period of rest of less than 45 hours, which may, subject to the conditions laid down in art 8(6), be shortened to a minimum of 24 consecutive hours: art 4(h). 'Rest' means any uninterrupted period during which a driver may freely dispose of his time: art 4(f). For the meaning of 'driver' see PARA 1380 ante.

A period of voluntary overtime which a driver spends working in his employer's yard cannot be regarded as a period of 'rest', because while the driver might be free to dispose of his time when he decided to work overtime, once he does so, he comes under the control of his employer: *Prime v Hosking* [1995] IRLR 143, [1995] RTR 189, DC.

Time spent working for another employer may not be counted as being part of a daily rest period: *Pearson v Rutterford* [1982] RTR 54, DC. Time spent driving the vehicle home must be included in the daily driving period: *DPP v Guy* [1997] 3 CMLR 1161, 161 JP 727, DC.

In *Kelly v Shulman* [1989] 1 All ER 106, [1989] RTR 84, DC, the court reached the following conclusions on the meaning and effect of EEC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1) art 6(1) (now repealed): (1) the term 'day' means successive periods of 24 hours beginning with the driver's resumption of driving after his last weekly rest period; (2) every driver must have a weekly rest period once in every week; (3) in certain circumstances the weekly rest period falls to be taken earlier. Thus any driver who in the course of six consecutive driving periods since his last weekly rest has driven in the aggregate not less than the maximum permitted number of hours in six such periods must begin a weekly rest immediately on conclusion of the sixth period; but any such driver who in those six driving periods has driven for an aggregate of less than the maximum permitted number of hours may postpone the commencement of his weekly rest period until the end of the sixth day and drive during the period of postponement, provided he does not by so doing increase the aggregate of the hours driven since his last weekly rest to a figure exceeding the maximum number of hours permitted in six daily driving periods. As to weekly rest periods see PARA 1387 post.

The term 'day' must be understood as equivalent to 'period of 24 hours' commencing when the driver activates the tachograph following his weekly or daily rest period: see Case C-394/92 *Criminal proceedings against Marc Michielsen and Geybels Transport Service NV* [1994] ECR I-2497, [1995] IRLR 171, ECJ.

2 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 6(1).

3 Ibid art 6(4).

4 'Weekly driving time' means the total accumulated driving time during a week: ibid art 4(l). 'A week' means the period of time between 00.00 on Monday and 24.00 on Sunday: art 4(i).

5 le laid down in European Parliament and Council Directive 2002/15 (OJ L80, 23.3.2002, p 35), on the organisation of the working time of persons performing mobile road transport activities.

6 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 6(2).

7 Ibid art 6(3).

## **UPDATE**

### **1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (2) DRIVERS' HOURS ON COMMUNITY DRIVING OR WORK/1387. Drivers' breaks and rest periods on Community driving or work.

#### **1387. Drivers' breaks and rest periods on Community driving or work.**

After a driving period<sup>1</sup> of four and a half hours, the driver<sup>2</sup> must take an uninterrupted break<sup>3</sup> of not less than 45 minutes, unless he takes a rest period<sup>4</sup>. This break may be replaced by a break of at least 15 minutes followed by a break of at least 30 minutes each distributed over the period in such a way as to comply with these provisions<sup>5</sup>.

A driver must take daily and weekly rest periods<sup>6</sup>. Within each period of 24 hours after the end of the previous daily rest period or weekly rest period a driver must have taken a new daily rest period<sup>7</sup>. If the portion of the daily rest period which falls within that 24 hour period is at least nine hours but less than eleven hours, then the daily rest period in question is to be regarded as a reduced daily rest period<sup>8</sup>. A daily rest period may be extended to make a regular weekly rest period or a reduced weekly rest period<sup>9</sup>. A driver may have at most three reduced daily rest periods between any two weekly rest periods<sup>10</sup>. By way of derogation from the requirement to take daily rest periods, within thirty hours of the end of a daily or weekly rest period, a driver engaged in multi-manning<sup>11</sup> must have taken a new daily rest period of at least nine hours<sup>12</sup>. In any two consecutive weeks a driver must take at least two regular weekly rest periods, or one regular weekly rest period and one reduced weekly rest period of at least 24 hours<sup>13</sup>. However, the reduction must be compensated by an equivalent period of rest taken en bloc before the end of the third week following the week in question<sup>14</sup>. A weekly rest period must start no later than at the end of six 24-hour periods from the end of the previous weekly rest period<sup>15</sup>.

Any rest taken as compensation for a reduced weekly rest period must be attached to another rest period of at least nine hours<sup>16</sup>. Where a driver chooses to do this, daily rest periods and reduced weekly rest periods away from base may be taken in a vehicle, as long as it has suitable sleeping facilities for each driver and the vehicle is stationary<sup>17</sup>.

A weekly rest period that falls in two weeks may be counted in either week, but not in both<sup>18</sup>.

By way of derogation from the above provisions<sup>19</sup>, where a driver accompanies a vehicle which is transported by ferry or train, and takes a regular daily rest period, that period may be interrupted not more than twice by other activities not exceeding one hour in total<sup>20</sup>. During that regular daily rest period the driver must have access to a bunk or couchette<sup>21</sup>. Any time spent travelling to a location to take charge of a vehicle falling within the scope of the

Community provisions as to drivers' hours<sup>22</sup>, or to return from that location, when the vehicle is neither at the driver's home nor at the employer's operational centre where the driver is normally based, is not to be counted as a rest or break unless the driver is on a ferry or train and has access to a bunk or couchette<sup>23</sup>. Any time spent by a driver driving a vehicle which falls outside the scope of the Community provisions to or from a vehicle which falls within the scope of those provisions, which is not at the driver's home or at the employer's operational centre where the driver is normally based, counts as other work<sup>24</sup>.

1 'Driving period' means the accumulated driving time from when a driver commences driving following a rest period or a break until he takes a rest period or a break; the driving period may be continuous or broken: European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) on the harmonisation of certain social legislation relating to road transport, art 4(q).

2 For the meaning of 'driver' see PARA 1380 ante.

3 'Break' means any period during which a driver may not carry out any driving or any other work and which is used exclusively for recuperation: European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 4(d).

4 Ibid art 7, 1st para. As to rest periods see PARA 1386 note 1 ante.

5 Ibid art 7, 2nd para. The calculation under art 7 begins afresh without taking into account the driving time and breaks previously completed by the driver: Case C-116/92 *Criminal proceedings against Kevin Albert Charlton* [1993] ECR I-6755, sub nom *Charlton v DPP* [1994] RTR 133, ECJ.

6 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 8(1).

7 Ibid art 8(2), 1st para.

8 Ibid art 8(2), 2nd para. For the meaning of 'reduced daily rest period' see PARA 1386 note 1 ante. These requirements must be observed both by the employer and by the drivers: Case 69/74 *Auditeur du Travail v Cagnon and Taquet* [1975] ECR 171, [1975] 2 CMLR 68, ECJ. 'Each period of 24 hours' means a period which commences with the activation of the tachograph by the driver after a daily or weekly rest period; the calculation commences at the end of a period of not less than eight hours if the daily rest period is split into two or three different periods: Case C-313/92 *Criminal proceedings against Van Swieten BV* [1994] ECR I-2177, ECJ.

9 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 8(3). For the meanings of 'regular weekly rest period' and 'reduced weekly rest period' see PARA 1386 note 1 ante.

10 Ibid art 8(4).

11 'Multi-manning' means the situation where, during each period of driving between any two consecutive daily rest periods, or between a daily rest period and a weekly rest period, there are at least two drivers in the vehicle to do the driving. For the first hour of multi-manning the presence of another driver or drivers is optional but for the remainder of the period it is compulsory: ibid art 4(o).

12 Ibid art 8(5).

13 Ibid art 8(6), 1st para.

14 Ibid art 8(6), 1st para. In proceedings under the Transport Act 1968 s 96(11A) (as added) for breach of the similar provision in EEC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1) art 8(3) (repealed) it was held that it was necessary for the prosecution to prove first that the driver had worked on the day in question: *Douglas v Glass* 1990 SCCR 445.

15 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 8(6), 2nd para.

16 Ibid art 8(7).

17 Ibid art 8(8).

18 Ibid art 8(9).

19 le ibid art 8.

20 Ibid art 9(1).

21 Ibid art 9(1).

22 Ie European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1).

23 Ibid art 9(2).

24 Ibid art 9(3). 'Other work' means all activities which are defined as working time in European Parliament and Council Directive 2002/15 (OJ L80, 23.3.2002, p 35) on the organisation of the working time of persons performing mobile road transport activities, art 3(a) except 'driving', including any work for the same or another employer, within or outside the transport sector: European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 4(e). A driver must record as other work any time spent as described in art 4(e) as well as any time spent driving a vehicle used for commercial operations not falling within the scope of European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1), and must record any periods of availability, as defined in EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) on recording equipment in road transport, art 15(3)(c) (see PARA 1414 post), since his last daily or weekly rest period; this record must be entered either manually on a record sheet or a print-out or by use of manual input facilities on recording equipment: European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 6(5).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

### 1387 Drivers' breaks and rest periods on Community driving or work

TEXT AND NOTES 13-15--Regulation 561/2006 art 8(6a) added: European Parliament and EC Council Regulation 1073/2009 (OJ L300, 14.11.2009, p 88).

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### 1388. Prohibition of certain payments and exceptions from the Community rules.

A transport undertaking<sup>1</sup> must not give drivers<sup>2</sup> it employs or who are put at its disposal any payment, even in the form of a bonus or wage supplement, related to distances travelled and/or the amount of goods carried if that payment is of such a kind as to endanger road safety and/or encourages infringement of the Community rules<sup>3</sup> as to drivers' hours<sup>4</sup>.

Provided that road safety is not thereby jeopardised and to enable the vehicle to reach a suitable stopping place, the driver may depart from the Community provisions as to driving time and rest periods<sup>5</sup> to the extent necessary to ensure the safety of persons, of the vehicle or its load<sup>6</sup>. The driver must indicate the reason for such departure manually on the record sheet of the recording equipment or on a print-out from the recording equipment or in the duty roster, at the latest on arrival at the suitable stopping place<sup>7</sup>.

1 'Transport undertaking' means any natural person, any legal person, any association or group of persons without legal personality, whether profit-making or not, or any official body, whether having its own legal

personality or being dependent upon an authority having such a personality, which engages in carriage by road, whether for hire or reward or for own account: Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) on the harmonisation of certain social legislation relating to road transport, art 4(p). The term 'undertaking' refers to an autonomous natural and legal person, irrespective of legal form, regularly carrying on a transport business, and empowered to organise and control the work of drivers: Case C-7/90 *Criminal proceedings against Paul Vandevenne* [1991] ECR I-4371, sub nom *Belgium v Vandevenne* [1993] 3 CMLR 608.

2 For the meaning of 'driver' see PARA 1380 ante.

3 Ie European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1).

4 Ibid art 10(1).

5 Ie ibid arts 6-9: see PARAS 1386-1387 ante.

6 Ibid art 12. This provision does not authorise a driver to derogate from the provisions of arts 6-9 (see PARAS 1386-1387 ante) for reasons known before the commencement of the journey: Case C-235/94 *Proceedings against Alan Geoffrey Bird* [1995] ECR I-3933, sub nom *R v AG Bird* [1996] 1 CMLR 543, [1996] RTR 49, ECJ. See also *Geldart v Brown* [1986] RTR 106, DC; and PARA 1380 note 4 ante.

7 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 12. As to the record sheet see PARA 1414 post; and as to the duty roster see PARA 1421 post.

A member state may provide for longer minimum breaks and rest periods or shorter maximum driving times than those laid down in arts 6-9 (see PARAS 1380, 1386-1387 ante) in the case of carriage by road undertaken wholly within its territory: art 11. In so doing, member states must take account of relevant collective or other agreements between the social partners: art 11. Nevertheless, European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) remains applicable to drivers engaged in international transport operations: art 11.

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

### 1388 Prohibition of certain payments and exceptions from the Community rules

TEXT AND NOTE 7--The recording requirement in Regulation 561/2006 art 12 is mandatory and clear: *Harding v Vehicle and Operator Services Agency* [2010] All ER (D) 96 (Mar), DC.

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## (3) DRIVERS' HOURS ON DOMESTIC JOURNEYS OR WORK

### (i) Permitted Driving Time and Periods of Duty

#### 1389. Permitted driving time and periods of duty.

A driver<sup>1</sup> must not on any working day<sup>2</sup> drive a vehicle or vehicles<sup>3</sup> for periods amounting in the aggregate to more than ten hours<sup>4</sup>. If on any working day a driver has been on duty for a period of, or for periods amounting in the aggregate to, five and a half hours and: (1) there has not been during that period, or during or between any of those periods, an interval of not less than half an hour in which he was able to obtain rest and refreshment<sup>5</sup>; and (2) the end of that period, or of the last of those periods, does not mark the end of that working day<sup>6</sup>, there must, at the end of that period, or of the last of those periods, be such an interval as aforesaid<sup>7</sup>.

The working day of a driver:

- 2173 (a) except where head (b) or head (c) below apply, must not exceed eleven hours<sup>8</sup>;
- 2174 (b) if during that day he is off duty for a period which is, or periods which taken together are, not less than the time by which his working day exceeds eleven hours, must not exceed twelve and a half hours<sup>9</sup>;
- 2175 (c) if during that day all the time when he is driving vehicles<sup>10</sup> to which Part VI of the Transport Act 1968 applies is spent in driving one or more express carriages or contract carriages, and he is able for a period of not less than four hours to obtain rest and refreshment, must not exceed fourteen hours<sup>11</sup>.

There must be, between any two successive working days of a driver, an interval for rest which: (i) subject to head (ii) below, must not be of less than eleven hours<sup>12</sup>; (ii) if during both those days all or the greater part of the time when he is driving vehicles<sup>13</sup> to which Part VI applies is spent in driving one or more passenger vehicles<sup>14</sup>, may, on one occasion in each working week, be of less than eleven hours but not of less than nine and a half hours<sup>15</sup>. For these purposes a period of time is not to be treated, in the case of an employee-driver, as not being an interval for rest by reason only that he may be called upon to report for duty if required<sup>16</sup>.

A driver must not be on duty in any working week for periods amounting in the aggregate to more than sixty hours<sup>17</sup>.

There must be, in the case of each working week<sup>18</sup> of a driver, a period of not less than 24 hours for which he is off duty, being a period either falling wholly in that week or beginning in that week and ending in the next week, but<sup>19</sup>: (A) where these requirements have been satisfied in the case of any week by reference to a period ending in the next week, no part of that period (except any part after the expiration of the first 24 hours of it) may be taken into account for the purpose of satisfying those requirements in the case of the next week<sup>20</sup>; and (B) those requirements need not be satisfied in the case of any working week of a driver who on each working day falling wholly or partly in that week drives one or more stage carriages if that week is immediately preceded by a week in the case of which those requirements have been satisfied as respects that driver or during which he has not at any time been on duty<sup>21</sup>.

If in the case of the working week of any driver the following requirement is satisfied, that is to say that in each of the periods of 24 hours beginning at midnight which make up that week, the driver does not drive a vehicle<sup>22</sup> for a period of, or periods amounting in the aggregate to, more than four hours, then the above provisions<sup>23</sup> do not apply to him in that week, except that certain provisions<sup>24</sup> nevertheless have effect in relation to the whole of any working day falling partly in that week and partly in a working week in the case of which that requirement is not satisfied<sup>25</sup>.

For these purposes<sup>26</sup> no account is to be taken of any time spent driving a vehicle elsewhere than on a road if the vehicle is being so driven in the course of operations of agriculture<sup>27</sup> or forestry<sup>28</sup>.

The Secretary of State<sup>29</sup> may by order<sup>30</sup> direct that the above provisions are to be modified<sup>31</sup>.

1 For the meaning of 'driver' see PARA 1380 ante.

2 'Working day', in relation to any driver, means: (1) any period during which he is on duty and which does not fall to be aggregated with any other such period by virtue of head (2) infra; and (2) where a period during which he is on duty is not followed by an interval for rest of not less than eleven hours or (where permitted by virtue of the Transport Act 1968 s 96(4)(b): see the text and notes 14-15 infra) of not less than nine and a half hours, the aggregate of that period and each successive such period until there is such an interval as aforesaid, together with any interval or intervals between periods so aggregated: s 103(1).

In Pt VI (ss 95-103) (as amended), references to a driver being on duty are references: (a) in the case of an employee-driver, to his being on duty (whether for the purpose of driving a vehicle to which Pt VI (as amended) applies (see PARA 1380 ante) or for other purposes) in the employment by virtue of which he is an employee-driver, or in any other employment under the person who is his employer in the first-mentioned employment; and (b) in the case of an owner-driver, to his driving a vehicle to which Pt VI (as amended) applies (see PARA 1380 ante) for the purposes of a trade or business carried on by him or being otherwise engaged in work for the purposes of that trade or business, being work in connection with such a vehicle or the load carried thereby: s 103(4). For the meanings of 'employee-driver' and 'owner-driver' see PARA 1380 ante.

3 le to which *ibid* Pt VI (as amended) applies: see PARA 1380 ante. As to references to driving a vehicle see PARA 1380 note 25 ante.

4 *Ibid* s 96(1). As to exemptions for the purpose of enabling drivers to deal with cases of emergency see s 96(10); and PARAS 1395-1397 post. As to contravention of the domestic drivers' hours code see s 96(11), (11A), (11B) (s 96(11A), (11B) as added); and PARA 1393 post.

5 *Ibid* s 96(2)(a). If on any working day a driver does not drive any vehicle to which Pt VI (as amended) applies, the provisions of s 96(2), (3) (see the text and notes 6-11 infra) do not apply to that day, and the period or periods of duty attributable to that day for the purposes of s 96(5) (see the text to note 17 infra) are, if amounting to more than eleven hours, to be treated as amounting to eleven hours only: s 96(8).

6 *Ibid* s 96(2)(b). See also note 5 supra.

7 *Ibid* s 96(2). See also note 5 supra.

8 *Ibid* s 96(3)(a). See also note 5 supra.

9 *Ibid* s 96(3)(b). See also note 5 supra.

10 See note 3 supra.

11 Transport Act 1968 s 96(3)(c). See also note 5 supra.

12 *Ibid* s 96(4)(a).

13 See note 3 supra.

14 For the meaning of 'passenger vehicle' see PARA 1380 ante.

15 Transport Act 1968 s 96(4)(b).

16 *Ibid* s 96(4).

17 *Ibid* s 96(5). See also note 5 supra.

18 'Working week' means, subject to *ibid* s 96(5) (see the text to note 17 supra), a week beginning at midnight between Sunday and Monday: s 103(1) (definition substituted by the Drivers' Hours (Harmonisation with Community Rules) Regulations 1986, SI 1986/1458, reg 3). The traffic commissioner for any area may, on the application of an owner-driver or of the employer of an employee-driver, from time to time direct that a week beginning at midnight between two days other than Sunday and Monday is, or is deemed to have been, a working week in relation to that owner-driver or employee-driver; but where by virtue of any such direction a new working week begins before the expiration of a previous working week then, without prejudice to the application of the provisions of the Transport Act 1968 Pt VI (as amended) in relation to the new working week, those provisions continue to apply in relation to the previous working week until its expiration: s 103(5) (amended by the Transport Act 1985 s 2, Sch 2 Pt II; and the Drivers' Hours (Harmonisation with Community Rules) Regulations 1986, SI 1986/1458, reg 3). As to traffic commissioners see PARA 1139 ante.

'Employer', in relation to an employee-driver, means the employer of that driver in the employment by virtue of which that driver is an employee-driver: Transport Act 1968 s 103(1). A driver's employer is the person who requires him to drive, and not the agency which pays his wages: *Alcock v GC Griston Ltd* [1981] RTR 34, DC.

- 19 Transport Act 1968 s 96(6).
- 20 Ibid s 96(6)(a).
- 21 Ibid s 96(6)(b).
- 22 See note 3 supra.
- 23 Ie the Transport Act 1968 s 96(1)-(6): see the text and notes 1-21 supra.
- 24 Ie ibid s 96(1), (2), (3): see the text and notes 1-11 supra.
- 25 Ibid s 96(7).
- 26 Ie for the purposes of ibid s 96(1)-(7): see the text and notes 1-25 supra.
- 27 'Agriculture' has the meaning assigned by the Agriculture Act 1947 s 109(3) (see AGRICULTURAL LAND vol 1 (2008) PARA 324): Transport Act 1968 s 103(1).
- 28 Ibid s 96(9).
- 29 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 30 In the exercise of this power, the Driver's Hours (Passenger and Goods Vehicles) (Modifications) Order 1971, SI 1971/818 (as amended); and the Drivers' Hours (Goods Vehicles) (Modifications) Order 1986, SI 1986/1459, have been made: see PARAS 1390-1392 post.
- 31 See the Transport Act 1968 s 96(12). In particular, the Secretary of State may:
- 1375 (1) direct that s 96(1) (see the text and notes 1-4 supra) has effect with the substitution for the reference to ten hours of a reference to nine hours, either generally or with such exceptions as may be specified in the order (s 96(12)(a));
  - 1376 (2) direct that s 96(3)(a) (see the text to note 8 supra) has effect with the substitution for the reference to eleven hours of a reference to any shorter period, or remove, modify or add to the provisions of s 96(3) containing exceptions to s 96(3)(a) (s 96(12)(b));
  - 1377 (3) remove, modify or add to any of the requirements of s 96(2), (4), (5) or (6) or any of the exemptions provided for by s 96(7), (8) and (9) (s 96(12)(c)).
- Any order under s 96(12) may contain such transitional and supplementary provisions as the Secretary of State thinks necessary or expedient, including provisions amending any definition in s 103 (as amended) which is relevant to any of the provisions affected by the order: s 96(12).
- No order may be made under s 96(12) unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament: s 101(3).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

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### **1390. Drivers' hours of drivers of passenger vehicles.**

The provisions relating to permitted driving hours and periods of duty are modified in relation to passenger vehicles<sup>1</sup>.

A driver<sup>2</sup> of a passenger vehicle<sup>3</sup> engaged on domestic driving or work<sup>4</sup> is subject, in so far as his hours of driving and work are concerned, to the domestic drivers' hours code<sup>5</sup>. A driver may not, on any working day<sup>6</sup>, drive a vehicle or vehicles<sup>7</sup> for periods amounting in the aggregate to more than ten hours<sup>8</sup>. If, on any working day, a driver has been driving a vehicle or vehicles<sup>9</sup>: (1) for a period of five and a half hours and the end does not mark the end of the working day<sup>10</sup>; or (2) for periods amounting in the aggregate to five and a half hours and there has not been between any of those periods an interval of not less than half an hour in which the driver was able to obtain rest and refreshment and the end of the last of those periods does not mark the end of the day<sup>11</sup>, there must, as respects the period in head (1) above, at the end of the period, or, in the case of head (2) above, at the end of the last of those periods, be an interval of not less than half an hour for rest and refreshment<sup>12</sup>. However, these provisions need not be satisfied in relation to a driver who, within any continuous period of eight and a half hours in the working day, drives for periods amounting in the aggregate to not more than seven and three-quarter hours, being periods of driving between which there is a period of, or there are periods amounting in the aggregate to, not less than 45 minutes during which the driver has not been driving, if the end of the last of those periods of driving marks the end of his working day or at the end of the last of those periods there is an interval of not less than half an hour for rest and refreshment<sup>13</sup>.

The working day of a driver: (a) except where head (b) or head (c) below applies, must not exceed eleven hours<sup>14</sup>; (b) if during that day he is off duty for a period which is, or periods which taken together are, not less than the time by which his working day exceeds eleven hours, must not exceed twelve and a half hours<sup>15</sup>; (c) if during that day all or the greater part of the time when he is driving vehicles<sup>16</sup> is spent driving one or more passenger vehicles, must not exceed sixteen hours<sup>17</sup>. There must be, between any two successive working days of a driver, an interval for rest which must not be of less than ten hours except that on not more than three occasions in any working week<sup>18</sup>, the interval may be of less than ten hours but not of less than eight and a half hours<sup>19</sup>.

There must be, in the case of every two successive working weeks of a driver, a period of not less than 24 hours for which he is off duty, being a period either falling wholly in those weeks or beginning in the second of those weeks and ending in the first of the next two successive weeks<sup>20</sup>. However, where these requirements have been satisfied in the case of any two successive working weeks by reference to a period ending in the first of the next two successive weeks, no part of that period (except any part after the expiration of the first 24 hours of it) may be taken into account for the purpose of satisfying those requirements in the case of the said next two successive weeks<sup>21</sup>.

If in the case of the working week of any driver the following requirements are satisfied, that is to say, that: (i) the driver does not drive any vehicle<sup>22</sup> for a period<sup>23</sup> of, or for periods amounting in the aggregate to, more than four hours in more than two of the periods of 24 hours beginning at midnight which make up that working week<sup>24</sup>; and (ii) certain provisions<sup>25</sup> are complied with in relation to him as respects each full time day in that week<sup>26</sup>, then the provisions relating to the permitted driving time, intervals for rest between periods of duty, the working day of the driver and intervals for rest between working days<sup>27</sup> do not apply to that driver in that week<sup>28</sup>. Where such requirements are satisfied in the case of two successive working weeks of that driver the provisions relating to the off-duty periods in a working week<sup>29</sup> do not apply to him as respects those working weeks<sup>30</sup>.

- 1 See the Drivers' Hours (Passenger and Goods Vehicles) (Modifications) Order 1971, SI 1971/818 (as amended).
- 2 For the meaning of 'driver' see PARA 1380 ante.
- 3 For the meaning of 'passenger vehicle' see PARA 1380 ante.
- 4 For the meaning of 'domestic driving or work' see PARA 1383 ante. As to the position where the driver is engaged on work which is a mixture of domestic driving or work and Community driving or work see PARA 1394 post.
- 5 See the Transport Act 1968 s 96 (as amended); and PARA 1389 ante. See also the Drivers' Hours (Harmonisation with Community Rules) Regulations 1986, SI 1986/1458, reg 2; and PARA 1383 ante. For the meaning of 'the domestic drivers' hours code' see PARA 1380 note 2 ante.
- 6 For the purposes of the Transport Act 1968 s 96(1)-(4), (6)-(8) (s 96(2)-(4), (6), (7) as modified), 'working day', in relation to a driver of a passenger vehicle, means: (1) any period during which he is on duty and which does not fall to be aggregated with any other such period by virtue of head (2) infra; and (2) where a period during which he is on duty is not followed by an interval for rest of not less than ten hours or (where permitted by s 96(4): see PARA 1389 ante) of not less than eight and a half hours, the aggregate of that period and each successive such period until there is such an interval, together with any interval or intervals between periods so aggregated: s 103(1) (definition modified by the Drivers' Hours (Passenger and Goods Vehicles) (Modifications) Order 1971, SI 1971/818, art 4(1), (8)). Different periods apply to goods vehicle drivers: see PARA 1391 note 6 post. As to a driver being on duty see PARA 1389 note 2 ante. As to the meaning of being 'on duty' see *Carter v Walton* [1985] RTR 378, DC.
- 7 In a vehicle or vehicles to which the Transport Act 1968 Pt VI (ss 95-103) (as amended) applies: see PARA 1380 ante. As to references to driving a vehicle see PARA 1380 note 25 ante.
- 8 Ibid s 96(1). As to exemptions for the purpose of enabling drivers to deal with cases of emergency see PARAS 1395-1397 post. As to contravention of the domestic drivers' hours code see PARA 1393 post.
- 9 See note 7 supra.
- 10 Transport Act 1968 s 96(2)(a) (modified by the Drivers' Hours (Passenger and Goods Vehicles) (Modifications) Order 1971, SI 1971/818, art 4(1), (2)). If on any working day a driver does not drive any vehicle to which the Transport Act 1968 Pt VI (as amended) applies, the provisions of s 96(2) and (3) (as modified) do not apply to that day: s 96(8).
- 11 Ibid s 96(2)(b) (as modified: see note 10 supra).
- 12 Ibid s 96(2) (as modified: see note 10 supra). See also note 10 supra.
- 13 Ibid s 96(2) (as modified: see note 10 supra). See also note 10 supra.
- 14 Ibid s 96(3)(a). See also note 10 supra.
- 15 Ibid s 96(3)(b). See also note 10 supra.
- 16 See note 7 supra.
- 17 Transport Act 1968 s 96(3)(c) (modified by the Drivers' Hours (Passenger and Goods Vehicles) (Modifications) Order 1971, SI 1971/818, art 4(1), (3)). In calculating hours of work, driving or rest, any time spent outside Great Britain which, if spent inside, would have been relevant must be taken into account: *Lawson v Fox* [1974] AC 803, [1974] 1 All ER 783, HL.
- 18 For the meaning of 'working week' see PARA 1389 note 18 ante.
- 19 Transport Act 1968 s 96(4) (modified by the Drivers' Hours (Passenger and Goods Vehicles) (Modifications) Order 1971, SI 1971/818, art 4(1), (4)). The period of time must not be treated, in the case of an employee-driver, as not being an interval for rest by reason only that he may be called upon to report for duty if required: Transport Act 1968 s 96(4). The requirement is that there should be a chance to rest, not that rest should be taken: *Beer v TM Fairclough & Sons Ltd* (1937) 101 JP 157, DC; *Witchell v Abbott* [1966] 2 All ER 657, [1966] 1 WLR 852, DC. A man voluntarily working during his rest period on a job of benefit both to himself and to his employer is working for this purpose: *Potter v Gorbould* [1970] 1 QB 238, [1969] 3 All ER 828, DC.
- 20 Transport Act 1968 s 96(6) (modified by the Drivers' Hours (Passenger and Goods Vehicles) (Modifications) Order 1971, SI 1971/818, art 4(1), (6)).

21 Transport Act 1968 s 96(6) (as modified: see note 20 supra).

22 See note 7 supra.

23 For the purposes of the Transport Act 1968 s 96(7) (as modified) and s 96(7B) (as added) (see note 25 infra), any such period of 24 hours in which the driver does drive for a period of, or for periods amounting in the aggregate to, more than four hours is referred to as 'a full time day': s 96(7) (modified by the Drivers' Hours (Passenger and Goods Vehicles) (Modifications) Order 1971, SI 1971/818, art 4(1), (7)).

24 Transport Act 1968 s 96(7)(a) (as modified: see note 23 supra).

25 The following provisions apply as respects each full time day in a working week of a driver in the case of which the requirement mentioned in *ibid* s 96(7)(a) (as modified) is satisfied, that is to say: (1) each period of duty of that driver must fall wholly within the full time day; (2) there must be an interval for rest of not less than ten hours immediately before his first period of duty and immediately after his last period of duty in the full time day or, if there is only one such period of duty in it, immediately before and after that period of duty; (3) the driver must not in the full time day drive a vehicle or vehicles to which Pt VI (as amended) applies for periods amounting in the aggregate to more than ten hours; (4) if in the full time day the driver has been driving a vehicle or vehicles to which Pt VI (as amended) applies: (a) for a period of five and a half hours and the end of that period of driving does not mark the end of his period of duty, or of the last of his periods of duty, in that day; or (b) for periods amounting in the aggregate to five and a half hours and there has not been between any of those periods of driving an interval of not less than half an hour in which the driver was able to obtain rest and refreshment and the end of the last of those periods of driving does not mark the end of his period of duty, or of the last of his periods of duty, in that day, there must be such an interval as aforesaid at the end of the period of driving mentioned in head (4)(a) supra or of the last of the periods of driving mentioned in head (4)(b) supra; provided, however, that these requirements need not be satisfied in relation to a driver who, within any continuous period of eight and a half hours falling wholly within the full time day, drives for periods amounting in the aggregate to not more than seven and three-quarter hours, being periods of driving between which there is a period of, or there are periods amounting in the aggregate to, not less than 45 minutes during which the driver has not been driving, if the end of the last of those periods of driving marks the end of his period, or of the last of his periods, of duty in that day, or at the end of the last of those periods of driving there is such an interval as is mentioned in head (4)(b) supra; and (5) the period during which the driver is on duty in the full time day or, if there is more than one such period, the period between the beginning of his first period of duty in that day and the end of his last period of duty therein, must not exceed sixteen hours: s 96(7B) (added as a modification in relation to passenger vehicles by the Drivers' Hours (Passenger and Goods Vehicles) (Modifications) Order 1971, SI 1971/818, art 4(1), (7)).

26 Transport Act 1968 s 96(7)(b) (as modified: see note 23 supra).

27 *Ie* the provisions of *ibid* s 96(1)-(4) (as modified): see the text and notes 1-19 supra.

28 *Ibid* s 96(7) (as modified: see note 23 supra). Where in the case of the working week of a driver the requirements mentioned in s 96(7) (as modified) are satisfied but there is a working day of the driver which falls partly in that working week and partly in a working week in the case of which the said requirements are not satisfied, then the provisions of s 96(1)-(3) (s 69(2), (3) as modified) (see the text and notes 1-17 supra) nevertheless have effect in relation to the whole of that working day: s 96(7A) (added as a modification in relation to passenger vehicles by the Drivers' Hours (Passenger and Goods Vehicles) (Modifications) Order 1971, SI 1971/818, art 4(1), (7)).

29 *Ie* the provisions of Transport Act 1968 s 96(6) (as modified): see the text and notes 20-21 supra.

30 *Ibid* s 96(7) (as modified: see note 23 supra). See also note 28 supra.

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/(3) DRIVERS' HOURS ON DOMESTIC JOURNEYS OR WORK/(i) Permitted Driving Time and Periods of Duty/1391. Drivers' hours of drivers of goods vehicles.

### **1391. Drivers' hours of drivers of goods vehicles.**

The provisions relating to permitted driving hours and periods of duty are modified in relation to goods vehicles<sup>1</sup>.

Where a driver is engaged<sup>2</sup> on domestic driving or work<sup>3</sup> then, unless otherwise exempted<sup>4</sup>, he is subject to the domestic drivers' hours code<sup>5</sup>.

A driver may not, on any working day<sup>6</sup>, drive a vehicle or vehicles<sup>7</sup> for periods amounting in the aggregate to more than ten hours<sup>8</sup>. The working day of a driver: (1) must not exceed eleven hours<sup>9</sup>; and (2) if during that day all the time when he is driving vehicles<sup>10</sup> is spent in driving one or more express carriages or contract carriages and he is able for a period of not less than four hours to obtain rest and refreshment, must not exceed fourteen hours<sup>11</sup>.

If in the case of the working week<sup>12</sup> of any driver the following requirement is satisfied, that is to say that, in each of the periods of 24 hours beginning at midnight which make up that week, the driver does not drive a vehicle<sup>13</sup> for a period of, or periods amounting in the aggregate to, more than four hours, then the above provisions do not apply to him in that week, except that certain provisions<sup>14</sup> nevertheless have effect in relation to the whole of any working day falling partly in that week and partly in a working week in the case of which that requirement is not satisfied<sup>15</sup>.

1 See the Drivers' Hours (Goods Vehicles) (Modifications) Order 1986, SI 1986/1459, which applies where during any working day a driver spends all or the greater part of the time when he is driving vehicles to which the Transport Act 1968 Pt VI (ss 95-103) (as amended) applies in driving goods vehicles: see the Drivers' Hours (Goods Vehicles) (Modifications) Order 1986, SI 1986/1459, art 2. For the meaning of 'driver' see PARA 1380 ante. For the meaning of 'goods vehicle' see PARA 1380 ante. As to vehicles to which the Transport Act 1968 Pt VI (as amended) applies see PARA 1380 ante.

2 Where a driver is engaged on work which is a mixture of domestic driving or work and Community driving or work, the Drivers' Hours (Harmonisation with Community Rules) Regulations 1986, SI 1986/1458, also apply: see PARA 1394 post.

3 For the meaning of 'domestic driving or work' see PARA 1383 ante.

4 As to exemptions for the purpose of enabling drivers to deal with cases of emergency see PARAS 1395-1397 post.

5 For the meaning of 'the domestic drivers' hours code' see PARA 1380 note 2 ante. As to contravention of the domestic drivers' hours code see PARA 1393 post.

6 'Working day', in relation to any driver, means: (1) any working period (that is to say, any period during which he is on duty) which does not fall to be aggregated with the whole or part of any other such period or periods by virtue of head (2) infra; and (2) where a working period is followed by one or more other such periods beginning within the 24 hours next after the beginning of that working period, the aggregate of that working period and so much of the other such period or periods as fall within those 24 hours: Transport Act 1968 s 103(1) (definition modified by the Drivers' Hours (Goods Vehicles) (Modifications) Order 1986, SI 1986/1459, art 2(d)). See *Lawson v Fox* [1974] AC 803, [1974] 1 All ER 783, HL; and PARA 1390 note 10 ante. As to a driver being on duty see PARA 1389 note 2 ante. Whether a driver is on or off duty at any particular time is a question of fact, and accordingly if a driver is to be regarded as on duty while he is taking a statutory break (whether or not he remains in his stationary lorry) a finding to that effect must be made based upon all the relevant evidence as to the reason why he was not driving and as to whether his employer would in that circumstance regard him as on duty: *Carter v Walton* [1985] RTR 378, DC.

7 I.e. a vehicle to which the Transport Act 1968 Pt VI (as amended) applies: see PARA 1380 ante. As to references to driving a vehicle see PARA 1380 note 25 ante.

8 Ibid s 96(1).

9 Ibid s 96(3)(a). If on any working day a driver does not drive a vehicle to which Pt VI (as amended) applies, s 96(3)(a) does not apply to that day: s 96(8)(a) (modified by the Drivers' Hours (Goods Vehicles) (Modifications) Order 1986, SI 1986/1459, art 2(c)).

10 See note 7 supra.

11 Transport Act 1968 s 96(3)(c).

12 For the meaning of 'working week' see PARA 1389 note 18 ante.

13 See note 7 supra.

14 Ie the Transport Act 1968 s 96(1), (3)(a): see the text and notes 6-9 supra.

15 Ibid s 96(7) (modified by the Drivers' Hours (Goods Vehicles) (Modifications) Order 1986, SI 1986/1459, art 2(b)).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/(3) DRIVERS' HOURS ON DOMESTIC JOURNEYS OR WORK/(i) Permitted Driving Time and Periods of Duty/1392. Drivers' hours code for light goods vehicles.

### 1392. Drivers' hours code for light goods vehicles.

The provisions relating to permitted driving hours and periods of duty are modified in relation to light goods vehicles<sup>1</sup>.

A driver may not, on any working day<sup>2</sup>, drive a vehicle or vehicles<sup>3</sup> for periods amounting in the aggregate to more than ten hours<sup>4</sup>. The working day of a driver, if during that day all the time when he is driving vehicles<sup>5</sup> is spent in driving one or more express carriages or contract carriages and he is able for a period of not less than four hours to obtain rest and refreshment, must not exceed fourteen hours<sup>6</sup>.

If in the case of the working week<sup>7</sup> of any driver the following requirement is satisfied, that is to say that, in each of the periods of 24 hours beginning at midnight which make up that week, the driver does not drive a vehicle<sup>8</sup> for a period of, or periods amounting in the aggregate to, more than four hours, then the above provisions do not apply to him in that week<sup>9</sup>.

1 See the Drivers' Hours (Goods Vehicles) (Modifications) Order 1986, SI 1986/1459, art 3, which applies where during any working week a driver spends all of the time when he is driving vehicles to which the Transport Act 1968 Pt VI (ss 95-103) (as amended) applies (see PARA 1380 ante) in driving light goods vehicles and, in so far as he drives such a vehicle during that week otherwise than for social, domestic or pleasure purposes, he does so: (1) solely in connection with the carrying on by him or his employer of the profession of medical practitioner, nurse, midwife, dentist or veterinary surgeon; (2) wholly or mainly in connection with the carrying out of any service of inspection, cleaning, maintenance, repair, installation or fitting; (3) solely while he

is acting as a commercial traveller and is carrying in the vehicle, apart from any effects of any person carried in it, no goods other than goods carried for the purpose of soliciting orders; (4) solely whilst acting in the course of his employment by the Automobile Association, the Royal Automobile Club or the Royal Scottish Automobile Club; or (5) solely in connection with the carrying on by him or by his employer of the business of cinematography or of radio or television broadcasting: Drivers' Hours (Goods Vehicles) (Modifications) Order 1986, SI 1986/1459, art 3(1). For the meaning of 'driver' see PARA 1380 ante. For the meaning of 'employer' see PARA 1389 note 18 ante.

'Light goods vehicle' means a vehicle which is a goods vehicle with a permissible maximum weight within the meaning of the Road Traffic Act 1988 s 108(1) (see PARA 478 note 16 ante) not exceeding 3.5 metric tons or a dual purpose vehicle (see PARA 271 note 28 ante) within the meaning of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, and in either case is a vehicle to which the Transport Act 1968 Pt VI (as amended) applies (see PARA 1380 ante): Drivers' Hours (Goods Vehicles) (Modifications) Order 1986, SI 1986/1459, art 3(2); Interpretation Act 1978 s 17(2). For the meaning of 'goods vehicle' see PARA 1380 ante.

2 'Working day', in relation to any driver, means: (1) any working period (ie any period during which he is on duty) which does not fall to be aggregated with the whole or part of any other such period or periods by virtue of head (2) infra; and (2) where a working period is followed by one or more other such periods beginning within the 24 hours next after the beginning of that working period, the aggregate of that working period and so much of the other such period or periods as fall within those 24 hours: Transport Act 1968 s 103(1) (definition modified by the Drivers' Hours (Goods Vehicles) (Modifications) Order 1986, SI 1986/1459, arts 2(d), 3(1)). See PARA 1391 note 6 ante. See also *Lawson v Fox* [1974] AC 803, [1974] 1 All ER 783, HL; and PARA 1390 note 10 ante. As to a driver being on duty see PARA 1389 note 2 ante.

3 Ie a vehicle to which the Transport Act 1968 Pt VI (as amended) applies: see PARA 1380 ante. As to references to driving a vehicle see PARA 1380 note 25 ante.

4 Ibid s 96(1). As to exemptions for the purpose of enabling drivers to deal with cases of emergency see PARAS 1395-1397 post. As to contravention of the domestic drivers' hours code see PARA 1393 post.

5 See note 3 supra.

6 Transport Act 1968 s 96(3)(c).

7 For the meaning of 'working week' see PARA 1389 note 18 ante.

8 See note 3 supra.

9 Transport Act 1968 s 96(7) (modified by the Drivers' Hours (Goods Vehicles) (Modifications) Order 1986, SI 1986/1459, art 2(b), art 3(1)). This provision applies with the exception that the Transport Act 1968 s 96(1), (3) (a) nevertheless has effect in relation to the whole of any working day falling partly in that week and partly in a working week in the case of which that requirement is not satisfied: s 96(7) (as so modified). It is submitted that, following the modification of the Transport Act 1968 s 96 by the Drivers' Hours (Goods Vehicles) (Modifications) Order 1986, SI 1986/1459, art 3(1) (which modified the Transport Act 1968 s 96 as if s 96(3)(a) were omitted) the reference in s 96(7) (as modified) to s 96(3)(a) ought also to have been omitted.

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

### 1392 Drivers' hours code for light goods vehicles

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/(3) DRIVERS' HOURS ON DOMESTIC JOURNEYS OR WORK/(i) Permitted Driving Time and Periods of Duty/1393. Contravention of the domestic drivers' hours code.

### **1393. Contravention of the domestic drivers' hours code.**

If any of the requirements of the domestic drivers' hours code<sup>1</sup>, is contravened in the case of any driver: (1) that driver<sup>2</sup>; and (2) any other person, being that driver's employer<sup>3</sup> or a person to whose orders that driver was subject, who caused or permitted the contravention<sup>4</sup>, is liable on summary conviction to a fine<sup>5</sup>. However, a person is not liable to be convicted under these provisions if he proves to the court: (a) that the contravention was due to unavoidable delay in the completion of a journey arising out of circumstances which he could not reasonably have foreseen<sup>6</sup>; or (b) in the case of a person charged under head (2) above, that the contravention was due to the fact that the driver had for any particular period or periods driven or been on duty otherwise than in the employment of that person or, as the case may be, otherwise than in the employment in which he is subject to the orders of that person, and that the person charged was not, and could not reasonably have become, aware of that fact<sup>7</sup>.

Where, in the case of a driver of a motor vehicle, there is a contravention of any requirement of the international rules as to periods of driving, or distance driven, or periods on or off duty, then the offender and the offender's employer, and any other person to whose orders the offender was subject, is liable on summary conviction to a fine<sup>8</sup>. However, a person is not liable to be so convicted if: (i) he proves the matters specified in head (a) above; or (ii) being charged as the offender's employer or a person to whose orders the offender was subject, he proves the matters specified in head (b) above; or (iii) being charged as mentioned in head (ii) above, he proves that at the time of the contravention he was complying with certain European legislation<sup>9</sup> and that he took all reasonable steps to avoid the contravention<sup>10</sup>.

1 For the meaning of 'the domestic drivers' hours code' see PARA 1380 note 2 ante.

2 Transport Act 1968 s 96(11)(a) (s 96(11) amended by the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 s 2(1)). For the meaning of 'driver' see PARA 1380 ante.

3 For the meaning of 'employer' see PARA 1389 note 18 ante.

4 Transport Act 1968 s 96(11)(b) (as amended: see note 2 supra). Unlawfully permitting a driver to exceed his daily driving period, contrary to s 96(11)(b) (as amended) is an offence which requires mens rea: *Licensing Authority for Goods Vehicles in the Metropolitan Traffic Area v Coggins* (1985) Times, 28 February, DC. As to mens rea see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 8-9 et seq.

5 Transport Act 1968 s 96(11) (as amended: see note 2 supra). The fine must not exceed level 4 on the standard scale: s 96(11) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 230 note 3 ante.

An offence under the Transport Act 1968 Pt VI (ss 95-103) (as amended) may be treated for the purpose of conferring jurisdiction on a court (but without prejudice to any jurisdiction it may have apart from this provision) as having been committed in any of the following places, that is to say: (1) the place where the person charged with the offence was driving when evidence of the offence first came to the attention of a constable or vehicle examiner; (2) the place where that person resides or is or is believed to reside or be at the time when the proceedings are commenced; or (3) the place where at that time that person or, in the case of an employee-driver, that person's employer or, in the case of an owner-driver, the person for whom he was driving, has his place or principal place of business or his operating centre for the vehicle in question: s 103(11) (substituted by the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 s 3). For these purposes, 'vehicle examiner' means an officer within the meaning of the Transport Act 1968 s 99 (as amended) (see PARA 1426 post): s 103(11) (as so substituted). For the meaning of 'employer' see PARA 1389 note 18 ante. For the meanings of 'employee-driver' and 'owner-driver' see PARA 1380 ante. As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

6 Ibid s 96(11)(i). An interval for rest does not amount to unavoidable delay: *Whitby v Stead* [1975] RTR 169, DC. The fact that the unforeseen occurred will only be a defence if it had the effect of causing the delay: *Green v Harrison* [1979] RTR 483, DC.

7 Transport Act 1968 s 96(11)(ii).

8 Ibid s 96(11A) (added by the European Communities 1972 s 4, Sch 4 para 9(2)(a); and amended by the Community Drivers' Hours and Recording Equipment Regulations 1986, SI 1986/1457, reg 2; and the Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819, regs 5, 7(a)). The fine must not exceed level 4 on the standard scale: Transport Act 1968 s 96(11A) (as so added; and amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46).

As to the meaning of 'causes or permits' see PARA 261 note 6 ante; and see also *Lovelace v DPP* [1954] 3 All ER 481, [1954] 1 WLR 1468; *Shulton (Great Britain) Ltd v Slough Borough Council* [1967] 2 QB 471, [1967] 2 All ER 137; *Sidcup Building Estates Ltd v Sidery* (1936) 24 Ry & Can Tr Cas 164; *Knowles Transport Ltd v Russell* [1975] RTR 87, DC; *Tophams Ltd v Earl of Sefton* [1967] 1 AC 50, [1966] 1 All ER 1039, HL. For a corporation to be liable for 'causing' or 'permitting' it must be shown that some person for whose criminal act the corporation would be liable caused or permitted the commission of the offence. Unless the offence is one for which the corporation may be vicariously liable, knowledge on the part of an ordinary employee is not sufficient, it has to be that of someone exercising a directing mind over the company's affairs: *James & Son Ltd v Smee* [1955] 1 QB 78, [1954] 3 All ER 273, DC; *Ross Hillman Ltd v Bond* [1974] QB 435, [1974] 2 All ER 287. The offences of causing or permitting may be committed by a company through the alter ego or person of its transport manager: *Worthy v Gordon Plant (Services) Ltd* [1989] RTR 7n, DC.

If repeated warnings to drivers about breaches of the Community rules on drivers' hours are ignored it may be necessary for an employer to move to disciplinary action if he is not to be considered to be permitting the breaches: *Light v DPP* [1994] RTR 396, DC. In *Redhead Freight Ltd v Shulman* [1988] Crim LR 696, [1989] RTR 1, DC, it was held that while acquiescence by the employer in the driver's record keeping failures could amount to 'permitting' it fell short of what was required for 'causing' as charged.

A person who: (1) is subject to the requirement imposed by European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 10(4) (undertakings etc to ensure that contractually agreed transport time schedules respect that Regulation); and (2) fails to take all reasonable steps to comply with that requirement, is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Transport Act 1968 s 96(11B) (added by the Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819, regs 5, 7(c)).

9 Ie European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 10(1) (distance-related payments etc) and art 10(2) (organisation of drivers' work etc).

10 Transport Act 1968 s 96(11B) (added by the Transport Act 1968 s 10; and amended by the Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819, regs 5, 7(b)).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

### 1393 Contravention of the domestic drivers' hours code

TEXT AND NOTES--A person may also be liable on summary conviction to a fine not exceeding level 4 on the standard scale for offences under the Transport Act 1968 s 96(11C) (added by SI 2007/1810) or the 1968 Act s 96(11D) (added by SI 2008/198) for certain contraventions of the Community Drivers' Hours Regulation (see PARA 1398 NOTE 5).



1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/(3) DRIVERS' HOURS ON DOMESTIC JOURNEYS OR WORK/(i) Permitted Driving Time and Periods of Duty/1394. Mixed driving of passenger and goods vehicles.

### **1394. Mixed driving of passenger and goods vehicles.**

Where during any working day a driver<sup>1</sup> of a vehicle<sup>2</sup> spends time both on Community driving or work<sup>3</sup> and on domestic driving or work<sup>4</sup>, any time spent on Community driving or work must be regarded for the purpose of: (1) applying the limits in the domestic drivers' hours code<sup>5</sup> on periods of driving or length of working day<sup>6</sup>; or (2) calculating periods of driving<sup>7</sup>, as time spent on domestic driving or, as the case may be, domestic work<sup>8</sup>. Any time spent on Community driving or work must not be regarded for the purpose of any of the provisions of the domestic drivers' hours code as constituting or forming part of an interval for rest or an interval for rest and refreshment<sup>9</sup>.

1 For the meaning of 'driver' see PARA 1380 ante.

2 I.e. a vehicle to which the Transport Act 1968 Pt VI (ss 95-103) (as amended) applies: see PARA 1380 ante.

3 For the meaning of 'Community driving or work' see PARA 1383 ante.

4 Drivers' Hours (Harmonisation with Community Rules) Regulations 1986, SI 1986/1458, reg 2(2). For the meaning of 'domestic driving or work' see PARA 1383 ante.

5 For the meaning of 'the domestic drivers' hours code' see PARA 1380 note 2 ante; definition applied by virtue of *ibid* reg 2(5).

6 *Ibid* reg 2(3)(a).

7 *Ibid* reg 2(3)(b). The periods of driving referred to in the text are periods of driving under the Transport Act 1968 s 96(7): see PARA 1389 ante.

8 Drivers' Hours (Harmonisation with Community Rules) Regulations 1986, SI 1986/1458, reg 2(3).

9 *Ibid* reg 2(4).

## **UPDATE**

### **1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/(3) DRIVERS' HOURS ON DOMESTIC JOURNEYS OR WORK/ (ii) Emergency Exemptions/1395. Power to make exemptions from requirements as to drivers' hours.

## **(ii) Emergency Exemptions**

### **1395. Power to make exemptions from requirements as to drivers' hours.**

For the purpose of enabling drivers<sup>1</sup> to deal with cases of emergency or otherwise to meet a special need, the Secretary of State<sup>2</sup> may by regulations<sup>3</sup>:

- 2176 (1) create exemptions from all or any of the requirements of the domestic drivers' hours code<sup>4</sup> in such cases and subject to such conditions as may be specified in the regulations<sup>5</sup>;
- 2177 (2) empower the traffic commissioner<sup>6</sup> for any area, subject to the provisions of the regulations<sup>7</sup>:
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217. (a) to dispense with the observance of all or any of those requirements (either generally or in such circumstances or to such extent as the commissioner thinks fit) in any particular case for which provision is not made under head (1) above<sup>8</sup>;
218. (b) to grant a certificate<sup>9</sup> that any particular case falls or fell within any exemption created under head (1) above<sup>10</sup>.
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Such regulations may enable any dispensation under head (2)(a) above to be granted retrospectively and provide for a document purporting to be a certificate granted by virtue of head (2)(b) above to be accepted in evidence without further proof<sup>11</sup>.

1 For the meaning of 'driver' see PARA 1380 ante.

2 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 As to the regulations that have been made in exercise of this power see the Drivers' Hours (Passenger Vehicles) (Exemptions) Regulations 1970, SI 1970/145 (as amended); the Drivers' Hours (Goods Vehicles) (Exemptions) Regulations 1986, SI 1986/1492; and PARAS 1396-1397 post. See also the Drivers' Hours (Goods Vehicles) (Milk Collection) (Temporary Exemption) Regulations 2007, SI 2007/2370. As to the making of regulations generally see PARA 1382 ante.

4 I.e. the Transport Act 1968 s 96(1)-(6); see PARA 1389 ante. For the meaning of 'the domestic drivers' hours code' see PARA 1380 note 2 ante.

5 Ibid s 96(10)(a).

6 As to traffic commissioners see PARA 1139 ante.

7 Transport Act 1968 s 96(10)(b) (amended by the Transport Act 1985 s 3, Sch 2 Pt II).

8 Transport Act 1968 s 96(10)(b)(i) (as amended: see note 7 supra).

9 The certificate which is granted is, for the purposes of any proceedings under ibid Pt VI (ss 95-103) (as amended), conclusive evidence of the facts stated in it: s 96(10)(b)(ii).

10 Ibid s 96(10)(b)(ii).

11 Ibid s 96(10).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/(3) DRIVERS' HOURS ON DOMESTIC JOURNEYS OR WORK/ (ii) Emergency Exemptions/1396. Emergency exemptions in relation to passenger vehicles.

### **1396. Emergency exemptions in relation to passenger vehicles.**

Any driver<sup>1</sup> of a passenger vehicle<sup>2</sup> who spends time on duty<sup>3</sup> to deal with an emergency<sup>4</sup> is exempted from the requirements of the domestic drivers' hours code<sup>5</sup> in respect of the time so spent<sup>6</sup>.

Any driver of a passenger vehicle who spends time on duty during a working day to meet a special need, that is to say work done solely in connection with the collection and delivery of blood for the purposes of transfusion, or work done in connection with the carriage of persons suffering from physical or mental disability to or from any place at which social or recreational facilities for them are specially provided, is exempted from the requirements as to the working day of a driver<sup>7</sup> in relation to that day, subject to the conditions that<sup>8</sup>:

2178 (1) he is able to obtain rest and refreshment during that day for a period which is, or for periods which taken together are, not less than the time by which the working day exceeds ten hours<sup>9</sup>;

2179 (2) that day does not exceed fourteen hours<sup>10</sup>; and

2180 (3) he has not taken advantage of this exemption from the requirements as to the working day of a driver<sup>11</sup> on more than one previous working day which forms part of the working week of which that day forms part<sup>12</sup>.

1 For the meaning of 'driver' see PARA 1380 ante.

2 For the meaning of 'passenger vehicle' see PARA 1380 ante.

3 As to a driver being on duty see PARA 1389 note 2 ante.

4 'Emergency' means an event which: (1) causes or is likely to cause such: (a) danger to the life or health of one or more individuals; (b) a serious interruption in the maintenance of public services for the supply of water, gas, electricity, drainage, electronic communication or postal services; (c) a serious interruption in the use of roads; or (d) a serious interruption in private transport or public transport (not being an interruption caused by a trade dispute involving persons who carry passengers for hire or reward); or (2) is likely to cause such serious damage to property, as to necessitate the taking of immediate action to prevent the occurrence or continuance of such danger or interruption or the occurrence of such damage: Drivers' Hours (Passenger Vehicles) (Exemptions) Regulations 1970, SI 1970/145, reg 2(1) (definition amended by SI 2003/2155). The Drivers' Hours (Passenger Vehicles) (Exemptions) Regulations 1970, SI 1970/145, reg 2(1) (as amended) (see head (1)(d) supra) refers to a trade dispute within the meaning of the Trade Disputes Act 1906, but this has been repealed: see now the Trade Union and Labour Relations (Consolidation) Act 1992 s 218; and EMPLOYMENT vol 41 (2009) PARA 1181.

5 I.e. the Transport Act 1968 s 96(1)-(6): see PARA 1389 ante. For the meaning of 'the domestic drivers' hours code' see PARA 1380 note 2 ante.

6 Drivers' Hours (Passenger Vehicles) (Exemptions) Regulations 1970, SI 1970/145, reg 3(1). Any time so spent by such a driver is for the purposes of the Transport Act 1968 s 96(1) (see PARA 1389 notes 1-4 ante) deemed not to have been spent in driving vehicles to which Pt VI (ss 95-103) (as amended) applies; and for the purposes of s 96(1)-(6) (including the expression 'working day') (see PARA 1389 note 2 ante) is deemed to have been spent by him off duty, and, if it would apart from the emergency have been spent in taking an interval for rest or an interval for rest and refreshment, is deemed to have been so spent by him: Drivers' Hours (Passenger Vehicles) (Exemptions) Regulations 1970, SI 1970/145, reg 3(2). The requirements of the Transport Act 1968 s 96(6) (see PARA 1389 notes 19-21 ante) are, in relation to such a driver, deemed to be satisfied in respect of a working week in which he spends time on such duty if he is off duty for a period of 24 hours in accordance with that provision less a period equal to the total time which he spends on such duty in that week: Drivers' Hours (Passenger Vehicles) (Exemptions) Regulations 1970, SI 1970/145, reg 3(3). For the meaning of 'working week'

see PARA 1389 note 18 ante. As to vehicles to which the Transport Act 1968 Pt VI (as amended) applies see PARA 1380 ante.

7 le ibid s 96(3): see PARA 1390 ante.

8 Drivers' Hours (Passenger Vehicles) (Exemptions) Regulations 1970, SI 1970/145, regs 4, 5 (added by SI 1970/649).

9 Drivers' Hours (Passenger Vehicles) (Exemptions) Regulations 1970, SI 1970/145, regs 4(a), 5(a) (as added: see note 8 supra).

10 Ibid regs 4(b), 5(b) (as added: see note 8 supra).

11 See note 7 supra.

12 Drivers' Hours (Passenger Vehicles) (Exemptions) Regulations 1970, SI 1970/145, regs 4(c), 5(c) (as added: see note 8 supra).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/(3) DRIVERS' HOURS ON DOMESTIC JOURNEYS OR WORK/ (ii) Emergency Exemptions/1397. Emergency exemptions in relation to goods vehicles.

### 1397. Emergency exemptions in relation to goods vehicles.

A driver<sup>1</sup> who during any working day<sup>2</sup> spends all or the greater part of the time when he is driving vehicles to which Part VI of the Transport Act 1968<sup>3</sup> applies in driving goods vehicles<sup>4</sup> and who spends time on duty during that working day to deal with any cases of emergency<sup>5</sup> is exempted from certain requirements<sup>6</sup> in respect of that working day subject to the condition that he does not spend time on such duty (otherwise than to deal with the emergency) for a period of or periods amounting in the aggregate to more than eleven hours<sup>7</sup>.

1 For the meaning of 'driver' see PARA 1380 ante.

2 For the meaning of 'working day' see PARA 1390 note 6 ante.

3 le the Transport Act 1968 Pt VI (ss 95-103) (as amended). As to the vehicles to which Pt VI (as amended) applies see PARA 1380 ante.

4 For the meaning of 'goods vehicle' see PARA 1380 ante.

5 The cases of emergency are: (1) events which cause or are likely to cause such: (a) danger to life or health of one or more individuals or animals; or (b) a serious interruption in the maintenance of public services for the supply of water, gas, electricity or drainage or of electronic communications or postal services; or (c) a serious interruption in the use of roads, railways, ports or airports as to necessitate the taking of immediate action to prevent the occurrence or continuance of such danger or interruption; and (2) events which are likely to cause such serious damage to property, as to necessitate the taking of immediate action to prevent the occurrence of such damage: Drivers' Hours (Goods Vehicles) (Exemptions) Regulations 1986, SI 1986/1492, reg 2(2) (amended by SI 2003/2155).

- 6 le the requirements of the Transport Act 1968 s 96(1), (3)(a): see PARA 1389 ante.
- 7 Drivers' Hours (Goods Vehicles) (Exemptions) Regulations 1986, SI 1986/1492, reg 2(1).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (4) HOURS AND RECORDS OF PERSONS PERFORMING MOBILE ROAD TRANSPORT ACTIVITIES/1398. Mobile workers.

## (4) HOURS AND RECORDS OF PERSONS PERFORMING MOBILE ROAD TRANSPORT ACTIVITIES

### 1398. Mobile workers.

Regulations have been made to implement the Community provisions concerning the organisation of the working time of persons performing mobile road transport activities<sup>1</sup>. The regulations apply to mobile workers<sup>2</sup> who are employed by, or who do work for, undertakings established in a member state of the European Union, and to whom either head (1) or head (2) below applies<sup>3</sup>, namely:

- 2181 (1) mobile workers who, in the course of that employment<sup>4</sup> or work, drive or travel in or on specified classes of vehicles<sup>5</sup> which are not excluded<sup>6</sup> from the Community Drivers' Hours Regulation<sup>7</sup>;
- 2182 (2) mobile workers, to whom head (1) above does not apply, who in the course of that employment or work drive, or travel in, vehicles of a specified class<sup>8</sup> which are performing international transport<sup>9</sup>.

The regulations do not apply to:

- 2183 (a) self-employed drivers<sup>10</sup>; or
- 2184 (b) any worker who does work which is included in the calculation of working time<sup>11</sup>: (i) where the reference period<sup>12</sup> is shorter than 26 weeks, on fewer than eleven days in a reference period applicable to that worker; or (ii) in any other case on fewer than sixteen days in a reference period applicable to that worker<sup>13</sup>.

1 le the Road Transport (Working Time) Regulations 2005, SI 2005/639 (amended by SI 2007/853), implementing EC Council Directive 2002/15 (OJ L80, 23.3.2002, p 35) concerning the organisation of the working time of persons performing mobile road transport activities. See further PARA 1399 et seq post.

2 'Mobile worker' means any worker forming part of the travelling staff, including trainees and apprentices, who is in the service of an undertaking which operates transport services for passengers or goods by road for hire or reward or on its own account: Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 2. 'Worker' means an individual who has entered into or works under (or, where employment has ceased, worked under) a contract of employment or any other contract, whether express or implied and (if it is express)

whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract; and any reference to a worker's contract is to be construed accordingly: reg 2.

3 Ibid reg 3(1).

4 'Employment' in relation to a worker, means employment under his contract; and 'employed' is to be construed accordingly: ibid reg 2.

5 le vehicles within the meaning of the Community Drivers' Hours Regulation art 4(b) (see PARA 1380 text and notes 8-9 ante). 'The Community Drivers' Hours Regulation' means European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) on the harmonisation of certain social legislation relating to road transport (and amending and repealing certain Council Regulations): Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 2 (definition substituted by SI 2007/853). In the Road Transport (Working Time) Regulations 2005, SI 2005/639 (as amended), 'vehicle' means a goods vehicle or a passenger vehicle: reg 2. 'Goods vehicle' means a motor vehicle constructed or adapted for use for the carriage of goods, or a trailer so constructed or adapted; and 'passenger vehicle' means a motor vehicle which is constructed or adapted to carry more than eight seated passengers in addition to the driver: reg 2. 'Motor vehicle' means a mechanically propelled vehicle intended or adapted for use on roads: reg 2. 'Goods' includes goods or burden of any description: reg 2.

6 le which are not vehicles described in the Community Drivers' Hours Regulation art 3 (see PARA 1384 ante) and which are not vehicles exempted from the provisions of that Regulation under the Community Drivers' Hours and Recording Equipment (Exemptions and Supplementary Provisions) Regulations 1986, SI 1986/1456, reg 2 (revoked: see now the Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819): Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 3(2)(a)-(c) (reg 3(2) substituted by SI 2007/853). As to exemptions granted by the Secretary of State see PARA 1385 ante.

7 Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 3(2) (as substituted: see note 6 supra).

8 le which fall within the meaning of a 'vehicle' in the AETR art 1 and which are not referred to in art 2(2)(b): Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 3(3)(a)-(c). 'AETR' means the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (Geneva, 1 July 1970; TS 103 (1978); Cmnd 7401): Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 2; and see PARA 1380 note 4 ante.

9 Ibid reg 3(3).

10 'Self-employed driver' means anyone whose main occupation is to transport passengers or goods by road for hire or reward within the meaning of Community legislation under cover of a Community licence or any other professional authorisation to carry out such transport, who is entitled to work for himself and who is not tied to an employer by an employment contract or by any other type of working hierarchical relationship, who is free to organise the relevant working activities, whose income depends directly on the profits made and who has the freedom, individually or through a co-operation between self-employed drivers, to have commercial relations with several customers: ibid reg 2. 'Employer' in relation to a worker, means the person by whom the worker is (or, where the employment has ceased, was) employed: reg 2.

11 'Working time' means the time from the beginning to the end of work during which the mobile worker is at his workstation, at the disposal of his employer and exercising his functions or activities, being: (1) time devoted to all road transport activities, including, in particular: (a) driving; (b) loading and unloading; (c) assisting passengers boarding and disembarking from the vehicle; (d) cleaning and technical maintenance; (e) all other work intended to ensure the safety of the vehicle, its cargo and passengers or to fulfil the legal or regulatory obligations directly linked to the specific transport operation under way, including monitoring of loading and unloading and dealing with administrative formalities with police, customs, immigration officers and others; or (2) time during which the mobile worker cannot dispose freely of his time and is required to be at his workstation, ready to take up normal work, with certain tasks associated with being on duty, in particular during periods awaiting loading or unloading where their foreseeable duration is not known in advance, that is to say either before departure or just before the actual start of the period in question, or under collective agreements or workforce agreements: ibid reg 2. 'Workstation' means: (i) the location of the main place of business of the undertaking for which the person performing mobile transport activities carries out duties, together with its various subsidiary places of business, regardless of whether they are located in the same place as its head office or its main place of business; (ii) the vehicle which the person performing mobile road transport activities uses when he carries out duties; or (iii) any other place in which activities connected with transport are carried out: reg 2. For the meaning of 'workforce agreement' see PARA 1399 post.

12 'Reference period' means the period for calculation of the average maximum weekly working time: ibid reg 2.

13 Ibid reg 3(4).

**UPDATE****1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (4) HOURS AND RECORDS OF PERSONS PERFORMING MOBILE ROAD TRANSPORT ACTIVITIES/1399. Workforce agreements.

**1399. Workforce agreements.**

A 'workforce agreement' means an agreement between an employer<sup>1</sup> and mobile workers<sup>2</sup> employed by him or their representatives in respect of which certain conditions<sup>3</sup> are satisfied<sup>4</sup>. An agreement is a workforce agreement for these purposes if the following conditions are satisfied<sup>5</sup>:

- 2185 (1) the agreement is in writing<sup>6</sup>;
- 2186 (2) it has effect for a specified period not exceeding five years<sup>7</sup>;
- 2187 (3) it applies either:
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- 219. (a) to all of the relevant members of the workforce<sup>8</sup>; or
- 220. (b) to all of the relevant members of the workforce who belong to a particular group<sup>9</sup>;
- 130
- 2188 (4) the agreement is signed:
- 131
- 221. (a) in the case of an agreement of the kind referred to in head (3)(a) above, by the representatives of the workforce<sup>10</sup>, and in the case of an agreement of the kind referred to in head (3)(b) above, by the representatives of the group<sup>11</sup> to which the agreement applies (excluding, in either case, any representative not a relevant member of the workforce on the date on which the agreement was first made available for signature)<sup>12</sup>; or
- 222. (b) if the employer employed twenty or fewer workers<sup>13</sup> on the date referred to in head (a) above, either by the appropriate representatives in accordance with that head or by the majority of the workers employed by him<sup>14</sup>; and
- 132
- 2189 (5) before the agreement was made available for signature, the employer provided all the workers to whom it was intended to apply on the date on which it came into effect with copies of the text of the agreement and such guidance as those employees might reasonably require in order to understand it in full<sup>15</sup>.

1 For the meaning of 'employer' see PARA 1398 note 10 ante.

2 For the meaning of 'mobile worker' see PARA 1398 note 2 ante.

3 Ie the conditions in the Road Transport (Working Time) Regulations 2005, SI 2005/639, Sch 1.

- 4 Ibid reg 2.
- 5 Ibid Sch 1 para 1.
- 6 Ibid Sch 1 para 1(a).
- 7 Ibid Sch 1 para 1(b).
- 8 Ibid Sch 1 para 1(c)(i). 'Relevant members of the workforce' are all of the workers employed by a particular employer, excluding any worker whose terms and conditions of employment are provided for, wholly or in part, in a collective agreement: Sch 1 para 2.
- 9 Ibid Sch 1 para 1(c)(ii). 'A particular group' is a group of the relevant members of a workforce who undertake a particular function, work at a particular workplace or belong to a particular department or unit within their employer's business: Sch 1 para 2.
- 10 'Representatives of the workforce' are workers duly elected to represent the relevant members of the workforce; and representatives are 'duly elected' if the election at which they were elected satisfied the requirements of ibid Sch 1 para 3: Sch 1 para 2. Those requirements are that:
  - 1378 (1) the number of representatives to be elected is determined by the employer (Sch 1 para 3(a));
  - 1379 (2) the candidates for election as representatives of the workforce are relevant members of the workforce, and candidates for election as representatives of the group are members of the group (Sch 1 para 3(b));
  - 1380 (3) no worker who is eligible to be a candidate is unreasonably excluded from standing for election (Sch 1 para 3(c));
  - 1381 (4) all the relevant members of the workforce are entitled to vote for representatives of the workforce, and all the members of a particular group are entitled to vote for representatives of the group (Sch 1 para 3(d));
  - 1382 (5) the workers entitled to vote may vote for as many candidates as there are representatives to be elected (Sch 1 para 3(e)); and
  - 1383 (6) the election is conducted so as to secure that: (a) so far as is reasonably practicable, those voting do so in secret; and (b) the votes given at the election are fairly and accurately counted (Sch 1 para 3(f)).
- 11 'Representatives of the group' are workers duly elected to represent the members of a particular group: ibid Sch 1 para 2.
- 12 Ibid Sch 1 para 1(d)(i).
- 13 For the meaning of 'worker' see PARA 1398 note 2 ante.
- 14 Road Transport (Working Time) Regulations 2005, SI 2005/639, Sch 1 para 1(d)(ii).
- 15 Ibid Sch 1 para 1(e).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).



1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (4) HOURS AND RECORDS OF PERSONS PERFORMING MOBILE ROAD TRANSPORT ACTIVITIES/1400. Calculation of working time.

#### **1400. Calculation of working time.**

The working time<sup>1</sup>, including overtime, of a mobile worker<sup>2</sup> must not exceed 60 hours in a week<sup>3</sup>. In any reference period<sup>4</sup> which is applicable to his case, a mobile worker's working time must not exceed an average of 48 hours for each week<sup>5</sup>. A mobile worker's average weekly working time during a reference period is to be determined according to a specified formula<sup>6</sup>.

An employer<sup>7</sup> must take all reasonable steps, in keeping with the need to protect the health and safety of the mobile worker, to ensure that the limits specified above are complied with in the case of each mobile worker employed by him<sup>8</sup>.

The times of breaks, rests<sup>9</sup> and periods of availability<sup>10</sup> are not to be included in the calculation of working time<sup>11</sup>.

1 For the meaning of 'working time' see PARA 1398 note 11 ante.

2 For the meaning of 'mobile worker' see PARA 1398 note 2 ante.

3 Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 4(1). 'Week' means a period of seven days beginning at midnight between Sunday and Monday: reg 2.

4 For the meaning of 'reference period' see PARA 1398 note 12 ante.

5 Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 4(2). The reference periods which apply in the case of a mobile worker are:

1384 (1) where a collective agreement or a workforce agreement provides for the application of reg 4 in relation to successive periods of 17 weeks, each such period (reg 4(3)(a));

1385 (2) in a case where: (a) there is no such provision; and (b) the employer gives written notice to the mobile worker in writing that he intends to apply this provision, any period of 17 weeks in the course of the worker's employment (reg 4(3)(b)); or

1386 (3) in any other case, the period ending at midnight between Sunday 31 July 2005 and Monday 1 August 2005 and thereafter, in each year, the successive periods beginning at midnight at the beginning of the Monday which falls on, or is the first Monday after, 1 December, and ending at midnight at the beginning of the Monday which falls on, or is the first Monday, after 1 April, 1 August and 1 December respectively (reg 4(3)(c)).

'Collective agreement' means a collective agreement within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 s 178, the trade union parties to which are independent trade unions within the meaning of s 5 (see EMPLOYMENT vol 40 (2009) PARA 859); Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 2. For the meaning of 'workforce agreement' see PARA 1399 ante. For the meaning of 'worker' see PARA 1398 note 2 ante.

The reference period may be extended in relation to particular mobile workers or groups of mobile workers for objective or technical reasons or reasons concerning the organisation of work, by a collective agreement or a workforce agreement, by the substitution for 17 weeks of a period not exceeding 26 weeks in the application of reg 4(2) and reg 4(3)(a) (see head (1) supra): reg 4(4).

6 Ibid reg 4(5). The formula is based on the aggregate number of hours comprised in the mobile worker's working time during the course of the reference period plus the number of excluded hours during the reference period, divided by the number of weeks in the reference period: see reg 4(5). For these purposes, 'excluded hours' means hours comprised in: (1) any period of annual leave taken by the mobile worker in exercise of entitlement under the Working Time Regulations 1998, SI 1998/1833, reg 13 (see EMPLOYMENT vol 39 (2009) PARA 267); (2) any period of sick leave taken by the mobile worker; (3) any period of maternity, paternity, adoption or parental leave taken by the mobile worker: Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 4(6). For the purposes of reg 4(5), the number of hours in a whole day is eight and the number of hours in a whole week is 48: reg 4(7).

- 7 For the meaning of 'employer' see PARA 1398 note 10 ante.
- 8 Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 4(8).
- 9 As to breaks and rest periods see PARA 1402 post.
- 10 As to periods of availability see PARA 1401 post.
- 11 Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 5.

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (4) HOURS AND RECORDS OF PERSONS PERFORMING MOBILE ROAD TRANSPORT ACTIVITIES/1401. Periods of availability.

#### 1401. Periods of availability.

'Period of availability' means a period during which the mobile worker<sup>1</sup> is not required to remain at his workstation<sup>2</sup>, but is required to be available to answer any calls to start or resume driving or to carry out other work, including periods during which the mobile worker is accompanying a vehicle<sup>3</sup> being transported by a ferry or by a train as well as periods of waiting at frontiers and those due to traffic prohibitions<sup>4</sup>.

A period is not to be treated as a period of availability unless the mobile worker knows before the start of the relevant period about that period of availability and its reasonably foreseeable duration<sup>5</sup>. The time spent by a mobile worker, who is working as part of a team, travelling in, but not driving, a moving vehicle as part of that team is a period of availability for that mobile worker<sup>6</sup>. A period of availability does not include a period of rest or a break<sup>7</sup>; but a period of availability may include a break taken by a mobile worker during waiting time or time which is not devoted to driving by the mobile worker and is spent in a moving vehicle, a ferry or a train<sup>8</sup>.

- 1 For the meaning of 'mobile worker' see PARA 1398 note 2 ante.
- 2 For the meaning of 'workstation' see PARA 1398 note 11 ante.
- 3 For the meaning of 'vehicle' see PARA 1398 note 5 ante.
- 4 Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 2.
- 5 Ibid reg 6(1).
- 6 Ibid reg 6(2).
- 7 Ibid reg 6(3). As to breaks and rest periods see PARA 1402 post.
- 8 Ibid reg 6(4).

## UPDATE

### **1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (4) HOURS AND RECORDS OF PERSONS PERFORMING MOBILE ROAD TRANSPORT ACTIVITIES/1402. Breaks and rest periods.

#### **1402. Breaks and rest periods.**

No mobile worker<sup>1</sup> is to work for more than six hours without a break<sup>2</sup>. Where a mobile worker's working time<sup>3</sup> exceeds six hours but does not exceed nine hours, the worker is entitled to a break lasting at least 30 minutes and interrupting that time<sup>4</sup>. Where a mobile worker's working time exceeds nine hours, the worker is entitled to a break lasting at least 45 minutes and interrupting that period<sup>5</sup>. Each break may be made up of separate periods of not less than 15 minutes each<sup>6</sup>. An employer<sup>7</sup> must take all reasonable steps, in keeping with the need to protect the health and safety of the mobile worker, to ensure that the limits specified above are complied with in the case of each mobile worker employed by him<sup>8</sup>.

In the application of the Road Transport (Working Time) Regulations 2005<sup>9</sup>, the provisions of the Community Drivers' Hours Regulation<sup>10</sup> relating to daily and weekly rest are to apply to all mobile workers to whom they do not apply under that Regulation as they apply to other mobile workers under that Regulation<sup>11</sup>. An employer must take all reasonable steps, in keeping with the need to protect the health and safety of the mobile worker, to ensure that those provisions are complied with in the case of each mobile worker employed by him, to whom they are applied by the above provision<sup>12</sup>.

1 For the meaning of 'mobile worker' see PARA 1398 note 2 ante.

2 Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 7(1).

3 For the meaning of 'working time' see PARA 1398 note 11 ante.

4 Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 7(2). For the meaning of 'worker' see PARA 1398 note 2 ante.

5 Ibid reg 7(3).

6 Ibid reg 7(4).

7 For the meaning of 'employer' see PARA 1398 note 10 ante.

8 Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 7(5).

9 Ie the Road Transport (Working Time) Regulations 2005, SI 2005/639 (as amended).

10 For the meaning of 'Community Drivers' Hours Regulation' see PARA 1398 note 5 ante.

11 Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 8(1).

12 Ibid reg 8(2).

**UPDATE****1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (4) HOURS AND RECORDS OF PERSONS PERFORMING MOBILE ROAD TRANSPORT ACTIVITIES/1403. Night work.

**1403. Night work.**

The working time<sup>1</sup> of a mobile worker<sup>2</sup>, who performs night work<sup>3</sup> in any period of 24 hours, must not exceed ten hours during that period<sup>4</sup>. The period of ten hours may be extended, in relation to particular mobile workers or groups of mobile workers for objective or technical reasons or reasons concerning the organisation of work, by a collective agreement<sup>5</sup> or a workforce agreement<sup>6</sup>. Compensation for night work must not be given to a mobile worker in any manner which is liable to endanger road safety<sup>7</sup>. An employer<sup>8</sup> must take all reasonable steps in keeping with the need to protect the health and safety of mobile workers to ensure that the limit specified above or extended in accordance with the above provision is complied with in the case of each mobile worker employed by him<sup>9</sup>.

1 For the meaning of 'working time' see PARA 1398 note 11 ante.

2 For the meaning of 'mobile worker' see PARA 1398 note 2 ante.

3 'Night work' means any work performed during night time; and 'night time' means in respect of goods vehicles the period between midnight and 4 am and in respect of passenger vehicles the period between 1 am and 5 am: Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 2. For the meaning of 'goods vehicle' see PARA 1398 note 5 ante.

4 Ibid reg 9(1).

5 For the meaning of 'collective agreement' see PARA 1400 note 5 ante.

6 Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 9(2). For the meaning of 'workforce agreement' see PARA 1399 ante.

7 Ibid reg 9(3).

8 For the meaning of 'employer' see PARA 1398 note 10 ante.

9 Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 9(4).

**UPDATE****1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (4) HOURS AND RECORDS OF PERSONS PERFORMING MOBILE ROAD TRANSPORT ACTIVITIES/1404. Agency workers and individuals carrying on trade or business.

#### **1404. Agency workers and individuals carrying on trade or business.**

The following provision applies in any case where an individual ('the agency worker'): (1) is supplied by a person ('the agent') to do the work of a mobile worker<sup>1</sup> for another ('the principal') under a contract or other arrangements made between the agent and the principal; but (2) is not, as respects that work, a worker<sup>2</sup>, because of the absence of a worker's contract between the individual and the agent or the principal; and (3) is not a party to a contract under which he undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer or any profession or business undertaking carried on by the individual<sup>3</sup>.

In a case where this provision applies, the other provisions of the Road Transport (Working Time) Regulations 2005<sup>4</sup> have effect as if there were a contract for the doing of the work by the agency worker made between the agency worker and: (a) whichever of the agent and the principal is responsible for paying the agency worker in respect of the work; or (b) if neither the agent nor the principal is so responsible, whichever of them pays the agency worker in respect of the work, and as if that person were the agency worker's employer<sup>5</sup>.

In the case of an individual who, for the purpose of a trade or business carried on by him, drives a vehicle<sup>6</sup> of a specified description<sup>7</sup>, and is neither a self-employed driver<sup>8</sup> nor an agency worker<sup>9</sup> as described above<sup>10</sup>, the Regulations have effect as if: (i) the individual were both a mobile worker and the employer of that mobile worker; and (b) certain provisions as to information and records<sup>11</sup> were omitted<sup>12</sup>.

1 For the meaning of 'mobile worker' see PARA 1398 note 2 ante.

2 For the meaning of 'worker' see PARA 1398 note 2 ante.

3 Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 14(1).

4 I.e. the Road Transport (Working Time) Regulations 2005, SI 2005/639 (as amended).

5 Ibid reg 14(2). For the meaning of 'employer' see PARA 1398 note 10 ante.

6 For the meaning of 'vehicle' see PARA 1398 note 5 ante.

7 I.e. a vehicle described in the Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 3(2) or (3): see PARA 1398 ante.

8 For the meaning of 'self-employed driver' see PARA 1398 note 10 ante.

9 I.e. within the meaning of the Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 14.

10 Ibid reg 15(1) (reg 15 substituted by SI 2007/853).

11 I.e. the Road Transport (Working Time) Regulations 2005, SI 2005/639, regs 10, 11(a), (e), 12: see PARA 1405 post.

12 Ibid reg 15(2) (as substituted: see note 10 supra).

#### **UPDATE**

### **1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (4) HOURS AND RECORDS OF PERSONS PERFORMING MOBILE ROAD TRANSPORT ACTIVITIES/1405. Information and records.

#### **1405. Information and records.**

An employer<sup>1</sup> of mobile workers<sup>2</sup> must notify each worker<sup>3</sup> of the provisions of the Road Transport (Working Time) Regulations 2005<sup>4</sup> and the provisions of any collective or workforce agreement<sup>5</sup> which is capable of application to that worker<sup>6</sup>.

An employer of a mobile worker must<sup>7</sup>:

- 2190 (1) request from each mobile worker details of any time worked by that worker for another employer<sup>8</sup>;
- 2191 (2) include time worked for another employer in the calculation of the mobile worker's working time<sup>9</sup>;
- 2192 (3) keep records which are adequate to show whether the requirements of the regulations are being complied with in the case of each mobile worker employed by him to whom they apply<sup>10</sup>;
- 2193 (4) retain such records for at least two years after the end of the period covered by those records<sup>11</sup>;
- 2194 (5) provide, at the request of a mobile worker, a copy of the record of hours worked by that worker<sup>12</sup>;
- 2195 (6) provide to an enforcement officer copies of such records relating to mobile workers as the officer may require<sup>13</sup>;
- 2196 (7) provide to a mobile worker or enforcement officer copies of such documentary evidence in the employer's possession as may be requested by the worker or officer in relation to records provided to him in accordance with head (5) or head (6) above<sup>14</sup>.

A mobile worker must, at the request of his employer<sup>15</sup>, notify his employer in writing of time worked by the worker for another employer for inclusion in the calculation of the mobile worker's working time<sup>16</sup>.

The Secretary of State<sup>17</sup> must arrange for the publication, in such form and manner as he considers appropriate, of information and advice concerning the operation of the regulations<sup>18</sup>. The information and advice must be such as appear to him best calculated to enable employers and workers affected by the regulations to understand their respective rights and obligations<sup>19</sup>.

1 For the meaning of 'employer' see PARA 1398 note 10 ante.

2 For the meaning of 'mobile worker' see PARA 1398 note 2 ante.

3 For the meaning of 'worker' see PARA 1398 note 2 ante.

- 4    le the Road Transport (Working Time) Regulations 2005, SI 2005/639 (as amended).
- 5    For the meaning of 'collective agreement' see PARA 1400 note 5 ante; and for the meaning of 'workforce agreement' see PARA 1399 ante.
- 6    Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 10.
- 7    Ibid reg 11.
- 8    Ibid reg 11(a).
- 9    Ibid reg 11(b). For the meaning of 'working time' see PARA 1398 note 11 ante.
- 10   Ibid reg 11(c). As to workers to whom the regulations apply see PARA 1398 ante.
- 11   Ibid reg 11(d).
- 12   Ibid reg 11(e).
- 13   Ibid reg 11(f).
- 14   Ibid reg 11(g).
- 15   le under ibid reg 11(a): see head (1) in the text.
- 16   Ibid reg 12.
- 17   As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 18   Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 13(1).
- 19   Ibid reg 13(2).

## **UPDATE**

### **1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (4) HOURS AND RECORDS OF PERSONS PERFORMING MOBILE ROAD TRANSPORT ACTIVITIES/1406. Appointment and powers of inspectors.

#### **1406. Appointment and powers of inspectors.**

It is the duty of the Secretary of State<sup>1</sup> to enforce the requirements of the Road Transport (Working Time) Regulations 2005<sup>2</sup>.

The Secretary of State may appoint as inspectors<sup>3</sup> (under whatever title he may from time to time determine) such persons having suitable qualifications as he thinks necessary for carrying the regulations into effect, and may terminate any such appointment<sup>4</sup>. Every such appointment of a person as an inspector must be made by an instrument in writing specifying which of the powers conferred on inspectors by the regulations are to be exercisable by the person

appointed; and an inspector is in right of his appointment entitled to exercise only such of those powers as are so specified<sup>5</sup>. An inspector must, if so required when exercising or seeking to exercise any power conferred on him by the regulations, produce his instrument of appointment or a duly authenticated copy thereof<sup>6</sup>.

Subject to the terms of his appointment and to the provisions below, an inspector may for the purpose of carrying into effect the Road Transport (Working Time) Regulations 2005 exercise the following powers<sup>7</sup>:

- 2197 (1) at any reasonable time (or in a situation which in his opinion may be dangerous, at any time) to enter any premises which he has reason to believe it is necessary for him to enter for the purpose of carrying the regulations into effect<sup>8</sup>;
- 2198 (2) to take with him a constable if he has reasonable cause to apprehend any serious obstruction in the execution of his duty<sup>9</sup>;
- 2199 (3) without prejudice to head (1) above, on entering any premises by virtue of head (1) above to take with him any other person duly authorised by the Secretary of State and any equipment or material required for any purpose for which the power of entry is being exercised<sup>10</sup>;
- 2200 (4) to make such examination and investigation as may in any circumstances be necessary for the purpose of carrying the regulations into effect<sup>11</sup>;
- 2201 (5) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under head (4) above to answer (in the absence of persons other than a person nominated by him to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers<sup>12</sup>;
- 2202 (6) to require the production of, inspect, and take copies of, or of any entry in any records which by virtue of the regulations are required to be kept and any other books, records or documents which it is necessary for him to see for the purposes of any examination or investigation under head (4) above<sup>13</sup>;
- 2203 (7) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by these provisions<sup>14</sup>;
- 2204 (8) any other power which is necessary for the purpose of carrying the regulations into effect<sup>15</sup>.

No answer given by a person in pursuance of a requirement imposed under head (5) above is admissible in evidence against that person or the husband or wife of that person in any proceedings<sup>16</sup>. Nothing in the above provisions<sup>17</sup> is to be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege<sup>18</sup> be entitled to withhold production on an order for disclosure<sup>19</sup> in an action in the High Court<sup>20</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 I.e. the Road Transport (Working Time) Regulations 2005, SI 2005/639 (as amended): reg 16(1). Schedule 2 applies in relation to the enforcement of the relevant requirements: reg 16(2). 'Relevant requirements' means regs 4(8), 7(5), 8(2), 9(4), 10-12 (see PARAS 1400, 1402-1403, 1405 ante): reg 2.

3 'Inspector' means a person appointed under *ibid* Sch 2 para 1: reg 2.

4 *Ibid* Sch 2 para 1(1).

5 *Ibid* Sch 2 para 1(2). So much of an inspector's instrument of appointment as specifies the powers which he is entitled to exercise may be varied by the Secretary of State: Sch 2 para 1(3).



- 6 Ibid Sch 2 para 1(4).
- 7 Ibid Sch 2 para 2(1).
- 8 Ibid Sch 2 para 2(2)(a).
- 9 Ibid Sch 2 para 2(2)(b).
- 10 Ibid Sch 2 para 2(2)(c).
- 11 Ibid Sch 2 para 2(2)(d).
- 12 Ibid Sch 2 para 2(2)(e). As to restrictions on the disclosure of information see PARA 1408 post.
- 13 Ibid Sch 2 para 2(2)(f).
- 14 Ibid Sch 2 para 2(2)(g).
- 15 Ibid Sch 2 para 2(2)(h).
- 16 Ibid Sch 2 para 2(3).
- 17 Ie ibid Sch 2 para 2.
- 18 As to legal professional privilege see CIVIL PROCEDURE vol 11 (2009) PARA 558 et seq. See also LEGAL PROFESSIONS vol 65 (2008) PARAS 511, 740; LEGAL PROFESSIONS vol 66 (2009) PARA 1146.
- 19 As to orders for disclosure (formerly discovery) see CIVIL PROCEDURE vol 11 (2009) PARA 550.
- 20 Road Transport (Working Time) Regulations 2005, SI 2005/639, Sch 2 para 2(4).

## **UPDATE**

### **1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (4) HOURS AND RECORDS OF PERSONS PERFORMING MOBILE ROAD TRANSPORT ACTIVITIES/1407. Improvement notices and prohibition notices.

#### **1407. Improvement notices and prohibition notices.**

If an inspector<sup>1</sup> is of the opinion that a person: (1) is contravening one or more of the regulations<sup>2</sup>; or (2) has contravened one or more of the regulations in circumstances that make it likely that the contravention will continue or be repeated, he may serve on him a notice (an 'improvement notice') stating that he is of that opinion, specifying the provision or provisions as to which he is of that opinion, giving particulars of the reasons why he is of that opinion, and requiring that person to remedy the contravention or, as the case may be, the matter occasioning it within such period (ending not earlier than the period within which an appeal against the notice can be brought<sup>3</sup>) as may be specified in the notice<sup>4</sup>.

The following provisions apply to any activities which are being, or are likely to be, carried on by or under the control of any person, being activities to or in relation to which any of the

regulations apply or will, if the activities are so carried on, apply<sup>5</sup>. If as regards any activities to which these provisions apply an inspector is of the opinion that, as carried on by or under the control of the person in question, the activities involve or, as the case may be, will involve a risk of serious personal injury, the inspector may serve on that person a notice (a 'prohibition notice')<sup>6</sup>. A prohibition notice must:

- 2205 (a) state that the inspector is of such opinion;
- 2206 (b) specify the matters which in his opinion give or, as the case may be, will give rise to the risk;
- 2207 (c) where in his opinion any of those matters involves or, as the case may be, will involve a contravention of any of the regulations, state that he is of that opinion, specify the regulation or regulations as to which he is of that opinion, and give particulars of the reasons why he is of that opinion; and
- 2208 (d) direct that the activities to which the notice relates are not to be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice in pursuance of head (b) above and any associated contraventions of provisions so specified in pursuance of head (c) above have been remedied<sup>7</sup>.

A direction contained in a prohibition notice in pursuance of head (d) above take effect either at the end of the period specified in the notice or, if the notice so declares, immediately<sup>8</sup>.

A notice<sup>9</sup> may (but need not) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates; and any such directions may be framed to any extent by reference to any approved code of practice and may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter<sup>10</sup>. Where an improvement notice or prohibition notice which is not to take immediate effect has been served, the notice may be withdrawn by an inspector at any time before the end of the period specified therein<sup>11</sup>; and the period so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending<sup>12</sup>.

A person on whom a notice<sup>13</sup> is served may within 21 days from the date of its service appeal to an employment tribunal; and on such an appeal the tribunal may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the tribunal may in the circumstances think fit<sup>14</sup>. Where an appeal is brought against a notice within the period allowed, then<sup>15</sup>:

- 2209 (i) in the case of an improvement notice, the bringing of the appeal has the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal<sup>16</sup>;
- 2210 (ii) in the case of a prohibition notice, the bringing of the appeal has the like effect if, but only if, on the application of the appellant the tribunal so directs (and then only from the giving of the direction)<sup>17</sup>.

One or more assessors may be appointed for the purposes of any proceedings brought before an employment tribunal under these provisions<sup>18</sup>.

1 For the meaning of 'inspector' see PARA 1406 note 3 ante.

2 Ie the Road Transport (Working Time) Regulations 2005, SI 2005/639 (as amended).

3 Ie under ibid Sch 2 para 6: see the text and notes 13-18 infra.

4 Ibid reg 16(2), Sch 2 para 3.

- 5 Ibid Sch 2 para 4(1).
- 6 Ibid Sch 2 para 4(2).
- 7 Ibid Sch 2 para 4(3).
- 8 Ibid Sch 2 para 4(4).
- 9 For these purposes, 'a notice' means an improvement notice or a prohibition notice: *ibid* Sch 2 para 5(1).
- 10 Ibid Sch 2 para 5(2).
- 11 *Ie* in pursuance of *ibid* Sch 2 para 3 (see the text and notes 1-4 *supra*) or Sch 2 para 4(4) (see the text and note 8 *supra*), as the case may be.
- 12 Ibid Sch 2 para 5(3).
- 13 For these purposes, 'a notice' means an improvement notice or a prohibition notice: *ibid* Sch 2 para 6(1).
- 14 Ibid Sch 2 para 6(2).
- 15 Ibid Sch 2 para 6(3).
- 16 Ibid Sch 2 para 6(3)(a).
- 17 Ibid Sch 2 para 6(3)(b).
- 18 Ibid Sch 2 para 6(4).

## **UPDATE**

### **1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (4) HOURS AND RECORDS OF PERSONS PERFORMING MOBILE ROAD TRANSPORT ACTIVITIES/1408. Restrictions on disclosure of information.

### **1408. Restrictions on disclosure of information.**

Subject to the exceptions below, no relevant information<sup>1</sup> may be disclosed without the consent of the person by whom it was furnished<sup>2</sup>. This does not apply to<sup>3</sup>:

- 2211 (1) disclosure of information to a government department<sup>4</sup>;
- 2212 (2) without prejudice to head (1) above, disclosure by the recipient<sup>5</sup> of information to any person for the purpose of any function conferred on the recipient by or under any of the relevant statutory provisions<sup>6</sup> or under the Road Transport (Working Time) Regulations 2005<sup>7</sup>;
- 2213 (3) without prejudice to head (1) above, disclosure by the recipient of information to an officer of a local authority who is authorised by that authority to receive it or to a constable authorised by a chief officer of police to receive it<sup>8</sup>; or

2214 (4) disclosure by the recipient of information in a form calculated to prevent it from being identified as relating to a particular person or case<sup>9</sup>.

A person to whom information is disclosed in pursuance of heads (1) to (4) above must not use the information for a purpose other than: (a) in a case falling within head (1) above, a purpose of a government department or local authority in connection with the Road Transport (Working Time) Regulations 2005, the relevant statutory provisions, or any enactment whatsoever relating to working time; (b) in the case of information given to a constable, the purposes of the police in connection with the regulations, the relevant statutory provisions, or any enactment relating to working time<sup>10</sup>.

A person must not disclose any information obtained by him as a result of the exercise of any power conferred on inspectors<sup>11</sup> (including in particular any information with respect to any trade secret obtained by him in any premises entered by him by virtue of any such power) except: (i) for the purposes of his functions; or (ii) for the purposes of any legal proceedings; or (iii) with the relevant consent<sup>12</sup>. Nevertheless, an inspector must, in circumstances in which it is necessary to do so for the purpose of assisting in keeping persons (or the representatives of persons) adequately informed about matters affecting their health, safety and welfare or working time, give to such persons or their representatives the following descriptions of information, namely: (A) factual information obtained by him in the exercise of such power which relates to their working environment; and (B) information with respect to any action which he has taken or proposes to take in or in connection with the performance of his functions in relation to their working environment; and, where an inspector does so, he must give the like information to the employer<sup>13</sup> of the first-mentioned persons<sup>14</sup>. A person who has obtained such information in the exercise of an inspector's powers may furnish to a person who appears to him to be likely to be a party to any civil proceedings arising out of any accident, occurrence, situation or other matter, a written statement of the relevant facts observed by him in the course of exercising any of those powers<sup>15</sup>.

1 For these purposes, 'relevant information' means information obtained by an inspector in pursuance of a requirement imposed under the Road Transport (Working Time) Regulations 2005, SI 2005/639, Sch 2 para 2 (see PARA 1406 ante): reg 16(2), Sch 2 para 7(1).

2 Ibid Sch 2 para 7(2).

3 Ibid Sch 2 para 7(3).

4 Ibid Sch 2 para 7(3)(a).

5 'The recipient', in relation to any relevant information, means the person by whom that information was so obtained or to whom that information was so furnished, as the case may be: ibid Sch 2 para 7(1).

6 For these purposes, 'relevant statutory provisions' means the provisions of the Transport Act 1968 Pt VI (ss 95-103) (as amended) and of any orders or regulations made under powers contained in that Part: Road Transport (Working Time) Regulations 2005, SI 2005/639, Sch 2 para 7(1).

7 I.e. the Road Transport (Working Time) Regulations 2005, SI 2005/639 (as amended): Sch 2 para 7(3)(b).

8 Ibid Sch 2 para 7(3)(c).

9 Ibid Sch 2 para 7(3)(d).

10 Ibid Sch 2 para 7(4).

11 I.e. conferred by ibid Sch 2 para 2: see PARA 1406 ante.

12 Ibid Sch 2 para 7(5). 'The relevant consent' means, in the case of information furnished in pursuance of a requirement imposed under Sch 2 para 2, the consent of the person who furnished it, and, in any other case, the consent of a person having responsibilities in relation to the premises where the information was obtained: Sch 2 para 7(5).

- 13 For the meaning of 'employer' see PARA 1398 note 10 ante.
- 14 Road Transport (Working Time) Regulations 2005, SI 2005/639, Sch 2 para 7(6).
- 15 Ibid Sch 2 para 7(7).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (4) HOURS AND RECORDS OF PERSONS PERFORMING MOBILE ROAD TRANSPORT ACTIVITIES/1409. Offences.

#### 1409. Offences.

Any person who fails to comply with any of the relevant requirements<sup>1</sup> is guilty of an offence<sup>2</sup>. The following provisions apply where an inspector<sup>3</sup> is exercising or has exercised any power conferred<sup>4</sup> on him<sup>5</sup>. It is an offence for a person<sup>6</sup>:

- 2215 (1) to contravene any requirement imposed<sup>7</sup> by an inspector<sup>8</sup>;
- 2216 (2) to prevent or attempt to prevent any other person from appearing before an inspector or from answering any question to which an inspector may<sup>9</sup> require an answer<sup>10</sup>;
- 2217 (3) to contravene any requirement or prohibition imposed by an improvement notice or a prohibition notice<sup>11</sup> (including any such notice as is modified on appeal)<sup>12</sup>;
- 2218 (4) intentionally to obstruct an inspector in the exercise or performance of his powers<sup>13</sup>;
- 2219 (5) to use or disclose any information in contravention of the restrictions<sup>14</sup> on disclosure<sup>15</sup>;
- 2220 (6) to make a statement which he knows to be false or recklessly to make a statement which is false where the statement is made in purported compliance with a requirement to furnish any information imposed by or under the Road Transport (Working Time) Regulations 2005<sup>16</sup>.

Where the commission by any person of an offence is due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with the conviction of the offence by virtue of this provision whether or not proceedings are taken against the first-mentioned person<sup>17</sup>.

Where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly<sup>18</sup>.

Proceedings for an offence may not be instituted except by an inspector or by, or with the consent of, the Director of Public Prosecutions<sup>19</sup>. If authorised in that behalf by the Secretary of State<sup>20</sup>, an inspector may prosecute proceedings for an offence before a magistrates' court even though the inspector is not of counsel or a solicitor<sup>21</sup>.

1 For the meaning of 'relevant requirements' see PARA 1406 note ante.

2 Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 17(1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine: reg 17(4). As to the statutory maximum see PARA 359 note 11 ante. The provisions set out in regs 18-22 (see the text and notes 17-21 *infra*; and PARA 1410 post) apply in relation to the offences provided for in reg 17(1) and reg 17(3) (see heads (1)-(6) in the text): reg 17(8).

3 For the meaning of 'inspector' see PARA 1406 note 3 ante.

4 *Ie* by the Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 16(2), Sch 2: see PARA 1406 ante.

5 *Ibid* reg 17(2).

6 *Ibid* reg 17(3). See note 2 *supra*.

7 *Ie* under *ibid* Sch 2 para 2: see PARA 1406 ante.

8 *Ibid* reg 17(3)(a). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine: reg 17(7)(a), (b)(ii).

9 *Ie* by virtue of *ibid* Sch 2 para 2(2)(e): see PARA 1406 head (5) ante.

10 *Ibid* reg 17(3)(b). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 17(5). As to the standard scale see PARA 230 note 3 ante.

11 *Ie* referred to in *ibid* Sch 2 paras 3, 4: see PARA 1407 ante.

12 *Ibid* reg 17(3)(c). A person guilty of such an offence is liable: (1) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum; (2) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both: reg 17(6).

13 *Ibid* reg 17(3)(d). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 17(5).

14 *Ie* *ibid* Sch 2 para 7: see PARA 1408 ante.

15 *Ibid* reg 17(3)(e). A person guilty of such an offence is liable: (1) on summary conviction, to a fine not exceeding the statutory maximum; or (2) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both: reg 17(7)(a), (b)(i).

16 *Ibid* reg 17(3)(f). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine: reg 17(7)(a), (b)(ii).

17 *Ibid* reg 18.

18 *Ibid* reg 19(1). Where the affairs of a body corporate are managed by its members, reg 19(1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: reg 19(2).

19 *Ibid* reg 20.

20 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

21 Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 21(1).

## UPDATE

### **1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (4) HOURS AND RECORDS OF PERSONS PERFORMING MOBILE ROAD TRANSPORT ACTIVITIES/1410. Power of court to order cause of offence to be remedied.

#### **1410. Power of court to order cause of offence to be remedied.**

The following provisions apply where a person is convicted of an offence<sup>1</sup> in respect of any matter which appears to the court to be a matter which it is in his power to remedy<sup>2</sup>. In addition to or instead of imposing any punishment, the court may order the person in question to take such steps as may be specified in the order for remedying the matters within such time as may be fixed by the order<sup>3</sup>. The time fixed by such an order may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended, as the case may be<sup>4</sup>. Where a person is ordered to remedy any matters, that person is not liable<sup>5</sup> in respect of that matter in so far as it continues during the time fixed by the order or any further time allowed<sup>6</sup>.

1    Ie an offence provided for in the Road Transport (Working Time) Regulations 2005, SI 2005/639, reg 17(1), (3) (see PARA 1409 ante): reg 17(8).

2    Ibid reg 22(1).

3    Ibid reg 22(2).

4    Ibid reg 22(3).

5    Ie under the Road Transport (Working Time) Regulations 2005, SI 2005/639 (as amended).

6    Ibid reg 22(4).

#### **UPDATE**

### **1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/(5) RECORDING EQUIPMENT (TACHOGRAPHS)/1411. Recording equipment in passenger and goods vehicles.

#### **(5) RECORDING EQUIPMENT (TACHOGRAPHS)**

## 1411. Recording equipment in passenger and goods vehicles.

Recording equipment (commonly known as 'tachographs') must be installed and used in vehicles<sup>1</sup> registered in a member state of the European Union which are used for the carriage of passengers or goods by road<sup>2</sup>. The recording equipment<sup>3</sup> which is installed must as regards construction, installation, use and testing, comply with certain requirements<sup>4</sup>. The equipment must bear an approval mark<sup>5</sup>, and may only be installed or repaired by fitters or workshops approved by the Secretary of State<sup>6</sup>. The approved fitter or workshop must place a special mark on the seals which it affixes, and a register of the marks used must be maintained<sup>7</sup>. To certify that installation of the equipment took place in accordance with the requirements<sup>8</sup>, the fitter or workshop must fix a plaque<sup>9</sup>.

1 For the meaning of 'vehicle' in the Community rules see PARA 1380 ante.

2 EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) on recording equipment in road transport, art 3(1) (art 3(1)-(3) substituted by European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 26(2)). EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 3(1) (as substituted) also provides that the requirement does not apply to vehicles referred to in European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) on the harmonisation of certain social legislation relating to road transport, art 3 (see PARA 1384 ante). A vehicle is used for the carriage of passengers or goods by road where it is constructed or adapted for that use; the purpose of any particular journey is irrelevant: *R (on the application of the Vehicle and Operator Services Agency) v North Leicester Vehicle Movements Ltd* [2003] EWHC 2638 (Admin), [2004] RTR 499. Member states may exempt vehicles mentioned in European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 13(1), (3) from the application of EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8): see art 3(2) (as so substituted); the Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819; and PARA 1385 ante. Member states may, after authorisation by the European Commission, exempt from the application of EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) (as amended) vehicles used for the transport operations referred to in European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 14 (see PARA 1385 ante): EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 3(3) (as so substituted). In the case of national transport operations, member states may also require the installation and use of recording equipment in accordance with EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) (as amended) in any of the vehicles for which installation and use are not required by art 3(1) (as substituted): see art 3(4). For the meaning of 'carriage by road' see PARA 1380 ante.

3 In EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8), Annex I (as amended), 'recording equipment' means equipment intended for installation in road vehicles to show and record automatically or semi-automatically details of the movement of those vehicles and of certain working periods of their drivers: Annex I Ch I para (a). Such recording equipment is commonly known as a 'tachograph'. In Annex IB (as added, substituted and amended), 'recording equipment' means the total equipment intended for installation in road vehicles to show, record and store automatically or semi-automatically details of the movement of such vehicles and of certain work periods of their drivers: Annex IB Ch I para (ee) (Annex IB added by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1); and substituted by EC Commission Regulation 1360/2002 (OJ L207, 5.8.2002, p 1)).

4 EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 1 (amended by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)). The requirements referred to in the text are the requirements of EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8), and of Annex I (as amended) or Annex IB (as added, substituted and amended) and Annex II (as amended): see art 1 (as so amended).

Annex I (as amended) makes provision as to:

1387 (1) the general characteristics and functions of recording equipment (see Annex I Ch II (amended by EEC Commission Regulation 3314/90 (OJ L318, 17.11.90, p 20)));

1388 (2) construction requirements for recording equipment, including provisions relating to visual instruments, recording instruments, closing devices, markings and maximum tolerances (see EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex I Ch III (amended by EEC Commission Regulation 3314/90 (OJ L318, 17.11.90, p 20)));

1389 (3) record sheets, including provisions relating to recording areas and their graduation, information to be printed on the record sheets and free space for hand written insertions (see EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex I Ch IV);



- 1390 (4) installation of recording equipment, including provisions relating to the position of the equipment, installation plaques, and sealing (see Annex I Ch V (amended by EEC Commission Regulation 3688/92 (OJ L374, 22.12.92, p 1); EC Commission Regulation 2479/95 (OJ L256, 26.10.95, p 8); EC Commission Regulation 1056/97 (OJ L154, 12.6.97, p 21))); and
- 1391 (5) checks and inspections, including provisions relating to certification of new or repaired instruments, installation, periodic inspections and measurement of errors (see EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex I Ch VI).

Annex IB (as added, substituted and amended) makes provision as to:

- 1392 (a) general characteristics and functions of recording equipment, including provisions relating to recording and storing in the data memory, storing on the driver card, system security and displaying or printing on request for an authorised user (Annex IB Ch II (as added and substituted: see note 3 supra));
- 1393 (b) construction and functional requirements for recording equipment, including provisions relating to visual instruments, warning signals, memory, markings and maximum tolerances (Annex IB Ch III (as so added and substituted));
- 1394 (c) construction and functional requirements for tachograph cards, including card identification and security, driver cards, control cards, workshop cards and company cards (Annex IB Ch IV (as so added and substituted; and amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ L236, 23.9.2003, p 33); Corrigendum (OJ L077, 13.3.2004, p 71); and EC Commission Regulation 432/2004 (OJ L71, 10.3.2004, p 3) art 1));
- 1395 (d) installation of recording equipment, including provisions relating to installation, activation, installation plaques and sealing (EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex IB Ch V (as so added and substituted));
- 1396 (e) checks, inspections and repairs, including provisions relating to the approval of fitters or workshops, checks of new or repaired instruments, installation inspection, periodic inspections, measurement of errors, and repairs (Annex IB Ch VI (as so added and substituted));
- 1397 (f) card issuing, including card numbers (Annex IB Ch VII (as so added and substituted));
- 1398 (g) type approval of recording equipment and tachograph cards, including security certificates, functional certificates, interoperability certificates and type approval certificates (Annex IB Ch VIII (as so added and substituted)).

For the meaning of 'driver card' see PARA 1412 note 1 post. For the meanings of 'calibration', 'data memory', 'control card', 'workshop card', 'company card', 'activation', 'installation', 'card number' and 'type approval' see Annex IB Ch I paras (f), (q), (o), (qq), (l), (a), (x), (g), (ll) (as so added and substituted).

EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1) art 2 provides for a phased introduction of the provisions of EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex IB (as added and substituted) relating to digital recording equipment and driver cards.

5 See *ibid* art 6 (amended by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)); and EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex II Ch I (amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ L236, 23.9.2003, p 33); and EC Commission Regulation 1360/2002 (OJ L207, 5.8.2002, p 1)). The equipment must also have an approval certificate in the prescribed form: see EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex II Ch II (amended by EC Commission Regulation 1360/2002 (OJ L207, 5.8.2002, p 1)).

6 See EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 12(1) (art 12 amended by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)); and the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 4(1) (reg 4 substituted by SI 1984/144; and the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 4(1) amended by SI 1986/1457). The period of administrative validity of the approved workshop must not exceed one year: EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 12(1) (as so amended). As to the installation of recording equipment see Annex I Ch V (amended by EEC Commission Regulation 3688/92 (OJ L374, 22.12.92, p 1); EC Commission Regulation 2479/95 (OJ L256, 26.10.95, p 8); and EC Commission Regulation 1056/97 (OJ L154, 12.6.97, p 21)).

Approval must be in writing, must specify its scope, must provide for its withdrawal by the Secretary of State on notice given by him, and may contain conditions: Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 4(2) (as so substituted). It must also be issued between specified dates: see reg 4(2A) (reg 4 as so substituted; and reg 4(2A) added by SI 1986/2076). It may contain conditions as to fees, premises, procedure, records, training, inspection and display of a sign: see the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 4(3) (as so substituted). The Secretary of State must publish from time to time a list of approved fitters and workshops: reg 4(4) (as so substituted). As to the fees which the Secretary of State may require to be paid in connection with the approval of a fitter or workshop for the installation or repair of recording equipment in accordance with EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 12 (as amended) see the Passenger and Goods Vehicles (Recording Equipment) (Approval of Fitters and Workshops) (Fees) Regulations 1986, SI 1986/2128 (amended by SI 2007/606).

As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 See EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 12(2) (art 12(2), (3) substituted by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)). The approved fitter or workshop must also enter for recording equipment in conformity with EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex IB (as added, substituted and amended) the electronic security data for carrying out, in particular, the authentication checks: see art 12(2) (as so substituted). Lists of approved fitters and workshops and the cards issued to them must be forwarded to the European Commission, together with copies of the marks and of the necessary information relating to the electronic security data used: see art 12(3) (as so substituted).

As to the affixing of seals, and the removal of them in certain circumstances, see art 12(5) (added by EEC Commission Regulation 3688/92 (OJ L374, 22.12.92, p 1); and amended by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)); and EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex I Ch V para 4 (Annex I Ch V amended by EEC Commission Regulation 3688/92 (OJ L374, 22.12.92, p 1)).

8 See the requirements of EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) (as amended).

9 See *ibid* art 12(4) (as amended: see note 6 *supra*). The plaque must be affixed in accordance with Annex I (as amended) and Annex IB (as added, substituted and amended): see art 12(4) (as so amended).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

### 1411 Recording equipment in passenger and goods vehicles

NOTE 6--SI 1986/2128 further amended: SI 2009/866.

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### 1412. Driver cards.

The driver card<sup>1</sup> must be issued, at the request of the driver, by the competent authority<sup>2</sup> of a member state where the driver has his normal residence<sup>3</sup>. Where the competent authority issuing the driver card has doubts as to the validity of a statement as to normal residence, or for the purpose of certain specific controls, it may request any additional information or evidence<sup>4</sup>. The competent authority must, as far as this can be done, ensure that the applicant

for a driver card does not already hold a valid driver card<sup>5</sup>. Driver cards issued by member states must be mutually recognised<sup>6</sup>.

The competent authority must personalise the driver card<sup>7</sup>, and for administrative purposes, the driver card may not be valid for more than five years<sup>8</sup>. The driver may hold one valid driver card only, and he is authorised to use only his own personalised driver card<sup>9</sup>. The driver must not use a driver card which is defective or which has expired<sup>10</sup>. When a new driver card is issued replacing the old, the new card must bear the same driver card issue number but the index must be increased by one<sup>11</sup>. The competent authority must keep records of issued, stolen, lost or defective driver cards for a period at least equivalent to their period of validity<sup>12</sup>. If a driver card issued by the competent authority is damaged, malfunctions or is lost or stolen, the authority must supply a replacement within five working days of receiving a detailed request to that effect<sup>13</sup>.

If a driver card is damaged or if it malfunctions, the driver must return it to the competent authority of the member state in which he has his normal residence<sup>14</sup>. Theft of the driver card must be the subject of a formal declaration to the competent authorities of the state where the theft occurred<sup>15</sup>. Loss of the driver card must be reported in a formal declaration to the competent authority of the state that issued it and to the competent authority of the member state of normal residence where they are different<sup>16</sup>.

1 For the purposes of EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) on recording equipment in road transport, Annex IB (as added, substituted and amended), 'driver card' means a tachograph card issued by the authorities of a member state to a particular driver; the driver card identifies the driver and allows for storage of driver activity data: Annex IB Ch I para (t) (Annex IB added by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1); and substituted by EC Commission Regulation 1360/2002 (OJ L207, 5.8.2002, p 1)). 'Tachograph card' means a smart card intended for use with the recording equipment: EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex IB Ch I para (kk) (as so added and substituted). Tachograph cards allow for identification by the recording equipment of the identity (or identity group) of the cardholder and allow for data transfer and storage; a tachograph card may be of the following types: driver card, control card, workshop card or company card: Annex IB Ch I para (kk) (as so added and substituted).

2 As to the competent authority in relation to type approval see the Motor Vehicles (Type Approval) Regulations 1980, SI 1980/1182 (as amended).

3 See EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 14(3) (art 14(3), (4), (5) added by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)). A member state may require any driver subject to the provisions of EEC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1) (repealed: see now European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1)) and normally resident on its territory to hold a driver card: EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 14(3) (as so added).

For these purposes, 'normal residence' means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living: art 14(3)(a), 1st para (as so added). However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in two or more member states must be regarded as being the place of his personal ties, provided that such a person returns there regularly, but this last condition need not be met where the person is living in an member state in order to carry out a fixed term assignment: art 14(3)(a), 2nd para (as so added). Drivers must give proof of their place of normal residence by any appropriate means, such as their identity card or any other valid document: art 14(3)(b) (as so added).

Driver cards must be issued only to applicants who are subject to the provisions of EEC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1) (drivers' hours) (repealed: see now European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1)): EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 14(4)(b) (as so added). The driver card is personal, and may not, during its official period of validity, be withdrawn or suspended for whatever reason unless the competent authority of a member state finds that the card has been falsified, or the driver is using a card of which he is not the holder, or that the card held has been obtained on the basis of false declarations and/or forged documents: art 14(4)(c) (as so added). If such suspension or withdrawal measures are taken by a member state other than the member state of issue, the former must return the card to the authorities of the member state which issued it and must indicate the reasons for returning it: art 14(4)(c) (as so added).

Member states must ensure that data needed to monitor compliance with EEC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1) (repealed: see now European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1)) and EEC Council Directive 92/6 (OJ L57, 2.3.1992, p 27) (as amended) on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community which are recorded and stored by recording equipment in conformity with EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex IB (as added, substituted and amended) can be made available for at least 365 days after the date of their recording and that they can be made available under conditions that guarantee the security and accuracy of the data: art 14(5) (as so added). Member states must take any measures necessary to ensure that the resale or decommissioning of recording equipment cannot detract, in particular, from the satisfactory application of this provision: art 14(5) (as so added).

4 Ibid art 14(3)(c) (as added: see note 3 supra).

5 Ibid art 14(3)(d) (as added: see note 3 supra).

6 Ibid art 14(4)(d), 1st para (as added: see note 3 supra). Where the holder of a valid driver card issued by a member state has established his normal place of residence in another member state, he may ask for his card to be exchanged for an equivalent driver card; it is the responsibility of the competent authority which carries out the exchange to verify if necessary whether the card produced is actually still valid, and member states carrying out an exchange must return the old card to the authorities of the member state of issue and indicate reasons for doing so: art 14(4)(d), 2nd, 3rd paras (as so added). Where a member state replaces or exchanges a driver card, the replacement or exchange, and any subsequent replacement or renewal, must be registered: art 14(4)(e) (as so added). Member states must take all necessary measures to prevent any possibility of driver cards being falsified: art 14(4)(f) (as so added).

7 In accordance with the provisions of ibid Annex IB (as added, substituted and amended): see PARA 1411 ante.

Ibid art 14(4)(a), 1st, 2nd paras (as added: see note 3 supra).

9 Ibid art 14(4)(a), 3rd para (as added: see note 3 supra).

10 Ibid art 14(4)(a), 3rd para (as added: see note 3 supra).

11 Ibid art 14(4)(a), 4th para (as added: see note 3 supra).

12 Ibid art 14(4)(a), 4th para (as added: see note 3 supra).

13 Ibid art 14(4)(a), 5th para (as added: see note 3 supra). In the event of a request for the renewal of a card whose expiry date is approaching, the competent authority must supply a new card before the expiry date provided that the request was sent not later than 15 working days before the expiry date of the card: art 14(4)(a), 6th para (as so added); art 15(1) (amended by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)).

14 EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 16(3), 1st para (art 16(3) added by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)). The driver may continue to drive without a driver card for a maximum period of 15 calendar days or for a longer period if this is necessary for the vehicle to return to its premises, provided he can prove the impossibility of producing or using the card during this period: EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 16(3), 3rd para (as so added). Where the authorities of the member state in which the driver has his normal residence are different from those which issued his card and where the latter are requested to renew, replace or exchange the driver card, they must inform the authorities which issued the old card of the precise reasons for its renewal, replacement or exchange: art 16(3), 4th para (as so added). If the driver card is damaged, malfunctions or is lost or stolen, the driver must apply within seven calendar days for its replacement to the competent authority of the member state in which he has his normal residence: art 15(1), 4th para (as amended: see note 13 supra).

15 Ibid art 16(3), 1st para (as added: see note 14 supra).

16 Ibid art 16(3), 2nd para (as added: see note 14 supra).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/(5) RECORDING EQUIPMENT (TACHOGRAPHS)/1413. Use and operation of recording equipment.

### **1413. Use and operation of recording equipment.**

The employer<sup>1</sup> and drivers<sup>2</sup> must ensure the correct functioning and proper use of, on the one hand, the recording equipment and, on the other hand, the driver card<sup>3</sup> where a driver is required<sup>4</sup> to drive a vehicle fitted with recording equipment<sup>5</sup>. In the event of breakdown or faulty operation of the equipment, the employer must have it repaired by an approved fitter or workshop, as soon as circumstances permit<sup>6</sup>. If the vehicle is unable to return to the premises within a period of one week calculated from the day of the breakdown or of the discovery of defective operation, the repair must be carried out en route<sup>7</sup>.

While the recording equipment is unserviceable or malfunctioning, drivers must mark on the record sheet or sheets, or on a temporary sheet to be attached to the record sheet or to the driver card, on which he must enter data enabling him to be identified<sup>8</sup>, including his signature, all information for the various periods of time which are no longer recorded or printed out correctly by the recording equipment<sup>9</sup>. If the driver card is damaged, malfunctions or is lost or stolen, the driver must, at the end of his journey, print out the information relating to the periods of time recorded by the recording equipment and mark on that document the details that enable him to be identified<sup>10</sup>, including his signature<sup>11</sup>.

Where the vehicle is fitted with certain recording equipment<sup>12</sup>, the employer and the driver must ensure that, taking into account the length of the period of service, printing on request<sup>13</sup> can be carried out correctly in the event of an inspection<sup>14</sup>.

The driver must enter in certain recording equipment<sup>15</sup> the symbols of the countries in which he begins and ends his daily work period, and these data entries must be activated by the driver, and may be entirely manual or automatic if the recording equipment is linked to a satellite tracking system<sup>16</sup>.

1 'Employer' in this context means the person who is at that time requiring the driver to drive, albeit that he may not be the person who pays the driver's wages: see *Alcock v GC Griston Ltd* [1981] RTR 34, [1980] Crim LR 653, DC (where a part-time driver was hired by an employment agency, and the agency paid his wages but did not direct his work).

2 For the meaning of 'driver' see PARA 1380 ante.

3 For the meaning of 'driver card' see PARA 1412 note 1 ante.

4 In conformity with EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) on recording equipment in road transport, Annex IB (as added, substituted and amended): see PARA 1411 ante.

5 Ibid art 13 (substituted by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)). For the meaning of 'recording equipment' in EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex I (as amended) and Annex IB (as added, substituted and amended) see PARA 1411 note 3 ante.

6 Ibid art 16(1), 1st para. As to repairs by approved fitters and workshops see PARA 1411 ante.

7 Ibid art 16(1), 2nd para. Measures taken by the member states pursuant to art 19 may give the competent authorities power to prohibit the use of the vehicle in cases where breakdown or faulty operation has not been put right as provided in art 16(1): art 16(1), 3rd para.

8 The data which enables the driver to be identified is his driver card number and/or name and/or driving licence number: see *ibid* art 16(2), 1st para (art 16(2) substituted by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)).

9 EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 16(2), 1st para (as substituted: see note 8 *supra*). Any entry made on a record sheet or a print-out by a driver for the purposes of art 16(2) (as substituted) is, in any proceedings under the Transport Act 1968 Pt VI (ss 95-103) (as amended) evidence of the matters appearing from the entry: s 97B(2) (s 97B added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 2(1); and amended by the Community Drivers' Hours and Recording Equipment Regulations 1986, SI 1986/1457, reg 3(3); and the Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 3).

10 See note 8 *supra*.

11 EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 16(2), 2nd para (as substituted: see note 8 *supra*).

12 *le* in conformity with *ibid* Annex IB (as added, substituted and amended): see PARA 1411 *ante*.

13 *le* as referred to in *ibid* Annex IB (as added, substituted and amended): see PARA 1411 *ante*.

14 *Ibid* art 14(1) (substituted by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)).

15 See note 12 *supra*.

16 See EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 15(5a) (added by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/(5) RECORDING EQUIPMENT (TACHOGRAPHS)/1414. Record sheets and driver cards.

#### 1414. Record sheets and driver cards.

Where recording equipment<sup>1</sup> is installed<sup>2</sup> and being used<sup>3</sup> in a passenger or goods vehicle<sup>4</sup>, no other record need be completed<sup>5</sup>.

The employer<sup>6</sup> must issue a sufficient number of record sheets<sup>7</sup> to drivers of vehicles fitted<sup>8</sup> with recording equipment, bearing in mind the fact that the sheets are personal in character, the length of the period of service, and the possible obligation to replace sheets which are damaged or have been taken by an authorised inspecting officer<sup>9</sup>. The employer must issue to drivers only sheets of an approved model<sup>10</sup> suitable for use in the equipment installed in the vehicle<sup>11</sup>. The undertaking must keep record sheets and print-outs, whenever print-outs have been made<sup>12</sup>, in chronological order and in a legible form for at least a year after their use and must give copies to the drivers concerned who request them<sup>13</sup>. The undertaking must also give copies of downloaded data from the driver cards to the drivers concerned who request them and the printed papers of these copies<sup>14</sup>. The record sheets, print-outs and downloaded data must be produced or handed over at the request of any authorised inspecting officer<sup>15</sup>.

Drivers must not use dirty or damaged record sheets or driver cards, and the sheets or cards must be adequately protected on this account<sup>16</sup>. Drivers must use the record sheets or driver cards every day on which they are driving, starting from the moment they take over the vehicle<sup>17</sup>. The record sheet or driver card must not be withdrawn before the end of the daily working period unless its withdrawal is otherwise authorised<sup>18</sup>. No record sheet or driver card may be used to cover a period longer than that for which it is intended<sup>19</sup>.

Drivers must ensure that the time recorded on the sheet agrees with the official time in the country of registration of the vehicle and operate the switch mechanisms enabling the following periods of time to be recorded separately and distinctly under the prescribed sign<sup>20</sup>: (1) driving time<sup>21</sup>; (2) time spent on other work<sup>22</sup>; (3) other periods of availability<sup>23</sup>; (4) breaks in work and daily rest periods<sup>24</sup>.

The recording equipment must be so designed that it is possible for an authorised inspecting officer, if necessary after opening the equipment, to read the recordings relating to the nine hours preceding the time of the check without permanently deforming, damaging or soiling the sheet<sup>25</sup>. The equipment must, furthermore, be so designed that it is possible, without opening the case, to verify that recordings are being made<sup>26</sup>.

Where the driver drives a vehicle fitted with recording equipment<sup>27</sup> or digital recording equipment<sup>28</sup>, the driver must be able to produce, whenever an inspecting officer so requests, the driver card (if any) and specified records<sup>29</sup>.

In any proceedings under the statutory provisions relating to drivers' hours<sup>30</sup>, any record produced by means of recording equipment is evidence of the matters appearing from the record<sup>31</sup>.

1     The recording equipment complying with the relevant Annexes as defined in the Transport Act 1968 s 97 (as amended). 'The relevant Annexes' to the Community Recording Equipment Regulation: (1) in the case of a vehicle put into service for the first time before 1 May 2006 means: (a) either Annex I (as amended) or Annex IB (as added, substituted and amended); and (b) Annex II (as amended); and (2) in the case of a vehicle put into service for the first time on or after that date means (a) Annex IB (as added, substituted and amended); and (b) Annex II (as amended): Transport Act 1968 s 97(7) (s 97 substituted by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 3; definition added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 2(1), (5), (8); and substituted by the Passenger and Goods Vehicles (Recording Equipment) (Fitting Date) Regulations 2006, SI 2006/1117, reg 2). See PARA 1411 ante.

For the purposes of the Transport Act 1968 Pt VI (ss 95-103) (as amended) the 'Community Recording Equipment Regulation' means EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) on recording equipment in road transport (as amended) as it has effect in accordance with EEC Commission Regulation 3314/90 (OJ L318, 17.11.90, p 20), EEC Commission Regulation 3688/92 (OJ L374, 22.12.92, p 12), EC Commission Regulation 2479/95 (OJ L256, 26.10.95, p 8), EC Commission Regulation 1056/97 (OJ L154, 12.6.1997, p 21), EC Council Regulation 2135/98 (OJ L274, 9.10.1998, p 1) art 1, EC Commission Regulation 1360/2002 (OJ L207, 5.8.2002, p 1), the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ L236, 23.9.2003, p 33), European Parliament and Council Regulation 1882/2003 (OJ L284, 31.10.2003, p 1), EC Commission Regulation 432/2004 (OJ L71, 10.3.2004, p 3) and European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1), and as read with the Community Drivers' Hours and Recording Equipment (Exemptions and Supplementary Provisions) Regulations 1986, SI 1986/1456 (revoked: see now the Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819) (see PARA 1385 ante): Transport Act 1968 s 97(7) (s 97 as so substituted; definition substituted by the Passenger and Goods Vehicles (Community Recording Equipment Regulation) Regulations 2006, SI 2006/3276, reg 2(1), (2)(a)); Transport Act 1968 s 103(1) (definition added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 3(7)). 'Recording equipment' means equipment for recording information as to the use of a vehicle: Transport Act 1968 s 97(7) (as so substituted); s 103(1) (definition added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 3(7)).

2     See PARA 1411 ante.

3     See PARA 1413 ante.

4 For the meanings of 'passenger vehicle' and 'goods vehicle' see PARA 1380 ante.

5 See the Transport Act 1968 s 98(2A) (added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 3(1); and amended by the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 4). See *Concorde Express Transport Ltd v Traffic Examiner Metropolitan Area* [1980] 2 CMLR 221.

6 As to the meaning of 'employer' see PARA 1413 note 1 ante. If an employed driver of a vehicle to which the Transport Act 1968 s 97 (as amended) applies (see PARA 1424 post) fails, where he has two or more employers by whom he is employed as a driver of such a vehicle, to notify each of them of the names and address of the other or others of them, he is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 97A(1)(b) (s 97A added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 2(1); and amended by virtue of the Criminal Justice Act 1982 ss 37, 39(2), 46, Sch 3; and by the Community Drivers' Hours and Recording Equipment Regulations 1986, SI 1986/1457, reg 3). As to the standard scale see PARA 230 note 3 ante. As to where an offence may be treated as having been committed see PARA 1393 note 5 ante.

7 'Record sheet' means a sheet designed to accept and retain recorded data, to be placed in the recording equipment and on which the equipment's marking devices inscribe a continuous record of the information to be recorded: EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8), Annex I Ch I para (b). In the Transport Act 1968 Pt VI (as amended), 'record sheet' includes a temporary sheet attached to a record sheet in accordance with EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 16(2) (as substituted) (see PARA 1413 ante): Transport Act 1968 s 103(1) (definition added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 3(7); and amended by the Community Drivers' Hours and Recording Equipment Regulations 1986, SI 1986/1457, reg 3(3)).

8 Ie in conformity with EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex I (as amended): see PARA 1411 ante.

9 Ibid art 14(1), 1st para (art 14(1) substituted by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)).

10 For the requirements as to record sheets see EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex I Ch IV.

11 Ibid art 14(1), 1st para (as substituted: see note 9 supra).

12 Ie to comply with ibid art 15(1) (as amended): see the text and note 16 infra.

13 Ibid art 14(2) (substituted by European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 26(3)). This provision requires the employer to keep the record sheets in good order and thus requires him to ensure that the record sheets are used and returned to him since it assumes that that will be done: *Murfitts Transport Ltd v Department of Transport* [1998] RTR 229, DC.

14 EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 14(2) (as substituted: see note 13 supra).

15 Ibid art 14(2) (as substituted: see note 13 supra).

16 Ibid art 15(1), 1st para (art 15(1), (2) amended by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)). In the case of damage to a record sheet bearing recordings, drivers must attach the damaged sheet to the spare sheet used to replace it: EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 15(1), 3rd para (as so amended). For the meaning of 'driver card' see PARA 1412 note 1 ante.

Any entry made on a record sheet or print-out by a driver for the purposes of art 15(2) (as amended) or art 15(5) is, in any proceedings under the Transport Act 1968 Pt VI (as amended) evidence of the matters appearing from the entry: s 97B(2) (s 97B added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 2(1); and amended by the Community Drivers' Hours and Recording Equipment Regulations 1986, SI 1986/1457, reg 3(3); and the Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 3).

17 EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 15(2), 1st para (as amended: see note 16 supra). See *Vehicle Operators and Services Agency v Jones* [2005] EWHC 2278 (Admin), [2006] RTR 65 (unlawful interference with tachograph).

18 EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 15(2), 1st para (as amended: see note 16 supra).

19 Ibid art 15(2), 1st para (as amended: see note 16 supra). When, as a result of being away from the vehicle, a driver is unable to use the equipment fitted to the vehicle, the entries for the periods of time referred



to in heads (2)-(4) in the text must: (1) if the vehicle is fitted with recording equipment in conformity with Annex I (as amended), be entered on the record sheet, either manually, by automatic recording or other means, legibly and without dirtying the sheet; or (2) if the vehicle is fitted with recording equipment in conformity with Annex IB (as added, substituted and amended), be entered onto the driver card using the manual entry facility provided in the recording equipment: art 15(2), 2nd para (substituted by European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 26(4)). Where there is more than one driver on board the vehicle fitted with recording equipment in conformity with EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex IB (as added, substituted and amended), each driver must ensure that his driver card is inserted into the correct slot in the tachograph: art 15(2), 2nd para (as so substituted).

The provisions of art 15(2) (as amended) contemplate that there might be more than one driver of a vehicle so the regulation covers not only persons driving the vehicle at the material time but a driver present in the vehicle as a passenger; that driver had therefore 'taken over the vehicle' and commenced his working day when boarding the vehicle: *Vehicle Inspectorate v Anelay* [1998] RTR 279, DC. Conversely the 'daily working period' for the purposes of EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 15(2) (as amended) did not end until, at the earliest, the driver had ceased to drive the vehicle in which the recording equipment was installed; thus when the driver used the vehicle to get home this was part of the 'daily working period': *DPP v Guy* [1998] RTR 82, (1997) 161 JP 727, DC. The 'daily working period' comprises the driving time, all other periods of work, the period of availability, breaks in work and, where the driver divides his daily rest period into two or three separate periods, such a period, provided that he does not exceed one hour; it commences at the time when the driver activates the tachograph following a weekly or daily rest period, or, if the daily rest is divided into separate periods, following the rest period of at least eight hours' duration; it ends at the beginning of a daily rest period or, if the daily rest is divided into separate periods, at the beginning of a rest period extending over a minimum of eight consecutive hours: see Case C-394/92 *Re Michielsen and Geybels Transport Service NV* [1994] ECR I-2497, [1995] IRLR 171, ECJ; Case C-313/92 *Van Swieten BV* [1994] ECR I-2177, ECJ; and PARA 1387 note 8 ante. See also *Vehicle Operators and Services Agency v Jones* [2005] EWHC 2278 (Admin), [2006] RTR 65.

20 EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 15(3), 1st and 2nd indents. A period of voluntary overtime which a driver spends working in his employer's yard is part of the driver's daily working period because the driver is no longer free to dispose of his time when he has decided to work overtime: *Prime v Hosking* [1995] RTR 189, [1995] IRLR 143, DC. Time spent by drivers between their homes and the pick-up point for the vehicle must be recorded on the vehicle's tachograph: Case C-297/99 *Criminal proceedings against Skills Motor Coaches Ltd* [2001] All ER (EC) 289, ECJ. Each crew member must enter the following information on his record sheet: (1) on beginning to use the sheet, his surname and first name; (2) the date and place where use of the sheet begins and the date and place where the use ends; (3) the registration number of each vehicle to which he is assigned, both at the start of the first journey recorded on the sheet and then, in the event of a change of vehicle, during use of the sheet; (4) the odometer reading at the start of the first journey recorded on the sheet, at the end of the last journey recorded on the sheet and in the event of change of vehicle during a working day (reading on the vehicle to which he was assigned and reading on the vehicle to which he is to be assigned); (5) the time of any change of vehicle: EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 15(5). See also note 16 supra.

21 Ibid art 15(3), 2nd indent (a).

22 Ibid art 15(3), 2nd indent (b) (substituted by European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 26(4)). 'Other work' means any activity other than driving, as defined in European Parliament and Council Directive 2002/15 (OJ L80, 23.3.2002, p 35) on the organisation of the working time of persons performing mobile road transport activities, art 3(a) (see PARA 1398 et seq ante), and also any work for the same or another employer within or outside the transport sector: EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 15(3), 2nd indent (b) (as so substituted).

23 Ibid art 15(3), 2nd indent (c) (substituted by European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 26(4)). 'Availability' is as defined in European Parliament and Council Directive 2002/15 (OJ L80, 23.3.2002, p 35) art 3(b): EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 15(3), 2nd indent (c) (as so substituted).

24 Ibid art 15(3), 2nd indent (d). Where a driver card is damaged, malfunctions, or is not in the possession of the driver, the driver must: (1) at the start of his journey, print out the details of the vehicle the driver is driving, and enter onto that print-out: (a) details that enable the driver to be identified (name, driver card or driver's licence number), including his signature; (b) the time spent on work other than driving, and times of availability and of breaks and daily rest periods (ie the periods referred to in art 15(3), second indent (b), (c) (as substituted) and (d)); and (2) at the end of his journey, print out the information relating to periods of time recorded by the recording equipment, record any periods of other work, availability and rest undertaken since the print-out that was made at the start of the journey, where not recorded by the tachograph, and mark on that document details that enable the driver to be identified (name, driver card or driver's licence number), including the driver's signature: art 15(1), 5th para (added by European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 26(4)).

25 See EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 15(6). For these purposes, 'recording equipment' means recording equipment as defined in Annex I (as amended): see art 15(6) (amended by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)).

26 EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 15(6).

27 In conformity with *ibid* Annex I (as amended): see PARA 1411 *ante*. Where the recording equipment is in conformity with Annex I (as amended), the driver must be able to produce: (1) the record sheets for the current week and those used by the driver in the previous 15 days; (2) the driver card if he holds one; and (3) any manual record and print-out made during the current week and the previous 15 days as required under EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) (as amended) and European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1): EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 15(7)(a) (art 15(7) substituted by European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 26(4)). However, after 1 January 2008, the time periods referred to under heads (1) and (3) *supra* must cover the current day and the previous 28 days: EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 15(7)(a) (as so substituted).

28 In conformity with *ibid* Annex IB (as added, substituted and amended): see PARA 1411 *ante*. Where the driver drives a vehicle fitted with recording equipment in conformity with Annex IB (as added, substituted and amended), the driver must be able to produce: (1) the driver card of which he is holder; (2) any manual record and print-out made during the current week and the previous 15 days as required under EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) (as amended) and European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1); and (3) the record sheets corresponding to the same period as the one referred to in head (2) *supra* during which he drove a vehicle fitted with recording equipment in conformity with EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex I (as amended): art 15(7)(b) (as substituted: see note 27 *supra*). However, after 1 January 2008, the time periods referred to under head (2) *supra* must cover the current day and the previous 28 days: art 15(7)(b) (as so substituted).

29 *Ibid* art 15(7) (as substituted: see note 27 *supra*).

An authorised inspecting officer may check compliance with European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) by analysis of the record sheets, of the displayed or printed data which have been recorded by the recording equipment or by the driver card or, failing this, by analysis of any other supporting document that justifies non-compliance with a provision, such as those laid down in EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 16(2) (as substituted) and art 16(3) (as added) (see PARA 1412 *ante*): art 15(7)(c) (as so substituted).

See *Yorkshire Traction Co Ltd v Vehicle Inspectorate* [2001] All ER (D) 53 (Mar), DC (adequacy of employer's supervision); *John Mann International Ltd v Vehicle Inspectorate* [2004] EWHC 1236 (Admin), [2004] 1 WLR 2731 (failure to produce such records amounts to an offence).

It is forbidden to falsify, suppress or destroy data recorded on the record sheet, stored in the recording equipment or on the driver card, or print-outs from the recording equipment as defined in EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex IB (as added, substituted and amended): art 15(8) (added by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)). The same applies to any manipulation of the recording equipment, record sheet or driver card which may result in data and/or printed information being falsified, suppressed or destroyed, and no device which could be used to this effect may be present on the vehicle: EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 15(8) (as so added).

30 In where recording equipment is installed in a vehicle to which the Transport Act 1968 Pt VI (as amended) applies: see PARA 1380 *ante*.

31 *Ibid* s 97B(1) (as added: see note 16 *supra*).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

### 1414 Record sheets and driver cards

NOTE 1--The 'Community Recording Equipment Regulation' now means EEC Council Regulation 3821/85 on recording equipment in road transport as read with the Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819: Transport Act 1968 s 97(7) (definition substituted by SI 2010/892).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/(5) RECORDING EQUIPMENT (TACHOGRAPHS)/1415. Approval of types of recording equipment or its components, and model record sheets or memory card.

**1415. Approval of types of recording equipment or its components, and model record sheets or memory card.**

To establish that recording equipment or its components or a model record sheet complies with the Community rules as to recording equipment<sup>1</sup>, provision is made for the type approval of recording equipment and its components, and for model record sheets<sup>2</sup>. Applications for EC approval of a type of recording equipment or its components<sup>3</sup> or of a model record sheet or memory card must be submitted, accompanied by the appropriate specifications, by a manufacturer or his agent to a member state<sup>4</sup>. A member state must grant EC component type approval of a type of recording equipment or its components or of a model record sheet or memory card<sup>5</sup>, provided the member state is in a position to check that production models conform to the approved type<sup>6</sup>. Member states must issue to the applicant an EC approval mark<sup>7</sup>, for each type of recording equipment or its components or model record sheet or memory card which they so approve<sup>8</sup>. The competent authority of the member state to which the application for type approval has been submitted must, in respect of each type of recording equipment or its components or model record sheet or memory card which it approves or refuses to approve, either send within one month to the authorities of the other member states a copy of the approval certificate accompanied by copies of the relevant specifications, or, if such is the case, notify those authorities that approval has been refused; in cases of refusal it must communicate the reasons for its decision<sup>9</sup>.

If a member state which has granted the EC type approval finds that certain recording equipment or its components or record sheets or memory card bearing the EC type approval mark which it has issued do not conform to the prototype which it has approved, it must take the necessary measures to ensure that production models conform to the approved prototype<sup>10</sup>. The measures may, if necessary, extend to withdrawal of EC type approval<sup>11</sup>. A member state which has granted EC type approval must withdraw such approval if the recording equipment or its components or record sheet or memory card is not in conformity with the Community rules as to recording equipment<sup>12</sup> or displays in use any general defect which makes it unsuitable for the purpose for which it is intended<sup>13</sup>.

No member state may refuse to register any vehicle fitted with recording equipment or its components, or prohibit the entry into service or use of such vehicle for any reason connected with the fact that the vehicle is fitted with such equipment or component, if the equipment or a component fitted in a vehicle bears the EC approval mark<sup>14</sup> and the installation plaque<sup>15</sup>.

All decisions refusing or withdrawing approval of a type of recording equipment or its components or model record sheet or memory card must specify in detail the reasons on which they are based, and a decision must be communicated to the party concerned, who must at the same time be informed of the remedies available to him under the laws of the member states and of the time limits for the exercise of such remedies<sup>16</sup>.

1    Ie EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) on recording equipment in road transport (as amended), and in particular, Annex I (as amended) and Annex IB (as added, substituted and amended): see PARA 1411 ante. For the meaning of 'recording equipment' in Annex I (as amended) and Annex IB (as added, substituted and amended) see PARA 1411 note 3 ante.

2    See *ibid* Ch II (arts 4-11) (as amended). For the meaning of 'record sheet' see PARA 1414 note 7 ante.

3    For the purposes of *ibid* Ch II (as amended), 'recording equipment' means 'recording equipment or its components': art 4, 1st para.

4    *Ibid* art 4, 2nd para (amended by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)). No application in respect of any one type of recording equipment or its components or of any one model record sheet or memory card may be submitted to more than one member state: EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 4, 2nd para (as so amended). An applicant for EC type approval of a model record sheet must state on his application the type or types of recording equipment on which the sheet in question is designed to be used and must provide suitable equipment of such type or types for the purpose of testing the sheet: art 9(1). The competent authorities of each member state must indicate on the approval certificate for the model record sheet the type or types of recording equipment or its components on which that model sheet may be used: art 9(2). As to the competent authority in relation to type approval see the Motor Vehicles (Type Approval) Regulations 1980, SI 1980/1182 (as amended).

5    Ie which conforms to the requirements laid down in EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex I (as amended) or Annex IB (as added, substituted and amended).

6    *Ibid* art 5, 1st para (substituted by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)). The system's security must comply with the technical requirements laid down in EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex IB (as added, substituted and amended): art 5, 2nd para (as so substituted). The European Commission, acting in accordance with the procedure laid down in art 18 (as substituted), must ensure that Annex IB (as added, substituted and amended) stipulates that recording equipment may not be granted EC component type approval until the whole system (ie the recording equipment itself, driver card and electrical gearbox connections) has demonstrated its capacity to resist attempts to tamper with or alter the data on driving times, and the tests necessary to establish this must be carried out by experts familiar with up to date tampering techniques: art 5, 2nd para (as so substituted).

Any modifications or additions to an approved model must receive additional EC type approval from the member state which granted the original EC type approval: art 5, 3rd para.

7    Ie which must conform to the model in *ibid* Annex II: see PARA 1411 ante.

8    *Ibid* art 6 (amended by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)).

9    EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 7 (amended by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)).

10   EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 8(1) (amended by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)).

11   EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 8(1).

12   Ie EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) (as amended) or Annex I (as amended), Annex IB (as added, substituted and amended) or Annex II: see PARA 1411 ante.

13   *Ibid* art 8(2) (amended by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)). If a member state which has granted EC type approval is notified by another member state of one of the cases referred to in EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 8(1), (2) (as amended), it must also, after consulting the latter member state, take the steps laid down in art 8(1), (2) (as amended), subject to art 8(5): art 8(3). A member state which ascertains that one of the cases referred to in art 8(2) (as amended) has arisen may forbid until further notice the placing on the market and putting into service of the recording equipment or its components or record sheets or memory card: art 8(4), 1st para (amended by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)). The same applies in the cases mentioned in EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 8(1) (as amended) with respect to recording equipment or its components or record sheets or memory which have been exempted from EC initial verification, if the manufacturer, after due warning, does not bring the equipment into line with the approved model or with the requirements of EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) (as amended): art 8(4), 1st para (as so amended). In any event, the competent authorities of the member states must notify one another and the European Commission, within one month, of any withdrawal of EC type approval or of any other measures taken pursuant to art 8(1), (2), (3) (as amended) and must specify the reasons for such action: art 8(4), 2nd para.

If a member state which has granted an EC type approval disputes the existence of any of the cases specified in art 8(1) or (2) (as amended) notified to it, the member states concerned must endeavour to settle the dispute and the European Commission must be kept informed: art 8(5), 1st para. If talks between the member states have not resulted in agreement within four months of the date of the notification referred to in art 8(3), the European Commission, after consulting experts from all member states and having considered all the relevant factors, eg economic and technical factors, must within six months adopt a decision which must be communicated to the member states concerned and at the same time to the other member states, and the European Commission must lay down in each instance the time limit for implementation of its decision: art 8(5), 2nd para.

14 le the approval mark referred to in ibid art 6 (as amended) (see the text and notes 7-8 supra).

15 Ibid art 10 (amended by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)). The installation plaque is the installation plaque referred to in EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 12 (as amended) (see PARA 1411 ante): see art 10 (as so amended).

16 Ibid art 11 (amended by EC Council Regulation 2135/98 (OJ L274, 9.10.98, p 1)).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/(5) RECORDING EQUIPMENT (TACHOGRAPHS)/1416. Issue of tachograph cards.

#### 1416. Issue of tachograph cards.

The Secretary of State<sup>1</sup> must issue a driver card<sup>2</sup> to a person who:

- 2221 (1) satisfies the Secretary of State that he is a driver subject to the relevant provisions<sup>3</sup>;
- 2222 (2) satisfies the Secretary of State that he is normally resident within Great Britain<sup>4</sup>;
- 2223 (3) makes an application for the card not more than 90 days before he wishes it to come into force in such form, and provides the Secretary of State with such documents and information in support of the application, as the Secretary of State may require<sup>5</sup>;
- 2224 (4) does not hold a driver card except in the specified circumstances<sup>6</sup>; and
- 2225 (5) pays the prescribed fee<sup>7</sup>.

The holder of a driver card may apply to exchange his driver card if the driver card was issued to the holder by the competent authority<sup>8</sup>, other than the Secretary of State, of a member state of the European Union, if the holder complies with the requirements of heads (1) to (5) above, and if the holder surrenders the driver card issued by the other competent authority to the Secretary of State<sup>9</sup>.

The Secretary of State must issue a company card<sup>10</sup> to a person who

- 2226 (a) is the owner or holder of a vehicle in which there is equipment for recording information as to the use of that vehicle which satisfies the relevant requirements<sup>11</sup>;
- 2227 (b) if an individual, is normally resident in Great Britain or, if a company, has a place of business in Great Britain<sup>12</sup>;
- 2228 (c) makes an application for the card in such form, and provides the Secretary of State with such documents and information in support of the application, as the Secretary of State may require<sup>13</sup>; and
- 2229 (d) pays the prescribed fee<sup>14</sup>.

The Secretary of State must not issue a workshop card<sup>15</sup> to a person to whom an approval has not been issued<sup>16</sup>, and must not issue a control card<sup>17</sup> to a person who is not a constable or vehicle examiner<sup>18</sup>. No fee is payable in respect of a workshop card or a control card<sup>19</sup>.

If the holder of a tachograph card<sup>20</sup>:

- 2230 (i) satisfies the Secretary of State that the card is damaged, malfunctions, is lost or is stolen, and the holder is entitled to continue to hold the card;
- 2231 (ii) surrenders the damaged or malfunctioning card to the Secretary of State;
- 2232 (iii) applies to the Secretary of State within seven days of such damage, malfunction, loss or theft;
- 2233 (iv) makes his application in such form, and provides the Secretary of State with such documents and information in support of the application, as the Secretary of State may require; and
- 2234 (v) pays the fee prescribed<sup>21</sup> for the replacement of a card,

the Secretary of State must issue a replacement card<sup>22</sup>.

Where an application is made for a tachograph card which would otherwise attract more than one fee, only one fee is to be paid in respect of that card; and where the fees are different, that fee is to be the higher or the highest of them<sup>23</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 'Driver card' has the meaning given in the Community Recording Equipment Regulation Annex IB (as added, substituted and amended) (see PARA 1412 note 1 ante): Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card Fees) Regulations 2005, SI 2005/1140, reg 2(1). 'The Community Recording Equipment Regulation' means EC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) on recording equipment in road transport (as amended) as it has effect in accordance with EEC Commission Regulation 3314/90 (OJ L318, 17.11.90, p 20), EEC Commission Regulation 3688/92 (OJ L374, 22.12.92, p 12), EC Commission Regulation 2479/95 (OJ L256, 26.10.95, p 8), EC Commission Regulation 1056/97 (OJ L154, 12.6.1997, p 21), EC Council Regulation 2135/98 (OJ L274, 9.10.1998, p 1) art 1, EC Commission Regulation 1360/2002 (OJ L207, 5.8.2002, p 1), the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ L236, 23.9.2003, p 33), European Parliament and Council Regulation 1882/2003 (OJ L284, 31.10.2003, p 1), EC Commission Regulation 432/2004 (OJ L71, 10.3.2004, p 3) and European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1), and as read with the Community Drivers' Hours and Recording Equipment (Exemptions and Supplementary Provisions) Regulations 1986, SI 1986/1456 (revoked: see now the Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819) (see PARA 1385 ante): Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card Fees) Regulations 2005, SI 2005/1140, reg 2(1) (definition substituted by the Passenger and Goods Vehicles (Community Recording Equipment Regulation) Regulations 2006, SI 2006/3276, reg 2(1), (2)(e)).

3 le subject to the provisions of European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) and the Community Recording Equipment Regulation: Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card Fees) Regulations 2005, SI 2005/1140, reg 3(2)(a).

4 Ibid reg 3(2)(b). Where any question arises as to whether a person is normally resident in Great Britain he is to be deemed to be normally resident there if he shows that he will have lived there for no fewer than 185 days during the period of 12 months ending on the day on which the card is to be issued: reg 2(2).

5 Ibid reg 3(2)(c).

6 Ibid reg 3(2)(d). The specified circumstances are that the person holds an existing driver card issued by the Secretary of State which is in force and has applied to renew it not later than 15 working days before the date of its expiry: reg 3(3). 'Working day' means a day other than Christmas Day, Good Friday, a Saturday, a Sunday or a bank holiday to be observed as such under the Banking and Financial Dealings Act 1971 s 1, Sch 1 (see TIME vol 97 (2010) PARA 321): Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card Fees) Regulations 2005, SI 2005/1140, reg 2(1).

7 Ibid reg 3(1), (2)(e). The prescribed fee is: (1) for a driver card issued on renewal of a time-expired card, £19; (2) for a driver card issued as a replacement for a damaged, lost or stolen card, £19; and (3) for any other driver card, £38: reg 8(2), Sch 1. No fee is payable in respect of the replacement of a malfunctioning driver card or a driver card issued with corrected personal details of the driver in exchange for an existing driver card: reg 8(4)(b), (c).

8 'Competent authority' has the same meaning as in the Community Recording Equipment Regulation: Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card Fees) Regulations 2005, SI 2005/1140, reg 2(1).

9 Ibid reg 4. As to the prohibition on holding more than one driver card see PARA 1417 post.

10 'Company card' has the meaning given in the Community Recording Equipment Regulation Annex IB (as added, substituted and amended): Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card Fees) Regulations 2005, SI 2005/1140, reg 2(1).

11 I.e. which has been installed in accordance with the Community Recording Equipment Regulation and complies with Annex IB (as added, substituted and amended) and Annex II (as amended): Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card Fees) Regulations 2005, SI 2005/1140, reg 5(2)(a).

12 Ibid reg 5(2)(b).

13 Ibid reg 5(2)(c).

14 Ibid reg 5(1), (2)(d). The prescribed fee is: (1) for a company card issued on renewal of a time-expired card, £19; (2) for a company card issued as a replacement for a damaged, lost or stolen card, £19; and (3) for any other company card, £38: reg 8(3), Sch 2. No fee is payable in respect of the replacement of a malfunctioning company card: reg 8(4)(b).

15 'Workshop card' has the meaning given in the Community Recording Equipment Regulation Annex IB (as added, substituted and amended): Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card Fees) Regulations 2005, SI 2005/1140, reg 2(1).

16 I.e. issued in accordance with the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 4 (see PARA 1411 ante): Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card Fees) Regulations 2005, SI 2005/1140, reg 6(1).

17 'Control card' has the meaning given in the Community Recording Equipment Regulation Annex IB (as added, substituted and amended): Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card Fees) Regulations 2005, SI 2005/1140, reg 2(1).

18 I.e. a vehicle examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 ante): Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card Fees) Regulations 2005, SI 2005/1140, reg 6(2).

19 Ibid reg 8(4)(a).

20 'Tachograph card' means a company card, control card, driver card or workshop card: ibid reg 2(1).

21 I.e. prescribed in ibid reg 8.

22 Ibid reg 7.

23 Ibid reg 8(5).

**UPDATE****1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

**1416-1417 Issue of tachograph cards, Use and possession of tachograph cards**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

**1416 Issue of tachograph cards**

NOTE 2--'The Community Recording Equipment Regulation' now means EEC Council Regulation 3821/85 on recording equipment in road transport as read with the Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819: Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card Fees) Regulations 2005, SI 2005/1140, reg 2(1) (definition substituted by SI 2010/892).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/(5) RECORDING EQUIPMENT (TACHOGRAPHS)/1417. Use and possession of tachograph cards.

**1417. Use and possession of tachograph cards.**

A person commits an offence<sup>1</sup>:

- 2235 (1) if he uses, attempts to use or is in possession of, more than one driver card<sup>2</sup> on which he is identified as the holder<sup>3</sup>;
- 2236 (2) if he uses or attempts to use a driver card on which he is not identified as the holder<sup>4</sup>;
- 2237 (3) if, with intent to deceive, he makes a false statement, or forges or alters a document, for the purpose of obtaining a driver card<sup>5</sup>;
- 2238 (4) if he uses, or is in possession of, a driver card issued in consequence of an application which included, with intent to deceive, a false statement or forged or altered document<sup>6</sup>; or
- 2239 (5) if he uses, or is in possession of, a driver card which has been forged or altered<sup>7</sup>.

A person commits an offence if he causes or permits any use or possession of a driver card, or the making of any false statement or forgery or alteration of a document specified in heads (1) to (5) above<sup>8</sup>.



It is not an offence, however, to hold a card which will become time-expired within one month and the card which has been issued by the Secretary of State<sup>9</sup> in renewal of the former card, or to hold a card, which has become time-expired, in combination with another card<sup>10</sup>.

A person commits an offence<sup>11</sup>:

- 2240 (a) if he uses, attempts to use or is in possession of more than one workshop card<sup>12</sup>, on which he is identified as the holder, or more than one PIN<sup>13</sup>, in respect of the same place of work<sup>14</sup>;
- 2241 (b) if he uses or attempts to use a workshop card, or PIN, of which he is not the identified holder<sup>15</sup>;
- 2242 (c) if he uses or attempts to use a workshop card, or PIN, in circumstances unconnected with the place of work for which that card, or PIN, was issued<sup>16</sup>;
- 2243 (d) if, with intent to deceive, he makes a false statement, or forges or alters a document, for the purpose of obtaining a workshop card or PIN<sup>17</sup>;
- 2244 (e) if he uses, or is in possession of, a workshop card, or PIN, issued in consequence of an application which included, with intent to deceive, a false statement or forged or altered document<sup>18</sup>;
- 2245 (f) if he uses, or is in possession of, a workshop card which has been forged or altered<sup>19</sup>; or
- 2246 (g) if he divulges to another person, or permits another person to use, the PIN used in connection with a workshop card of which he is identified as the holder<sup>20</sup>.

A person commits an offence if he causes or permits any use, alteration or possession of a workshop card or PIN, or the making of any false statement or forgery or alteration of a document, specified in heads (1) to (g) above<sup>21</sup>.

It is not an offence, however, to hold a workshop card which will become time-expired within one month and the workshop card which has been issued by the Secretary of State in renewal of the former workshop card, or to hold a workshop card, which has become time-expired, in combination with another workshop card<sup>22</sup>.

If a tachograph card<sup>23</sup> is lost or stolen, the person to whom that card was issued must notify the Secretary of State in writing and must provide such information or documents concerning the loss or theft as the Secretary of State may require<sup>24</sup>. If a tachograph card is found at any time after the Secretary of State has been notified of the loss or theft of it, the person to whom that card was issued, if it is in his possession, must return it to the Secretary of State, or if it is not in his possession, but he becomes aware that it is found, must take all reasonable steps to take possession of it and if successful must return it as soon as may be to the Secretary of State<sup>25</sup>. If a tachograph card is damaged or malfunctions, the person to whom that card was issued must return it to the Secretary of State and must provide such information or documents concerning the damage or malfunction as the Secretary of State may require<sup>26</sup>. A person who fails to comply with these requirements as to lost, stolen or malfunctioning tachograph cards commits an offence<sup>27</sup>.

Where the details of the holder of a tachograph card specified on the card cease to be correct, the holder must: (i) forthwith notify the Secretary of State of the details which require correction; and (ii) surrender the card when required to do so, to such address as may be specified, by the Secretary of State<sup>28</sup>. Where it appears to the Secretary of State that a tachograph card issued by him to any person was issued in error or with an error or omission in the particulars specified in the card, he may serve notice in writing on that person requiring him to surrender that card and it is the duty of that person to comply with the requirement<sup>29</sup>. On surrender of a card by a person in accordance with these provisions the Secretary of State must, if so requested by that person, issue a replacement card to him<sup>30</sup>. The Secretary of State may require the person surrendering the card to provide such information and documents as the Secretary of State may require to enable him to correct the details, error or omission before

issuing a new card<sup>31</sup>. A person who fails to comply with the requirements as to notification or surrender<sup>32</sup> commits an offence<sup>33</sup>.

A person in possession of a tachograph card: (A) on which the person using the card is not identified as the holder; (B) which has been falsified; or (C) which has been issued in consequence of an application which included a false statement or forged or altered document must surrender that card to the Secretary of State, by such means and to such address as may be specified by the Secretary of State<sup>34</sup>. A constable or a vehicle examiner<sup>35</sup> may remove and retain such a tachograph card which has not been surrendered to the Secretary of State<sup>36</sup>. A person who does not surrender a card in accordance with these provisions commits an offence<sup>37</sup>.

1 Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card) Regulations 2006, SI 2006/1937, reg 3(1).

2 For the meaning of 'driver card' see PARA 1412 note 1 ante; definition applied by ibid reg 2.

3 Ibid reg 3(1)(a). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 3(4). As to the standard scale see PARA 230 note 3 ante.

4 Ibid reg 3(1)(b). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 3(4).

5 Ibid reg 3(1)(c). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both, or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both: reg 3(5). As to the statutory maximum see PARA 359 note 11 ante.

6 Ibid reg 3(1)(d). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both: reg 3(6).

7 Ibid reg 3(1)(e). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both: reg 3(6).

8 Ibid reg 3(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both: reg 3(6).

9 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

10 Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card) Regulations 2006, SI 2006/1937, reg 3(3).

11 Ibid reg 4(1).

12 'Workshop card' has the meaning given by the Community Recording Equipment Regulation Annex IB (as added, substituted and amended) (see PARA 1411 note 4 ante); Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card) Regulations 2006, SI 2006/1937, reg 2.

13 'PIN' means personal identification number for use in connection with a workshop card: ibid reg 2.

14 Ibid reg 4(1)(a). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 4(4).

15 Ibid reg 4(1)(b). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 4(4).

16 Ibid reg 4(1)(c). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 4(4).

17 Ibid reg 4(1)(d). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both, or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both: reg 4(5).

18 Ibid reg 4(1)(e). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both: reg 4(6).

19 Ibid reg 4(1)(f). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both: reg 4(6).

20 Ibid reg 4(1)(g). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 4(4).

21 Ibid reg 4(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both: reg 4(6).

22 Ibid reg 4(3).

23 'Tachograph card' means a company card, control card, driver card or workshop card: ibid reg 2. 'Company card' and 'control card' have the meanings given by the Community Recording Equipment Regulation Annex IB (as added, substituted and amended) (see PARA 1411 note 4 ante): Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card) Regulations 2006, SI 2006/1937, reg 2.

24 Ibid reg 5(1).

25 Ibid reg 5(2).

26 Ibid reg 5(3).

27 Ibid reg 5(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 5(5).

28 Ibid reg 6(1).

29 Ibid reg 6(2).

30 Ibid reg 6(3).

31 Ibid reg 6(4).

32 Ie the requirements of ibid reg 6(1) or (2): see the text and notes 28-29 supra.

33 Ibid reg 6(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 6(6).

34 Ibid reg 7(1), (3).

35 Ie a vehicle examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended): see PARA 698 ante.

36 Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card) Regulations 2006, SI 2006/1937, reg 7(2), (3).

37 Ibid reg 7(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 7(5). Regulation 7(5) refers to an offence under reg 7(3), but it is submitted that the reference should be a reference to an offence under reg 7(4).

## **UPDATE**

### **1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

### **1416-1417 Issue of tachograph cards, Use and possession of tachograph cards**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/(6) RECORDS ON DOMESTIC DRIVING OR WORK/1418. Written records.

## **(6) RECORDS ON DOMESTIC DRIVING OR WORK**

### **1418. Written records.**

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup>: (1) for requiring drivers<sup>3</sup> to keep, and employers<sup>4</sup> of employee-drivers<sup>5</sup> to cause to be kept, in such books as may be specified in the regulations records with respect to such matter relevant to the enforcement of Part VI of the Transport Act 1968<sup>6</sup> as may be so specified<sup>7</sup>; and (2) for requiring owner-drivers<sup>8</sup> and the employers of employee-drivers to maintain such registers as may be so specified with respect to any such books which are in their possession or in that of any employee-drivers in their employment<sup>9</sup>.

Such regulations may contain such supplementary and incidental provisions including provisions supplementary and incidental to the requirements of the applicable Community rules<sup>10</sup> as to books, records or documents as the Secretary of State thinks necessary or expedient, including in particular provisions<sup>11</sup>:

- 2247 (a) specifying the person or persons from whom books and registers required for the purposes of the regulations or of the applicable Community rules are to be obtained and, if provision is made for them to be obtained from the Secretary of State, charging a fee for their issue by him (which is payable into the Consolidated Fund)<sup>12</sup>;
- 2248 (b) as to the form and manner of making of entries in such books and registers<sup>13</sup>;
- 2249 (c) as to the issue by and return to the employers of employee-drivers of books required to be kept by the latter for the purposes of the regulations<sup>14</sup>;
- 2250 (d) requiring any book in current use for the purposes of the regulations to be carried on, or by the driver of, any vehicle, as to the preservation of any books and registers used for those purposes, and otherwise as to the manner in which those books and registers are to be dealt with<sup>15</sup>;
- 2251 (e) for exemptions from all or any of the requirements of the regulations in respect of drivers of small goods vehicles<sup>16</sup> and for other exemptions from all or any of those requirements<sup>17</sup>.

Subject to the provisions of any regulations made by the Secretary of State, the traffic commissioner<sup>18</sup> for any area may dispense with the observance by any employee-driver or his employer, or by any owner-driver, of any requirement imposed under these provisions, either generally or in such circumstances or to such extent as the commissioner thinks fit, but the traffic commissioner must not grant such a dispensation unless satisfied that it is not reasonably practicable for the requirement dispensed with to be observed<sup>19</sup>.

Any person who contravenes any regulations made under these provisions or any requirement as to books, records or documents of the applicable Community rules is liable on summary conviction to a fine<sup>20</sup>. However, the employer of an employee-driver is not liable to be convicted by reason of contravening any such regulation whereby he is required to cause any records to be kept if he proves to the court that he has given proper instructions to his employees with respect to the keeping of the records and has from time to time taken reasonable steps to secure that those instructions are being carried out<sup>21</sup>. Any entry made by an employee-driver for the purposes of regulations made under these provisions or of the applicable Community rules is, in any proceedings under Part VI of the Transport Act 1968, admissible in evidence against his employer<sup>22</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 In exercise of this power, the Drivers' Hours (Goods Vehicles) (Keeping of Records) Regulations 1987, SI 1987/1421, have been made: see PARA 1420 post. As to the making of regulations generally see PARA 1382 ante. The requirements of regulations made under the Transport Act 1968 s 98 (as amended) do not apply as respects the driving of a vehicle to which s 97 (as substituted and amended) (see PARA 1424 post) applies and which is installed with recording equipment complying with the relevant Annexes (within the meaning of s 97 (as amended)): s 98(2A) (added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 3(1); and amended by the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 4). For the meaning of 'the relevant Annexes' see PARA 1414 note 1 ante.

3 For the meaning of 'driver' see PARA 1380 ante.

4 For the meaning of 'employer' see PARA 1389 note 18 ante.

5 For the meaning of 'employee-driver' see PARA 1380 ante.

6 In the Transport Act 1968 Pt VI (ss 95-103) (as amended).

7 Ibid s 98(1)(a).

8 For the meaning of 'owner-driver' see PARA 1380 ante.

9 Transport Act 1968 s 98(1)(b).

10 For the meaning of 'the applicable Community rules' see PARA 1380 note 1 ante.

11 Transport Act 1968 s 98(2) (amended by the European Communities Act 1972 s 4, Sch 4 para 9(2); and the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 s 2(1)).

12 Transport Act 1968 s 98(2)(a) (amended by the European Communities Act 1972 Sch 4 para 9(2); and the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 s 2(1)). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

13 Transport Act 1968 s 98(2)(b).

14 Ibid s 98(2)(c).

15 Ibid s 98(2)(d).

16 For the purposes of ibid 98(2)(e), 'a small goods vehicle' means a goods vehicle which has a plated weight of the prescribed description not exceeding 3,500 kg or (not having a plated weight) has an unladen weight not exceeding 1,525 kg; but the Secretary of State may by regulations direct that s 98(2)(e) has effect: (1) with the substitution for either of the weights there specified of such other weight as may be specified in the

regulations; (2) with the substitution for either of those weights or for any other weight for the time being so specified of a weight expressed in terms of the metric system, being a weight which is equivalent to that for which it is substituted or does not differ from it by more than 5% of it: s 103(6) (amended by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 3(8); and the Transport Act 1968 (Metrication) Regulations 1981, SI 1981/1373, reg 4(2), Schedule Pt IIIB). As to the regulations that have been made see the Road Traffic Acts 1960 and 1972, Road Traffic Regulation Act 1967, and the Transport Act 1968 (Metrication) Regulations 1981, SI 1981/1373 (amended by the Goods Vehicles (Licensing of Operators) Act 1995 s 60(2), Sch 8 Pt II).

17 Transport Act 1968 s 98(2)(e).

18 As to traffic commissioners see PARA 1139 ante.

19 Transport Act 1968 s 98(3) (amended by the Transport Act 1968 s 3, Sch 2 Pt II).

20 Transport Act 1968 s 98(4) (amended by the European Communities Act 1972 Sch 4 para 9(2); and the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 s 2(1)). The fine must not exceed level 4 on the standard scale: Transport Act 1968 s 98(4) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 230 note 3 ante. As to where an offence may be treated as having been committed see PARA 1393 note 5 ante.

A person is not liable to be convicted under the Transport Act 1968 s 98(4) (as amended) by reason of contravening any regulation made under s 98 (as amended) if he proves to the court that, if the vehicle in question had been such a vehicle as is mentioned in s 98(2A) (as added) (see note 2 supra), there would have been no contravention of the provisions of Pt VI (as amended) so far as they relate to the use of such vehicles: s 98(4A) (added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 3(1)).

With the replacement of the individual control book (see EC Council Regulation 543/69 (OJ L77, 29.3.69, p 49) art 14 (repealed by EC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1) on the harmonisation of social legislation relating to road transport, art 18(1))) by the recording equipment specified in EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) on recording equipment in road transport (as amended), the only remaining requirements of the Community rules as to books, records or documents are those in European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 16 (see PARA 1421 post).

21 Transport Act 1968 s 98(4).

22 Ibid s 98(5) (amended by the European Communities Act 1972 Sch 4 para 9(2); and the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 s 2(1)).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

### 1418 Written records

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### 1419. Records for domestic driving or work by passenger vehicle drivers.

There is no requirement for the drivers of passenger vehicles engaged in domestic driving or work<sup>1</sup> to keep any records<sup>2</sup>.

1 For the meaning of 'domestic driving or work' see PARA 1383 ante.

2 See the Vehicle and Operator Services Agency booklet *Drivers' Hours and Tachograph Rules for Road Passenger Vehicles in the UK and Europe* (PSV 375) (2nd Edn, December 2006) Pt C para 44. Drivers carrying out domestic driving or work are not subject to European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) on the harmonisation of certain social legislation relating to road transport, art 16 (see PARA 1421 post): see arts 3, 13; and PARA 1384 ante. The Drivers' Hours (Goods Vehicles) (Keeping of Records) Regulations 1987, SI 1987/1421, which impose the requirement to keep records so far as domestic services are concerned, apply to drivers of goods vehicles and their employers (see reg 4; and PARA 1420 post); they only apply to passenger vehicles when driven in any working week by a driver of goods vehicles (see reg 13; and PARA 1420 post).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/(6) RECORDS ON DOMESTIC DRIVING OR WORK/1420. Records for domestic journeys or work by goods vehicle drivers.

### 1420. Records for domestic journeys or work by goods vehicle drivers.

Unless exempted from doing so<sup>1</sup>, the driver of a goods vehicle<sup>2</sup> carrying out domestic driving or work<sup>3</sup> must enter, and where he is an employee-driver, his employer<sup>4</sup> must cause him to enter, in accordance with the instructions to drivers for the completion of sheets, the required information<sup>5</sup> in drivers' record books<sup>6</sup>. The record book must contain a front sheet, instructions to drivers for completion of sheets, notes for guidance on use of the book and weekly records sheets<sup>7</sup>. It must be issued to the employee-driver by his employer from time to time as may be necessary<sup>8</sup>. When a driver has made an entry in a record book he must not, until all the weekly record sheets in the book have been completed, make an entry in another record book<sup>9</sup> and he must not make an entry in a record book which was not supplied to him by his employer unless a record book so supplied to him by his employer was not available<sup>10</sup>. No person may erase or obliterate an entry once made, and corrections must be made by striking the original entry through in such a way that it may still be read, and writing the appropriate correction near to the entry, and any person making such a correction must initial it<sup>11</sup>. When a weekly record sheet has been completed the driver's record book must be delivered (including the duplicate of the weekly record sheet) to the employer who issued it within seven days (or earlier if the employer so requires)<sup>12</sup> and the employer must examine and sign it and its duplicate, detach the duplicate and return the book to the driver when he is next on duty<sup>13</sup>. An owner-driver must preserve the driver's record book intact when it has been completed or he has ceased to use it, and the employer of an employee-driver to whom any driver's record book relating to that employee-driver has been returned must preserve the book intact, for a period of one year<sup>14</sup>. An employee-driver must produce his current driver's record book for inspection by the employer who issued it to him or by any other person in relation to whom he is an employee-

driver, whenever required to do so<sup>15</sup>. A driver must have his current driver's record book (including all unused record sheets) in his possession at all times when on duty<sup>16</sup>.

The record book and weekly sheets must be produced for inspection by an officer<sup>17</sup> on request<sup>18</sup>. Any entry made by an employee-driver for the purposes of these provisions is admissible in evidence against his employer in any proceedings under the provisions relating to drivers' hours<sup>19</sup>.

1 The exemptions under the Drivers' Hours (Goods Vehicles) (Keeping of Records) Regulations 1987, SI 1987/1421, regs 12, 13. Exemptions from reg 7 and reg 10 (see the text and note 16 infra) apply to:

1399 (1) the driver, and, if he is an employee-driver, his employer, where a driver does not, on any working day, drive any goods vehicle other than a vehicle the use of which is exempted from any requirement to have an operator's licence or, in the public service of the Crown, would be so exempted by virtue of the Transport Act 1968 s 60(2) (repealed), were it not such a vehicle (see the Drivers' Hours (Goods Vehicles) (Keeping of Records) Regulations 1987, SI 1987/1421, reg 12(1));

1400 (2) the driver, and, if he is an employee-driver, his employer, where, on any working day, a driver does not drive a goods vehicle for more than four hours and does not drive it outside a radius of 50 km from its operating centre (see reg 12(2)(a)); and if a driver drives otherwise than on a road for the purposes of agriculture, forestry, quarrying or in the course of carrying out work in the construction, reconstruction, alteration or extension or maintenance of, or of a part of, a building, or of any other fixed works of construction of civil engineering (including works for the construction, improvement or maintenance of a road), that driving does not count towards the four hour period (see reg 12(2)(b));

1401 (3) the driver, and, if he is an employee-driver, his employer, where a driver during any working day does not spend all or the greater part of his time in driving vehicles to which the Transport Act 1968 Pt VI (ss 95-103) (as amended) applies in driving goods vehicles (see the Drivers' Hours (Goods Vehicles) (Keeping of Records) Regulations 1987, SI 1987/1421, reg 12(3));

1402 (4) the driver, and, if he is an employee-driver, his employer, where the vehicle is used in such circumstances that by virtue of the Community Drivers' Hours and Recording Equipment (Exemptions and Supplementary Provisions) Regulations 1986, SI 1986/1456, reg 5 (revoked), EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) on recording equipment in road transport (as amended) (requiring recording equipment to be installed and used in accordance with the Community rules) applies to the vehicle (see the Drivers' Hours (Goods Vehicles) (Keeping of Records) Regulations 1987, SI 1987/1421, reg 12(4)).

'Operating centre', in relation to any vehicle, means the base or centre at which the vehicle is normally kept; and references to an operating centre of the holder of an operator's licence are references to any place which is an operating centre for authorised vehicles under the licence: Transport Act 1968 s 92 (repealed); Drivers' Hours (Goods Vehicles) (Keeping of Records) Regulations 1987, SI 1987/1421, reg 12(5)(b). For the meaning of 'goods vehicle' see PARA 1380 ante. For the meaning of 'employee-driver' see PARA 1380 ante.

Subject to reg 12(3), the provisions of reg 7 and reg 10 apply to a driver who in any working week drives goods and passenger vehicles as they apply to a driver who only drives a goods vehicle and the information to be entered in the driver's record book pursuant to reg 7 is information in relation to his employment in connection with both goods and passenger vehicles: reg 13(1). If a driver of both goods vehicles and passenger vehicles has a different employer in relation to his employment in connection with goods vehicles from his employer in relation to his employment in connection with passenger vehicles, his employer for the purpose of reg 6 (see the text and note 8 infra) is his employer in relation to his employment in connection with goods vehicles notwithstanding the provisions of reg 6(2): reg 13(2).

2 Subject to *ibid* reg 12 and reg 13 (see note 1 supra), the provisions of the Drivers' Hours (Goods Vehicles) (Keeping of Records) Regulations 1987, SI 1987/1421, apply to drivers of goods vehicles and to employers of employee-drivers of such vehicles but they do not so apply in relation to a journey made or work done by a driver in a case where the journey or, as the case may be, the work is a journey or work to which the applicable Community rules apply: reg 4. Where the applicable Community rules apply, subject to exceptions (see PARA 1384 ante), recording equipment must be installed and used (see PARA 1411 ante). For the meaning of 'the applicable Community rules' see PARA 1380 note 1 ante.

3 As to the classification of driving or work see PARA 1383 ante.



4 The employer of an employee-driver or the owner-driver must also make certain entries, namely those relating to the name, address, telephone number and stamp (if any) of the employer or undertaking and the operator's licence number: see reg 7(1)-(3), Schedule. For the meaning of 'owner-driver' see PARA 1380 ante. 'Operator's licence' means a licence granted under the Transport Act 1968 Pt V (repealed): s 60(1) (repealed); Drivers' Hours (Goods Vehicles) (Keeping of Records) Regulations 1987, SI 1987/1421, reg 3. As to goods vehicles licensing and the licensing of operators see now the Good Vehicles (Licensing of Operators) Act 1995; and PARA 1329 et seq ante.

5 Details must be entered as to dates the book was first and last used, the name and address of the holder of the book, the operator's licence number, the day on which duty was commenced, the registration number of the vehicle, the place where the vehicle is based, the time of going on and off duty, the time spent driving and the time spent on duty: see the Drivers' Hours (Goods Vehicles) (Keeping of Records) Regulations 1987, SI 1987/1421, reg 7(4), Schedule. A driver when making an entry in the weekly record sheet, including signing such a sheet, must ensure, by the use of carbon paper or otherwise, that the entry is simultaneously reproduced on the duplicate of the sheet: reg 7(5).

6 See *ibid* reg 7(4). As to the model for the drivers' record book, including the record book for drivers in road transport, instructions to drivers for completion of sheets and notes for guidance on the use of record books see reg 7(4), Schedule. 'Driver's record book' means a book which complies with reg 5 (see the text and note 7 *infra*), and any reference in relation to a driver's record book to a front sheet, or to instructions to drivers for completion of sheets or to weekly record sheets is a reference to those components of a driver's record book referred to in reg 5: reg 3.

The Drivers' Hours (Goods Vehicles) (Keeping of Records) Regulations 1987, SI 1987/1421, were made under the Transport Act 1968 ss 98(1), (2), 101(2) (s 98 as amended) (see PARA 1418 ante). For the power of the traffic commissioner for any area to grant dispensations from observance of the regulations see s 98(3); and PARA 1418 ante. As to traffic commissioners see PARA 1139 ante. As to the making of regulations generally see PARA 1382 ante.

7 See the Drivers' Hours (Goods Vehicles) (Keeping of Records) Regulations 1987, SI 1987/1421, reg 5.

8 See *ibid* reg 6(1). If the employee-driver has more than one employer in relation to whom he is an employee-driver of a vehicle, it is the employer for whom the employee-driver first acts in the course of his employment who must issue him the record book (see reg 6(2)); and if he stops working for that employer he must return that book to him and his other employer must issue him with a new driver's record book (see reg 6(3)). Where an employer has a driver who has a record book issued by another employer, he must require the driver to produce the record book and must enter on the front sheet his name, address, telephone number and stamp (if any): see reg 9(1).

9 See *ibid* reg 8(6).

10 See *ibid* reg 8(7).

11 See *ibid* reg 8(8).

12 See *ibid* reg 8(1). When the weekly record sheet has been completed by the owner-driver he must, within a period of seven days from the date of its being completed, detach the duplicate sheet and deliver it to the required address: reg 8(4).

13 *Ibid* reg 8(2). When all the weekly record sheets in a driver's record book have been used, the driver must retain the book for a period of 14 days from the date the book was last returned to him under reg 8(2), and must then return the book to the employer as soon as is reasonably practicable: reg 8(3). An employee-driver or an owner-driver is not to be treated as having failed to comply with reg 8(1)-(4) with respect to the period within which the duplicate of a weekly record sheet is to be delivered if he can show it was not reasonably practicable to comply with the requirement and that the duplicate sheet was delivered as soon as it is reasonably practicable to do so: reg 8(5).

14 See *ibid* reg 11(1). A book which is used by a second driver is not preserved intact: see *Blakey Transport Ltd v Casebourne* [1975] RTR 221, DC. The one-year period is calculated, in the case of an owner-driver, from the day that book was completed or ceased to be used by him, and, in the case of an employee-driver, from the day on which that book was returned to his employer: see the Drivers' Hours (Keeping of Records) Regulations 1987, SI 1987/1421, reg 11(3). An employer of an employee-driver or an owner-driver who has detached duplicate sheets must preserve those sheets for the same period: see reg 11(2).

15 See *ibid* reg 9(2).

16 *Ibid* reg 10.

17 For the meaning of 'officer' see PARA 1426 note 1 *post*.

18 See the Transport Act 1968 s 99(1) (as amended); and PARA 1426 post. As to offences arising out of this requirement see s 99(4) (as amended); and PARA 1426 post.

19 See *ibid* s 98(5). The provisions referred to in the text are the provisions of Pt VI (as amended).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (7) CONTROL PROCEDURES AND INSPECTION/1421. Control procedures for certain passenger services.

## (7) CONTROL PROCEDURES AND INSPECTION

### 1421. Control procedures for certain passenger services.

In the case of regular national passenger services, and certain regular international passenger services<sup>1</sup>, to which the applicable Community rules as to drivers' hours<sup>2</sup> apply, a service timetable and a duty roster must be drawn up by the transport undertaking<sup>3</sup>. The duty roster must show, in respect of each driver<sup>4</sup>, the name, the place where he is based and the schedule laid down in advance for various periods of driving, other work<sup>5</sup>, breaks<sup>6</sup> and availability<sup>7</sup>. Each driver assigned to a service must carry an extract from the duty roster and a copy of the service timetable<sup>8</sup>.

The duty roster must: (1) include all the particulars specified above for a minimum period covering the previous 28 days; these particulars must be updated on regular intervals, the duration of which may not exceed one month; (2) be signed by the head of the transport undertaking or by a person authorised to represent him; (3) be kept by the transport undertaking for one year after expiry of the period covered by it; and (4) be produced and handed over at the request of an authorised inspecting officer<sup>9</sup>.

Vehicles covered by these provisions which are not fitted with recording equipment<sup>10</sup> used in accordance with the Community rules as to recording equipment<sup>11</sup> have until 31 December 2007 to install and use such equipment<sup>12</sup>.

1 The regular international passenger services referred to in the text are those whose route terminals are located within a distance of 50 km as the crow flies from the frontier between two member states and whose route length does not exceed 100 km: European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) on the harmonisation of certain social legislation relating to road transport, art 16(1).

2 *Ie* European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1).

3 *Ibid* art 16(2), 1st para. For the meaning of 'transport undertaking' see PARA 1388 note 1 ante. As to the meaning of 'undertaking' see also Case C-7/90 *Criminal proceedings against Paul Vandevenne* [1991] ECR I-4371, sub nom *Belgium v Vandevenne* [1993] 3 CMLR 608.

4 For the meaning of 'driver' see PARA 1380 ante.

5 For the meaning of 'other work' see PARA 1387 note 24 ante.

6 For the meaning of 'break' see PARA 1387 note 3 ante.

7 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 16(2), 1st para.

8 Ibid art 16(2), 2nd para. The requirement that each driver assigned to a regular service must carry an extract from the duty roster and a copy of the service timetable was not satisfied where an extract from the duty roster related only to the day on which it was checked: Case C-387/96 *Criminal proceedings against Anders Sjöberg* [1998] ECR I-1225, [1998] 2 CMLR 1304, ECJ.

9 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 16(3). The transport undertaking must give an extract from the roster to the drivers concerned upon request: art 16(3)(c).

10 For the meaning of 'recording equipment' see PARA 1411 note 3 ante.

11 Ie EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) on recording equipment in road transport (as amended).

12 See ibid art 3(1) (substituted by European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 26(2)).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (7) CONTROL PROCEDURES AND INSPECTION/1422. Control procedures for passenger and goods vehicles.

### 1422. Control procedures for passenger and goods vehicles.

A transport undertaking must organise the work of drivers in such a way that the drivers are able to comply with the Community rules as to drivers' hours and recording equipment<sup>1</sup>. The transport undertaking must properly instruct the driver and must make regular checks to ensure that those rules are complied with<sup>2</sup>. A transport undertaking is liable for infringements committed by drivers of the undertaking, even if the infringement was committed on the territory of another member state or a third country<sup>3</sup>.

Undertakings, consignors, freight forwarders, tour operators, principal contractors, subcontractors and driver employment agencies must ensure that contractually agreed transport time schedules respect the Community rules as to drivers' hours<sup>4</sup>. A transport undertaking which uses vehicles that are fitted with specified recording equipment<sup>5</sup> and that fall within the scope of the rules as to drivers' hours must comply with requirements as to the downloading and storage of data from the vehicle units and driver cards<sup>6</sup>.

1 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) on the harmonisation of certain social legislation relating to road transport, art 10(2). The Community rules as to recording equipment referred to in the text are those in EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) on recording equipment in road transport (as amended), and the Community rules as to drivers' hours referred to are those in European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) Ch II (arts 5-9): art 10(2). For the meaning of 'recording equipment' see PARA 1411 note 3 ante.

2 Ibid art 10(2). Failure to examine tachograph records in accordance with art 10(2) could amount to recklessly permitting contraventions of the Community rules since a responsible employer would normally check those records and it was his duty to do so: *Vehicle Inspectorate v Nuttall* [1999] 3 All ER 833, [1999] IRLR 656, HL. In Case-7/90 *Criminal proceedings against Paul Vandevenne* [1991] ECR I-4371, sub nom *Belgium v Vandevenne* [1993] 3 CMLR 608, ECJ, the court ruled that neither the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 10 (renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ) nor EEC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1) art 17(1) (repealed; cf European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 18) requires a member state to introduce strict criminal liability for breaches of the Regulation, provided the penalties imposed are effective, proportionate and dissuasive.

3 European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 10(3).

4 Ibid art 10(4).

5 ie complying with EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) Annex IB (as added, substituted and amended): see PARA 1411 ante.

6 See European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 10(5). For the meaning of 'driver card' see PARA 1412 note 1 ante.

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (7) CONTROL PROCEDURES AND INSPECTION/1423. Compliance with Community rules.

### 1423. Compliance with Community rules.

Member states are required to adopt such measures as may be necessary for the implementation of the Community rules as to drivers' hours<sup>1</sup>.

Member states must lay down rules on penalties applicable to infringements of the Community rules as to drivers' hours and the Community rules as to recording equipment<sup>2</sup> and must take all measures necessary to ensure that they are implemented<sup>3</sup>. Those penalties must be effective, proportionate, dissuasive and non-discriminatory; and no infringement may be subjected to more than one penalty or procedure<sup>4</sup>.

A member state must enable the competent authority to impose a penalty on an undertaking and/or a driver for an infringement of the Community rules as to drivers' hours detected on its territory and for which a penalty has not already been imposed, even where that infringement has been committed on the territory of another member state or of a third country<sup>5</sup>. Whenever a member state initiates proceedings or imposes a penalty for a particular infringement, it must provide the driver with due evidence of this in writing<sup>6</sup>.

Member states must ensure that a system of proportionate penalties, which may include financial penalties, is in force for infringements of the Community rules as to drivers' hours and recording equipment on the part of undertakings<sup>7</sup>, or associated consignors, freight forwarders, tour operators, principal contractors, subcontractors and driver employment agencies<sup>8</sup>.

To address cases where a member state considers that there has been an infringement of the Community rules as to drivers' hours which is of a kind that is clearly liable to endanger road safety, it must empower the relevant competent authority to proceed with immobilisation of the vehicle concerned until such time as the cause of the infringement has been rectified<sup>9</sup>. Member states may compel the driver to take a daily rest period<sup>10</sup>. Member states must, where appropriate, also withdraw, suspend or restrict an undertaking's licence, if the undertaking is established in that member state, or withdraw, suspend or restrict a driver's driving licence<sup>11</sup>. The European Commission<sup>12</sup> must develop guidelines with a view to promoting a harmonised application of these provisions<sup>13</sup>.

1    Ie European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1): art 18. For the meaning of 'driver' see PARA 1380 ante.

2    Ie EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) on recording equipment in road transport (as amended). For the meaning of 'recording equipment' see PARA 1411 note 3 ante.

3    European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 19(1).

4    Ibid art 19(1). The member states are required to notify the European Commission of these measures, and the Commission is required to inform member states accordingly: see art 19(1).

5    Ibid art 19(2), 1st para. An exception applies until 1 January 2009: see art 19(2), 2nd para.

6    Ibid art 19(3). The driver must keep any evidence provided by a member state concerning penalties imposed or the initiation of proceedings until such time as the same infringement of European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) can no longer lead to a second proceeding or penalty pursuant to that Regulation: art 20(1). The driver must produce such evidence upon request: art 20(2). A driver who is employed or at the disposal of more than one transport undertaking must provide sufficient information to each undertaking to enable it to comply with Ch II (arts 5-9) (crews, driving times, breaks and rest periods): art 20(3).

7    See PARA 1422 ante.

8    European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 19(4).

9    Ibid art 21.

10   Ibid art 21.

11   Ibid art 21.

12   Ie acting in accordance with the procedure in ibid art 24(2).

13   Ibid art 21. As to assistance and exchange of information see arts 22-25.

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (7) CONTROL PROCEDURES AND INSPECTION/1424. Installation and use of recording equipment.

#### 1424. Installation and use of recording equipment.

No person may use, or cause or permit to be used, a vehicle to which these provisions apply<sup>1</sup>: (1) unless there is in the vehicle recording equipment which complies with certain requirements<sup>2</sup>; or (2) in which there is recording equipment which has been repaired (whether before or after installation) otherwise than in accordance with the Community Recording Equipment Regulation<sup>3</sup>. Any person who contravenes these provisions<sup>4</sup> is liable on summary conviction to a fine<sup>5</sup>. A person is not liable to be convicted under these provisions if he proves to the court that he neither knew nor ought to have known that the recording equipment had not been installed or repaired, as the case may be, in accordance with the Community Recording Equipment Regulation<sup>6</sup>.

A person is not liable to be convicted under head (1) above if he proves to the court that the vehicle in question was proceeding to a place where recording equipment which would comply with certain requirements of the Community Recording Equipment Regulation<sup>7</sup> was to be installed in the vehicle in accordance with that Regulation<sup>8</sup>.

A person is not liable to be convicted under head (1) above by reason of the recording equipment installed in the vehicle in question not being in working order if he proves to the court that it had not become reasonably practicable for the equipment to be repaired by an approved fitter or workshop, and that the requirements of the Community Recording Equipment Regulation relating to the driver's duty to record information while the recording equipment is unserviceable or malfunctioning<sup>9</sup> were being complied with<sup>10</sup>.

A person is not liable to be convicted under head (1) above by reason of any seal on the recording equipment installed in the vehicle in question not being intact if he proves to the court that<sup>11</sup>: (a) the breaking or removal of the seal could not have been avoided<sup>12</sup>; (b) it had not become reasonably practicable for the seal to be replaced by an approved fitter or workshop<sup>13</sup>; and (c) in all other respects the equipment was being used as provided by certain requirements<sup>14</sup> of the Community Recording Equipment Regulation<sup>15</sup>.

A person is not liable to be convicted under head (1) above by reason of the driver card<sup>16</sup> not being used with the recording equipment installed in the vehicle in question if he proves to the court that: (i) the driver card was damaged, malfunctioning, lost or stolen; (ii) the requirements of the Community Recording Equipment Regulation<sup>17</sup> were being complied with; and (iii) in all other respects the recording equipment was being used as required<sup>18</sup>.

1 The Transport Act 1968 s 97 (as substituted and amended) applies at any time to any vehicle to which Pt VI (ss 95-103) (as amended) applies if, at that time, the Community Recording Equipment Regulation art 3 (as amended) (see PARA 1384 ante) requires recording equipment to be installed and used in that vehicle: Transport Act 1968 s 97(6) (s 97 substituted by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 2(1)). For the meaning of 'the Community Recording Equipment Regulation' see PARA 1414 note 1 ante. As to vehicles to which the Transport Act 1968 Pt VI (as amended) applies see PARA 1380 ante.

2 Ibid s 97(1)(a) (s 97(1) substituted by the Passenger and Goods Vehicles (Recording Equipment) (Amendment) Regulations 1984, SI 1984/144, reg 1; and renumbered by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1989, SI 1989/2121, reg 2(2)). The requirements are that the recording equipment: (1) must be installed in accordance with the Community Recording Equipment Regulation (as amended); (2) must comply with the relevant Annexes to that Regulation (see PARA 1411 ante); and (3) must be used as provided by art 13 (as substituted), art 14 (as amended) and art 15 (as amended) (see PARA 1412 et seq ante): Transport Act 1968 s 97(1)(a) (as so substituted and renumbered; and amended by the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 2(1), (2)). For the meaning of 'recording equipment' see PARA 1414 note 1 ante; and for the vehicles in which such equipment should be installed see PARA 1411 ante. For the meaning of 'the relevant Annexes' see PARA 1414 note 1 ante.

A breach of EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) art 15(7) (as substituted) (see PARA 1414 ante) can properly be charged under the Transport Act 1968 s 97(1)(a) (as substituted, renumbered and amended): *Birkett v Vehicle Inspectorate* [1998] RTR 264, (1997) 161 JP 805, DC. As to the meaning of 'causes or permits' see PARA 261 note 6 ante; and PARA 1393 note 8 ante. On a charge under the Transport Act 1968 s

97(1)(a) (as substituted, renumbered and amended) it is for the prosecution to prove non-compliance with the requirements and not for the defendant to prove compliance: *Murphitts Transport Ltd v Department of Transport* [1998] RTR 229, DC. See also *Vehicle Operators and Services Agency v Jones* [2005] EWHC 2278 (Admin), [2006] RTR 65.

3 Transport Act 1968 s 97(1)(b) (added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1989, SI 1989/2121, reg 2(2)).

4 Ie the Transport Act 1968 s 97(1) (as substituted and amended).

5 Ibid s 97(1) (as substituted (see note 2 supra); and amended by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1989, SI 1989/2121, reg 2(2)). The fine must not exceed level 5 on the standard scale: Transport Act 1968 s 97(1) (as so substituted and amended; and further amended by the Community Drivers' Hours and Recording Equipment Regulations 1986, SI 1986/1457, reg 3(3)). As to the standard scale see PARA 230 note 3 ante. As to where an offence may be treated as having been committed see PARA 1393 note 5 ante.

6 Transport Act 1968 s 97(1A) (added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1989, reg 2(3)).

7 Ie the relevant Annexes: see note 2 supra.

8 Transport Act 1968 s 97(2) (as substituted (see note 1 supra); and amended by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1989, SI 1989/2121, reg 2(4); and the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 2(3)).

9 Ie under the Community Recording Equipment Regulation art 16(2) (as substituted): see PARAS 1412-1413 ante.

10 Transport Act 1968 s 97(3) (as substituted (see note 1 supra); and amended by the Community Drivers' Hours and Recording Equipment Regulations 1986, SI 1986/1457, reg 3(3); and the Passenger and Goods Vehicles (Recording Equipment) Regulations 1989, SI 1989/2121, reg 2(4)).

11 Transport Act 1968 s 97(4) (as substituted (see note 1 supra); and amended by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1989, SI 1989/2121, reg 2(4)).

12 Transport Act 1968 s 97(4)(a) (as substituted: see note 1 supra). See also *Vehicle Inspectorate v Sam Anderson (Newhouse) Ltd* [2001] EWHC 893 (Admin), [2002] RTR 217, DC.

13 Transport Act 1968 s 97(4)(b) (as substituted: see note 1 supra).

14 Ie the Community Recording Equipment Regulation art 13 (as substituted), art 14 (as amended) and art 15 (as amended): see PARA 1412 et seq ante.

15 Transport Act 1968 s 97(4)(c) (as substituted (see note 1 supra); and amended by the Community Drivers' Hours and Recording Equipment Regulations 1986, SI 1986/1457, reg 3(3)). For the purposes of the Transport Act 1968 s 97 (as substituted and amended), recording equipment is used as provided by the Community Recording Equipment Regulation art 13 (as substituted), art 14 (as amended) and art 15 (as amended) if, and only if, the circumstances of its use are such that each requirement of those articles is complied with: s 97(5) (as substituted (see note 1 supra); and amended by the Community Drivers' Hours and Recording Equipment Regulations 1986, SI 1986/1457, reg 3(3)).

16 As to the meaning of 'driver card' see PARA 1427 note 3 post.

17 Ie the requirements of the Community Recording Equipment Regulation art 16(2) (as substituted) and, apart from the last paragraph thereof, art 16(3) (as substituted).

18 Transport Act 1968 s 97(4A) (added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 2(4)). The equipment must be used as provided by the Community Recording Equipment Regulation art 13 (as substituted), art 14 (as amended) and art 15 (as amended).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

#### **1424 Installation and use of recording equipment**

NOTE 1--1968 Act s 97(6) amended: SI 2008/198.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (7) CONTROL PROCEDURES AND INSPECTION/1425. Further provisions relating to the installation and use of recording equipment.

#### **1425. Further provisions relating to the installation and use of recording equipment.**

If an employed driver<sup>1</sup> of a vehicle to which the provisions relating to the installation and use of recording equipment<sup>2</sup> apply<sup>3</sup> fails: (1) without reasonable excuse to return any record sheet<sup>4</sup> which relates to him to his employer within 21 days of completing it<sup>5</sup>; or (2) where he has two or more employers by whom he is employed as a driver of such a vehicle, to notify each of them of the name and address of the other or others of them<sup>6</sup>, he is liable on summary conviction to a fine<sup>7</sup>.

If the employer<sup>8</sup> of drivers of a vehicle to which the provisions relating to the installation and use of recording equipment apply<sup>9</sup> fails without reasonable excuse to secure that they comply with head (1) above, he is liable on summary conviction to a fine<sup>10</sup>.

A person who, with intent to deceive, forges<sup>11</sup>, alters or uses any seal on recording equipment installed in, or designed for installation in, a vehicle to which the provisions relating to the installation and use of recording equipment<sup>12</sup> applies<sup>13</sup>, is guilty of an offence<sup>14</sup>.

1 For the meaning of 'driver' see PARA 1380 ante.

2 Ie the Transport Act 1968 s 97 (as substituted and amended): see PARA 1424 ante. For the meaning of 'recording equipment' see PARA 1414 note 1 ante.

3 As to the application of ibid s 97 (as substituted and amended) see PARA 1424 note 1 ante.

4 For the meaning of 'record sheet' see PARA 1414 note 7 ante.

5 Transport Act 1968 s 97A(1)(a) (s 97A added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 2(1)).

Where a driver of a vehicle to which the Transport Act 1968 s 97 (as substituted and amended) applies has two or more employers by whom he is employed as a driver of such a vehicle, s 97A(1)(a) (as added) and s 97A(2) (as added and amended) (see the text and notes 8-10 infra) apply as if any reference to his employer, or any reference which is to be construed as such a reference, were a reference to such of those employers as was the first to employ him in that capacity: s 97A(3) (as so added; and amended by the Community Drivers' Hours and Recording Equipment Regulations 1986, SI 1986/1457, reg 3(3)).

6 Transport Act 1968 s 97A(1)(b) (as added (see note 5 supra); and amended by the Community Drivers' Hours and Recording Equipment Regulations 1986, SI 1986/1457, reg 3(3)).

7 Transport Act 1968 s 97A(1) (as added (see note 5 supra); and amended by the Community Drivers' Hours and Recording Equipment Regulations 1986, SI 1986/1457, reg 3(3)). The fine must not exceed level 4 on the standard scale: Transport Act 1968 s 97A(1) (as so added and amended; and further amended by virtue of the



Criminal Justice Act 1982 ss 37, 39(2), 46, Sch 3). As to the standard scale see PARA 230 note 3 ante. As to where an offence may be treated as having been committed see PARA 1393 note 5 ante.

8 For the meaning of 'employer' see PARA 1389 note 18 ante.

9 See note 3 supra.

10 Transport Act 1968 s 97A(2) (as added (see note 5 supra); and amended by the Community Drivers' Hours and Recording Equipment Regulations 1986, SI 1986/1457, reg 3(3)). The fine must not exceed level 4 on the standard scale: Transport Act 1968 s 97A(2) (as so added and amended; and further amended by virtue of the Criminal Justice Act 1982 ss 37, 39(2), 46, Sch 3).

11 In the application of the Transport Act 1968 s 97AA (as added) to England and Wales, a person 'forges' a seal if he makes a false seal in order that it may be used as genuine: s 97AA(3) (s 97AA added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1989, SI 1989/2121, reg 3).

12 See note 2 supra.

13 See note 3 supra.

14 Transport Act 1968 s 97AA(1) (as added: see note 11 supra). A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to a fine not exceeding the statutory maximum: s 97AA(2) (as so added). As to the statutory maximum see PARA 359 note 11 ante. As to seals on recording equipment see EEC Council Regulation 3821/85 (OJ L370, 31.12.85, p 8) on recording equipment in road transport, Annex I Ch V para 4 (as amended) and Annex IB Ch V para 3 (as added and substituted); and PARA 1411 note 7 ante.

## **UPDATE**

### **1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

### **1425 Further provisions relating to the installation and use of recording equipment**

TEXT AND NOTES 1-10--Transport Act 1968 s 97A repealed: SI 2008/198. If a record sheet or manual records and printouts made in accordance with the Community Recording Equipment Regulation (see PARA 660) relate to a person in his capacity as the driver of a vehicle to which the Transport Act 1968 s 97 applies, he must before the end of the delivery period deliver the document to the transport undertaking to whose orders he was subject in driving the vehicle: s 97C(1), (2) (ss 97C-97H added, s 103(1) amended by SI 2008/198). The delivery period is the period of 42 days starting on the day after the latest date to which the document relates: Transport Act 1968 s 97C(3). A person who without reasonable excuse fails to comply with the requirement to deliver a document is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 97C(4). If a transport undertaking fails without reasonable excuse to secure that each driver subject to its orders complies with the requirement to deliver a document, in respect of documents relating to him in his capacity as such a driver, it is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 97C(5). If a person is subject to the orders of two or more transport undertakings in driving a vehicle during a period to which a document relates (1) the requirement to deliver a document has effect as if it were a requirement to deliver that document to the undertaking to whose orders he was first subject in driving the vehicle during that period; (2) the transport undertaking's obligation, in relation to that document, applies only to the undertaking to whose orders he was first subject in driving the vehicle during that period: s 97C(6). 'Transport undertaking' has the meaning given in the

Community Drivers' Hours Regulation (see PARA 1398): Transport Act 1968 s 103(1). Provision is also made requiring transport undertakings to download data held electronically on a vehicle unit and a driver card before the expiration of specific periods according to the data concerned (ss 97D, 97E), and requiring transport undertakings to download data held electronically on a vehicle unit or driver card where required by an enforcement officer (s 97F). Failure to comply with ss 97D-97F is an offence: see s 97G. Data which has been downloaded must be made accessible to enforcement officers: see s 97H.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (7) CONTROL PROCEDURES AND INSPECTION/1426. Inspection of records and documents, vehicles and equipment.

#### **1426. Inspection of records and documents, vehicles and equipment.**

An officer<sup>1</sup>, on production if so required of his authority, may require any person to produce, and permit him to inspect and copy<sup>2</sup>:

- 2252 (1) any book or register which that person is required by regulations<sup>3</sup> to carry or have in his possession for the purpose of making in it any entry required by those regulations or which is so required to be carried on any vehicle of which he is the driver<sup>4</sup>;
- 2253 (2) any book or register which that person is required by regulations<sup>5</sup> to preserve<sup>6</sup>;
- 2254 (3) if that person is the owner of a vehicle to which the provisions relating to drivers' hours apply<sup>7</sup>, any other document of that person which the officer may reasonably require to inspect for the purpose of ascertaining whether those provisions or regulations made under them have been complied with<sup>8</sup>.

That book, register or document must, if the officer so requires by notice in writing served on that person, be produced at the office of the traffic commissioner specified in the notice within a specified time, not being less than ten days, from the service of the notice<sup>9</sup>.

An officer may also, on production if so required of his authority: (a) at any time, enter any vehicle to which the provisions relating to drivers' hours applies<sup>10</sup> and inspect that vehicle and any recording equipment<sup>11</sup> installed in it, and inspect and copy any record sheet on the vehicle on which a record has been produced by means of the equipment or an entry has been made<sup>12</sup>; (b) at any time which is reasonable having regard to the circumstances of the case, enter any premises on which he has reason to believe that such a vehicle is kept or that any such record sheets, books, registers or other documents<sup>13</sup> are to be found, and inspect any such vehicle, and inspect and copy any such record sheet, register or document, which he finds there<sup>14</sup>.

Any person who fails to comply with any requirement under the provisions relating to inspection of records and other documents<sup>15</sup>, or who obstructs an officer in the exercise of his powers as to inspection and detention<sup>16</sup>, is liable on summary conviction to a fine<sup>17</sup>.

Any person who makes, or causes to be made, any entry in a book, register or document kept or carried for the purposes of regulations under the statutory provisions relating to written records<sup>18</sup> which he knows to be false or who, with intent to deceive, alters or causes to be altered any such record or entry is liable<sup>19</sup> on summary conviction to a fine<sup>20</sup>, and on conviction on indictment to imprisonment<sup>21</sup>. If an officer has reason to believe that such an offence has been committed in respect of any record or document so inspected by him, he may seize that

record or document<sup>22</sup>. Where a record or document is so seized, and within six months of the date on which it was seized no person has been charged since that date with such an offence in relation to that record or document and the record or document has not been returned to the person from whom it was taken, a magistrate's court may, on an application made for the purpose by that person or by an officer, make such order respecting the disposal of the record or document, and award such costs, as the justice of the case may require<sup>23</sup>.

1 For the purposes of the Transport Act 1968 Pt VI (ss 95-103) (as amended), 'officer' means an examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 ante), and any person authorised by the traffic commissioner for any area: Transport Act 1968 s 99(8) (amended by the Transport Act 1985 s 3(5), Sch 2 para 1(4); the Road Traffic Act 1991 s 48, Sch 4 para 2; and the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 5(1), (5)). Such powers may also be exercised by a police constable, who is not, if wearing uniform, required to produce any authority: Transport Act 1968 s 99(9) (amended by the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 5(6)). As to traffic commissioners see PARA 1139 ante. As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

2 For these purposes, references to the inspection and copying of any record produced by means of recording equipment installed in a vehicle include references to the application to the record of any process for eliciting information recorded by it and to taking down the information elicited from it: Transport Act 1968 s 99(10) (amended by the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 5(7)). Records may be removed for the purposes of copying and inspection and refusal to allow such removal constitutes an offence: *Cantabrica Coach Holdings Ltd v Vehicle Inspectorate* [2001] UKHL 60, [2002] 1 All ER 595.

3 The regulations under the Transport Act 1968 s 98 (as amended): see PARA 1418 ante. As to the regulations see the Drivers' Hours (Goods Vehicles) (Keeping of Records) Regulations 1987, SI 1987/1421; and PARAS 1419-1420 ante.

4 Transport Act 1968 s 99(1)(a). For the purpose of exercising his powers under s 99(2)(a) (as substituted) (see the text and note 12 infra) and (in respect of a document carried on, or by the driver of, a vehicle) his powers under s 99(1)(a), the officer may detain the vehicle for such time as is required for the exercise of that power: s 99(3) (amended by the European Communities Act 1972 s 4(1), Sch 4 para 9(2); and the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 5(3)).

5 See note 3 supra.

6 Transport Act 1968 s 99(1)(b) (amended by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 3(3)).

7 The Transport Act 1968 Pt VI (as amended). As to vehicles to which Pt VI (as amended) applies see PARA 1380 ante.

8 Ibid s 99(1)(c).

9 Ibid s 99(1) (amended by the Transport Act 1985 s 3(5), Sch 2 Pt II; the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 3; and the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 5(2)). The provisions of the Transport Act 1968 s 99(1)-(6), (10) do not apply in respect of vehicles to which s 97 (as substituted and amended) applies (see PARA 1424 ante): s 99(11) (added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 5(8)). See further the Transport Act 1968 ss 99ZA-99ZF, 99A (all as added), which make further provision for enforcement; and PARA 1427 et seq post.

10 See note 7 supra.

11 For the meaning of 'recording equipment' see PARA 1414 note 1 ante.

12 Transport Act 1968 s 99(2)(a) (substituted by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 3). As to the detention of vehicles for these purposes see note 4 supra.

13 The documents mentioned in the Transport Act 1968 s 99(1) (as amended): see the text and notes 1-9 supra.

14 Ibid s 99(2)(b) (amended by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 3).

15 le under the Transport Act 1968 s 99(1) (as amended): see the text and notes 1-9 supra.

16 le under ibid s 99(2) (as amended) (see the text and notes 10-14 supra) or s 99(3) (as amended) (see note 4 supra).

17 Ibid s 99(4). The fine must not exceed level 3 on the standard scale: s 99(4) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 230 note 3 ante. As to where an offence may be treated as having been committed see PARA 1393 note 5 ante. A person is not liable to be convicted under the Transport Act 1968 s 99(4) (as amended) by reason of failing to comply with any requirement under s 99(1)(a) or (b) (as amended) if he proves to the court that, if the vehicle in question had been such a vehicle as is mentioned in s 98(2A) (as added) (see PARA 1414 ante), there would have been no contravention of the provisions of Pt VI (as amended) so far as they relate to the use of such vehicles: s 99(4A) (added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 3).

18 le under the Transport Act 1968 s 98 (as amended): see PARA 1418 ante.

19 Ibid s 99(5) (amended by the European Communities Act 1972 s 4, Sch 4 para 9(2); the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 s 2(1); the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 3; and the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 5(4)). In relation to a charge of aiding and abetting this offence it would be sufficient to show that the defendant transport company knew of the offences by its drivers and took no steps to prevent them: see *R v JF Alford Transport Ltd* [1999] 2 Cr App Rep 326, [1999] RTR 51, CA.

20 Transport Act 1968 s 99(5)(a). The fine must not exceed the prescribed sum: see s 99(5)(a) (amended by virtue of the Magistrates' Court Act 1980 s 32(2)). As to the prescribed sum see PARA 359 note 11 ante.

21 Transport Act 1968 s 99(5)(b). The term of imprisonment must not exceed two years: see s 99(5)(b). A substantial custodial sentence is appropriate where a person has been falsifying documents and thereby putting the public in danger for a significant period: *R v Saunders* [2001] EWCA Crim 93, [2001] 2 Cr App Rep (S) 301.

22 Transport Act 1968 s 99(6).

23 Ibid s 99(6).

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

### 1426 Inspection of records and documents, vehicles and equipment

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (7) CONTROL PROCEDURES AND INSPECTION/1427. Inspection of records and other documents and data relating to recording equipment.

### 1427. Inspection of records and other documents and data relating to recording equipment.

An officer<sup>1</sup> may, on production if so required of his authority, require any person to produce, and permit him to inspect, remove, retain<sup>2</sup> and copy<sup>3</sup>:

- 2255 (1) if that person is the owner of a vehicle to which the provisions relating to the installation and use of recording equipment apply<sup>4</sup>, any document of that person which the officer may reasonably require to inspect for the purpose of ascertaining whether the provisions relating to drivers hours<sup>5</sup> have been complied with;
- 2256 (2) any record sheet or hard copy of electronically stored data which that person is required by the Community Recording Equipment Regulation to retain or to be able to produce;
- 2257 (3) any book, register or other document required by the applicable Community rules or which the officer may reasonably require to inspect for the purpose of ascertaining whether the requirements of the applicable Community rules have been complied with<sup>6</sup>.

An officer may, on production if so required of his authority, require any person to produce and permit him to inspect any driver card which that person is required by the Community Recording Equipment Regulation<sup>7</sup> to be able to produce, and to permit the officer to copy the data stored on the driver card, and to remove temporarily the driver card for the purpose of doing so, and to remove and retain the copy<sup>8</sup>.

If the officer so requires by notice in writing, anything that a person is required to produce under the above provisions must, instead of being produced when the requirement under those provisions is imposed, be produced at an address specified in the notice, within such time, not being less than ten days, from the service of the notice as is so specified<sup>9</sup>.

A person commits an offence if he fails without reasonable excuse to comply with any requirement imposed on him by an officer under the above provisions<sup>10</sup>, or obstructs an officer in the exercise of his powers<sup>11</sup>.

1 For the meaning of 'officer' see PARA 1426 note 1 ante.

2 Any record sheet, book, register, other document or any electronic copy of data that is retained by an officer under the Transport Act 1968 s 99ZA (as added) may only be retained for six months, and, if it is required as evidence in any proceedings, any further period during which it is so required: s 99ZC(2) (ss 99ZA, 99ZC, 99ZD added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 6).

3 Where an officer makes any hard copy of data stored on a driver card or on recording equipment under the Transport Act 1968 s 99ZA (as added) he may require a person to sign the hard copy (if necessary with manual corrections) to confirm that it is a true and complete record of his activities during the period covered by it: s 99ZC(1) (as added: see note 2 supra). In the Transport Act 1968 Pt VI (ss 95-103) (as amended), any reference to copying data stored on a driver card or on digital recording equipment includes a reference to making a hard copy or an electronic copy of the data (and any reference to copies of data is to be construed accordingly): s 99ZA(5) (as so added). 'Digital recording equipment' means recording equipment that complies with the Community Recording Equipment Regulation Annex IB (as added, substituted and amended); 'driver card' has the meaning given in that Annex; 'electronic copy' of data means a copy of data stored electronically together with the data's digital signature (within the meaning of that Annex); and 'hard copy' in relation to data stored electronically means a printed out version of the data: Transport Act 1968 s 99ZA(6) (as so added). For the meaning of 'Community Recording Equipment Regulation' see PARA 1414 note 1 ante.

4 In the Transport Act 1968 s 97 (as substituted and amended): see PARA 1424 ante.

5 In ibid Pt VI (as amended).

6 Ibid s 99ZA(1) (as added: see note 2 supra). For the meaning of 'the applicable Community rules' see PARA 1380 note 1 ante. In s 99ZA (as added), references to the inspection and copying of any record produced by means of equipment in or on a vehicle include references to the application to the record of any process for

eliciting the information recorded by it and to taking down the information elicited from it: s 99ZC(3) (as so added).

7 le by the Community Recording Equipment Regulation art 15(7).

8 Transport Act 1968 s 99ZA(2) (as added: see note 2 supra).

9 Ibid s 99ZA(3) (as added: see note 2 supra). Where a notice is served under s 99ZA(3) (as added), the officer may exercise his powers under s 99ZA (as added) at the place specified in the notice: s 99ZA(4) (as so added).

10 le under ibid ss 99ZA, 99ZC (both as added).

11 Ibid s 99ZD(1) (as added: see note 2 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 99ZD(2) (as so added). As to the standard scale see PARA 230 note 3 ante.

## UPDATE

### 1380-1430 Passenger and Goods Vehicles Drivers' Hours

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (7) CONTROL PROCEDURES AND INSPECTION/1428. Power of entry.

#### 1428. Power of entry.

An officer may, on production if so required of his authority, at any time enter any vehicle to which the provisions relating to the installation and use of recording equipment apply<sup>1</sup> in order to inspect that vehicle and any recording equipment in or on it<sup>2</sup>. Where any officer enters any vehicle under the above provision he may:

- 2258 (1) inspect, remove, retain<sup>3</sup> and copy any record sheet that he finds there on which a record has been produced by means of analogue recording equipment<sup>4</sup> or on which an entry has been made;
- 2259 (2) inspect, remove, retain and copy any hard copy of data that he finds there which was stored on any digital recording equipment or on a driver card<sup>5</sup>;
- 2260 (3) inspect, remove, retain and copy any other document that he finds there which the officer may reasonably require to inspect for the purpose of ascertaining whether the requirements of the applicable Community rules<sup>6</sup> have been complied with;
- 2261 (4) inspect any driver card that he finds there, copy the data stored on it (using any digital recording equipment in or on the vehicle<sup>7</sup> or temporarily removing the driver card for the purpose of copying the data) and remove and retain the copy;
- 2262 (5) copy data stored on any digital recording equipment that is in or on the vehicle and remove and retain that copy;
- 2263 (6) inspect any recording equipment that is in or on the vehicle and, if necessary for the purposes of the inspection, remove it from the vehicle;

- 2264 (7) retain the recording equipment as evidence if he finds that it has been interfered with;
- 2265 (8) inspect the vehicle for the purpose of ascertaining whether there is in or on the vehicle any device which is capable of interfering with the proper operation of any recording equipment in or on the vehicle;
- 2266 (9) inspect anything in or on the vehicle which he believes is such a device and, if necessary for the purpose of the inspection, remove it from the vehicle;
- 2267 (10) retain the device as evidence if he finds that it is capable of interfering with the proper operation of the recording equipment<sup>8</sup>.

Where any officer who is an examiner appointed under the Road Traffic Act 1988<sup>9</sup>, or any constable, enters any vehicle he may, if he has reason to believe that any recording equipment in or on the vehicle has been interfered with so as to affect its proper operation or that there is in or on the vehicle any device which is capable of interfering with the proper operation of any recording equipment in or on the vehicle, require the driver or operator of the vehicle to take it to an address specified by the officer or constable for the purposes of enabling an inspection of the recording equipment, the vehicle or any device in or on it to be carried out<sup>10</sup>.

An officer may, on production if so required of his authority, at any time which is reasonable having regard to the circumstances of the case, enter any premises on which he has reason to believe that: (a) a vehicle to which the provisions relating to the installation and use of recording equipment apply is kept; (b) any document relating to recording equipment<sup>11</sup> is to be found; (c) any driver card or copy of data previously stored on a driver card or on recording equipment is to be found; or (d) any digital recording equipment is to be found<sup>12</sup>. Where any officer enters any premises under this power he may:

- 2268 (i) inspect any vehicle which he finds there and which is subject to the provisions relating to the installation and use of recording equipment;
- 2269 (ii) inspect, remove, retain and copy any document relating to recording equipment<sup>13</sup> that he finds there;
- 2270 (iii) make a copy of any such copy of data as is mentioned in head (c) above that he finds there, and remove and retain the copies he makes;
- 2271 (iv) inspect any driver card that he finds there, copy the data stored on it (using any digital recording equipment on the premises or temporarily removing the driver card for the purpose of copying the data) and remove and retain the copy;
- 2272 (v) copy data stored on any digital recording equipment that he finds there and remove and retain that copy;
- 2273 (vi) inspect any recording equipment that he finds there and, if necessary for the purposes of inspection, remove it from the premises;
- 2274 (vii) retain any such recording equipment as evidence if he finds that it has been interfered with;
- 2275 (viii) inspect anything that he finds there which he believes is a device capable of interfering with the proper operation of any recording equipment and, if necessary for the purpose of the inspection, remove it from the premises;
- 2276 (ix) retain any such device as evidence if he finds that it is capable of interfering with the proper operation of recording equipment<sup>14</sup>.

A person commits an offence if he fails without reasonable excuse to comply with any requirement imposed on him by an officer under any of the above provisions<sup>15</sup> or obstructs an officer in the exercise of his powers<sup>16</sup>.

1    le the Transport Act 1968 s 97 (as substituted and amended): see PARA 1424 ante.

2 Ibid s 99ZB(1) (ss 99ZB, 99ZC, 99ZD added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 6). For the meaning of 'officer' see PARA 1426 note 1 ante.

3 Any record sheet, book, register, other document or any electronic copy of data that is retained by an officer under the Transport Act 1968 s 99ZB (as added) may only be retained for six months, and, if it is required as evidence in any proceedings, any further period during which it is so required: s 99ZC(2) (as added: see note 2 supra).

4 In ibid Pt VI (ss 95-103) (as amended), 'analogue recording equipment' means recording equipment that complies with the Community Recording Equipment Regulation Annex I (as amended): Transport Act 1968 s 99ZB(9) (as added: see note 2 supra). For the meaning of 'the Community Recording Equipment Regulation' see PARA 1414 note 1 ante.

5 Where an officer makes any hard copy of data stored on a driver card or on recording equipment under the Transport Act 1968 s 99ZB (as added), he may require a person to sign the hard copy (if necessary with manual corrections) to confirm that it is a true and complete record of his activities during the period covered by it: s 99ZC(1) (as added: see note 2 supra). As to the meaning of 'digital recording equipment' and 'driver card' see PARA 1427 note 3 ante.

6 For the meaning of 'the applicable Community rules' see PARA 1380 note 1 ante.

7 References to the inspection and copying of any record produced by means of equipment in or on a vehicle include references to the application to the record of any process for eliciting the information recorded by it and to taking down the information elicited from it: Transport Act 1968 s 99ZC(3) (as added: see note 2 supra).

8 Ibid s 99ZB(2) (as added: see note 2 supra). For the purposes of exercising any of his powers under s 99ZB (as added) in relation to a vehicle or anything found in or on a vehicle, or exercising any of his powers under s 99ZA(1) or (2) (as added) in respect of a document or driver card carried by the driver of a vehicle, an officer may detain the vehicle during such time as is required for the exercise of that power: s 99ZB(6) (as so added).

9 Ie under the Road Traffic Act 1988 s 66A (as added and amended): see PARA 698 ante.

10 Transport Act 1968 s 99ZB(3) (as added: see note 2 supra). If (1) at the time when a requirement is imposed under s 99ZB(3) (as added) the vehicle is more than five miles from the address specified by the officer or constable to which the vehicle is to be taken; and (2) the Community Recording Equipment Regulation is found not to have been contravened in relation to the recording equipment, the vehicle or any device in or on it, the relevant person must pay, in respect of loss occasioned, such amount as in default of agreement may be determined by a single arbitrator agreed upon by the parties or, in default of agreement, appointed by the Secretary of State: Transport Act 1968 s 99ZB(7) (as so added). For these purposes 'relevant person' means: (a) if the requirement was imposed by an examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 ante), the Secretary of State; and (b) if the requirement was imposed by a constable, the chief officer of police for the police area in which the requirement was imposed: s 99ZB(8) (as so added).

11 Ie any document mentioned in ibid s 99ZA(1) (as added): see PARA 1427 ante.

12 Ibid s 99ZB(4) (as added: see note 2 supra).

13 Ie any document mentioned in ibid s 99ZA(1) (as added): see PARA 1427 ante.

14 Ibid s 99ZB(5) (as added: see note 2 supra).

15 Ie under ibid s 99ZB (as added) or s 99ZC (as added).

16 Ibid s 99ZD(1) (as added: see note 2 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 99ZD(2) (as so added). As to the standard scale see PARA 230 note 3 ante.

## **UPDATE**

### **1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).



## 1428 Power of entry

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (7) CONTROL PROCEDURES AND INSPECTION/1429. Offences: false records and data.

## 1429. Offences: false records and data.

A person commits an offence:

- 2277 (1) if he makes, or causes or permits<sup>1</sup> to be made, a relevant record or entry<sup>2</sup> which he knows to be false;
- 2278 (2) if, with intent to deceive, he alters, or causes or permits to be altered, a relevant record or entry;
- 2279 (3) if he destroys or suppresses, or causes or permits to be destroyed or suppressed, a relevant record or entry; or
- 2280 (4) if he fails without reasonable excuse to make a relevant record or entry, or causes or permits such a failure<sup>3</sup>.

A person also commits an offence:

- 2281 (a) if he records or causes or permits to be recorded any data which he knows to be false on recording equipment or on a driver card<sup>4</sup>;
- 2282 (b) if he records or causes or permits to be recorded any data which he knows to be false on any hard copy<sup>5</sup> of data previously stored on recording equipment or on a driver card;
- 2283 (c) if, with intent to deceive, he alters, or causes or permits to be altered, any data stored on recording equipment or on a driver card or appearing on any copy of data previously so stored;
- 2284 (d) if, with intent to deceive, he produces anything falsely purporting to be a hard copy of data stored on recording equipment or on a driver card;
- 2285 (e) if he destroys or suppresses, or causes or permits to be destroyed or suppressed, any data stored in compliance with the requirements of the applicable Community rules on recording equipment or on a driver card; or
- 2286 (f) if he fails without reasonable excuse to record any data on recording equipment or on a driver card, or causes or permits such a failure<sup>6</sup>.

A person guilty of an offence under heads (1) to (4) or heads (a) to (f) above consisting otherwise than in permitting an act or omission is liable on summary conviction to a fine or on conviction on indictment to imprisonment or to a fine or to both<sup>7</sup>. A person guilty of such offences consisting in permitting an act or omission is liable on summary conviction to a fine<sup>8</sup>.

A person commits an offence if he produces, supplies or installs any device that is designed to interfere with the proper operation of any recording equipment, or that is designed to enable the falsification, alteration, destruction or suppression of data stored in compliance with

requirements of the applicable Community rules on any recording equipment or driver's card<sup>9</sup>. A person commits an offence if without reasonable excuse he provides information which would assist other persons in producing any such device<sup>10</sup>. A person guilty of either of these offences is liable on summary conviction to a fine<sup>11</sup>.

If an officer<sup>12</sup> has reason to believe that an offence under the above provisions<sup>13</sup> has been committed in respect of any document inspected by him<sup>14</sup>, he may seize that document<sup>15</sup>. Where a document is so seized, a magistrates' court must, on an application made for the purpose by that person or by an officer, make such order respecting the disposal of the document, and award such costs, as the justice of the case may require if within six months of the date on which it was seized no person has been charged since that date with an offence<sup>16</sup> in relation to that document, and the document has not been returned to the person from whom it was taken<sup>17</sup>.

1 For these purposes, a person is taken to permit an act or omission if he is, or ought reasonably to be, aware of the act or omission, or of it being a likelihood, and takes no steps to prevent it: Transport Act 1968 s 99ZE(10) (ss 99ZE, 99ZF added by the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 6).

2 For these purposes, a 'relevant record or entry' is: (1) any record or entry required to be made by or for the purposes of the Community Recording Equipment Regulation or the Transport Act 1968 s 97 (as substituted and amended) (see PARA 1424 ante); or (2) any entry in a book, register or document kept or carried for the purposes of the applicable Community rules: Transport Act 1968 s 99ZE(2) (as added: see note 1 supra). For the meaning of 'the Community Recording Equipment Regulation' see PARA 1414 note 1 ante. For the meaning of 'the applicable Community rules' see PARA 1380 note 1 ante.

3 Transport Act 1968 s 99ZE(1) (as added: see note 1 supra).

4 As to the meaning of 'driver card' see PARA 1427 note 3 ante.

5 As to the meaning of 'hard copy' see PARA 1427 note 3 ante.

6 Transport Act 1968 s 99ZE(3) (as added: see note 1 supra).

7 Ibid s 99ZE(4) (as added: see note 1 supra). Such a person is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both: see s 99ZE(4) (as so added). As to the statutory maximum see PARA 359 note 11 ante.

8 Ibid s 99ZE(5) (as added: see note 1 supra). Such a person is liable on summary conviction to a fine not exceeding level 5 on the standard scale: see s 99ZE(5) (as so added).

9 Ibid s 99ZE(6) (as added: see note 1 supra).

10 Ibid s 99ZE(7) (as added: see note 1 supra). A person is not liable to be convicted under s 99ZE(6), (7) (as added) if he proves to the court that he produced, supplied or installed the device, or provided information to assist a person in producing a device, for use in connection with the enforcement of the provisions of the Transport Act 1968 Pt VI (ss 95-103) (as amended): s 99ZE(8) (as so added).

11 Ibid s 99ZE(9) (as added: see note 1 supra). Such a person is liable on summary conviction to a fine not exceeding level 5 on the standard scale: see s 99ZE(9) (as so added).

12 For the meaning of 'officer' see PARA 1426 note 1 ante.

13 Ie under the Transport Act 1968 s 99ZE (as added).

14 Ie under ibid s 99ZA (as added) or s 99ZB (as added) (see PARAS 1427-1428 ante).

15 Ibid s 99ZF(1) (as added: see note 1 supra).

16 Ie under ibid s 99ZE (as added).

17 Ibid s 99ZF(2) (as added: see note 1 supra).

**UPDATE****1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

**1429 Offences: false records and data**

NOTE 3--The actus reus of the offence of permitting a driver to fail without reasonable excuse to make a record or entry can be proved by evidence of a systemic failure by the employer to perform its duties: *Vehicle and Operator Services Agency v Ace Crane and Transport Ltd* [2010] All ER (D) 107 (Jan), DC.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/14. PASSENGER AND GOODS VEHICLES DRIVERS' HOURS/ (7) CONTROL PROCEDURES AND INSPECTION/1430. Power to prohibit driving of vehicle.

**1430. Power to prohibit driving of vehicle.**

If (1) the driver of a UK vehicle<sup>1</sup> obstructs an authorised person<sup>2</sup> in the exercise of his powers<sup>3</sup> or fails to comply with any requirement made by an authorised person<sup>4</sup>; (2) it appears to an authorised person that, in relation to a UK vehicle or its driver, there has been a contravention of any of specified provisions<sup>5</sup>, or that there will be such a contravention if the vehicle is driven on a road; or (3) it appears to an authorised person that an offence<sup>6</sup> has been committed in respect of a UK vehicle or its driver, the authorised person may prohibit the driving of the vehicle on a road either for a specified period or without limitation of time<sup>7</sup>. Where an authorised person prohibits the driving of a vehicle under these provisions, he may also direct the driver to remove the vehicle (and, if it is a motor vehicle drawing a trailer, also to remove the trailer) to such place and subject to such conditions as are specified in the direction; and the prohibition will not apply to the removal of the vehicle in accordance with that direction<sup>8</sup>. On imposing a prohibition<sup>9</sup>, the authorised person must give notice in writing of the prohibition to the driver of the vehicle, specifying the circumstances (as mentioned in head (1), (2) or (3) above) in consequence of which the prohibition is imposed and stating whether it is imposed only for a specified period (and, if so, specifying the period) or without limitation of time<sup>10</sup>.

Subject to any exemption<sup>11</sup>, a prohibition<sup>12</sup> will come into force as soon as notice of it has been given<sup>13</sup> and will continue in force: (a) until it is removed<sup>14</sup>; or (b) in the case of a prohibition imposed for a specified period, until it is removed or that period expires, whichever first occurs<sup>15</sup>. Where notice of a prohibition has been given<sup>16</sup> in respect of a vehicle, an exemption in writing for the use of the vehicle in such manner, subject to such conditions and for such purposes as may be specified in the exemption may be granted by any authorised person<sup>17</sup>. A prohibition<sup>18</sup> may be removed by any authorised person, if he is satisfied that appropriate action has been taken to remove or remedy the circumstances (as mentioned in head (1), (2) or (3) above) in consequence of which the prohibition was imposed; and on doing so the authorised person must give notice in writing of the removal of the prohibition to the driver of the vehicle<sup>19</sup>.

Any person who: (i) drives a vehicle on a road in contravention of a prohibition<sup>20</sup>; (ii) causes or permits a vehicle to be driven on a road in contravention of such a prohibition; or (iii) refuses or

fails to comply within a reasonable time with a direction<sup>21</sup>, is guilty of an offence and liable on conviction to a fine<sup>22</sup>.

1 'UK vehicle' means a vehicle registered under the Vehicle Excise and Registration Act 1994: Transport Act 1968 s 99A(5) (s 99A added by the Transport Act 2000 s 266).

2 'Authorised person' means: (1) an examiner appointed by the Secretary of State under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 ante); or (2) a constable authorised to act for the purposes of the Transport Act 1968 s 99A (as added) by or on behalf of a chief officer of police: s 99A(5) (as added: see note 1 supra).

3 le under ibid s 99(2) or (3) (as amended) (see PARA 1426 ante) or s 99ZB (as added) (see PARA 1428 ante).

4 le under ibid s 99(1) (as amended) (see PARA 1426 ante) or under any of ss 99ZA-99ZC (as added) (see PARAS 1427-1428 ante).

5 le a contravention of any of the provisions of: (1) ibid ss 96-98 (as amended) and any orders or regulations under those provisions; or (2) the applicable Community rules. For the meaning of 'the applicable Community rules' see PARA 1380 note 1 ante.

6 le under the Transport Act 1968 s 99(5) (as amended) (see PARA 1426 ante) or s 99ZE (as added) (see PARA 1429 ante).

7 Ibid s 99A(1) (as added (see note 1 supra); and amended by the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 7).

As from a day to be appointed, the Road Safety Act 2006 s 11(3), Sch 4 makes provision about the immobilisation of vehicles the driving of which has been prohibited under the Transport Act 1968 s 99A(1) (as added and amended) and about their removal and disposal: s 99A(6) (added by the Road Safety Act 2006 s 12(1)). See PARAS 1127-1131 ante. At the date at which this volume states the law no such day had been appointed.

8 Transport Act 1968 s 99A(2) (as added: see note 1 supra). Any direction under s 99A(2) (as added) may be given: (1) in the notice under s 99A(3) (as added) (see the text and note 10 infra); or (2) in a separate notice in writing given to the driver of the vehicle: s 99A(4) (as so added)

9 le under ibid s 99A(1) (as added): see the text and notes 1-7 supra.

10 Ibid s 99A(3) (as added: see note 1 supra).

11 le granted under ibid s 99B(2) (as added): see text and notes 16-17 infra.

12 le under ibid s 99A(1) (as added): see the text and notes 1-7 supra.

13 le in accordance with ibid s 99A(3) (as added): see the text and notes 9-10 supra.

14 le under ibid s 99B(3) (as added): see text to notes 18-19 infra.

15 Ibid s 99B(1) (added by the Transport Act 2000 s 266).

16 le under the Transport Act 1968 s 99A(3) (as added): see the text and notes 9-10 supra.

17 Ibid s 99B(2) (as added: see note 15 supra). In s 99B (as added), 'authorised person' has the same meaning as in s 99A (as added) (see note 2 supra): s 99B(4) (as so added).

18 le under ibid s 99A(1) (as added): see the text and notes 1-7 supra.

19 Ibid s 99B(3) (as added: see note 15 supra).

20 le imposed under ibid s 99A(1) (as added): see the text and notes 1-7 supra.

21 le given under ibid s 99A(2) (as added): see the text and note 8 supra.

22 Ibid s 99C (added by the Transport Act 2000 s 266). Such a person is liable on summary conviction to a fine not exceeding level 5 on the standard scale: see the Transport Act 1968 s 99C (as so added). As to the standard scale see PARA 230 note 3 ante.

**UPDATE****1380-1430 Passenger and Goods Vehicles Drivers' Hours**

As to offences under the Transport Act 1968 Pt VI (ss 95-103) alleged to have been committed by partnerships and other unincorporated associations, and by bodies corporate etc, see ss 102B, 102C (added by SI 2008/198).

**1430 Power to prohibit driving of vehicle**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 7--Day appointed is 5 January 2009: SI 2008/3164.

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**15. TAXIS AND PRIVATE HIRE VEHICLES****(1) LEGISLATION****1431. In general.**

In England and Wales exclusive of the metropolitan police district and the City of London<sup>1</sup>, the principal statute relating to hackney carriages is the Town Police Clauses Act 1847<sup>2</sup>, which provides for the licensing and regulation of hackney carriages<sup>3</sup> (sometimes referred to in modern legislation as 'taxis'<sup>4</sup>) and their drivers. The law relating to hackney carriages is modified by the Local Government (Miscellaneous Provisions) Act 1976<sup>5</sup> in those areas in which that Act applies<sup>6</sup>. The Local Government (Miscellaneous Provisions) Act 1976<sup>7</sup> also provides for the licensing and regulation in such areas of private hire vehicles, their drivers and operators<sup>8</sup>.

In the metropolitan police district and the City of London a separate set of statutes applies to hackney carriages<sup>9</sup>, and the Private Hire Vehicles (London) Act 1998<sup>10</sup> provides for the licensing of private hire vehicles.

There are in addition certain statutory provisions which apply to taxis in all parts of England and Wales<sup>11</sup>.

1 As to the metropolitan police district see the London Government Act 1963 s 76 (as amended); and POLICE vol 36(1) (2007 Reissue) PARA 137. As to the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 31. The combined area of the metropolitan police district, the City of London, the Inner Temple and the Middle Temple is the same as the administrative area called Greater London: see ss 2(1), 76(1) (as amended); para 244 note 28 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29. As to taxis in London see PARA 1477 et seq post.

2 Ie the Town Police Clauses Act 1847 ss 37-68 (as amended): see PARA 1434 et seq post.

3 For the meaning of 'hackney carriage' see PARA 1434 post.

4 See eg the Transport Act 1980 s 64(1) (see PARA 1473 post), the Transport Act 1985 s 13(3) (see PARA 1495 post), and the Disability Discrimination Act 1995 s 32(5) (see DISCRIMINATION vol 13 (2007 Reissue) PARA 627).

5 le the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended): see PARA 1433 et seq post.

6 See PARA 1433 post.

7 le the Local Government (Miscellaneous Provisions) Act 1976 Pt II (as amended).

8 See PARA 1447 et seq post.

9 See PARAS 1477-1494 post.

10 See PARAS 1500-1530 post.

11 See PARAS 1495-1499 post.

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### **1432. Application of the Town Police Clauses Act 1847.**

The Town Police Clauses Act 1847 originally applied to towns and districts by incorporation in local Acts but has subsequently been extended to the whole of England and Wales outside the metropolitan police district by public general Acts<sup>1</sup>. The provisions of the Town Police Clauses Act 1847<sup>2</sup> relating to hackney carriages were applied to all urban sanitary districts by the Public Health Act 1875<sup>3</sup>. The Local Government Act 1972 provided that the relevant provisions of the Public Health Act 1875<sup>4</sup> should apply to those areas and only those areas to which they applied immediately before 1 April 1974<sup>5</sup>, but enabled a local authority after giving the requisite notice<sup>6</sup> to resolve that those provisions should apply throughout its area or should cease to apply throughout its area (whether or not, in either case, those provisions applied to only part of its area)<sup>7</sup>. The licensing of hackney carriages under the Town Police Clauses Act 1847 was extended to all areas of England and Wales outside the metropolitan police district and the City of London by the Transport Act 1985<sup>8</sup>. This provided that where, immediately before the commencement of the relevant provision of the Transport Act 1985<sup>9</sup>, the provisions of the Town Police Clauses Act 1847 with respect to hackney carriages and the Town Police Clauses Act 1889 (as incorporated in each case in the Public Health Act 1875) were not in force throughout the whole area of a district council in England and Wales whose area lay outside the area to which the Metropolitan Public Carriage Act 1869 applied<sup>10</sup>, those provisions (as so incorporated) were, if not in force in any part of the council's area, to apply throughout that area and, if in force in part only of its area, to apply also in the remainder of that area<sup>11</sup>.

Where the whole or any part of the area of a district council ceases to be within the metropolitan police district<sup>12</sup> certain provisions of the Greater London Authority Act 1999 are to have effect<sup>13</sup>. In such a case the provisions of the Town Police Clauses Act 1847 with respect to hackney carriages (as incorporated in the Public Health Act 1875) are to apply throughout the council's area<sup>14</sup>. The council's area constitutes a single licensing area for the purposes of those provisions, without the passing of any resolution under the relevant provision of the Local Government Act 1972<sup>15</sup>, and the provisions of the Local Government (Miscellaneous Provisions) Act 1976<sup>16</sup> apply throughout the council's area without the passing of any resolution under the relevant provisions of that Act<sup>17</sup>.

1 See the Town Police Clauses Act 1847 s 1. As to taxis in London see PARA 1477 et seq post.

2    Ie *ibid* Pt II (ss 37-68) (as amended).

3    See the Public Health Act 1875 s 5 (repealed), s 171(4) (amended by the Public Health Act 1936 s 346, Sch 3 Pt I; and the Fire Brigades Act 1938 s 30, Sch 3). Under the Local Government Act 1894 s 21(1) (repealed) urban sanitary authorities became urban district councils (and their districts were called urban districts), except where the area constituted a borough. Under the Local Government Act 1933 the relevant areas for hackney carriage licensing were county districts, which could either be urban districts or non-county boroughs, and county boroughs. In a few cases hackney carriage licensing was extended to rural districts by virtue of orders under the Public Health Act 1875 s 276 (repealed).

4    Ie the provisions of *ibid* s 171(4) (as amended): see the text and note 3 *supra*.

5    See the Local Government Act 1972 s 180(1), (2), (3)(a), Sch 14 paras 23, 24(b) (s 180(1) amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 35).

6    The notice which is requisite for a resolution under the Local Government Act 1972 Sch 14 para 25(1) is a notice:

1403 (1)    given by the local authority in question of its intention to pass the resolution given by the advertisement in two consecutive weeks in a local newspaper circulating in its area (Sch 14 para 25(5)(a)); and

1404 (2)    served, not later than the date on which the advertisement is first published, on the council of every parish or community whose area, or part of whose area, is affected by the resolution or, in the case of a parish so affected but not having a parish council (whether separate or common), on the chairman of the parish meeting (Sch 14 para 25(5)(b)).

7    See *ibid* Sch 14 para 25(1). A resolution disapplying the Public Health Act 1875 s 171(4) (as amended) had to be passed before 1 April 1975: Local Government Act 1972 Sch 14 para 25(2)(a). A resolution under Sch 14 para 25 applying or disapplying the Public Health Act 1875 s 171(4) throughout an area is not to have effect unless approved by the Secretary of State: Local Government Act 1972 Sch 14 para 25(4). See further the Department of Transport Circular 8/86 (17 November 1986) and Advice Notes issued by the Department of Transport (May 1997) and the Welsh Office (February 1998). As to the Secretary of State see PARA 236 *ante*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 *ante*.

8    See the Transport Act 1985 s 15; and the text and note 11 *infra*.

9    Ie *ibid* s 15.

10   The Metropolitan Public Carriage Act 1869 applies to the area of the metropolitan police district and the City of London: see s 2 (as amended); and PARA 1477 *post*.

11   See the Transport Act 1985 s 15(1). Where part only of a district council's area lies outside the area to which the Metropolitan Public Carriage Act 1869 applies, that part is, for the purposes of the Transport Act 1985 s 15(1), to be treated as being the council's area: s 15(2). So much of any local Act as enabled a district council to bring to an end the application of the provisions mentioned in s 15(1) to the whole or any part of its area ceases to have effect: s 15(3). See also the Department of Transport Circular 8/86 (17 November 1986) and Advice Notes issued by the Department of Transport (May 1997) and the Welsh Office (February 1998).

12   Ie by virtue of the coming into force of the Greater London Authority Act 1999 s 323: see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 580; POLICE vol 36(1) (2007 Reissue) PARA 137.

13   See *ibid* s 255(1). The reference in the text to certain provisions of the Greater London Authority Act 1999 is to those contained in s 255(2)-(7). Power to make transitional provisions by order is conferred by s 255(5)-(7). As to the order that has been made see the Greater London Authority Act 1999 (Hackney Carriages and Private Hire Vehicles) (Transitional and Consequential Provisions) Order 2000, SI 2000/412.

14   Greater London Authority Act 1999 s 255(2).

15   Ibid s 255(3). The reference in the text to the passing of a resolution under the relevant provisions of the Local Government Act 1972 is to a resolution under Sch 14 Pt II (as amended): see notes 4-7 *supra*.

16   Ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 *post*.

17 Greater London Authority Act 1999 s 255(4). The reference in the text to the passing of a resolution under the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1976 is to a resolution under s 45: see PARA 1433 post. As to the application of the Local Government (Miscellaneous Provisions) Act 1976 see PARA 1433 post.

## UPDATE

### 1432 Application of the Town Police Clauses Act 1847

NOTE 7--Local Government Act 1972 Sch 14 para 25(1) amended, Sch 14 para 25(4) repealed: SI 2008/2840.

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### 1433. Application of Part II of the Local Government (Miscellaneous Provisions) Act 1976.

The provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>1</sup>, with one exception<sup>2</sup>, come into force in an area in accordance with the following provisions<sup>3</sup>. If the Town Police Clauses Act 1847<sup>4</sup> is in force in the area of a district council<sup>5</sup>, the council may resolve that the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1976<sup>6</sup>, with one exception<sup>7</sup>, are to apply to the relevant area<sup>8</sup>, and if the council does so resolve, those provisions come into force in the relevant area on the day specified in that behalf in the resolution (which must not be before the expiration of the period of one month beginning with the day on which the resolution is passed)<sup>9</sup>.

A council must not pass such a resolution<sup>10</sup> unless it has published in two consecutive weeks, in a local newspaper circulating in its area, notice of its intention to pass the resolution<sup>11</sup> and served a copy of the notice, not later than the date on which it is so first published, on the council of each parish or community which would be affected by the resolution or, in the case of such a parish which has no parish council, on the chairman of the parish meeting<sup>12</sup>. If after a council has passed such a resolution<sup>13</sup> the Town Police Clauses Act 1847 comes into force for any part of the area of the council for which it was not in force when the council passed the resolution, the council may pass a resolution<sup>14</sup> in respect of that part as if that part were included in the relevant area for the above purposes<sup>15</sup>.

Part II of the Local Government (Miscellaneous Provisions) Act 1976 was also brought into force in districts which ceased, in whole or in part, to be within the metropolitan police district by virtue of the operation of the Greater London Authority Act 1999<sup>16</sup>.

1    Ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended).

2    Ie *ibid* s 45.

3    Ibid s 45(1).

4    As to the application of the Town Police Clauses Act 1847 see PARA 1432 ante.

5    In the Local Government (Miscellaneous Provisions) Act 1976 Pt II (as amended), except where the context otherwise requires, references to a district council, in relation to Wales, are to be construed as references to a county council or county borough council: s 80(4) (added by the Local Government Reorganisation (Wales)



(Consequential Amendments No 3) Order 1996, SI 1996/3071, art 2, Schedule para 1(8)). See further LOCAL GOVERNMENT vol 69 (2009) PARAS 18, 37 et seq.

6    Ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (as amended).

7    Ie *ibid* s 45.

8    For these purposes, 'the relevant area', in relation to a council, means: (1) if the Town Police Clauses Act 1847 is in force throughout the area of the council, that area (Local Government (Miscellaneous Provisions) Act 1976 s 45(2)(a)); and (2) if the Town Police Clauses Act 1847 is in force for part only of the area of the council, that part of that area (Local Government (Miscellaneous Provisions) Act 1976 s 45(2)(b)).

9    Ibid s 45(2).

10   Ie in pursuance of *ibid* s 45(2): see the text and notes 4-9 *supra*.

11   Ibid s 45(3)(a).

12   Ibid s 45(3)(b).

13   Ie in pursuance of *ibid* s 45(2): see the text and notes 4-9 *supra*.

14   Ie in accordance with *ibid* s 45(1)-(3): see the text and notes 1-12 *supra*.

15   Ibid s 45(4). The purposes referred to in the text are those of s 45(2): see the text and notes 4-9 *supra*.

16   See PARA 1432 text and notes 12-17 *ante*. As to taxis in London see PARA 1477 *et seq post*.

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## **(2) TAXIS OUTSIDE LONDON**

### **1434. Meaning of 'hackney carriage'.**

For the purposes of the Town Police Clauses Act 1847, 'hackney carriage'<sup>1</sup> does not include a stage coach used for the purpose of standing or plying for passengers to be carried for hire at separate fares<sup>2</sup>. With this exception it includes every wheeled carriage, whatever may be its form or construction, used in standing or plying for hire<sup>3</sup> in any street<sup>4</sup> within the prescribed distance<sup>5</sup> and every carriage standing upon any street within the prescribed distance, and having on it any numbered plate required<sup>6</sup> to be fixed upon a hackney carriage or any plate resembling or intended to resemble such a plate<sup>7</sup>.

In the Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>8</sup>, unless the subject or the context otherwise requires, 'hackney carriage' has the same meaning as in the Town Police Clauses Act 1847<sup>9</sup>.

1    Apart from any statutory definition, 'hackney carriage' means a carriage exposed for hire to the public, whether standing in the public street or a private yard: *Bateson v Oddy* (1874) 38 JP 598, DC. The name is derived from an old French word denoting an ambling horse or mare: Oxford English Dictionary.

2    See the Town Police Clauses Act 1847 s 38 proviso. See also *R v Cambridge City Council, ex p Lane* (1998) 96 LGR 817, [1999] RTR 182, CA.

3    A licensed hackney carriage is nonetheless 'used in standing or plying for hire' even though at the time it is employed otherwise: *Hawkins v Edwards* [1901] 2 KB 169, DC; *Yates v Gates* [1970] 2 QB 27, [1970] 1 All ER 754, DC. A carriage plies for hire even though the driver only asks for voluntary contributions from passengers:

*Cocks v Mayner* (1893) 58 JP 104, DC. In the absence of touting, a specially engaged carriage which is not exhibited outside the proprietor's premises does not ply for hire: *Cavill v Amos* (1900) 64 JP 309, DC; *Cogley v Sherwood* [1959] 2 QB 311, [1959] 2 All ER 313, DC. As to unattended vehicles see *Vant v Cripps* (1963) 62 LGR 88, DC. An unlicensed private hire vehicle ought to have been found to be plying for hire when waiting beside a hackney carriage stand: *Pettigrew v Barry* (1984) Times, 12 July. When the driver of a marked licensed private hire vehicle agreed to carry two persons who had enquired as to his availability to do so, the vehicle was held to be plying for hire: *Nottingham City Council v Woodings* [1994] RTR 72, DC. As to taxis in London see PARAS 1477-1494 post.

4 'Street' includes any road, square, court, alley, thoroughfare or public passage: Town Police Clauses Act 1847 s 3. However, subject to what follows, it does not include a roadway to a station which is owned by the railway or other private property: *Case v Storey* (1869) LR 4 Exch 319; *Curtis v Embery* (1872) LR 7 Exch 369; *Skinner v Usher* (1872) LR 7 QB 423, DC; *Jones v Short* (1900) 64 JP 247, DC. See, however, *Eastbourne Borough Council v Stirling* [2001] RTR 65, DC ('plying for hire in any street' included a situation in which a private hire vehicle was in a prominent position just off the street and the public were in numbers on the street); *Marks v Ford* (1880) 45 JP 157, DC. In the area within which the provisions of the Town Police Clauses Act 1847 with respect to hackney carriages are in force (see PARA 1432 ante), those provisions and any byelaws of the local authority are as fully applicable in all respects to hackney carriages standing or plying for hire at any railway station or railway premises within such area as if such railway station or railway premises were a stand for hackney carriages or a street: Public Health Act 1925 s 76. However, the provisions of s 76 do not apply to any vehicles belonging to or used by any railway company for the purpose of carrying passengers and their luggage to or from any of its railway stations or railway premises, or to the driver or conductor of such vehicle: s 76 proviso (a). Nothing in s 76 empowers the local authority to fix the site of the stand or starting place of any hackney carriage in any railway station or railway premises, except with the consent of that company: s 76 proviso (b). Section 76 extends the provisions of the Town Police Clauses Act 1847 to railway property and does not give a right to ply for hire without the permission necessary under railway byelaws: see *Hulin v Cook* [1977] RTR 345, DC.

Apart from the qualifying words 'in any street', a carriage may be said to ply for hire if it stands ready to take up passengers on private property: *Clarke and Goodge v Stanford* (1871) LR 6 QB 357, DC; *Allen v Tunbridge* (1871) LR 6 CP 481; *Bateson v Oddy* (1874) 38 JP 598, DC; *Foinett v Clark* (1877) 41 JP 359, DC; *Birmingham and Midland Motor Omnibus Co v Thompson* [1918] 2 KB 105, DC; *White v Cubitt* [1930] 1 KB 443, DC. The vehicle must, however, be exhibited to the public as available for hire: *Cogley v Sherwood* [1959] 2 QB 311, [1959] 2 All ER 313, DC; *Vant v Cripps* (1963) 62 LGR 88, DC.

5 The 'prescribed distance' is either the area of the local authority or, if the area is divided into hackney carriage zones, the zone for which the hackney carriage is licensed: see PARA 1432 ante; and the Department of Transport Circular 8/86 (17 November 1986) and Advice Notes issued by the Department of Transport (May 1997) and the Welsh Office (February 1998). As to the concept of hackney carriage zones see the Circular and the Advice Notes.

6 Ie by the Town Police Clauses Act 1847 or the special Act. The expression 'special Act' is construed to mean any Act which is passed for the improvement or regulation of any town or district defined or comprised in it and with which the Town Police Clauses Act 1847 is to be incorporated: see s 2.

7 Ibid s 38. As to the area to which the Town Police Clauses Act 1847 applies see PARA 1432 ante. See also *R v Bournemouth Borough Council, ex p Thompson* (1985) 83 LGR 662.

8 Ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

9 Ibid s 80(1).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/15. TAXIS AND PRIVATE HIRE VEHICLES/(2) TAXIS OUTSIDE LONDON/1435. Hackney carriage licences which may be granted.

### **1435. Hackney carriage licences which may be granted.**

A district council<sup>1</sup> may from time to time license hackney carriages<sup>2</sup> to ply for hire<sup>3</sup> within the prescribed distance<sup>4</sup> and persons to act as drivers of licensed hackney carriages<sup>5</sup>. In granting or

refusing licences the council must exercise a just and reasonable discretion<sup>6</sup>, and in the case of drivers may require the applicant to attend in person<sup>7</sup>.

1     le a district council in England or a county council or county borough council in Wales in whose area the Town Police Clauses Act 1847 and (but not necessarily) the Local Government (Miscellaneous Provisions) Act 1976 are in force: see PARAS 1432-1433 ante. As to the devolution of powers to district councils in respect of hackney carriages see PARA 1432 ante.

2     For the meaning of 'hackney carriage' see PARA 1434 ante.

3     As to the meaning of 'ply for hire' see PARA 1434 note 3 ante.

4     See the Town Police Clauses Act 1847 s 37 (amended by the Transport Act 1985 ss 16(a), 139(3), Sch 8). For the meaning of the 'prescribed distance' see PARA 1434 note 5 ante. A district council has no power to impose further restrictions on a licence holder plying for trade where he has been issued with a licence in respect of a prescribed distance: *R (on the application of Maud) v Castle Point Borough Council* [2002] EWCA Civ 1526, [2003] LGR 47. Councillors have an unfettered discretion to issue taxi licenses under the Town Police Clauses Act 1847 s 37: *R (on the application of Johnson) v Reading Borough Council* [2004] EWHC 765 (Admin), [2004] ACD 284.

5     See the Town Police Clauses Act 1847 s 46 (amended by the Local Government, Planning and Land Act 1980 s 1(6), Sch 6 para 1). The Town Police Clauses Act 1847 s 46 (as amended) does not apply to a person driving a hackney carriage licensed under that Act for the purpose of or in connection with:

1405 (1)     any test of the mechanical condition or fitness of the hackney carriage or its equipment carried out for the purposes of the Road Traffic Act 1988 s 45 (as amended) (see PARA 660 ante) (tests of satisfactory condition of vehicles other than goods vehicles) or for the purposes of any requirements with respect to such condition or fitness imposed by or under any other enactment (Transport Act 1985 s 139(2), Sch 7 para 3(a) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 31)); or

1406 (2)     any test of that person's competence to drive a hackney carriage carried out for the purposes of any application made by him for a licence to drive a hackney carriage (Transport Act 1985 Sch 7 para 3(b) (amended by the Road Traffic (Consequential Provisions) Act 1988 Sch 3 para 31)).

6     *R v Blackpool Corp*n (1899) Times, 7 December, DC; *R v Barry District Council, ex p Jones* (1900) 16 TLR 565, DC; *R v Brighton Corp*n, *ex p Thomas Tilling Ltd* (1916) 85 LJB 1552, DC. The council must be prepared to hear from both the applicant and any other person whose interests might be affected: *R v Liverpool Corp*n, *ex p Liverpool Taxi Fleet Operators' Association* [1972] 2 QB 299, sub nom *Re Liverpool Taxi Owners' Association* [1972] 2 All ER 589, CA. It is doubtful whether the fares to be charged can be taken into account on an application, since these are regulated by the authority: *R v Farnborough UDC, ex p Aldershot District Traction Co* [1920] 1 KB 234, DC, as explained and distinguished in *R v Minister of Transport, ex p HC Motor Works Ltd* [1927] 2 KB 401, DC. As to the fixing of hackney carriage fares see PARA 1441 post.

7     *Banton v Davies* (1891) 56 JP 294, DC. As to the information a council may request from drivers of hire cars or hackney carriages see the Local Government (Miscellaneous Provisions) Act 1976 s 57(1), (2)(a); and PARA 1437 note 10 post. As to the information that may be requested from operators of private hire vehicles see s 57(1), (2)(b), (c); and PARA 1459 post.

## UPDATE

### 1435 Hackney carriage licences which may be granted

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 6--As part of the exercise of its discretion the council must consider whether the licences are likely to be used within its own geographical area: *R (on the application of Newcastle City Council) v Berwick-upon-Tweed BC* [2008] EWHC 2639 (Admin), [2009] LGR 195.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/15. TAXIS AND PRIVATE HIRE VEHICLES/(2) TAXIS OUTSIDE LONDON/1436. Licensing of vehicles as hackney carriages.

### **1436. Licensing of vehicles as hackney carriages.**

Each hackney carriage<sup>1</sup> requires a separate licence<sup>2</sup> which must, except in relation to an area to which Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>3</sup> applies, be under the seal of the district council<sup>4</sup> and must specify the name and surname and place of abode of every person who is a proprietor or part proprietor of the vehicle or person concerned in keeping or hiring it, the number corresponding with that to be affixed to the vehicle and such other particulars as the council thinks fit<sup>5</sup>.

A requisition for a licence, in such form as the council provides, must be made and signed by the proprietor or one of the proprietors, as the case may be, and must give those details required to be recorded on the licence<sup>6</sup>. The licence must be made out by the proper officer of the council<sup>7</sup> and entered in a register which is to be open for inspection by any person, without fee, at all reasonable times, and is to contain spaces for recording any offences by the proprietor, driver or conductor of, or any person attending, the vehicle<sup>8</sup>. Notice of any change of abode must be given within seven days, and the licence must be produced for the necessary changes to be endorsed on it<sup>9</sup>.

A district council<sup>10</sup> for an area to which the Local Government (Miscellaneous Provisions) Act 1976 applies<sup>11</sup> may attach to the grant of a licence of a hackney carriage under the Town Police Clauses Act 1847 such conditions as the district council may consider reasonably necessary<sup>12</sup>. Without prejudice to the generality of the above, a district council may require any hackney carriage licensed by it under the Town Police Clauses Act 1847 to be of such design or appearance or bear such distinguishing marks as must clearly identify it as a hackney carriage<sup>13</sup>. Any person aggrieved by any conditions attached to a licence may appeal to a magistrates' court<sup>14</sup>.

A licence for a vehicle normally enures for a year from its date, or until the next annual licensing day, where one is fixed<sup>15</sup>, but it may be granted for any less period specified in it<sup>16</sup>.

The grant of a licence for a vehicle may be refused for the purpose of limiting the number of hackney carriages in respect of which licences are granted, if, but only if, the person authorised to grant the licence is satisfied that there is no significant demand for the services of hackney carriages (within the area to which the licence would apply) which is unmet<sup>17</sup>.

1 For the meaning of 'hackney carriage' see PARA 1434 ante.

2 The licence attaches to the vehicle and not to the proprietor and, therefore, when the vehicle changes hands, the new owner is entitled to have his name and address entered on the licence and in the register: *R v Weymouth Borough Council, ex p Teletax (Weymouth) Ltd* [1947] KB 583, [1947] 1 All ER 779, DC. A proprietor of a hackney carriage in respect of which a vehicle licence has been granted by a district council must notify the council in writing of the name and address of any person to whom he transfers his interest in the vehicle within 14 days after the transfer: see the Local Government (Miscellaneous Provisions) Act 1976 s 49(1); and PARA 1455 post. Failure to do so is an offence: see s 49(2); and PARA 1476 post. The reference in the text to a licence is to one under the Town Police Clauses Act 1847 s 37 (as amended) for a hackney carriage to ply for hire within the prescribed distance: see PARA 1434 note 3 ante. As to the charging of fees for the grant of licences see the Local Government (Miscellaneous Provisions) Act 1976 s 70; and PARA 1465 post. Where s 70 is not in force in a district, the council may charge a fee by virtue of the Transport Act 1981 s 35(3). As to hackney carriage licences which may be granted see PARA 1435 ante.

3 le the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

4 See the Town Police Clauses Act 1847 s 43. As to the derivation of powers of local authorities under the Town Police Clauses Act 1847 see PARA 1432 ante. As to the authentication of licences in areas to which the Local Government (Miscellaneous Provisions) Act 1976 Pt II (as amended) applies see PARA 1469 post.

5 Ibid s 41. A licensee who ceases to be one of the proprietors is entitled to have his name removed: *Hodges v London Trams Omnibus Co* (1883) 12 QBD 105, DC. As to the transfer of licences see the Local Government (Miscellaneous Provisions) Act 1976 s 49; and PARA 1455 post.

6 Town Police Clauses Act 1847 s 40. It is an offence when applying for a licence for a hackney carriage or an omnibus to include in the requisition the name of any person who is not a proprietor or part proprietor or is not concerned in the keeping or hiring of the vehicle, or wilfully to omit to specify in it truly the name of any person who is a proprietor or part proprietor or is concerned in the keeping or hiring of the vehicle: see s 40. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 40 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 230 note 3 ante.

7 Town Police Clauses Act 1847 s 42.

8 Ibid s 42.

9 Ibid s 44. It is an offence for a licensed proprietor of a hackney carriage or omnibus, on changing his abode, to fail duly to give notice of the change or to produce the licence for endorsement: s 44. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 44 (amended by the Criminal Law Act 1977 s 31(6); and by virtue of the Criminal Justice Act 1982 ss 37, 46).

10 As to the meaning of 'district council' see PARA 1433 note 5 ante.

11 le the Local Government (Miscellaneous Provisions) Act 1976 Pt II (as amended).

12 Ibid s 47(1).

13 Ibid s 47(2).

14 See *ibid* s 47(3); and PARA 1467 post. A local authority can appeal as an aggrieved person against the decision of justices to allow an appeal against the authority's decision to revoke the licence of a hackney carriage driver: *Cook v Southend Borough Council* [1990] 2 QB 1, [1990] 1 All ER 243, CA.

15 Town Police Clauses Act 1847 s 43.

16 Town Police Clauses Act 1889 s 5.

17 See the Transport Act 1985 s 16. See generally the Department of Transport Circular 3/85 (1985) PARAS 26-27. As to whether a council may defer a decision on an application whilst it assesses whether there is unmet demand see *R v Reading Borough Council, ex p Egan* [1990] RTR 399n; not followed in *Ghafoor v Wakefield Metropolitan District Council* [1990] RTR 389; and *R v Middlesbrough Borough Council, ex p IJH Cameron (Holdings) Ltd* [1992] COD 247. Decisions by licensing authorities not to limit the number of hackney carriage licences issued were upheld in *R v Great Yarmouth Borough Council, ex p Sawyer* [1989] RTR 297n, CA. In satisfying itself that there is no unmet demand a broader approach is legitimate: *Stevenage Borough Council v Younas* [1990] RTR 405n; *R v Great Yarmouth Borough Council, ex p Sawyer* supra. In considering an appeal against the decision of a council to refuse a licence on the ground that it was satisfied that there was not significant unmet demand, the Crown Court is entitled to take a different view from the council in deciding whether to exercise the power conferred by the Transport Act 1985 s 16: *Cannock Chase District Council v Aldritt* (28 January 1993) Lexis, DC.

## UPDATE

### 1436 Licensing of vehicles as hackney carriages

NOTE 6--See *Key Cabs Ltd v Plymouth City Council* [2007] EWHC 2837 (Admin), [2008] RTR 135.

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### **1437. Licences for drivers of hackney carriages.**

No person may act as the driver of a licensed hackney carriage<sup>1</sup> unless he has obtained a licence from the local authority<sup>2</sup> to do so<sup>3</sup>. If Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>4</sup> applies in its area<sup>5</sup>, the council may not grant a licence to drive a hackney carriage: (1) unless it is satisfied that he is a fit and proper person<sup>6</sup> to hold a driver's licence<sup>7</sup>; or (2) to any person who has not for at least 12 months<sup>8</sup> been, and is not at the date of the application for a driver's licence, authorised<sup>9</sup> to drive a motor car<sup>10</sup>. The licence, for which there is a fee<sup>11</sup>, must be registered by the proper officer of the council<sup>12</sup>. It must be delivered to the proprietor of the vehicle and be retained by him whilst the licensee remains in his employ; and it must be produced by the proprietor if he is summoned to answer any complaint or to produce the licence<sup>13</sup>. It must be returned forthwith to the licensee if he leaves his employment without having been guilty of any misconduct<sup>14</sup>. If he has been so guilty, the proprietor must retain the licence and forthwith issue a summons to have his cause of complaint determined<sup>15</sup>. Every licence granted by a district council under the Local Government (Miscellaneous Provisions) Act 1976<sup>16</sup> to any person remains in force for three years from the date of such licence or for such lesser period as the district council may specify<sup>17</sup>, and must be produced for inspection at the request of any authorised officer<sup>18</sup> of the council or a police constable<sup>19</sup>.

1    I.e. a hackney carriage licensed under the provisions of the Town Police Clauses Act 1847: see PARA 1436 ante. For the meaning of 'hackney carriage' see PARA 1434 ante.

2    As to local authorities in whose area the Town Police Clauses Act 1847 applies see PARA 1432 ante.

3    Ibid s 46. It is also an offence to employ unlicensed drivers: see s 47.

4    I.e. the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended).

5    As to the application of ibid Pt II (as amended) see PARA 1433 ante.

6    The initial consideration by a local authority of an application under ibid s 59 (as amended) (see notes 7-10 infra) for a hackney carriage driver's licence is a proceeding before a judicial authority within the meaning given in the Rehabilitation of Offenders Act 1974 s 4(6): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 663. Accordingly, spent convictions may be admitted in evidence by virtue of s 7(3) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 684): *Adamson v Waveney District Council* [1997] 2 All ER 898.

7    Local Government (Miscellaneous Provisions) Act 1976 s 59(1)(a). 'Driver's licence' means, in relation to the driver of a hackney carriage, a licence under the Town Police Clauses Act 1847 s 46 (see the text and note 3 supra): Local Government (Miscellaneous Provisions) Act 1976 s 80(1).

8    A person who has held a licence for 12 months in the past, and does in fact hold a licence at the date of the application, is entitled to qualify, notwithstanding that there is no continuity between the periods: *Crawley Borough Council v Crabb* [1996] RTR 201.

9    For the purposes of the Local Government (Miscellaneous Provisions) Act 1976 s 59(1) a person is authorised to drive a motor car if: (1) he holds a licence granted under the Road Traffic Act 1988 Pt III (ss 87-122) (as amended) (not being a provisional licence) authorising him to drive a motor car; or (2) he is authorised by virtue of s 99A (as added) or s 109(1) (as amended) to drive in Great Britain a motor car: Local Government (Miscellaneous Provisions) Act 1976 s 59(1A) (added by the Driving Licences (Community Driving Licence) Regulations 1996 SI 1996/1974, reg 5, Sch 4 para 2(1), (4), (5); and amended by the Deregulation (Taxis and Private Hire Vehicles) Order 1998, SI 1998/1946, art 3).

10   Local Government (Miscellaneous Provisions) Act 1976 s 59(1)(b) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 16(3)). A district council may require an applicant to submit

to it such information as it reasonably considers necessary to enable it to determine whether a licence should be granted and whether conditions should be attached to it: Local Government (Miscellaneous Provisions) Act 1976 s 57(1). It may require an applicant to: (1) produce a medical certificate stating that he is physically fit to be the driver of a hackney carriage or omnibus (see s 57(2)(a)(i)); and (2) whether or not such a certificate has been produced, to submit to an examination by a registered medical practitioner selected by the district council as to his physical fitness to be the driver of a hackney carriage or private hire vehicle (s 57(2)(a)(ii)). Any applicant aggrieved by the refusal of a district council to grant a driver's licence on the ground that he is not a fit and proper person to hold such a licence may appeal to a magistrates' court: see s 59(2); and PARA 1467 post.

11 See the Town Police Clauses Act 1847 s 46 (amended by the Local Government, Planning and Land Act 1980 s 1(6), Sch 6 para 1). The fee payable is such as the council determines: Town Police Clauses Act 1847 s 46 (as so amended). As to fees for vehicle and operator's licences see PARA 1465 post.

12 Ibid s 46 (as amended: see note 11 supra); Local Government Act 1972 s 251(1), Sch 29 para 4(1)(c).

13 Town Police Clauses Act 1847 s 48. It is an offence for a proprietor to neglect to obtain delivery of and to retain the licence of each driver and conductor in his employ or to neglect to produce it when required to do so: s 48. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 48 (amended by the Criminal Law Act 1977 s 31(6); and by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 230 note 3 ante. If a driver is found guilty of an offence, his licence must be endorsed: Town Police Clauses Act 1847 s 48. As to the failure by a proprietor to retain or produce a licence see PARA 1457 post. The licence is the property of the licensee and the proprietor must not make endorsements on it: *Hurrell v Ellis* (1845) 2 CB 295; *Rogers v Macnamara* (1853) 14 CB 27; *Heath v Brewer* (1864) 15 CBNS 803; *Norris v Birch* [1895] 1 QB 639, DC.

14 Town Police Clauses Act 1847 s 49. If the justices find that the licence has been improperly retained they may order its return and award compensation: s 49.

15 Ibid s 49.

16 Ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (as amended).

17 See *ibid* s 53(1)(a).

18 'Authorised officer' means any officer of a district council authorised in writing by the council for the purposes of *ibid* Pt II (as amended): s 80(1).

19 See *ibid* s 53(3). The licence must be produced either forthwith (s 53(3)); or, in the case of a request by an authorised officer, at the principal offices of the council before the expiration of the period of five days beginning with the day following that on which the request was made (s 53(3)(a)); or, in the case of a request by a constable, before the expiration of that period at any police station which is within the area of the council and is nominated by the driver when the request is made (s 53(3)(b)). Contravention of s 53 without reasonable excuse is an offence: see s 53(4); and PARA 1457 post. As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

## UPDATE

### 1437 Licences for drivers of hackney carriages

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/15. TAXIS AND PRIVATE HIRE VEHICLES/(2) TAXIS OUTSIDE LONDON/1438. Byelaws.

### 1438. Byelaws.

A district council<sup>1</sup> may make byelaws<sup>2</sup>, in respect of hackney carriages<sup>3</sup> for all or any of the following purposes<sup>4</sup>:

- 2287 (1) for regulating the conduct of the proprietors and drivers of such vehicles in their several employments, and for determining whether such drivers should wear any and what badges, and for regulating the hours within which they may exercise their calling<sup>5</sup>;
- 2288 (2) for regulating the manner in which the number of each carriage, corresponding with the number of its licence, is to be displayed<sup>6</sup>;
- 2289 (3) for regulating the number of persons to be carried by such hackney carriages, and in what manner such number is to be shown on such carriage, and what number of horses or other animals is to draw the same, and the placing of check strings to the carriages, and the holding of the same by the driver, and how such hackney carriages are to be furnished or provided<sup>7</sup>;
- 2290 (4) for fixing the stands<sup>8</sup> of such hackney carriages and the distance which they may be compelled to take passengers not exceeding the prescribed distance<sup>9</sup>;
- 2291 (5) for fixing the rates or fares<sup>10</sup>, as well for time as distance, to be paid for such hackney carriages within the prescribed distance, and for securing the due publication of such fares<sup>11</sup>;
- 2292 (6) for securing the safe custody and redelivery of any property accidentally left in such vehicles, and for fixing the charges to be made in respect of it<sup>12</sup>.

1 As to the devolution of powers to district councils see PARA 1432 ante.

2 As to byelaws generally see LOCAL GOVERNMENT vol 69 (2009) PARA 553 et seq.

3 For the meaning of 'hackney carriage' see PARA 1434 ante.

4 Town Police Clauses Act 1847 s 68.

5 Ibid s 68.

6 Ibid s 68. As to the number of a licence see the Town Police Clauses Act 1847 s 41 (see PARA 1436 ante); and *Eccles v Kirke* [1949] 1 All ER 428.

7 Town Police Clauses Act 1847 s 68.

8 As to hackney carriage stands see PARA 1439 post.

9 Town Police Clauses Act 1847 s 68. For the meaning of the 'prescribed distance' see PARA 1434 note 5 ante.

10 As to the fixing of fares for hackney carriages see PARA 1441 post.

11 Town Police Clauses Act 1847 s 68.

12 Ibid s 68; Town Police Clauses Act 1889 s 6. As to the conduct of proprietors and drivers see *Blackpool Local Board of Health v Bennett* (1859) 4 H & N 127 (plying for hire at forbidden place); *Mackenzie v Somerville* (1900) 3 F 4, Ct of Sess (loitering); *Murphy v Neilson* (1901) 3 F 77, Ct of Sess (loitering); *Derham v Strickland* (1911) 104 LT 820, DC (touting); *Dunning v Maher* (1912) 106 LT 846, DC (provision of taximeter lamps).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/15. TAXIS AND PRIVATE HIRE VEHICLES/(2) TAXIS OUTSIDE LONDON/1439. Stands for hackney carriages.

### **1439. Stands for hackney carriages.**



A district council<sup>1</sup> may make byelaws<sup>2</sup> fixing the stands for hackney carriages<sup>3</sup>.

For the purposes of its functions under the Town Police Clauses Act 1847<sup>4</sup>, a district council<sup>5</sup> for an area to which Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>6</sup> applies<sup>7</sup> may from time to time appoint<sup>8</sup> stands for hackney carriages for the whole or any part of a day in any highway in the district<sup>9</sup> which is maintainable at the public expense<sup>10</sup> and, with the consent of the owner, on any land in the district which does not form part of a highway so maintainable and may from time to time vary the number of hackney carriages permitted to be at each stand<sup>11</sup>. Before appointing any stand for hackney carriages or varying the number of hackney carriages to be at each stand<sup>12</sup>, a district council must give notice to the chief officer of police<sup>13</sup> for the police area in which the stand is situated and must also give public notice of the proposal by advertisement in at least one local newspaper circulating in the district and must take into consideration any objections or representations in respect of such proposal which may be made to it in writing within 28 days of the first publication of such notice<sup>14</sup>.

Nothing<sup>15</sup> can empower a district council to appoint any such stand:

- 2293 (1) so as unreasonably to prevent access to any premises<sup>16</sup>;
- 2294 (2) so as to impede the use of any points authorised to be used in connection with a local service within the meaning of the Transport Act 1985<sup>17</sup> or PSV operator's licence granted under the Public Passenger Vehicles Act 1981<sup>18</sup>, as points for the taking up or setting down of passengers, or in such a position as to interfere unreasonably with access to any station or depot of any passenger road transport operators, except with the consent of those operators<sup>19</sup>;
- 2295 (3) on any highway except with the consent of the highway authority<sup>20</sup>,

and in deciding the position of stands a district council must have regard to the position of any bus stops for the time being in use<sup>21</sup>.

Any hackney carriage byelaws<sup>22</sup> for fixing stands for hackney carriages which were made by a district council before a certain date<sup>23</sup> in the area of the council and were in force immediately before that date cease to have effect, but any stands fixed by such byelaws are deemed to have been appointed<sup>24</sup>.

1 As to the devolution of powers to district councils see PARA 1432 ante.

2 As to byelaws see PARA 1438 ante. As to the effect on existing byelaws of the passing by a district council of a resolution bringing into force within its area the provisions of the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended) see the text and notes 22-24 infra.

3 Town Police Clauses Act 1847 s 68. A byelaw may not fix the site of the stand or starting place of any hackney carriage on railway property without the consent of the railway company: see PARA 1434 note 4 ante. A byelaw need not define the position of a stand otherwise than as such stand as may from time to time be indicated by notice boards: *Blackpool Local Board of Health v Bennett* (1859) 4 H & N 127. Byelaws may prohibit plying for hire in forbidden places, touting and loitering: see the Town Police Clauses Act 1847 s 68; and the cases cited in PARA 1438 note 12 ante. For the meaning of 'hackney carriage' see PARA 1434 ante.

4 As to the application of the Town Police Clauses Act 1847 see PARA 1432 ante.

5 As to the meaning of 'district council' see PARA 1433 note 5 ante.

6 I.e. the Local Government (Miscellaneous Provisions) Act 1976 Pt II (as amended).

7 As to the application of *ibid* Pt II (as amended) see PARA 1433 ante.

8 The power to appoint stands for hackney carriages under *ibid* s 63(1) includes power to revoke such appointment and to alter any stand so appointed; and 'appointing' and 'appoint' in s 63(2) (see the text and notes 12-14 infra) and s 63(3) (see the text and notes 15-21 infra) are to be construed accordingly: s 63(5).

9 'The district', in relation to a district council in whose area the provisions of *ibid* Pt II (as amended) are in force, means if those provisions are in force throughout the area of the council, that area, and if those provisions are in force for part only of the area of the council, that part of that area: s 80(1).

10 As to highways maintainable at the public expense see *HIGHWAYS, STREETS AND BRIDGES* vol 21 (2004 Reissue) PARA 248.

11 Local Government (Miscellaneous Provisions) Act 1976 s 63(1).

12 *Ie* in exercise of the powers of *ibid* s 63 (as amended).

13 As to chief officers of police see *POLICE* vol 36(1) (2007 Reissue) PARAS 165, 178 *et seq.*

14 Local Government (Miscellaneous Provisions) Act 1976 s 63(2).

15 *Ie* nothing in *ibid* s 63 (as amended).

16 *Ibid* s 63(3)(a).

17 For the meaning of 'local service' within the meaning of the Transport Act 1985 see s 2; and PARA 1177 *ante*.

18 As to the granting of PSV operator's licences see the Public Passenger Vehicles Act 1981 s 12 (as amended); and PARA 1144 *ante*.

19 Local Government (Miscellaneous Provisions) Act 1976 s 63(3)(b).

20 *Ibid* s 63(3)(c). As to highway authorities see *HIGHWAYS, STREETS AND BRIDGES* vol 21 (2004 Reissue) PARA 49 *et seq.*

21 *Ibid* s 63(3) (amended by the Transport Act 1980 s 43, Sch 5 Pt II; the Public Passenger Vehicles Act 1981 s 88, Sch 7 para 19; and the Transport Act 1985 s 1, Sch 1 para 2).

22 'Hackney carriage byelaws' means the byelaws for the time being in force in the controlled district in question relating to hackney carriages: Local Government (Miscellaneous Provisions) Act 1976 s 80(1). 'Controlled district' means an area for which Pt II (as amended) is in force by virtue of: (1) a resolution passed by a district council under s 45; or (2) the Greater London Authority Act 1999 s 255(4): Local Government (Miscellaneous Provisions) Act 1976 s 80(1) (amended by the Greater London Authority Act 1999 (Hackney Carriages and Private Hire Vehicles) (Transitional and Consequential Provisions) Order 2000, SI 2000/412, art 7(3)).

23 *Ie* before the date when the Local Government (Miscellaneous Provisions) Act 1976 s 63 (as amended) comes into force in the area: see s 45; and PARA 1433 *ante*.

24 *Ibid* s 63(4). The text refers to deemed appointment under s 63 (as amended).

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#### **1440. Prohibition of other vehicles on hackney carriage stands.**

In an area to which Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>1</sup> applies, no person may cause or permit any vehicle other than a hackney carriage<sup>2</sup> to wait on any stand for hackney carriages during any period for which that stand has been appointed, or is deemed to have been appointed, by a district council<sup>3</sup>. Notice of this prohibition must be indicated by such traffic signs as may be prescribed or authorised for the purpose by the Secretary of State in pursuance of his powers<sup>4</sup>. If any person without reasonable excuse contravenes<sup>5</sup> these provisions, he is guilty of an offence<sup>6</sup>. In any proceedings<sup>7</sup> against the driver of a public service vehicle<sup>8</sup> it is a defence to show that, by reason of obstruction to traffic or for

other compelling reason, he caused his vehicle to wait on a stand or part of a stand and that he caused or permitted his vehicle so to wait only for so long as was reasonably necessary for the taking up or setting down of passengers<sup>9</sup>.

1     Ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

2     For the meaning of 'hackney carriage' see PARA 1434 ante; definition applied by virtue of *ibid* s 80(1).

3     *Ibid* s 64(1). The reference in the text to a stand appointed or deemed to be appointed by a district council is to one so appointed under s 63 (as amended): see PARA 1439 ante. As to the meaning of 'district council' see PARA 1433 note 5 ante.

4     *Ibid* s 64(2). The text refers to the powers of the Secretary of State under the Road Traffic Regulation Act 1984 s 64 (as amended): see PARA 830 ante. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5     'Contravene' includes fail to comply: Local Government (Miscellaneous Provisions) Act 1976 s 80(1).

6     *Ibid* s 64(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 76 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Where such an offence is due to the act or default of another person, then, whether proceedings are taken against the first-mentioned person or not, that other person may be charged with and convicted of the offence, and is liable on conviction to the same punishment as might have been imposed on the first-mentioned person if he had been convicted of the offence: Local Government (Miscellaneous Provisions) Act 1976 s 72(1). Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly: ss 44(3), 72(2). As to the standard scale see PARA 230 note 3 ante.

7     Ie under *ibid* s 64.

8     For the meaning of 'public service vehicle' see PARA 1136 ante; definition applied by virtue of *ibid* s 80(1) (amended by the Public Passenger Vehicles Act 1981 s 88, Sch 7 para 20).

9     Local Government (Miscellaneous Provisions) Act 1976 s 64(4).

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#### **1441. Fixing of fares for hackney carriages.**

Under the Town Police Clauses Act 1847, the fares to be charged to hirers of hackney carriages<sup>1</sup> are determined by the district council<sup>2</sup>, which may make byelaws<sup>3</sup> for fixing the rates or fares, as well for time as distance, to be paid for hackney carriages within its district, and for securing the due publication of those fares<sup>4</sup>.

The district council for an area to which Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>5</sup> applies may fix the rates or fares within the district<sup>6</sup> as well for time as distance, and all other charges in connection with the hire of a vehicle or with the arrangements for the hire of a vehicle, to be paid in respect of the hire of hackney carriages by means of a table (referred to as a 'table of fares') made or varied in accordance with these provisions<sup>7</sup>. When a district council makes or varies a table of fares it must publish in at least one local newspaper circulating in the district a notice setting out the table of fares or the variation of it and specifying the period, which must not be less than 14 days from the date of

the first publication of the notice, within which and the manner in which objections to the table of fares or variation can be made<sup>8</sup>. For the period of 14 days from the date of its first publication, a copy of such a notice must be deposited at the offices of the council which published the notice, and must at all reasonable hours be open to public inspection without payment<sup>9</sup>. If no objection to a table of fares or variation is duly made within the period specified in the notice, or if all objections so made are withdrawn, the table of fares or variations comes into operation on the date of the expiration of the period specified in the notice or the date of withdrawal of the objection or, if more than one, of the last objection, whichever date is the later<sup>10</sup>. If objection is duly made and is not withdrawn, the district council must set a further date, not later than two months after the first specified date, on which the table of fares is to come into force with or without modifications as decided by it after consideration of the objections<sup>11</sup>. A table of fares so made or varied is to have effect for the purposes of the Town Police Clauses Act 1847<sup>12</sup> as if it were included in hackney carriage byelaws<sup>13</sup> made under that Act<sup>14</sup>. On the coming into operation of a table of fares so made by a council for the district, any hackney carriage byelaws fixing the rates and fares or any table of fares previously made<sup>15</sup> for the district, as the case may be, cease to have effect<sup>16</sup>.

If a hackney carriage is hired and taken to any place and there required to wait, the driver may demand his fare to that place and also a deposit over and above that, calculated according to the time he is required to wait<sup>17</sup>.

If a person refuses to pay the legal fare it may be recovered summarily as a civil debt<sup>18</sup> with costs<sup>19</sup>.

1 For the meaning of 'hackney carriage' see PARA 1434 ante.

2 As to the meaning of 'district council' see PARA 1433 note 5 ante.

3 As to byelaws see PARA 1438 ante.

4 See the Town Police Clauses Act 1847 s 68; and PARA 1438 ante. As to the application of the Town Police Clauses Act 1947 see PARA 1432 ante. A local authority may not attempt to control fares by refusing to grant licences on the ground that fares charged are excessive: *R v Farnborough UDC, ex p Aldershot District Traction Co* [1920] 1 KB 234, DC.

5 I.e. the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

6 For the meaning of 'the district' see PARA 1439 note 9 ante.

7 Local Government (Miscellaneous Provisions) Act 1976 s 65(1).

8 Ibid s 65(2)(a).

9 Ibid s 65(2)(b).

10 Ibid s 65(3).

11 Ibid s 65(4).

12 See the text and note 4 supra.

13 For the meaning of 'hackney carriage byelaws' see PARA 1439 note 22 ante.

14 Local Government (Miscellaneous Provisions) Act 1976 s 65(5).

15 I.e. previously made under ibid s 65.

16 Ibid s 65(6). The Local Government Act 1972 s 236(8) (except the words 'when confirmed') (see LOCAL GOVERNMENT vol 69 (2009) PARA 557) and s 238 (amended) (except s 238(c), (d)) (see LOCAL GOVERNMENT vol 69 (2009) PARA 568) extend and apply to a table of fares made or varied under the Local Government (Miscellaneous Provisions) Act 1976 s 65 as they apply to byelaws made by a district council: s 65(7).

17 Town Police Clauses Act 1847 s 57. It is an offence for the driver of a hackney carriage who has received a proper deposit to refuse to wait, or to go away, or permit his carriage to be taken away, without the hirer's consent, before the expiration of the time covered by the deposit, or to refuse to account for such deposit when finally discharged: s 57. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 57 (amended by the Criminal Law Act 1977 s 31(6); and by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see PARA 230 note 3 ante.

The penalty for demanding more than the sum agreed for is a fine not exceeding level 1 on the standard scale: see the Town Police Clauses Act 1847 s 54 (amended by the Criminal Law Act 1977 s 31(6); and by virtue of the Criminal Justice Act 1982 ss 37, 46). As to an agreement to pay more than the legal fare see the Town Police Clauses Act 1847 s 55 (amended by virtue of the Criminal Justice Act 1982 ss 37, 39, 46, Sch 3). As to agreements to carry passengers a discretionary distance for a fixed sum see the Town Police Clauses Act 1847 s 56 (amended by the Criminal Law Act 1977 s 31(6); and by virtue of the Criminal Justice Act 1982 ss 37, 46).

18 The amount is recoverable only as a civil debt even though the Town Police Clauses Act 1847 s 66 provides that it may be recovered as a penalty, ie in the same way as a penalty: *R v Kerswill* [1895] 1 QB 1, DC. The court has consequently no power to mitigate the amount under the Magistrates' Courts Act 1980 s 34 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 148): see *Leach v Litchfield* [1960] 3 All ER 739, [1960] 1 WLR 1392, DC (decided under the Magistrates' Courts Act 1952 s 27 (repealed)). As to money recoverable summarily as a civil debt see the Magistrates' Courts Act 1980 s 58 (as amended); and MAGISTRATES vol 29(2) (Reissue) PARA 826. As to enforcement of civil debts see MAGISTRATES vol 29(2) (Reissue) PARA 828.

19 Town Police Clauses Act 1847 s 66.

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#### **1442. Fares for long journeys.**

No person, being the driver of a hackney carriage<sup>1</sup> licensed by a district council<sup>2</sup> for an area to which Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>3</sup> applies and undertaking for any hirer a journey ending outside the district<sup>4</sup> and in respect of which no fare and no rate of fare was agreed before the hiring was effected, may require for such journey a fare greater than that indicated on the taximeter<sup>5</sup> with which the hackney carriage is equipped or, if it is not equipped with a taximeter, greater than that which, if the current byelaws fixing rates or fares and in force in the district<sup>6</sup> or, as the case may be, the current table of fares in force within the district<sup>7</sup> had applied to the journey, would have been authorised for the journey by the byelaws or table<sup>8</sup>. If any person knowingly contravenes<sup>9</sup> the above provisions<sup>10</sup>, he is guilty of an offence<sup>11</sup>.

1 For the meaning of 'hackney carriage' see PARA 1434 ante.

2 As to the meaning of 'district council' see PARA 1433 note 5 ante.

3 Ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

4 For the meaning of 'the district' see PARA 1439 note 9 ante.

5 'Taximeter' means any device for calculating the fare to be charged in respect of any journey in a hackney carriage or private hire vehicle by reference to the distance travelled or time elapsed since the start of the journey, or a combination of both: Local Government (Miscellaneous Provisions) Act 1976 s 80(1). 'Private hire vehicle' means a motor vehicle constructed or adapted to seat fewer than nine passengers, other than a hackney carriage or public service vehicle or a London cab or tramcar, which is provided for hire with the services of a driver for the purpose of carrying passengers: s 80(1) (amended by the Transport Act 1980 s 43, Sch 5 Pt II; the Transport Act 1985 s 139(2), Sch 7 para 17(3); and the Transport and Works Act 1992 s 62(3)).

6 Ie in pursuance of the Town Police Clauses Act 1847 s 68: see PARA 1438 ante.

7 le in pursuance of the Local Government (Miscellaneous Provisions) Act 1976 s 65: see PARA 1441 ante.

8 Ibid s 66(1).

9 As to the meaning of 'contravene' see PARA 1440 note 5 ante.

10 le the provisions of the Local Government (Miscellaneous Provisions) Act 1976 s 66(1): see the text and notes 1-8 supra.

11 Ibid s 66(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 76 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 230 note 3 ante.

## UPDATE

### 1442 Fares for long journeys

NOTE 5--See also *Stratford-on-Avon DC v Dyde* [2009] EWHC 3011 (Admin), [2010] RTR 135, [2009] All ER (D) 54 (Nov), DC (fixed price agreed higher than metered fair for journey).

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### 1443. Hackney carriages used for private hire.

No hackney carriage<sup>1</sup> may be used in a district to which Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>2</sup> applies under contract<sup>3</sup> or purported contract for private hire except at a rate of fares or charges not greater than that fixed by the byelaws or table<sup>4</sup>, and, when any such hackney carriage is so used, the fare or charge must be calculated from the point in the district at which the hirer commences his journey<sup>5</sup>. Any person who knowingly contravenes<sup>6</sup> this provision<sup>7</sup> is guilty of an offence<sup>8</sup>.

1 For the meaning of 'hackney carriage' see PARA 1434 ante.

2 le the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante. For the meaning of 'the district' see PARA 1439 note 9 ante.

3 'Contract' means: (1) a contract made otherwise than while the relevant hackney carriage is plying for hire in the district or waiting at a place in the district which, when the contract is made, is a stand for hackney carriages appointed by the district council under ibid s 63 (as amended) (see PARA 1439 ante) (s 67(3)(a)); and (2) a contract made, otherwise than with or through the driver of the relevant hackney carriage, while it is so plying or waiting (s 67(3)(b)). As to the meaning of 'district council' see PARA 1433 note 5 ante.

4 le mentioned in ibid s 66: see PARA 1442 ante.

5 Ibid s 67(1).

6 As to the meaning of 'contravene' see PARA 1440 note 5 ante.

7 le the Local Government (Miscellaneous Provisions) Act 1976 s 67.

8 Ibid s 67(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 76 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 230 note 3 ante. Where such an offence is due to the act or default of another person,

then, whether proceedings are taken against the first-mentioned person or not, that other person may be charged with and convicted of the offence, and is liable on conviction to the same punishment as might have been imposed on the first-mentioned person if he had been convicted of the offence: Local Government (Miscellaneous Provisions) Act 1976 s 72(1). Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly: ss 44(3), 72(2).

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#### **1444. Number of passengers.**

No hackney carriage<sup>1</sup> may be used or let for hire or stand or ply for hire<sup>2</sup> within a district<sup>3</sup> unless the number of persons to be carried is shown upon a plate placed on it in the manner required by statute<sup>4</sup>, and a driver cannot be required to carry a greater number of passengers<sup>5</sup>. The district council<sup>6</sup> may make byelaws<sup>7</sup> for regulating the number of persons to be carried and the manner in which the number is to be shown<sup>8</sup>.

- 1 For the meaning of 'hackney carriage', see PARA 1434 ante.
- 2 As to the meaning of 'stand or ply for hire' see PARA 1434 notes 3-4 ante.
- 3 Ie to which the Town Police Clauses Act 1847 applies: see PARA 1432 ante.
- 4 Ie in the manner specified by ibid s 51.
- 5 Ibid s 51.
- 6 As to the devolution of powers to district councils see PARA 1432 ante.
- 7 As to byelaws see PARA 1438 ante.
- 8 Town Police Clauses Act 1847 s 68.

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#### **1445. Duty to carry passengers.**

The driver of a hackney carriage<sup>1</sup> standing at an appointed stand<sup>2</sup> or in any street<sup>3</sup> must, unless he has reasonable excuse, drive to any place, including private property with access for carriages<sup>4</sup>, within the district, or within any less distance duly fixed by byelaw<sup>5</sup>, to which he is directed to drive by a hirer or intending hirer<sup>6</sup>. The driver of a hackney carriage may not refuse to carry the full complement of passengers if required to do so by the hirer<sup>7</sup>. Without the express consent of the hirer<sup>8</sup>, the proprietor or driver of a hackney carriage must not permit any person to be carried in, on or about the carriage during the period of hire<sup>9</sup>.

- 1 For the meaning of 'hackney carriage' see PARA 1434 ante.
- 2 As to hackney carriage stands see PARA 1439 ante.
- 3 As to the meaning of 'street' see PARA 1434 note 4 ante.
- 4 See *Ex p Kippins* [1897] 1 QB 1, DC.
- 5 Ie a byelaw made under the Town Police Clauses Act 1847 s 68: see PARA 1438 ante.
- 6 Ibid s 53. This may include such persons as a chauffeur in the employ of a car hire proprietor who requested a hackney carriage driver to execute an order he could not execute himself: *Shepherd v Hack* (1917) 86 LJB 1480, DC. It is an offence for a driver of a hackney carriage standing at an appointed stand, or in any street, to refuse without reasonable excuse to drive to any place within the district or within any less distance fixed by byelaw: s 53. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 53 (amended by virtue of the Criminal Justice Act 1982 ss 37, 39, 46, Sch 3). As to the standard scale see PARA 230 note 3 ante.
- 7 Town Police Clauses Act 1847 s 52. It is an offence for a proprietor to allow a hackney carriage or omnibus to be used, or any person to stand or ply for hire with it, without having the number of persons to be carried by it properly exhibited, or for a driver or conductor to refuse to carry a full complement or any less numbers of passengers: s 52. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 52 (amended by the Criminal Law Act 1977 s 31(6); and by virtue of the Criminal Justice Act 1982 ss 37, 46).
- 8 Mere acquiescence does not amount to express consent: *Yates v Gates* [1970] 2 QB 27, [1970] 1 All ER 754, DC.
- 9 Town Police Clauses Act 1847 s 59. It is an offence for the proprietor or driver of a hackney carriage to permit any person to ride in, on or about it without the hirer's express consent: s 59. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 59 (amended by the Criminal Law Act 1977 s 31(6); and by virtue of the Criminal Justice Act 1982 ss 37, 46).

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#### **1446. Rights and liabilities of proprietors.**

It seems that, having regard to the nature of the legislation<sup>1</sup> as to hackney carriages<sup>2</sup>, the proprietor is liable to third persons for torts committed by the driver within the apparent scope of the driver's authority, even where the relationship between the proprietor and driver is strictly that of bailor and bailee and not that of employer and employee<sup>3</sup>.

By statute, whenever any damage to person or property has been caused by a driver of a hackney carriage, any justice convicting him may order a sum to be paid as compensation by the proprietor, who may recover it from the guilty person<sup>4</sup>. Consent by an injured person to the exercise of this power bars his ordinary right of action<sup>5</sup>.

- 1 Ie the Town Police Clauses Act 1847.
- 2 For the meaning of 'hackney carriage' see PARA 1434 ante.
- 3 *Bygraves v Dicker* [1923] 2 KB 585, [1923] All ER Rep 473. As to the liability of employers for the torts of employees see TORT vol 45(2) (Reissue) PARA 806 et seq. As to the relationship between bailors and bailees see BAILMENT.
- 4 Town Police Clauses Act 1847 s 63. The sum must not exceed £5, and is recoverable as damages: see s 63. As to the liability to report damage to a local authority see the Local Government (Miscellaneous Provisions) Act 1976 s 50(3) (as amended); and PARA 1456 post.



5 *Wright v London General Omnibus Co* (1877) 2 QBD 271, DC.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/15. TAXIS AND PRIVATE HIRE VEHICLES/(3) PRIVATE HIRE VEHICLES OUTSIDE LONDON/1447. Need for vehicle licences, drivers' licences and operators' licences.

### **(3) PRIVATE HIRE VEHICLES OUTSIDE LONDON**

#### **1447. Need for vehicle licences, drivers' licences and operators' licences.**

Except as authorised by the Local Government (Miscellaneous Provisions) Act 1976, in an area to which Part II<sup>1</sup> of that Act applies<sup>2</sup>:

- 2296 (1) no person being the proprietor<sup>3</sup> of any vehicle, not being a hackney carriage<sup>4</sup> or London cab<sup>5</sup> in respect of which a vehicle licence<sup>6</sup> is in force, may use or permit the same to be used in a controlled district<sup>7</sup> as a private hire vehicle without having for such a vehicle a current licence<sup>8</sup>;
- 2297 (2) no person may in a controlled district act as driver of any private hire vehicle without having a current licence<sup>9</sup>;
- 2298 (3) no person being the proprietor of a private hire vehicle licensed under Part II of the Act<sup>10</sup> may employ as the driver of it, for the purpose of any hiring, any person who does not have a current licence<sup>11</sup>;
- 2299 (4) no person may in a controlled district operate<sup>12</sup> any vehicle as a private hire vehicle without having a current licence<sup>13</sup>; and
- 2300 (5) no person licensed to operate private hire vehicles<sup>14</sup> may in a controlled district operate any vehicle as a private hire vehicle if for the vehicle a current licence<sup>15</sup> is not in force<sup>16</sup>, or if the driver does not have a current licence<sup>17</sup>.

If any person knowingly<sup>18</sup> contravenes<sup>19</sup> heads (1) to (5) above, he is guilty of an offence<sup>20</sup>.

1 <sup>1</sup> ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

2 <sup>2</sup> Ibid s 46(1).

3 <sup>3</sup> 'Proprietor' includes a part-proprietor and, in relation to a vehicle which is the subject of a hiring agreement or hire-purchase agreement, means the person in possession of the vehicle under that agreement: *ibid* s 80(1).

4 <sup>4</sup> For the meaning of 'hackney carriage' see PARA 1434 ante.

5 <sup>5</sup> 'London cab' means a vehicle which is a hackney carriage within the meaning of the Metropolitan Public Carriage Act 1869 (see PARAS 1477-1484 post); Local Government (Miscellaneous Provisions) Act 1976 s 80(1) (definition added by the Transport Act 1985 s 139(2), Sch 7 para 17(3)).

6 <sup>6</sup> 'Vehicle licence' means, in relation to a hackney carriage, a licence under the Town Police Clauses Act 1847 ss 37-45 (as amended); in relation to a London cab, a licence under the Metropolitan Public Carriage Act 1869 s 6 (as amended) (see PARA 1479 post); and in relation to a private hire vehicle, a licence under the Local Government (Miscellaneous Provisions) Act 1976 s 48 (as amended) (see PARA 1448 post): s 80(1) (definition amended by the Transport Act 1985 s 139(2), Sch 7 para 17(3)). For the meaning of 'private hire vehicle' see PARA 1442 note 5 ante. For the meaning of 'public service vehicle' see PARA 1136 ante; definition applied by the Local Government (Miscellaneous Provisions) Act 1976 s 80(1) (amended by the Public Passenger Vehicles Act 1981 s 88, Sch 7 para 20).

7 For the meaning of 'controlled district' see PARA 1439 note 22 ante.

8 Local Government (Miscellaneous Provisions) Act 1976 s 46(1)(a) (amended by the Transport Act 1985 s 139(2), Sch 7 para 17(1)). The reference in the text to a current licence is to one under the Local Government (Miscellaneous Provisions) Act 1976 s 48: see PARA 1448 post. In Pt II (as amended), references to a licence in connection with a controlled district are references to a licence issued by the council whose area consists of or includes that district; and 'licensed' is to be construed accordingly: s 80(2).

9 Ibid s 46(1)(b). The reference in the text to a current licence is to one under s 51 (as amended): see PARA 1449 post.

An offence is committed under s 46(1)(b) when a vehicle licensed as a private hire vehicle is driven by a person not licensed to drive a private hire vehicle under s 51 (as amended), regardless of the specific activity in connection with which it is being driven (ie even though it is not working as a private hire vehicle): *Benson v Boyce* [1997] RTR 226, DC.

10 Ie under the Local Government (Miscellaneous Provisions) Act 1976 Pt II (as amended).

11 See ibid s 46(1)(c). The reference in the text to a current licence is to one under s 51 (as amended): see PARA 1449 ante.

12 'Operate' means in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle: ibid s 80(1).

13 Ibid s 46(1)(d). The reference in the text to a current licence is to one under s 51 (as amended): see PARA 1449 ante.

An operator licensed in a district commits no offence by accepting telephone bookings made by persons calling from outside the district nor by placing advertisements in publications circulating outside the district: *Windsor and Maidenhead Royal Borough Council v Khan* [1994] RTR 87, DC. For a private hire vehicle to collect a passenger within a controlled district in pursuance of a contract for hire made outside that district is not to operate the vehicle in the district for the purposes of the Local Government (Miscellaneous Provisions) Act 1976 s 46(1)(d): *Britain v ABC Cars (Camberley) Ltd* [1981] RTR 395, DC. Cf *Braintree District Council v Howard* [1993] RTR 193, DC. See also *Brentwood Borough Council v Gladen* [2004] EWHC 2500 (Admin), [2005] RTR 152.

14 Ie under the Local Government (Miscellaneous Provisions) Act 1976 s 55: see PARA 1450 post. An offence was not committed under s 46(1)(e) (see head (5) in the text) where the private hire vehicle, its driver and operator were not licensed in the district in which the journey took place but were all licensed in the district in which the booking was made: *Adur District Council v Fry* [1997] RTR 257, DC.

15 Ie under the Local Government (Miscellaneous Provisions) Act 1976 s 48 (as amended): see PARA 1448 post.

16 Ibid s 46(1)(e)(i). A person may operate a vehicle as a private hire vehicle even though there is no payment for the hiring, if the operator can fairly be said to derive commercial benefit from a transaction: *St Albans District Council v Taylor* [1991] RTR 400, DC.

17 Local Government (Miscellaneous Provisions) Act 1976 s 46(1)(e)(ii). The reference in the text to a current licence is to one under s 51 (as amended): see PARA 1449 ante. The three licences must be granted by the same authority: *Dittah v Birmingham District Council*, *Choudhry v Birmingham District Council* [1993] RTR 356, DC.

18 The meaning of 'knowingly' has been judicially considered in various contexts. 'Knowingly' imports some actual knowledge on the part of the person committing the offence: *R v Bannen* (1844) 1 Car & Kir 295, CCR; *R v Chainey* [1914] 1 KB 137, CCA; *Gaumont British Distributors Ltd v Henry* [1939] 2 KB 711, [1939] 2 All ER 808, DC; *R v Hallam* [1957] 1 QB 569, [1957] 1 All ER 665, CCA. Deliberate avoidance of making inquiries for fear of the results may amount to actual knowledge in law: *Knox v Boyd* 1941 JC 82; *Taylor's Central Garages (Exeter) Ltd v Roper* (1951) 115 JP 445, DC; *Mallon v Allen* [1964] 1 QB 385, [1963] 3 All ER 843, DC. Mere neglect to inquire would not constitute knowledge: see *Taylor's Central Garages (Exeter) Ltd v Roper* supra; *Mallon v Allen* supra; and cf *London Computator Ltd v Seymour* [1944] 2 All ER 11, DC.

19 As to the meaning of 'contravene' see PARA 1440 note 5 ante.

20 Local Government (Miscellaneous Provisions) Act 1976 s 46(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 76 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 230 note 3 ante. Where such an offence is due to the act or default of another person, then, whether proceedings are taken against the first-mentioned person or not, that other person may be charged with and convicted of the offence, and is liable on conviction

to the same punishment as might have been imposed on the first-mentioned person if he had been convicted of the offence: Local Government (Miscellaneous Provisions) Act 1976 s 72(1). Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly: ss 44(3), 72(2).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/15. TAXIS AND PRIVATE HIRE VEHICLES/(3) PRIVATE HIRE VEHICLES OUTSIDE LONDON/1448. Licensing of private hire vehicles.

#### **1448. Licensing of private hire vehicles.**

Subject to the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>1</sup>, in an area to which those provisions apply, a district council<sup>2</sup> may, on the receipt of an application from the proprietor<sup>3</sup> of any vehicle for the grant in respect of such vehicle of a licence<sup>4</sup> to use the vehicle as a private hire vehicle<sup>5</sup>, grant in respect of it a vehicle licence<sup>6</sup>. However, a district council must not grant such a licence unless it is satisfied:

- 2301 (1) that the vehicle is suitable in type, size and design for use as a private hire vehicle, that it is not of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage<sup>7</sup>, that it is in a suitable mechanical condition, safe, and comfortable<sup>8</sup>; and
- 2302 (2) that there is in force in relation to the use of the vehicle a policy of insurance or such security as complies with the requirements of the Road Traffic Act 1988<sup>9</sup>,

and it must not refuse such a licence for the purpose of limiting the number of vehicles in respect of which such licences are granted by the council<sup>10</sup>.

A district council may attach to the grant of such a licence such conditions as it may consider reasonably necessary including, without prejudice to the generality of the above provisions<sup>11</sup>, conditions requiring or prohibiting the display of signs on or from the vehicle to which the licence relates<sup>12</sup>. In every vehicle licence so granted there must be specified:

- 2303 (a) the name and address of the applicant<sup>13</sup>, and every other person who is a proprietor of the private hire vehicle in respect of which the licence is granted, or who is concerned, either solely or in partnership with any other person, in the keeping, employing or letting on hire of the private hire vehicle<sup>14</sup>;
- 2304 (b) the number of the licence which must correspond with the number to be painted or marked on the plate or disc to be exhibited on the private hire vehicle<sup>15</sup>;
- 2305 (c) the conditions attached to the grant of the licence<sup>16</sup>; and
- 2306 (d) such other particulars as the district council considers reasonably necessary<sup>17</sup>.

Every licence granted<sup>18</sup> must be signed by an authorised officer<sup>19</sup> of the council which granted it<sup>20</sup>. It must relate to not more than one private hire vehicle<sup>21</sup>, and remains in force for such period not being longer than one year as the district council may specify in the licence<sup>22</sup>. Where a district council so grants a vehicle licence in respect of a private hire vehicle it must issue a plate or disc identifying that vehicle as a private hire vehicle in respect of which a vehicle licence has been granted<sup>23</sup>. Subject to the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>24</sup>, no person may use or permit to be used in a controlled

district<sup>25</sup> as a private hire vehicle a vehicle in respect of which a licence has been so granted unless the plate or disc issued<sup>26</sup> is exhibited on the vehicle in such manner as is prescribed by the district council by condition attached to the grant of the licence<sup>27</sup>.

Any person aggrieved by the refusal of a district council so to grant a vehicle licence or by any conditions specified in such a licence, may appeal to a magistrates' court<sup>28</sup>.

1     le the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

2     As to the meaning of 'district council' see PARA 1433 note 5 ante.

3     For the meaning of 'proprietor' see PARA 1447 note 3 ante.

4     As to the meaning of 'licence' see PARA 1447 note 8 ante.

5     For the meaning of 'private hire vehicle' see PARA 1442 note 5 ante.

6     Local Government (Miscellaneous Provisions) Act 1976 s 48(1). For the meaning of 'vehicle licence' see PARA 1447 note 6 ante.

7     For the meaning of 'hackney carriage' see PARA 1434 ante.

8     Local Government (Miscellaneous Provisions) Act 1976 s 48(1) proviso (a). Considerations of safety are relevant in determining whether a vehicle is suitable for use as a private hire vehicle: *Chauffeur Bikes Ltd v Leeds City Council* [2005] EWHC 2369 (Admin), [2006] RTR 74, DC.

9     Local Government (Miscellaneous Provisions) Act 1976 s 48(1) proviso (b) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 16). The reference in the text to the Road Traffic Act 1988 is to Pt VI (ss 143-162) (as amended): see PARA 937 et seq ante.

10    Local Government (Miscellaneous Provisions) Act 1976 s 48(1) proviso.

11    le the provisions of *ibid* s 48(1) (as amended): see the text and notes 1-10 supra.

12    *Ibid* s 48(2).

13    *Ibid* s 48(3)(a)(i).

14    *Ibid* s 48(3)(a)(ii).

15    *Ibid* s 48(3)(b). The text refers to the number to be painted or marked on the plate or disc which is to be exhibited on the private hire vehicle in accordance with s 48(6): see the text and note 27 infra.

16    *Ibid* s 48(3)(c).

17    *Ibid* s 48(3)(d).

18    le under *ibid* s 48 (as amended).

19    For the meaning of 'authorised officer' see PARA 1437 note 18 ante.

20    Local Government (Miscellaneous Provisions) Act 1976 s 48(4)(a).

21    *Ibid* s 48(4)(b).

22    *Ibid* s 48(4)(c).

23    *Ibid* s 48(5). The form of the plate is subject to judicial review if the council has acted perversely according to the principles laid down in *Associated Provincial Picture Houses v Wednesbury Corp*n [1948] 1 KB 223, [1947] 2 All ER 680, CA, but is otherwise not subject to appeal: *Solihull Metropolitan Borough Council v Silverline Cars* [1989] RTR 142, DC. As to judicial review see CIVIL PROCEDURE vol 12 (2009) PARA 1530 et seq; JUDICIAL REVIEW.

24    See note 1 supra.

25 For the meaning of 'controlled district' see PARA 1439 note 22 ante.

26 In accordance with the Local Government (Miscellaneous Provisions) Act 1976 s 48(5): see the text and note 23 supra.

27 Ibid s 48(6)(a). If any person without reasonable excuse contravenes the provisions of s 48(6)(a) he is guilty of an offence: s 48(6)(b). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 76 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 230 note 3 ante. As to the meaning of 'contravene' see PARA 1440 note 5 ante. Where such an offence is due to the act or default of another person, then, whether proceedings are taken against the first-mentioned person or not, that other person may be charged with and convicted of the offence, and is liable on conviction to the same punishment as might have been imposed on the first-mentioned person if he had been convicted of the offence: Local Government (Miscellaneous Provisions) Act 1976 s 72(1). Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly: ss 44(3), 72(2).

28 Ibid s 48(7).

## UPDATE

### **1448-1449 Licensing of private hire vehicles, Licensing of drivers of private hire vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/15. TAXIS AND PRIVATE HIRE VEHICLES/(3) PRIVATE HIRE VEHICLES OUTSIDE LONDON/1449. Licensing of drivers of private hire vehicles.

### **1449. Licensing of drivers of private hire vehicles.**

Subject to the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>1</sup>, a district council<sup>2</sup> must, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles<sup>3</sup>, grant to that person a driver's licence<sup>4</sup>. However, a district council must not grant a licence unless it is satisfied that the applicant is a fit and proper person to hold a driver's licence<sup>5</sup>, and also must not grant a licence to any person who has not for at least 12 months been authorised to drive a motor car or is not at the date of the application for a driver's licence so authorised<sup>6</sup>. A district council may attach to the grant of such a licence such conditions as it may consider reasonably necessary<sup>7</sup>. It is the duty of a council by which licences are granted in pursuance of this provision to enter, in a register maintained by the council for the purpose, the following particulars of each such licence, namely:

- 2307 (1) the name of the person to whom it is granted<sup>8</sup>;
- 2308 (2) the date on which and the period for which it is granted<sup>9</sup>; and
- 2309 (3) if the licence has a serial number, that number<sup>10</sup>.

The council must also keep the register available at its principal offices for inspection by members of the public during office hours free of charge<sup>11</sup>.

- 1     le the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.
- 2     As to the meaning of 'district council' see PARA 1433 note 5 ante.
- 3     For the meaning of 'private hire vehicle' see PARA 1442 note 5 ante.
- 4     Local Government (Miscellaneous Provisions) Act 1976 s 51(1). 'Driver's licence' means, in relation to the driver of a private hire vehicle, a licence under s 51: s 80(1).
- 5     Ibid s 51(1) proviso (a). As to whether the applicant is a fit and proper person see *McCool v Rushcliffe Borough Council* [1998] 3 All ER 889, DC.
- 6     Local Government (Miscellaneous Provisions) Act 1976 s 51(1) proviso (b) (substituted by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 5, Sch 4 para 2(1)-(3)). For the purposes of the Local Government (Miscellaneous Provisions) Act 1976 s 51(1) (as amended) a person is authorised to drive a motor car if: (1) he holds a licence granted under the Road Traffic Act 1988 Pt III (ss 87-109) (as amended) (see PARA 442 et seq ante) (not being a provisional licence) authorising him to drive a motor car (Local Government (Miscellaneous Provisions) Act 1976 s 51(1B)(a) (s 51(1B) added by the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 5, Sch 4 para 2(1)-(3))); or (2) he is authorised by virtue of the Road Traffic Act 1988 s 99A(1) (as added) (see PARA 473 ante) or s 109(1) (as amended) (see PARA 484 ante) to drive in Great Britain a motor car (Local Government (Miscellaneous Provisions) Act 1976 s 51(1B)(b) (as so added; and amended by the Deregulation (Taxis and Private Hire Vehicles) Order 1998, SI 1998/1946, art 2)). This provision was added as the Local Government (Miscellaneous Provisions) Act 1976 s 51(1), but it is submitted that it should be numbered s 51(1B). For the meaning of 'Great Britain' see PARA 205 note 3 ante.
- 7     Ibid s 51(2). As to the right of appeal against the attaching of conditions to the grant of a licence to drive a private hire vehicle see *Peddubriwny v Cambridge City Council* [2001] EWHC Admin 200, [2001] RTR 461.
- 8     Local Government (Miscellaneous Provisions) Act 1976 s 51(3)(a).
- 9     Ibid s 51(3)(b).
- 10    Ibid s 51(3)(c).
- 11    Ibid s 51(3).

## UPDATE

### **1448-1449 Licensing of private hire vehicles, Licensing of drivers of private hire vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/15. TAXIS AND PRIVATE HIRE VEHICLES/(3) PRIVATE HIRE VEHICLES OUTSIDE LONDON/1450. Licensing of operators of private hire vehicles.

### **1450. Licensing of operators of private hire vehicles.**

Subject to the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>1</sup>, a district council<sup>2</sup> must, on receipt of an application from any person for the grant to that person of a licence to operate<sup>3</sup> private hire vehicles<sup>4</sup>, grant to that person an operator's licence<sup>5</sup>. However, a district council must not grant a licence unless it is satisfied that the applicant is a fit and proper person to hold an operator's licence<sup>6</sup>. Every licence granted<sup>7</sup> must remain in force for such period, not being longer than five years, as the district council may specify in the licence<sup>8</sup>. A district council may attach to the grant of a licence<sup>9</sup> such conditions as it may consider reasonably necessary<sup>10</sup>. Any applicant aggrieved by the refusal of a district council to grant an operator's licence<sup>11</sup>, or by any conditions attached to the grant of such a licence, may appeal to a magistrates' court<sup>12</sup>.

1     Ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

2     As to the meaning of 'district council' see PARA 1433 note 5 ante.

3     For the meaning of 'operate' see PARA 1447 note 12 ante.

4     For the meaning of 'private hire vehicle' see PARA 1442 note 5 ante.

5     Local Government (Miscellaneous Provisions) Act 1976 s 55(1).

6     Ibid s 55(1) proviso.

7     Ie under ibid s 55.

8     Ibid s 55(2).

9     See note 7 supra.

10    Local Government (Miscellaneous Provisions) Act 1976 s 55(3).

11    See note 7 supra.

12    Local Government (Miscellaneous Provisions) Act 1976 s 55(4). See MAGISTRATES.

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### **1451. Operators of private hire vehicles.**

For the purposes of Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>1</sup>, every contract for the hire of a private hire vehicle<sup>2</sup> licensed under it is deemed to be made with the operator who accepted the booking for that vehicle whether or not he himself provided the vehicle<sup>3</sup>. Every person to whom a licence<sup>4</sup> has been granted by a district council<sup>5</sup> must keep a record in such form as the council may, by condition attached to the grant of the licence, prescribe and must enter in it, before the commencement of each journey, such particulars of every booking of a private hire vehicle invited or accepted by him, whether by accepting the same from the hirer or by undertaking it at the request of another operator, as the district council may by condition prescribe and must produce such record on request to any authorised officer<sup>6</sup> of the council or to any constable for inspection<sup>7</sup>. Every person to whom a licence<sup>8</sup> has been granted by a district council must keep such records as the council may, by condition attached to the grant of the licence, prescribe of the particulars of any private hire vehicle operated by him and must produce the same on request to any authorised officer of the council

or to any constable for inspection<sup>9</sup>. A person to whom a licence to operate private hire vehicles<sup>10</sup> has been granted by a district council must produce the licence on request to any authorised officer of the council or any constable for inspection<sup>11</sup>. If any person without reasonable excuse contravenes<sup>12</sup> the above provisions<sup>13</sup>, he is guilty of an offence<sup>14</sup>.

1    Ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

2    For the meaning of 'private hire vehicle' see PARA 1442 note 5 ante.

3    Local Government (Miscellaneous Provisions) Act 1976 s 56(1).

4    Ie in force under ibid s 55: see PARA 1450 ante.

5    As to the meaning of 'district council' see PARA 1433 note 5 ante.

6    For the meaning of 'authorised officer' see PARA 1437 note 18 ante.

7    Local Government (Miscellaneous Provisions) Act 1976 s 56(2).

8    Ie in force under ibid s 55: see PARA 1450 ante.

9    Ibid s 56(3).

10   Ie a licence in force under ibid s 55: see PARA 1450 ante.

11   Ibid s 56(4).

12   As to the meaning of 'contravene' see PARA 1440 note 5 ante.

13   Ie the provisions of the Local Government (Miscellaneous Provisions) Act 1976 s 56.

14   Ibid s 56(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 76 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 230 note 3 ante. Where such an offence is due to the act or default of another person, then, whether proceedings are taken against the first-mentioned person or not, that other person may be charged with and convicted of the offence, and is liable on conviction to the same punishment as might have been imposed on the first-mentioned person if he had been convicted of the offence: Local Government (Miscellaneous Provisions) Act 1976 s 72(1). Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly: ss 44(3), 72(2).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/15. TAXIS AND PRIVATE HIRE VEHICLES/(3) PRIVATE HIRE VEHICLES OUTSIDE LONDON/1452. Suspension and revocation of operators' licences.

#### **1452. Suspension and revocation of operators' licences.**

Notwithstanding anything in Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>1</sup>, a district council<sup>2</sup> may suspend, revoke or on application therefor<sup>3</sup> refuse to renew an operator's licence<sup>4</sup> on any of the following grounds<sup>5</sup>:

2310 (1) any offence under, or non-compliance with, the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>6</sup>;

2311 (2) any conduct on the part of the operator which appears to the district council to render him unfit to hold an operator's licence<sup>7</sup>;



- 2312 (3) any material change since the licence was granted in any of the  
circumstances of the operator on the basis of which the licence was granted<sup>8</sup>; or  
2313 (4) any other reasonable cause<sup>9</sup>.

Where a district council so suspends, revokes or refuses to renew any licence it must give to the operator notice of the grounds on which the licence has been suspended or revoked or on which it has refused to renew such licence within 14 days of such suspension, revocation or refusal<sup>10</sup>. Any operator aggrieved by a decision of a district council under this provision may appeal to a magistrates' court<sup>11</sup>.

- 1     I.e. the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.
- 2     As to the meaning of 'district council' see PARA 1433 note 5 ante.
- 3     I.e. on application for a licence under the Local Government (Miscellaneous Provisions) Act 1976 s 55 (see PARA 1450 ante); see s 62(1).
- 4     'Operator's licence' means a licence under *ibid* s 55 (see PARA 1450 ante): s 80(1).
- 5     *Ibid* s 62(1).
- 6     *Ibid* s 62(1)(a).
- 7     *Ibid* s 62(1)(b).
- 8     *Ibid* s 62(1)(c).
- 9     *Ibid* s 62(1)(d).
- 10    *Ibid* s 62(2).
- 11    *Ibid* s 62(3). See MAGISTRATES.

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### **1453. Taximeters.**

Nothing in the Local Government (Miscellaneous Provisions) Act 1976 can require any private hire vehicle<sup>1</sup> to be equipped with any form of taximeter<sup>2</sup> but no private hire vehicle so equipped may be used for hire in a controlled district<sup>3</sup> unless such taximeter has been tested and approved by or on behalf of the district council<sup>4</sup> for the district<sup>5</sup> or any other district council by which a vehicle licence<sup>6</sup> in force for the vehicle was issued<sup>7</sup>. Any person who tampers with any seal on any taximeter without lawful excuse, or alters any taximeter with intent to mislead, or knowingly causes or permits a vehicle of which he is the proprietor<sup>8</sup> to be used in contravention of the above provision is guilty of an offence<sup>9</sup>.

- 1     For the meaning of 'private hire vehicle' see PARA 1442 note 5 ante.
- 2     For the meaning of 'taximeter' see PARA 1442 note 5 ante.
- 3     For the meaning of 'controlled district' see PARA 1439 note 22 ante.

4 As to the meaning of 'district council' see PARA 1433 note 5 ante.

5 For the meaning of 'the district' see PARA 1439 note 9 ante.

6 For the meaning of 'vehicle licence' see PARA 1447 note 6 ante.

7 Local Government (Miscellaneous Provisions) Act 1976 s 71(1).

8 For the meaning of 'proprietor' see PARA 1447 note 3 ante.

9 Local Government (Miscellaneous Provisions) Act 1976 s 71(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 76 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 230 note 3 ante. Where such an offence is due to the act or default of another person, then, whether proceedings are taken against the first-mentioned person or not, that other person may be charged with and convicted of the offence, and is liable on conviction to the same punishment as might have been imposed on the first-mentioned person if he had been convicted of the offence: Local Government (Miscellaneous Provisions) Act 1976 s 72(1). Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly: ss 44(3), 72(2).

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#### **1454. Saving for certain vehicles etc.**

Nothing in Part II of the Local Government (Miscellaneous Provisions ) Act 1976<sup>1</sup>:

- 2314 (1) applies to a vehicle used for bringing passengers or goods within a controlled district<sup>2</sup> in pursuance of a contract for the hire of the vehicle made outside the district if the vehicle is not made available for hire within the district<sup>3</sup>;
- 2315 (2) applies to a vehicle used only for carrying passengers for hire or reward under a contract for the hire of the vehicle for a period of not less than seven days<sup>4</sup>;
- 2316 (3) applies to a vehicle while it is being used in connection with a funeral or a vehicle used wholly or mainly, by a person carrying on the business of a funeral director, for the purpose of funerals<sup>5</sup>;
- 2317 (4) applies to a vehicle while it is being used in connection with a wedding<sup>6</sup>;
- 2318 (5) requires the display of any plate, disc or notice in or on any private hire vehicle<sup>7</sup> licensed by a council under Part II of the Local Government (Miscellaneous Provisions) Act 1976 during such period that such vehicle is used for carrying passengers for hire or reward under a contract for the hire of the vehicle for a period of not less than 24 hours<sup>8</sup>.

1 I.e. the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

2 For the meaning of 'controlled district' see PARA 1439 note 22 ante.

3 Local Government (Miscellaneous Provisions) Act 1976 s 75(1)(a).

4 Ibid s 75(1)(b). As from a day to be appointed, this provision is repealed by the Road Safety Act 2006 ss 53, 59, Sch 7. At the date at which this volume states the law no such day had been appointed.

For the defence under the Local Government (Miscellaneous Provisions) Act 1976 s 75 (as amended) to apply, the contract must relate to a particular identified vehicle: see *Pitts v Lewis* [1989] RTR 71n, DC. The burden of establishing the defence rests on the defendant and was not discharged in a case where the period of hire was

set at the customer's wishes and was not set at any minimum period of time: *Leeds City Council v Azam* [1989] RTR 66, DC; applied in *Crawley Borough Council v Ovenden* [1992] RTR 60, DC.

5 Local Government (Miscellaneous Provisions) Act 1976 s 75(1)(c).

6 Ibid s 75(1)(cc) (added by the Transport Act 1985 s 139(2), Sch 7 para 17(2)).

7 For the meaning of 'private hire vehicle' see PARA 1442 note 5 ante.

8 Local Government (Miscellaneous Provisions) Act 1976 s 75(1)(d) (amended by the Transport Act 1985 Sch 7 para 17(2)). The provisions of the Local Government (Miscellaneous Provisions) Act 1976 s 46(1)(a), (b), (c) (s 46(1)(a) as amended) (see PARA 1447 ante) do not apply to the use or driving of a vehicle or to the employment of a driver of a vehicle while the vehicle is used as a private hire vehicle in a controlled district if a licence issued under s 48 (as amended) (see PARA 1448 ante) by the council whose area consists of or includes another controlled district is then in force for the vehicle and a driver's licence issued by such a council is then in force for the driver of the vehicle: s 75(2). For the meaning of 'driver's licence' see PARA 1437 note 7 ante. The provisions of s 46(1)(a), (b), (c) (s 46(1)(a) as amended) cannot apply to the use or driving of a vehicle, or to the employment of a driver of a vehicle, if a London PHV licence issued under the Private Hire Vehicles (London) Act 1998 s 7 (as amended) (see PARA 1506 post) is in force in relation to that vehicle, and the driver of the vehicle holds a London PHV driver's licence issued under s 13 (as amended) (see PARA 1512 post): Local Government (Miscellaneous Provisions) Act 1976 s 75(2B) (added by the Private Hire Vehicles (London) Act 1998 s 39(1), Sch 1 para 1). Where a licence under the Local Government (Miscellaneous Provisions) Act 1976 s 48 (as amended) (see PARA 1448 ante) is in force for a vehicle, the council which issued the licence may, by a notice in writing given to the proprietor of the vehicle, provide that s 48(6)(a) is not to apply to the vehicle on any occasion specified in the notice or is not so to apply while the notice is carried in the vehicle; and on any occasion on which, by virtue of s 75(3), s 48(6)(a) does not apply to a vehicle s 54(2)(a) (see PARA 1458 post) does not apply to the driver of the vehicle: s 75(3). For the meaning of 'proprietor' see PARA 1447 note 3 ante.

## UPDATE

### 1454 Saving for certain vehicles etc

NOTE 4--Day now appointed in relation to Road Safety Act 2006 s 53: SI 2007/3492.

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## (4) LEGISLATION APPLICABLE TO BOTH TAXIS AND PRIVATE HIRE VEHICLES OUTSIDE LONDON

### 1455. Transfer of hackney carriages and private hire vehicles.

If the proprietor<sup>1</sup> of a hackney carriage or a private hire vehicle<sup>2</sup>, in respect of which a vehicle licence<sup>3</sup> has been granted by a district council<sup>4</sup> for an area to which Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>5</sup> applies, transfers his interest in the hackney carriage or private hire vehicle to a person other than the proprietor whose name is specified in the licence, he must within 14 days after such transfer give notice in writing to the district council specifying the name and address of the person to whom the hackney carriage or private hire vehicle has been transferred<sup>6</sup>. If a proprietor without reasonable excuse fails to give such notice to a district council he is guilty of an offence<sup>7</sup>.

1 For the meaning of 'proprietor' see PARA 1447 note 3 ante.

2 For the meaning of 'hackney carriage' see PARA 1434 ante. For the meaning of 'private hire vehicle' see PARA 1442 note 5 ante.

3 For the meaning of 'vehicle licence' see PARA 1447 note 6 ante.

4 As to the meaning of 'district council' see PARA 1433 note 5 ante.

5 I.e. the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

6 Ibid s 49(1).

7 Ibid s 49(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 76 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 230 note 3 ante. Where such an offence is due to the act or default of another person, then, whether proceedings are taken against the first-mentioned person or not, that other person may be charged with and convicted of the offence, and is liable on conviction to the same punishment as might have been imposed on the first-mentioned person if he had been convicted of the offence: Local Government (Miscellaneous Provisions) Act 1976 s 72(1). Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly: ss 44(3), 72(2).

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#### **1456. Provisions as to proprietors.**

Without prejudice to the provisions of the Local Government (Miscellaneous Provisions) Act 1976 relating to the fitness of hackney carriages and private hire vehicles<sup>1</sup>, the proprietor<sup>2</sup> of any hackney carriage or of any private hire vehicle licensed by a district council<sup>3</sup> for an area to which Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>4</sup> applies must present such hackney carriage or private hire vehicle for inspection and testing by or on behalf of the council within such period and at such place within the area of the council as it may by notice reasonably require<sup>5</sup>. However, a district council must not require a proprietor to present the same hackney carriage or private hire vehicle for inspection and testing on more than three separate occasions during any one period of 12 months<sup>6</sup>.

The proprietor of any hackney carriage or private hire vehicle licensed by a district council under the Town Police Clauses Act 1847<sup>7</sup> or under Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>8</sup>, or in respect of which an application for a licence has been made to a district council under the Town Police Clauses Act 1847 or under Part II of the Local Government (Miscellaneous Provisions) Act 1976, must, within such period as the district council may by notice reasonably require, state in writing the address of every place where such hackney carriage or private hire vehicle is kept when not in use, and must if the district council so requires afford to it such facilities as may be reasonably necessary to enable it to cause such hackney carriage or private hire vehicle to be inspected and tested there<sup>9</sup>. Without prejudice to the provisions relating to a driver's duty to stop, report an accident and give information or documents<sup>10</sup>, the proprietor of a hackney carriage or of a private hire vehicle licensed by a district council must report to it as soon as reasonably practicable, and in any case within 72 hours of the occurrence, any accident to such hackney carriage or private hire vehicle causing damage materially affecting the safety, performance or appearance of the hackney carriage or private hire vehicle or the comfort or convenience of persons carried in it<sup>11</sup>.

The proprietor of any hackney carriage or of any private hire vehicle licensed by a district council must at the request of any authorised officer<sup>12</sup> of the council produce for inspection the vehicle licence<sup>13</sup> for such hackney carriage or private hire vehicle and the certificate of the policy of insurance or security required by Part VI of the Road Traffic Act 1988<sup>14</sup> in respect of such hackney carriage or private hire vehicle<sup>15</sup>.

If any person without reasonable excuse contravenes<sup>16</sup> the above provisions<sup>17</sup>, he is guilty of an offence<sup>18</sup>.

1    Ie the Local Government (Miscellaneous Provisions) Act 1976 s 68: see PARA 1463 post. For the meaning of 'hackney carriage' see PARA 1434 ante. For the meaning of 'private hire vehicle' see PARA 1442 note 5 ante.

2    For the meaning of 'proprietor' see PARA 1447 note 3 ante.

3    As to the meaning of 'district council' see PARA 1433 note 5 ante.

4    Ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

5    Ibid s 50(1).

6    Ibid s 50(1) proviso.

7    See PARAS 1434-1446 ante.

8    Ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (as amended).

9    Ibid s 50(2).

10   Ie the provisions of the Road Traffic Act 1988 s 170 (as amended): see PARA 645 ante.

11   Local Government (Miscellaneous Provisions) Act 1976 s 50(3) (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 16).

12   For the meaning of 'authorised officer' see PARA 1437 note 18 ante.

13   For the meaning of 'vehicle licence' see PARA 1447 note 6 ante.

14   Ie the Road Traffic Act 1988 Pt VI (ss 143-162) (as amended).

15   Local Government (Miscellaneous Provisions) Act 1976 s 50(4) (amended by the Road Traffic (Consequential Provisions) Act 1988 Sch 3 para 16).

16   As to the meaning of 'contravene' see PARA 1440 note 5 ante.

17   Ie the Local Government (Miscellaneous Provisions) Act 1976 s 50 (as amended).

18   Ibid s 50(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 76 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 230 note 3 ante. Where such an offence is due to the act or default of another person, then, whether proceedings are taken against the first-mentioned person or not, that other person may be charged with and convicted of the offence, and is liable on conviction to the same punishment as might have been imposed on the first-mentioned person if he had been convicted of the offence: Local Government (Miscellaneous Provisions) Act 1976 s 72(1). Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly: ss 44(3), 72(2).

## UPDATE

### 1456 Provisions as to proprietors

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **1457. Drivers' licences for hackney carriages and private hire vehicles.**

Every licence granted by a district council<sup>1</sup> under the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>2</sup> to any person to drive a private hire vehicle<sup>3</sup> remains in force for three years from the date of such licence or for such lesser period as the district council may specify in such licence<sup>4</sup>. Notwithstanding the provisions of the Public Health Act 1875<sup>5</sup> and the Town Police Clauses Act 1889<sup>6</sup>, every licence granted by a district council under the provisions of the Town Police Clauses Act 1847<sup>7</sup> to any person to drive a hackney carriage<sup>8</sup> remains in force for three years from the date of such licence or for such lesser period as the district council may specify in such licence<sup>9</sup>.

Notwithstanding the provisions of the Town Police Clauses Act 1847, a district council may demand and recover for the grant to any person of a licence to drive a hackney carriage or a private hire vehicle, as the case may be, such a fee as it considers reasonable with a view to recovering the costs of issue and administration; and it may remit the whole or part of the fee in respect of a private hire vehicle in any case in which it thinks it appropriate to do so<sup>10</sup>.

The driver of any hackney carriage or of any private hire vehicle licensed by a district council must at the request of any authorised officer<sup>11</sup> of the council or of any constable produce for inspection his driver's licence<sup>12</sup> either immediately or<sup>13</sup>:

2319 (1) in the case of a request by an authorised officer, at the principal offices of the council before the expiration of the period of five days beginning with the day following that on which the request is made<sup>14</sup>;

2320 (2) in the case of a request by a constable, before the expiration of the period mentioned in head (1) above at any police station which is within the area of the council and is nominated by the driver when the request is made<sup>15</sup>.

If any person without reasonable excuse contravenes<sup>16</sup> the above provisions<sup>17</sup>, he is guilty of an offence<sup>18</sup>.

1 As to the meaning of 'district council' see PARA 1433 note 5 ante.

2 Ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

3 For the meaning of 'private hire vehicle' see PARA 1442 note 5 ante.

4 Local Government (Miscellaneous Provisions) Act 1976 s 53(1)(a).

5 See PARA 1432 ante.

6 See PARA 1436 ante.

- 7 See PARAS 1434-1446 ante.
- 8 For the meaning of 'hackney carriage' see PARA 1434 ante.
- 9 Local Government (Miscellaneous Provisions) Act 1976 s 53(1)(b).
- 10 Ibid s 53(2).
- 11 For the meaning of 'authorised officer' see PARA 1437 note 18 ante.
- 12 For the meaning of 'driver's licence' see PARA 1437 note 7 ante.
- 13 Local Government (Miscellaneous Provisions) Act 1976 s 53(3).
- 14 Ibid s 53(3)(a).
- 15 Ibid s 53(3)(b).
- 16 As to the meaning of 'contravene' see PARA 1440 note 5 ante.
- 17 In the provisions of the Local Government (Miscellaneous Provisions) Act 1976 s 53: see the text to notes 11-15 supra.
- 18 Ibid s 53(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 76 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 230 note 3 ante. Where such an offence is due to the act or default of another person, then, whether proceedings are taken against the first-mentioned person or not, that other person may be charged with and convicted of the offence, and is liable on conviction to the same punishment as might have been imposed on the first-mentioned person if he had been convicted of the offence: Local Government (Miscellaneous Provisions) Act 1976 s 72(1). Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly: ss 44(3), 72(2).

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### **1458. Issue of drivers' badges.**

When granting a driver's licence<sup>1</sup> a district council for an area to which Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>2</sup> applies must issue a driver's badge<sup>3</sup> in such a form as may from time to time be prescribed by it<sup>4</sup>. A driver must at all times when acting in accordance with the driver's licence granted to him wear such badge in such position and manner as to be plainly and distinctly visible<sup>5</sup>. If any person without reasonable excuse contravenes<sup>6</sup> these provisions, he is guilty of an offence<sup>7</sup>.

1 In the Local Government (Miscellaneous Provisions) Act 1976 s 51 (as amended): see PARA 1449 ante. For the meaning of 'driver's licence' see PARA 1437 note 7 ante.

2 In the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante. As to the meaning of 'district council' see PARA 1433 note 5 ante.

3 'Driver's badge' means, in relation to the driver of a hackney carriage, any badge issued by a district council under byelaws made under the Town Police Clauses Act 1847 s 68 (as amended) (see PARA 1438 ante) and, in relation to the driver of a private hire vehicle, any badge issued by a district council under the Local Government (Miscellaneous Provisions) Act 1976 s 54: s 80(1). For the meaning of 'hackney carriage' see PARA 1434 ante. For the meaning of 'private hire vehicle' see PARA 1442 note 5 ante.

4 Ibid s 54(1).

5 Ibid s 54(2)(a).

6 As to the meaning of 'contravene' see PARA 1440 note 5 ante.

7 Local Government (Miscellaneous Provisions) Act 1976 s 54(2)(b). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 76 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 230 note 3 ante. Where such an offence is due to the act or default of another person, then, whether proceedings are taken against the first-mentioned person or not, that other person may be charged with and convicted of the offence, and is liable on conviction to the same punishment as might have been imposed on the first-mentioned person if he had been convicted of the offence: Local Government (Miscellaneous Provisions) Act 1976 s 72(1). Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly: ss 44(3), 72(2).

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#### **1459. Power to require applicants to submit information.**

A district council for an area to which Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>1</sup> applies may require any applicant for a licence under the Town Police Clauses Act 1847<sup>2</sup> or under Part II of the Local Government (Miscellaneous Provisions) Act 1976 to submit to it such information as it may reasonably consider necessary to enable it to determine whether the licence should be granted and whether conditions should be attached to any such licence<sup>3</sup>. Without prejudice to the generality of the above provision<sup>4</sup>, a district council:

2321 (1) may require an applicant for a driver's licence<sup>5</sup> in respect of a hackney carriage<sup>6</sup> or a private hire vehicle<sup>7</sup>:

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223. (a) to produce a certificate signed by a registered medical practitioner to the effect that he is physically fit to be the driver of a hackney carriage or a private hire vehicle<sup>8</sup>; and

224. (b) whether or not such a certificate has been produced, to submit to examination by a registered medical practitioner selected by the district council as to his physical fitness to be the driver of a hackney carriage or a private hire vehicle<sup>9</sup>;

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2322 (2) may require an applicant for an operator's licence<sup>10</sup> to submit to it such information as to<sup>11</sup>:

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225. (a) the name and address of the applicant<sup>12</sup>;

226. (b) the addresses or address whether within the area of the council or not from which he intends to carry on business in connection with private hire vehicles licensed under Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>13</sup>;

227. (c) any trade or business activities he has carried on before making the application<sup>14</sup>;

228. (d) any previous application he has made for an operator's licence<sup>15</sup>;



229. (e) the revocation or suspension of any operator's licence previously held by him<sup>16</sup>; and
230. (f) any convictions recorded against the applicant<sup>17</sup>,
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- 2323 as it may reasonably consider necessary to enable it to determine whether to grant such licence<sup>18</sup>; and
- 2324 (3) in addition to the information specified in head (2) above, may require an applicant for an operator's licence to submit to it<sup>19</sup>:
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231. (a) if the applicant is or has been a director or secretary of a company, information as to any convictions recorded against that company at any relevant time; any trade or business activities carried on by that company; any previous application made by that company for an operator's licence; and any revocation or suspension of an operator's licence previously held by that company<sup>20</sup>;
232. (b) if the applicant is a company, information as to any convictions recorded against a director or secretary of that company; any trade or business activities carried on by any such director or secretary; any previous application made by any such director or secretary for an operator's licence; and any revocation or suspension of an operator's licence previously held by such director or secretary<sup>21</sup>; or
233. (c) if the applicant proposes to operate the vehicle in partnership with any other person, information as to any convictions recorded against that person; any trade or business activities carried on by that person; any previous application made by that person for an operator's licence; and any revocation or suspension of an operator's licence previously held by him<sup>22</sup>.
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If any person knowingly or recklessly makes a false statement or omits any material particular in giving information under these provisions, he is guilty of an offence<sup>23</sup>.

1   Ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante. As to the meaning of 'district council' see PARA 1433 note 5 ante.

2   See PARAS 1434-1446 ante.

3   Local Government (Miscellaneous Provisions) Act 1976 s 57(1).

4   Ie *ibid* s 57(1): see the text and notes 1-3 *supra*.

5   For the meaning of 'driver's licence' see PARA 1437 note 7 ante.

6   For the meaning of 'hackney carriage' see PARA 1434 ante.

7   Local Government (Miscellaneous Provisions) Act 1976 s 57(2)(a). For the meaning of 'private hire vehicle' see PARA 1442 note 5 ante.

8   *Ibid* s 57(2)(a)(i).

9   *Ibid* s 57(2)(a)(ii).

10   For the meaning of 'operator's licence' see PARA 1452 note 4 ante.

11   Local Government (Miscellaneous Provisions) Act 1976 s 57(2)(b).

12   *Ibid* s 57(2)(b)(i).

13   *Ibid* s 57(2)(b)(ii).

14   *Ibid* s 57(2)(b)(iii).

15 Ibid s 57(2)(b)(iv).

16 Ibid s 57(2)(b)(v).

17 Ibid s 57(2)(b)(vi).

18 Ibid s 57(2)(b).

19 Ibid s 57(2)(c).

20 Ibid s 57(2)(c)(i).

21 Ibid s 57(2)(c)(ii).

22 Ibid s 57(2)(c)(iii).

23 Ibid s 57(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 76 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 230 note 3 ante. Where such an offence is due to the act or default of another person, then, whether proceedings are taken against the first-mentioned person or not, that other person may be charged with and convicted of the offence, and is liable on conviction to the same punishment as might have been imposed on the first-mentioned person if he had been convicted of the offence: Local Government (Miscellaneous Provisions) Act 1976 s 72(1). Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly: ss 44(3), 72(2).

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#### **1460. Return of identification plate or disc on revocation or expiry of licence etc.**

On the revocation or expiry of a vehicle licence<sup>1</sup> in relation to a hackney carriage or private hire vehicle<sup>2</sup>, or the suspension of a licence<sup>3</sup>, a district council<sup>4</sup> for an area to which Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>5</sup> applies may by notice require the proprietor<sup>6</sup> of that hackney carriage or private hire vehicle licensed by it to return to it, within seven days after the service on him of that notice, the plate or disc which in the case of a hackney carriage is required to be affixed to the carriage<sup>7</sup> and in the case of a private hire vehicle was issued for the vehicle under the Local Government (Miscellaneous Provisions) Act 1976<sup>8</sup>. If any proprietor fails without reasonable excuse to comply with the terms of such a notice<sup>9</sup> he is guilty of an offence<sup>10</sup>. Any authorised officer<sup>11</sup> of the council or constable<sup>12</sup> is entitled to remove and retain the said plate or disc from the said hackney carriage or private hire vehicle<sup>13</sup>.

1 For the meaning of 'vehicle licence' see PARA 1447 note 6 ante.

2 For the meaning of 'hackney carriage' see PARA 1434 ante. For the meaning of 'private hire vehicle' see PARA 1442 note 5 ante.

3 Ie under the Local Government (Miscellaneous Provisions) Act 1976 s 68: see PARA 1463 post.

4 As to the meaning of 'district council' see PARA 1433 note 5 ante.

- 5     le the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.
- 6     For the meaning of 'proprietor' see PARA 1447 note 3 ante.
- 7     le as mentioned in the Town Police Clauses Act 1847 s 38: see PARA 1434 ante.
- 8     Local Government (Miscellaneous Provisions) Act 1988 s 58(1). A plate or disc is issued for a private hire vehicle under s 48(5): see PARA 1448 note 23 ante.
- 9     le under ibid s 58(1): see the text and notes 1-8 supra.
- 10    Ibid s 58(2)(a) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). A person convicted of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale and to a daily fine not exceeding £10: Local Government (Miscellaneous Provisions) Act 1976 s 58(2)(a) (as so amended). As to the standard scale see PARA 230 note 3 ante. 'Daily fine' means a fine for each day during which an offence continues after conviction: s 80(1).
- 11    For the meaning of 'authorised officer' see PARA 1437 note 18 ante.
- 12    As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.
- 13    Local Government (Miscellaneous Provisions) Act 1976 s 58(2)(b).

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#### **1461. Suspension and revocation of vehicle licences.**

Notwithstanding anything in the Town Police Clauses Act 1847<sup>1</sup> or in Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>2</sup>, a district council for an area to which Part II of the Local Government (Miscellaneous Provisions) Act 1976 applies<sup>3</sup> may suspend, revoke or on an application therefor<sup>4</sup> refuse to renew a vehicle licence<sup>5</sup> on any of the following grounds<sup>6</sup>:

- 2325 (1) that the hackney carriage<sup>7</sup> or private hire vehicle<sup>8</sup> is unfit for use as a hackney carriage or private hire vehicle<sup>9</sup>;
- 2326 (2) that any offence under, or non-compliance with, the provisions of the Town Police Clauses Act 1847 or of Part II of the Local Government (Miscellaneous Provisions) Act 1976 by the operator or driver has been committed<sup>10</sup>; or
- 2327 (3) any other reasonable cause<sup>11</sup>.

Where a district council so suspends, revokes or refuses to renew any licence it must give to the proprietor<sup>12</sup> of the vehicle notice of the grounds on which the licence has been suspended or revoked or on which it has refused to renew the licence within 14 days of such suspension, revocation or refusal<sup>13</sup>.

Any proprietor aggrieved by a decision of a district council under this provision may appeal to a magistrates' court<sup>14</sup>.

1     As to the revocation of vehicle licences under the Town Police Clauses Act 1847 s 50 see PARA 1474 note 3 post.

2     le the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended).

- 3 As to the application of *ibid* Pt II (as amended) see PARA 1433 ante. As to the meaning of 'district council' see PARA 1433 note 5 ante.
- 4 *Ie* on application under the Town Police Clauses Act 1847 s 40 (as amended) (see PARA 1436 ante) or the Local Government (Miscellaneous Provisions) Act 1976 s 48 (as amended) (see PARA 1448 ante).
- 5 For the meaning of 'vehicle licence' see PARA 1447 note 6 ante.
- 6 Local Government (Miscellaneous Provisions) Act 1976 s 60(1).
- 7 For the meaning of 'hackney carriage' see PARA 1434 ante.
- 8 For the meaning of 'private hire vehicle' see PARA 1442 note 5 ante.
- 9 Local Government (Miscellaneous Provisions) Act 1976 s 60(1)(a).
- 10 *Ibid* s 60(1)(b).
- 11 *Ibid* s 60(1)(c). The words 'any other reasonable cause' give a district council a wide discretion in deciding whether to suspend a vehicle licence and indicate that something other than a criminal conviction would justify a suspension: *Leeds City Council v Hussain* [2002] EWHC 1145 Admin, [2003] RTR 199.
- 12 For the meaning of 'proprietor' see PARA 1447 note 3 ante.
- 13 Local Government (Miscellaneous Provisions) Act 1976 s 60(2).
- 14 *Ibid* s 60(3). See MAGISTRATES.

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#### **1462. Suspension and revocation of drivers' licences.**

Notwithstanding anything in the Town Police Clauses Act 1847<sup>1</sup> or in Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>2</sup>, a district council for an area to which Part II of the Local Government (Miscellaneous Provisions) Act 1976 applies<sup>3</sup> may suspend, revoke or on an application therefor<sup>4</sup> refuse to renew the licence of a driver of a hackney carriage<sup>5</sup> or a private hire vehicle<sup>6</sup> on any of the following grounds<sup>7</sup>:

- 2328 (1) that he has since the grant of the licence been convicted of an offence involving dishonesty, indecency or violence<sup>8</sup>, or been convicted of an offence under or has failed to comply with the provisions of the Town Police Clauses Act 1847 or of Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>9</sup>; or
- 2329 (2) any other reasonable cause<sup>10</sup>.

Where a district council so suspends, revokes or refuses to renew any licence it must give to the driver notice of the grounds on which the licence has been suspended or revoked or on which it has refused to renew such licence within 14 days of such suspension, revocation or refusal and the driver must on demand return to the district council the driver's badge<sup>11</sup>.

If any person without reasonable excuse contravenes<sup>12</sup> these provisions he is guilty of an offence<sup>13</sup>.

Any driver aggrieved by a decision of a district council under this provision may appeal to a magistrates' court<sup>14</sup>.

- 1 See PARAS 1434-1446 ante.
- 2 le the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended).
- 3 As to the application of *ibid* Pt II (as amended) see PARA 1433 ante. As to the meaning of 'district council' see PARA 1433 note 5 ante.
- 4 le on application under the Town Police Clauses Act 1847 s 46 (as amended) (see PARA 1437 ante) or under the Local Government (Miscellaneous Provisions) Act 1976 s 51 (as amended) (see PARA 1449 ante).
- 5 For the meaning of 'hackney carriage' see PARA 1434 ante. For the revocation of licences under the Town Police Clauses Act 1847 see PARA 1474 note 3 post.
- 6 For the meaning of 'private hire vehicle' see PARA 1442 note 5 ante.
- 7 Local Government (Miscellaneous Provisions) Act 1976 s 61(1).
- 8 *Ibid* s 61(1)(a)(i).
- 9 *Ibid* s 61(1)(a)(ii).
- 10 *Ibid* s 61(1)(b). The words 'any other reasonable cause' give a district council a wide discretion in deciding whether to suspend a driver's licence and indicate that something other than a criminal conviction would justify a suspension: *Leeds City Council v Hussain* [2002] EWHC 1145 Admin, [2003] RTR 199.
- 11 Local Government (Miscellaneous Provisions) Act 1976 s 61(2)(a). The driver's badge is issued to him in accordance with s 54: see PARA 1458 ante. For the meaning of 'driver's badge' see PARA 1458 note 3 ante.  
As from a day to be appointed, a suspension or revocation of the licence of a driver under s 61 (as amended) takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver under s 61(2)(a): s 61(2A) (s 61(2A), (2B) added by the Road Safety Act 2006 s 52(1), (2)). However, if it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver includes a statement that that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver: Local Government (Miscellaneous Provisions) Act 1976 s 61(2B) (as so added). At the date at which this volume states the law no such day had been appointed.
- 12 As to the meaning of 'contravene' see PARA 1440 note 5 ante.
- 13 Local Government (Miscellaneous Provisions) Act 1976 s 61(2)(b). Such a person is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 61(2)(b) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 230 note 3 ante.
- 14 Local Government (Miscellaneous Provisions) Act 1976 s 61(3). See MAGISTRATES. As from a day to be appointed, s 61(3) is amended by the Road Safety Act 2006 s 52(3) so as to refer to a person aggrieved by a decision under the Local Government (Miscellaneous Provisions) Act 1976 s 61(1) see the text and notes 1-10 *supra*). At the date at which this volume states the law no such day had been appointed.

## UPDATE

### 1462 Suspension and revocation of drivers' licences

NOTES 11, 14--Day now appointed in relation to Road Safety Act 2006 s 52(1)-(3): SI 2007/466.

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### **1463. Fitness of hackney carriages and private hire vehicles.**

Any authorised officer<sup>1</sup> of the council in question or any constable has power at all reasonable times to inspect and test, for the purpose of ascertaining its fitness, any hackney carriage or private hire vehicle<sup>2</sup> licensed by a district council<sup>3</sup> for an area to which Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>4</sup> applies, or any taximeter<sup>5</sup> affixed to such a vehicle, and if he is not satisfied as to the fitness of the hackney carriage or private hire vehicle or as to the accuracy of its taximeter he may by notice in writing require the proprietor<sup>6</sup> of the hackney carriage or private hire vehicle to make it or its taximeter available for further inspection and testing at such reasonable time and place as may be specified in the notice and suspend the vehicle licence<sup>7</sup> until such time as the authorised officer or constable<sup>8</sup> is so satisfied<sup>9</sup>.

1 For the meaning of 'authorised officer' see PARA 1437 note 18 ante.

2 For the meaning of 'hackney carriage' see PARA 1434 ante. For the meaning of 'private hire vehicle' see PARA 1442 note 5 ante.

3 As to the meaning of 'district council' see PARA 1433 note 5 ante.

4 I.e. the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

5 For the meaning of 'taximeter' see PARA 1442 note 5 ante.

6 For the meaning of 'proprietor' see PARA 1447 note 3 ante.

7 For the meaning of 'vehicle licence' see PARA 1447 note 6 ante.

8 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

9 Local Government (Miscellaneous Provisions) Act 1976 s 68. However, if the authorised officer or constable is not so satisfied before the expiration of a period of two months, the said licence is deemed, by virtue of s 68, to have been revoked, and the provisions of s 60(2), (3) (see PARA 1461 ante) apply with any necessary modifications: s 68 proviso.

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### **1464. Prolongation of journeys.**

No person being the driver of a hackney carriage or of a private hire vehicle<sup>1</sup> licensed by a district council<sup>2</sup> for an area to which Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>3</sup> applies may without reasonable cause unnecessarily prolong, in distance or in time, the journey for which the hackney carriage or private hire vehicle has been hired<sup>4</sup>. If any person contravenes<sup>5</sup> these provisions, he is guilty of an offence<sup>6</sup>.

1 For the meaning of 'hackney carriage' see PARA 1434 ante. For the meaning of 'private hire vehicle' see PARA 1442 note 5 ante.

2 As to the meaning of 'district council' see PARA 1433 note 5 ante.

3 le the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

4 Ibid s 69(1).

5 As to the meaning of 'contravene' see PARA 1440 note 5 ante.

6 Local Government (Miscellaneous Provisions) Act 1976 s 69(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 76 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 230 note 3 ante.

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### **1465. Fees for vehicle licences and operators' licences.**

A district council<sup>1</sup> for an area to which Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>2</sup> applies may charge such fees for the grant of vehicle licences and operators' licences<sup>3</sup> as may be resolved by it from time to time and as may be sufficient in the aggregate to cover in whole or in part<sup>4</sup>:

- 2330 (1) the reasonable cost of the carrying out by or on behalf of the district council of inspections of hackney carriages<sup>5</sup> and private hire vehicles<sup>6</sup> for the purpose of determining whether any such licence should be granted or renewed<sup>7</sup>;
- 2331 (2) the reasonable cost of providing hackney carriage stands<sup>8</sup>; and
- 2332 (3) any reasonable administrative or other costs in connection with the foregoing and with the control and supervision of hackney carriages and private hire vehicles<sup>9</sup>.

The fees chargeable<sup>10</sup> must not exceed the specified maximums<sup>11</sup> or such other sums as a district council may, subject to the following provisions, from time to time determine<sup>12</sup>.

If a district council determines that the specified maximum fees are to be varied it must publish in at least one local newspaper circulating in the district a notice setting out the variation proposed, drawing attention to certain requirements<sup>13</sup> and specifying the period, which must not be less than 28 days from the date of the first publication of the notice, within which and the manner in which objections to the variation can be made<sup>14</sup>. A copy of the notice must be deposited, for the period of 28 days from the date of the first publication, at the offices of the council which published the notice and must at all reasonable hours be open to public inspection without payment<sup>15</sup>. If no objection to a variation is duly made within the period specified in the notice, or if all objections so made are withdrawn, the variation is to come into operation on the date of the expiration of the period specified in the notice or the date of withdrawal of the objection or, if more than one, of the last objection, whichever date is the later<sup>16</sup>. If objection is duly made and is not withdrawn, the district council must set a further date, not later than two months after the first specified date, on which the variation is to come into force with or without modification as decided by the district council after consideration of the objections<sup>17</sup>.

A district council may remit the whole or part of any fee chargeable in pursuance of the above provisions for the grant of a licence<sup>18</sup> in any case in which it thinks it appropriate to do so<sup>19</sup>.

- 1 As to the meaning of 'district council' see PARA 1433 note 5 ante.
- 2 Ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.
- 3 For the meaning of 'vehicle licence' see PARA 1447 note 6 ante. For the meaning of 'operator's licence' see PARA 1452 note 4 ante.
- 4 Local Government (Miscellaneous Provisions) Act 1976 s 70(1). This is subject to the provisions of s 70(2) (see the text and notes 10-12 infra); s 70(1).
- 5 For the meaning of 'hackney carriage' see PARA 1434 ante. A district council, before granting a licence, has the power under *ibid* s 70 to impose charges for the inspection of a vehicle, without specifying a maximum sum, and such charges may increase with each failed inspection: *Kelly v Liverpool City Council* [2003] EWCA Civ 197, [2003] 2 All ER 772, [2003] RTR 326.
- 6 For the meaning of 'private hire vehicle' see PARA 1442 note 5 ante.
- 7 Local Government (Miscellaneous Provisions) Act 1976 s 70(1)(a).
- 8 *Ibid* s 70(1)(b).
- 9 *Ibid* s 70(1)(c).
- 10 Ie the fees chargeable under *ibid* s 70.
- 11 The specified maximums are: (1) for the grant of a vehicle licence in respect of a hackney carriage, £25; (2) for the grant of a vehicle licence in respect of a private hire vehicle, £25; and (3) for the grant of an operator's licence, £25 per annum: *ibid* s 70(2)(a)-(c).
- 12 *Ibid* s 70(2).
- 13 Ie the provisions of *ibid* s 70(3)(b): see the text to note 15 infra.
- 14 *Ibid* s 70(3)(a).
- 15 *Ibid* s 70(3)(b).
- 16 *Ibid* s 70(4).
- 17 *Ibid* s 70(5).
- 18 Ie under *ibid* s 48 (as amended) or s 55: see PARAS 1448, 1450 ante.
- 19 *Ibid* s 70(6).

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#### **1466. Saving for certain businesses.**

Where any provision of Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>1</sup> coming into operation on the relevant day<sup>2</sup> requires the licensing of a person carrying on any business, or of any vehicle used by a person in connection with any business, it is lawful for any person who immediately before that day was carrying on that business, and had before that day duly applied for the licence required by that provision to continue to carry on that business until he is informed of the decision with regard to his application and, if the decision is adverse, during such further time as is provided for an appeal to be brought<sup>3</sup>.



<sup>1</sup> ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

<sup>2</sup> For these purposes, 'the relevant day' means: (1) in relation to a district the whole or part of which ceased to be within the metropolitan police district by virtue of the coming into force of the Greater London Authority Act 1999 s 323 (alteration of the metropolitan police district: see POLICE vol 36(1) (2007 Reissue) PARA 137), 1 April 2000; and (2) in any other case, a day fixed by resolution under the Local Government (Miscellaneous Provisions) Act 1976 s 45 (see PARA 1433 ante): s 74 (amended by the Greater London Authority Act 1999 (Hackney Carriages and Private Hire Vehicles) (Transitional and Consequential Provisions) Order 2000, SI 2000/412, art 7(1), (2)(b)).

<sup>3</sup> Local Government (Miscellaneous Provisions) Act 1976 s 74 (amended by the Greater London Authority Act 1999 (Hackney Carriages and Private Hire Vehicles) (Transitional and Consequential Provisions) Order 2000, SI 2000/412, art 7(1), (2)(a)).

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## **1467. Appeals.**

Certain provisions of the Public Health Act 1936<sup>1</sup> relating to appeals have effect as if Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>2</sup> were part of the Public Health Act 1936<sup>3</sup>. If any requirement, refusal or other decision of a district council<sup>4</sup> against which a right of appeal is conferred by the Local Government (Miscellaneous Provisions) Act 1976<sup>5</sup> involves the execution of any work or the taking of any action<sup>6</sup>, or makes it unlawful for any person to carry on a business which he was lawfully carrying on up to the time of the requirement, refusal or decision<sup>7</sup>, then, until the time for appealing has expired, or, when an appeal is lodged, until the appeal is disposed of or withdrawn or fails for want of prosecution, no proceedings may be taken in respect of any failure to execute the work, or take the action, and that person may carry on that business<sup>8</sup>.

<sup>1</sup> ie the Public Health Act 1936 ss 300-302: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARAS 129-130.

<sup>2</sup> ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

<sup>3</sup> Ibid s 77(1).

<sup>4</sup> As to the meaning of 'district council' see PARA 1433 note 5 ante.

<sup>5</sup> Local Government (Miscellaneous Provisions) Act 1976 s 77(2). As from a day to be appointed, s 77(2) does not apply in relation to a decision under s 61(1) (see PARA 1462 ante) which has immediate effect in accordance with s 61(2B) (as added) (see PARA 1462 note 13 ante): s 77(3) (added by the Road Safety Act 2006 s 52(1), (4)). At the date at which this volume states the law no such day had been appointed.

<sup>6</sup> Local Government (Miscellaneous Provisions) Act 1976 s 77(2)(a).

<sup>7</sup> Ibid s 77(2)(b).

<sup>8</sup> Ibid s 77(2).

## **UPDATE**

### **1467 Appeals**

NOTE 5--Day now appointed in relation to Road Safety Act 2006 s 52(1), (4): SI 2007/466.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/15. TAXIS AND PRIVATE HIRE VEHICLES/(4) LEGISLATION APPLICABLE TO BOTH TAXIS AND PRIVATE HIRE VEHICLES OUTSIDE LONDON/1468. Application of provisions of Public Health Act 1936.

#### **1468. Application of provisions of Public Health Act 1936.**

Certain provisions of the Public Health Act 1936<sup>1</sup> have effect as if references in those provisions to the Public Health Act 1936 included a reference to Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>2</sup>.

1    Ie the Public Health Act 1936 ss 283(1), 304: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARAS 119, 128.

2    Local Government (Miscellaneous Provisions) Act 1976 s 78. As to the application of Pt II (ss 45-80) (as amended) see PARA 1433 ante.

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#### **1469. Authentication of licences.**

Notwithstanding anything in the provision relating to the sealing and signing of licences in the Town Police Clauses Act 1847<sup>1</sup>, any vehicle licence<sup>2</sup> or driver's licence<sup>3</sup> granted by a district council<sup>4</sup> under the Town Police Clauses Act 1847, or any licence granted by a district council under Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>5</sup>, is not required to be under the common seal of the district council, but if not so sealed must be signed by an authorised officer of the council<sup>6</sup>.

1    Ie the Town Police Clauses Act 1847 s 43.

2    For the meaning of 'vehicle licence' see PARA 1447 note 6 ante.

3    For the meaning of 'driver's licence' see PARA 1437 note 7 ante.

4    As to the meaning of 'district council' see PARA 1433 note 5 ante.

5    Ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

6    Ibid s 79.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-

1663)/15. TAXIS AND PRIVATE HIRE VEHICLES/(5) OMNIBUSES OUTSIDE LONDON/1470.  
Meaning of 'omnibus'.

## **(5) OMNIBUSES OUTSIDE LONDON**

### **1470. Meaning of 'omnibus'.**

The term 'omnibus' includes every omnibus, char-a-banc, wagonette, brake, stage coach, and other carriage plying or standing for hire by or used to carry passengers at separate fares<sup>1</sup>, to, from or in any part of the prescribed distance<sup>2</sup>. The term 'omnibus' does not include:

- 2333 (1) any tramcar or tram carriage<sup>3</sup>;
- 2334 (2) any carriage starting from and previously hired for the particular passengers thereby carried at any livery stable yard (within the prescribed distance) where horses are stabled and carriages let for hire, the carriage starting from the stable yard and being bona fide the property of the occupier, not standing or plying for hire within the prescribed distance<sup>4</sup>;
- 2335 (3) any omnibus belonging to or hired or used by any railway company for conveying passengers and their luggage to or from any railway station of that company, not standing or plying for hire within the prescribed distance<sup>5</sup>; or
- 2336 (4) any omnibus starting from outside the prescribed distance, and not standing or plying for hire within the prescribed distance<sup>6</sup>.

1 As to separate fares see PARA 1136 note 7 ante.

2 Town Police Clauses Act 1889 s 3. For the meaning of the 'prescribed distance' see PARA 1434 note 5 ante.

3 Ibid s 3 (amended by the Transport and Works Act 1992 s 68(1), Sch 4 Pt I). As to trams see PARA 1532 et seq post.

4 Town Police Clauses Act 1889 s 3.

5 Ibid s 3.

6 Ibid s 3.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/15. TAXIS AND PRIVATE HIRE VEHICLES/(5) OMNIBUSES OUTSIDE LONDON/1471.  
Application of hackney carriage legislation to omnibuses.

### **1471. Application of hackney carriage legislation to omnibuses.**

The several terms 'hackney carriages'<sup>1</sup>, 'hackney coach', 'carriages', and 'carriage', whenever used in certain provisions of the Town Police Clauses Act 1847<sup>2</sup> are deemed to include<sup>3</sup> every omnibus<sup>4</sup>.

The power to make byelaws for specified purposes in relation to omnibuses is conferred by the Town Police Clauses Act 1889<sup>5</sup>. The Town Police Clauses Act 1889 was, however, repealed by the Road Traffic Act 1930<sup>6</sup> so far as it related to public service vehicles, the definition of which was limited to motor vehicles<sup>7</sup>. Accordingly, the Town Police Clauses Act 1889 is now virtually obsolete since it only applies to omnibuses falling within the statutory definition<sup>8</sup> which are not motor vehicles<sup>9</sup>.

- 1 For the meaning of 'hackney carriage' see PARA 1434 ante.
- 2 The specified provisions of the Town Police Clauses Act 1847 are ss 37, 40-52, 54, 58, 60-66 (all as amended): Town Police Clauses Act 1889 s 4(1). The Town Police Clauses Act 1889 is to be construed as one with the Town Police Clauses Act 1847: Town Police Clauses Act 1889 s 2(1). The Town Police Clauses Act 1889 is also deemed to be incorporated with the Public Health Act 1875 by s 171 (as amended): Town Police Clauses Act 1889 s 2(2).
- 3 In notwithstanding anything contained in the Town Police Clauses Act 1847 s 38: see PARA 1434 ante.
- 4 Town Police Clauses Act 1889 s 4(1).
- 5 See *ibid* ss 4(3), 6; and PARA 1438 ante.
- 6 See the Road Traffic Act 1930 s 122, Sch 5 (repealed).
- 7 See *ibid* s 121 (repealed).
- 8 See PARA 1470 ante.
- 9 In practice this means horse-drawn omnibuses. However, byelaws have been made in relation to pedal rickshaws carrying passengers at separate fares.

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## **(6) OFFENCES AS TO TAXIS AND PRIVATE HIRE VEHICLES OUTSIDE LONDON**

### **1472. Compensation where charge withdrawn or dismissed.**

If a charge<sup>1</sup> against a driver is withdrawn or dismissed, the court may order the complainant to compensate him for loss of time<sup>2</sup>.

- 1 In a charge concerning any offence under the Town Police Clauses Act 1847 or any Act with which it is incorporated, or any byelaw made under it. As to byelaws see PARA 1438 ante. As to the application of the Town Police Clauses Act 1847 see PARA 1432 ante.
- 2 *Ibid* s 65 (amended by the Statute Law (Repeals) Act 1989).

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### **1473. Roof signs carried by vehicles other than hackney carriages.**

No vehicle which is used for carrying passengers for hire or reward, other than a taxi<sup>1</sup>, may display on or above its roof, in any part of England and Wales outside the metropolitan police district and the City of London<sup>2</sup>, any sign which consists of or includes the word 'taxi' or 'cab',

whether in the singular or plural, or 'hire', or any word of similar meaning or appearance to any of those words, whether alone or as part of another word, or any sign, notice, mark, illumination or other feature which may suggest that the vehicle is a taxi<sup>3</sup>. Any person who knowingly drives a vehicle which contravenes the above provision<sup>4</sup> or causes or permits it to be contravened in respect of any vehicle commits an offence<sup>5</sup>.

1 'Taxi' means a vehicle licensed under the Town Police Clauses Act 1847 s 37 (see PARA 1435 ante) or under the Metropolitan Public Carriage Act 1869 s 6 (as substituted) (see PARA 1479 post): Transport Act 1980 s 64(3).

2 As to the extent of the metropolitan police district and the City of London see PARA 1431 note 1 ante.

3 Transport Act 1980 s 64(1). As to conditions which may be imposed in respect of signs on private hire vehicles see the Local Government (Miscellaneous Provisions) Act 1976 s 48(2); and PARA 1448 ante. For the meaning of 'private hire vehicle' see PARA 1442 note 5 ante.

4 I.e. the Transport Act 1980 s 64(1).

5 Ibid s 64(2). Such a person is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 64(2) (amended by virtue of the Criminal Justice Act 1982 s 46(1), (4)). As to the standard scale see PARA 230 note 3 ante.

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#### **1474. Endorsement, suspension and revocation of licences.**

If the driver of a hackney carriage<sup>1</sup> summoned to attend before a justice is adjudged guilty of the offence alleged against him, an endorsement must be made on his licence<sup>2</sup>, stating the nature of the offence and the amount of the penalty inflicted<sup>3</sup>.

Notwithstanding anything in the Town Police Clauses Act 1847, a district council for an area to which Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>4</sup> applies may suspend, revoke or refuse to renew a hackney carriage licence or the licence of the driver of a hackney carriage on specified grounds<sup>5</sup>.

1 For the meaning of 'hackney carriage' see PARA 1434 ante.

2 As to licences for the drivers of hackney carriages see PARA 1437 ante.

3 Town Police Clauses Act 1847 s 48. The local authority may, upon conviction for the second time of the proprietor or driver of a hackney carriage for any offence under the provisions of the Town Police Clauses Act 1847 with respect to hackney carriages, or any byelaw made in pursuance thereof, suspend or revoke as it deems right, the licence of such driver or proprietor: s 50. The convictions do not have to be for identical offences: *Bowers v Gloucester Corp* [1963] 1 QB 881, [1963] 1 All ER 437. As to byelaws see PARA 1438 ante.

4 I.e. the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

5 See ibid ss 60(1), 61(1). As to the specified grounds see PARAS 1461-1462 ante.

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1663)/15. TAXIS AND PRIVATE HIRE VEHICLES/(6) OFFENCES AS TO TAXIS AND PRIVATE HIRE VEHICLES OUTSIDE LONDON/1475. Obstruction of authorised officers.

# **1475. Obstruction of authorised officers.**

Any person who:

- 2337 (1) wilfully obstructs an authorised officer<sup>1</sup> or constable acting in pursuance of Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>2</sup> or the Town Police Clauses Act 1847<sup>3</sup>;
- 2338 (2) without reasonable excuse fails to comply with any requirement properly made to him by such officer or constable under Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>4</sup>; or
- 2339 (3) without reasonable cause fails to give such an officer or constable so acting any other assistance or information which he may reasonably require of such person for the purpose of the performance of his functions under Part II of the Local Government (Miscellaneous Provisions) Act 1976 or the Town Police Clauses Act 1847<sup>5</sup>,

is guilty of an offence<sup>6</sup>.

If any person, in giving any such information as is mentioned in head (3) above, makes any statement which he knows to be false, he is guilty of an offence<sup>7</sup>.

1 For the meaning of 'authorised officer' see PARA 1437 note 18 ante.

2 Ie the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

3 Ibid s 73(1)(a).

4 Ibid s 73(1)(b).

5 Ibid s 73(1)(c).

6 Ibid s 73(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 76 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 230 note 3 ante. Where such an offence is due to the act or default of another person, then, whether proceedings are taken against the first-mentioned person or not, that other person may be charged with and convicted of the offence, and is liable on conviction to the same punishment as might have been imposed on the first-mentioned person if he had been convicted of the offence: Local Government (Miscellaneous Provisions) Act 1976 s 72(1). Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly: ss 44(3), 72(2).

7 Ibid s 73(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 76 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to where such an offence is due to the act or default of another person, or where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity see note 6 supra.

1663)/15. TAXIS AND PRIVATE HIRE VEHICLES/(6) OFFENCES AS TO TAXIS AND PRIVATE HIRE VEHICLES OUTSIDE LONDON/1476. Penalties.

### **1476. Penalties.**

Any person who commits an offence against any of the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976<sup>1</sup> in respect of which no penalty is expressly provided is liable on summary conviction to a fine<sup>2</sup>.

Where an offence by any person under any of the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976 is due to the act or default of another person, then, whether proceedings are taken against the first-mentioned person or not, that other person may be charged with and convicted of that offence, and is liable on conviction to the same punishment as might have been imposed on the first-mentioned person if he had been convicted of the offence<sup>3</sup>.

1 The Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (as amended). As to the application of Pt II (as amended) see PARA 1433 ante.

2 Ibid s 76. The fine must not exceed level 3 on the standard scale: see s 76 (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 230 note 3 ante.

3 Local Government (Miscellaneous Provisions) Act 1976 s 72(1). Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly: ss 44(3), 72(2).

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## **(7) TAXIS IN LONDON**

### **1477. Introduction.**

Within the metropolitan police district<sup>1</sup> and the City of London<sup>2</sup>, hackney carriages and cabs<sup>3</sup> are regulated by the London Hackney Carriage Act 1831, the London Hackney Carriages Act 1843<sup>4</sup>, the London Hackney Carriage Act 1850, the London Hackney Carriage Act 1853, the Metropolitan Public Carriage Act 1869, the London Cab Act 1896, the London Cab and Stage Carriage Act 1907, the London Cab Act 1968, the Transport Act 1985 and other Acts which also apply to the rest of England and Wales<sup>5</sup>. However, the principal legislation is contained in the Metropolitan Public Carriage Act 1869<sup>6</sup>. The legislation relating to hackney carriages in London was amended by the Greater London Authority Act 1999, in particular for the purpose of transferring functions exercisable by the Secretary of State<sup>7</sup> to Transport for London<sup>8</sup>.

1 As to the metropolitan police district see POLICE vol 36(1) (2007 Reissue) PARA 137.

2 The application of the provisions relating to hackney carriages and cabs is limited to the metropolitan police district and the City of London by the London Hackney Carriage Act 1853 ss 20, 21; the Metropolitan Public Carriage Act 1869 s 2 (amended by the Statute Law (Repeals) Act 1989); and the London Cab and Stage Carriage Act 1907 s 6(3). As to the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 31.

3 For the meanings of 'hackney carriages' and 'cabs' see PARA 1478 post.

4 So much of the London Hackney Carriage Act 1831 as relates to hackney carriages and is not repealed extends and applies to hackney carriages within the meaning of the London Hackney Carriages Act 1843: s 3 (amended by the Statute Law Revision Act 1874 (No 2); and the Statute Law Revision Act 1891).

5 As to taxis outside London see PARAS 1434-1446 ante.

6 As to the Metropolitan Public Carriage Act 1869 see PARA 1478 et seq post. All the provisions relating to hackney carriages in force at the time of the commencement of the Metropolitan Public Carriage Act 1869 are, subject to any alteration made therein by the Metropolitan Public Carriage Act 1869 or by any London cab order made in pursuance of the Metropolitan Public Carriage Act 1869, to continue in force, and all such provisions as relate to licences granted, are, subject to any alteration as mentioned, to apply to licences granted under the Metropolitan Public Carriage Act 1869: s 15 (amended by the Statute Law (Repeals) Act 1976; and the Greater London Authority Act 1999 s 253, Sch 20 Pt I para 5(1), (11), Pt II para 14). Private hire vehicles in London are also governed by the Private Hire Vehicles (London) Act 1998: see PARA 1500 et seq post. As to London cab orders see PARA 1484 post.

7 As to the Secretary of State see PARA 236 ante.

8 See the Greater London Authority Act 1999 s 253, Sch 20. As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

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### **1478. Meaning of 'hackney carriage'.**

Within the metropolitan police district<sup>1</sup> and the City of London<sup>2</sup>, for the purposes of the relevant enactments<sup>3</sup>, 'hackney carriage' or 'cab'<sup>4</sup> means any such vehicle for the conveyance of passengers which plies for hire<sup>5</sup>, whether drawn or propelled by animal or mechanical power<sup>6</sup>, and which is not a stage carriage<sup>7</sup> or a tramcar<sup>8</sup>. 'Stage carriage' means any carriage for the conveyance of passengers which plies for hire in any public street, road or place within those limits, and in which passengers or any of them are charged to pay separate and distinct, or at the rate of separate and distinct, fares<sup>9</sup> for their respective places or seats<sup>10</sup>. A motor vehicle which plies for hire but does not carry passengers at separate fares and is not adapted to carry eight or more passengers is accordingly a hackney carriage<sup>11</sup>.

Legislation relating to hackney carriages and stage carriages in London no longer applies to public service vehicles, and such vehicles are accordingly excluded from the meaning of 'hackney carriage'<sup>12</sup>.

1 As to the metropolitan police district see POLICE vol 36(1) (2007 Reissue) PARA 137.

2 As to the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 31.

3 Ie the London Hackney Carriage Act 1831, the London Hackney Carriages Act 1843, the London Hackney Carriage Act 1850, the London Hackney Carriage Act 1853, the Metropolitan Public Carriage Act 1869, the London Cab Act 1896, the London Cab and Stage Carriage Act 1907, the London Cab Act 1968 and the Transport Act 1985.

4 See the London Cab Act 1896 s 3 and the London Cab and Stage Carriage Act 1907 s 6(1), which apply the definition of hackney carriage to cabs.

5 Cars standing outside an office which displays a 'cars for hire' sign are plying for hire: *Gilbert v McKay* [1946] 1 All ER 458, DC. Vehicles bearing an advertisement containing the words 'Mini cab' and having equipment in the form of radio communication may be plying for hire: *Rose v Welbeck Motors Ltd* [1962] 2 All ER 801, [1962] 1 WLR 1010, DC. See *Newman v Vincent* [1962] 2 All ER 806, [1962] 1 WLR 1017, DC. Cars not exhibited as available for hire are not plying for hire: *Cogley v Sherwood* [1959] 2 QB 311, [1959] 2 All ER 313,



DC. An unattended vehicle may be plying for hire: see *Vant v Cripps* (1963) 62 LGR 88, DC. The phrase 'ply for hire' does not connote motion. A cab is not plying for hire when cruising whilst displaying a 'for hire' sign unless the driver stops when hailed: *Hunt v Morgan* [1949] 1 KB 233, [1948] 2 All ER 1065, DC.

A cab which is in a parking place designated under the Road Traffic Regulation Act 1984 (see PARA 808 note 4 ante) is not deemed to be plying for hire: see the London Cab Act 1968 s 3(2) (amended by the Road Traffic Regulation Act 1984 s 146, Sch 13 para 4).

As to the display of signs on vehicles other than taxis and the use of words in advertisements in relation to vehicles offered for hire which are not taxis see the Private Hire Vehicles (London) Act 1998 s 30 (as amended), s 31; and PARAS 1524-1525 post.

6 See the London Cab and Stage Carriage Act 1907 s 6(2) (amended by the Statute Law Revision Act 1907; and the Statute Law (Repeals) Act 1976).

7 For the meaning of 'stage carriage' see the text and notes 9-10 infra.

8 See the Metropolitan Public Carriage Act 1869 s 4 (amended by the Transport and Works Act 1992 s 62(1)). As to tramcars see PARA 1532 et seq post.

9 A coach which stops to pick up passengers with seats booked for the journey is not plying for hire: *Sales v Lake* [1922] 1 KB 553, DC.

10 Metropolitan Public Carriage Act 1869 s 4.

11 Formerly, a motor car carrying passengers at separate fares was held to be a stage carriage for the purposes of the Metropolitan Public Carriage Act 1869 s 4 (see the text to note 8 supra): *White v Cubitt* [1930] 1 KB 443, DC. A vehicle which is used for carrying passengers for hire or reward and which is adapted to carry eight or more passengers is a public service vehicle even though it is not carrying passengers at separate fares: see PARA 1136 ante.

12 See the Public Passenger Vehicles Act 1981 s 64(1); and PARA 1138 ante.

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### **1479. Grant of hackney carriage licences.**

Functions previously exercisable by the Secretary of State<sup>1</sup> and the Metropolitan Police Commissioner<sup>2</sup> have been transferred to Transport for London<sup>3</sup>. Transport for London has the function of licensing hackney carriages<sup>4</sup> to ply for hire<sup>5</sup> within the metropolitan police district<sup>6</sup> and the City of London<sup>7</sup>, to be distinguished in such manner as may be prescribed<sup>8</sup>.

A licence may be granted subject to such conditions, may be in such form, may be subject to revocation or suspension in such event and may generally be dealt with in such manner as may be prescribed<sup>9</sup>. A licence, if not revoked or suspended, remains in force for one year<sup>10</sup>. A fee of such amount, if any, as Transport for London may determine is to be paid to Transport for London<sup>11</sup>: (1) by any applicant for a licence under this provision, on making the application for the licence<sup>12</sup>; (2) by an applicant for the taking or re-taking of any test or examination, or any part of a test or examination, with respect to any matter of fitness<sup>13</sup>, on making the application for the taking or re-taking of the test, examination or part<sup>14</sup>; and (3) by any person granted a licence<sup>15</sup>, on the grant of a licence<sup>16</sup>.

Provision is to be made by London cab order for the transfer of a licence under the relevant provision to the widow or to any child of full age of any person to whom such a licence has been granted who may die during the continuance of the licence leaving a widow or child of full age<sup>17</sup>. Provision must also be made for the transfer of a licence under the relevant provision to

the husband of any woman to whom such licence has been granted and who marries during the continuance of the licence<sup>18</sup>.

- 1 As to the Secretary of State see PARA 236 ante.
- 2 As to the Metropolitan Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 183 et seq.
- 3 Greater London Authority Act 1999 s 253, Sch 20 Pt I. As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.
- 4 As to hackney carriages see PARA 1478 ante.
- 5 As to the meaning of 'ply for hire' see PARA 1478 note 5 ante.
- 6 As to the metropolitan police district see POLICE vol 36(1) (2007 Reissue) PARA 137.
- 7 As to the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 31.
- 8 Metropolitan Public Carriage Act 1869 s 2 (amended by the Statute Law (Repeals) Act 1989); Metropolitan Public Carriage Act 1869 s 6(1) (s 6 substituted by the Greater London Authority Act 1999 s 253, Sch 20 para 5(3)).
- 9 Metropolitan Public Carriage Act 1869 s 6(2) (as substituted: see note 8 supra). Section 6(2) (as substituted) is subject to s 6(4)-(9) (as substituted): s 6(3) (as so substituted). 'Prescribed' means prescribed by London cab order: s 4 (substituted by the Greater London Authority Act 1999 s 253, Sch 20 para 5(1), (2)(a)). 'London cab order' means an order made by Transport for London: Metropolitan Public Carriage Act 1869 s 4 (substituted by the Greater London Authority Act 1999 s 253, Sch 20 para 5(1), (2)(a)). As to London cab orders see PARA 1484 post. Any power to make a London cab order under the Metropolitan Public Carriage Act 1869 includes power to vary or revoke a previous London cab order: s 4 (substituted by the Greater London Authority Act 1999 s 253, Sch 20 para 5(1), (2)(b)).
- 10 Metropolitan Public Carriage Act 1869 s 6(4) (as substituted: see note 8 supra).
- 11 Ibid s 6(5) (as substituted: see note 8 supra).
- 12 Ibid s 6(5)(a) (as substituted: see note 8 supra).
- 13 For these purposes, 'matter of fitness' means any matter as respects which Transport for London must be satisfied before granting a licence under ibid s 6 (as substituted), or any matter such that, if Transport for London is not satisfied with respect to the matter, it may refuse to grant a licence under s 6 (as substituted): s 6(6) (as substituted: see note 8 supra).
- 14 Ibid s 6(5)(b) (as substituted: see note 8 supra).
- 15 Ie granted a licence under ibid s 6 (as substituted): s 6(5)(c) (as substituted: see note 8 supra).
- 16 Ibid s 6(5)(c) (as substituted: see note 8 supra). Different amounts may be determined under s 6(5) (as substituted) for different purposes or different cases: s 6(7) (as so substituted). Transport for London may remit or refund the whole or part of a fee under s 6(5) (as substituted): s 6(8) (as so substituted).
- 17 Ibid s 6(9)(a) (as substituted: see note 8 supra).
- 18 Ibid s 6(9)(b) (as substituted: see note 8 supra). As to the order that has been made under s 6 (as substituted) see the London Cab Order 1934, SR & O 1934/1346 (amended by SI 1955/1853; SI 1962/289; SI 1971/333; SI 1980/588; SI 1982/311; SI 1982/610; SI 1983/653; SI 1984/707; SI 1985/933; SI 1987/999; SI 1988/996; SI 1989/848; SI 1990/2003; SI 1991/1301; SI 1994/1087; SI 1995/1181; SI 1996/1176; SI 1997/1116; SI 1998/1043; SI 1999/1117; SI 1999/3250; SI 2000/1276; SI 2000/1666).

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### 1480. Use of an unlicensed carriage.

Any hackney carriage<sup>1</sup> plying for hire<sup>2</sup>, and any hackney carriage found on any stand without having such distinguishing mark, or being otherwise distinguished in such manner as may for the time being be prescribed<sup>3</sup>, is deemed to be an unlicensed carriage<sup>4</sup>.

If any unlicensed hackney carriage plies for hire, the owner of such carriage is liable to a penalty<sup>5</sup>. If any unlicensed hackney carriage is found on any stand within the limits of the Metropolitan Public Carriage Act 1869, the owner of such carriage is liable to a penalty<sup>6</sup>. The driver is also in every such case liable to a like penalty unless he proves that he was ignorant of the fact of the carriage being an unlicensed carriage<sup>7</sup>.

1 As to hackney carriages see PARA 1478 ante.

2 As to the meaning of 'ply for hire' see PARA 1478 note 5 ante.

3 For the meaning of 'prescribed' see PARA 1479 note 9 ante.

4 Metropolitan Public Carriage Act 1869 s 7 (amended by the Greater London Authority Act 1999 ss 253, 423, Sch 20 Pt I para 5(1), (4), Pt II para 14, Sch 34 Pt V). As to the licensing of hackney carriages see PARA 1479 ante.

5 Metropolitan Public Carriage Act 1869 s 7 (amended by the Statute Law (Repeals) Act 1976). The penalty referred to is a fine not exceeding level 4 on the standard scale: Metropolitan Public Carriage Act 1869 s 7 (amended by virtue of the Criminal Justice Act 1982 ss 37, 39, 46, Sch 3). As to the standard scale see PARA 230 note 3 ante. All penalties under the Metropolitan Public Carriage Act 1869 may be recovered summarily: s 13 (amended by the Statute Law (Repeals) Act 1989).

6 Metropolitan Public Carriage Act 1869 s 7. The penalty referred to is a fine not exceeding level 4 on the standard scale: s 7 (amended by virtue of the Criminal Justice Act 1982 ss 37, 39, 46, Sch 3).

7 Metropolitan Public Carriage Act 1869 s 7.

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### 1481. Licensing of drivers.

Transport for London<sup>1</sup> has the function of licensing persons to be drivers of hackney carriages<sup>2</sup>. No hackney carriage may ply for hire<sup>3</sup> within the metropolitan police district<sup>4</sup> or the City of London<sup>5</sup> unless under the charge of a driver having a licence<sup>6</sup> from Transport for London<sup>7</sup>. A licence<sup>8</sup> may be granted on such conditions, may be in such form, may be subject to revocation or suspension in such event and may generally be dealt with in such manner as may be prescribed<sup>9</sup>. A licence, if not revoked or suspended, remains in force for three years<sup>10</sup>.

A fee of such amount (if any) as Transport for London may determine must be paid to Transport for London<sup>11</sup>: (1) by any applicant for a licence under the relevant provision, on making the application for the licence<sup>12</sup>; (2) by any applicant for the taking or re-taking of any test or examination, or any part of a test or examination, with respect to any matter of fitness<sup>13</sup>, on making the application for the taking or re-taking of the test, examination or part<sup>14</sup>; and (3) by any person granted a licence<sup>15</sup>, on the grant of the licence<sup>16</sup>.

1 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

2 Metropolitan Public Carriage Act 1869 s 8(1) (s 8 substituted by the Greater London Authority Act 1999 s 253, Sch 20 Pt I para 5(1), (5), Pt II para 14). As to hackney carriages see PARA 1478 ante.

3 As to the meaning of 'ply for hire' see PARA 1478 note 5 ante.

4 As to the metropolitan police district see POLICE vol 36(1) (2007 Reissue) PARA 137.

5 As to the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 31.

6 Ie a licence under the Metropolitan Public Carriage Act 1869 s 8 (as substituted): s 8(2) (as substituted: see note 2 supra).

7 Ibid s 2 (amended by the Statute Law (Repeals) Act 1989); Metropolitan Public Carriage Act 1869 s 8(2) (as substituted: see note 2 supra). If any hackney carriage plies for hire in contravention of s 8 (as substituted), the person driving the carriage, and the owner of the carriage unless he proves that the driver acted without his privity or consent, are each liable to a penalty not exceeding level 3 on the standard scale: s 8(3) (as so substituted). As to the standard scale see PARA 230 note 3 ante. All penalties under the Metropolitan Public Carriage Act 1869 may be recovered summarily: s 13 (amended by the Statute Law (Repeals) Act 1989).

Transport for London may send to the Metropolitan Police Commissioner or the City of London Police Commissioner the details of a person to whom Transport for London is considering granting a licence under the relevant provision, and a request for the Commissioner's observations, and the Commissioner must respond to the request: Metropolitan Public Carriage Act 1869 s 8(4) (as so substituted). As to the Metropolitan Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 183 et seq. As to the City of London Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 187.

8 Ie a licence under ibid s 8 (as substituted): s 8(5) (as substituted: see note 2 supra).

9 Ibid s 8(5) (as substituted: see note 2 supra). Section 8(5) (as substituted) is subject to s 8(7)-(11): s 8(6) (as so substituted). For the meaning of 'prescribed' see PARA 1479 note 9 ante.

10 Ibid s 8(7) (as substituted: see note 2 supra).

11 Ibid s 8(8) (as substituted: see note 2 supra).

12 Ibid s 8(8)(a) (as substituted: see note 2 supra).

13 For these purposes, 'matter of fitness' means any matter as respects which Transport for London must be satisfied before granting a licence under s 8 (as substituted), or any matter such that, if Transport for London is not satisfied with respect to the matter, it may refuse to grant a licence under s 8 (as substituted): s 8(9) (as substituted: see note 2 supra).

14 Ibid s 8(8)(b) (as substituted: see note 2 supra).

15 Ie granted a licence under ibid s 8 (as substituted).

16 Ibid s 8(8)(c) (as substituted: see note 2 supra). Different amounts may be determined under s 8(8) (as substituted) for different purposes or different cases: s 8(10) (as so substituted). Transport for London may remit or refund the whole or part of a fee under s 8(8) (as substituted): s 8(11) (as so substituted).

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## **1482. Grant of licences by other persons.**

Any licence which may be granted by Transport for London<sup>1</sup> under the Metropolitan Public Carriage Act 1869 may, if Transport for London so directs, be granted by such person as may be appointed for the purposes in the direction<sup>2</sup>.

- 1 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.
- 2 Metropolitan Public Carriage Act 1869 s 11 (substituted by the Greater London Authority Act 1999 s 253, Sch 20 Pt I para 5(1), (8)).

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### **1483. Powers of execution.**

Transport for London<sup>1</sup> may appoint such officers and constables<sup>2</sup> of the metropolitan police force<sup>3</sup>, and of the City of London police<sup>4</sup>, as Transport for London thinks fit to perform any duties required to be performed for the purposes of carrying the Metropolitan Public Carriage Act 1869 into execution, and may award such sums by way of compensation for their services out of the money raised<sup>5</sup> as Transport for London may think just<sup>6</sup>.

Transport for London may cause to be attached to any lamp post any placard or signal for the purpose of carrying into effect the provisions of the Metropolitan Public Carriage Act 1869<sup>7</sup>.

- 1 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.
- 2 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.
- 3 As to the metropolitan police see POLICE vol 36(1) (2007 Reissue) PARAS 137, 147 et seq.
- 4 As to the City of London police see POLICE vol 36(1) (2007 Reissue) PARA 138.
- 5 I.e. the money raised under the Metropolitan Public Carriage Act 1869: s 12 (amended by the Greater London Authority Act 1999 s 253, Sch 20 Pt I para 5(1), (9), Pt II para 14).
- 6 Metropolitan Public Carriage Act 1869 s 12 (as amended: see note 5 supra).
- 7 Ibid s 14 (amended by the Greater London Authority Act 1999 Sch 20 Pt I para 5(1), (10), Pt II para 14).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/15. TAXIS AND PRIVATE HIRE VEHICLES/(7) TAXIS IN LONDON/1484. London cab orders.

### **1484. London cab orders.**

Transport for London<sup>1</sup> may, subject to certain restrictions<sup>2</sup>, from time to time by London cab order make regulations for all or any of the following purposes<sup>3</sup>:

- 2340 (1) for regulating the number of persons to be carried in any hackney carriage, the manner such number is to be shown on such carriage and how such hackney carriages are to be furnished or fitted<sup>4</sup>;
- 2341 (2) for fixing the stands of hackney carriages and the persons to attend at such stands<sup>5</sup>;
- 2342 (3) for fixing the rates or fares, as well for time as distance, to be paid for hackney carriages and for securing the due publication of such fares<sup>6</sup>;

- 2343 (4) for forming, in the case of hackney carriages, a table of distances, as evidence for the purpose of any fare to be charged by distance, by the preparation of a book, map or plan, or any combination of a book, map or plan<sup>7</sup>;
- 2344 (5) for securing the safe custody and re-delivery of any property accidentally left in hackney carriages and fixing the charges to be paid in respect thereof, with power to cause such property to be sold or to be given to the finder in the event of its not being claimed within a certain time<sup>8</sup>.

Transport for London has power by regulations made by London cab order<sup>9</sup> to fix the fares<sup>10</sup> to be paid for the hire in London<sup>11</sup> of cabs<sup>12</sup> fitted with taximeters<sup>13</sup>, either on the basis of time or distance or both, and so as to differ for different classes of cabs and under different circumstances<sup>14</sup>. The power of Transport for London<sup>15</sup> includes power to prescribe fares for the hire of cabs in respect of all journeys in London whether or not the journey is one which the driver of the cab is obliged by law to undertake<sup>16</sup>.

Where Transport for London<sup>17</sup> is authorised<sup>18</sup> to make a London cab order<sup>19</sup>, Transport for London may annex a penalty<sup>20</sup> for the breach of such order or of any part or parts thereof, or of any regulation or regulations thereby made<sup>21</sup>.

1 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

2 le subject to the following restrictions: (1) in fixing the stands for hackney carriages within the City of London, the consent of the Court of the Lord Mayor and Aldermen is required to any stand appointed by Transport for London; and (2) any power of Transport for London to fix by regulations made by London cab order under the Metropolitan Public Carriage Act 1869 s 9 (as amended) any rates or fares to be paid for hackney carriages is exercisable subject to and in accordance with any directions given to Transport for London by the Mayor of London as to the basis on which those rates or fares are to be calculated: s 9 (amended by the Road Transport Lighting Act 1927 s 11(1), Schedule; the Statute Law Revision Act 1966; the London Cab Act 1968 s 5(2); the Statute Law (Repeals) Act 1973; the Statute Law (Repeals) Act 1976; the Statute Law (Repeals) Act 1989; and the Greater London Authority Act 1999 s 253, Sch 20 Pt I para 5(1), (6)(b), (c), Pt II para 14). As to the Lord Mayor and Aldermen see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 44 et seq; and as to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

As to hackney carriages see PARA 1478 ante. For the meaning of 'London cab order' see PARA 1479 note 9 ante.

3 Metropolitan Public Carriage Act 1869 s 9 (amended by the Greater London Authority Act 1999 s 253, Sch 20 Pt I para 5(1), (6)(a), Pt II para 14).

4 Metropolitan Public Carriage Act 1869 s 9(1) (amended by the Transport Charges etc (Miscellaneous Provisions) Act 1954 s 14(1), Sch 2 Pt IV).

5 Metropolitan Public Carriage Act 1869 s 9(2) (s 9(2), (3), (5) amended by the Road Transport Lighting Act 1927 s 11(1), Schedule; the Statute Law Revision Act 1966; the London Cab Act 1968 s 5(2); the Statute Law (Repeals) Act 1973; the Statute Law (Repeals) Act 1976; and the Statute Law (Repeals) Act 1989).

6 Metropolitan Public Carriage Act 1869 s 9(3) (as amended: see note 5 supra).

7 Ibid s 9(4).

8 Ibid s 9(5) (as amended: see note 5 supra). As to the order that has been made see the London Cab Order 1934, SR & O 1934/1346 (amended by SI 1955/1853; SI 1962/289; SI 1971/333; SI 1980/588; SI 1982/311; SI 1982/610; SI 1983/653; SI 1984/707; SI 1985/933; SI 1987/999; SI 1988/996; SI 1989/848; SI 1990/2003; SI 1991/1301; SI 1994/1087; SI 1995/1181; SI 1996/1176; SI 1997/1116; SI 1998/1043; SI 1999/1117; SI 1999/3250; SI 2000/1276; SI 2000/1666).

9 le by London cab order under the Metropolitan Public Carriage Act 1869 s 9 (as amended): see the text and notes 1-8 supra. 'London cab order' has the same meaning as in the Metropolitan Public Carriage Act 1869 (see PARA 1479 note 9 ante): London Cab and Stage Carriage Act 1907 s 6(1) (amended by the Greater London Authority Act 1999 s 253, Sch 20 Pt II para 6(1), (5)(a)). A power to make a London cab order under or by virtue of the London Cab and Stage Carriage Act 1907 includes power to vary or revoke a previous such order: s 6(4) (added by the Greater London Authority Act 1999 s 253, Sch 20 Pt I para 6(1), (6)).

10 'Fare' includes any payment to be made for the carriage of luggage on a cab, and any other payment to be made in respect of the hire of a cab: London Cab and Stage Carriage Act 1907 s 6(1).

11 'London' means the metropolitan police district and the City of London: *ibid* s 6(3). As to the metropolitan police district see POLICE vol 36(1) (2007 Reissue) PARA 137. As to the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 31.

12 'Cab' has the same meaning as the expression 'hackney carriage' used in the Metropolitan Public Carriage Act 1869 (see PARA 1478 ante): London Cab and Stage Carriage Act 1907 s 6(1).

13 'Taximeter' means any appliance for measuring the time or distance for which a cab is used, or for measuring both time or distance, which is for the time being approved for the purpose by or on behalf of Transport for London: *ibid* s 6(1).

14 *Ibid* s 1(1) (amended by the Statute Law (Repeals) Act 1973; and the Greater London Authority Act 1999 s 253, Sch 20 Pt I para 6(1), (2), Pt II para 15(1)). The power conferred by the London Cab and Stage Carriage Act 1907 s 1(1) (as amended) is subject to the restrictions of the Metropolitan Public Carriage Act 1869 s 9(4) (see the text to note 7 supra): London Cab and Stage Carriage Act 1907 s 1(3) (added by the Greater London Authority Act 1999 Sch 20 Pt I para 6(3), Pt II para 15(1)).

The fares fixed under this provision and under the Metropolitan Public Carriage Act 1869 s 9 (as amended) (see the text and notes 1-8 supra) apply only to journeys which begin and end in the metropolitan police district and the City of London; in the case of other journeys a fare in excess of the prescribed rates may be fixed by contract between the driver and the hirer: *Goodman v Serle* [1947] KB 808, [1947] 2 All ER 318, DC.

15 *Ie* under the Metropolitan Public Carriage Act 1869 s 9(3) (as amended) (see the text and note 6 supra) and under the London Cab and Stage Carriage Act 1907 (see the text and notes 9-14 supra).

16 London Cab Act 1968 s 1(1) (amended by the Greater London Authority Act 1999 s 253, Sch 20 Pt I para 7(1), (2)). For these purposes, 'cab', 'fare' and 'London' have the same meanings as in the London Cab and Stage Carriage Act 1907 (see notes 10-12 supra): London Cab Act 1968 s 1(2).

17 See note 1 supra.

18 *Ie* authorised under the Metropolitan Public Carriage Act 1869: s 10 (amended by the Greater London Authority Act 1999 s 253, Sch 20 Pt I para 5(1), (7), Pt II para 14).

19 For the meaning of 'London cab order' see PARA 1479 note 9 ante. As to penalties for breach of the London Cab Order 1934, SR & O 1934/1346 (as amended) see notes 20-21 *infra*.

20 The penalty is not to exceed level 1 on the standard scale or not to exceed a lesser amount: Metropolitan Public Carriage Act 1869 s 10 (amended by virtue of the Criminal Justice Act 1982 ss 37, 40, 46). As to the standard scale see PARA 230 note 3 ante. All penalties under the Metropolitan Public Carriage Act 1869 may be recovered summarily: s 13 (amended by the Statute Law (Repeals) Act 1989).

21 Metropolitan Public Carriage Act 1869 s 10 (amended by the Greater London Authority Act 1999 s 253, Sch 20 Pt I para 5(1), (7), Pt II para 14). Any penalties are deemed to be penalties under the Metropolitan Public Carriage Act 1869 and may be enforced accordingly: s 10 (as so amended).

## UPDATE

### 1484 London cab orders

NOTE 14--The fare for a cab journey starting within London but ending outside London must be such fare as may be agreed between the driver and the passenger before the commencement of the journey, or where, after the commencement of the journey, the driver and the passenger agree to change the destination of the journey, at the time when the destination of the journey is changed, or if no fare is so agreed, the fare shown on the taximeter: 1907 Act s 1(5) (s 1(4), (5) added by Transport for London Act 2008 s 15(1)). A driver of a cab who demands or takes more than the proper fare for a journey undertaken as mentioned above is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: 1907 Act s 1(5). See also the 2008 Act s 15(2).

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#### **1485. Procedure for licensing of cabs.**

Application for a cab licence<sup>1</sup> must be made to Transport for London<sup>2</sup> on a form to be obtained from Transport for London, signed by the owner<sup>3</sup> or one of the owners of the cab<sup>4</sup>. Transport for London at its discretion may refuse a licence<sup>5</sup> if the applicant<sup>6</sup> has been convicted of an indictable offence<sup>7</sup>, or if the applicant appears to Transport for London to be unfit to hold a cab licence on specified grounds<sup>8</sup>, or fails to satisfy Transport for London as to certain other matters<sup>9</sup>. The owner and driver of a cab must be covered by a policy of third party insurance covering not only death and bodily injury<sup>10</sup> but also damage to property<sup>11</sup>.

If Transport for London does not approve the application, it must notify the applicant of the refusal to grant a licence<sup>12</sup>. If Transport for London approves the application, it must return the application form to the applicant<sup>13</sup>, who must, in the case of a motor cab<sup>14</sup>, send the cab to a passing station<sup>15</sup> for examination by a public carriage examiner<sup>16</sup> along with the application form, the current revenue licence and the certificate or other evidence of insurance<sup>17</sup>.

If, after examining a cab which has been presented to him for examination, the public carriage examiner finds that it conforms to the conditions of fitness laid down by Transport for London and is fit for public use, he must give a certificate<sup>18</sup>, and cause the plates and notices<sup>19</sup> to be affixed to the cab in the positions required<sup>20</sup>, and such notices or marks to be placed upon the cab as Transport for London may from time to time direct<sup>21</sup>.

The certificate with the application is submitted to Transport for London, who then grants the licence unless circumstances rendering its grant improper have arisen or come to knowledge since the approval of the application<sup>22</sup>. The licence<sup>23</sup> remains in force for one year<sup>24</sup>, and is subject to certain conditions<sup>25</sup>, but it may be revoked or suspended by Transport for London on certain grounds<sup>26</sup>.

1 'Cab licence' means a licence in pursuance of the Metropolitan Public Carriage Act 1869 s 6 (as substituted) (see PARA 1479 ante) and of the London Cab Order 1934, SR & O 1934/1346, Pt III (arts 5-22) (as amended) in respect of a cab: art 2(1). 'Cab' has the same meaning as the expression 'hackney carriage' has in the Metropolitan Public Carriage Act 1869 (see PARA 1478 ante): London Cab Order 1934, SR & O 1934/1346, art 2(1).

2 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

3 'Owner' or 'cab owner' in relation to a cab which is the subject of a hiring agreement or hire purchase agreement means the person in possession of the cab under that agreement: London Cab Order 1934, SR & O 1934/1346, art 2(1). See *R v Metropolitan Police Comr, ex p Randall*, *R v Metropolitan Police Comr, ex p Humphreys* (1911) 75 JP 486, DC; *Kemp v Elisha* [1918] 1 KB 228, CA.

4 London Cab Order 1934, SR & O 1934/1346, art 5 (amended by SI 2000/1666). Where the owner is a partnership firm or a limited liability company, the application may be signed by the senior partner of the firm or by the authorised officer of the company: London Cab Order 1934, SR & O 1934/1346, art 5. Where a cab licence is held on behalf of a firm or company, both the person holding it and the firm or company are deemed to be the licensee and are liable for any breach of the London Cab Order 1934, SR & O 1934/1346 (as amended) or for any failure to comply with any provisions or conditions subject to which the licence is granted: art 22. 'Licensee' means any person to whom a licence is granted: art 2(1). As to penalties for breach of the London Cab Order 1934, SR & O 1934/1346 (as amended) see PARA 1484 text and notes 17-21 ante.

5 London Cab Order 1934, SR & O 1934/1346, art 7 (amended by SI 2000/1666).



6 A cab licence will not be granted to a person under the age of 21, and if granted to such a person is void: London Cab Order 1934, SR & O 1934/1346, art 6.

7 Ibid art 7(1).

8 Ibid art 7(2) (as amended: see note 5 supra). The specified grounds referred to are:

1407 (1) that he, or any person in partnership with him, or any company of which he was at the material time a responsible officer, or any company on behalf of which the application is being made by him, or any other responsible officer of that company, has been convicted of any offence in relation to the use of a hackney or stage carriage within the meaning of the Metropolitan Public Carriage Act 1869 s 4 (as amended) (see PARA 1478 ante), or of a public service vehicle as defined in the Road Traffic Act 1930 (see PARA 1136 ante), or has been found by the Industrial Court to have been guilty of a breach of the Road Traffic Act 1930 s 93 (repealed) (London Cab Order 1934, SR & O 1934/1346, art 7(2)(a)); or

1408 (2) that at any time when he or any such person or company as aforesaid held a licence in respect of such carriage or vehicle the licence was revoked or suspended or the holder thereof either was convicted of any offence against any Act under which the licence was granted or failed to comply with any of the provisions or conditions subject to which the licence was granted (art 7(2)(b)); or

1409 (3) in the case of an application for a licence in respect of a horse cab, that he or any such person or company as aforesaid has been convicted of an offence of cruelty within the meaning of the Protection of Animals Act 1911 (see ANIMALS vol 2 (2008) PARAS 817, 819) (London Cab Order 1934, SR & O 1934/1346, art 7(2)(c)).

'Horse cab' means any cab drawn by animal power, and 'horse' includes any animal used to draw a cab: para 2(1).

If any person for the purpose of obtaining the grant of a cab licence to himself or to any other person knowingly makes any false statement or withholds any material information, he is guilty of a breach of the London Cab Order 1934, SR & O 1934/1346 (as amended): art 15.

9 Ibid art 7(3) (as amended: see note 5 supra). The matters referred to are:

1410 (1) that the cab in respect of which the application is made conforms to the conditions of fitness from time to time laid down by Transport for London and is fit for public use (art 7(3)(a) (as so amended));

1411 (2) that the applicant is of good character (see art 7(3)(b));

1412 (3) that the owner of the cab in respect of which the application is made, being either the applicant himself or the firm or company on whose behalf he has made the application, is of good business repute, fulfils the requirements of art 8 (see the text and note 11 infra) as to liability to third parties, and is, having regard to his general financial position, a fit and proper person to hold a cab licence (art 7(3)(c)).

10 As to third party motor insurance see PARA 937 et seq ante; and INSURANCE vol 25 (2003 Reissue) PARA 706 et seq.

11 See the London Cab Order 1934, SR & O 1934/1346, art 8 (amended by SI 2000/1666). The special requirements may be waived where the owner's financial situation is satisfactory: see the London Cab Order 1934, SR & O 1934/1346, art 8(3) (as so amended).

12 See ibid art 9 (amended by SI 2000/1666).

13 See the London Cab Order 1934, SR & O 1934/1346, art 9 (as amended: see note 12 supra).

14 'Motor cab' means any mechanically propelled cab: ibid art 2(1).

15 'Passing station' means any place appointed by Transport for London as a place where cabs may be examined for the purposes of the London Cab Order 1934, SR & O 1934/1346 (as amended); and if it appoints any passing station for the examination of any particular cab or cabs, that passing station is deemed to be the appointed passing station for that cab or those cabs: art 2(1) (amended by SI 2000/1666).

16 'Public carriage examiner' means any person appointed by Transport for London to examine and inspect public carriages for the purposes of the Metropolitan Public Carriage Act 1869 (see PARA 1479 ante): London Cab Order 1934, SR & O 1934/1346, art 2(1) (as amended: see note 15 supra).

17 See *ibid* art 10 (amended by SI 2000/1666). As to the presentation of horse cabs for licensing see the London Cab Order 1934, SR & O 1934/1346, art 11 (amended by SI 1982/311; SI 2000/1666).

18 *Ie* specified in the form contained in the London Cab Order 1934, SR & O 1934/1346, art 12, Sch A (amended by SI 2000/1666): London Cab Order 1934, SR & O 1934/1346, art 12(1).

19 *Ie* the plates and notices described in the London Cab Order 1934, SR & O 1934/1346, art 12, Sch B (amended by SI 1971/333; SI 2000/1666): London Cab Order 1934, SR & O 1934/1346, art 12(1).

20 *Ie* the positions required by *ibid* Sch B (as amended: see note 19 *supra*): art 12(1).

21 *Ibid* art 12(1) (amended by SI 2000/1666). The plates remain the property of Transport for London: London Cab Order 1934, SR & O 1934/1346, art 12(1) (as so amended).

If the public carriage examiner, after examining a cab which has been presented to him for examination, does not give the certificate mentioned, he must so inform the applicant and return to him the application form, and must report the fact to Transport for London, who must thereupon refuse to grant a cab licence unless it thinks fit to cause the cab to be re-examined and is thereupon satisfied that such a licence can properly be granted, and if Transport for London refuses to grant the licence, it must so inform the applicant, who is thereupon entitled to the refund of any fee paid by him in respect thereof: art 13 (amended by SI 1982/311; SI 2000/1666).

It is a breach of the London Cab Order 1934, SR & O 1934/1346 (as amended) for the owner of a cab, or for a licensee where the owner is a firm or company, to permit it to ply for hire without the proper plates or marks or with them defaced, or for any person without lawful authority to remove, conceal, obliterate or alter a plate or mark: art 16 (amended by SI 2000/1666). New plates or marks must be affixed by the public carriage examiner in place of any which are lost, defaced, obliterated or indistinct: see the London Cab Order 1934, SR & O 1934/1346, art 16 (as so amended). It is a breach of the order for any person without lawful authority to use or possess any altered or irregular or counterfeit cab licence, plate or mark: art 18.

22 *Ibid* art 12(2) (amended by SI 2000/1666).

23 The form of licence is laid down by the London Cab Order 1934, SR & O 1934/1346, art 14, Sch C (amended by SI 1982/311; SI 2000/1666).

24 London Cab Order 1934, SR & O 1934/1346, art 14 (amended by SI 2000/1666). A licence is transferable to the personal representative of a deceased licensee or to his widow or child or to the husband of a woman licensee who marries, if the proposed transferee is of full age and fit to hold it: London Cab Order 1934, SR & O 1934/1346, art 20 (amended by SI 2000/1666). A licence held on behalf of a firm or company may be transferred to any other fit person of full age who would be entitled to apply for a licence on behalf of the firm or company: London Cab Order 1934, SR & O 1934/1346, art 20 (as so amended). The licence and the plates affixed to the cab must be surrendered on the expiry of the licence: art 21 (amended by SI 2000/1666).

25 Thus the licensee must produce the licence and evidence of third party insurance when required by any of certain authorised persons so to do; must notify a change of address, which must be indorsed on the licence, or of the place where the cab is ordinarily kept; must not deface the licence; must not permit an unlicensed driver to drive the cab; must produce the licences of his employees when required to do so; must allow inspection of the cab; must not remove or conceal plates or notices or alter or obliterate marks; must not knowingly permit the cab to be used for illegal purposes; must keep it in good order and, unless and in so far as Transport for London otherwise directs, free from advertising matter; must not permit any person to appear or be carried on the cab by way of advertisement; and must return the licence and plate on change of ownership: see the London Cab Order 1934, SR & O 1934/1346, art 14 (as amended: see note 24 *supra*). A defaced or altered licence is void: art 17.

26 See *ibid* art 19 (amended by SI 1962/289; SI 2000/1666). The grounds are: (1) that the licence has been obtained by misrepresentation, fraud or concealment; (2) that circumstances arising or coming to the knowledge of Transport for London after the grant of the licence are or the condition of the cab is such that a new licence could not properly be granted; (3) failure to comply with any provision or condition subject to which the licence was granted; or (4) any ground on which a hackney carriage licence might at the time of the commencement of the Metropolitan Public Carriage Act 1869 have been revoked or suspended: London Cab Order 1934, SR & O 1934/1346, art 19(1) (as so amended). Where more than one licence granted to the same licensee becomes liable to revocation or suspension and Transport for London is of opinion that it would be contrary to the public interest to revoke or suspend them all, it may revoke or suspend only such of them as it thinks fit: art 19(1) (as so amended).

Licences which have been revoked or suspended must be sent or delivered to the public carriage examiner and the plates affixed to the cab must, if so required, be delivered up: see art 19(2) (as so amended). The licence, if unexpired, must be returned to the licensee and the plates reattached: see art 19(3).

As to the nature of the power to revoke see *R v Metropolitan Police Comr, ex p Parker* [1953] 2 All ER 717, [1953] 1 WLR 1150, DC. A power of suspension on grounds of unfitness for public use is also conferred on Transport for London by the London Hackney Carriage Act 1853 s 2 (amended by the Statute Law Revision Act 1892; the Statute Law (Repeals) Act 1976; and the Greater London Authority Act 1999 s 253, Sch 20 Pt I para 3(1), (2), Pt II para 12).

## UPDATE

### 1485 Procedure for licensing of cabs

NOTE 26--1853 Act s 2 further amended: Transport for London Act 2008 s 16.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/15. TAXIS AND PRIVATE HIRE VEHICLES/(7) TAXIS IN LONDON/1486. Procedure for the granting of cab drivers' licences.

### 1486. Procedure for the granting of cab drivers' licences.

Transport for London<sup>1</sup> must on demand furnish to any applicant for a cab driver's licence<sup>2</sup> the form of requisition appointed for that purpose<sup>3</sup>. The licence must not be granted to a person under 21 years of age<sup>4</sup> and may be refused if the applicant is not of good character or is unfit to act as a cab driver, or has failed to act as a cab driver during certain periods when he had a licence<sup>5</sup>. The licence, which may be limited to particular types of cabs and particular areas, is issued with a copy, both of which must be signed by the applicant<sup>6</sup>. The cab driver's licence may be revoked or suspended by Transport for London if it is satisfied by reason of any circumstances arising or coming to its knowledge after the licence was granted that the licensee<sup>7</sup> is not a fit person to hold a licence<sup>8</sup>. The driver must have his copy with him during his employment or when appearing before a court and must produce it for inspection on demand by a police constable<sup>9</sup>, a public carriage examiner<sup>10</sup> or an officer of a court<sup>11</sup>.

1 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

2 'Cab driver's licence' means a licence in pursuance of the Metropolitan Public Carriage Act 1869 s 8 (as substituted) (see PARA 1481 ante) and of the London Cab Order 1934, SR & O 1934/1346, Pt IV (arts 23-32) (as amended) to drive cabs: art 2(1). As to the meaning of 'cab' see PARA 1485 note 1 ante. For fees for cab drivers' licences and driving tests see art 26(3) (amended by virtue of the Decimal Currency Act 1969 s 10; and amended by SI 2000/1666). As to responsibility of cab owners for safe custody and return of cab drivers' licences see the London Cab Order 1934, SR & O 1934/1346, art 29 (amended by SI 2000/1666). For the meaning of 'cab owner' see PARA 1485 note 3 ante.

3 London Cab Order 1934, SR & O 1934/1346, art 23 (amended by SI 2000/1666). The form of requisition is that appointed pursuant to the London Hackney Carriages Act 1843 s 14 (as amended) (see PARA 1487 post): London Cab Order 1934, SR & O 1934/1346, art 23.

4 Ibid art 24. If granted to such a person the licence is void: art 24.

5 See ibid art 25 (amended by SI 2000/1666). A licence may be refused on the basis of medical evidence provided inter alia by a doctor of the driver's choice: *R v Assistant Metropolitan Police Comr, ex p Howell* [1985] RTR 181. A refusal to renew a licence has been quashed where the applicant was not told the reasons for not renewing his licence and given an opportunity to make representations: *R v Assistant Metropolitan Police Comr, ex p Howell* [1986] RTR 52, CA.

6 See the London Cab Order 1934, SR & O 1934/1346, art 27 (amended by SI 2000/1666). For the form of the cab driver's licence see the London Cab Order 1934, SR & O 1934/1346, art 27, Sch D (amended by SI 2000/1666). If the holder of a cab driver's licence drives a cab of any type which by the terms of his licence he is not permitted to drive (not being a cab which is withdrawn from hire), or plies for hire with a cab or permits

the cab to be hired in any part of the metropolitan area in which by a condition attached to his licence he is prohibited from plying for hire with a cab, he is guilty of a breach of the London Cab Order 1934, SR & O 1934/1346 (as amended): art 31(1). As to the meaning of 'ply for hire' see PARA 1478 note 5 ante. As to penalties for breach of the London Cab Order 1934, SR & O 1934/1346 (as amended) see PARA 1484 text and notes 17-21 ante.

The London Hackney Carriage Act 1831 s 35 (as amended) (see PARA 1489 post) and the London Hackney Carriage Act 1853 s 17(2) (see PARA 1491 post), which require a cab driver to go with a person desiring to hire his cab, do not apply to a cab driver in an area where he is prohibited from plying for hire: see the London Cab Order 1934, SR & O 1934/1346, art 31(2). A cab driver who changes his address during the currency of his licence must notify Transport for London of the change, which must be indorsed on his licence: see art 32(1) (amended by SI 2000/1666). Failure on his part to do so is a breach of the London Cab Order 1934, SR & O 1934/1346 (as amended): art 32(2).

7 For the meaning of 'licensee' see PARA 1485 note 4 ante.

8 London Cab Order 1934, SR & O 1934/1346, art 30(1) (amended by SI 2000/1666). In the event of the revocation or suspension of the licence, the licensee's copy and his badge must be sent or delivered to Transport for London: see the London Cab Order 1934, SR & O 1934/1346, art 30(2) (amended by SI 1962/289; SI 2000/1666). On the removal of a suspension, Transport for London must return the licence, its copy and the badge to the licensee, unless the licence has expired: London Cab Order 1934, SR & O 1934/1346, art 30(3) (amended by SI 2000/1666).

9 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

10 For the meaning of 'public carriage examiner' see PARA 1485 note 16 ante.

11 See the London Cab Order 1934, SR & O 1934/1346, art 28. If he fails to do so, he is guilty of a breach of the London Cab Order 1934, SR & O 1934/1346 (as amended): art 28.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/15. TAXIS AND PRIVATE HIRE VEHICLES/(7) TAXIS IN LONDON/1487. Licence and badge.

### **1487. Licence and badge.**

The London Hackney Carriages Act 1843 contains additional provisions with regard to cab drivers' licences. It is lawful for Transport for London<sup>1</sup> to grant a licence to act as driver of hackney carriages to any person who produces a certificate which satisfies Transport for London of his good behaviour and fitness for such situation<sup>2</sup>. In every such licence there is to be specified the number of the licence and the proper name and surname, place of abode, age and description of the person to whom the licence is granted<sup>3</sup>. On every licence Transport for London must cause proper columns to be prepared in which every proprietor<sup>4</sup> employing the driver named in the licence must enter his own name and address and the days on which the driver enters and quits his service<sup>5</sup>. If any of the particulars entered or endorsed upon any licence in pursuance of the London Hackney Carriages Act 1843 are erased or defaced the licence is to be wholly void and of no effect<sup>6</sup>.

Every person to whom such a licence and ticket have been granted who, except in compliance with the provisions of the London Hackney Carriages Act 1843, transfers or lends the licence, or permits any other person to use or wear the ticket, must for every offence forfeit a sum<sup>7</sup>. Every proprietor who knowingly suffers any person not duly licensed under that Act to act as driver of any hackney carriage of which he is the proprietor, must for every such offence forfeit a sum<sup>8</sup>. Before any such licence is granted, a requisition for it, in such form as Transport for London from time to time appoints for the purpose, and accompanied by a certificate as required by the London Hackney Carriages Act 1843<sup>9</sup> must be made and signed by the person by whom the licence is required<sup>10</sup>. In every such requisition all such particulars as Transport for London may require must be truly set forth<sup>11</sup>. The particulars of every licence must be entered in books to be

kept for the purpose at the office of Transport for London and every person applying at all reasonable times must be furnished with a certified copy of the particulars respecting any licensed person without payment of any fee<sup>12</sup>.

Every licensed driver must at all times during his employment and when he is required to attend before any justice of the peace, wear his ticket conspicuously on his breast, in such manner that the whole of the writing is distinctly legible<sup>13</sup>. Upon the expiration of any licence granted under the London Hackney Carriages Act 1843 the person to whom the licence was granted must deliver the licence and the ticket relating to it to Transport for London<sup>14</sup>. Whenever the writing on any ticket becomes obliterated or defaced, so that it is not distinctly legible, and also whenever any ticket is proved to the satisfaction of Transport for London to have been lost or mislaid, the person to whom the licence relating to any such ticket has been granted must deliver the ticket (if he has it in his possession) and must produce the licence to Transport for London, and that person is then entitled to have a new ticket delivered to him, upon payment to Transport for London of such sum of money as Transport for London from time to time appoints<sup>15</sup>.

Every proprietor of a hackney carriage who permits or employs any licensed person to act as the driver of it must require to be delivered to him, and must retain in his possession, the licence of the driver while the driver remains in his service<sup>16</sup>. It is lawful for any justice of the peace before whom any driver is convicted of any offence<sup>17</sup>, if such justice in his discretion thinks fit, to revoke the licence of such driver and also any other licence which he holds under the provisions of the London Hackney Carriages Act 1843, or to suspend the same for such time as the justice thinks proper<sup>18</sup>. A magistrates' court that makes an order revoking or suspending any licence under this provision may, if the court thinks fit, suspend the effect of the order pending an appeal against the order<sup>19</sup>.

1 All the jurisdiction, powers, authorities, privileges, interests and duties which were vested in or exercisable by the Metropolitan Police Commissioner (see POLICE vol 36(1) (2007 Reissue) PARA 183 et seq) by virtue of the London Hackney Carriages Act 1850 s 2 (repealed) (transfer of functions of registrar of metropolitan public carriages to Metropolitan Police Commissioner) were transferred to and vested in Transport for London: Greater London Authority Act 1999 s 253, Sch 20 para 1(1), (2), (3). As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

2 London Hackney Carriages Act 1843 s 8 (amended by the Statute Law Revision Act 1874 (No 2); the Statute Law Revision Act 1891; the Statute Law (Repeals) Act 1976; and the Greater London Authority Act 1999 s 253, Sch 20 para 1). The provisions of the London Hackney Carriages Act 1843, except s 3 (as amended) and s 33 (as amended), apply in relation to a licensed taxi which is licensed under the Metropolitan Public Carriage Act 1869, at any time when that vehicle is being used to provide a local service under a special licence: Local Services (Operation by Taxis) (London) Regulations 1986, SI 1986/566, regs 3, 4.

3 London Hackney Carriages Act 1843 s 8 (as amended: see note 2 supra).

4 In the London Hackney Carriages Act 1843, 'proprietor' includes every person who, either alone or in partnership with any other person, keeps any hackney carriage or who is concerned otherwise than as a driver or attendant in employing for hire any hackney carriage: s 2 (amended by the Statute Law Revision (No 2) Act 1888; the Statute Law (Repeals) Act 1976; and the Statute Law (Repeals) Act 1989). As to proceedings where there is more than one proprietor of a hackney carriage see the London Hackney Carriages Act 1843 s 44 (amended by the Statute Law Revision Act 1891; and the Statute Law (Repeals) Act 1976). As to all complaints under the provisions of the London Hackney Carriage Act 1831 or the London Hackney Carriages Act 1843 see ss 38, 39 (both amended by the Statute Law Revision Act 1891; and the Statute Law (Repeals) Act 1976).

5 London Hackney Carriages Act 1843 s 8 (as amended: see note 2 supra).

6 Ibid s 8 (as amended: see note 2 supra). Transport for London must, at the time of granting any licence, deliver to the driver to whom the licence is granted an abstract of the laws in force relating to such driver and of the penalties to which he is liable for any misconduct, and also a metal ticket, upon which there must be marked or engraved his office or employment and a number corresponding to the notice inserted in such licence: s 8 (as so amended).

7 Ibid s 10 (amended by the Statute Law Revision Act 1874 (No 2); the Statute Law Revision Act 1891; the Statute Law (Repeals) Act 1976; and the Statute Law (Repeals) Act 1993). The sum must not exceed level 3 on

the standard scale: London Hackney Carriages Act 1843 s 10 (amended by virtue of the Criminal Justice Act 1982 ss 35, 37, 38, 46). As to the standard scale see PARA 230 note 3 ante.

8 London Hackney Carriages Act 1843 s 10 (as amended: see note 7 supra). The sum must not exceed level 3 on the standard scale: s 10 (amended by virtue of the Criminal Justice Act 1982 ss 35, 37, 38, 46).

9 le under the London Hackney Carriages Act 1843 s 8 (as amended): see the text and notes 1-6 supra.

10 Ibid s 14 (amended by the Statute Law Revision Act 1891; and the Greater London Authority Act 1999 Sch 20 para 1).

11 London Hackney Carriages Act 1843 s 14 (amended by the Greater London Authority Act 1999 Sch 20 para 1). Every person applying for or attempting to procure any such licence who makes or causes to be made any false representation in regard to the application or does not truly answer all questions demanded of him in relation to the application, and also every person to whom reference is made who, in regard to the application, wilfully and knowingly makes any misrepresentation, must forfeit for every such offence a sum not exceeding level 3 on the standard scale: London Hackney Carriages Act 1843 s 14 (as so amended; and further amended by the Forgery and Counterfeiting Act 1981 s 30, Schedule Pt I). It is lawful for Transport for London to proceed for recovering such penalty before any magistrate at any time within one calendar month after commission of the offence, or during the currency of the licence so improperly obtained: London Hackney Carriages Act 1843 s 14 (amended by the Greater London Authority Act 1999 Sch 20 para 1).

12 London Hackney Carriages Act 1843 s 16 (amended by the Statute Law Revision Act 1891; and the Greater London Authority Act 1999 Sch 20 para 1). In all courts, and before any justice of the peace, and upon all occasions whatsoever, a copy of an entry in any such book, and certified by the person having charge thereof to be a true copy, is to be received as evidence and deemed sufficient proof of all things registered in it, without requiring the production of the book or of any licence or of any requisition or other document upon which any such entry may be founded: London Hackney Carriages Act 1843 s 16.

13 Ibid s 17 (amended by the Statute Law Revision Act 1874 (No 2); the Statute Law Revision Act 1891; and the Statute Law (Repeals) Act 1976). Every driver who acts as such, or who attends when required before any justice of the peace, without wearing the ticket in the manner aforesaid, or who, when required, refuses to produce the ticket for inspection, or permit any person to note the writing thereon, must for every offence forfeit a sum not exceeding level 1 on the standard scale: London Hackney Carriages Act 1843 s 17 (as so amended; and further amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46).

14 London Hackney Carriages Act 1843 s 18 (amended by the Statute Law Revision Act 1891; and the Greater London Authority Act 1999 s 253, Sch 20 para 1). Every person who, after the expiration of a licence, wilfully neglects for three days to deliver it to Transport for London, and every person who uses or wears or detains any ticket without having a licence in force relating to such ticket, or who for the purpose of deception uses or wears or has any ticket resembling or intended to resemble any ticket granted under the authority of the London Hackney Carriages Act 1843, must for every offence forfeit a sum equivalent to level 1 on the standard scale: London Hackney Carriages Act 1843 s 18 (amended by the Greater London Authority Act 1999 Sch 20 para 1; and by virtue of the Criminal Justice Act 1982 ss 37, 46).

It is lawful for Transport for London, or any person employed by it for that purpose, to prosecute any person so neglecting to deliver up his licence or ticket, at any period within 12 calendar months after the expiration of the licence: London Hackney Carriages Act 1843 s 18 (amended by the Greater London Authority Act 1999 Sch 20 para 1). It is lawful for any constable, or any person employed for that purpose by Transport for London, to seize and take away any such ticket, wheresoever the same may be found, in order to deliver the same to Transport for London: London Hackney Carriages Act 1843 s 18 (amended by the Greater London Authority Act 1999 Sch 20 para 1; and the Statute Law (Repeals) Act 2004).

15 London Hackney Carriages Act 1843 s 19 (amended by the Statute Law Revision Act 1891; by virtue of the Decimal Currency Act 1969 s 10(1); and by the Greater London Authority Act 1999 Sch 20 para 1). The sum must not exceed 15 pence: see the London Hackney Carriages Act 1843 s 19 (as so amended).

If any ticket which has been proved or represented to have been lost or mislaid is afterwards found the same must be delivered forthwith to Transport for London: s 19 (amended by the Greater London Authority Act 1999 Sch 20 para 1). Every person into whose possession any such ticket is or comes who refuses or neglects for three days to deliver the same to Transport for London, and also every person licensed under the authority of the London Hackney Carriages Act 1843 who uses or wears the ticket granted to him after the writing on it is obliterated, defaced, or obscured, so that the same is not distinctly legible, must for every such offence forfeit a sum equivalent to level 1 on the standard scale: London Hackney Carriages Act 1843 s 19 (amended by virtue of the Criminal Justice Act 1982 ss 37, 46; and amended by the Greater London Authority Act 1999 s 253, Sch 20 para 1).

16 London Hackney Carriages Act 1843 s 21 (amended by the Statute Law Revision Act 1891; and the Statute Law (Repeals) Act 1976). In all cases of complaint where the proprietor of a hackney carriage is

summoned to produce the driver of a hackney carriage before a justice of the peace he must also produce the licence of the driver, if at the time of receiving the summons the driver is in his service: London Hackney Carriages Act 1843 s 21 (amended by the Statute Law (Repeals) Act 1976). If any driver is adjudged guilty of the offence alleged against him the justice of the peace before whom he is convicted must in every case endorse upon the licence of the driver the nature of the offence and the amount of the penalty inflicted: London Hackney Carriages Act 1843 s 21 (amended by the Statute Law (Repeals) Act 1976). Every proprietor who neglects to require to be delivered to him, and to retain in his possession, the licence of any driver during such period as the driver remains in his service or who refuses or neglects to produce the licence, must for every offence forfeit a sum equivalent to level 1 on the standard scale: London Hackney Carriages Act 1843 s 21 (amended by the Statute Law (Repeals) Act 1976; and by virtue of the Criminal Justice Act 1982 ss 37, 46).

As to proceedings with respect to licences on quitting service, and the duty of a proprietor to return the licence to the driver on demand upon a licensed driver (subject to a right that if the proprietor has any complaint against the driver he may retain the licence and apply to a magistrates' court for a summons), see the London Hackney Carriages Act 1843 s 24 (amended by the Statute Law Revision Act 1891; the Statute Law (Repeals) Act 1976; the Access to Justice Act 1999 ss 78(2), 90(1), 106, Sch 11 para 6, Sch 13 para 1, Sch 15 Pt V; and the Courts Act 2003 s 109(1), Sch 8 para 14(1), (3)).

17     le an offence under the London Hackney Carriages Act 1843 or any other Act.

18     Ibid s 25 (amended by the Statute Law Revision Act 1874 (No 2); the Statute Law Revision Act 1891; and the Statute Law (Repeals) Act 1976). As to detailed provisions regarding the delivery up of licences and tickets and their cancellation, and the penalty for failure to deliver up a licence and ticket, see the London Hackney Carriages Act 1843 s 25 (as so amended; and further amended by virtue of the Criminal Justice Act 1982 ss 37, 46; and by the Greater London Authority Act 1999 Sch 20 para 1).

19     London Hackney Carriages Act 1843 s 25 (amended by the Transport Act 1985 s 139(2), Sch 7 para 2).

## UPDATE

### 1487 Licence and badge

TEXT AND NOTES--1843 Act ss 8, 10, 17, 18, 19, 25, 27 amended: Transport for London Act 2008 s 11.

NOTE 4--1843 Act s 38 amended: 2008 Act s 14.

NOTE 12--1843 Act s 16 amended: 2008 Act s 12.

NOTE 15--1843 Act s 19 amended: 2008 Act s 13.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/15. TAXIS AND PRIVATE HIRE VEHICLES/(7) TAXIS IN LONDON/1488. Appeals.

### 1488. Appeals.

Where the licensing authority<sup>1</sup> has refused to grant or has suspended or revoked a licence<sup>2</sup>, the applicant for the licence or (as the case may be) the holder of the licence may, before the expiry of the designated period<sup>3</sup>, require the authority to reconsider<sup>4</sup> its decision or appeal to a magistrates' court<sup>5</sup>. If the person calling for a decision to be reconsidered under these provisions is dissatisfied with the decision of the licensing authority on reconsideration, he may, before the expiry of the designated period, appeal to a magistrates' court<sup>6</sup>. On any appeal under these provisions, the court may make such order as it thinks fit, and any order which it makes is binding on the licensing authority<sup>7</sup>. Where a person holds a licence which is in force when he applies for a new licence in substitution for it, the existing licence continues in force until the application for the new licence, or any appeal under these provisions in relation to that application, is disposed of, but without prejudice to the exercise in the meantime of any power of the licensing authority to revoke the existing licence<sup>8</sup>. Where the licensing authority

suspends or revokes a licence, or confirms a decision to do so, it may, if the holder of the licence so requests, direct that its decision is not to have effect until the expiry of the designated period<sup>9</sup>.

1 In the Transport Act 1985 s 17 (as amended), 'licensing authority' means the person empowered to grant a licence: s 17(1); and see PARA 1479 ante. In relation to such licences the licensing authority is Transport for London: see PARA 1479 ante. As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

2 In *ibid* s 17 (as amended), 'licence' means a licence under the Metropolitan Public Carriage Act 1869 s 6 (as substituted) (taxi licences) (see PARA 1479 ante) or under s 8 (as substituted) (taxi driver licences) (see PARA 1481 ante): Transport Act 1985 s 17(1).

3 In *ibid* s 17 (as amended), 'designated period' means such period as may be specified for the purpose by London cab order: s 17(10) (amended by the Greater London Authority Act 1999 s 253, Sch 20 para 8(1), (3)). 'London cab order' means an order made by Transport for London: Transport Act 1985 s 17(10) (as so amended). Any power to make a London cab order under s 17 (as amended) includes power to make or revoke a previous order: s 17(11) (added by the Greater London Authority Act 1999 Sch 20 para 8(3)). As to London cab orders see PARA 1484 ante.

4 Any call for reconsideration under the Transport Act 1985 s 17(2) (as amended) must be made to the licensing authority in writing: s 17(3). On any reconsideration under s 17 (as amended) the person calling for the decision is entitled to be heard either in person or by his representative: s 17(4).

5 *Ibid* s 17(2) (amended by the Greater London Authority Act 1999 Sch 20 para 8(3); and the Courts Act 2003 s 109(1), Sch 8 para 293(1), (2)). See the London Taxis (Licensing Appeals) Regulations 1986, SI 1986/1188, made under the Transport Act 1985 s 17(2), (5) (as originally enacted).

6 *Ibid* s 17(5) (amended by the Greater London Authority Act 1999 Sch 20 para 8(3); and the Courts Act 2003 Sch 8 para 293(2)).

7 Transport Act 1985 s 17(6).

8 *Ibid* s 17(7). For the purposes of s 17(7), where the licensing authority refuses to grant the new licence the application is not to be treated as disposed of: (1) where no call for a reconsideration of the authority's decision is made under s 17(2) (as amended) (see the text and note 5 *supra*), until the expiry of the designated period; (2) where such a reconsideration is called for, until the expiry of the designated period which begins by reference to the decision of the authority on reconsideration: s 17(8) (amended by the Greater London Authority Act 1999 Sch 20 para 8(3)).

9 Transport Act 1985 s 17(9) (amended by the Greater London Authority Act 1999 Sch 20 para 8(3)).

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### **1489. Compellability.**

Every hackney carriage<sup>1</sup> found standing in any street or place<sup>2</sup> is, unless actually hired, deemed to be plying for hire<sup>3</sup>, although such hackney carriage is not on any standing or place usually appropriate for the purpose of hackney carriages standing or plying for hire<sup>4</sup>. The driver of every such hackney carriage which is not actually hired is obliged and compellable to go with any person desirous of hiring such hackney carriage<sup>5</sup>. Upon the hearing of any complaint against the driver of any such hackney carriage for any such refusal the driver is obliged to adduce evidence of having been actually hired at the time of such refusal<sup>6</sup>. The driver of every hackney carriage who plies for hire at any place<sup>7</sup> within the limits of the London Hackney Carriage Act 1853 must, unless such driver has reasonable excuse (to be allowed by the justice before whom the matter is brought in question), drive such hackney carriage to any place to



which he is required by the hirer to drive it, not exceeding six miles from where it was hired, or for any time not exceeding one hour from the time when hired<sup>8</sup>.

The driver of any hackney carriage who plies for hire at any place within the limits of the London Hackney Carriage Act 1853 must, if required by the hirer, carry in and by such carriage the number of persons painted or marked on it, or any less number of persons<sup>9</sup>. The driver of every hackney carriage within the limits of the London Hackney Carriage Act 1853 must carry in or upon such carriage a reasonable quantity of luggage for every person hiring such carriage<sup>10</sup>.

Where any hackney carriage is hired and taken to any place of public resort or elsewhere, and the driver is required to wait with the hackney carriage, it is lawful for the driver to demand and receive from the person so hiring and requiring him to wait a reasonable sum as a deposit over and above the fare so which the driver is entitled for driving<sup>11</sup>. If a driver who has received any such deposit refuses to wait, or if the driver goes away, or permits the hackney carriage to be driven or taken away, without the consent of the person making the deposit, before the expiration of the time for which the sum so deposited is a sufficient compensation, he commits an offence<sup>12</sup>.

1 For the meaning of 'hackney carriage' see PARA 1478 ante.

2 The reference to a street or place does not include a reference to any parking place for the time being designated by an order in force under the Road Traffic Regulation Act 1984 or to any part the use of which as a parking place is for the time being authorised by an order in force under that Act: London Cab Act 1968 s 3(2) (amended by the Road Traffic Regulation Act 1984 s 146, Sch 13 para 4). As to cabs standing at airports and railway stations see PARA 1493 post.

3 As to the meaning of 'ply for hire' see PARA 1478 note 5 ante.

4 London Hackney Carriage Act 1831 s 35 (amended by the Statute Law Revision (No 2) Act 1888; and the Statute Law (Repeals) Act 1976).

5 London Hackney Carriage Act 1831 s 35 (as amended: see note 4 supra).

6 Ibid s 35 (as amended: see note 4 supra). If the driver fails to produce sufficient evidence of his having been hired he must forfeit a sum not exceeding level 1 on the standard scale: s 35 (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 230 note 3 ante. As to compensation for drivers improperly summoned for refusing to carry any person see the London Hackney Carriage Act 1831 s 36 (amended by the Statute Law Revision (No 2) Act 1888; and the Statute Law (Repeals) Act 1976). The provisions of the London Hackney Carriage Act 1831 s 35 (as amended) and of the London Hackney Carriage Act 1853 s 17(2) (as amended) do not apply in the case of a cab driver who is in any part of the metropolitan area in which by a condition attached to his licence he is prohibited from plying for hire: London Cab Order 1934, SR & O 1934/1346, art 31(2). As to the imposition of such conditions see art 31(1). As to plying for hire by hackney carriages elsewhere than at some standing or place appointed, and loitering or obstruction by drivers of hackney carriages, see the London Hackney Carriages Act 1843 s 33 (as amended); and PARA 1491 note 9 post. Plying for hire on private property is not prohibited: *Skinner v Usher* (1872) LR 7 QB 423, DC; *Benjamin v Cooper* [1951] 2 All ER 907, DC. 'Standing' does not mean standing still, but rather waiting or parking: *Eldridge v British Airports Authority* [1970] 2 QB 387, [1970] 2 All ER 92, DC.

7 As to plying for hire at railway stations and airports see PARA 1493 post.

8 London Hackney Carriage Act 1853 s 7 (amended by the Statute Law (Repeals) Act 1973). By the London Cab Order 1934, SR & O 1934/1346, art 34(1) (art 34 substituted by the London Cab (No 2) Order 2001 arts 2, 3), for the reference to six miles in the London Hackney Carriage Act 1853 s 7 (as amended) there is substituted a reference to 12 miles. This does not affect the London Cab Order 1972, SI 1972/1047: London Cab Order 1934, SR & O 1934/1346, art 34(2) (as so substituted).

Transport for London may by London cab order direct that for the reference to the distance of six miles in the London Hackney Carriage Act 1853 s 7 (as amended) and s 17(2) (as amended) (being the length of a journey which the driver of a cab is by law obliged to undertake) there may be substituted a reference to such greater distance as appears to Transport for London to be appropriate: London Cab Act 1968 s 2(1) (amended by the Greater London Authority Act 1999 s 253, Sch 20 Pt I para 7(1), (4)(a), Pt II para 16(1)). The London Cab Order 1972, SI 1972/1047, has been made under this power, prescribing a distance of 20 miles in the case of Heathrow airport. A London cab order under the London Cab Act 1968 s 2(1) (as amended) may be limited to

apply only in relation to hirings which begin, or which end, at such places as may be specified in the order, and may substitute different distances in relation to such hirings or any of them and in relation to other hirings: s 2(2) (amended by the Greater London Authority Act 1999 Sch 20 Pt I para 7(4)(b)). The power to make London cab orders under the London Cab Act 1968 s 2 (as amended) includes power to vary or revoke a previous such order: s 2(3) (amended by the Greater London Authority Act 1999 ss 253, 423, Sch 20 Pt I para 7(4)(c), Sch 34 Pt V). Before making any London cab order under the London Cab Act 1968 s 2 (as amended), Transport for London must consult with such bodies appearing to it to represent the owners and drivers of cabs as it considers appropriate: s 2(4) (amended by the Greater London Authority Act 1999 Sch 20 Pt I para 7(4)(d)).

As to the offence of refusing to go see the London Hackney Carriage Act 1853 s 17(2) (as amended); and PARA 1491 post. For the exclusion of s 17 (as amended) in the case of certain drivers in specified circumstances see note 6 ante.

9 Ibid s 9 (amended by the Statute Law Revision Act 1892). For the offence of allowing any person to ride without the consent of the hirer see the London Hackney Carriage Act 1831 s 50 (amended by the Statute Law Revision (No 2) Act 1888; the Criminal Law Act 1977 s 36(1); and by virtue of the Criminal Justice Act 1982, ss 37, 46). For the offence of refusing to carry the authorised number of persons see the London Hackney Carriage Act 1853 s 17 (as amended); and PARA 1491 post.

10 Ibid s 10 (amended by the Statute Law (Repeals) Act 1973). For the offence of refusing to carry luggage see the Hackney Carriage Act 1853 s 17 (as amended); and PARA 1491 post.

11 London Hackney Carriage Act 1831 s 47 (amended by the Statute Law Revision Act 1874). The sum so demanded and received must be accounted for by the driver when the hackney carriage is finally discharged: London Hackney Carriage Act 1831 s 47 (as so amended). If the driver refuses to account for the deposit he is guilty of an offence and is liable to forfeit a fine not exceeding level 1 on the standard scale: s 47 (as so amended; and further amended by virtue of the Criminal Justice Act 1982 ss 37, 46).

12 London Hackney Carriage Act 1831 s 47 (amended by the Statute Law Revision (No 2) Act 1888). A person guilty of such an offence is liable to forfeit a fine not exceeding level 1 on the standard scale: London Hackney Carriage Act 1831 s 47 (as so amended; and further amended by virtue of the Criminal Justice Act 1982 ss 37, 46).

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### **1490. Conduct of passengers.**

If, with respect to a cab<sup>1</sup>, any person:

- 2345 (1) hires a cab, knowing or having reason to believe that he cannot pay the lawful fare, or with intent to avoid payment of the lawful fare<sup>2</sup>; or
- 2346 (2) fraudulently endeavours to avoid payment of a fare lawfully due from him<sup>3</sup>;
- or
- 2347 (3) having failed or refused to pay a fare lawfully due from him, either refuses to give the driver an address at which he can be found or, with intent to deceive, gives a false address<sup>4</sup>,

he is guilty of an offence<sup>5</sup>. If any person refuses or omits to pay the driver of any hackney carriage the sum justly due to him for the hire of the hackney carriage, or if any person defaces or in any manner injures any such hackney carriage, it is lawful for any justice of the peace, upon complaint made to him, to grant a summons, or, if it appears to him necessary, a warrant, for bringing before him or any other justice, to award reasonable satisfaction to the party so complaining of his fare or for his damages and costs, and also a reasonable compensation for the loss of his time in attending to make and establish the complaint<sup>6</sup>.

1 'Cab' means any hackney carriage within the meaning of the Metropolitan Public Carriage Act 1869: London Cab Act 1896 s 3. For the meaning of 'hackney carriage' see PARA 1478 ante.

2 Ibid s 1(a).

3 Ibid s 1(b).

4 Ibid s 1(c).

5 Ibid s 1. Such a person is liable on summary conviction to pay, in addition to the lawful fare, a fine not exceeding level 1 on the standard scale, or, in the discretion of the court, to be imprisoned for a term not exceeding 14 days; and the whole or any part of any fine imposed may be applied in compensation to the driver: s 1 (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 230 note 3 ante.

6 London Hackney Carriage Act 1831 s 41 (amended by the Statute Law Revision (No 2) Act 1988; and the Statute Law (Repeals) Act 1976).

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#### **1491. Conduct of cab drivers and proprietors.**

It is an offence:

- 2348 (1) for any proprietor or driver of any hackney carriage<sup>1</sup> wrongfully in a forcible or clandestine manner to take away the fare from any other such proprietor or driver who, in the judgment of any justice of the peace before whom any complaint of the offence be heard, is fairly entitled to such fare<sup>2</sup>;
- 2349 (2) for the proprietor or driver of any hackney carriage, or any person having the care thereof, by wanton and furious driving, or by other wilful misconduct, to injure or endanger any person in his life, limbs or property, or to make use of any abusive or insulting language, or to be guilty of other rude behaviour, to or towards any person whatsoever, or to assault or obstruct any officer of police, constable, watchman or patrol, in the execution of his duty<sup>3</sup>;
- 2350 (3) for a person to whom a licence and ticket have been granted under the London Hackney Carriages Act 1843 to transfer or lend the licence, except in compliance with that Act, or to permit any other person to use or wear the ticket and for a proprietor<sup>4</sup> to knowingly suffer any person not duly licensed under the authority of that Act to act as driver of any hackney carriage of which he is the proprietor<sup>5</sup>;
- 2351 (4) for a driver authorised by any proprietor to act as driver of any hackney carriage to suffer any other person to act as driver of the hackney carriage without the consent of the proprietor and for a person, whether licensed or not, to act as driver of any such carriage without the consent of the proprietor<sup>6</sup>;
- 2352 (5) for a driver of a hackney carriage to be guilty of wanton or furious driving, or by carelessness or wilful misbehaviour to cause any hurt or damage to any person or property being in any street or highway, or during his employment to be drunk or make use of any insulting or abusive language, or to be guilty of any insulting gesture or misbehaviour<sup>7</sup>;
- 2353 (6) for the driver of a hackney carriage to ply for hire<sup>8</sup> elsewhere than at some standing appointed for that purpose, or to cause, by loitering or by wilful misbehaviour, obstruction in or upon any public street, road, or place, or for the driver of a hackney carriage, whether hired or unhired, to allow any person beside

himself, not being the hirer or a person employed by the hirer, to ride on the driving box<sup>9</sup>;

- 2354 (7) for any person to carry about on a carriage or on horseback or on foot, in any thoroughfare or public place, to the obstruction or annoyance of the inhabitants or passenger any picture, placard, notice, or advertisement, whether written, printed, or painted upon or posted or attached to any part of such carriage, or on any board, or otherwise<sup>10</sup>;
- 2355 (8) for the driver of a hackney carriage to demand or take more than the proper fare or to refuse to admit and carry in his carriage the number of persons painted or marked on the carriage or specified in the certificate granted by Transport for London<sup>11</sup>, or to refuse to carry by his carriage a reasonable quantity of luggage for any person hiring or intending to hire the carriage<sup>12</sup>;
- 2356 (9) for the driver of a hackney carriage to refuse to drive the carriage to any place within the limits of the London Hackney Carriage Act 1853<sup>13</sup>, not exceeding six miles, to which he is required to drive any person hiring or intending to hire the carriage, or to refuse to drive any such carriage for any time not exceeding an hour, if so required by the person hiring or intending to hire the carriage, or if he does not drive the carriage at a reasonable and proper speed, not less than six miles an hour, except in cases of unavoidable delay, or when required by the hirer to drive at a slower pace<sup>14</sup>;
- 2357 (10) for a driver of a hackney carriage to ply for hire with any carriage or horse which is at the time unfit for public use<sup>15</sup>.

1 For the meaning of 'hackney carriage' see PARA 1478 ante.

2 London Hackney Carriage Act 1831 s 51 (amended by the Statute Law Revision (No 2) Act 1888; and the Statute Law (Repeals) Act 1976). A person guilty of such an offence is liable to a fine of level 1 on the standard scale: London Hackney Carriage Act 1831 s 51 (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 230 note 3 ante. As to the award of compensation to drivers when complaints are withdrawn see the London Hackney Carriage Act 1831 s 57 (amended by the Statute Law (Repeals) Act 1976; and the Statute Law Revision (No 2) Act 1888).

3 London Hackney Carriage Act 1831 s 56 (amended by the Summary Jurisdiction Act 1884 s 4; the Statute Law Revision (No 2) Act 1888; the Statute Law (Repeals) Act 1976; the Statute Law (Repeals) Act 1989; and the Statute Law (Repeals) Act 2004). A person guilty of such an offence is liable to a fine of level 1 on the standard scale: London Hackney Carriage Act 1831 s 56 (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46).

4 For the meaning of 'proprietor' see PARA 1487 note 4 ante.

5 London Hackney Carriages Act 1843 s 10 (amended by the Statute Law Revision Act 1874 (No 2); the Statute Law Revision Act 1891; the Statute Law (Repeals) Act 1976; and the Statute Law (Repeals) Act 1993). A person guilty of such an offence is liable to a fine not exceeding level 3 on the standard scale: London Hackney Carriages Act 1843 s 10 (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46).

6 London Hackney Carriages Act 1843 s 27 (amended by the Statute Law Revision Act 1874 (No 2); the Statute Law Revision Act 1891; and the Statute Law (Repeals) Act 1976). A person guilty of such an offence is liable to a fine not exceeding level 1 on the standard scale: London Hackney Carriages Act 1843 s 27 (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). Every driver charged with an offence who, when required by a justice of the peace so to do, does not truly make known the name and place of abode of the person so suffered by him to act as driver without the consent of the proprietor, and also the number of the ticket of such person (if licensed), is liable to a further penalty of level 1 on the standard scale: London Hackney Carriages Act 1843 s 27 (as so amended). It is lawful for any police constable, if necessary, to take charge of the carriage and every horse in charge of any person unlawfully acting as driver and to deposit the same in some place of safe custody until it can be applied for by the proprietor: s 27 (amended by the Police and Criminal Evidence Act 1984 s 119, Sch 6 para 4).

7 London Hackney Carriages Act 1843 s 28 (amended by the Statute Law Revision Act 1874 (No 2); the Statute Law Revision Act 1891; the Statute Law (Repeals) Act 1976; and the Statute Law (Repeals) Act 1993). A person guilty of such an offence is liable to a fine of level 1 on the standard scale or to imprisonment for a period not exceeding two months: London Hackney Carriages Act 1843 s 28 (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As from a day to be appointed, a person convicted before the justice of such an

offence will be liable to a fine of level 1 on the standard scale but no longer to imprisonment: London Hackney Carriages Act 1843 s 28 (amended by the Criminal Justice Act 2003 s 304, Sch 32 Pt 2 para 147). At the date at which this volume states the law no such day had been appointed.

8 As to the meaning of 'ply for hire' see PARA 1478 note 5 ante.

9 London Hackney Carriages Act 1843 s 33 (amended by the Statute Law Revision Act 1891; and the Statute Law (Repeals) Act 1976). A person guilty of such an offence is liable to a fine of level 1 on the standard scale: London Hackney Carriage Act 1843 s 33 (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46).

10 London Hackney Carriage Act 1853 s 16. A person guilty of such an offence is liable to a fine not exceeding level 1 on the standard scale: s 19 (amended by the Summary Jurisdiction Act 1884 s 4, Schedule; the Statute Law (Repeals) Act 1976; and by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the jurisdiction of justices of the peace to hear and determine offences under the London Hackney Carriage Act 1853 see s 18 (amended by the London Cab Act 1896 s 2; and the Access to Justice Act 1999 ss 78(2), 106, Sch 11 para 8, Sch 15 Pt V Table (1), (3)).

11 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

12 London Hackney Carriage Act 1853 s 17(1) (amended by the Statute Law (Repeals) Act 1976; and the Greater London Authority Act 1999 s 253, Sch 20 para 3(3)). A person guilty of such an offence is liable to a fine not exceeding level 3 on the standard scale (amended by virtue of the Criminal Justice Act 1982 ss 39, 46, Sch 3). As to the exclusion of the London Hackney Carriage Act 1853 s 17 (as amended) in the case of certain drivers in specified circumstances see PARA 1489 note 6 ante.

13 In the metropolitan police district or the City of London: see PARA 1431 note 1 ante.

14 London Hackney Carriage Act 1853 s 17(2). By the London Cab Order 1934, SR & O 1934/1346, art 34(1) (art 34 substituted by the London Cab (No 2) Order 2001 arts 2, 3), for the reference to six miles in the London Hackney Carriage Act 1853 s 17(2) there is substituted a reference to 12 miles. This does not affect the London Cab Order 1972, SI 1972/1047 (see PARA 1489 note 8 ante): London Cab Order 1934, SR & O 1934/1346, art 34(2) (as so substituted). A person guilty of such an offence is liable to a fine not exceeding level 3 on the standard scale: London Hackney Carriage Act 1853 s 17 (amended by the Summary Jurisdiction Act 1884 s 4, Schedule; the Statute Law (Repeals) Act 1973; the Statute Law (Repeals) Act 1976; and by virtue of the Criminal Justice Act 1982 ss 39, 46, Sch 3). As to the compellability of a hackney carriage see PARA 1489 ante.

15 London Hackney Carriage Act 1853 s 17(3) (amended by the Summary Jurisdiction Act 1884 s 4, Schedule). A person guilty of such an offence is liable to a fine not exceeding level 3 on the standard scale: London Hackney Carriage Act 1853 s 17 (as amended: see note 14 supra).

## UPDATE

### 1491 Conduct of cab drivers and proprietors

NOTE 10--1843 Act s 10 amended: Transport for London Act 2008 s 11(2).

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### 1492. Lost property.

Any person who finds property accidentally left in a cab<sup>1</sup> must immediately hand it to the driver<sup>2</sup>. The driver must search his cab at the termination of each hiring or as soon as practicable after each hiring<sup>3</sup>; and if he finds or receives any property he must within 24 hours deposit it at a police station unless it is meanwhile satisfactorily claimed by the owner<sup>4</sup>.

1 For the meaning of 'cab' see PARA 1485 note 1 ante.

2 London Cab Order 1934, SR & O 1934/1346, art 51(1).

3 See *ibid* art 51(2).

4 See *ibid* art 51(3). The police station will forward the property to Transport for London, who may deliver to the cab driver property not claimed within three months or sell or otherwise dispose of it and pay the cab driver an award on a prescribed scale: see art 52(1) (amended by virtue of the Decimal Currency Act 1969 s 10; and by SI 1971/333; SI 2000/1666). Property claimed must be delivered to the claimant on payment of certain sums in respect of costs and of an award to the cab driver: see the London Cab Order 1934, SR & O 1934/1346, art 52(2)-(4) (amended by virtue of the Decimal Currency Act 1969 s 10; and by SI 1971/333; SI 2000/1666). Transport for London has power to open packages, bags or other receptacles for the purpose of tracing the owners of property or ascertaining contents: see the London Cab Order 1934, SR & O 1934/1346, art 52(7) (amended by SI 2000/1666). As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

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### **1493. Taxis at railway stations and airports.**

By virtue of local legislation applying in London<sup>1</sup>, railway stations in London and their approaches and precincts are deemed to be public streets or places<sup>2</sup>. Any road or place within an airport in the metropolitan police district<sup>3</sup> is also deemed to be a street or place<sup>4</sup>.

In the admission of cabs<sup>5</sup> to a railway station, or in the treatment of cabs while in a railway station<sup>6</sup>, the company having control of the station must not show any preference to any cab, or give any cab a privilege, which is not given to other cabs, and where any charge is made in respect of the admission of any cab to a railway station for the purpose of plying for hire<sup>7</sup> therein, the charge must not exceed such sum as may be allowed by Transport for London<sup>8</sup>. If it is proved to the satisfaction of Transport for London that it will not be possible to obtain a sufficient supply of cabs at a railway station for the proper accommodation of the public, unless the operation of this provision<sup>9</sup> is suspended or modified as respects that provision, Transport for London may by London cab order<sup>10</sup> so modify or suspend that provision with respect to that station subject to such conditions as may be specified in the order<sup>11</sup>.

1 See local Acts applying to particular railway companies and their successors.

2 *Ie* within the meaning of the London Hackney Carriage Act 1831 s 35 (as amended): see PARA 1489 ante. Thus cabs in stations are compellable. This does not include areas in stations specially set aside for parking: see the London Cab Act 1968 s 3(2) (amended by the Road Traffic Act 1984 s 146, Sch 13 para 4). As to compellability see PARA 1489 ante.

3 As to the metropolitan police district see POLICE vol 36(1) (2007 Reissue) PARA 137.

4 Airports Act 1986 s 65(5). See *Eldridge v British Airports Authority* [1970] 2 QB 387, [1970] 2 All ER 92.

5 For the meaning of 'cab' see PARA 1484 note 12 ante.

6 'Railway station' includes the precincts thereof and the approaches thereto: London Cab and Stage Carriage Act 1907 s 2(3).

7 As to the meaning of 'ply for hire' see PARA 1478 note 5 ante.

8 London Cab and Stage Carriage Act 1907 s 2(1) (amended by the Greater London Authority Act 1999 s 253, Sch 20 Pt I para 6(1), (4)(a), Pt II para 15(2)). As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

9 le the London Cab and Stage Carriage Act 1907 s 2 (as amended).

10 As to London cab orders see PARA 1484 ante.

11 London Cab and Stage Carriage Act 1907 s 2(2) (amended by the Greater London Authority Act 1999 Sch 20 Pt I para 6(4)(b), Pt II para 15(3)). Nothing in the London Cab and Stage Carriage Act 1907 s 2 (as amended) affects the liability of cabs or the drivers thereof to comply with any regulations or conditions which may be made by the company having control of the railway station for the purpose of maintaining order or dealing with traffic at such station, including regulations as to: (1) the number of cabs to be admitted at any one time; (2) the rejection of cabs and drivers unfit for admission; and (3) the expulsion of any cabman who has been guilty of misconduct, or a breach of the company's byelaws or regulations: s 2(4).

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#### **1494. Appointment of standings by Transport for London.**

It is lawful for Transport for London<sup>1</sup> from time to time to appoint standings for hackney carriages<sup>2</sup> at such places as it thinks convenient in any street, thoroughfare, or place of public resort within the metropolitan police district<sup>3</sup>, any law, statute or custom to the contrary thereof notwithstanding, and at its discretion to alter the same, and from time to time to make regulations concerning the boundaries of the same, the number of carriages to be allowed at any such standing, the times at and during which they may stand and ply for hire<sup>4</sup> at any such standing, and also from time to time to make such regulations as Transport for London deems proper for enforcing order at every such standing and for removing any person who unnecessarily loiters or remains at or about any such standing<sup>5</sup>. Transport for London must cause all such orders and regulations to be made by it to be advertised<sup>6</sup>, and must cause a copy of them, signed by a person authorised for the purpose by Transport for London, to be hung up for public inspection in the offices of Transport for London, and at each of the magistrates' courts acting for an area falling wholly within an inner London borough<sup>7</sup>.

1 As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

2 As to hackney carriages see PARA 1478 ante.

3 As to the metropolitan police district see POLICE vol 36(1) (2007 Reissue) PARA 137.

4 As to the meaning of 'ply for hire' see PARA 1478 note 5 ante.

5 London Hackney Carriages Act 1850 s 4 (amended by the Statute Law Revision Act 1891; and the Greater London Authority Act 1999 s 253, Sch 20 Pt I para 2(1), (2)(a), Sch 20 Pt II para 11).

6 le in the London Gazette: London Hackney Carriages Act 1850 s 4.

7 Ibid s 4 (amended by the Greater London Authority Act 1999 Sch 20 Pt I para 2(1), (2), Sch 20 Pt II para 11; and the Access to Justice Act 1999 s 78(2), Sch 11 para 7). The copy referred to must be received in evidence in the said courts as if it were the original of which it purports to be a copy, and is to be taken to be a true copy of such original order or regulation, without further proof than the aforesaid signature: London Hackney Carriages Act 1850 s 4 (amended by the Greater London Authority Act 1999 Sch 20 Pt I para 2(1), (2)(d), Pt II para 11).

#### **UPDATE**

#### **1494 Appointment of standings by Transport for London**

TEXT AND NOTES--Transport for London may by London cab order designate any standing for hackney carriages appointed under the 1850 Act s 4 to be a directional taxi rank at all times or for such times of the day as may be specified in the order: Transport for London Act 2008 s 9. Transport for London may by London cab order designate any standing, or part of a standing, for hackney carriages appointed under the 1850 Act s 4 to be a rest rank at all times or for such times of the day as may be specified in the order: 2008 Act s 10.

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## **(8) LEGISLATION APPLICABLE TO TAXIS BOTH IN AND OUTSIDE LONDON**

### **1495. Immediate hiring of taxis and advance booking of taxis and hire cars at separate fares.**

If:

- 2358 (1) a licensed taxi<sup>1</sup> is hired in an area where a scheme for the hiring of taxis at separate fares<sup>2</sup> is in operation<sup>3</sup>;
- 2359 (2) the taxi is licensed by the licensing authority<sup>4</sup> for that area<sup>5</sup>; and
- 2360 (3) the hiring falls within the terms of the scheme<sup>6</sup>,

that licensed taxi may be hired for use for the carriage of passengers for hire or reward at separate fares without becoming a public service vehicle<sup>7</sup> for the purposes of the Public Passenger Vehicles Act 1981 or any related enactment<sup>8</sup>, or ceasing<sup>9</sup> to be subject to the taxi code<sup>10</sup>. For these purposes<sup>11</sup>, a licensing authority may make a scheme<sup>12</sup> for its area and must make a scheme if the holders of at least 10 per cent of the current taxi licences issued by the authority request the authority in writing to do so<sup>13</sup>. Any scheme must:

- 2361 (a) designate the places in the area from which taxis may be hired under the scheme ('the authorised places')<sup>14</sup>;
- 2362 (b) specify the requirements to be met for the purposes of the scheme in relation to the hiring of taxis at separate fares<sup>15</sup>;
- 2363 (c) include such provision, or provision of such description, as may be prescribed for the purpose<sup>16</sup>; and
- 2364 (d) not include provisions of any such description as may be prescribed for the purpose<sup>17</sup>.

1 For these purposes, 'licensed taxi' means a vehicle licensed under the Town Police Clauses Act 1847 s 37 (see PARA 1435 ante) or the Metropolitan Public Carriage Act 1869 s 6 (as substituted) (see PARA 1479 ante): Transport Act 1985 s 13(3).

2 le under ibid s 10 (as amended).

3 Ibid s 10(2)(a).



4 For these purposes, 'licensing authority' means, in relation to the London taxi area, Transport for London or the holder for the time being of any office designated by Transport for London for the purposes of *ibid* s 10 (as amended); and, in relation to any other area in England and Wales, the authority having responsibility for licensing taxis in that area: s 10(3) (amended by the Greater London Authority Act 1999 s 253, Sch 20 Pt I para 8(1), Pt II para 17(1)). 'London taxi area' means the area to which the Metropolitan Public Carriage Act 1869 applies (see PARA 1477 ante): Transport Act 1985 s 13(3). As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

5 *Ibid* s 10(2)(b).

6 *Ibid* s 10(2)(c). For the purposes of s 10 (as amended), the hiring of a taxi falls within the terms of a scheme if: (1) it is hired from an authorised place and the hiring meets the requirements specified by the licensing authority as to those to be met for the purposes of the scheme; and (2) a taxi is hired from an authorised place if it is standing at that place when it is hired and the persons hiring it are all present there: s 10(9).

7 For the meaning of 'public service vehicle' see PARA 1136 ante.

8 'Related enactment' in relation to the Public Passenger Vehicles Act 1981 means any statutory provision (whenever passed or made) relating to public service vehicles in which 'public service vehicle' is defined directly or indirectly by reference to provisions of that Act: Transport Act 1985 s 13(3).

9 *Ie* otherwise than by virtue of any provision made under *ibid* s 13 (as amended): see PARA 1498 post.

10 *Ibid* s 10(1). The 'taxi code', in relation to a taxi used as mentioned in s 10 (as amended), s 11 or s 12 (as amended) means those provisions made by or under any enactment which would apply if the vehicle were plying for hire (see PARAS 1496-1497 post) and were hired by a single passenger for his exclusive use: s 13(3). As to the meaning of 'ply for hire' see PARA 1434 note 3 ante.

11 *Ie* for the purposes of *ibid* s 10 (as amended).

12 A licensing authority may, subject to *ibid* s 10(5), vary any scheme made by it under s 10 (as amended): s 10(7). Any scheme under s 10 (as amended), and any variation of such a scheme, must be made in accordance with the prescribed procedure: s 10(8) (amended by the Greater London Authority Act 1999 ss 253, 423, Sch 20 Pt I para 8(1), Sch 34 Pt V). 'Prescribed' means prescribed by regulations: Transport Act 1985 s 137(1).

13 *Ibid* s 10(4).

14 *Ibid* s 10(5)(a). As to the regulations that have been made under s 10(5) (as amended) and s 10(8) see the Taxis (Schemes for Hire at Separate Fares) Regulations 1986, SI 1986/1779. Subject to the Transport Act 1985 s 10(5) (as amended), any scheme under s 10 (as amended) may, in particular, make provision with respect to: (1) fares; (2) the display of any document, plate, mark or sign for indicating an authorised place is available for the carriage of passengers at separate fares; (3) the manner in which arrangements are to be made for the carriage of passengers on any such hiring as is mentioned in s 10(1); and (4) the conditions to apply to the use of any such hiring: s 10(6).

15 *Ibid* s 10(5)(b).

16 *Ibid* s 10(5)(c)(i) (s 10(5)(c) amended by the Greater London Authority Act 1999 Sch 20 Pt I para 8(1), (2) (c), Sch 34, Pt V).

17 Transport Act 1985 s 10(5)(c)(ii) (as amended: see note 16 supra).

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#### **1496. Advance booking of taxis and hire cars at separate fares.**

If:

- 2365 (1) all the passengers carried on the occasion in question booked their journeys in advance<sup>1</sup>; and
- 2366 (2) each of them consented, when booking his journey, to sharing the use of the vehicle on that occasion with the others on the basis that a separate fare would be payable by each passenger for his own journey on that occasion<sup>2</sup>,

then a licensed taxi<sup>3</sup> or licensed hire car<sup>4</sup> may be used for the carriage of passengers at separate fares for hire or reward at separate fares without: (a) becoming a public service vehicle for the purposes of the Public Passenger Vehicles Act 1981 or any related enactment; or (b) ceasing<sup>5</sup> to be subject to the taxi code<sup>6</sup> or, as the case may be, the hire car code<sup>7</sup>.

1 Transport Act 1985 s 11(2)(a).

2 Ibid s 11(2)(b).

3 For the meaning of 'licensed taxi' see PARA 1495 note 1 ante.

4 'Licensed hire car' means a vehicle licensed under the Local Government (Miscellaneous Provisions) Act 1976 s 48 (as amended) (see PARA 1448 ante) or the Private Hire Vehicles (London) Act 1998 s 7 (as amended) (see PARA 1506 post); Transport Act 1985 s 13(3) (amended by the Private Hire Vehicles (London) Act 1998 s 39(1), Sch 1 para 4).

5 I.e. otherwise than by virtue of any provision made under the Transport Act 1985 s 13 (as amended): see PARA 1498 post.

6 For the meaning of 'taxi code' see PARA 1495 note 10 ante.

7 Transport Act 1985 s 11(1). 'Hire car code', in relation to a licensed hire car used as mentioned in s 11, means those provisions made by or under any enactment which would apply if it were hired by a single passenger for his exclusive use: s 13(3).

## UPDATE

### 1496 Advance booking of taxis and hire cars at separate fares

NOTE 4--Definition of 'licensed hire car' substituted: Local Transport Act 2008 s 54 (3), (5).

NOTE 7--Definition of 'hire car code' amended: Local Transport Act 2008 s 54(3), (7).

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### 1497. Use of taxis in providing local services.

Where the holder of a taxi licence<sup>1</sup>: (1) applies to the appropriate traffic commissioner<sup>2</sup> for a restricted PSV operator's licence<sup>3</sup> to be granted to him under Part II of the Public Passenger Vehicles Act 1981<sup>4</sup>; and (2) states in his application that he proposes to use one or more licensed taxis<sup>5</sup> to provide a local service<sup>6</sup>, that provision of the Public Passenger Vehicles Act 1981<sup>7</sup> which specifies the conditions to be met before the grant of a PSV operator's licence is not to apply, and the commissioner must grant the application<sup>8</sup>. Without prejudice to his powers to attach other conditions<sup>9</sup>, any traffic commissioner granting a special licence<sup>10</sup> must attach specified conditions to it<sup>11</sup>. The conditions are: (a) that every vehicle<sup>12</sup> used under the

licence must be one for which the holder of the licence has a taxi licence; and (b) that no vehicle is to be used under the licence otherwise than for providing a local service<sup>13</sup> with one or more stopping places within the area of the authority which granted the taxi licence of the vehicle in question<sup>14</sup>. At any time when a licensed taxi is being used for the provision of a local service under a special licence it must carry such documents, plates and marks, in such manner, as may be prescribed<sup>15</sup>. Such provisions of the taxi code<sup>16</sup> as may be prescribed apply in relation to a licensed taxi at any time when it is being so used, and any such provision may be so applied subject to such modifications as may be prescribed<sup>17</sup>. A person may hold more than one special licence but may not at the same time hold more than one such licence granted by the traffic commissioner for a particular traffic area<sup>18</sup>.

1 'Taxi licence' means a licence under the Metropolitan Public Carriage Act 1869 s 6 (see PARA 1479 ante), the Town Police Clauses Act 1847 s 37 (see PARA 1435 ante), or any similar enactment: Transport Act 1985 s 13(3).

2 As to traffic commissioners see PARA 1139 ante.

3 As to PSV operator's licences see PARA 1144 et seq ante.

4 Ie the Public Passenger Vehicles Act 1981 Pt II (ss 6-29) (as amended): see PARA 1147 et seq ante.

5 For the meaning of 'licensed taxi' see PARA 1495 note 1 ante.

6 As to the meaning of 'local service' see PARA 1177 ante.

7 Ie the Public Passenger Vehicles Act 1981 s 14 (as amended): see PARA 1146 ante.

8 Transport Act 1985 s 12(1).

9 Ie under the Public Passenger Vehicles Act 1981 s 14 (as amended): see PARA 1146 ante.

10 For these purposes, 'special licence' means a restricted PSV operator's licence granted by virtue of the Transport Act 1985 s 12 (as amended): s 12(2). The Public Passenger Vehicles Act 1981 s 1(2) (vehicle used as a public service vehicle to be treated as such until that use is permanently discontinued) (see PARA 1136 ante) does not apply to any use of a licensed taxi for the provision of a local service under a special licence: Transport Act 1985 s 12(8). For the purposes of the Public Passenger Vehicles Act 1981 s 12(3) (as amended) (which provides that where two or more PSV operators' licences are held they must be granted by traffic commissioners for different areas) (see PARA 1144 ante), special licences must be disregarded: Transport Act 1985 s 12(11). The Public Passenger Vehicles Act 1981 s 16(1A) (as added), s 16(2), s 17(3)(d), ss 18-20 (all as amended), s 26 (as amended) and the Transport Act 1985 s 26(5), (6) do not apply in relation to special licences or (as the case may be) the use of vehicles under such licences and, for the purposes of the Public Passenger Vehicles Act 1981 s 12 (as amended), the Transport Act 1985 s 12 (as amended) must be treated as if it were in the Public Passenger Vehicles Act 1981 Pt II (ss 6-29) (as amended): Transport Act 1985 s 12(13) (amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 16, Sch 6).

11 Transport Act 1985 s 12(4).

12 The maximum number of vehicles which the holder of a special licence may at any time use under the licence is the number of vehicles for which (for the time being) he holds taxi licences; and a condition to that effect must be attached to every special licence under the Public Passenger Vehicles Act 1981 s 16(1) (as amended) (see PARA 1153 ante): Transport Act 1985 s 12(7).

13 For the purposes of ibid s 12(5)(b) (see head (b) in the text), 'local service' does not include an excursion or tour: s 12(6).

14 Ibid s 12(5).

15 Ibid s 12(9). For the meaning of 'prescribed' see PARA 1495 note 12 ante. As to the power to make regulations, rules and orders under the Transport Act 1985 see PARA 1135 ante. See note 17 infra.

16 For the meaning of 'taxi code' see PARA 1495 note 10 ante.

17 Transport Act 1985 s 12(10). As to the regulations that have been made under s 12(9), (10), see the Local Services (Operation by Taxis) (London) Regulations 1986, SI 1986/566; and the Local Services (Operation by Taxis) Regulations 1986, SI 1986/567.

18 Transport Act 1985 s 12(12).

## UPDATE

### 1497 Use of taxis [or hire cars] in providing local services

TEXT AND NOTES--Transport for London may by order provide that the Transport Act 1985 s 12 is to apply to vehicles licensed under the Private Hire Vehicles (London) Act 1998 s 7 (see PARA 1506) as it applies to vehicles licensed under the Local Government (Miscellaneous Provisions) Act 1976 s 48 (see PARA 1448): Transport Act 1985 s 13A (added by the Local Transport Act 2008 s 54(8)).

TEXT AND NOTES 1-8--Transport Act 1985 s 12(1) amended: Local Transport Act 2008 s 53(2).

NOTE 10--Transport Act 1985 s 12(8) amended: Local Transport Act 2008 s 53(5).

TEXT AND NOTES 12-14--Transport Act 1985 s 12(5) amended: Local Transport Act 2008 s 53(3).

NOTE 12--Transport Act 1985 s 12(7) amended: Local Transport Act 2008 s 53(4).

TEXT AND NOTE 15--Transport Act 1985 s 12(9) amended, s 12(10A) added: Local Transport Act 2008 s 53(6), (8).

TEXT AND NOTES 16, 17--Transport Act 1985 s 12(10) amended, s 12(10A) added: Local Transport Act 2008 s 53(7), (8).

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### 1498. Orders modifying the taxi and private hire codes.

The Secretary of State<sup>1</sup> may by order<sup>2</sup> make such modifications of the taxi code<sup>3</sup> or the hire car code<sup>4</sup> as he sees fit for the purpose of supplementing certain provisions<sup>5</sup>. An order under this power may, in particular, modify any provision:

- 2367 (1) relating to fares payable by the hirer of a vehicle<sup>6</sup>;
- 2368 (2) requiring the driver of any vehicle to accept any hiring, or to drive at the direction of the hirer, or (as the case may be) of a prospective hirer, to any place within or not exceeding any specified distance or for any period of time not exceeding a specified period from the time of hiring<sup>7</sup>;
- 2369 (3) making the carriage of additional passengers in any vehicle which is currently subject to a hiring dependent on the consent of the hirer<sup>8</sup>.

<sup>1</sup> As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

<sup>2</sup> As to the power to make regulations, rules and orders under the Transport Act 1985 see PARA 1135 ante. See note 5 infra.

<sup>3</sup> For the meaning of 'taxi code' see PARA 1495 note 10 ante.

4 For the meaning of 'hire car code' see PARA 1496 note 7 ante.

5 Transport Act 1985 s 13(1). The specified provisions are s 10 (as amended), s 11 and s 12 (as amended): see PARAS 1495-1497 ante. As to the orders that have been made see the Licensed Taxis (Hiring at Separate Fares) Order 1986, SI 1986/1386; and the Licensed Taxis (Hiring at Separate Fares) (London) Order 1986, SI 1986/1387. An order under the Transport Act 1985 s 13(1) may contain such supplementary, incidental, consequential and transitional provisions (including provisions modifying any enactment contained in any Act other than the Transport Act 1985) as appear to the Secretary of State to be necessary or expedient in consequence of any modification of the taxi code or the hire car code made by the order: s 13(4).

6 Ibid s 13(2)(a).

7 Ibid s 13(2)(b).

8 Ibid s 13(2)(c).

## UPDATE

### 1498 Orders modifying the taxi and private hire codes

TEXT AND NOTES 1-5--Transport Act 1985 s 13(1) amended: Local Transport Act 2008 s 54(2).

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### 1499. Taxi fare concessions.

A parish council<sup>1</sup> or a community council<sup>2</sup> may enter into arrangements with any licensed taxi operator or licensed hire car operator<sup>3</sup> under which: (1) the operator grants fare concessions on local journeys specified in the arrangements to some or all of the persons satisfying the specified requirements<sup>4</sup>; and (2) the council reimburses the cost incurred in granting the concessions<sup>5</sup>. The persons satisfying the specified requirements are persons who are: (a) resident in the council's area<sup>6</sup>; and (b) specified<sup>7</sup> for the time being as eligible to receive travel concessions under a scheme for the provision of travel concessions on journeys on public passenger transport services<sup>8</sup>.

1 As to the constitution and powers of parish councils see LOCAL GOVERNMENT vol 69 (2009) PARA 27 et seq.

2 As to the constitution and powers of community councils see LOCAL GOVERNMENT vol 69 (2009) PARA 41 et seq.

3 'Licensed taxi operator' and 'licensed hire car operator' mean a person who provides a service for the carriage of passengers by licensed taxi (as defined by the Transport Act 1985 s 13(3): see PARA 1495 note 1 ante) or by licensed hire car: Local Government and Rating Act 1997 s 28(4).

4 Ibid s 28(1)(a).

5 Ibid s 28(1)(b). Arrangements made under s 28(1) may specify such other terms and conditions as the council thinks fit: s 28(3).

6 Ibid s 28(2)(a).

7 Ie in or under the Transport Act 1985 s 93(7) (as amended): see PARA 1280 ante.

8 Local Government and Rating Act 1997 s 28(2)(b). As to the scheme for travel concessions see PARA 1280 et seq ante.

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## 16. PRIVATE HIRE VEHICLES IN LONDON

### (1) INTRODUCTION

#### 1500. Legislation.

The licensing and regulation of private hire vehicles in London<sup>1</sup>, and drivers and operators of such vehicles, are governed by the Private Hire Vehicles (London) Act 1998<sup>2</sup>. For these purposes, 'private hire vehicle' means a vehicle<sup>3</sup> constructed or adapted to seat fewer than nine passengers which is made available with a driver to the public for hire for the purpose of carrying passengers, other than a licensed taxi<sup>4</sup> or a public service vehicle<sup>5</sup>. Nothing in the Private Hire Vehicles (London) Act 1998 applies to any vehicle whose use as a private hire vehicle is limited to use in connection with funerals or weddings<sup>6</sup>. The Private Hire Vehicles (London) Act 1998 was amended by the Greater London Authority Act 1999 so as to transfer the functions of the Secretary of State<sup>7</sup> under the Private Hire Vehicles (London) Act 1998 to Transport for London as licensing authority for the purposes of the Private Hire Vehicles (London) Act 1998<sup>8</sup>.

1 In the Private Hire Vehicles (London) Act 1998, 'London' means the area consisting of the metropolitan police district and the City of London (including the Temples): s 36. This area corresponds to the administrative area of Greater London: see the London Government Act 1963 ss 2(1), 76 (amended by the Greater London Authority Act 1999 s 323). As to the metropolitan police district see the London Government Act 1963 s 76 (as amended); and POLICE vol 36(1) (2007 Reissue) PARA 137. As to the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 31; and as to the Temples see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 32. As to the administrative area of Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29. As to taxis in London see PARA 1477 et seq ante.

2 As to the commencement of the Private Hire Vehicles (London) Act 1998 see s 40(2). All the provisions of the Act have been brought into force.

The Secretary of State has power by regulations to make transitional provisions and savings: see s 37(1). Such regulations may modify any provision of the Private Hire Vehicles (London) Act 1998 or any other Act: s 37(2). Before making regulations the Secretary of State must consult the licensing authority (see PARA 1502 note 1 post): s 37(3) (added by the Greater London Authority Act 1999 s 254(3), Sch 21 para 18). Such regulations are to be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Private Hire Vehicles (London) Act 1998 s 32(3) (amended by the Greater London Authority Act 1999 Sch 21 para 16). The following regulations have been made under the Private Hire Vehicles (London) Act 1998 s 37: the Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146; the Private Hire Vehicles (London) (Transitional and Saving Provisions) Regulations 2003, SI 2003/655; the Private Hire Vehicles (London) (Transitional and Saving Provisions) (Amendment) Regulations 2003, SI 2003/3028; the Private Hire Vehicles (London) (Transitional Provisions) Regulations 2004, SI 2004/242; and the Private Hire Vehicles (London) (Transitional and Saving Provisions) (Amendment) Regulations 2006, SI 2006/584.

3 'Vehicle' means a mechanically propelled vehicle (other than a tramcar) intended or adapted for use on roads: Private Hire Vehicles (London) Act 1998 s 36. 'Road' means any length of highway or of any other road to which the public has access (including bridges over which a road passes): s 36. As to the construction of the similar definition of 'road' in the road traffic legislation see PARA 206 ante. As to the meaning of 'tramcar' see PARA 1538 post.

4 'Licensed taxi' means a hackney carriage, a London cab or a taxi licensed under the Civic Government (Scotland) Act 1982 Pt II: Private Hire Vehicles (London) Act 1998 s 36. 'Hackney carriage' means a vehicle licensed under the Town Police Clauses Act 1847 s 37 (as amended) (see PARAS 1434-1435 ante) or any similar

enactment: Private Hire Vehicles (London) Act 1998 s 36. 'London cab' means a vehicle licensed under the Metropolitan Public Carriage Act 1869 s 6 (as amended) (see PARA 1479 ante); Private Hire Vehicles (London) Act 1998 s 36.

5 Ibid s 1(1)(a). For the meaning of 'public service vehicle' see PARA 1136 ante; definition applied by s 36. As from a day to be appointed, the words 'to the public' in the definition of 'private hire vehicle' are repealed: s 1(1)(a) (amended by the Road Safety Act 2006 ss 54, 59, Sch 7). At the date at which this volume states the law no such day had been appointed.

6 Private Hire Vehicles (London) Act 1998 s 29.

7 The functions of the Secretary of State under ibid s 37 (as amended), s 38 (repealed), s 40 are excluded: Greater London Authority Act 1999 s 254(2). As to the Secretary of State see PARA 236 ante.

8 See the Greater London Authority Act 1999 s 254(1); and the Private Hire Vehicles (London) Act 1998 s 36 (amended by the Greater London Authority Act 1999 s 254(3), Sch 21 paras 1, 2, 17). See also PARA 1502 note 1 post.

## UPDATE

### 1500 Legislation

NOTE 2--SI 2004/242 amended: SI 2007/3453.

NOTE 5--Day appointed in relation to Road Safety Act 2006 s 54 is 31 March 2008: SI 2007/3492.

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## (2) LONDON OPERATORS' LICENCES

### 1501. Requirement for London operator's licence.

No person may in London<sup>1</sup> make provision for the invitation or acceptance of, or accept, private hire bookings<sup>2</sup> unless he is the holder of a private hire vehicle operator's licence for London (a 'London PHV operator's licence')<sup>3</sup>. A person who makes provision for the invitation or acceptance of private hire bookings, or who accepts such a booking, in contravention of this provision is guilty of an offence<sup>4</sup>.

1 For the meaning of 'London' see PARA 1500 note 1 ante.

2 'Private hire booking' means a booking for the hire of a private hire vehicle for the purpose of carrying one or more passengers (including a booking to carry out as sub-contractor a private hire booking accepted by another operator): Private Hire Vehicles (London) Act 1998 s 1(4). For the meaning of 'private hire vehicle' see PARA 1500 ante. 'Operator' means a person who makes provision for the invitation or acceptance of, or who accepts, private hire bookings: s 1(1)(b). Any reference in the Private Hire Vehicles (London) Act 1998 to the operator of a vehicle which is being used as a private hire vehicle is a reference to the operator who accepted the booking for the hiring or to whom the vehicle is immediately available, as the case may be: s 1(3).

3 Ibid s 2(1).

4 Ibid s 2(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 2(2). As to the standard scale see PARA 230 note 3 ante. Where an offence by any person under the Private Hire Vehicles (London) Act 1998 is due to the act or default of another person, then (whether proceedings are taken against the first mentioned person or not) that other person is guilty of the

offence and is liable to be proceeded against and punished accordingly: s 33(1). Where an offence under the Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate (or any person purporting to act in that capacity), he as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly: s 33(2).

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## **1502. Grant of London operator's licence.**

Any person may apply to the licensing authority<sup>1</sup> for a London PHV operator's licence<sup>2</sup>. The application must state the address of any premises in London<sup>3</sup> which the applicant proposes to use as an operating centre<sup>4</sup>. The licensing authority must grant a London PHV operator's licence to the applicant if it is satisfied that<sup>5</sup> the applicant is a fit and proper person to hold a London PHV operator's licence<sup>6</sup>, and that any further requirements that may be prescribed<sup>7</sup> (which may include requirements relating to operating centres) are met<sup>8</sup>.

A London PHV operator's licence is to be granted subject to such conditions as may be prescribed and such other conditions as the licensing authority may think fit<sup>9</sup>, and is to be granted for five years or such shorter period as the licensing authority may consider appropriate in the circumstances of the case<sup>10</sup>. A London PHV operator's licence must specify the address of any premises in London which the holder of the licence may use as an operating centre<sup>11</sup>; and is to be in such form and contain such particulars as the licensing authority may think fit<sup>12</sup>.

An applicant for a London PHV operator's licence may appeal to a magistrates' court against a decision not to grant such a licence<sup>13</sup>, or against a decision not to specify an address proposed in the application as an operating centre<sup>14</sup>, or against any condition (other than a prescribed condition) to which the licence is subject<sup>15</sup>.

1 'The licensing authority' means Transport for London: Private Hire Vehicles (London) Act 1998 s 36 (amended by the Greater London Authority Act 1999 s 254(3), Sch 21 para 17). The functions of the Secretary of State under the Private Hire Vehicles (London) Act 1998 as originally enacted (except ss 37, 38, 40) were transferred to Transport for London by the Greater London Authority Act 1999 s 254(1), (2). References in the Private Hire Vehicles (London) Act 1998 to the Secretary of State are replaced by references to the licensing authority (except in ss 37, 38, 40): Greater London Authority Act 1999, Sch 21 para 2. See also PARA 1500 text and notes 7-8 ante. As to the Secretary of State see PARA 236 ante. As to Transport for London see PARA 246 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq. As to the delegation of functions of the licensing authority see PARA 1529 post.

2 Private Hire Vehicles (London) Act 1998 s 3(1) (amended by the Greater London Authority Act 1999 Sch 21 para 2). 'London PHV operator's licence' means a licence under the Private Hire Vehicles (London) Act 1998 s 2 (see PARA 1501 ante): s 36. As to applications for licences, and as to fees, see PARAS 1514-1515 post.

3 For the meaning of 'London' see PARA 1500 note 1 ante.

4 Private Hire Vehicles (London) Act 1998 s 3(2). 'Operating centre' means premises at which private hire bookings are accepted by an operator: ss 1(5), 36. For the meanings of 'private hire booking' and 'operator' see PARA 1501 note 2 ante.

5 Ibid s 3(3) (amended by the Greater London Authority Act 1999 Sch 21 paras 2, 3).

6 Private Hire Vehicles (London) Act 1998 s 3(3)(a).

7 'Prescribed' means prescribed by regulations made under ibid s 32(1) (see PARA 1530 post): s 36.



8 Ibid s 3(3)(b). Where the decision has been made to approve an application for the grant of a licence, the licensing authority, provided that any fee prescribed for such a grant is received within the specified time limit, must grant the licence and send it to the applicant: Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146, reg 6(1).

9 Private Hire Vehicles (London) Act 1998 s 3(4) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2). Every licence must be granted subject to prescribed conditions, which include requirements as to insurance, agreement or estimation of fares, giving the licensing authority notice of certain matters, wireless telegraphy apparatus, the keeping of records, and maintaining a procedure as to complaints and lost property: Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146, reg 9. The licensing authority must issue a replacement licence where an operator notifies it that: (1) he has adopted, altered or dispensed with a business name; (2) he has changed his name; or (3) his licence has been lost, destroyed or defaced: reg 18(1). Except where a licence has been lost or destroyed, no replacement may be issued until the original licence has been returned to the licensing authority: reg 18(2). In relation to a licence granted in the sole name of an individual, if that individual dies, becomes bankrupt or becomes a person who lacks capacity under the Mental Capacity Act 2005, the licensing authority may direct that a person carrying on the business of the operator is to be treated for the purposes of the Private Hire Vehicles (London) Act 1998 as if he were the operator for such purpose and to such extent as is specified in the direction for a period not exceeding six months from the date of the coming into force of that direction or, if less, the remainder of the period of the licence: Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146, reg 19(1), (3). These provisions refer to a patient under the Mental Health Act 1983 Pt VII (ss 93-113), but that Part has been repealed by the Mental Capacity Act 2005 and replaced by provisions of that Act relating to persons who lack capacity. As to persons who lack capacity see MENTAL HEALTH vol 30(2) (Reissue) PARA 641 et seq. In the event of the individual's death, the licensing authority may direct that the licence is not to be treated as terminated when the individual died but suspended until the date when the direction comes into force: Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146, reg 19(2). Temporary permits could be issued where an application for the grant of a licence was received by the licensing authority before 22 August 2001 but no determination had been made in relation to that application before 22 October 2001: reg 20.

10 Private Hire Vehicles (London) Act 1998 s 3(5) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2). As to the suspension or revocation of licences see PARA 1516 post. As to the variation of licences see PARAS 1517-1518 post.

11 Private Hire Vehicles (London) Act 1998 s 3(6)(a).

12 Ibid s 3(6)(b) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).

13 Private Hire Vehicles (London) Act 1998 s 3(7)(a).

14 Ibid s 3(7)(b).

15 Ibid s 3(7)(c).

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### **1503. Obligations of London operators.**

The holder of a London PHV operator's licence<sup>1</sup> (a 'London PHV operator') may not in London<sup>2</sup> accept a private hire booking<sup>3</sup> other than at an operating centre<sup>4</sup> specified in his licence<sup>5</sup>. A London PHV operator must secure that any vehicle<sup>6</sup> which is provided by him for carrying out a private hire booking accepted by him in London is either a vehicle for which a London PHV licence<sup>7</sup> is in force driven by a person holding a London PHV driver's licence<sup>8</sup>, or a London cab<sup>9</sup> driven by a person holding a London cab driver's licence<sup>10</sup>.

A London PHV operator must:

- 2370 (1) display a copy of his licence at each operating centre specified in the licence<sup>11</sup>;

- 2371 (2) keep at each specified operating centre a record in the prescribed<sup>12</sup> form of the private hire bookings accepted by him there<sup>13</sup>;
- 2372 (3) before the commencement of each journey booked at a specified operating centre, enter in the record kept under head (2) above the prescribed particulars of the booking<sup>14</sup>;
- 2373 (4) keep at each specified operating centre such records as may be prescribed of particulars of the private hire vehicles<sup>15</sup> and drivers which are available to him for carrying out bookings accepted by him at that centre<sup>16</sup>;
- 2374 (5) at the request of a constable or authorised officer<sup>17</sup>, produce for inspection any record required by these provisions to be kept<sup>18</sup>;
- 2375 (6) keep at each operating centre specified in his licence a record containing: (a) specified details of any complaint made in respect of a private hire booking accepted by him at that centre; and (b) specified details of any other complaint made in respect of his undertaking as an operator at that centre<sup>19</sup>; and
- 2376 (7) keep at each operating centre specified in his licence a record containing specified details of: (a) any lost property found at that centre or in any private hire vehicle used to carry out a booking accepted by him there; and (b) any property reported to him at that centre as having been lost<sup>20</sup>.

If a London PHV operator ceases to use an operating centre specified in his licence he must preserve any record he was required by this provision to keep there for such period as may be prescribed<sup>21</sup>.

A London PHV operator who contravenes any of the above provisions is guilty of an offence<sup>22</sup>. It is a defence in proceedings for an offence under this provision for an operator<sup>23</sup> to show that he exercised all due diligence to avoid committing such an offence<sup>24</sup>.

1 For the meaning of 'London PHV operator's licence' see PARA 1502 note 2 ante.

2 For the meaning of 'London' see PARA 1500 note 1 ante.

3 For the meaning of 'private hire booking' see PARA 1501 note 2 ante.

4 For the meaning of 'operating centre' see PARA 1502 note 4 ante.

5 Private Hire Vehicles (London) Act 1998 s 4(1).

6 For the meaning of 'vehicle' see PARA 1500 note 3 ante.

7 'London PHV licence' means a licence under the Private Hire Vehicles (London) Act 1998 s 7 (see PARA 1506 post): s 36.

8 Ibid s 4(2)(a). 'London PHV driver's licence' means a licence under s 13 (see PARA 1512 post): s 36.

9 For the meaning of 'London cab' see PARA 1500 note 4 ante.

10 Private Hire Vehicles (London) Act 1998 s 4(2)(b).

11 Ibid s 4(3)(a).

12 For the meaning of 'prescribed' see PARA 1502 note 7 ante. The record must be kept in writing or in other such form that the information contained in it can easily be reduced to writing: Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146, reg 10.

13 Private Hire Vehicles (London) Act 1998 s 4(3)(b).

14 Ibid s 4(3)(c). As to the prescribed particulars of the booking see the Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146, reg 11. The operator must preserve such particulars for six months from the date from which the booking was accepted: reg 16(1)(a). Where an operator tape-records a private hire booking, he must preserve the tape-recording of that conversation for six months: reg 16(2).

15 For the meaning of 'private hire vehicle' see PARA 1500 ante.

16 Private Hire Vehicles (London) Act 1998 s 4(3)(d). As to the prescribed particulars of the private hire vehicles and drivers see the Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146, regs 12, 13. The operator must preserve such particulars for 12 months from the date from which the vehicle or, as the case may be, the driver ceased to be available for carrying out bookings: reg 16(1)(b).

17 'Authorised officer' means an officer authorised in writing by the licensing authority for the purposes of the Private Hire Vehicles (London) Act 1998: s 36 (amended by the Greater London Authority Act 1999 Sch 21 para 2). As to the licensing authority see PARA 1502 note 1 ante.

18 Private Hire Vehicles (London) Act 1998 s 4(3)(e).

19 Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146, reg 14.

20 Ibid reg 15. The operator must preserve the particulars referred to in heads (6), (7) in the text for six months from the date from which they were entered into the record: reg 16(1)(c).

21 Private Hire Vehicles (London) Act 1998 s 4(4). An operator who has ceased to use a specified operating centre must, in relation to that centre, preserve records of private hire bookings accepted by him at the operating centre for six months and particulars of hire vehicles and drivers for 12 months: Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146, reg 16(3).

22 Private Hire Vehicles (London) Act 1998 s 4(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 4(5). As to the standard scale see PARA 230 note 3 ante. As to offences generally see PARA 1501 note 4 ante.

23 For the meaning of 'operator' see PARA 1501 note 2 ante.

24 Private Hire Vehicles (London) Act 1998 s 4(6).

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#### **1504. Hirings accepted on behalf of another operator.**

A London PHV operator<sup>1</sup> ('the first operator') who has in London<sup>2</sup> accepted a private hire booking<sup>3</sup> may not arrange for another operator<sup>4</sup> to provide a vehicle<sup>5</sup> to carry out that booking as sub-contractor unless:

- 2377 (1) the other operator is a London PHV operator and the sub-contracted booking is accepted at an operating centre<sup>6</sup> in London<sup>7</sup>;
- 2378 (2) the other operator is licensed<sup>8</sup> by the council of a district and the sub-contracted booking is accepted in that district<sup>9</sup>; or
- 2379 (3) the other operator accepts the sub-contracted booking in Scotland<sup>10</sup>.

A London PHV operator who contravenes the above provision is guilty of an offence<sup>11</sup>. It is a defence in proceedings for such an offence for an operator to show that he exercised all due diligence to avoid committing an offence<sup>12</sup>. It is immaterial for the above purposes whether or not sub-contracting is permitted by the contract between the first operator and the person who made the booking<sup>13</sup>.

For the avoidance of doubt (and subject to any relevant contract terms), a contract of hire between a person who made a private hire booking at an operating centre in London and the London PHV operator who accepted the booking remains in force despite the making of

arrangements by that operator for another contractor to provide a vehicle to carry out that booking as sub-contractor<sup>14</sup>.

- 1 For the meaning of 'London PHV operator' see PARA 1503 ante.
- 2 For the meaning of 'London' see PARA 1500 note 1 ante.
- 3 For the meaning of 'private hire booking' see PARA 1501 note 2 ante.
- 4 For the meaning of 'operator' see PARA 1501 note 2 ante.
- 5 For the meaning of 'vehicle' see PARA 1500 note 3 ante.
- 6 For the meaning of 'operating centre' see PARA 1502 note 4 ante.
- 7 Private Hire Vehicles (London) Act 1998 s 5(1)(a).
- 8 le under the Local Government (Miscellaneous Provisions) Act 1976 s 55: see PARA 1450 ante.
- 9 Private Hire Vehicles (London) Act 1998 s 5(1)(b).
- 10 Ibid s 5(1)(c).
- 11 Ibid s 5(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 5(2). As to the standard scale see PARA 230 note 3 ante. As to offences generally see PARA 1501 note 4 ante.
- 12 Ibid s 5(3).
- 13 Ibid s 5(4).
- 14 Ibid s 5(5).

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### **(3) PRIVATE HIRE VEHICLE LICENCES**

#### **1505. Requirement for private hire vehicle licence.**

A vehicle<sup>1</sup> may not be used as a private hire vehicle<sup>2</sup> on a road<sup>3</sup> in London<sup>4</sup> unless a private hire vehicle licence<sup>5</sup> is in force for that vehicle<sup>6</sup>. The driver and operator of a vehicle used in contravention of this provision are each guilty of an offence<sup>7</sup>. The owner<sup>8</sup> of a vehicle who permits it to be so used is also guilty of an offence<sup>9</sup>.

The above provisions do not apply to a vehicle used for the purposes of a hiring for a journey beginning outside London in an area of England and Wales which is not a controlled district<sup>10</sup>.

- 1 For the meaning of 'vehicle' see PARA 1500 note 3 ante.
- 2 For the meaning of 'private hire vehicle' see PARA 1500 ante. Any reference in the Private Hire Vehicles (London) Act 1998 to a vehicle being 'used as a private hire vehicle' is a reference to a private hire vehicle which: (1) is in use in connection with a hiring for the purpose of carrying one or more passengers (s 1(2)(a)); or (2) is immediately available to an operator to carry out a private hire booking (s 1(2)(b)). For the meaning of 'operator' see PARA 1501 note 2 ante. For the meaning of 'private hire booking' see PARA 1501 note 2 ante.
- 3 For the meaning of 'road' see PARA 1500 note 3 ante.

4 For the meaning of 'London' see PARA 1500 note 1 ante.

5 'Private hire vehicle licence' means:

1413 (1) except where head (2) or head (3) infra applies, a London PHV licence;

1414 (2) if the vehicle is in use for the purposes of a hiring the booking for which was accepted outside London in a controlled district, a licence under the Local Government (Miscellaneous Provisions) Act 1976 s 48 (as amended) (see PARA 1448 ante) issued by the council for that district; and

1415 (3) if the vehicle is in use for the purposes of a hiring the booking for which was accepted in Scotland, a licence under the Civic Government (Scotland) Act 1982 s 10,

and for the purposes of head (2) or head (3) supra it is immaterial that the booking in question is a sub-contracted booking: Private Hire Vehicles (London) Act 1998 s 6(6). 'Controlled district' means an area for which the Local Government (Miscellaneous Provisions) Act 1976 Pt II (ss 45-80) (see PARA 1433 et seq ante) is in force by virtue of a resolution passed by a district council under s 45 (see PARA 1433 ante): Private Hire Vehicles (London) Act 1998 s 36.

6 Ibid s 6(1).

7 Ibid s 6(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 6(5). As to the standard scale see PARA 230 note 3 ante. However, it is a defence in proceedings for an offence under s 6(2) for the driver or operator to show that he exercised all due diligence to prevent the vehicle being so used: s 6(4). As to offences generally see PARA 1501 note 4 ante.

8 For the purposes of the Private Hire Vehicles (London) Act 1998, the owner of a vehicle is to be taken to be the person by whom it is kept: s 35(1). In determining, in the course of any proceedings for an offence under the Act, who was the owner of a vehicle at any time, it must be presumed that the owner was the person who was the registered keeper of the vehicle at that time: s 35(2). Notwithstanding that presumption, it is open to the defence to show that the person who was the registered keeper of a vehicle at any particular time was not the person by whom the vehicle was kept at that time; and it is open to the prosecution to prove that the vehicle was kept at that time by some person other than the registered keeper: s 35(3). 'Registered keeper', in relation to a vehicle, means the person in whose name the vehicle was registered under the Vehicle Excise and Registration Act 1994 (see PARA 518 et seq ante): Private Hire Vehicles (London) Act 1998 s 35(4).

9 Ibid s 6(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 6(5).

10 Ibid s 6(7).

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### **1506. Application for and grant of a London PHV licence.**

The owner of any vehicle<sup>1</sup> constructed or adapted to seat fewer than nine passengers may apply to the licensing authority<sup>2</sup> for a private hire vehicle<sup>3</sup> licence for London<sup>4</sup> (a 'London PHV licence') for that vehicle<sup>5</sup>. The licensing authority must grant a London PHV licence for a vehicle if it is satisfied<sup>6</sup>:

2380 (1) that the vehicle: (a) is suitable in type, size and design for use as a private hire vehicle; (b) is safe, comfortable and in a suitable mechanical condition for that use; and (c) is not of such design and appearance as would lead any person to believe that the vehicle is a London cab<sup>7</sup>;

- 2381 (2) that there is in force in relation to the use of the vehicle a policy of insurance or such security as complies with the requirements of Part VI of the Road Traffic Act 1988<sup>8</sup>; and
- 2382 (3) that any further requirements that may be prescribed<sup>9</sup> are met<sup>10</sup>.

A London PHV licence may not be granted in respect of more than one vehicle<sup>11</sup>, and is to be granted subject to such conditions as may be prescribed and such other conditions as the licensing authority may think fit<sup>12</sup>. A London PHV licence must be in such form and must contain such particulars as the licensing authority may think fit<sup>13</sup>, and is to be granted for one year or for such shorter period as the licensing authority may consider appropriate in the circumstances of the case<sup>14</sup>.

An applicant for a London PHV licence may appeal to a magistrates' court against a decision not to grant such a licence or against any condition (other than a prescribed condition) to which the licence is subject<sup>15</sup>.

1 For the meaning of 'vehicle' see PARA 1500 note 3 ante. As to references to the owner of a vehicle see PARA 1505 note 8 ante.

2 As to the licensing authority see PARA 1502 note 1 ante.

3 For the meaning of 'private hire vehicle' see PARA 1500 ante.

4 For the meaning of 'London' see PARA 1500 note 1 ante.

5 Private Hire Vehicles (London) Act 1998 s 7(1) (amended by the Greater London Authority Act 1999 s 254(3), Sch 21 para 2). As to applications for licences, and as to fees, see PARAS 1514-1515 post.

6 Private Hire Vehicles (London) Act 1998 s 7(2) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).

7 Private Hire Vehicles (London) Act 1998 s 7(2)(a). For the meaning of 'London cab' see PARA 1500 note 4 ante.

8 Ibid s 7(2)(b). As to the Road Traffic Act 1988 Pt VI (ss 143-162) see PARA 937 et seq ante.

9 For the meaning of 'prescribed' see PARA 1502 note 7 ante.

10 Private Hire Vehicles (London) Act 1998 s 7(2)(c).

11 Ibid s 7(3).

12 Ibid s 7(4) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).

13 Private Hire Vehicles (London) Act 1998 s 7(5) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).

14 Private Hire Vehicles (London) Act 1998 s 7(6) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2). As to the suspension or revocation of licences see PARA 1516 post.

15 Private Hire Vehicles (London) Act 1998 s 7(7).

## UPDATE

### **1506-1507 Application for and grant of a London PHV licence, Obligations of owners of licensed vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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Obligations of owners of licensed vehicles.

### **1507. Obligations of owners of licensed vehicles.**

The owner of any vehicle<sup>1</sup> to which a London PHV licence<sup>2</sup> relates must present the vehicle for inspection and testing by or on behalf of the licensing authority<sup>3</sup> within such period and at such place as the authority may by notice reasonably require<sup>4</sup>. However, the vehicle may not be required to be so presented on more than three separate occasions during any one period of 12 months<sup>5</sup>.

The owner must report any accident to the vehicle materially affecting the safety, performance or appearance of the vehicle, or the comfort or convenience of persons carried in the vehicle, to the licensing authority as soon as reasonably practical and in any case within 72 hours of the accident occurring<sup>6</sup>.

If the ownership of the vehicle changes, the person who was previously the owner must within 14 days of the change give notice<sup>7</sup> to the licensing authority of that fact and the name and address of the new owner<sup>8</sup>.

A person who, without reasonable excuse, contravenes any of the above provisions is guilty of an offence<sup>9</sup>.

1 For the meaning of 'vehicle' see PARA 1500 note 3 ante. As to references to the owner of a vehicle see PARA 1505 note 8 ante.

2 For the meaning of 'London PHV licence' see PARA 1503 note 7 ante.

3 As to the licensing authority see PARA 1502 note 1 ante.

4 Private Hire Vehicles (London) Act 1998 s 8(1), (2) (s 8(2) amended by the Greater London Authority Act 1999 s 254(3), Sch 21 paras 1, 2, 5).

5 Private Hire Vehicles (London) Act 1998 s 8(2).

6 Ibid s 8(3) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2). This duty is without prejudice to the Road Traffic Act 1988 s 170 (as amended) (see PARA 645 ante): Private Hire Vehicles (London) Act 1998 s 8(3).

7 'Notice' means notice in writing: ibid s 36. As to service of notices see PARA 1521 post.

8 Ibid s 8(4) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).

9 Private Hire Vehicles (London) Act 1998 s 8(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 8(5). As to the standard scale see PARA 230 note 3 ante. As to offences generally see PARA 1501 note 4 ante.

## **UPDATE**

### **1506-1507 Application for and grant of a London PHV licence, Obligations of owners of licensed vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/16. PRIVATE HIRE VEHICLES IN LONDON/(3) PRIVATE HIRE VEHICLE LICENCES/1508. Fitness of licensed vehicles.

### **1508. Fitness of licensed vehicles.**

A constable or authorised officer<sup>1</sup> has power at all reasonable times to inspect and test, for the purpose of ascertaining its fitness, any vehicle<sup>2</sup> to which a London PHV licence<sup>3</sup> relates<sup>4</sup>. If a constable or authorised officer is not satisfied as to the fitness of such a vehicle he may by notice<sup>5</sup> to the owner of the vehicle<sup>6</sup>:

- 2383 (1) require the owner to make the vehicle available for further inspection and testing at such reasonable time and place as may be specified in the notice<sup>7</sup>; and
- 2384 (2) if he thinks fit, suspend the London PHV licence relating to that vehicle until such time as a constable or authorised officer is satisfied as to the fitness of the vehicle<sup>8</sup>.

A notice suspending a London PHV licence must state the grounds on which the licence is being suspended and the suspension takes effect on the day on which the notice is served on the owner<sup>9</sup>. A suspended licence remains suspended until such time as a constable or authorised officer by notice to the owner directs that the licence is again in force<sup>10</sup>. If a licence remains suspended at the end of the period of two months beginning with the day on which notice of suspension was served on the owner of the vehicle, a constable or authorised officer may by notice to the owner direct that the licence is revoked<sup>11</sup>, and the revocation takes effect at the end of the period of 21 days beginning with the day on which the owner is served with that notice<sup>12</sup>.

An owner may appeal against a notice suspending or revoking a London PHV licence to a magistrates' court<sup>13</sup>.

1 For the meaning of 'authorised officer' see PARA 1503 note 17 ante.

2 For the meaning of 'vehicle' see PARA 1500 note 3 ante.

3 For the meaning of 'London PHV licence' see PARA 1503 note 7 ante.

4 Private Hire Vehicles (London) Act 1998 s 9(1).

5 For the meaning of 'notice' see PARA 1507 note 7 ante. As to service of notices see PARA 1521 post.

6 As to references to the owner of a vehicle see PARA 1505 note 8 ante.

7 Private Hire Vehicles (London) Act 1998 s 9(2)(a).

8 Ibid s 9(2)(b). As to the suspension of licences see PARA 1516 post.

9 Ibid s 9(3).

10 Ibid s 9(4).



- 11 Ibid s 9(5)(a).
- 12 Ibid s 9(5)(b).
- 13 Ibid s 9(6).

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### **1509. Identification of licensed vehicles.**

The licensing authority<sup>1</sup> must issue a disc or plate for each vehicle<sup>2</sup> to which a London PHV licence<sup>3</sup> relates which identifies that vehicle as a vehicle for which such a licence is in force<sup>4</sup>. No vehicle to which a London PHV licence relates may be used as a private hire vehicle<sup>5</sup> on a road<sup>6</sup> in London<sup>7</sup> unless such a disc or plate is exhibited on the vehicle in such manner as may be prescribed<sup>8</sup>. The licensing authority may by notice<sup>9</sup> exempt a vehicle from this requirement when it is being used to provide a service specified in the notice if the authority considers it inappropriate (having regard to that service) to require the disc or plate in question to be exhibited<sup>10</sup>.

The driver and operator<sup>11</sup> of a vehicle used in contravention of the above provisions are each guilty of an offence<sup>12</sup>. The owner of a vehicle<sup>13</sup> who permits it to be so used is also guilty of an offence<sup>14</sup>.

- 1 As to the licensing authority see PARA 1502 note 1 ante.
- 2 For the meaning of 'vehicle' see PARA 1500 note 3 ante.
- 3 For the meaning of 'London PHV licence' see PARA 1503 note 7 ante.
- 4 Private Hire Vehicles (London) Act 1998 s 10(1) (amended by the Greater London Authority Act 1999 s 254(3), Sch 21 para 2).
- 5 For the meaning of 'private hire vehicle' see PARA 1500 ante. As to the meaning of 'used as a private hire vehicle' see PARA 1505 note 2 ante.
- 6 For the meaning of 'road' see PARA 1500 note 3 ante.
- 7 For the meaning of 'London' see PARA 1500 note 1 ante.
- 8 Private Hire Vehicles (London) Act 1998 s 10(2). For the meaning of 'prescribed' see PARA 1502 note 7 ante.
- 9 For the meaning of 'notice' see PARA 1507 note 7 ante. As to service of notices see PARA 1521 post.
- 10 Private Hire Vehicles (London) Act 1998 s 10(3) (amended by the Greater London Authority Act 1999 Sch 21 paras 2, 6).
- 11 For the meaning of 'operator' see PARA 1501 note 2 ante.
- 12 Private Hire Vehicles (London) Act 1998 s 10(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 10(7). As to the standard scale see PARA 230 note 3 ante. However, it is a defence in proceedings for an offence under s 10(4) for the driver or operator to show that he exercised all due diligence to prevent the vehicle being so used: s 10(6). As to offences generally see PARA 1501 note 4 ante.
- 13 As to references to the owner of a vehicle see PARA 1505 note 8 ante.

14 Private Hire Vehicles (London) Act 1998 s 10(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 10(7).

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### **1510. Prohibition of taximeters.**

No vehicle<sup>1</sup> to which a London PHV licence<sup>2</sup> relates may be equipped with a taximeter<sup>3</sup>. If such a vehicle is equipped with a taximeter, the owner of that vehicle<sup>4</sup> is guilty of an offence<sup>5</sup>.

1 For the meaning of 'vehicle' see PARA 1500 note 3 ante.

2 For the meaning of 'London PHV licence' see PARA 1503 note 7 ante.

3 Private Hire Vehicles (London) Act 1998 s 11(1). 'Taximeter' means a device for calculating the fare to be charged in respect of any journey by reference to the distance travelled or time elapsed since the start of the journey (or a combination of both): s 11(3).

4 As to references to the owner of a vehicle see PARA 1505 note 8 ante.

5 Private Hire Vehicles (London) Act 1998 s 11(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 11(2). As to the standard scale see PARA 230 note 3 ante. As to offences generally see PARA 1501 note 4 ante.

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### **1511. Requirement for private hire vehicle driver's licence.**

No vehicle<sup>1</sup> may be used as a private hire vehicle<sup>2</sup> on a road<sup>3</sup> in London<sup>4</sup> unless the driver holds a private hire vehicle driver's licence<sup>5</sup>. The driver and operator<sup>6</sup> of a vehicle used in contravention of this provision are each guilty of an offence<sup>7</sup>. The owner of a vehicle<sup>8</sup> who permits it to be so used is also guilty of an offence<sup>9</sup>.

This prohibition does not apply to the use of a vehicle for the purposes of a hiring for a journey beginning outside London in an area of England and Wales which is not a controlled district<sup>10</sup>.

1 For the meaning of 'vehicle' see PARA 1500 note 3 ante.

2 For the meaning of 'private hire vehicle' see PARA 1500 ante. As to the meaning of 'used as a private hire vehicle' see PARA 1505 note 2 ante.

3 For the meaning of 'road' see PARA 1500 note 3 ante.

4 For the meaning of 'London' see PARA 1500 note 1 ante.

5 Private Hire Vehicles (London) Act 1998 s 12(1). 'Private hire vehicle driver's licence' means:

1416 (1) except where head (2) or head (3) infra applies, a London PHV driver's licence;

1417 (2) if the vehicle is in use for the purposes of a hiring the booking for which was accepted outside London in a controlled district in England and Wales, a licence under the Local Government (Miscellaneous Provisions) Act 1976 s 51 (as amended) (see PARA 1449 ante) issued by the council for that district; and

1418 (3) if the vehicle is in use for a hiring the booking for which was accepted in Scotland, a licence under the Civic Government (Scotland) Act 1982 s 13,

and for the purposes of head (2) or head (3) supra it is immaterial that the booking in question is a sub-contracted booking: Private Hire Vehicles (London) Act 1998 s 12(6). For the meaning of 'London PHV driver's licence' see PARA 1503 note 8 ante. For the meaning of 'controlled district' see PARA 1505 note 5 ante.

6 For the meaning of 'operator' see PARA 1501 note 2 ante.

7 Private Hire Vehicles (London) Act 1998 s 12(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 12(5). As to the standard scale see PARA 230 note 3 ante. It is a defence in proceedings against the operator of a vehicle for an offence under s 12(2) for the operator to show that he exercised all due diligence to prevent the vehicle being so used: s 12(4). As to offences generally see PARA 1501 note 4 ante.

8 As to references to the owner of a vehicle see PARA 1505 note 8 ante.

9 Private Hire Vehicles (London) Act 1998 s 12(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 12(5).

10 Ibid s 12(7).

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### **1512. London PHV driver's licence.**

Any person may apply to the licensing authority<sup>1</sup> for a private hire vehicle<sup>2</sup> driver's licence for London<sup>3</sup> (referred to as a 'London PHV driver's licence')<sup>4</sup>. The licensing authority must grant a London PHV driver's licence to an applicant if it is satisfied that<sup>5</sup>:

2385 (1) the applicant has attained the age of 21, is (and has for at least three years been) authorised to drive a motor car<sup>6</sup> and is a fit and proper person to hold a London PHV driver's licence<sup>7</sup>; and

2386 (2) the requirement specified below<sup>8</sup>, and any further requirements prescribed<sup>9</sup> by the licensing authority, are met<sup>10</sup>.

The licensing authority must require applicants to show to the authority's satisfaction (whether by taking a test or otherwise) that they possess a level of knowledge of London or parts of London, and of general topographical skills, which appears to the authority to be appropriate<sup>11</sup>. The licensing authority may impose different requirements in relation to different applicants<sup>12</sup>. The licensing authority may send a copy of an application to the Metropolitan Police Commissioner or the City of London Police Commissioner with a request for the Commissioner's observations; and the Commissioner must respond to the request<sup>13</sup>.

A London PHV driver's licence:

2387 (a) may be granted subject to such conditions as the licensing authority may think fit<sup>14</sup>;

- 2388 (b) must be in such form and must contain such particulars as the licensing authority may think fit<sup>15</sup>; and
- 2389 (c) must be granted for three years or for such shorter period as the licensing authority may consider appropriate in the circumstances of the particular case<sup>16</sup>.

An applicant may appeal to a magistrates' court against a decision not to grant a London PHV driver's licence or against any condition to which such a licence is subject<sup>17</sup>.

- 1 As to the licensing authority see PARA 1502 note 1 ante.
- 2 For the meaning of 'private hire vehicle' see PARA 1500 ante.
- 3 For the meaning of 'London' see PARA 1500 note 1 ante.
- 4 Private Hire Vehicles (London) Act 1998 s 13(1) (amended by the Greater London Authority Act 1999 s 254(3), Sch 21 paras 1, 2). As to applications for licences, and as to fees, see PARAS 1514-1515 post.
- 5 Private Hire Vehicles (London) Act 1998 s 13(2) (amended by the Greater London Authority Act 1999 Sch 21 paras 2, 7). As to the suspension or revocation of licences see PARA 1516 post.
- 6 For this purpose, a person is authorised to drive a motor car if:
  - 1419 (1) he holds a licence granted under the Road Traffic Act 1988 Pt III (ss 87-109) (as amended) (see PARA 442 et seq ante) (other than a provisional licence) authorising him to drive a motor car (Private Hire Vehicles (London) Act 1998 s 13(7)(a)); or
  - 1420 (2) he is authorised by virtue of the Road Traffic Act 1988 s 99A(1) (as added) (Community licences: see PARA 473 ante) or s 109(1) (as amended) (Northern Ireland licences) to drive a motor car in Great Britain (Private Hire Vehicles (London) Act 1998 s 13(7)(b)).
- 7 Ibid s 13(2)(a).
- 8 Ie the requirement of ibid s 13(3): see the text and notes 11-12 infra.
- 9 For the meaning of 'prescribed' see PARA 1502 note 7 ante.
- 10 Private Hire Vehicles (London) Act 1998 s 13(2)(b) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).
- 11 Private Hire Vehicles (London) Act 1998 s 13(3) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2, 7).
- 12 Private Hire Vehicles (London) Act 1998 s 13(3) (as amended: see note 11 supra).
- 13 Ibid s 13(4) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2). As to the Metropolitan Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 183 et seq. As to the City of London Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 187.
- 14 Private Hire Vehicles (London) Act 1998 s 13(5)(a) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).
- 15 Private Hire Vehicles (London) Act 1998 s 13(5)(b) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).
- 16 Private Hire Vehicles (London) Act 1998 s 13(5)(c) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).
- 17 Private Hire Vehicles (London) Act 1998 s 13(6).

## UPDATE

### 1512 London PHV driver's licence

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **1513. Issue of driver's badges.**

The licensing authority<sup>1</sup> must issue a badge to each person to whom it has granted a London PHV driver's licence<sup>2</sup>. The licensing authority may prescribe<sup>3</sup> the form of such badges<sup>4</sup>. A person issued with such a badge must, when he is the driver of a vehicle being used as a private hire vehicle<sup>5</sup>, wear the badge in such position and manner as to be plainly and distinctly visible<sup>6</sup>. The licensing authority may by notice<sup>7</sup> exempt a person from this requirement when he is the driver of a vehicle<sup>8</sup> being used to provide a service specified in the notice if the authority considers it inappropriate (having regard to that service) to require the badge to be worn<sup>9</sup>.

Any person who without reasonable excuse contravenes the above requirement is guilty of an offence<sup>10</sup>.

1 As to the licensing authority see PARA 1502 note 1 ante.

2 Private Hire Vehicles (London) Act 1998 s 14(1) (amended by the Greater London Authority Act 1999 s 254(3), Sch 21 paras 2, 8). For the meaning of 'London PHV driver's licence' see PARA 1503 note 8 ante.

3 For the meaning of 'prescribed' see PARA 1502 note 7 ante.

4 Private Hire Vehicles (London) Act 1998 s 14(2) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).

5 For the meaning of 'private hire vehicle' see PARA 1500 ante. As to the meaning of 'used as a private hire vehicle' see PARA 1505 note 2 ante.

6 Private Hire Vehicles (London) Act 1998 s 14(3).

7 For the meaning of 'notice' see PARA 1507 note 7 ante. As to service of notices see PARA 1521 post.

8 For the meaning of 'vehicle' see PARA 1500 note 3 ante.

9 Private Hire Vehicles (London) Act 1998 s 14(4) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2, 8).

10 Private Hire Vehicles (London) Act 1998 s 14(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 14(5). As to the standard scale see PARA 230 note 3 ante. As to offences under the Private Hire Vehicles (London) Act 1998 generally see PARA 1501 note 4 ante.

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## (4) LICENCE APPLICATIONS AND FEES

### 1514. Application for licence.

An application for the grant of a licence under the Private Hire Vehicles (London) Act 1998 must be made in such form, and include such declarations and information, as the licensing authority<sup>1</sup> may require<sup>2</sup>. The licensing authority may require an applicant to furnish such further information as it may consider necessary for dealing with the application<sup>3</sup>.

The information which an applicant for a London PHV operator's licence<sup>4</sup> may be required to furnish includes in particular information about:

- 2390 (1) any premises in London<sup>5</sup> which he proposes to use as an operating centre<sup>6</sup>;
- 2391 (2) any convictions recorded against him<sup>7</sup>;
- 2392 (3) any business activities he has carried on before making the application<sup>8</sup>;
- 2393 (4) if the applicant is or has been a director or secretary of a company, that company<sup>9</sup>;
- 2394 (5) if the applicant is a company, information about the directors or secretary of that company<sup>10</sup>;
- 2395 (6) if the applicant proposes to act as an operator<sup>11</sup> in partnership with any other person, information about that person<sup>12</sup>.

An applicant for a London PHV driver's licence<sup>13</sup> may be required by the licensing authority<sup>14</sup>:

- 2396 (a) to produce a certificate signed by a registered medical practitioner to the effect that:
  - 139 234. (i) he is physically fit to be the driver of a private hire vehicle<sup>15</sup>; and
  - 235. (ii) if any specific requirements of physical fitness have been prescribed<sup>16</sup> for persons holding London PHV licences<sup>17</sup>, that he meets those requirements<sup>18</sup>; and
  - 140 2397 (b) whether or not such a certificate has been produced, to submit to examination by a registered medical practitioner selected by the licensing authority as to his physical fitness to be the driver of such a vehicle<sup>19</sup>.

The provisions of the Private Hire Vehicles (London) Act 1998 apply to the renewal of a licence as they apply to the grant of a licence<sup>20</sup>.

1 As to the licensing authority see PARA 1502 note 1 ante.

2 Private Hire Vehicles (London) Act 1998 s 15(1) (amended by the Greater London Authority Act 1999 s 254(3), Sch 21 para 2). As to the form for making an application see the Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146, reg 3. The licensing authority must give the applicant notice of any determination of his application and, where it decides not to grant the licence in the terms applied for without additional conditions other than those prescribed in reg 9, the grounds for its decision: reg 5.

3 Private Hire Vehicles (London) Act 1998 s 15(2) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2, 9).

4 For the meaning of 'London PHV operator's licence' see PARA 1502 note 2 ante.

5 For the meaning of 'London' see PARA 1500 note 1 ante.

6 Private Hire Vehicles (London) Act 1998 s 15(3)(a). For the meaning of 'operating centre' see PARA 1502 note 4 ante.

- 7 Ibid s 15(3)(b).
- 8 Ibid s 15(3)(c).
- 9 Ibid s 15(3)(d).
- 10 Ibid s 15(3)(e).
- 11 For the meaning of 'operator' see PARA 1501 note 2 ante.
- 12 Private Hire Vehicles (London) Act 1998 s 15(3)(f).
- 13 For the meaning of 'London PHV driver's licence' see PARA 1503 note 8 ante.
- 14 Private Hire Vehicles (London) Act 1998 s 15(4) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).
- 15 Private Hire Vehicles (London) Act 1998 s 15(4)(a)(i). For the meaning of 'private hire vehicle' see PARA 1500 ante.
- 16 For the meaning of 'prescribed' see PARA 1502 note 7 ante.
- 17 For the meaning of 'London PHV licence' see PARA 1503 note 7 ante.
- 18 Private Hire Vehicles (London) Act 1998 s 15(4)(a)(ii).
- 19 Ibid s 15(4)(b) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).
- 20 Private Hire Vehicles (London) Act 1998 s 15(5).

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### **1515. Fees for grant of licences etc.**

The licensing authority<sup>1</sup> may by regulations provide for prescribed<sup>2</sup> fees to be payable<sup>3</sup>:

- 2398 (1) by an applicant for a licence under the Private Hire Vehicles (London) Act 1998, or for the variation of a London operator's licence<sup>3</sup>, on making the application<sup>4</sup>;
- 2399 (2) by a person granted a licence or variation, on the grant or variation of the licence and (if the regulations so provide) at such times while the licence is in force as may be prescribed<sup>5</sup>.

The regulations may provide for fees to be payable by instalments, or for fees to be remitted or refunded (in whole or part), in prescribed cases<sup>6</sup>. The licensing authority may decline to proceed with an application for, or for the variation of, a licence, or with the grant or variation of a licence, until any prescribed fee (or instalment) due in respect of the application or grant is paid<sup>7</sup>.

- 1 As to the licensing authority see PARA 1502 note 1 ante.
- 2 For the meaning of 'prescribed' see PARA 1502 note 7 ante.
- 3 Private Hire Vehicles (London) Act 1998 s 20(1) (amended by the Greater London Authority Act 1999 s 254(3), Sch 21 paras 1, 2).

3 le under the Private Hire Vehicles (London) Act 1998 s 18: see PARA 1517 post.

4 Ibid s 20(1)(a).

5 Ibid s 20(1)(b). Under head (1) in the text the fee is £703 for an application for the grant of a licence or £25 for an application for the variation of a licence: Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146, reg 4 (amended by the Private Hire Vehicles (London) (Operators' Licences) (Amendment) Regulations 2006, reg 1). Under head (2) in the text the fee for the grant of a licence for five years is £1707 or, where no more than two hire vehicles are available to the applicant for carrying out bookings accepted by him at all his operating centres and the applicant so elects, £550: Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146, reg 7(1)-(3) (amended by the Private Hire Vehicles (London) (Operators' Licences) (Amendment) Regulations 2006, regs 2, 3). Where the grant of a licence is for a period of less than five years the prescribed fee is reduced proportionately, and adjusted downwards to the nearest pound: Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146, reg 7(4)-(6).

6 Private Hire Vehicles (London) Act 1998 s 20(2). As to the refund of fees see the Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146, reg 8.

7 Private Hire Vehicles (London) Act 1998 s 20(3) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).

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## **(5) SUSPENSION, REVOCATION AND VARIATION OF LICENCES**

### **1516. Power to suspend or revoke licences.**

The licensing authority<sup>1</sup> may suspend or revoke a licence under the Private Hire Vehicles (London) Act 1998 for any reasonable cause including (without prejudice to the generality of this provision) any ground mentioned below<sup>2</sup>.

A London PHV operator's licence<sup>3</sup> may be suspended or revoked where the licensing authority is no longer satisfied that the licence holder is fit to hold such a licence<sup>4</sup>, or the licence holder has failed to comply with any condition of the licence or any other obligation imposed on him by or under the Private Hire Vehicles (London) Act 1998<sup>5</sup>.

A London PHV licence<sup>6</sup> may be suspended or revoked where the licensing authority is no longer satisfied that the vehicle<sup>7</sup> to which it relates is fit for use as a private hire vehicle<sup>8</sup>, or the owner has failed to comply with any condition of the licence or any other obligation imposed on him by or under the Private Hire Vehicles (London) Act 1998<sup>9</sup>.

A London PHV driver's licence<sup>10</sup> may be suspended or revoked where:

2400 (1) the licence holder has, since the grant of the licence, been convicted of an offence involving dishonesty, indecency or violence<sup>11</sup>;

2401 (2) the licensing authority is for any other reason no longer satisfied that the licence holder is fit to hold such a licence<sup>12</sup>; or

2402 (3) the licence holder has failed to comply with any condition of the licence or any other obligation imposed on him by or under the Private Hire Vehicles (London) Act 1998<sup>13</sup>.



Where the licensing authority has so decided to suspend or revoke a licence: (a) the authority must give notice<sup>14</sup> of the decision and the grounds for the decision to the licence holder or, in the case of a London PHV licence, the owner of the vehicle to which the licence relates<sup>15</sup>; and (b) the suspension or revocation takes effect at the end of the period of 21 days beginning with the day on which that notice is served on the licence holder or the owner<sup>16</sup>. If the licensing authority is of the opinion that the interests of public safety require the suspension or revocation of a licence to have immediate effect, and the authority includes a statement of that opinion and the reasons for it in the notice of suspension or revocation, the suspension or revocation takes effect when the notice is served on the licence holder or vehicle owner (as the case may be)<sup>17</sup>.

A suspended licence remains suspended until such time as the licensing authority by notice directs that the licence is again in force<sup>18</sup>.

The holder of a London PHV operator's or driver's licence, or the owner of a vehicle to which a PHV licence relates, may appeal to a magistrates' court against a decision to suspend or revoke that licence<sup>19</sup>.

1 As to the licensing authority see PARA 1502 note 1 ante.

2 Private Hire Vehicles (London) Act 1998 s 16(1) (amended by the Greater London Authority Act 1999 s 254(3), Sch 21 paras 1, 2).

3 For the meaning of 'London PHV operator's licence' see PARA 1502 note 2 ante.

4 Private Hire Vehicles (London) Act 1998 s 16(2)(a) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).

5 Private Hire Vehicles (London) Act 1998 s 16(2)(b).

6 For the meaning of 'London PHV licence' see PARA 1503 note 7 ante.

7 For the meaning of 'vehicle' see PARA 1500 note 3 ante.

8 Private Hire Vehicles (London) Act 1998 s 16(3)(a) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2). For the meaning of 'private hire vehicle' see PARA 1500 ante. As to the meaning of 'used as a private hire vehicle' see PARA 1505 note 2 ante.

9 Private Hire Vehicles (London) Act 1998 s 16(3)(b).

10 For the meaning of 'London PHV driver's licence' see PARA 1503 note 8 ante.

11 Private Hire Vehicles (London) Act 1998 s 16(4)(a).

12 Ibid s 16(4)(b) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).

13 Private Hire Vehicles (London) Act 1998 s 16(4)(c).

14 For the meaning of 'notice' see PARA 1507 note 7 ante. As to service of notices see PARA 1521 post.

15 Private Hire Vehicles (London) Act 1998 s 17(1)(a) (amended by the Greater London Authority Act 1999 Sch 21 paras 2, 10). As to references to the owner of a vehicle see PARA 1505 note 8 ante.

16 Private Hire Vehicles (London) Act 1998 s 17(1)(b).

17 Ibid s 17(2) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2, 10).

18 Private Hire Vehicles (London) Act 1998 s 17(3) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).

19 Private Hire Vehicles (London) Act 1998 s 17(4).

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### **1517. Variation of operator's licence at the request of the operator.**

The licensing authority<sup>1</sup> may, on the application of a London PHV operator<sup>2</sup>, vary his licence by adding a reference to a new operating centre<sup>3</sup> or removing an existing reference to an operating centre<sup>4</sup>. An application for variation must be made in such form, and include such declarations and information, as the licensing authority may require<sup>5</sup>, and the authority may require an applicant to furnish such further information as it may consider necessary for dealing with the application<sup>6</sup>. The licensing authority may not add a reference to a new operating centre unless it is satisfied that the premises in question meet certain prescribed requirements<sup>7</sup>.

An applicant for the variation of a London PHV operator's licence<sup>9</sup> under the above provision may appeal to a magistrates' court against a decision not to add a new operating centre to the licence<sup>10</sup>.

1 As to the licensing authority see PARA 1502 note 1 ante.

2 For the meaning of 'London PHV operator' see PARA 1503 ante. As to the form for making an application see the Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146, reg 3. The licensing authority must give the applicant notice of any determination of his application and, where it decides not to vary the licence in the terms applied for, the grounds for its decision: reg 5.

3 For the meaning of 'operating centre' see PARA 1502 note 4 ante.

4 Private Hire Vehicles (London) Act 1998 s 18(1) (amended by the Greater London Authority Act 1999 s 254(3), Sch 21 paras 1, 2). Temporary variations to licences could be made where an application for the variation of a licence was received by the licensing authority before 22 August 2001 but no determination had been made in relation to that application before 22 October 2001: Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146, reg 20.

5 Private Hire Vehicles (London) Act 1998 s 18(2) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).

6 Private Hire Vehicles (London) Act 1998 s 18(3) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).

7 For the meaning of 'prescribed' see PARA 1502 note 7 ante.

8 Private Hire Vehicles (London) Act 1998 s 18(4) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2, 11). The requirements referred to are those prescribed under the Private Hire Vehicles (London) Act 1998 s 3(3)(b) (see PARA 1502 ante): s 18(4). Where the decision has been made to approve an application for the variation of a licence the licensing authority must, provided that any fee prescribed for such a variation is received within the specified time limit, vary the licence and send the licence or any replacement licence to the applicant: Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146, reg 6(1).

9 For the meaning of 'London PHV operator's licence' see PARA 1502 note 2 ante.

10 Private Hire Vehicles (London) Act 1998 s 18(5).

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### **1518. Variation of operator's licence by licensing authority.**

The licensing authority<sup>1</sup> may suspend the operation of a London PHV operator's licence<sup>2</sup> so far as relating to any operating centre<sup>3</sup> specified in the licence, or vary such a licence by removing a reference to an operating centre previously specified in the licence, if the authority is no longer satisfied that the operating centre in question meets certain prescribed<sup>4</sup> requirements<sup>5</sup> or for any other reasonable cause<sup>6</sup>. Where the licensing authority has decided so to suspend the operation of a licence or vary a licence<sup>7</sup> it must give notice<sup>8</sup> of the decision and the grounds for it to the licence holder<sup>9</sup>; and the decision takes effect at the end of the period of 21 days beginning with the day on which the licence holder is served with that notice<sup>10</sup>.

If the licensing authority is of the opinion that the interests of public safety require its decision to have immediate effect, and the authority includes a statement of that opinion and the reasons for it in the notice, its decision takes effect when the notice is served on the licence holder<sup>11</sup>.

If a licence is suspended in relation to an operating centre, the premises in question are not to be regarded for the purposes of the Private Hire Vehicles (London) Act 1998 as premises at which the licence holder is authorised to accept private hire bookings<sup>12</sup>, until such time as the licensing authority by notice states that the licence is no longer suspended in relation to those premises<sup>13</sup>.

The holder of a London PHV operator's licence may appeal to a magistrates' court against a decision under these provisions<sup>14</sup>.

1 As to the licensing authority see PARA 1502 note 1 ante.

2 For the meaning of 'London PHV operator's licence' see PARA 1502 note 2 ante.

3 For the meaning of 'operating centre' see PARA 1502 note 4 ante.

4 For the meaning of 'prescribed' see PARA 1502 note 7 ante.

5 ie any requirements prescribed under the Private Hire Vehicles (London) Act 1998 s 3(3)(b): see PARA 1502 ante.

6 Ibid s 19(1) (amended by the Greater London Authority Act 1999 s 254(3), Sch 21 paras 2, 12).

7 Private Hire Vehicles (London) Act 1998 s 19(2) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).

8 For the meaning of 'notice' see PARA 1507 note 7 ante. As to service of notices see PARA 1521 post.

9 Private Hire Vehicles (London) Act 1998 s 19(2)(a) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 12).

10 Private Hire Vehicles (London) Act 1998 s 19(2)(b).

11 Ibid s 19(3) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2, 12).

12 For the meaning of 'private hire booking' see PARA 1501 note 2 ante.

13 Private Hire Vehicles (London) Act 1998 s 19(4) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).

14 Private Hire Vehicles (London) Act 1998 s 19(5).

1663)/16. PRIVATE HIRE VEHICLES IN LONDON/(6) APPEALS AND NOTICES/1519. Procedure on appeal.

## **(6) APPEALS AND NOTICES**

### **1519. Procedure on appeal.**

The following provisions apply to any appeal which lies under the Private Hire Vehicles (London) Act 1998 to a magistrates' court against a decision of the licensing authority<sup>1</sup>, a constable or an authorised officer<sup>2</sup> in relation to, or to an application for, a licence under the Act<sup>3</sup>. If the licensing authority has exercised the power to delegate functions<sup>4</sup>, such an appeal must be heard by a magistrates' court<sup>5</sup>.

Any such appeal is to be by way of complaint for an order and the Magistrates' Courts Act 1980<sup>6</sup> applies to the proceedings<sup>7</sup>. The time within which a person may bring such an appeal is 21 days from the date on which notice of the decision appealed against is served<sup>8</sup> on him<sup>9</sup>. In the case of a decision where an appeal lies, the notice of the decision must state the right of appeal to a magistrates' court and the time within which an appeal may be brought<sup>10</sup>.

An appeal against any decision of a magistrates' court in pursuance of an appeal to which this provision applies lies to the Crown Court at the instance of any party to the proceedings in the magistrates' court<sup>11</sup>.

Where on appeal a court varies or reverses any decision of the licensing authority, a constable or an authorised officer, the order of the court must be given effect by the licensing authority or, as the case may be, a constable or authorised officer<sup>12</sup>.

1 As to the licensing authority see PARA 1502 note 1 ante.

2 For the meaning of 'authorised officer' see PARA 1503 note 17 ante.

3 Private Hire Vehicles (London) Act 1998 s 25(1) (amended by the Greater London Authority Act 1999 s 254(3), Sch 21 paras 1, 2).

4 lie under the Private Hire Vehicles (London) Act 1998 s 24 (as amended): see PARA 1529 post.

5 Ibid s 25(2) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2; and by the Courts Act 2003 (Consequential Provisions) Order 2005, SI 2005/886, art 2, Schedule para 54).

6 See MAGISTRATES.

7 Private Hire Vehicles (London) Act 1998 s 25(3).

8 As to service of notices see PARA 1521 post.

9 Private Hire Vehicles (London) Act 1998 s 25(4).

10 Ibid s 25(5).

11 Ibid s 25(6).

12 Ibid s 25(7) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).

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## **1520. Effect of appeal on decision appealed against.**

If any decision of the licensing authority<sup>1</sup> against which a right of appeal is conferred by the Private Hire Vehicles (London) Act 1998:

- 2403 (1) involves the execution of any work or the taking of any action;
- 2404 (2) makes it unlawful for any person to carry on a business which he was lawfully carrying on at the time of the decision,

the decision is not to take effect until the time for appealing has expired or (where an appeal is brought) until the appeal is disposed of or withdrawn<sup>2</sup>. However, this does not apply in relation to a decision to suspend, vary or revoke a licence if the notice of suspension, variation or revocation directs that, in the interests of public safety, the decision is to have immediate effect<sup>3</sup>.

1 As to the licensing authority see PARA 1502 note 1 ante.

2 Private Hire Vehicles (London) Act 1998 s 26(1) (amended by the Greater London Authority Act 1999 s 254(3), Sch 21 para 2).

3 Private Hire Vehicles (London) Act 1998 s 26(2).

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## **1521. Service of notices.**

Any notice<sup>1</sup> authorised or required under the Private Hire Vehicles (London) Act 1998 to be given to any person may be served by post<sup>2</sup>. For the purposes of the Interpretation Act 1978<sup>3</sup> any such notice is properly addressed to a London PHV operator<sup>4</sup> if it is addressed to him at any operating centre<sup>5</sup> of his in London<sup>6</sup>. Any notice authorised or required under the Private Hire Vehicles (London) Act 1998 to be given to the owner of a vehicle<sup>7</sup> is deemed to have been effectively given if it is given to the person who is for the time being notified to the licensing authority<sup>8</sup> for the purposes of the Private Hire Vehicles (London) Act 1998 as the owner of the vehicle (or, if more than one person is currently notified as the owner, if it is given to any of them)<sup>9</sup>.

1 For the meaning of 'notice' see PARA 1507 note 7 ante.

2 Private Hire Vehicles (London) Act 1998 s 34(1).

3 I.e. the Interpretation Act 1978 s 7: see STATUTES vol 44(1) (Reissue) PARA 1388.

4 For the meaning of 'London PHV operator' see PARA 1503 ante.

5 For the meaning of 'operating centre' see PARA 1502 note 4 ante.

6 Private Hire Vehicles (London) Act 1998 s 34(2). For the meaning of 'London' see PARA 1500 note 1 ante.

7 For the meaning of 'vehicle' see PARA 1500 note 3 ante. As to references to the owner of a vehicle see PARA 1505 note 8 ante.

8 As to the licensing authority see PARA 1502 note 1 ante.

9 Private Hire Vehicles (London) Act 1998 s 34(3) (amended by the Greater London Authority Act 1999 s 254(3), Sch 21 para 2).

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## **(7) PRODUCTION OF DOCUMENTS AND RETURN OF LICENCES**

### **1522. Production of documents.**

The holder of a London PHV operator's licence<sup>1</sup> or a London PHV driver's licence<sup>2</sup> must at the request of a constable or authorised officer<sup>3</sup> produce his licence for inspection<sup>4</sup>. The owner of a vehicle<sup>5</sup> to which a London PHV licence<sup>6</sup> relates must at the request of a constable or authorised officer produce for inspection the London PHV licence for that vehicle<sup>7</sup>, and the certificate of the policy of insurance or security required in respect of the vehicle by Part VI of the Road Traffic Act 1988<sup>8</sup>.

A document required to be produced under these provisions must be produced either forthwith or:

- 2405 (1) if the request is made by a constable, at any police station within London<sup>9</sup> nominated by the licence holder or vehicle owner when the request is made<sup>10</sup>; or
- 2406 (2) if the request is made by an authorised officer, at such place as the officer may reasonably require<sup>11</sup>,

before the end of the period of six days beginning with the day on which the request is made<sup>12</sup>.

A person who without reasonable excuse contravenes any of the above provisions is guilty of an offence<sup>13</sup>.

1 For the meaning of 'London PHV operator's licence' see PARA 1502 note 2 ante.

2 For the meaning of 'London PHV driver's licence' see PARA 1503 note 8 ante.

3 For the meaning of 'authorised officer' see PARA 1503 note 17 ante.

4 Private Hire Vehicles (London) Act 1998 s 21(1).

5 For the meaning of 'vehicle' see PARA 1500 note 3 ante. As to references to the owner of a vehicle see PARA 1505 note 8 ante.

6 For the meaning of 'London PHV licence' see PARA 1503 note 7 ante.

7 Private Hire Vehicles (London) Act 1998 s 21(2)(a).

8 Ibid s 21(2)(b). As to the Road Traffic Act 1988 Pt VI (ss 143-162) (as amended) see PARA 937 et seq ante.

9 For the meaning of 'London' see PARA 1500 note 1 ante.

10 Private Hire Vehicles (London) Act 1998 s 21(3)(a).

11 Ibid s 21(3)(b).

12 Ibid s 21(3).

13 Ibid s 21(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 21(4). As to the standard scale see PARA 230 note 3 ante. As to offences under the Private Hire Vehicles (London) Act 1998 generally see PARA 1501 note 4 ante.

## UPDATE

### 1522 Production of documents

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### 1523. Return of licences etc.

The holder of a London PHV operator's licence<sup>1</sup> must return the licence to the licensing authority<sup>2</sup> after the expiry or revocation of that licence, within the period of 7 days after the day on which the licence expires or the revocation takes effect<sup>3</sup>. The owner of a vehicle<sup>4</sup> to which a London PHV licence<sup>5</sup> relates must return the licence and the plate or disc which was issued for the vehicle<sup>6</sup> to the licensing authority after the expiry or revocation of that licence within the period of seven days after the day on which the licence expires or the revocation takes effect<sup>7</sup>. The holder of a London PHV driver's licence<sup>8</sup> must return the licence and his driver's badge<sup>9</sup> to the licensing authority after the expiry or revocation of that licence, within the period of seven days after the day on which the licence expires or the revocation takes effect<sup>10</sup>.

On the suspension of a licence under the Private Hire Vehicles (London) Act 1998, the licensing authority, a constable or an authorised officer<sup>11</sup> may by notice<sup>12</sup> direct the holder of the licence, or the owner of the vehicle, to return the licence to him within the period of seven days after the day on which the notice is served on that person<sup>13</sup>. Such a direction may also direct the return by the vehicle owner of the disc or plate which was issued for the vehicle<sup>14</sup> (in the case of a London PHV licence)<sup>15</sup>, or the return by the licence holder of the driver's badge (in the case of a London PHV driver's licence)<sup>16</sup>.

A person who without reasonable excuse fails to comply with any such requirement or direction to return a licence, disc, plate or badge is guilty of an offence<sup>17</sup>.

A constable or authorised officer is entitled to remove and retain the plate or disc from a vehicle to which an expired, suspended or revoked London PHV licence relates following a failure to return the plate or disc within the time allowed<sup>18</sup>, or following a suspension or revocation of the licence having immediate effect<sup>19</sup>.

1 For the meaning of 'London PHV operator's licence' see PARA 1502 note 2 ante.

2 As to the licensing authority see PARA 1502 note 1 ante.

3 Private Hire Vehicles (London) Act 1998 s 22(1) (amended by the Greater London Authority Act 1999 s 254(3), Sch 21 paras 1, 2).

- 4 For the meaning of 'vehicle' see PARA 1500 note 3 ante. As to references to the owner of a vehicle see PARA 1505 note 8 ante.
- 5 For the meaning of 'London PHV licence' see PARA 1503 note 7 ante.
- 6 le under the Private Hire Vehicles (London) Act 1998 s 10 (as amended): see PARA 1509 ante.
- 7 Ibid s 22(2) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).
- 8 For the meaning of 'London PHV driver's licence' see PARA 1503 note 8 ante.
- 9 'Driver's badge' means the badge issued to the holder of a London PHV driver's licence: Private Hire Vehicles (London) Act 1998 s 36.
- 10 Ibid s 22(3) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).
- 11 For the meaning of 'authorised officer' see PARA 1503 note 17 ante.
- 12 For the meaning of 'notice' see PARA 1507 note 7 ante. As to service of notices see PARA 1521 ante.
- 13 Private Hire Vehicles (London) Act 1998 s 22(4) (amended by the Greater London Authority Act 1999 Sch 21 paras 2, 13).
- 14 le under the Private Hire Vehicles (London) Act 1998 s 10 (as amended): see PARA 1509 ante.
- 15 Ibid s 22(4)(a).
- 16 Ibid s 22(4)(b).
- 17 Ibid s 22(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, in the case of a continuing offence, to a fine not exceeding £10 for each day during which an offence continues after conviction: s 22(6). As to the standard scale see PARA 230 note 3 ante. As to offences under the Private Hire Vehicles (London) Act 1998 generally see PARA 1501 note 4 ante.
- 18 le under ibid s 22(2) (as amended) (see the text and notes 4-7 supra) or s 22(4) (as amended) (see the text and notes 11-16 supra).
- 19 Ibid s 22(7). A suspension or revocation may have immediate effect by virtue of s 9(3) (see PARA 1508 ante) or s 17(2) (see PARA 1516 ante).

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## **(8) PROHIBITION OF SIGNS AND ADVERTISEMENTS**

### **1524. Prohibition of certain signs, notices etc.**

The licensing authority<sup>1</sup> may make regulations prohibiting the display in London<sup>2</sup> on or from vehicles<sup>3</sup> (other than licensed taxis<sup>4</sup> and public service vehicles<sup>5</sup>) of any sign, notice or other feature of a description specified in the regulations<sup>6</sup>. Before making the regulations the licensing authority must consult such bodies appearing to it to represent the London cab<sup>7</sup> trade and the private hire vehicle<sup>8</sup> trade in London as the authority considers appropriate<sup>9</sup>. Any person who drives a vehicle in respect of which a prohibition imposed by such regulations is contravened, or causes or permits such a prohibition to be contravened in respect of any vehicle, is guilty of an offence<sup>10</sup>.



- 1 As to the licensing authority see PARA 1502 note 1 ante.
- 2 For the meaning of 'London' see PARA 1500 note 1 ante.
- 3 For the meaning of 'vehicle' see PARA 1500 note 3 ante.
- 4 For the meaning of 'licensed taxi' see PARA 1500 note 4 ante.
- 5 For the meaning of 'public service vehicle' see PARA 1136 ante; definition applied by the Private Hire Vehicles (London) Act 1998 s 36.
- 6 Ibid s 30(1) (amended by the Greater London Authority Act 1999 s 254(3), Sch 21 paras 1, 2). At the date at which this volume states the law no regulations had been made under the Private Hire Vehicles (London) Act 1998 s 30. As to the prohibition by statute of the display of certain signs or notices on, and the issue of certain advertisements in connection with, private hire cars see the London Cab Act 1968 s 4 (amended by the Cable and Broadcasting Act 1984 s 57(1), Sch 5 para 18; the Transport and Works Act 1992 s 62(2); and by virtue of the Criminal Justice Act 1982 ss 38, 46).
- 7 For the meaning of 'London cab' see PARA 1500 note 4 ante.
- 8 For the meaning of 'private hire vehicle' see PARA 1500 ante.
- 9 Private Hire Vehicles (London) Act 1998 s 30(2) (amended by the Greater London Authority Act 1999 Sch 21 paras 2, 15).
- 10 Private Hire Vehicles (London) Act 1998 s 30(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 30(3). As to the standard scale see PARA 230 note 3 ante. As to offences under the Private Hire Vehicles (London) Act 1998 generally see PARA 1501 note 4 ante.

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### **1525. Prohibition of certain advertisements.**

The following provisions apply to any advertisement<sup>1</sup>:

- 2407 (1) indicating that vehicles<sup>2</sup> can be hired on application to a specified address in London<sup>3</sup>;
- 2408 (2) indicating that vehicles can be hired by telephone on a telephone number<sup>4</sup> being the number of premises in London<sup>5</sup>; or
- 2409 (3) on or near any premises in London, indicating that vehicles can be hired at those premises<sup>6</sup>.

No such advertisement may include any of the following words, namely 'taxi', 'taxis', 'cab' or 'cabs' or any word so closely resembling any of those words as to be likely to be mistaken for it (whether alone or as part of another word), unless the vehicles offered for hire are London cabs<sup>7</sup>. An advertisement which includes the word 'minicab', 'mini-cab' or 'mini cab' (whether in the singular or plural) does not by reason only of that fact contravene this provision<sup>8</sup>.

Any person who issues, or causes to be issued, an advertisement which contravenes these provisions is guilty of an offence<sup>9</sup>. However, it is a defence for a person charged with such an offence to prove that:

- 2410 (a) he is a person whose business it is to publish or arrange for the publication of advertisements<sup>10</sup>;

- 2411 (b) he received the advertisement in question for publication in the ordinary course of business<sup>11</sup>; and  
 2412 (c) he did not know and had no reason to suspect that its publication would amount to an offence<sup>12</sup>.

1 'Advertisement' includes every form of advertising (whatever the medium) and references to the issue of an advertisement are to be construed accordingly: Private Hire Vehicles (London) Act 1998 s 31(6).

2 For the meaning of 'vehicle' see PARA 1500 note 3 ante.

3 Private Hire Vehicles (London) Act 1998 s 31(1)(a). For the meaning of 'London' see PARA 1500 note 1 ante.

4 'Telephone number' includes any number used for the purposes of communicating with another by electronic means; and 'telephone' is to be construed accordingly: *ibid* s 31(6).

5 *Ibid* s 31(1)(b).

6 *Ibid* s 31(1)(c).

7 *Ibid* s 31(2). For the meaning of 'London cab' see PARA 1500 note 4 ante. See also PARA 1524 note 6 ante.

8 *Ibid* s 31(3).

9 *Ibid* s 31(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 31(4). As to the standard scale see PARA 230 note 3 ante. As to offences under the Private Hire Vehicles (London) Act 1998 generally see PARA 1501 note 4 ante.

10 *Ibid* s 31(5)(a).

11 *Ibid* s 31(5)(b).

12 *Ibid* s 31(5)(c).

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## **(9) OBSTRUCTION AND FALSE STATEMENTS**

### **1526. Obstruction of authorised officers etc.**

A person who wilfully obstructs a constable or authorised officer<sup>1</sup> acting in pursuance of the Private Hire Vehicles (London) Act 1998 is guilty of an offence<sup>2</sup>.

A person who, without reasonable excuse:

2413 (1) fails to comply with any requirement properly made to such person by a constable or authorised officer acting in pursuance of the Private Hire Vehicles (London) Act 1998; or

2414 (2) fails to give a constable or authorised officer acting in pursuance of the Act any other assistance or information which he may reasonably require of such person for the purpose of performing his functions under the Act,

is guilty of an offence<sup>3</sup>.

A person who makes any statement which he knows to be false in giving any information to an authorised officer or constable acting in pursuance of the Act is guilty of an offence<sup>4</sup>.

1 For the meaning of 'authorised officer' see PARA 1503 note 17 ante.

2 Private Hire Vehicles (London) Act 1998 s 27(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 27(1). As to the standard scale see PARA 230 note 3 ante. As to offences under the Private Hire Vehicles (London) Act 1998 generally see PARA 1501 note 4 ante.

3 Ibid s 27(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 27(2).

4 Ibid s 27(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 27(3).

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### **1527. Penalty for false statements.**

A person who knowingly or recklessly makes a statement or furnishes information which is false or misleading in any material particular for the purpose of procuring the grant or renewal of a licence under the Private Hire Vehicles (London) Act 1998, or the variation of an operator's licence<sup>1</sup>, is guilty of an offence<sup>2</sup>.

1 Ie under the Private Hire Vehicles (London) Act 1998 s 18: see PARA 1517 ante.

2 Ibid s 28. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 28. As to the standard scale see PARA 230 note 3 ante. As to offences under the Private Hire Vehicles Act (London) 1998 generally see PARA 1501 note 4 ante.

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## **(10) POWERS AND DUTIES OF LICENSING AUTHORITIES**

### **1528. Register of licences.**

The licensing authority<sup>1</sup> must maintain a register containing the following particulars for each licence issued under the Private Hire Vehicles (London) Act 1998<sup>2</sup>, namely: the number of the licence, the name and address of the person to whom it is granted, the date on which it is granted and the expiry date<sup>3</sup>, and such other particulars as may be prescribed<sup>4</sup>. The register must be available for inspection free of charge by members of the public at such place or places, and during such hours, as are determined by the licensing authority<sup>5</sup>.

1 As to the licensing authority see PARA 1502 note 1 ante.

2 Private Hire Vehicles (London) Act 1998 s 23(1) (amended by the Greater London Authority Act 1999 s 254(3), Sch 21 paras 1, 2).

3 Private Hire Vehicles (London) Act 1998 s 23(1)(a).

4 Ibid s 23(1)(b). For the meaning of 'prescribed' see PARA 1502 note 7 ante. The register must also contain the address of each operating centre specified in the licence and an indication that it is current, suspended or revoked: Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146, reg 17.

5 Private Hire Vehicles (London) Act 1998 s 23(2) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).

## **UPDATE**

### **1528 Register of licences**

TEXT AND NOTES--1998 Act s 23 amended by Transport for London Act 2008 s 26 so as not to include holders' addresses in the public register of licences.

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### **1529. Delegation of functions by the licensing authority.**

The functions of the licensing authority<sup>1</sup> under the Private Hire Vehicles (London) Act 1998 (apart from any power to make subordinate legislation<sup>2</sup>) may be exercised by any person appointed by the licensing authority for the purpose to such extent and subject to such conditions as may be specified in the appointment<sup>3</sup>. Such an appointment may authorise the person appointed to retain any fees received by him<sup>4</sup>. It is the duty of a person so appointed to comply with any directions given to him by the licensing authority in relation to the exercise of functions under the Private Hire Vehicles (London) Act 1998<sup>5</sup>.

1 As to the licensing authority see PARA 1502 note 1 ante.

2 See PARA 1530 post.

3 Private Hire Vehicles (London) Act 1998 s 24(1) (amended by the Greater London Authority Act 1999 s 254(3), Sch 21 paras 1, 2).

4 Private Hire Vehicles (London) Act 1998 s 24(2).

5 Ibid s 24(3) (amended by the Greater London Authority Act 1999 Sch 21 paras 1, 2).

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### **1530. Power to make regulations.**

The licensing authority<sup>1</sup> may make regulations for any purpose for which regulations may be made under the Private Hire Vehicles (London) Act 1998 (other than the transitional provisions<sup>2</sup> of that Act) or for prescribing anything which falls to be prescribed under any provision of the Act (other than the transitional provisions)<sup>3</sup>, and may vary or revoke previous regulations made under that Act for such purposes<sup>4</sup>. Regulations under the Act may make different provision for different cases, provide for exemptions from any provision of the regulations, and contain incidental, consequential, transitional and supplemental provision<sup>5</sup>.

The licensing authority must secure that any such regulations made by the authority are printed and published<sup>6</sup>.

1 As to the licensing authority see PARA 1502 note 1 ante.

2 I.e. the Private Hire Vehicles (London) Act 1998 s 37 (as amended): see PARA 1500 note 2 ante.

3 Ibid s 32(1) (amended by the Greater London Authority Act 1999 s 254(3), Sch 21 paras 2, 16). As to the regulations that have been made under the Private Hire Vehicles (London) Act 1998 s 32 (as amended) see the Private Hire Vehicles (London) (Operators' Licences) Regulations 2000, SI 2000/3146.

4 Private Hire Vehicles (London) Act 1998 s 32(4) (s 32(4)-(7) added by the Greater London Authority Act 1999 Sch 21 para 16). This applies notwithstanding that the previous regulations in question were made by the Secretary of State: Private Hire Vehicles (London) Act 1998 s 32(5) (as so added). As to the Secretary of State see PARA 236 ante.

5 Ibid s 32(2).

6 Ibid s 32(6) (as added: see note 4 supra). A fee may be charged for the sale of printed and published regulations: s 32(7) (as so added).

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## 17. CAR-SHARING

### 1531. Car-sharing schemes.

A parish council<sup>1</sup> or community council<sup>2</sup> may: (1) establish and maintain any car-sharing scheme; or (2) assist others to establish and maintain any car-sharing scheme, for the benefit of persons in the council's area<sup>3</sup>. The council may impose any conditions it thinks fit: (a) on the participation of persons in any scheme established and maintained by the council under head (1) above, including conditions requiring persons who receive fares under the scheme to contribute to the costs of establishing and maintaining it; or (b) on the giving of any assistance under head (2) above<sup>4</sup>.

For these purposes, a car-sharing scheme is a scheme for the provision of private cars<sup>5</sup> for use on journeys in the course of which one or more passengers may be carried at separate fares, and the participants in a car-sharing scheme are those who make private cars available for use under the scheme or who are eligible for carriage as passengers under the scheme<sup>6</sup>.

1 As to the constitution and powers of parish councils see LOCAL GOVERNMENT vol 69 (2009) PARA 27 et seq.

2 As to the constitution and powers of community councils see LOCAL GOVERNMENT vol 69 (2009) PARA 41 et seq.

3 Local Government and Rating Act 1997 s 26(1).

4 Ibid s 26(2).

5 'Private car' means a motor vehicle other than a public service vehicle, a licensed taxi, a licensed hire car or a motor cycle: *ibid* s 26(4)(a). For the meaning of 'motor vehicle' see PARA 210 ante; and for the meaning of 'public service vehicle' see PARA 1136 ante (definitions applied by s 26(4)(b)). For the meaning of 'fares' see PARA 1136 note 7 ante; definition applied by s 26(4)(b). For the meaning of 'licensed taxi' see PARA 1495 note 1 ante; and for the meaning of 'licensed hire car' see PARA 1496 note 4 ante (definitions applied by s 26(4)(c)).

6 Ibid s 26(3).

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## **18. TRAMWAYS**

### **(1) INTRODUCTION**

#### **(i) History of the Legislation**

##### **1532. Origins.**

Tramways owe their origin to the construction of mineral lines in the sixteenth and seventeenth centuries which used wooden beams to guide and support tubs and skips carrying materials from mines. In the eighteenth century these lines developed into wagonways with metal strips placed on the timber. Eventually the wagons were equipped with flanged wheels to maintain them in position<sup>1</sup>. The nineteenth century saw the development of both railways and tramways from these beginnings. The former were for the most part designed to operate on their own right of way, segregated from public roads<sup>2</sup>, whereas tramways tended to be street-running. Tramways of this character appeared in England in the early 1860s and were installed without statutory authority<sup>3</sup>. By the mid-1880s they had become the dominant mode of urban transport and remained so for some fifty years.

1 *Blackpool and Fleetwood Tramroad Co v Thornton UDC* [1907] 1 KB 568 at 576, CA, per Sir Gorell Barnes P; *affd sub nom Thornton UDC v Blackpool and Fleetwood Tramroad Co* [1909] AC 264, HL.

2 As to railways see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

3 The lines were located in Birkenhead (1860), London (three) (1861), Darlington (1862) and the Potteries (1862).

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##### **1533. Early tramway legislation.**

Although a tramway could be constructed without statutory authority<sup>1</sup>, persons wishing to lay tramway rails along a public highway had first to obtain the protection of the legislature as, if the evidence showed that the rails laid in a public highway were a nuisance<sup>2</sup>, and were dangerous and mischievous to passengers on the highway, the persons laying the rails were

liable to be convicted of a criminal offence<sup>3</sup>, and it made no difference that the owner of the rails allowed the public to use them<sup>4</sup>. Although an arrangement of the highway to the advantage of one class might have been allowable even when mischievous to another class, the laying of tramway rails was not an arrangement of the highway for use in the ordinary manner of using it<sup>5</sup>.

Statutory authority to construct and operate a tramway could be secured by private Act of Parliament<sup>6</sup>. From 1870 it was also possible to secure such authority under Part I of the Tramways Act 1870. This entailed obtaining a provisional order from the Board of Trade<sup>7</sup>, which had subsequently to be confirmed by Act of Parliament<sup>8</sup>. A provisional order procedure was also introduced by the Military Tramways Act 1887<sup>9</sup>, a statute designed to facilitate the construction of tramways for military purposes. Under that Act, the provisional order had to be confirmed by Act of Parliament (when objections to the order had been made) or by the Privy Council (if no objections had been made)<sup>10</sup>. Similar legislation was later enacted to facilitate the construction of tramways for naval purposes<sup>11</sup>. A tramway may in rare instances be authorised under a licence granted by a local authority under parliamentary powers<sup>12</sup>.

Without statutory authority, it is now generally an offence to place tramway apparatus in or under a street, or break up or open a street for that purpose<sup>13</sup>. This is also the case with regard to the installation in a street of overhead wires to permit the operation of an electric tramway, unless the consent of the Secretary of State has been obtained<sup>14</sup>.

1 A tramway so constructed may, however, be subject to general legislation affecting railways: see eg *London and South Western Rly Co v Myers* (1881) 45 JP 731, DC, where speed limits under the Locomotives Act 1865 were considered applicable. Cf, however, *Matson v Baird & Co* (1878) 3 App Cas 1082, HL, where it was held that statutory obligations to provide gates and gatekeepers did not apply to a private railway on private property used exclusively for the owner's purposes. Even though a tramway is laid on private ground, the owner may be liable for injury suffered by persons, whether or not they are there by permission of the owner: see the Occupiers' Liability Act 1957; the Occupiers' Liability Act 1984; and NEGLIGENCE vol 78 (2010) PARAS 29-40. In the case of electric tramways, there may also be liability for damage caused by stray electrical currents: see PARA 1551 post.

2 As to proceedings on indictment for common law nuisance see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 333; and as to nuisance generally see NUISANCE.

3 *R v Train* (1862) 2 B & S 640. See also *R v Morris* (1830) 1 B & Ad 441; *R v Charlesworth* (1851) 16 QB 1012.

4 *R v Morris* (1830) 1 B & Ad 441.

5 *R v Train* (1862) 2 B & S 640.

6 As to the promotion of private Bills see PARLIAMENT vol 34 (Reissue) PARA 845 et seq.

7 Subsequently the Secretary of State for Transport: see PARA 1539 post. As to the Secretary of State see PARA 236 ante.

8 Tramways Act 1870 s 14 (repealed).

9 Military Tramways Act 1887 s 3 (repealed).

10 Ibid s 10 (repealed). A provisional order confirmed by the Privy Council had the same force and effect as if confirmed by Act of Parliament: s 10(3) (repealed).

11 See the Naval Works Act 1899.

12 See eg *Williams v London and North Western Rly Co* [1900] 1 QB 760, CA.

13 New Roads and Street Works Act 1991 s 51(1). A licence may be issued by the street authority for this purpose: see PARA 1598 post.

14 See the Electricity Act 1989 s 37(1); and PARA 1618 post.

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### **1534. Light railway legislation.**

A separate mode of transport, occupying an intermediate position between railways and tramways, was the light railway<sup>1</sup>. That mode is considered in this context because in many instances it closely approximates to tramways. The Regulation of Railways Act 1868 permitted the Board of Trade<sup>2</sup> by licence to authorise a company<sup>3</sup> to construct and work, or to work as a light railway, the whole or any part of a railway which the company had power to construct or work<sup>4</sup>. A light railway so authorised could be subjected to conditions and regulations as to weight and speed<sup>5</sup>. Of wider import was the Light Railways Act 1896<sup>6</sup>, which introduced an order-making procedure<sup>7</sup>. Such an order, when made, had effect as if enacted by Parliament<sup>8</sup>. The procedure offered several advantages over those contained in the Tramways Act 1870, notably in avoiding parliamentary expenses and limiting the rating assessment for a light railway to one fourth of that for a tramway<sup>9</sup>. This encouraged the promotion of many light railways which were in physical terms indistinguishable from tramways<sup>10</sup>.

1 See further PARAS 1536, 1574 et seq post.

2 Subsequently the Secretary of State for Transport: see PARA 1539 post. As to the Secretary of State see PARA 236 ante.

3 'Company' means a company incorporated, either before or after the passing of the Regulation of Railways Act 1868, for the purpose of constructing, maintaining or working a railway in the United Kingdom (either alone or in conjunction with any other purpose) or any person having the management of a railway or a train for the time being, and includes any individual or individuals not incorporated who are owners or lessees of a railway in the United Kingdom or parties to an agreement for working a railway in the United Kingdom: s 2 (amended by the Railways Act 1993 (Consequential Modifications) Order 1994, SI 1994/857, art 2, Schedule para 3). As to companies generally see COMPANIES.

4 Regulation of Railways Act 1868 s 27 (repealed).

5 See *ibid* s 28 (repealed).

6 The Light Railways Act 1896 was amended by the Light Railways Act 1912 and the Railways Act 1921.

7 Light Railways Act 1896 s 2 (repealed).

8 *Ibid* s 10 (repealed).

9 See *Wakefield Corpn v Wakefield and District Light Rly Co* [1908] AC 293, HL.

10 See *Tottenham UDC v Metropolitan Electric Tramways Ltd* [1913] AC 702 at 712-713, HL, per Lord Moulton.

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### **1535. Recent legislation.**



Tramways experienced a decline in the middle years of the twentieth century, but there has since been a limited, but significant, revival<sup>1</sup>. The new tramways secured statutory authority by way of the private Bill procedure<sup>2</sup>. The influx of such Bills was a contributory factor which led to a review of that procedure<sup>3</sup> and this in turn led to the enactment of Part I of the Transport and Works Act 1992<sup>4</sup>. Under that Act, the Secretary of State<sup>5</sup> may make an order<sup>6</sup> relating to, or to matters ancillary to, the construction or operation in England and Wales of certain transport systems<sup>7</sup>, including tramways<sup>8</sup>.

With the coming into force of Part I of the Transport and Works Act 1992<sup>9</sup>, certain of the provisions of the Tramways Act 1870 were totally repealed and the remaining provisions were largely repealed except as incorporated in, or otherwise applied by, any Act of Parliament or provisional order<sup>10</sup>. From the same date, the Military Tramways Act 1887 was also repealed<sup>11</sup> as was the Light Railways Act 1896<sup>12</sup>, except in relation to Scotland<sup>13</sup>. This latter repeal, together with the earlier repeal of the light railway provisions of the Regulation of Railways Act 1868<sup>14</sup> therefore had the additional effect of precluding in future the introduction in England and Wales of what would otherwise have been, in legal terms, new light railways.

1 The only tramways to survive in Great Britain during the decline were the Blackpool system and the Great Orme Tramway at Llandudno.

2 As to the private Bill procedure see PARLIAMENT vol 34 (Reissue) PARA 845 et seq.

3 See further PARA 1585 post.

4 See the Transport and Works Act 1992 Pt I (ss 1-25) (as amended); and PARA 1585 et seq post.

5 As to the Secretary of State see PARAS 236 ante, 1539 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 The power to make orders under this provision is exercisable by statutory instrument: Transport and Works Act 1992 s 1(2). As to the validity of such orders see PARA 1594 post. As to the matters as to which provision may be made by an order see PARAS 1588-1593 post.

7 Ibid s 1(1)(a)-(d). See further PARA 1586 post.

8 Ibid s 1(1)(b). For the meaning of 'tramway' see PARAS 1537 note 3 ante, 1586 post.

9 Ie on 1 January 1993: see ibid s 70(1); and the Transport and Works Act 1992 (Commencement No 3 and Transitional Provisions) Order 1992, SI 1992/2784.

10 See the Transport and Works Act 1992 ss 65(1)(b), 68(1), Sch 4 Pt I; and PARA 1541 post.

11 Ibid s 65(1)(c), Sch 4 Pt I. The repeal did not affect the validity of a provisional order made under the Military Tramways Act 1887 and in force immediately before 1 January 1993: Transport and Works Act 1992 (Commencement No 3 and Transitional Provisions) Order 1992, SI 1992/2784, art 3(1).

12 Transport and Works Act 1992 Sch 4 Pt I. As to savings for orders made, or applied for, before the date of the repeal see PARA 1575 post.

13 Ibid Sch 4 Pt I.

14 Ie the Regulation of Railways Act 1868 ss 27, 28 (both repealed).

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## **(ii) Nature of Tramways**

### 1536. Meaning of 'tramway': earlier authorities.

Before the passing of the Tramways Act 1870, no distinction was drawn in legal terms between tramways and railways<sup>1</sup>. Later legislation, albeit in special circumstances, occasionally continued to adopt this same practice<sup>2</sup>. It has been said that whether an undertaking is a railway or a tramway is largely a question of fact<sup>3</sup>. The Tramways Act 1870 constituted tramways as a separate system of transport, but it did not define the term. It is nevertheless evident from the Act that street running was assumed<sup>4</sup>. The Military Tramways Act 1887<sup>5</sup> contained a limited definition<sup>6</sup>. In its primary and natural sense, 'tramway' denotes nothing more than the fabric of the lines on which traffic is carried, but the word may be used so as to embrace the use and occupation of the fabric as well as the fabric itself, and even to include the whole stock and goodwill of the tramway undertaking<sup>7</sup>.

Neither the Regulation of Railways Act 1868 nor the Light Railways Act 1896<sup>8</sup> contained a definition of 'light railway'. For reasons earlier explained<sup>9</sup>, many undertakings physically resembling tramways were constituted under the provisions of the Light Railways Act 1896, but such undertakings were classed as railways<sup>10</sup>. This led to the introduction of a sub-category: a light railway in the nature of a tramway<sup>11</sup>. The term 'tramroad' has been applied to a system in which the rails are laid on sleepers above the surface and fixed in a way usual in railways<sup>12</sup>.

1 The two were referred to together without distinction for the purposes of the Regulation of Railways Act 1868: see s 2 (definition of 'railway').

2 Eg the Railway Fires Act 1905 s 4, which defines 'railway' to include 'any light railway and any tramway worked by steam power'; and the Highways Act 1980 s 118A(8) (added by the Transport and Works Act 1992 s 47(1), Sch 2 paras 1, 3), in which 'railway' includes tramway but does not include any part of a system where rails are laid along a carriageway.

3 See *Tottenham UDC v Metropolitan Electric Tramways Ltd* [1913] AC 702 at 712-713, HL, per Lord Moulton; *Swansea Improvements and Tramways Co v Swansea Urban Sanitary Authority* [1892] 1 QB 357, DC; *Blackpool and Fleetwood Tramroad Co v Thornton UDC* [1907] 1 KB 568 at 576, CA, per Sir Gorell Barnes P (affd sub nom *Thornton UDC v Blackpool and Fleetwood Tramroad Co* [1909] AC 264, HL).

4 See the Tramways Act 1870 Pt II (ss 1-33). See in particular s 25; and PARA 1542 post.

5 See PARA 1532 ante.

6 The definition in the Military Tramways Act 1887 was 'any tramway constructed or to be constructed by the Secretary of State under the authority of a Provisional Order under this Act': see s 12 (repealed).

7 *Edinburgh Street Tramways Co v Edinburgh Corpn* [1894] AC 456 at 471, HL, per Lord Watson; *London Street Tramways Co v LCC* [1894] AC 489, HL.

8 As to these Acts see PARA 1534 ante.

9 See PARA 1534 ante.

10 *Tottenham UDC v Metropolitan Electric Tramways Ltd* [1913] AC 702, HL. See also *Wakefield Corpn v Wakefield and District Light Rly Co* [1908] AC 293, HL.

11 This was defined as meaning 'a light railway laid wholly or mainly along a public carriageway, and used wholly or mainly for the carriage of passengers': Railways Act 1921 s 73(3) (repealed); Transport Charges etc (Miscellaneous Provisions) Act 1954 s 13(1) (repealed); General Rate Act 1967 s 32(8) (repealed). For the corresponding definition of 'railway' see the New Roads and Street Works Act 1991 s 105(1); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 428.

12 *Thornton UDC v Blackpool and Fleetwood Tramroad Co* [1909] AC 264, HL.

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### **1537. Meaning of 'tramway': recent authorities.**

The New Roads and Street Works Act 1991 contains a definition of 'tramway' which was designed to be wide enough also to include a trolley vehicle system and a guided bus system<sup>1</sup>. The Transport and Works Act 1992 introduced definitions for both 'railway'<sup>2</sup> and 'tramway'<sup>3</sup>, for the purposes of that Act. With the need for modern tramways to be more precisely defined in the context of their immediate surroundings, the model clauses prescribed for incorporation in orders made under the Transport and Works Act 1992<sup>4</sup> contain definitions of 'street tramway' and 'tramroad'<sup>5</sup>.

Recent private Acts have adopted further terms to describe the systems of transport which they authorise, notably 'light rapid transit'<sup>6</sup> and 'light rail transit'<sup>7</sup>, expressions which, while possessing no legal significance (the undertakings concerned are either railways or tramways for legal purposes), are intended to emphasise that the lines in question adopt an advanced form of tramway, often providing a greater degree of segregation from other traffic and thus higher speeds. In the context of safety legislation<sup>8</sup>, the Health and Safety Executive<sup>9</sup> has classified tramways into the following types: (1) integrated on-street; (2) segregated on-street; and (3) off-street<sup>10</sup>.

1 In the New Roads and Street Works Act 1991 Pt III (ss 48-106) (as amended), 'tramway' means a system, mainly or exclusively for the carriage of passengers, using vehicles guided, or powered by energy transmitted, by rails or other fixed apparatus installed exclusively or mainly in a street: s 105(1).

2 In the Transport and Works Act 1992, 'railway' means a system of transport employing parallel rails which: (1) provide support and guidance for vehicles carried on flanged wheels; and (2) form a track which either is of a gauge of at least 350 mm or crosses a carriageway (whether or not at the same level), but does not include a tramway: s 67(1).

3 In the Transport and Works Act 1992, 'tramway' means a system of transport used wholly or mainly for the carriage of passengers and employing parallel rails which: (1) provide support and guidance for vehicles carried on flanged wheels; and (2) are laid wholly or mainly along a street or in any other place to which the public has access (including a place to which the public has access only on making a payment): s 67(1). See further PARA 1586 post.

4 See the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, art 3(b), Sch 2; and PARA 1588 et seq post.

5 See *ibid* Sch 2 para 1(1); and PARA 1592 note 11 post.

6 See the Greater Manchester (Light Rapid Transit System) Act 1988, and subsequent Acts relating to the same undertaking.

7 See the South Yorkshire Light Rail Transit Act 1988, and subsequent Acts relating to the same undertaking; the Midland Metro Act 1989, and subsequent Acts relating to the same undertaking; the Croydon Tramlink Act 1994; and the Greater Nottingham Light Rapid Transit System Act 1994.

8 See the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994, SI 1994/157 (revoked; but continuing in force up to and including 1 October 2008 for certain purposes: see the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, regs 29, 34, Sch 7). See further PARA 1618 post.

9 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

10 See *Railway Safety Principles and Guidance Part 2 Section G: Guidance on Tramways* (Health and Safety Guidance Series 153/8, HSE Books, 1997). 'Integrated on-street' is a type of tramway in which the rails are laid in a part of the highway capable of being used by other road vehicles or by pedestrians; 'segregated on-street'

is a type of tramway in which the rails are laid in a part of the highway which may be crossed by pedestrians but not normally shared with other road vehicles; and 'off-street' is a type of tramway which is totally segregated from a highway on an alignment wholly separate from a highway.

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### **1538. Terminology and status of tramway vehicles.**

Vehicles which operate on a tramway are referred to in the Tramways Act 1870 as carriages<sup>1</sup>. The Town Police Clauses Act 1889 uses the expression 'tramcar or tram carriage' and for the purposes of that Act vehicles of those descriptions are excluded from the definition of 'omnibus'<sup>2</sup>. In particular cases a tramcar has been held to be a coach<sup>3</sup>. For the purposes of the Road Traffic Regulation Act 1984 and the Road Traffic Act 1988, the term 'tramcar' is employed and is defined as including any carriage used on any road by virtue of an order under the Light Railways Act 1896<sup>4</sup>. For the purposes of the model clauses prescribed for incorporation in orders made under the Transport and Works Act 1992<sup>5</sup>, 'tramcar' means any vehicle (whether or not used for the carriage of passengers) carried on flanged wheels along the rails of a tramway<sup>6</sup>.

A tramcar is not a public service vehicle<sup>7</sup> for the purposes of the Public Passenger Vehicles Act 1981<sup>8</sup> and it is no longer a hackney carriage for the purpose of legislation regulating hackney carriages<sup>9</sup>. It is also excluded from the definition of 'private hire vehicle' for the purposes of the Local Government (Miscellaneous Provisions) Act 1976<sup>10</sup>. The abbreviated form 'tram' is used in ordinary speech and has been adopted in certain private Acts<sup>11</sup> and in regulations dealing with road traffic signs and signals<sup>12</sup>. Other terms have been employed to refer to vehicles on a tramway which are not designed or used to carry passengers<sup>13</sup>.

Tramway operators are under the same liabilities to passengers as other common carriers<sup>14</sup>.

1 See in particular the Tramways Act 1870 s 34.

2 See the Town Police Clauses Act 1889 s 3 (as amended); and PARA 1470 ante.

3 See *Plymouth, Stonehouse and Devonport Tramways Co v General Tolls Co Ltd* (1896) 75 LT 467, CA (affd (1898) 14 TLR 531, HL), where it was held that a tramcar was a coach for the purposes of a local Act requiring payment of tolls; *Burton v Nicholson* [1909] 1 KB 397, DC, where a tramcar was held to be a carriage under a regulation regulating the rule of the road.

4 See the Road Traffic Regulation Act 1984 s 141A (as added); the Road Traffic Act 1988 s 193A (as added); and PARA 219 ante.

5 See the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, art 3(b), Sch 2; and see further PARA 1588 et seq post.

6 Ibid Sch 2 para 1(1).

7 For the meaning of 'public service vehicle' see PARA 1136 ante.

8 See the Public Passenger Vehicles Act 1981 s 1(1); and PARA 1136 ante. However, provisions of the Act have been applied to tramcars: see PARA 1623 post. Also, tramcars are to be taken as public service vehicles for the purposes of the Road Traffic Regulation Act 1984 s 122(2)(c) (duty of local authorities to facilitate passage of public service vehicles and secure safety and security of their users): see the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, Sch 2 para 40(5) (in cases where that provision has been incorporated in orders made under the Transport and Works Act 1992).

9 Originally, the Town Police Clauses Act 1847 ss 37-68 (as amended) (licensing of hackney carriages etc) were applied to tramcars and persons working on them by the Tramways Act 1870 s 48 (repealed). The provisions of the Town Police Clauses Act 1847 ss 37-68 (as amended) never applied to light railway vehicles: *Yorkshire (Woollen District) Electric Tramways v Ellis* [1905] 1 KB 396. As to hackney carriages see PARA 1434 et seq ante.

10 See the Local Government (Miscellaneous Provisions) Act 1976 s 80(1) (amended by the Transport and Works Act 1992 s 62(3)). As to private hire cars see PARA 1447 et seq ante.

11 Eg the Leeds Supertram Act 1993 s 2(1).

12 See the Traffic Signs Regulations and General Directions 2002, SI 2002/3113, regs 11(1), 41(3), Sch 5 ('tram stop' and 'tram signals').

13 Eg 'locomotive', 'engine', 'wagon'.

14 *Clarke v West Ham Corpn* [1909] 2 KB 858, CA; and see CARRIAGE AND CARRIERS vol 7 (2008) PARA 1, 3 et seq.

## UPDATE

### 1538 Terminology and status of tramway vehicles

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/18. TRAMWAYS/(1) INTRODUCTION/(ii) Nature of Tramways/1539. Functions of Secretary of State.

### 1539. Functions of Secretary of State.

Matters relating to tramways were historically under the jurisdiction of the Board of Trade<sup>1</sup>, but the duty of implementing the Light Railways Act 1896 was given to Light Railway Commissioners<sup>2</sup>. In 1919 the Ministry of Transport was created for the purpose of improving the means of, and the facilities for, locomotion and transport<sup>3</sup>. At the same time all the powers and duties of other government departments, including those of the Board of Trade, in relation to tramways and light railways, were transferred to the Minister of Transport<sup>4</sup>. These powers are now exercised by the Secretary of State for Transport<sup>5</sup>.

Certain functions of a safety character relating to railways and tramways have been transferred from the Secretary of State to the Health and Safety Executive<sup>6</sup>. Responsibility for certain other safety legislation has also passed to the Health and Safety Executive<sup>7</sup>, and the Secretary of State is no longer empowered to direct the holding of inquiries or investigations into railway and tramway accidents<sup>8</sup>.

1 As to the Board of Trade see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 505; TRADE AND INDUSTRY vol 97 (2010) PARA 802.

2 Light Railways Act 1896 s 1(2) (repealed).

3 Ministry of Transport Act 1919 s 1 (repealed).

4 Ibid s 2 (repealed). The powers and duties of the Light Railway Commissioners in relation to light railway orders were transferred to the Minister of Transport by the Railways Act 1921 s 68 (repealed).

5 See PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 See the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 10 (amended by SI 2006/557). The functions transferred were those conferred on the Secretary of State by the Transport and Works Act 1992 s 41 (as amended) (approval of works, plant and equipment) and s 45 (as amended) (directions limiting speeds and loads): see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 204, 208. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

7 See the Railways Act 1993 s 117; and PARAS 1615-1616 post.

8 The power of direction was conferred by the Regulation of Railways Act 1871 s 6, which has been repealed. The holding of such inquiries or investigations may now be directed by the Health and Safety Commission under powers conferred by the Health and Safety at Work etc Act 1974 s 14 (as amended).

## UPDATE

### 1539 Functions of Secretary of State

NOTE 8--Health and Safety Commission replaced by the Health and Safety Executive: see Legislative Reform (Health and Safety Executive) Order 2008, SI 2008/960; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

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## (2)

### (i) General Statutory Position

#### 1540. Authorisation of tramways.

With the repeal of Part I of the Tramways Act 1870<sup>1</sup>, it is no longer possible to authorise the construction or operation of a tramway by means of a provisional order<sup>2</sup> made under that Act. The normal method of obtaining statutory authority for a tramway is now by means of an order made under Part I of the Transport and Works Act 1992<sup>3</sup>. This same procedure is applicable in cases where an amendment or modification is sought to, or repeal or revocation is sought of, an existing Act of Parliament or provisional order which has authorised a tramway<sup>4</sup>.

1 Transport and Works Act 1992 ss 65(1)(b), 68(1), Sch 4 Pt I. See also PARA 1535 ante.

2 See PARA 1533 ante.

3 See PARA 1586 post.

4 See the Transport and Works Act 1992 s 5.

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1663)/18. TRAMWAYS/(2) TRAMWAYS ACT 1870/(i) General Statutory Position/1541. Continuing application of the Tramways Act 1870.

### **1541. Continuing application of the Tramways Act 1870.**

Although in general the Tramways Act 1870 has been repealed, certain provisions of that Act continue to have effect to the extent that they have been incorporated in, or otherwise applied by, any Act of Parliament or provisional order<sup>1</sup>. Certain private Acts have incorporated, or otherwise applied, provisions of the Tramways Act 1870 where authority to construct or operate a tramway has been conferred. Such authorisation has been secured in respect of tramways in the following localities: Llandudno<sup>2</sup>, Blackpool<sup>3</sup>, Greater Manchester<sup>4</sup>, South Yorkshire<sup>5</sup>, West Midlands<sup>6</sup>, Leeds<sup>7</sup> and Croydon<sup>8</sup>. An Act of Parliament or provisional order which incorporates certain provisions of the Tramways Act 1870 is referred to in that Act as a 'special Act'<sup>9</sup>.

1 See the Transport and Works Act 1992 ss 65(1)(b), 68(1), Sch 4 Pt I, which provide that the provisions (all now repealed) of the Tramways Act 1870 capable of having continuing effect are s 3 (as amended), ss 22-24, 25 (part), s 26, s 27 (as amended), ss 28-29, s 30 (as amended), ss 31-40, 43-47 (as amended), ss 49-63 (as amended), Sch A Pts I, II, Sch C: see PARA 1542 et seq post.

2 See the Great Orme Tramway Act 1898.

3 See the County of Lancashire Act 1984.

4 See the Greater Manchester (Light Rapid Transit System) Act 1988; the Greater Manchester (Light Rapid Transit System) (No 2) Act 1988; the Greater Manchester (Light Rapid Transit System) Act 1990; the Greater Manchester (Light Rapid Transit System) (No 2) Act 1990; the Greater Manchester (Light Rapid Transit System) Act 1991; the Greater Manchester (Light Rapid Transit System) Act 1992; and the Greater Manchester (Light Rapid Transit System) Act 1994.

5 See the South Yorkshire Light Rail Transit Act 1988; the South Yorkshire Light Rail Transit Act 1989; the South Yorkshire Light Rail Transit Act 1990; and the South Yorkshire Light Rail Transit Act 1993.

6 See the Midland Metro Act 1989; the Midland Metro Act 1992; the Midland Metro (No 2) Act 1992; the Midland Metro Act 1993; and the Midland Metro (No 2) Act 1993.

7 See the Leeds Supertram Act 1993.

8 See the Croydon Tramlink Act 1994 (amended by the Croydon Tramlink (Penalty Fares) Order 2003, SI 2003/1614).

9 'Special Act', in the Tramways Act 1870 Pt II (ss 22-33) and Pt III (ss 34-63) (as amended), means any Act of Parliament passed after 9 August 1870 or any provisional order authorising the construction of a tramway, and with which Pts II and III are to be incorporated: s 23. Those Parts, save in so far as they are expressly varied or excepted, are to be incorporated with the special Act under s 22.

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## **(ii) Construction and Maintenance of Tramways**

### **1542. Construction of track.**

Every tramway authorised under the Tramways Act 1870 must be constructed to the gauge prescribed<sup>1</sup> by the special Act<sup>2</sup>, or, if no gauge is so prescribed, to such gauge as will admit of

the use of carriages<sup>3</sup> constructed for use upon railways of a gauge of four feet eight and a half inches, and must be so laid and maintained that the uppermost surface of the rail is on a level with the surface of the road<sup>4</sup>.

1 'Prescribed' means prescribed by any rules made in pursuance of the Tramways Act 1870: s 3. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante. As to the power to make rules see s 64; and PARA 1573 post.

2 For the meaning of 'special Act' see PARA 1541 note 9 ante.

3 As to the exclusive right of user of carriages given to promoters see the Tramways Act 1870 ss 34, 54 (as amended); and PARA 1555 post.

4 Ibid s 25. The degree of tolerance in the requirement for tramway rails to be level with the surface of the road depends on the technical feasibility of laying the rails level and the risk of injury if they are not level: *Roe v Sheffield City Council* [2003] EWCA Civ 01, [2004] QB 653.

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### **1543. Interference with roads.**

The promoters<sup>1</sup> may open and break up<sup>2</sup> any road<sup>3</sup> for the purpose of making, forming, laying down, maintaining and renewing a duly authorised tramway or any part of it<sup>4</sup>. The following regulations must, however, be observed by the promoters:

- 2415 (1) they must give notice of their intention to the road authority<sup>5</sup> at least<sup>6</sup> seven days before the commencement of the works, specifying the time of commencement of the works and the portion of the road proposed to be dealt with<sup>7</sup>;
- 2416 (2) they may not open or break up or alter the level of any road except under the superintendence and to the satisfaction of the road authority, unless such superintendence is withheld at the time specified in the notice or discontinued during the work<sup>8</sup>;
- 2417 (3) they must pay all reasonable expenses of that authority with respect to the superintendence<sup>9</sup>; and
- 2418 (4) without the consent of the road authority, they may not deal at any time with a greater length than 100 yards of any road not exceeding a quarter of a mile in length, and in the case of roads exceeding that length, must leave an interval of at least a quarter of a mile between any two places at which they open or break up the road, and may not open or break up a greater length than 100 yards at any such place<sup>10</sup>.

Where, however, the works in question are street works or major transport works within the meaning of the New Roads and Street Works Act 1991<sup>11</sup>, then in so far as they are executed in a street<sup>12</sup> within the meaning of that Act, the manner of carrying out the works is regulated by Part III of that Act<sup>13</sup>.

1 'Promoters' means any person, persons, corporation, company or local authority authorised by special Act to construct a tramway: Tramways Act 1870 s 24. For the meaning of 'special Act' see PARA 1541 note 9 ante. It



seems that 'promoters' also comprises the permitted assigns of such persons (see ss 43, 44; and PARAS 1565-1566 post), but does not include debenture holders (see *Marshall v South Staffordshire Tramways Co* [1895] 2 Ch 36 at 51, CA) or lessees or licensees (see *Edinburgh Street Tramways Co v Edinburgh Corpn* [1894] AC 456 at 469, HL).

2 For the meaning of 'open and break up' see *St Luke's Vestry v North Metropolitan Tramways Co* (1876) 1 QBD 760, 35 LT 329.

3 'Road' means any carriageway being a public highway, and the carriageway of any bridge forming part of or leading to the same: Tramways Act 1870 s 3. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante. A road does not include a footway: *Hyde Corpn v Oldham, Ashton and Hyde Electric Tramway Ltd* (1900) 64 JP 596, CA. Unauthorised interference with a road or street may lead to prosecution under the Highways Act 1980 s 131 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 345) or, in certain cases, under the Criminal Damage Act 1971 s 1 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 334): see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 525.

4 Tramways Act 1870 s 26.

5 'Road authority' means the local authority or other body having power to maintain or repair the road: see *ibid* s 3, Sch A Pt II. For the body responsible for the maintenance of different categories of roads see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 56 et seq, 412-413.

6 For the effect of the words 'at least' see TIME vol 97 (2010) PARA 335. Notice may be dispensed with in cases of urgency: see *St Luke's Vestry v North Metropolitan Tramways Co* (1876) 1 QBD 760 at 767, obiter, per Blackburn J.

7 Tramways Act 1870 s 26 para 1.

8 *Ibid* s 26 para 2.

9 *Ibid* s 26 para 3. Where the work done is merely work of repair under s 28 (see PARA 1547 post), superintendence is not necessary and the expense of superintendence is not payable: *St Luke's Vestry v North Metropolitan Tramways Co* (1876) 1 QBD 760.

10 Tramways Act 1870 s 26 para 4.

11 For the meaning of 'street works' in the New Roads and Street Works Act 1991 see ss 48(3), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 407. For the meaning of 'major transport works' see ss 91(2), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 474.

12 For the meaning of 'street' see *ibid* ss 48(1), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 9.

13 *Ibid* s 101. As to Pt III (ss 48-106) (as amended) see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 406 et seq.

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#### **1544. Interference with bridges.**

Where the carriageway over any bridge forms part of, or is, a road<sup>1</sup> within the jurisdiction of the road authority<sup>2</sup>, but the bridge is vested in any person, corporation or company distinct from that authority, any work the promoters<sup>3</sup> are empowered to construct affecting or in any way interfering with the structural works of the bridge must be constructed under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of that person, corporation or company, unless such superintendence has been refused or withheld after notice given seven days before the commencement of the work by the promoters<sup>4</sup>.

Where the carriageway in question is a street within the meaning of the New Roads and Street Works Act 1991<sup>5</sup> and the work concerned constitutes street works<sup>6</sup> or major transport works<sup>7</sup> which an undertaker<sup>8</sup> proposes to execute affecting the structure of a bridge within the meaning of that Act<sup>9</sup>, then the manner in which the work is to be carried out is regulated by Part III of that Act<sup>10</sup>.

1 For the meaning of 'road' see PARA 1543 note 3 ante.

2 For the meaning of 'road authority' see PARA 1543 note 5 ante.

3 For the meaning of 'promoters' see PARA 1543 note 1 ante.

4 Tramways Act 1870 s 26. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante.

5 For the meaning of 'street' in the New Roads and Street Works Act 1991 see ss 48(1), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 9.

6 For the meaning of 'street works' see ibid ss 48(3), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 407.

7 For the meaning of 'major transport works' see ibid ss 91(2), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 474.

8 For the meaning of 'undertaker' in relation to street works and apparatus see ibid ss 48(4), (5), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 408.

9 As to the meaning of 'bridge' see ibid s 88(1)(a); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 407. Any statutory right to place apparatus in a street which is carried by or crosses a bridge includes the right to place apparatus in the structure of the bridge: see s 88(3).

10 See ibid s 101. As to Pt III (ss 48-106) (as amended) see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 406 et seq.

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### **1545. Interference with level crossings.**

Where the carriageway in or upon which any tramway is proposed to be laid down is crossed by any railway or tramway on the level, any work which the promoters<sup>1</sup> are empowered to construct affecting or interfering with the railway or tramway, or the traffic on it, must be constructed and maintained under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of the person, corporation or company owning the railway or tramway, unless such superintendence is refused or withheld after notice given seven days before the commencement of the work of the promoters<sup>2</sup>.

Where the carriageway in question is a street within the meaning of the New Roads and Street Works Act 1991<sup>3</sup>, and the work concerned constitutes the execution of street works<sup>4</sup> affecting or interfering with apparatus<sup>5</sup> of a transport authority<sup>6</sup> or major transport works<sup>7</sup> within the meaning of that Act or the street works are in the vicinity of a railway, tramway, dock, pier, canal or inland navigation<sup>8</sup> or are street works at a crossing of a railway on the level or which affect a tramway<sup>9</sup>, then the manner in which the work is carried out is regulated by Part III of that Act<sup>10</sup>.

- 1 For the meaning of 'promoters' see PARA 1543 note 1 ante.
- 2 Tramways Act 1870 s 26. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante.
- 3 For the meaning of 'street' see the New Roads and Street Works Act 1991 ss 48(1), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 9.
- 4 For the meaning of 'street works' see *ibid* ss 48(3), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 407.
- 5 For the meaning of 'apparatus' see *ibid* ss 89(3), 105(1), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 407.
- 6 For the meaning of 'transport authority' see *ibid* ss 91(1)(a), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 413.
- 7 For the meaning of 'major transport works' see *ibid* ss 91(2), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 474.
- 8 See *ibid* s 92 (amended by the Traffic Management Act 2004 s 40(1), (2), Sch 1). At the date at which this volume states the law the amendment made by the Traffic Management Act 2004 had not been brought into force in relation to Wales.
- 9 See the New Roads and Street Works Act 1991 s 93 (prospectively amended by the Traffic Management Act 2004 s 49(3)).
- 10 See the New Roads and Street Works Act 1991 s 101. As to Pt III (ss 48-106) (as amended) see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 406 et seq. See in particular ss 69, 84, 85, 92, 93 (ss 69, 92, 93 as amended).

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### **1546. Reinstatement of roads.**

When the promoters<sup>1</sup> have opened or broken up<sup>2</sup> any portion of any road<sup>3</sup>, they must with all convenient speed, and in all cases within four weeks, unless the road authority<sup>4</sup> otherwise consents in writing, complete the work on account of which the road was opened or broken up, and, subject to the formation, maintenance or renewal of the tramway, fill in the ground and make good the surface, restoring to the satisfaction of the road authority the road to as good a condition as it was in before the opening or breaking up, and clear away all surplus paving or metalling material or rubbish occasioned by it<sup>5</sup>. In the meantime, the promoters must cause the place where the road is opened or broken up to be fenced and watched and properly lit at night<sup>6</sup>. The promoters must pay all reasonable expenses of the repair of the road for six months after its restoration, so far as those expenses are increased by the opening or breaking up<sup>7</sup>.

Where the road opened or broken up is a street within the meaning of the New Roads and Street Works Act 1991<sup>8</sup> and the works concerned constitute street works<sup>9</sup> or major transport works<sup>10</sup> within the meaning of that Act, then requirements in respect of reinstatement<sup>11</sup> are regulated by Part III of that Act<sup>12</sup>.

1 For the meaning of 'promoters' see PARA 1543 note 1 ante.

2 For the meaning of 'open and break up' see *St Luke's Vestry v North Metropolitan Tramways Co* (1876) 1 QBD 760, 35 LT 329.

3 For the meaning of 'road' see PARA 1543 note 3 ante.

4 For the meaning of 'road authority' see PARA 1543 note 5 ante.

5 Tramways Act 1870 s 27 para 1. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante. Failure by the promoters to comply with s 27 is punishable by a penalty not exceeding level 2 on the standard scale, and a further daily penalty of £5 on continuance, without prejudice to the enforcement by specific performance of the requirements of the Tramways Act 1870 or to any other remedy against them: s 27 (amended by virtue of the Criminal Law Act 1977 s 31(5), (6)(b), (9); and by the Criminal Justice Act 1982 s 46(1), (4)). As to the standard scale see PARA 230 note 3 ante. As to the recovery of penalties see PARA 1572 post. Any surplus paving or metalling remains the property of the road authority: see *Stockport and Hyde Highway Board v Chester County Council* (1891) 61 LJQB 22.

6 Tramways Act 1870 s 27 para 2.

7 Ibid s 27 para 3.

8 For the meaning of 'street' in the New Roads and Street Works Act 1991 see ss 48(1), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 9.

9 For the meaning of 'street works' see ibid ss 48(3), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 407.

10 For the meaning of 'major transport works' see ibid ss 91(2), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 474.

11 See ibid ss 70-73, 90(3) (ss 70-72 as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 457 et seq.

12 See ibid s 101. As to Pt III (ss 48-106) (as amended) see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 406 et seq.

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### **1547. Repair of roads.**

The promoters<sup>1</sup> must, at their own expense, maintain and repair to the satisfaction of the road authority<sup>2</sup>, and with such materials and in such manner as that authority directs, so much of any road<sup>3</sup> upon which a tramway belonging to them is laid as lies between the rails; and where two tramways are laid by the same promoters in any road not more than four feet apart, the portion of road between the tramways; and in each case so much of the road as extends eighteen inches beyond the rails and on each side of the tramway<sup>4</sup>. If the promoters abandon<sup>5</sup> the whole or any part of their undertaking and take up any part of their tramway, they must with all convenient speed and within six weeks (unless the road authority otherwise consents in writing) fill in the ground and make good the surface, restoring to the satisfaction of that authority that portion of the road to as good a condition as it was in before the tramway was laid, and clear away all surplus paving or metalling material or rubbish occasioned by the work; and in the meantime must provide for the fencing, watching and lighting at night of the place where the road is open or broken up<sup>6</sup>. In the event of non-compliance the road authority itself may, after seven days' notice to the promoters, open and break up the road and do the necessary works of repair, maintenance or restoration, and recover its expenses from the promoters<sup>7</sup>.

If the part of the tramway abandoned is in a street within the meaning of the New Roads and Street Works Act 1991<sup>8</sup> and the abandonment works concerned constitute the execution of

street works<sup>9</sup> or major transport works<sup>10</sup> within the meaning of that Act, then the requirements as to the manner of carrying out the works are regulated by Part III of that Act<sup>11</sup>, as are the circumstances in which a street authority<sup>12</sup> may carry out the necessary work and recover the cost from the promoters<sup>13</sup>.

In addition to these statutory requirements, the promoters must keep the part of the highway which they are liable to repair in a fit and safe condition for passing traffic, and if they fail to do so they are liable in damages to any person injured<sup>14</sup>. They are not, however, bound to remove snow, except perhaps where the snow amounts to an actual obstruction<sup>15</sup>.

1 For the meaning of 'promoters' see PARA 1543 note 1 ante.

2 For the meaning of 'road authority' see PARA 1543 note 5 ante.

3 For the meaning of 'road' see PARA 1543 note 3 ante.

4 Tramways Act 1870 s 28. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante.

5 The specific provisions as to abandonment formerly contained in *ibid* s 41 have been repealed: Transport and Works Act 1992 ss 65(1)(b), 68(1), Sch 4 Pt I; and see PARA 1564 post.

6 Tramways Act 1870 s 28.

7 *Ibid* s 28 proviso.

8 For the meaning of 'street' in the New Roads and Street Works Act 1991 see ss 48(1), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 9.

9 For the meaning of 'street works' see *ibid* ss 48(3), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 407.

10 For the meaning of 'major transport works' see *ibid* ss 91(2), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 474.

11 See *ibid* s 101. As to Pt III (ss 48-106) (as amended) see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 406 et seq. See, in particular, ss 70-73 (ss 70-72 as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 457 et seq.

12 For the meaning of 'street authority' see *ibid* ss 49(1), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 412.

13 See *ibid* s 72(3) (prospectively amended by the Traffic Management Act 2004 s 53(1)); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 460-461.

14 *Dublin United Tramways Co v Fitzgerald* [1903] AC 99, HL; *Browne v De Luxe Car Services* [1941] 1 KB 549, [1941] 1 All ER 383, CA. The obligation of the repairer does not cease if the tramway is disused but the rails have not been taken up: *Browne v De Luxe Car Services* *supra*.

15 *Acton District Council v London United Tramways* [1909] 1 KB 68, DC. See also *Amesbury Guardians v Wiltshire Justices* (1883) 10 QBD 480, DC; *Ogston v Aberdeen District Tramways Co* [1897] AC 111, HL; *Montreal City v Montreal Street Rly Co* [1903] AC 482, PC.

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## **1548. Agreements with road authorities.**

The road authority<sup>1</sup> and the promoters<sup>2</sup> may enter into, carry into effect, alter, renew or vary contracts, agreements or arrangements for paving and keeping in repair the whole or any portion of the roadway of any road<sup>3</sup> in which a tramway has been laid by the promoters, and the proportion to be paid by either of the parties of the expense of such paving and keeping in repair<sup>4</sup>. If the road authority undertakes the repair of a portion of the roadway which the promoters would otherwise be liable to repair, the road authority is, but the promoters are not, liable to any person injured as a result of lack of repair<sup>5</sup>.

1 For the meaning of 'road authority' see PARA 1543 note 5 ante.

2 For the meaning of 'promoters' see PARA 1543 note 1 ante. The promoter's duty to maintain the road on which its tramways are laid does not displace a highway authority's duty to maintain the highway as a whole: *Roe v Sheffield City Council* [2003] EWCA Civ 01, [2004] QB 653.

3 For the meaning of 'road' see PARA 1543 note 3 ante.

4 Tramways Act 1870 s 29. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante.

5 *Howett v Nottingham and District Tramways Co Ltd* (1883) 12 QBD 16, DC; *Allred v West Metropolitan Tramways Co* [1891] 2 QB 398, CA; *Barnett v Poplar Corp* [1901] 2 KB 319, DC.

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### **1549. Interference with particular apparatus of other undertakers.**

For the purposes of making, forming, laying down, maintaining, repairing or renewing any of their tramways, and where it appears necessary or expedient in order to prevent frequent interruption of traffic by repairs or works connected with the tramway, the promoters<sup>1</sup> may from time to time alter the position of any mains or pipes for the supply of gas or water, or any tubes, wires or apparatus for telegraphic or other purposes<sup>2</sup>. However, this is subject to the following restrictions<sup>3</sup>:

- 2419 (1) before laying down a tramway in a road<sup>4</sup> in which any mains or pipes, tubes, wires or apparatus may be laid, whether or not the promoters contemplate altering the position of any of them, the promoters must give seven days' notice of their intentions to the board, company or persons owning or controlling those mains etc, and deliver a plan and section of the proposed work; and, if the board, company or persons are of the opinion that the proposed construction or alteration would endanger their works or apparatus or interfere with the supply<sup>5</sup> of gas, water or telegraphic or other communication, they may give notice<sup>6</sup> to the promoters to lower or alter the position of the mains etc in such a manner as may be considered necessary, any difference as to the necessity of lowering or alteration being settled in accordance with the provisions of the Tramways Act 1870 with respect to the settlement of the difference<sup>7</sup>;
- 2420 (2) the promoters may not remove or displace any of the mains or pipes, valves, syphons, plugs, tubes, wires or apparatus or works belonging to or controlled by any such board, company or persons, or in any way impede the passage of water, gas or telegraphic or other communication, without the consent of, and except in the manner approved by, such board, company or persons until a satisfactory alternative supply has been provided at the promoters' expense<sup>8</sup>;

2421 (3) the promoters must make good all damage done by them to property belonging to or controlled by such board, company or persons, and make full compensation to all parties for loss or damage arising from interference with such property or with the private service pipes of any persons supplied with water or gas<sup>9</sup>; and are liable to a penalty not exceeding £50 for every day upon which interference occurs if by any of their operations they interrupt the supply of water or gas in or through any main or main pipe<sup>10</sup>.

The promoters are subject to further restrictions if the tramway concerned is in a street<sup>11</sup> and the works in question are street works<sup>12</sup> or major transport works<sup>13</sup> within the meaning of the New Roads and Street Works Act 1991 and such mains, pipes, tubes, wires or apparatus are for the purposes of that Act another person's apparatus<sup>14</sup> in that street likely to be affected by those works<sup>15</sup>. The manner of carrying out the works is regulated by Part III of the New Roads and Street Works Act 1991<sup>16</sup>.

1 For the meaning of 'promoters' see PARA 1543 note 1 ante.

2 Tramways Act 1870 s 30. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante. The operation of s 30 is not limited to cases where alteration is expedient to prevent interruption of traffic, but applies where the alteration is necessary to the construction of the tramway; overhead wires may be altered, and the promoters may enter on private land if necessary: *Re Rhondda UDC and Taff Vale Rly Co* (1907) 97 LT 892, CA.

3 Tramways Act 1870 s 30.

4 For the meaning of 'road' see PARA 1543 note 3 ante.

5 In this context 'supply' includes supply to premises expected to be connected to a main in the future: *Re Ilford Gas Co and Ilford UDC* (1903) 88 LT 236, DC.

6 The notice may be given at any time: *Hastings Tramways Co v Hastings and St Leonards Gas Co* [1906] 2 Ch 578, CA.

7 Tramways Act 1870 s 30 para 1. As to the settlement of differences see s 33; and PARA 1554 post. Any alterations must be made with as little detriment and inconvenience to the board, company or persons owning or controlling the mains etc or to the inhabitants of the district as the circumstances admit, and under the superintendence of such board, company or persons or their surveyor or engineer, for which purposes the promoters must give 48 hours' notice: see s 30 para 1.

8 Ibid s 30 para 2. The mains and works must be laid down to the satisfaction of the surveyor or engineer of the water or gas or other company, or of such person, in the case of disagreement between that surveyor or engineer and the promoters, as an engineer appointed by the Secretary of State (see PARAS 236, 1539 ante) may direct: s 30 para 2. Pipes may not be laid down contrary to the regulation of any Act of Parliament relating to water, gas or other companies or to telegraphs: s 30 para 3.

9 Ibid s 30 para 4. As to notice before commencing any work see note 7 supra.

10 Ibid s 30 para 5 (amended by the Criminal Law Act 1977 s 31(6)). As to the recovery of penalties see PARA 1572 post.

11 For the meaning of 'street' in the New Roads and Street Works Act 1991 see ss 48(1), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 9.

12 For the meaning of 'street works' see ibid ss 48(3), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 407.

13 For the meaning of 'major transport works' see ibid ss 91(2), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 474.

14 See ibid s 69 (amended by the Traffic Management Act 2004 s 40(1), (2), Sch 1). At the date at which this volume states the law the amendment made by the Traffic Management Act 2004 had not been brought into

force in relation to Wales. See HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 455. For the meaning of 'apparatus' see ss 105(1), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 407.

15 See the New Roads and Street Works Act 1991 s 69 (as amended: see note 14 supra), ss 84, 85; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 455, 474-475.

16 See *ibid* s 101; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 477, 480 et seq. As to Pt III (ss 48-106) (as amended) see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 406 et seq.

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### **1550. Interference with sewers and drains.**

Where any tramway, or other work connected with it, interferes with any sewer, drain, watercourse, subway, defence or other work, or in anyway affects the sewerage or drainage of any district, the promoters<sup>1</sup> may not commence any work until fourteen days' previous written notice<sup>2</sup> of their intention, with all necessary particulars<sup>3</sup>, has been left<sup>4</sup> at the principal office<sup>5</sup> of the proper authority or authorities<sup>6</sup>, and that authority or (if more than one) any of them, unless it fails or they fail to do so within fourteen days after service of the notice and particulars, has or have signified approval<sup>7</sup>. The promoters must also comply with and conform to the authority's reasonable directions and regulations in executing the works, and provide, by such new, altered or substituted works as the authority may require, for the protection of, and prevention of injury or impediment to, the sewers and works, and must save harmless the authority against all expense occasioned by the works<sup>8</sup>. All the works must be done at the promoters' reasonable expense under the direction, superintendence and control of the authority's engineers or other officers, and any such new, altered or substituted works are afterwards as completely under the jurisdiction and control of, and as fully maintainable by, the authority as any other sewers or works<sup>9</sup>.

The promoters may be subject to further requirements if the work in question is in a street<sup>10</sup> and constitutes the execution of street works<sup>11</sup> or major transport works<sup>12</sup> within the meaning of the New Roads and Street Works Act 1991 and the sewers, drains and other works concerned constitute apparatus within the meaning of that Act<sup>13</sup>. The manner of carrying out the work is regulated by Part III of the New Roads and Street Works Act 1991<sup>14</sup>.

1 For the meaning of 'promoters' see PARA 1543 note 1 ante.

2 Notice may be dispensed with in cases of urgency: *St Luke's Vestry v North Metropolitan Tramways Co* (1876) 1 QBD 760 at 767, obiter, per Blackburn J.

3 Particulars may be sufficient even though they do not state the depth at which certain cables will be laid: see *Brentford UDC v London United Tramways Ltd* (1901) 45 Sol Jo 408.

4 As to the validity of a notice served in this way see *Lord Newborough v Jones* [1975] Ch 90, [1974] 3 All ER 17, CA.

5 'Principal office' means the place where the business of the body corporate is managed and controlled as a whole: see *Garton v Great Western Rly Co* (1858) EB & E 837; *Palmer v Caledonian Rly Co* [1892] 1 QB 823, CA; *Clokey v London and North Western Rly Co* [1905] 2 IR 251.

6 The principal authority responsible for sewers, sewerage and drainage is the sewage undertaker appointed pursuant to the Water Industry Act 1991 s 6 (as amended) for the area in question or any local authority which is a relevant authority for the purposes of s 97 (as amended): see further WATER AND WATERWAYS vol 100 (2009) PARA 137 et seq.



7 Tramways Act 1870 s 31. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante. If the authority expresses neither approval nor disapproval within the 14 days, the works may be commenced: *Brentford UDC v London United Tramways Ltd* (1901) 45 Sol Jo 408.

8 Tramways Act 1870 s 31.

9 Ibid s 31.

10 For the meaning of 'street' in the New Roads and Street Works Act 1991 see ss 48(1), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 9.

11 For the meaning of 'street works' see ibid ss 48(3), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 407.

12 For the meaning of 'major transport works' see ibid ss 91(2), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 474.

13 As to the meaning of 'apparatus' see ibid ss 89(3), 105(1), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 407.

14 See ibid s 101. As to Pt III (ss 48-106) (as amended) see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 406 et seq.

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### **1551. Electrical interference.**

Given that at the time that the Tramways Act 1870 was enacted, the operation of tramways by means of electricity was not a practical proposition, the Act is silent on this aspect. Accordingly, in later years it became usual for the special Act<sup>1</sup> by which the tramway was constituted to contain special provisions for the protection of other works from electrical interference caused by operation of the tramway. Thus such an Act may provide that the tramway company must operate its undertaking with due regard to the mains, pipes or apparatus for the supply of gas or water, or the mains, cables or wires for the supply of electricity or for telecommunications purposes, and use every reasonable means to prevent injurious affection caused by the operation of the tramway and arising from electro-magnetic interference or electrolytic damage, and that the company must meet the expense of any equipment or alteration necessary to prevent or remedy the injurious affection<sup>2</sup>. In such a case, if it is proved that such mains, pipes, apparatus, cables or wires have been injuriously affected by electro-magnetic interference or electrolytic damage as a result of the tramway, it is no answer for the tramway company to prove that the owner of the equipment so affected has been negligent in selecting the place in which to lay that equipment; in order to succeed, the company must prove that the injurious affection was entirely due to the negligence of the owner of the equipment and not to the tramway at all<sup>3</sup>.

If, however, the tramway company operates the tramway in conformity with its statutory powers, the company will not be liable for the effects of stray electrical currents, either under the rule in *Rylands v Fletcher*<sup>4</sup> or in an action for nuisance<sup>5</sup>.

1 For the meaning of 'special Act' see PARA 1541 note 9 ante.

2 See eg the Greater Manchester (Light Rapid Transit System) Act 1988 s 27; and the South Yorkshire Light Rail Transit Act 1988 s 21.

3 *Postmaster-General v Blackpool and Fleetwood Tramroad Co* [1921] 1 KB 114, CA; but cf *Postmaster-General v Beck and Pollitzer* [1924] 2 KB 308, CA. As to negligence see further NEGLIGENCE.

4 See *Rylands v Fletcher* (1868) LR 3 HL 330; and NUISANCE vol 78 (2010) PARA 148 et seq.

5 See PARA 1563 text and notes 7-9 post; and NUISANCE.

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### **1552. Right to break open roads in which tramways lie.**

The powers of breaking up any road<sup>1</sup> along or across which any tramway is laid, and the powers vested in local<sup>2</sup> or road<sup>3</sup> authorities for any of the purposes for which they are constituted<sup>4</sup>, or in any company, body or person for any purposes with respect to gas<sup>5</sup> or telegraphic or other purposes<sup>6</sup>, are unaffected by the Tramways Act 1870<sup>7</sup>. The exercise of those powers is, however, limited by the following restrictions<sup>8</sup>:

- 2422 (1) the authority, company, body or person must cause as little detriment to the promoters<sup>9</sup> as circumstances admit<sup>10</sup>;
- 2423 (2) except in cases of urgency<sup>11</sup>, they must give to the promoters, and their lessees, if any, eighteen hours' notice at least of their intention to commence any works which will interrupt<sup>12</sup> the traffic on the tramway, specifying the time at which the work will begin<sup>13</sup>, but they are not liable to pay to the promoters or lessees any compensation for injury done to the tramway<sup>14</sup> by the execution of the work, or for loss of traffic occasioned by it, or for the reasonable exercise of the powers vested in them<sup>15</sup>;
- 2424 (3) whenever a local or road authority so requires for the purpose of executing such work, the promoters or their lessees must either stop traffic on the tramway referred to in the notice, or shore up or secure it at their own risk and cost during the execution of the work<sup>16</sup>, although the work must be completed by the local or road authority with all reasonable speed<sup>17</sup>;
- 2425 (4) no company, body or person may execute any such work so far as it immediately affects the tramway except under the superintendence and to the reasonable satisfaction of the promoters, unless they refuse or neglect to give such superintendence at the time specified in the notice or discontinue it during the progress of the work, and the expenses of the execution must be borne by the company, body or person executing it<sup>18</sup>.

If the work in question is in a street<sup>19</sup> and constitutes the execution of street works<sup>20</sup> within the meaning of the New Roads and Street Works Act 1991, then the manner of carrying out the work is regulated by Part III of that Act<sup>21</sup>.

1 For the meaning of 'road' see PARA 1543 note 3 ante.

2 For the meaning of 'local authority' see PARA 1558 note 2 post.

3 For the meaning of 'road authority' see PARA 1543 note 5 ante. See also *Wolverhampton Tramways Co v Great Western Rly Co* (1886) 56 LJQB 190, DC; and note 14 infra.

4 As to the breaking up of roads in the exercise of statutory powers see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 389 et seq.

5 As to the power of a public gas supplier to break up roads in connection with gas supply see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 842.

6 See PARA 1551 ante. See also note 7 infra.

7 Tramways Act 1870 s 32. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante. The protection afforded under s 32 is expressly applied to authorities breaking open roads on which tramways are laid for purposes connected with water supply or sewerage disposal: see the Water Industry Act 1991 s 183, Sch 13 para 3(6); and WATER AND WATERWAYS vol 101 (2009) PARA 491. The Tramways Act 1870 s 32 has been held to relieve a telephone company from seeking the consent of a tramway company under the Telegraph Act 1863 s 13 (repealed): see *Bristol Tramways and Carriage Co v National Telephone Co* [1899] 2 Ch 282. See now the Telecommunications Act 1984 s 10 (as amended), Sch 2 para 12 (as amended); and TELECOMMUNICATIONS vol 97 (2010) PARA 177. As to the power of a licensee, exercising powers conferred by the Electricity Act 1989, to break up roads in connection with electricity supply see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1287.

8 Tramways Act 1870 s 32. Further restrictions may be imposed by the New Roads and Street Works Act 1991: see note 21 infra.

9 For the meaning of 'promoters' see PARA 1543 note 1 ante.

10 Tramways Act 1870 s 32 para 1.

11 In cases of urgency no notice is necessary: *ibid* s 32 para 2.

12 As to acts constituting an interruption see *Re Bristol Gas Co and Bristol Tramways and Carriage Co Ltd* [1910] 1 KB 114, CA.

13 Tramways Act 1870 s 32 para 2.

14 See *Wolverhampton Tramways Co v Great Western Rly Co* (1886) 56 LJQB 190, DC, where a railway company was held to be authorised to remove the plaintiff's tramway for the purpose of reconstructing, in the interests of public safety, a bridge which the railway company had maintained and repaired for 40 years, the railway company being the road authority for this purpose.

15 Tramways Act 1870 s 32 para 3. As to compensation not being payable if powers are exercised unreasonably see *Lanarkshire Tramways Co v Motherwell Burgh* (1908) 16 SLT 63.

16 Tramways Act 1870 s 32 para 4.

17 *Ibid* s 32 para 4 proviso.

18 *Ibid* s 32 para 5. As to expenses to which the proviso applies or does not apply see *Bristol Tramways and Carriage Co v National Telephone Co* [1899] 2 Ch 282; *Re Bristol Gas Co and Bristol Tramways and Carriage Co Ltd* [1910] 1 KB 114, CA.

19 For the meaning of 'street' in the New Roads and Street Works Act 1991 see ss 48(1), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 9.

20 For the meaning of 'street works' see *ibid* ss 48(3), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 407.

21 See *ibid* s 101. As to Pt III (ss 48-106) (as amended) see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 406 et seq. See in particular ss 69, 84, 85, 92, 93 (ss 69, 92, 93 as amended).

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### **1553. Obstruction of construction works.**

The obstruction of any person acting under the authority of the promoters<sup>1</sup> of a tramway in the lawful exercise of their powers in setting out, making, forming, laying down, repairing or renewing any tramway, or the defacement or destruction of any mark made for setting out the line of the tramway, or the damage or destruction of any property of the promoters or their lessees<sup>2</sup> or licensees<sup>3</sup>, is an offence<sup>4</sup>.

1 For the meaning of 'promoters' see PARA 1543 note 1 ante.

2 As to lessees see PARA 1567 post.

3 As to licensees see PARAS 1568-1570 post.

4 Tramways Act 1870 s 49 (amended by virtue of the Criminal Justice Act 1982 s 46(1), (4)). The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante. Such an offence is punishable by a fine not exceeding level 2 on the standard scale: see s 49 (as so amended). As to the standard scale see PARA 230 note 3 ante. As to the recovery of penalties see PARA 1572 post. As to unauthorised user of tramways see PARA 1555 note 6 post.

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#### **1554. Settlement of differences.**

In the case of any difference between the promoters<sup>1</sup> or lessees<sup>2</sup> and any local authority<sup>3</sup> or road authority<sup>4</sup>, or gas<sup>5</sup>, water<sup>6</sup> or electricity<sup>7</sup> undertaking or company or person possessing sewers, drains, tubes, wires or apparatus for telegraphic<sup>8</sup> or other purposes with respect to any interference or control exercised by, or claimed to be exercised by, either of the parties in relation to any tramway or work, or in relation to any work or proceeding or the propriety or mode of execution of the work, or the amount of any compensation to be made by or to the promoters or lessees, or the question whether any work is such as ought reasonably to satisfy the authority, board, company or person concerned, or any other subject or thing regulated by the Tramways Act 1870<sup>9</sup>, then the matter in difference must, unless it is otherwise specially provided by the Act, be settled by an engineer or other fit person nominated as a referee by the Secretary of State<sup>10</sup> on the application of either party, the expenses of the reference being borne and paid as the referee directs<sup>11</sup>.

No difference arises within these provisions where the local authority is seeking to exercise rights arising otherwise than under the tramway legislation<sup>12</sup>, or where the tramway company may have a right to damages at common law against the local authority<sup>13</sup>; and, pending arbitration, there is no jurisdiction in a court to deal with a case in which a difference to which these provisions apply is in issue<sup>14</sup>.

If, however, any matter in dispute arises out of issues regulated by Part III of the New Roads and Street Works Act 1991 as a result of the application of those provisions in the circumstances previously described<sup>15</sup>, the matter is to be settled by arbitration by reference to a single arbitrator appointed by agreement between the parties concerned or, in default of agreement, by the President of the Institution of Civil Engineers<sup>16</sup>.

1 For the meaning of 'promoters' see PARA 1543 note 1 ante.

2 As to lessees see PARA 1567 post.

- 3 For the meaning of 'local authority' see PARA 1558 note 2 post.
- 4 For the meaning of 'road authority' see PARA 1543 note 5 ante.
- 5 Is a public gas supplier. As to the power of a public gas supplier to break up roads in connection with gas supply see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 842.
- 6 Is the Environment Agency or a water or sewerage undertaker. See PARA 1552 note 7 ante.
- 7 Is a licence holder entitled to supply electricity. See PARA 1552 note 7 ante.
- 8 Is a public telecommunications operator. See PARA 1552 note 7 ante.
- 9 See the Tramways Act 1870 ss 26-32; and PARA 1543 et seq ante.
- 10 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 11 Tramways Act 1870 s 33. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante.
- 12 *Bristol Tramways and Carriage Co v Bristol Corpn* (1890) 25 QBD 427, CA. Cf *R v Croydon and Norwood Tramways Co* (1886) 18 QBD 39, CA.
- 13 *Lanarkshire Tramways Co v Motherwell Burgh* (1908) 16 SLT 63.
- 14 *Norwich Corpn v Norwich Electric Tramways Co Ltd* [1906] 2 KB 119, CA. See also *Regent's Canal Dock Co v LCC* (1907) 71 JP 201; *R v Garrett and Hammersmith Borough Council, ex p London United Tramways Ltd* (1909) 100 LT 533, DC (magistrates' court prosecution); and cf *R v Devonport Justices, ex p Devonport Tramways Co* (1909) 101 LT 424, DC.
- 15 See PARA 1543 et seq ante. As to the New Roads and Street Works Act 1991 Pt III (ss 48-106) (as amended) see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 406 et seq.
- 16 Ibid s 99.

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### **(iii) Operation of Tramways**

#### **1555. Carriages.**

The promoters<sup>1</sup> and their lessees<sup>2</sup> may use on their tramways carriages with flange wheels or wheels suitable only to run on the rail prescribed<sup>3</sup> by the special Act<sup>4</sup>, and, subject to the provisions of that special Act and of the Tramways Act 1870, they are entitled to the exclusive use<sup>5</sup> of their tramways for carriages having such wheels<sup>6</sup>. No carriages may extend more than eleven inches on each side beyond the outer edge of the wheels<sup>7</sup>.

The motive power to be used on any tramway is prescribed by the special Act<sup>8</sup>, and where no such power is prescribed all carriages used on any tramway must be moved by animal power only<sup>9</sup>.

- 1 For the meaning of 'promoters' see PARA 1543 note 1 ante.
- 2 As to lessees see PARA 1567 post.

3 For the meaning of 'flange wheels' or 'wheels suitable only to run on the rail prescribed' see *Cottam v Guest* (1880) 6 QBD 70, DC; *Manchester Corp'n and Manchester Carriage and Tramway Co v Andrews & Son* (1899) 5 TLR 470; *Liverpool Tramways Co v Liverpool Omnibus Co* [1870] WN 126.

4 For the meaning of 'special Act' see PARA 1541 note 9 ante.

5 In consequence of the provision for exclusive use, the promoters are occupiers of the land which is de facto occupied by the tramway, and are therefore rateable in respect of it: *Pimlico Tramway Co v Greenwich Union* (1873) LR 9 QB 9. See RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARAS 27, 103.

6 Tramways Act 1870 s 34. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante. A fine not exceeding level 2 on the standard scale is imposed on persons using such carriages except under lease from, or agreement with, the promoters, or under licence from the Secretary of State: s 54 (amended by virtue of the Criminal Law Act 1977 s 31(5), (6), (9); and the Criminal Justice Act 1982 s 46(1), (4)). As to the recovery of penalties see PARA 1572 post. As to the standard scale see PARA 230 note 3 ante.

7 Tramways Act 1870 s 34.

8 Promoters may be entitled under their special Act to execute works for forming a connection with any generating station: see *Wandsworth Corp'n v London United Tramways (1901) Ltd* (1905) 69 JP 340.

9 Tramways Act 1870 s 34.

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## **1556. Charging of fares.**

The promoters<sup>1</sup> or lessees<sup>2</sup> of a tramway authorised by a special Act<sup>3</sup> may demand and take, in respect of their tramway, tolls and charges not exceeding the sum specified in that Act, subject and according to the regulations specified in it, and a list of the authorised tolls and charges must be exhibited in a conspicuous place inside and outside each of the carriages used on the tramway<sup>4</sup>. A tramway company which is required by its special Act to provide carriages for the convenience of workmen travelling at reduced fares may set apart special cars for their use<sup>5</sup>. It has become custom in special Acts to make provision for the imposition of penalty fares<sup>6</sup>.

1 For the meaning of 'promoters' see PARA 1543 note 1 ante.

2 As to lessees see PARA 1567 post.

3 For the meaning of 'special Act' see PARA 1541 note 9 ante.

4 Tramways Act 1870 s 45. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante. Provision for the regulating of fares by traffic commissioners was substituted by the Transport Charges etc (Miscellaneous Provisions) Act 1954 s 2, Sch 1 and the provision in the text authorising the demanding of fares ceased to have effect by virtue of s 14(2). However, the 1954 Act provisions have been repealed: for the present position see PARA 1623 text and note 19 post. As to byelaws regulating fares see PARA 1558 post. As to non-payment of fares see PARA 1557 post.

5 *Lanarkshire Tramways Co v M'Naughton* 1924 SC 35 (not following on this point *Nimmo v Lanarkshire Tramways Co* 1912 SC (J) 23). As to who may avail himself of this privilege see *McDonald v Brown* (1918) 87 LJKB 1119, DC; *Lanarkshire Tramways Co v M'Naughton* supra.

6 See eg the South Yorkshire Light Rail Transit Act 1989 Pt V; the Leeds Supertram Act 1993 Pt V; the Croydon Tramlink Act 1994 s 45 (with the Croydon Tramlink (Penalty Fares) Order 2003, SI 2003/1614; and the

Greater London (Penalty Fares) (Croydon Tramlink Designation) Order 2000, SI 2000/1442); and the Greater Nottingham Light Rapid Transit System Act 1994 Pt V.

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### **1557. Non-payment of fares.**

Any person who:

- 2426 (1) travelling or having travelled in any carriage on a tramway avoids or attempts to avoid payment of his fare; or
- 2427 (2) having paid his fare for a certain distance, knowingly and wilfully proceeds in the carriage beyond such distance without paying the additional fare for the additional distance, or attempts to avoid that payment; or
- 2428 (3) knowingly and wilfully refuses or neglects to quit the carriage on arriving at the point to which he has paid his fare,

is liable to a penalty<sup>1</sup> for every such offence<sup>2</sup>. Any officer or employee of the promoters<sup>3</sup> or lessees<sup>4</sup> of a tramway, and all persons called by him to his assistance, may seize and detain any person discovered either in or after committing or attempting to commit any such offence, and whose name or residence is unknown to that officer or employee, until he can be conveniently taken before a justice or otherwise discharged by due course of law<sup>5</sup>.

1 The penalty must not exceed level 1 on the standard scale: Tramways Act 1870 s 51 (amended by virtue of the Criminal Justice Act 1967 s 92(1), Sch 3 Pt I; and the Criminal Justice Act 1982 ss 38(1), (6), (8), 46(1), (4)). As to the standard scale see PARA 230 note 3 ante. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante.

2 Ibid s 51 (as amended: see note 1 supra). No offence is committed unless there is a fraudulent intention: *Nimmo v Lanarkshire Tramways Co* 1912 SC (J) 23. As to byelaws regulating payment of fares and penalties for non-compliance see PARA 1558 post. As to fares payable see PARA 1556 ante. As to the recovery of penalties see PARA 1572 post.

3 For the meaning of 'promoters' see PARA 1543 note 1 ante.

4 As to lessees see PARA 1567 post.

5 Tramways Act 1870 s 52. As to the liability of the promoters or their lessees for the acts of their employees see PARA 1563 post.

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### **1558. Byelaws.**

Subject to the provisions of the special Act<sup>1</sup> authorising tramways and of the Tramways Act 1870, a local authority<sup>2</sup> may frame byelaws for the regulation of: (1) the speed to be observed

on any tramway in its district<sup>3</sup>; (2) the distances at which carriages using the tramway may be allowed to follow each other<sup>4</sup>; (3) the stopping of those carriages; and (4) the traffic in the road<sup>5</sup> in which the tramway is laid<sup>6</sup>. The promoters<sup>7</sup> of any tramway and their lessees<sup>8</sup> are similarly empowered to make byelaws: (a) for preventing the commission of any nuisance<sup>9</sup> in or upon any carriage or in or against any premises; and (b) for regulating the travelling in or upon any carriage belonging to them<sup>10</sup>. The power to make byelaws with respect to travelling includes the power to make byelaws requiring passengers to pay the proper fare<sup>11</sup> and to produce tickets upon demand<sup>12</sup>. In all cases, however, byelaws must be reasonable and not repugnant to the general law<sup>13</sup>. Any byelaw may impose reasonable penalties for offences against it<sup>14</sup>. There may be further penalties for continuing offences<sup>15</sup>.

1 For the meaning of 'special Act' see PARA 1541 note 9 ante.

2 'Local authority' means in London the Common Council of the City of London and the London borough councils (see the Tramways Act 1870 s 3, Sch A Pt I; the Local Government Act 1888 s 40(8) (repealed); the Local Government Act 1985 Pts I, II (ss 1, 2-17) (as amended); and the Local Law (Greater London Council and Inner London Boroughs) Order 1965, SI 1965/540, art 4(2), Table), and elsewhere a district council in respect of England (see the Tramways Act 1870 s 3, Sch A Pt I; the Municipal Corporations Act 1882 s 242(1), Sch 9; the Local Government Act 1933 ss 31, 32 (repealed); and the Local Government Act 1972 ss 1, 179(3)) and a principal council in respect of Wales (see the Local Government Act 1972 s 20 (substituted by the Local Government (Wales) Act 1994 s 1(1))). As to local authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; as to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq; and as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

3 'District' in relation to a local authority (see note 2 supra) or a road authority (see PARA 1543 note 5 ante) means the area within the authority's jurisdiction: Tramways Act 1870 s 3.

4 A local authority having constructed tramways may be compelled by judicial review to comply with its local Act and make byelaws specifying the distance between which tramcars should follow one another: see *R v Manchester Corp* [1911] 1 KB 560, DC.

5 For the meaning of 'road' see PARA 1543 note 3 ante.

6 Tramways Act 1870 s 46. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante. As to excessive numbers of passengers see *Badcock v Sankey* (1890) 54 JP 564, DC.

7 For the meaning of 'promoters' see PARA 1543 note 1 ante.

8 As to lessees see PARA 1567 post.

9 See eg *Gentel v Rapps* [1902] 1 KB 160, DC, where a byelaw against offensive language was upheld. As to nuisance see further NUISANCE.

10 Tramways Act 1870 s 46. Local authorities and promoters may repeal or alter byelaws and may make new ones provided that they are not repugnant to the law: see s 46. For other powers to make byelaws see eg *Hartley v Wilkinson* (1885) 49 JP 726, DC; *Hunt v Green* (1906) 96 LT 23, DC.

11 See eg *Egginton v Pearl* (1875) 33 LT 428, DC (fare payable on demand); *Tuffley v Tate* (1906) 96 LT 24, DC (liability to pay excess fare on demand); *Bastable v Metcalfe* [1906] 2 KB 288, DC (liability to pay further fare where journey broken). Byelaws may require a passenger who loses his ticket to pay again or get off: *Hanks v Bridgman* [1896] 1 QB 253, DC; *Hunt v Green* (1906) 96 LT 23, DC.

12 *Heap v Day* (1886) 51 JP 213, DC; *Lowe v Volp* [1896] 1 QB 256, DC. Cf *Wilson v Fearnley* (1905) 92 LT 647, DC, where a passenger who left a ticket on the floor and would not pick it up was held not to have offended against the byelaws.

13 See note 9 supra; and LOCAL GOVERNMENT vol 69 (2009) PARA 553 et seq. In *London Passenger Transport Board v Sumner* (1935) 154 LT 108, DC, a byelaw which made failure to pay the fare an offence irrespective of whether there was an intent to avoid payment was held to be invalid as being unreasonable and repugnant. See also *Lowe v Volp* [1896] 1 QB 256 at 259, DC, where Kay J was of the opinion that a byelaw could not create an offence of fraudulent travel without intent to avoid payment. As to reasonableness see *Apthorpe v Edinburgh Street Tramways Co* (1882) 10 R 344, Ct of Sess; and the cases cited in note 10 supra. As to the construction of



byelaws whereby the reasonable meaning of any particular byelaw must be put upon it see *Stokell v Baldwin* (1892) 8 TLR 346, DC.

14 Tramways Act 1870 s 47 (amended by virtue of the Criminal Justice Act 1967 s 92(2), Sch 3 Pt II; the Decimal Currency Act 1969 s 10(1); and the Criminal Justice Act 1982 ss 40(1), (5), (8), 46(1), (4)). The penalties must not exceed level 1 on the standard scale: see the Tramways Act 1870 s 47 (as so amended). As to the standard scale see PARA 230 note 3 ante. All byelaws must be so framed as to allow in every case part only of the maximum penalty to be ordered to be paid: s 47 (as so amended). As to offences involving non-payment of fares see PARA 1557 ante.

15 Ibid s 47. The penalties must not exceed 50 pence per day: see s 47.

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### **1559. Procedure for making byelaws.**

Notice of the making of byelaws, made either by local authorities<sup>1</sup> or by the promoters<sup>2</sup> or their lessees<sup>3</sup>, must be published by the insertion of an advertisement within one month of the making of the byelaw at least once in each of two successive weeks in a newspaper published in the district<sup>4</sup> affected by the byelaw and at least once in the London Gazette<sup>5</sup>. A copy of every proposed byelaw must also be sent to the Secretary of State not less than two calendar months before it will come into operation, and if made by the local authority, must be delivered to the promoters, and, if made by the promoters, to the local authority<sup>6</sup>. No byelaw which has been disallowed by the Secretary of State within the two calendar months after it has been laid before him is of any effect<sup>7</sup>.

1 For the meaning of 'local authority' see PARA 1558 note 2 ante.

2 For the meaning of 'promoters' see PARA 1543 note 1 ante.

3 As to lessees see PARA 1567 post.

4 For the meaning of 'district' see PARA 1558 note 3 ante.

5 Tramways Act 1870 s 46, Sch C Pt II, which also makes provision for a case where there is no such local newspaper. Unless notice is so published, the Secretary of State must disallow the byelaw: s 46. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante. As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 Ibid s 46.

7 Ibid s 46.

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### **1560. Dangerous goods.**

No person is entitled to carry or require to be carried any goods of a dangerous nature<sup>1</sup> on any tramway, and any person sending any such goods by any tramway without distinctly marking their nature on the outside of the package containing them, or otherwise giving written notice to the bookkeeper or other employee with whom they are left at the time of their sending, is liable to a fine<sup>2</sup> for every such offence<sup>3</sup>. The promoters<sup>4</sup> or their lessees may also refuse to take any parcel which they suspect to contain goods of a dangerous nature, or may require it to be opened to ascertain the fact<sup>5</sup>.

1 There is no definition in the Tramways Act 1870 of 'dangerous goods', and it would appear that the expression means goods which are declared by the promoters to be dangerous: cf *North Eastern Rly Co v Reckitt & Sons Ltd* (1913) 109 LT 327 at 332-333 per Bankes LJ.

2 le a fine not exceeding level 2 on the standard scale: see the Tramways Act 1870 s 53 (amended by virtue of the Criminal Law Act 1977 s 31(5), (6)(b), (9); and the Criminal Justice Act 1982 s 46(1), (4)). As to the standard scale see PARA 230 note 3 ante. As to recovery of penalties see PARA 1572 post. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante.

3 Ibid s 53 (as amended: see note 2 supra). As to the carriage of dangerous goods generally see CARRIAGE AND CARRIERS vol 7 (2008) PARA 105 et seq.

4 For the meaning of 'promoters' see PARA 1543 note 1 ante.

5 Tramways Act 1870 s 53.

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### **1561. Obstruction of operation.**

It is an offence, punishable by a fine<sup>1</sup>, for any person without lawful excuse (the proof of which lies on him) wilfully to interfere with, remove or alter any part of a tramway or its works, to place or throw any material on any part of a tramway, to do or cause to be done anything in such manner as to obstruct any carriage using a tramway or to endanger the lives of people on it or in it, or knowingly to aid or assist in doing any such thing<sup>2</sup>.

Other road users must pay due regard to the presence of the tramway<sup>3</sup>.

1 The fine must not exceed level 1 on the standard scale: see the Tramways Act 1870 s 50 (amended by virtue of the Criminal Law Act 1977 s 31(5), (6)(b), (9); and the Criminal Justice Act 1982 s 46(1), (4)). See note 2 infra. As to the standard scale see PARA 230 note 3 ante. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante.

2 Ibid s 50 (as amended: see note 1 supra). This liability is expressed to be in addition to any proceedings by way of indictment or otherwise to which the person may be subject. It is submitted that this does not make the offence under discussion an offence triable either way, and accordingly the £5 penalty referred to in the Tramways Act 1870 is increased as stated in note 1 supra.

3 See *Hartley v Chadwick* (1904) 68 JP 512, DC; and PARA 1563 text and note 16 post. As to unauthorised user of tramways see PARA 1555 note 6 ante.

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#### **(iv) Rights and Liabilities of Promoters**

##### **1562. Rights of promoters.**

The promoters<sup>1</sup> of a tramway authorised by special Act<sup>2</sup> have a right to interfere with public highways by laying down and maintaining tramways upon them<sup>3</sup>, and they and their lessees have an exclusive right to use upon that tramway carriages with flange wheels<sup>4</sup>. These rights are rights of user only<sup>5</sup>. The user must in no way interfere with or limit the rights of any owner or lessee or occupier of mines or minerals lying under or adjacent to any road<sup>6</sup> along or across which the tramway is laid to work the mines or minerals, nor is the owner, lessee or occupier liable to make good or pay compensation for damage to the tramway occasioned by the ordinary working of the mines or minerals<sup>7</sup>. The rights of the promoters in no way affect the powers of road authorities<sup>8</sup>, or of the owners, commissioners or undertakers or lessees of railways, tramways or inland navigations with respect to widening, altering, diverting or improving any road, railway, tramway or inland navigation<sup>9</sup>, or of local or police authorities with respect to the regulation of traffic<sup>10</sup>, or the right of the public to pass along or across any part of a road on which a tramway is laid, whether on or off the tramway, with carriages not having flange wheels or wheels suitable only to run on the rails<sup>11</sup>.

1 For the meaning of 'promoters' see PARA 1543 note 1 ante.

2 For the meaning of 'special Act' see PARA 1541 note 9 ante.

3 Temporary rails may not be laid while an authorised tramway is being modified unless the laying of such rails is within the powers of the special Act authorising the modification: *T Tilling Ltd v Dick, Kerr & Co Ltd* [1905] 1 KB 562.

4 *Edinburgh Street Tramways Co v Edinburgh Corp'n* [1894] AC 456 at 463, HL, per Lord Herschell LC. See also the Tramways Act 1870 s 34; and PARA 1555 ante. These rights may be transferred from the promoters to the local authority under s 43 (see PARA 1565 post), or to the local authority or other body under s 44 (see PARA 1566 post). They cannot be transferred in any other way, and consequently are not rights in the nature of a commercial asset: *Edinburgh Street Tramways Co v Edinburgh Corp'n* supra; *London Street Tramways Co v LCC* [1894] AC 489, HL. See also PARA 1566 post.

5 Tramways Act 1870 s 57. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante. Under the provisional order procedure (now repealed: see PARA 1533 ante), it was not possible for a provisional order to include a power to acquire land compulsorily (s 8 (repealed)), although such a power may be conferred by special Act. Although the rights are of user only, as this right is exclusive the promoters are regarded as occupiers of land for rating purposes: *Pimlico Tramway Co v Greenwich Union* (1873) LR 9 QB 9; and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARAS 27, 103.

6 For the meaning of 'road' see PARA 1543 note 3 ante.

7 Tramways Act 1870 s 59. As to damage to roads caused by the working of minerals see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 41. As to subsidence generally see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 184 et seq. See also PARA 1593 note 9 post.

8 For the meaning of 'road authority' see PARA 1543 note 5 ante.

9 Tramways Act 1870 s 60. As to the rights of road authorities see *Bristol Tramways and Carriage Co v Bristol Corp'n* (1890) 25 QBD 427, CA. Such rights may, however, in certain circumstances be regulated by the New Roads and Street Works Act 1991: see PARA 1598 et seq post; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 406 et seq.

10 Tramways Act 1870 s 61. As to traffic regulation see PARA 1624 post.

11 Ibid s 62.

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### **1563. Liabilities of promoters.**

The promoters<sup>1</sup> of a tramway or their lessees<sup>2</sup> are liable for all accidents, damages and injuries caused by the act or default<sup>3</sup> of themselves or their employees by reason or in consequence of any of their works or carriages<sup>4</sup>, and they are required to save harmless all road<sup>5</sup> and other authorities, companies or bodies, collectively and individually, and their officers and employees, from all damages and costs in respect of such accidents, damages and injuries<sup>6</sup>. A tramway company will not be liable in an action for nuisance<sup>7</sup>, or under the rule in *Rylands v Fletcher*<sup>8</sup>, in respect of acts properly done in the exercise of its statutory powers<sup>9</sup>.

A tramway company and its employees must take proper steps to ensure the safety of passengers<sup>10</sup> both by ensuring that the condition of the tramway<sup>11</sup> and carriages<sup>12</sup> is as safe as reasonable care and skill can make them<sup>13</sup> and by driving and managing the carriages with due regard to the safety of passengers<sup>14</sup>. Moreover, carriages must be driven with due regard to the safety of other road users<sup>15</sup>, but other road users must pay due regard to the presence of the tramway<sup>16</sup>. A tramway company will be liable for wrongful acts, such as assault or malicious prosecution<sup>17</sup>, committed by employees acting within the scope of their authority<sup>18</sup>. An employee of a tramway company ordinarily has the authority to exclude from a carriage passengers who are drunk<sup>19</sup> or who do not pay the fare<sup>20</sup>, and to arrest or cause the arrest of passengers for certain offences<sup>21</sup>, but not to punish offenders<sup>22</sup>.

1 For the meaning of 'promoters' see PARA 1543 note 1 ante.

2 As to lessees see PARA 1567 post.

3 'Act or default' means wrongful act or default, and there is no liability for inevitable accident: *Brocklehurst v Manchester, Bury, Rochdale and Oldham Steam Tramways Co* (1886) 17 QBD 118, DC.

4 See eg *Sadler v South Staffordshire and Birmingham District Steam Tramways Co* (1889) 23 QBD 17, CA (where promoters were held liable as for trespass where a tramcar derailed and injured the plaintiff, who was on the highway); *Goldberg & Son Ltd v Liverpool Corp'n* (1900) 82 LT 362, CA (as to reasonableness in placing overhead line supports).

5 For the meaning of 'road authority' see PARA 1543 note 5 ante.

6 Tramways Act 1870 s 55. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante. Section 55 declares who is liable when there is liability; it does not create liability: *Brocklehurst v Manchester, Bury, Rochdale and Oldham Steam Tramways Co* (1886) 17 QBD 118, DC.

7 See NUISANCE vol 78 (2010) PARAS 188, 192.

8 See *Rylands v Fletcher* (1868) LR 3 HL 330; and NUISANCE vol 78 (2010) PARAS 148, 154.

9 *National Telephone Co v Baker* [1893] 2 Ch 186; *Goldberg & Sons Ltd v Liverpool Corp'n* (1900) 82 LT 362, CA. See also *Eastern and South African Telegraph Co Ltd v Cape Town Tramways Companies Ltd* [1902] AC 381, PC. The statutory powers were held to have been exceeded in *West v Bristol Tramways Co* [1908] 2 KB 14, CA. As to acts done ultra vires see JUDICIAL REVIEW vol 61 (2010) PARA 610 et seq.

10 For the general principles relating to the duty of care owed to passengers by a common carrier of passengers such as a tramway company see CARRIAGE AND CARRIERS vol 7 (2008) PARA 39 et seq.

11 See *Sadler v South Staffordshire and Birmingham Steam Tramways Co* (1889) 23 QBD 17, CA; and note 3 supra. The tramway company may have a remedy against the contractor: *City of Birmingham Tramways Co v Law* [1910] 2 KB 965. As to the liability of a tramway company to other road users for failure to repair the tramway see PARA 1547 ante.

12 See *Clarke v West Ham Corpn* [1909] 2 KB 858, CA; *Newberry v Bristol Tramways and Carriage Co Ltd* (1912) 107 LT 801, CA.

13 *Newberry v Bristol Tramways and Carriage Co Ltd* (1912) 107 LT 801, CA. See also *Hood v Walthamstow UDC* (1915) 79 JP Jo 161, CA. As to liability for breach of statutory duty see *Clarke v West Ham Corpn* [1909] 2 KB 858, CA; and STATUTES vol 44(1) (Reissue) PARA 1361.

14 Lack of due care may consist in failing to stop when requested or starting off before a passenger has time to board or alight: see eg *Hall v London Tramways Co Ltd* (1896) 12 TLR 611, CA; *Pickering v Belfast Corpn* [1911] 2 IR 224, Ir CA. It is the duty of the conductor by standing on the platform or otherwise to ensure if possible that such an event does not occur: see *Hall v London Tramways Co Ltd* supra; *Watt v Glasgow Corpn* 1919 SC 300; *Wagner v West Ham Corpn* (1920) 37 TLR 86, where negligence was not established; *Steel v Belfast Corpn* [1920] 2 IR 125, Ir CA; *Gray v Glasgow Corpn* 1926 SC 967, where negligence was not established; *Davies v Liverpool Corpn* [1949] 2 All ER 175, CA. The passenger may be guilty of contributory negligence (eg in standing on the step): see eg *Jude v Edinburgh Corpn* 1943 SC 399, Ct of Sess; and NEGLIGENCE vol 78 (2010) PARA 75 et seq. For other cases on accidents involving passengers see *Ross v Glasgow Corpn* 1919 SC 174 (nervous shock too remote in all the circumstances); *Callen v Dublin United Tramways Co (1896) Ltd* [1920] 2 IR 63, Ir CA. The duty of care extends to goods carried by passengers: see *Rosenthal v LCC* (1924) 131 LT 563.

15 See NEGLIGENCE vol 78 (2010) PARA 53 et seq. See also *M'Dermid v Edinburgh Street Tramways Co* 1884 22 Sc LR 13; *Martin v North Metropolitan Tramways Co* (1887) 3 TLR 600, CA; *Rattee v Norwich Electric Tramway Co* (1902) 18 TLR 562, CA; *Hartley v Chadwick* (1904) 68 JP 512, DC; *Leaver v Pontypridd UDC* (1911) 76 JP 31, HL; *Milliken v Glasgow Corpn* 1918 SC 857; *Taylor v Dumbarton Tramways Co Ltd* 1918 SC (HL) 96; *Lynam v Dublin United Tramways Co (1896) Ltd* [1919] 2 IR 445, Ir CA; *Craig v Glasgow Corpn* (1919) 35 TLR 214, HL; *Owens v Liverpool Corpn* [1939] 1 KB 394, [1938] 4 All ER 727, CA.

16 *Hartley v Chadwick* (1904) 68 JP 512, DC. As to contributory negligence (eg in crossing the road) see *Cass v Edinburgh and District Tramways Co Ltd* 1909 SC 1068; and NEGLIGENCE vol 78 (2010) PARA 75 et seq. As to the duty of care for vehicles following tramcars and overtaking them see *Ramsay v Thomson & Sons* (1881) 9 R 140, Ct of Sess (where it was held that a tramcar may be overtaken on the nearside, but that care must be taken for alighting passengers); *Jardine v Stonefield Laundry Co* (1887) 14 R 839, Ct of Sess.

17 See *Rayson v South London Tramways Co* [1893] 2 QB 304, CA; and TORT vol 45(2) (Reissue) PARAS 460, 466.

18 See TORT vol 45(2) (Reissue) PARA 819.

19 *Delaney v Dublin United Tramway Co* (1892) 30 LR Ir 725, Ir CA.

20 *Smith v North Metropolitan Tramway Co* (1891) 55 JP 630, CA; *Hutchins v LCC* (1915) 85 LJB 1177, HL; *Whittaker v LCC* [1915] 2 KB 676, DC. The authority of the employee is not limited to arrest (see PARA 1557 ante) under the Tramways Act 1870 s 52: see *Whittaker v LCC* supra. As to the fares payable see PARA 1556 ante; and as to the offence of failure to pay fares see PARA 1557 ante. Byelaws may regulate the payment of fares: see the cases cited in PARA 1558 notes 11-12 ante.

21 Eg for offences under the Tramways Act 1870 s 51 (as amended): see s 52; and *Furlong v South London Tramways Co* (1884) 48 JP 329; *Percy v Glasgow Corpn* [1922] 2 AC 299, HL. Cf *Charleston v London Tramways Co* (1888) 4 TLR 629, CA; *Knight v North Metropolitan Tramways Co* (1898) 78 LT 227. It seems that the power of detention given by the Tramways Act 1870 s 52 is limited to an employee appointed by the promoters to exercise it: see *Charleston v London Tramways Co* (1887) 36 WR 367, DC.

22 *Radley v LCC* (1913) 109 LT 162, DC.

1663)/18. TRAMWAYS/(2) TRAMWAYS ACT 1870/(iv) Rights and Liabilities of Promoters/1564. Discontinuance and insolvency.

### **1564. Discontinuance and insolvency.**

The former powers which enabled a local authority to acquire the whole or part of a tramway undertaking in the event of its discontinuance<sup>1</sup> or in the event of the insolvency of the promoters of the undertaking<sup>2</sup> have been repealed<sup>3</sup>.

Certain special Acts, in relation to the closure of the whole or part of the undertakings authorised by such Acts, have applied, with or without modification, railway enactments governing the procedure for closing parts of railway undertakings<sup>4</sup>. However, these provisions have ceased to have effect<sup>5</sup>.

A tramway company incorporated by special Act<sup>6</sup> can be wound up under the Insolvency Act 1986 as an unregistered company<sup>7</sup>. In the past, such companies have sometimes been dissolved by special Act<sup>8</sup>.

1 See the Tramways Act 1870 s 41. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante.

2 See *ibid* s 42.

3 Transport and Works Act 1992 ss 65(1)(b), 68(1), Sch 4 Pt I.

4 The relevant enactments are the Transport Act 1962 ss 56(7)-(10), (13), 56A (repealed); and the Transport Act 1968 s 54 (as amended).

5 See the Railways Act 1993 s 49(1)(d) (repealed by the Railways Act 2005 s 59(6), Sch 13 Pt 1).

6 For the meaning of 'special Act' see PARA 1541 note 9 ante.

7 See the Insolvency Act 1986 Pt V (ss 220-229) (as amended). As to the winding up of unregistered companies see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1147 et seq.

8 See eg the South Wales Transport Act 1959, which provided for the closure of the Oystermouth and Mumbles railway and the dissolution of Swansea and Mumbles Railways Ltd and the Mumbles Railway and Pier Co.

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### **(v) Alienation of Powers and Interests**

#### **1565. Compulsory sale.**

Where the promoters<sup>1</sup> of a tramway in any district<sup>2</sup> are not the local authority<sup>3</sup>, that authority may, by written notice with the approval of the Secretary of State<sup>4</sup>, require the promoters to sell their undertaking<sup>5</sup>, or so much of it as is within that district, within six months after the expiration of 21 years from the time when they were empowered to construct it, and within six months after the expiration of every subsequent period of seven years<sup>6</sup>. However, the purchase may only be made if the local authority has decided to effect it by resolution passed at a special meeting of which a month's previous notice has been given in the manner in which

those notices are usually given, and at which two-thirds of the members are present and vote, and a majority of those present and voting concur in the resolution<sup>7</sup>.

The local authority must pay the then value of the tramway, exclusive of any allowance for past or future profits or any compensation for compulsory sale or other consideration whatsoever, and of all land, buildings, works, materials and plant of the promoters of the undertaking<sup>8</sup>, the value being determinable in case of difference by a referee<sup>9</sup> nominated by the Secretary of State on the application of either party, and the expenses of the reference being borne and paid as the referee directs<sup>10</sup>. The local authority may pay the purchase money and all expenses incurred by it in the purchase of any undertaking under this provision, and has like powers to borrow, as if such expenses were incurred in applying for, obtaining and carrying into effect a provisional order obtained by it under the Tramways Act 1870<sup>11</sup>.

When any such sale has been made, all the rights, powers and authorities of the promoters in respect of the undertaking are transferred to and vested in, and may be exercised by, the purchasing authority as if the tramway were constructed by it under a provisional order<sup>12</sup>, and it is deemed to be the promoter in reference to that order<sup>13</sup>. Subject to these provisions, two or more local authorities may jointly purchase any undertaking or so much of it as is within their districts<sup>14</sup>.

1 For the meaning of 'promoters' see PARA 1543 note 1 ante. For the purpose of statutory provisions regarding the disposal of tramways, 'promoters' may include the assigns of promoters: *Hartlepool Electric Tramways Co Ltd v Hartlepool Corpn* (1911) 75 JP 537, CA; *Llandudno UDC v Great Orme Rly Ltd* [1948] 2 All ER 782.

2 For the meaning of 'district' see PARA 1558 note 3 ante.

3 For the meaning of 'local authority' see PARA 1558 note 2 ante.

4 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 A power to purchase a tramway is not affected by its incorporation by statute into one undertaking with other tramways in respect of which no power to purchase had arisen: *North Metropolitan Tramways Co v LCC* (1895) 60 JP 23, CA.

6 Tramways Act 1870 s 43. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante. A power to purchase within 15 years of construction is not inconsistent with, and does not exclude, the enactment: *Wallasey United Tramways and Omnibus Co v Wallasey UDC* (1900) 17 TLR 152, HL. The former powers enabling a local authority to acquire a tramway undertaking in the event of its discontinuance (conferred by the Tramways Act 1870 s 41) or the insolvency of its promoters (conferred by s 42) have been repealed: see the Transport and Works Act 1992 ss 65(1)(b), 68(1), Sch 4 Pt I; and see further PARA 1564 ante.

7 Tramways Act 1870 s 43.

8 Ie including the whole value of plant etc used by promoters partly for the purposes of the tramways purchased and partly for the purposes of their lease of other tramways already owned by the local authority: *Re Manchester Carriage and Tramways Co Ltd and Manchester Corpn* (1902) 87 LT 504; on appeal (1903) 19 TLR 439, CA. Buildings outside the district of the local authority may also be included: *Manchester Carriage and Tramways Co Ltd v Swinton and Pendlebury UDC* [1906] AC 277, HL.

9 The referee must be an engineer or other fit person: Tramways Act 1870 s 43.

10 Ibid s 43. The basis of valuation is the value of the tramway as successfully constructed in complete working condition after deduction of a proper sum for depreciation, but without taking into account rights of user: *Edinburgh Street Tramway Co v Edinburgh Corpn* [1894] AC 456, HL; *London Street Tramways Co v LCC* [1894] AC 489, HL. Alternatively the basis of valuation is what it would cost the local authority to construct the tramway at the date of acquisition, including the cost of obtaining parliamentary powers (*Re Manchester Carriage and Tramways Co Ltd and Ashton-under-Lyne Corpn* (1904) 68 JP 576), but no regard should be had to a practice arising after the construction of the tramway under which the promoters were obliged to contribute to the cost of street widening (*London, Deptford and Greenwich Tramways Co v LCC* [1905] 1 KB 316). See also *North Metropolitan Tramways Co v Leyton UDC* (1908) 98 LT 792, CA; *Oldham, Ashton and Hyde Electric Tramways Ltd v Ashton Corpn* [1921] 3 KB 511, CA. The principle of compensation on statutory acquisition of

undertakings is further illustrated by *Melbourne Tramway and Omnibus Co Ltd v Tramway Board* [1919] AC 667, PC; *Toronto City Corp v Toronto Rly Corp* [1925] AC 177, PC; *International Rly Co v Niagra Parks Commission* [1937] 3 All ER 181, PC.

- 11 Tramways Act 1870 s 43.
- 12 As to provisional orders see PARAS 1533, 1540 ante.
- 13 Tramways Act 1870 s 43.
- 14 Ibid s 43.

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### **1566. Voluntary sale.**

Where a tramway has been operated in any district<sup>1</sup> for a period of six months, the promoters<sup>2</sup>, with the consent of the Secretary of State<sup>3</sup>, may sell their undertaking to any person, persons, corporation or company, or, provided that the purchase has been approved by a resolution passed at a special meeting under conditions similar to those as to compulsory sale<sup>4</sup>, to a local authority<sup>5</sup>. After the sale, all the rights, powers, authorities, obligations and liabilities of the promoters are transferred to and exercisable by the purchasers in the same manner as if the tramway had been constructed by them under the powers conferred by special Act<sup>6</sup>, and with reference to that Act they are deemed to be the promoters<sup>7</sup>. When the purchase is made by a local authority, that authority has the same powers and is subject to the same conditions as in the case of a compulsory sale<sup>8</sup>.

- 1 For the meaning of 'district' see PARA 1558 note 3 ante.
- 2 For the meaning of 'promoters' see PARA 1543 note 1 ante.
- 3 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. Consent may be expressed by documents recognising the rights of transferees: *Hartlepool Electric Tramways Co v Hartlepool Corp* (1911) 75 JP 537, CA.
- 4 See PARA 1565 ante.
- 5 Tramways Act 1870 s 44. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante. For the meaning of 'local authority' see PARA 1558 note 2 ante. This power of sale is not exercisable by or on behalf of debenture holders: see *Marshall v South Staffordshire Tramways Co* [1895] 2 Ch 36, CA.
- 6 For the meaning of 'special Act' see PARA 1541 note 9 ante.
- 7 Tramways Act 1870 s 44. See also *Llandudno UDC v Great Orme Rly Ltd* [1948] 2 All ER 782.
- 8 Tramways Act 1870 s 44 (amended by the Local Government Act 1933 ss 307, 308, Sch 11 Pt IV). As to compulsory sale see PARA 1565 ante.

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1663)/18. TRAMWAYS/(2) TRAMWAYS ACT 1870/(v) Alienation of Powers and Interests/1567. Power to work tramway.

### **1567. Power to work tramway.**

Nothing in the Tramways Act 1870 authorises any local authority<sup>1</sup> to place carriages and run them upon, or demand tolls and charges for the use of, a tramway constructed or acquired<sup>2</sup> by it<sup>3</sup>, but this power may be given by special provisions in a special Act<sup>4</sup> (or previously by a provisional order<sup>5</sup>). The power conferred by the Tramways Act 1870 on a local authority to lease a tramway, or to leave the tramway open to be used by the public, demanding and taking tolls and charges, has ceased to have effect<sup>6</sup>. However, the Transport and Works Act 1992 confers on any person authorised by or under an enactment to operate a tramway which was in operation at the date of passing of that Act<sup>7</sup> power, with the consent of the Secretary of State<sup>8</sup>, to grant the right to operate that tramway (or any part of it), together with any related statutory rights as may be agreed, to another person<sup>9</sup>. The terms of any agreement so made are subject to the approval of the Secretary of State<sup>10</sup>; and references in any enactment to the person granting the rights, if and to the extent that the agreement so provides, have effect as references to the person on whom the rights are conferred by the agreement<sup>11</sup>.

1 For the meaning of 'local authority' see PARA 1558 note 2 ante.

2 As to the acquisition of tramways see PARAS 1565-1566 ante.

3 See the Tramways Act 1870 s 19 (repealed).

4 For the meaning of 'special Act' see PARA 1541 note 9 ante. Parliamentary powers to run tramways conferred upon local authorities are, however, strictly construed: see *LCC v A-G* [1902] AC 165, HL (where a power to run tramways was held not to include a power to run omnibuses even though the tramway undertaking which had been acquired had such powers). See also *A-G v Manchester Corp* [1906] 1 Ch 643; *A-G v Mersey Rly Co* [1907] AC 415, HL; *A-G v Leeds Corp* [1929] 2 Ch 291.

5 As to provisional orders see PARAS 1533, 1540 ante.

6 Transport and Works Act 1992 s 65(1)(b).

7 *Ibid* s 60(4). The date on which the Act was passed was 16 March 1992.

8 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

9 Transport and Works Act 1992 s 60(1).

10 *Ibid* s 60(2).

11 *Ibid* s 60(3).

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### **1568. Grant of licences to use tramway.**

If, at any time after a tramway or part of a tramway has been opened for public traffic in any district<sup>1</sup>, on the written representation of the local<sup>2</sup> or road<sup>3</sup> authority or of twenty ratepayers in the district it is proved to the satisfaction of the Secretary of State<sup>4</sup> that the public is deprived

of the full benefit of any tramway, he may grant a licence, if necessary after inquiry by a referee<sup>5</sup>, to any company or person to use the tramway in addition to the promoters<sup>6</sup> for such traffic as is authorised by the special Act<sup>7</sup>, with carriages to be approved by him<sup>8</sup>.

1 For the meaning of 'district' see PARA 1558 note 3 ante.

2 For the meaning of 'local authority' see PARA 1558 note 2 ante.

3 For the meaning of 'road authority' see PARA 1543 note 5 ante.

4 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 The referee must hold an inquiry in accordance with the Tramways Act 1870 s 63. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante. An inquiry under s 63 must be held in public and the referee must be appointed in writing by the Secretary of State: s 63 para 1. The referee must give ten days' notice of the inquiry to the parties on whose representation the inquiry was directed (s 63 para 2), and may summon witnesses, who may be examined on oath (see s 63 paras 4-6) (s 63 para 4 amended by the Criminal Law Act 1977 s 31(6); and by virtue of the Criminal Justice Act 1982 ss 37, 46). The referee may adjourn the inquiry (Tramways Act 1870 s 63 para 3), and on its conclusion must report in writing to the Secretary of State and, on request, to the parties (s 63 para 7). Such an inquiry will not be restrained on the application of the liquidator of a company which had operated a tramway but had not acquired it under s 44 (see PARA 1566 ante): *Re Pontypridd and Rhondda Valley Tramways Co Ltd* (1889) 58 LJ Ch 536.

6 For the meaning of 'promoters' see PARA 1543 note 1 ante.

7 For the meaning of 'special Act' see PARA 1541 note 9 ante.

8 Tramways Act 1870 s 35.

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### **1569. Terms of licences.**

A licence to use a tramway<sup>1</sup> may be for any period not less than one nor more than three years, and must be to use the whole of the tramway open for public traffic, or such part or parts as the Secretary of State<sup>2</sup> thinks right<sup>3</sup>. The licence must specify the number of carriages, the mode in which and the times at which they are to be run, and the tolls to be paid for the use of the tramway by the licensee, who must permit one person, duly authorised for that purpose by the promoters<sup>4</sup> or their lessees<sup>5</sup>, to ride free of charge upon each of the licensee's carriages run upon the tramway for the whole or any part of the journey<sup>6</sup>.

1 See PARA 1568 ante.

2 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 Tramways Act 1870 s 35 paras 1, 2. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante.

4 For the meaning of 'promoters' see PARA 1543 note 1 ante.

5 As to the power to lease a tramway see PARA 1567 ante.

6 See the Tramways Act 1870 s 35 paras 3-5. The Secretary of State may at any time revoke, alter or modify any licence for good cause shown to him (s 35 para 6), and may renew a licence (s 35 para 1).

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### **1570. Rights of promoters under a licence.**

On failure by the licensee to pay the tolls due in respect of passengers carried in any carriage, the promoters<sup>1</sup> may sell the carriage, or, if it be removed from the tramway or premises, any other carriage on the tramway or premises, retaining the amounts payable and the charges and expenses of the sale out of the money arising from the sale, and rendering any surplus, and such carriages as remain unsold, to the person entitled<sup>2</sup>. The promoters may also require the licensee to give a written account of the number of passengers to an officer authorised by them<sup>3</sup>, and any licensee who fails to do so, or with intent to avoid payment gives a false account, is liable to a penalty<sup>4</sup> in addition to any tolls payable in respect of any passengers carried<sup>5</sup>.

Licensees are also liable for any trespass or damage done by their carriages, horses or employees to or upon the promoters' tramway or to the property of any other person<sup>6</sup>.

1 For the meaning of 'promoters' see PARA 1543 note 1 ante.

2 Tramways Act 1870 s 36. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante.

3 Ibid s 37.

4 The penalty must not exceed level 2 on the standard scale: see ibid s 38 (amended by the Criminal Law Act 1977 s 31(5), (6)(a), (9); and by virtue of the Criminal Justice Act 1982 s 46(1), (4)). As to the standard scale see PARA 230 note 3 ante.

5 Tramways Act 1870 s 38 (as amended: see note 4 supra). As to the recovery of tolls see PARA 1571 post; and as to the recovery of penalties see PARA 1572 post. Disputes as to the amount of tolls or the charges incident to any detention or sale of carriages are settled by two justices or a stipendiary magistrate: see ss 3, 39.

6 Ibid s 40. Without prejudice to the right of action against the licensee, any of his employees may be convicted summarily of such trespass or damage; and on such conviction the licensee must pay to the promoters, lessees or persons injured the damage ascertained by the justices, not exceeding £50: s 40. As to trespass see TORT vol 45(2) (Reissue) PARA 425 et seq.

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### **(vi) Miscellaneous**

#### **1571. Recovery of charges.**

All tolls and charges under the Tramways Act 1870 or any byelaw made in pursuance of the Act may be recovered and enforced summarily<sup>1</sup>. The power to make byelaws enables byelaws to be made requiring passengers to pay the proper fares<sup>2</sup>, and a byelaw may impose a reasonable penalty for an offence against it<sup>3</sup>.

1 Tramways Act 1870 ss 3, 56 (s 3 amended by the Access to Justice Act 1999 s 106, Sch 15 Pt V). The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante.

2 See PARA 1558 ante.

3 See the Tramways Act 1870 s 47 (as amended); and PARA 1558 ante. There is also a specific penalty for non-payment of fares: see s 51 (as amended); and PARA 1557 ante.

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### **1572. Recovery of penalties.**

All penalties under the Tramways Act 1870, or under any byelaws<sup>1</sup> made in pursuance of that Act, may be recovered and enforced summarily<sup>2</sup>.

1 As to the power to make byelaws see PARAS 1558-1559 ante.

2 See the Tramways Act 1870 ss 3, 56. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante. As to summary procedure see MAGISTRATES.

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### **1573. Power to make rules.**

The Secretary of State<sup>1</sup> may from time to time make, rescind, annul, or add to, rules with respect to any matter or thing in respect of which it may be expedient to make rules for the purpose of carrying the Tramways Act 1870 into execution<sup>2</sup>. Any rules so made are to be laid before Parliament<sup>3</sup>.

1 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 See the Tramways Act 1870 s 64. The Tramways Act 1870 has been largely repealed except to the extent that it is incorporated in, or otherwise applied by, any Act of Parliament or provisional order: see PARAS 1535, 1541 ante.

3 Ibid s 64. Rules under s 64 were made by the Board of Trade in January 1892: see SR & O Rev 1948 XXIII p 263.

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### **(3) LIGHT RAILWAYS ACT 1896**

#### **(i) General Statutory Position**

##### **1574. Authorisation of light railways.**

With the repeal of the relevant provisions of the Regulation of Railways Act 1868<sup>1</sup> and of the Light Railways Act 1896<sup>2</sup>, it is no longer possible to authorise the construction or operation of a light railway by means of a licence issued under the former Act or by means of an order made under the latter Act. The normal method of obtaining statutory authority for what previously would have been described as a light railway is now by means of an order made under Part I of the Transport and Works Act 1992<sup>3</sup>, but an application for a system of rail transport under that Act must be in respect of a railway<sup>4</sup>, a tramway<sup>5</sup>, a trolley vehicle system<sup>6</sup>, or some other prescribed mode of guided transport<sup>7</sup>, as it is not possible under that Act to secure statutory authority for a new light railway. The procedure under the Transport and Works Act 1992 is also applicable in respect of cases where an amendment or modification to, or a revocation of, an existing light railway order is required<sup>8</sup>.

1 See the Regulation of Railways Act 1868 ss 27, 28 (repealed). As to railways see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

2 See the Light Railways Act 1896 (and amending enactments, the Light Railways Act 1912 and the Railways Act 1921 ss 68, 69, 71, 73, 74) (repealed).

3 See PARA 1586 post.

4 Transport and Works Act 1992 s 1(1)(a). See RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 302. For the meaning of 'railway' see PARA 1537 note 2 ante.

5 Ibid s 1(1)(b). For the meaning of 'tramway' see PARAS 1537 note 3 ante, 1586 post.

6 Ibid s 1(1)(c). For the meaning of 'trolley vehicle system' see s 67(1); and PARA 1628 note 3 post.

7 Ibid s 1(1)(d). As to the meaning of 'mode of guided transport' see PARAS 1586 note 7, 1633 post.

8 See ibid s 5.

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##### **1575. Continuing validity of previous light railway orders.**

The repeal of the Light Railways Act 1896 and associated enactments<sup>1</sup> did not affect the validity of orders made under them which were in force immediately before 1 January 1993<sup>2</sup>. Nor did the repeal affect the operation of the Light Railways Act 1896 and the associated

enactments in relation to applications for, or the making of, orders thereunder, where the applications in question were made prior to that date<sup>3</sup>. There are about seventy light railway orders which continue to have effect as a consequence of these savings. The undertakings to which they relate provide diverse examples of the mode: lines forming part of the national rail network<sup>4</sup>, so-called heritage or preserved railways<sup>5</sup>, funiculars<sup>6</sup> and lines of a tramway nature<sup>7</sup>. However, the term 'light railway' has also been applied to undertakings which have not been authorised by light railway legislation<sup>8</sup>.

1 See the Light Railways Act 1896 (and amending enactments, the Light Railways Act 1912 and the Railways Act 1921 ss 68, 69, 71, 73, 74) (repealed). As to railways see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

2 Transport and Works Act 1992 (Commencement No 3 and Transitional Provisions) Order 1992, SI 1992/2784, arts 2(b), 3(2)(a), (3)(a). Some of the light railway orders so preserved contain terms which in certain respects rely for their effectiveness on the continued operation of provisions of the Light Railways Act 1896 or the associated enactments, notably provisions conferring functions on the Secretary of State or a council. Notwithstanding the repeal of these statutes, these provisions may have continuing effect in appropriate circumstances. As to the preservation of rights, privileges, obligations or liabilities acquired, accrued or incurred under the repealed enactment see the Interpretation Act 1978 s 16(1)(c); and STATUTES vol 44(1) (Reissue) PARA 1308. As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 Transport and Works Act 1992 (Commencement No 3 and Transitional Provisions) Order 1992, SI 1992/2784, arts 2(b), 3(2)(b), (3)(b).

4 Eg the Central Wales Railway (see the British Railways Board (Central Wales Railway) Light Railway Order 1972, SI 1972/545).

5 Eg the Romney, Hythe and Dymchurch Railway (see the Romney, Hythe and Dymchurch Light Railway Order 1926, SI 1926/741); and the Bluebell Railway (see the Horsted Keynes and Sheffield Park Light Railway Order 1960, SI 1960/1022).

6 Eg the Folkestone cliff lift (see the Folkestone Corporation Light Railway Order 1967, SI 1967/1520).

7 Eg Seaton and District Tramways (see the British Railways Board (Seaton and Beer) Light Railway Order 1969, SI 1969/835); and the Wirral Tramway (see the Wirral Tramway Light Railway Order 1994, SI 1994/1761).

8 Eg the Docklands Light Railway, in East London, authorised by the London Docklands Railway Act 1984 and later statutes.

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## **(ii) Provisions relating to Light Railway Orders**

### **1576. Application of enactments and conferment of powers.**

Any light railway order may contain provisions<sup>1</sup> for all or any of the following purposes:

- 2429 (1) the incorporation<sup>2</sup> of all or any of the provisions of the Clauses Acts<sup>3</sup>;
- 2430 (2) the application, so far as may be considered necessary, of certain enactments<sup>4</sup> which impose obligations on railway undertakers with respect to the safety of the public<sup>5</sup> and other matters<sup>6</sup>;

- 2431 (3) giving the necessary powers for constructing and working the railway and any works incidental to it, including power to make agreements with any railway or other company, or any authority, person or body of persons, for the purpose<sup>7</sup>;
- 2432 (4) giving any railway or other company, or any authority, person or body of persons, any power required for carrying the order into effect<sup>8</sup>.

However, subject to any special provisions in the order, the general enactments relating to railways apply to light railways in the same manner as they apply to other railways<sup>9</sup>.

- 1 The provisions contained in the order must be consistent with the Light Railways Act 1896: s 11. For further provisions which may be made by order see PARA 1577 et seq post. The Light Railways Act 1896 has been repealed, but the repeal does not affect the validity of orders made under it which were in force immediately before 1 January 1993: see PARA 1575 ante.
- 2 Incorporation may be subject to any exceptions and variations mentioned in the order: *ibid* s 11(a).
- 3 *Ibid* s 11(a). The 'Clauses Acts' means the Lands Clauses Acts (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 509-511); the Railways Clauses Consolidation Act 1845 and the Railways Clauses Act 1863 (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 343 et seq); and the Companies Clauses Acts 1845 to 1889 (see COMPANIES vol 15 (2009) PARA 1667 et seq): Light Railways Act 1896 s 28. The Clauses Acts do not apply unless incorporated or applied by the order: Light Railways Act 1896 s 12(1).
- 4 *Ie* the enactments mentioned in *ibid* s 11(b), Sch 2 (amended by the Transport Act 1962 s 95(1), Sch 2 Pt I).
- 5 Where a section in a light railway order, inserted for the protection of a navigation company, also contained provisions to some extent for the benefit of the public, and provided, among other things, that the light railway company, which was authorised to carry the light railway over a canal by a swing bridge, might agree with the navigation company on any variation or alteration of the works, it was held that to substitute a fixed bridge for the swing bridge would be more than a mere alteration or variation of the works provided for, and that the section was not a mere contract that the parties could release or vary to the prejudice of the public, who were entitled, through the Attorney General, to restrain the companies from carrying out such an agreement: *A-G v North Eastern Rly Co* [1915] 1 Ch 905, CA.
- 6 Light Railways Act 1896 s 11(b).
- 7 *Ibid* s 11(c) (substituted by the Light Railways Act 1912 s 5(3)).
- 8 Light Railways Act 1896 s 11(d) (substituted by the Light Railways Act 1912 s 5(3)).
- 9 Light Railways Act 1896 s 12(2). For the purposes of statutory provisions which apply, a light railway company (see PARA 1577 post) is deemed to be a railway company and the order authorising the railway to be a special Act. The general enactments which apply under s 12(2) are not confined to statutory provisions especially concerned with railways: see *Wakefield Corp'n v Wakefield and District Light Rly Co* [1908] AC 293, HL (where the Public Health Act 1875 s 211(1)(b) (now repealed) was held to apply to light railways).

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### **1577. Light railway companies.**

For the purposes of the Light Railways Act 1896, a light railway company includes any person or body of persons, whether or not incorporated, who are authorised to construct, or who are the owners or lessees of, any light railway authorised by that Act or who are operating the railway under any working agreement<sup>1</sup>.

A light railway company incorporated by an order under the Light Railways Act 1896, if insolvent, can be wound up under the Insolvency Act 1986 as an unregistered company<sup>2</sup>.

1 Light Railways Act 1896 s 28. The Light Railways Act 1896 has been repealed, but the repeal does not affect the validity of orders made under it which were in force immediately before 1 January 1993: see PARA 1575 ante. As to railways see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

2 Light Railways Act 1912 s 7. The Light Railways Act 1912 has been repealed, but the repeal does not affect the validity of orders made under it which were in force immediately before 1 January 1993: see PARA 1575 ante. See the Insolvency Act 1986 Pt V (ss 220-229) (as amended); and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1147 et seq.

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### **1578. Managing body and working of railway as light railway.**

Any light railway order may provide for the constitution of a company as a body corporate for carrying out the objects of the order<sup>1</sup>, and for the representation of any council advancing money, or agreeing to advance money, for the purpose of the railway on the managing body of the railway<sup>2</sup>. An order may authorise a company which has power to construct or work a railway to construct and work, or to work, that railway or any part of it as a light railway<sup>3</sup>.

1 Light Railways Act 1896 s 11(e). The Light Railways Act 1896 has been repealed, but the repeal does not affect the validity of orders made under it which were in force immediately before 1 January 1993: see PARA 1575 ante. As to railways see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

2 Ibid s 11(f). Section 11(f) applies in respect of a guarantee under the Railways Act 1921 s 71(1) (see PARA 1579 post) as if the guarantee were an advance by the council: s 71(3). The Railways Act 1921 has been repealed, but the repeal does not affect the validity of orders made under it which were in force immediately before 1 January 1993: see PARA 1575 ante. As to the power of councils to give guarantees see PARA 1579 post.

3 Light Railways Act 1896 s 18.

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### **1579. Financial provisions.**

Any light railway order may authorise the council of any county, London borough or district to advance to a light railway company<sup>1</sup>, either by way of loan or as part of the share capital<sup>2</sup> of the company, or partly in one way and partly in the other, such amount as may be authorised by the order<sup>3</sup>, which may regulate the terms on which the money is to be advanced or borrowed<sup>4</sup>. The order may authorise the council to guarantee or join with any other council, person or body of persons to guarantee the whole or any part of the interest or dividends on any loan or share capital of a light railway company for such period and on such terms and subject to such conditions as may be approved by the Secretary of State<sup>5</sup>. The order may also indicate the manner in which profits are to be divided<sup>6</sup> and the time within which the railway must be



constructed<sup>7</sup>, and may provide for the proper audit of the accounts of the managing body of the light railway<sup>8</sup>.

If the railway for which the advance is proposed to be made is wholly or partly outside the council's area, the council must join with the council of the outside area, or must prove to the satisfaction of the Secretary of State<sup>9</sup> that the advance is expedient in the interests of the area of the first-mentioned council<sup>10</sup>. The expenditure, if authorised, must be limited by the order to such amount as the Secretary of State thinks fit in the circumstances<sup>11</sup>. Any expenses incurred by a council in satisfying any guarantee entered into by it as described above are to be defrayed, in the case of a county council, as general expenses out of the county fund<sup>12</sup>, and, in the case of a London borough or a district council, out of the general fund<sup>13</sup>. Any council making a profit in respect of a light railway must apply the same in aid of the fund out of which the expenses of the council are payable<sup>14</sup>.

1 As to the meaning of 'light railway company' see PARA 1577 ante. As to railways see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

2 'Share capital' includes any capital, whether consisting of shares or stock, which is not raised by means of borrowing: Light Railways Act 1896 s 28. The Light Railways Act 1896 has been repealed, but the repeal does not affect the validity of orders made under it which were in force immediately before 1 January 1993: see PARA 1575 ante.

3 Ibid s 3(1)(b); and see also the London Government Act 1963 s 1(1), Sch 1 Pt I (s 1(1) (as amended); and the Local Government Act 1972 ss 1, 20, 179(3) (s 20 as substituted). A council may join any other council or person or body of persons for this purpose: Light Railways Act 1896 s 3(1)(c). No order authorising a council to advance money to a light railway company may be made except on an application by the council in pursuance of a special resolution as directed by the Light Railways Act 1896: see s 3(2)(a), Sch 1; and PARA 1581 note 1 post.

4 Ibid s 11(g). Section 11(g) applies in respect of a guarantee under the Railways Act 1921 s 71(1) (see the text and note 5 infra) as if the guarantee were an advance by the council: s 71(3). The Railways Act 1921 has been repealed, but the repeal does not affect the validity of orders made under it which were in force immediately before 1 January 1993: see PARA 1575 ante. The Secretary of State, from time to time, on the application of any council, may extend the limit of the amount which the council is authorised by an order to borrow, and the limit so extended must be substituted for the limit fixed by the order: Light Railways Act 1896 s 16(3). As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 Railways Act 1921 s 71(1). As to the power of the Secretary of State perform this role notwithstanding the repeal of the Light Railways Act 1896 see PARA 1575 note 2 ante.

6 Light Railways Act 1896 s 11(h). Such a provision is inserted where an advance is made by a council to a light railway company as part of its share capital of the company: s 11(h). Section 11(h) applies in respect of a guarantee under the Railways Act 1921 s 71(1) as if the guarantee were an advance by the council: s 71(3).

7 Light Railways Act 1896 s 11(i).

8 Ibid s 11(i). This provision is inserted where the managing body is not a local authority: s 11(i).

9 As to the position of the Secretary of State see note 5 supra.

10 Light Railways Act 1896 s 3(2)(b).

11 Ibid s 3(2)(b) (amended by the Light Railways Act 1912 s 5(1)). The Secretary of State has power from time to time to extend the amount which a council is authorised to advance on the council's application, and the limit so extended must then be substituted for the time limit fixed by the order: Light Railways Act 1896 s 16(3).

12 Railways Act 1921 s 71(2). Expenses incurred by a county council may be declared by the order authorising the railway to be chargeable exclusively on certain parishes or communities or parts of parishes or communities only: Light Railways Act 1896 s 16(1) proviso; Local Government Act 1972 s 179(1), (4). As to the county fund see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 550.

13 See the Light Railways Act 1896 s 16(1); and the Railways Act 1921 s 71(2); and see also the London Government Act 1963 s 1(1), Sch 1 Pt I (s 1(1) as amended); and the Local Government Act 1972 ss 1, 20, 179(1), (3) (s 20 as substituted). Where a rate is levied for meeting any expenditure, the demand note for the rate must state, in a form prescribed by the Secretary of State, the proportion of the rate levied for that expenditure: Light Railways Act 1896 s 16(6). These provisions refer to the general rate fund, but this has been replaced by the general fund: see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 545 et seq.

14 Ibid s 16(5).

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### **1580. Acquisition of light railways by other bodies.**

Any light railway order may empower any local authority to acquire the railway<sup>1</sup> or, in the case of a light railway which is not of the nature of a tramway<sup>2</sup>, may empower a railway company to acquire it<sup>3</sup>. Where an authority is authorised and agrees to buy a light railway at a price to be settled in case of difference by arbitration, the proper basis of valuation is not the value to the light railway company or the railway as an income-earning concern, but that of the railway as it exists capable of earning a profit<sup>4</sup>.

1 Light Railways Act 1896 s 11(l). This power to acquire has always been given in the case of a railway laid on a public road, either to the road authority or to a local authority at the expiration of a certain period or successive periods prescribed by the order. Neither 'local authority' nor 'road authority' is defined in the Act. 'Local authority', in this context, would appear to mean the council of a county, London borough, district, parish or community: see the London Government Act 1963 s 1(1), Sch 1 Pt I (s 1(1) as amended); the Local Government Act 1972 ss 1, 9 (as amended), s 20 (as substituted), s 27(2) (as substituted); and LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq. 'Road authority' appears to be a reference to a local highway authority, as to which see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 56 et seq. The Light Railways Act 1896 has been repealed, but the repeal does not affect the validity of orders made under it which were in force immediately before 1 January 1993: see PARA 1575 ante.

2 As to the meaning of 'light railway of the nature of a tramway' see PARA 1536 text and note 11 ante. As to railways see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

3 Light Railways Act 1896 s 11(l) (amended by the Railways Act 1921 s 73(1)).

4 *Dudley Corpn v Dudley, Stourbridge and District Electric Traction Co* (1907) 97 LT 556, HL.

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### **1581. Power of local authority to construct.**

A light railway order may authorise the council of any county, London borough or district to undertake to construct and work, or to contract for the construction or working of, the authorised light railway<sup>1</sup>, or do any other act incidental to that construction and working<sup>2</sup>. If the undertaking is wholly or partly outside the council's area, the council must join with the council of the outside area, or must prove to the satisfaction of the Secretary of State<sup>3</sup> that the

construction or working is expedient in the interests of the area of the first-mentioned council<sup>4</sup>. If a council is so authorised under these provisions, any expenditure must be limited by the order to such amount as the Secretary of State thinks fit in the circumstances<sup>5</sup>.

1 See the Light Railways Act 1896 s 3(1)(a); and see also the London Government Act 1963 s 1(1), Sch 1 Pt I (s 1(1) as amended); and the Local Government Act 1972 ss 1, 20, 179(3) (s 20 as substituted). A council may join any other council or person or body of persons for this purpose: Light Railways Act 1896 s 3(1)(c). No order authorising a council to undertake to construct and work or to contract for the construction or working of a light railway may be made except on an application made by the council in pursuance of a special resolution as directed by the Light Railways Act 1896 Sch 1: s 3(2)(a). A special resolution must be passed at a meeting of the council (Sch 1 para 1), and it may not be passed unless: (1) a month's previous notice of the resolution has been given in the usual manner (Sch 1 para 2); and (2) two-thirds of the members present and voting concur in the resolution (Sch 1 para 3). The Light Railways Act 1896 has been repealed, but the repeal does not affect the validity of orders made under it which were in force immediately before 1 January 1993: see PARA 1575 ante. As to railways see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

2 Ibid s 3(1)(d).

3 As to the Secretary for State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. As to the power to perform this function notwithstanding the repeal of the Light Railways Act 1896 see PARA 1575 note 2 ante.

4 Ibid s 3(2)(b).

5 Ibid s 3(2)(b) (amended by the Light Railways Act 1912 s 5(1)).

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## **1582. Power of a local authority to raise money.**

The council of a county, London borough or district authorised by a light railway order to expend money may raise the money required by borrowing, if the expenditure is capital expenditure<sup>1</sup>. If the expenditure is not capital expenditure, the money is raised as if it were on account of the expense of an application for a light railway order<sup>2</sup>.

1 See the Light Railways Act 1896 s 16(2)(a) (amended by the Local Government Act 1933 s 307(1)(b), Sch 11 Pt IV); and see the London Government Act 1963 s 1(1), Sch 1 Pt I (s 1(1) as amended); and the Local Government Act 1972 ss 1, 20, 179(1), (3) (s 20 as substituted). The Light Railways Act 1896 has been repealed, but the repeal does not affect the validity of orders made under it which were in force immediately before 1 January 1993: see PARA 1575 ante. As to railways see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

2 Ibid s 16(2)(b).

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## **1583. Ancillary provisions.**

In addition to the specific provisions which may be contained in a light railway order<sup>1</sup>, provisions relating to any other matters which, whether or not similar to the specific provisions, may be considered ancillary to the objects of the order or expedient for carrying those objects into effect may be included<sup>2</sup>. However, the sale and transfer, under a light railway order, of a railway for which powers had been obtained under an Act of Parliament has been held inadmissible<sup>3</sup>, and provisions giving a corporation powers to supply electrical energy outside its own district<sup>4</sup>, or provisions which, although agreed between the parties, are not called for by any special circumstances and depart from decisions in previous applications, have been disallowed<sup>5</sup>.

1 See PARA 1576 et seq ante.

2 Light Railways Act 1896 s 11(m). The Light Railways Act 1896 has been repealed, but the repeal does not affect the validity of orders made under it which were in force immediately before 1 January 1993: see PARA 1575 ante. See also *Dartford District (Deviation) Case* (1899) 1 Oxley's Light Railways 49 (powers granted to authorise construction of pier for interchange of traffic, and to levy tolls). As to railways see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

3 *Portmadoc, Beddgelert and Snowdon Case* (1898) Light Railway Commissioners' Report, List 4 No 31 (Parliamentary Paper (1902) 198).

4 *Nelson and District Case* (1899) 1 Oxley's Light Railways 203.

5 *Worcester and District Case* (1900) 1 Oxley's Light Railways 240.

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### **1584. Determination of disputes.**

Subject to any special provision of a light railway order, any matter which under the order is to be determined by arbitration<sup>1</sup> must be determined by the Secretary of State<sup>2</sup> or, if he thinks fit, by a single arbitrator appointed by him<sup>3</sup>.

1 As to the determination by arbitration of any matter under the Lands Clauses Acts incorporated in a light railway order see the Light Railways Act 1896 s 13. The Light Railways Act 1896 has been repealed, but the repeal does not affect the validity of orders made under it which were in force immediately before 1 January 1993: see PARA 1575 ante. As to railways see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

2 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. As to the power to perform this function notwithstanding the repeal of the Light Railways Act 1896 see PARA 1575 note 2 ante.

3 Light Railways Act 1912 s 9(1) (amended by the Railways Act 1921 s 86, Sch 9 Pt I). In the case of a determination by the Secretary of State, the Board of Trade Arbitrations etc Act 1874 applies: Light Railways Act 1912 s 9(2). If the determination is by an arbitrator appointed by the Secretary of State, the Arbitration Act 1996 applies: Light Railways Act 1912 s 9(3); Interpretation Act 1978 s 17(2). As to arbitration see ARBITRATION vol 2 (2008) PARA 1201 et seq.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-

1663)/18. TRAMWAYS/(4) TRANSPORT AND WORKS ACT 1992/(i) General Statutory Position/1585. Evolution and effect of the Transport and Works Act 1992.

## (4)

### (i) General Statutory Position

#### 1585. Evolution and effect of the Transport and Works Act 1992.

Prior to the coming into force of Part I of the Transport and Works Act 1992<sup>1</sup>, the practice had developed of securing statutory authority for new tramways by means of private Act of Parliament<sup>2</sup>, although all of these Acts incorporated, or otherwise applied, some at least of the provisions of the Tramways Act 1870<sup>3</sup>. The increasing number of Bills seeking such authorisation was one of the factors giving rise to concern within Parliament<sup>4</sup>. This led to the establishment of a Joint Committee of Parliament to report on the issue<sup>5</sup>, to be followed by a government consultation document<sup>6</sup>.

These proposals, somewhat modified, culminated in the enactment of Part I of the Transport and Works Act 1992<sup>7</sup>, which provides for an order-making procedure administered by the Secretary of State<sup>8</sup> and with no parliamentary stage, save in certain exceptional circumstances<sup>9</sup>. If the powers sought are capable of being secured by means of an order under that Act, then resort to the private Bill procedure is no longer available to a promoter<sup>10</sup>.

1 le on 1 January 1993.

2 As to the private Bill procedure see PARLIAMENT vol 34 (Reissue) PARA 845 et seq.

3 As to these Acts see PARA 1541 notes 2-8 ante.

4 Apart from the excessive demands on parliamentary time arising from the number, and intensity of opposition to, private Bills, it was thought somewhat anomalous that tramway and railway works needed to be authorised by Parliament, whereas equally extensive (and contentious) road works were authorised by means of government order-making machinery (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 138 et seq).

5 See the *Report of the Joint Committee on Private Bill Procedure* (July 1988) (HL Paper 97 (1987-88); HC Paper 625 (1987-88)); and PARLIAMENT vol 34 (Reissue) PARA 846.

6 See *Private Bills and New Procedures--A Consultation Document--The Government Response to the Report of the Joint Committee on Private Bill Procedure* (Cm 1110) (1990).

7 See the Transport and Works Act 1992 ss 1-25 (as amended).

8 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

9 As to the exceptions see the Transport and Works Act 1992 s 9 (as amended) (schemes of national significance), s 12 (orders requiring special parliamentary procedure (compulsory acquisition of National Trust land, commons, etc)), s 24 (schemes extending into Scotland). The agreement of the Welsh Ministers is required in respect of the order, rule and regulation functions of the Secretary of State under ss 1, 3, 6, 7(4), 8, 10, 15 (s 6 as amended) so far as they are exercisable in relation to Wales (including cases in which the application of an order would straddle the border between England and Wales): National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 5(1), Sch 2.

10 The Transport and Works Act 1992 contains no express provision prohibiting resort to the private Bill procedure, but it is an essential feature of that procedure that it may only be employed if the promoters of such Bills are able to maintain the averment, which the preamble to any private Bill has to contain, that the purposes of the Act cannot be effected without the authority of Parliament: see PARLIAMENT vol 34 (Reissue) PARA 846.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/18. TRAMWAYS/(4) TRANSPORT AND WORKS ACT 1992/(i) General Statutory Position/1586. Scope of the Transport and Works Act 1992.

### **1586. Scope of the Transport and Works Act 1992.**

The provisions of Part I of the Transport and Works Act 1992<sup>1</sup> empower the Secretary of State<sup>2</sup> to make orders<sup>3</sup> relating to, or to matters ancillary to, the construction or operation of certain transport systems<sup>4</sup>. These transport systems are: (1) railways<sup>5</sup>; (2) tramways<sup>6</sup>; (3) trolley vehicle systems<sup>7</sup>; or (4) systems using a mode of guided transport<sup>8</sup> prescribed by order<sup>9</sup>.

For the purposes of the Transport and Works Act 1992, 'tramway' means a system of transport used wholly or mainly<sup>10</sup> for the carriage of passengers<sup>11</sup> and employing parallel rails which: (a) provide support and guidance for vehicles carried on flanged wheels; and (b) are laid wholly or mainly along a street<sup>12</sup> or in any other place to which the public<sup>13</sup> has access<sup>14</sup> (including a place to which the public has access only on making a payment)<sup>15</sup>.

1 See the Transport and Works Act 1992 Pt I (ss 1-25) (as amended).

2 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 The power to make orders as to transport systems is exercisable by statutory instrument: Transport and Works Act 1992 s 1(2). As to the validity of orders see PARA 1594 post.

4 Ibid s 1(1). The transport systems must be located entirely within England and Wales: s 1(1). As to those that extend into Scotland see s 24. The Secretary of State may also make orders under the Act relating to, or to matters ancillary to, an inland waterway or the carrying out of certain works which interfere with rights of navigation: see s 3; and WATER AND WATERWAYS vol 101 (2009) PARA 713 et seq.

5 Ibid s 1(1)(a). For the meaning of 'railway' see s 67(1); and PARA 1537 note 2 ante. As to railways see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

6 Ibid s 1(1)(b). For the meaning of 'tramway' see s 67(1); and the text and notes 9-14 infra.

7 Ibid s 1(1)(c). For the meaning of 'trolley vehicle system' see s 67(1); and PARA 1628 note 3 post.

8 'Guided transport' means transport by vehicles guided by means external to the vehicles (whether or not the vehicles are also capable of being operated in some other way): ibid s 67(1).

9 Ibid s 1(1)(d). The Secretary of State may prescribe modes of guided transport for the purposes of s 1(1)(d): s 2(1). The power to make orders under s 2 is exercisable by statutory instrument; but no order is to be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament: s 2(2). See the Transport and Works (Guided Transport Modes) Order 1992, SI 1992/3231 (amended by SI 1997/1951) (monorail, magnetic levitation, aerial cableway and various road/rail guidance systems); and see further PARA 1633 post.

10 In the phrase 'wholly or mainly', 'mainly' probably means 'more than half' although there is nothing here to indicate by reference to what this is to be calculated: cf *Fawcett Properties Ltd v Buckingham County Council* [1961] AC 636 at 669, HL, per Lord Morton of Henryton. As to the meaning of 'wholly or mainly' (or 'exclusively or mainly') in various contexts see also *Re Hatschek's Patents, ex p Zerrenner* [1909] 2 Ch 68; *Miller v Otilie (Owners)* [1944] KB 188, [1944] 1 All ER 277, CA; *Franklin v Gramophone Co Ltd* [1948] 1 KB 542 at 555, CA, per Somervell LJ; *Berthelemy v Neale* [1952] 1 All ER 437, CA.

11 The mention of 'passengers' makes it clear that lines used solely to convey goods, spoil and similar traffic are excluded from the definition.

12 'Street' means a street within the meaning of the New Roads and Street Works Act 1991 s 48 (see PARA 1598 note 4 post), together with land on the verge of a street or between two carriageways: Transport and Works Act 1992 s 67(1).

13 As to the meaning of 'public', 'the public' and 'member of the public' in various contexts see *Tatem Steam Navigation Co Ltd v IRC* [1941] 2 KB 194, [1941] 2 All ER 616, CA; *Income Tax Comr v Bjordal* [1955] AC 309, [1955] 1 All ER 401, PC; *DPP v Milbanke Tours Ltd* [1960] 2 All ER 467, [1960] 1 WLR 630; *Morrisons Holdings Ltd v IRC* [1966] 1 All ER 789, [1966] 1 WLR 553; *IRC v Park Investments Ltd* [1966] Ch 701, [1966] 2 All ER 785, CA; *R v Delmayne* [1970] 2 QB 170, [1960] 2 All ER 980, CA; *Beynon v Caerphilly Lower Licensing Justices* [1970] 1 All ER 618, [1970] 1 WLR 369; *A-G's Reference (No 2 of 1977)* [1978] 2 All ER 646, [1978] 1 WLR 290, CA.

14 As to the meaning of 'place to which the public has access' see the definition of 'road' in the Road Traffic Act 1988 s 192(1) (see PARA 206 ante); and see *DPP v Vivier* [1991] 4 All ER 18, DC. The access must be lawful access: see *Harrison v Hill* 1932 SC (J) 13; *Cox v White* [1976] RTR 248.

15 Transport and Works Act 1992 s 67(1). The words in parentheses are capable of including lines on private property, such as those within the curtilage of a museum or exhibition.

## UPDATE

### 1586 Scope of the Transport and Works Act 1992

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/18. TRAMWAYS/(4) TRANSPORT AND WORKS ACT 1992/(i) General Statutory Position/1587. Orders involving European sites.

### 1587. Orders involving European sites.

The procedures relating to applications for transport and works orders<sup>1</sup>, and for their making or refusal, must have regard to the effect which such orders might have, if made, on environmental and cultural concerns<sup>2</sup>. However, an entirely separate procedure prevails where such concerns are related to a European site<sup>3</sup>.

Where the making of a transport and works order would be likely to have a significant effect on a European site (either alone or in combination with other plans or projects), the Secretary of State<sup>4</sup> must carry out an appropriate assessment of the implications for the site in view of its conservation objectives<sup>5</sup>, and where in such a case the Secretary of State considers (after appropriate consultations and relevant representations)<sup>6</sup> that any adverse effects of the plan or project on the integrity of the site would be avoided by making modifications to the proposals, he may make an order subject to these modifications<sup>7</sup>. The Secretary of State is also required to review existing transport and works orders, and if he considers on such review that any adverse effects on the integrity of a European site of the carrying out or, as the case may be, the continuation of the plan or project would be avoided by a variation of the order, he may vary it accordingly<sup>8</sup>. However, the power to review or vary such an order does not apply if the works to which the order relates have been completed before the site has become a European site<sup>9</sup>. The Secretary of State, in conjunction with any review, may also vary or revoke any direction deeming planning permission to be granted for the plan or project<sup>10</sup>. Further provisions regulate the review procedure<sup>11</sup>, the effect of the review<sup>12</sup> and the payment of compensation in the event of a revocation or variation of an existing order<sup>13</sup>. However, if the Secretary of State is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest, he may agree the plan or project notwithstanding a negative assessment of the implications for the site<sup>14</sup>.

1 The orders made under the Transport and Works Act 1992 s 1(2) or s 3(3): see PARA 1586 ante; and see also RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 302; WATER AND WATERWAYS vol 101 (2009) PARA 801.

2 See *ibid* s 6 (as amended), s 6A (as added and amended) (see PARA 1588 note 3 post) (procedures and documentation relating to environmental matters), s 12 (special parliamentary procedure to apply to National Trust land, open spaces, commons, etc), s 14 (as amended) (see PARA 1588 note 3 post) (need for consideration of and publicity for environmental issues), s 17 (consents relating to listed buildings and conservation areas); and the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, SI 2006/1466, r 7 (requirement for environmental statement and screening decisions).

3 'European site' means: (1) a special area of conservation; (2) a site of European Community importance; (3) a site hosting a priority natural habitat or priority species; or (4) a classified area: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 2(1), 10 (as amended), implementing the requirements of EC Council Directive 43/92 (OJ L206, 22.7.92, p 7) on the conservation of natural habitats and of wild fauna and flora (as amended). See further OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 728 et seq.

4 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 48(1).

6 *Ibid* reg 48(3), (4).

7 *Ibid* reg 79(2).

8 *Ibid* reg 79(4).

9 *Ibid* reg 79(3).

10 *Ibid* reg 79(5).

11 *Ibid* reg 80.

12 *Ibid* reg 81.

13 *Ibid* reg 82.

14 *Ibid* reg 49(1).

## UPDATE

### 1587 Orders involving European sites

TEXT AND NOTES 4, 5--SI 1994/2716 reg 48(1) amended: SI 2007/1843.

NOTE 13--SI 1994/2716 reg 82 amended: SI 2009/1307.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/18. TRAMWAYS/(4) TRANSPORT AND WORKS ACT 1992/(ii) Transport and Works Orders/1588. General procedures.

## (ii) Transport and Works Orders

### 1588. General procedures.



Transport and works orders<sup>1</sup> are considered in greater detail elsewhere in this work<sup>2</sup>. Matters covered include the procedure for applying for and the making (or refusing) of such orders<sup>3</sup>, the bodies which may apply for (or object to) them<sup>4</sup>, orders which may be made by the Secretary of State without application<sup>5</sup>, the subject matter of orders<sup>6</sup> and orders relating to schemes of national significance<sup>7</sup>.

1 The orders made under the Transport and Works Act 1992 s 1(2) or s 3(3): see PARA 1586 ante; and see also RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 302; WATER AND WATERWAYS vol 101 (2009) PARA 801.

2 See RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 302 et seq.

3 See RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 307-316. The Transport and Works Act 1992 s 6 (applications for orders under ss 1, 3) and s 14 (publicity for making or refusal of orders) have been amended, and s 6A added, so as to widen the rule-making powers of s 6 and the publicity requirements of s 14 to take account of the requirements of EC Council Directive 337/85 (OJ L175, 5. 7.85, p 4) on the assessment of the effects of certain public and private projects on the environment (as amended): see the Transport and Works (Assessment of Environmental Effects) Regulations 1995, SI 1995/1541, reg 2; and the Transport and Works (Assessment of Environmental Effects) Regulations 1998, SI 1998/2226, regs 2-4. See further WATER AND WATERWAYS.

4 See RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 302.

5 See RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 304.

6 See RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 303. Such orders may include those relating to, or matters ancillary to, the construction or operation of a railway, tramway or other system for naval, military, air force or other defence purposes. This power replaces those formerly conferred by the Military Tramways Act 1887 and the Naval Works Act 1899 (see PARAS 1533, 1535 ante).

7 See RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 317.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/18. TRAMWAYS/(4) TRANSPORT AND WORKS ACT 1992/(ii) Transport and Works Orders/1589. Model clauses for incorporation in orders: general.

### **1589. Model clauses for incorporation in orders: general.**

The Transport and Works Act 1992 empowers the Secretary of State<sup>1</sup> by order<sup>2</sup> to prescribe model provisions for incorporation in any draft orders which, in accordance with rules made under the Act<sup>3</sup>, may be required to be submitted with applications for a transport and works order<sup>4</sup>. Model clauses have been prescribed in pursuance of this power<sup>5</sup>. The prescribing of a model provision does not of itself make it mandatory for a provision in the terms of the model to be incorporated in a draft order or in any order eventually made by the Secretary of State<sup>6</sup>.

1 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 The power to make such orders is exercisable by statutory instrument: Transport and Works Act 1992 s 8(4).

3 The under ibid s 6 (as amended). See the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, SI 2006/1466. These rules came into force on 11 September 2006, replacing the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000, SI 2000/2190. For transitional provisions see the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, SI 2006/1466, r 3.

4 Transport and Works Act 1992 s 8(1). Different provisions may be prescribed under s 8 for different cases: s 8(2).

5 See the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954; and PARA 1590 et seq post.

6 Transport and Works Act 1992 s 8(3).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/18. TRAMWAYS/(4) TRANSPORT AND WORKS ACT 1992/(ii) Transport and Works Orders/1590. Model clauses: works powers.

### **1590. Model clauses: works powers.**

An order under the Transport and Works Act 1992<sup>1</sup> appertaining to a tramway<sup>2</sup> may incorporate model clauses prescribed under that Act<sup>3</sup> which provide for the construction and maintenance of the works authorised by the order. Such clauses may confer power:

- 2433 (1) to deviate laterally<sup>4</sup> or vertically<sup>5</sup>, or to substitute different trackwork arrangements<sup>6</sup>;
- 2434 (2) to construct and maintain<sup>7</sup> the scheduled works<sup>8</sup> and such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works<sup>9</sup>, namely: (a) stations, platforms and tram stops<sup>10</sup>; (b) works required for, or in connection with, the control of vehicular and pedestrian traffic on the authorised tramway<sup>11</sup>; (c) works to alter the position of apparatus<sup>12</sup>, including mains, sewers, drains and cables<sup>13</sup>; (d) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse<sup>14</sup>; (e) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works<sup>15</sup>; and (f) works for the benefit or protection of premises affected by the scheduled works<sup>16</sup>;
- 2435 (3) to alter the layout of streets<sup>17</sup>, stop up streets permanently<sup>18</sup> or temporarily<sup>19</sup>, construct and maintain new or altered streets<sup>20</sup>, construct bridges and tunnels<sup>21</sup>, construct temporary tramways<sup>22</sup>, install level crossings<sup>23</sup>, attach equipment to buildings to support overhead electric wires and other equipment and apparatus<sup>24</sup>, and enter into agreements with street authorities<sup>25</sup>;
- 2436 (4) to gain access to works<sup>26</sup>;
- 2437 (5) to survey and investigate land<sup>27</sup>.

The clauses may impose certain obligations on the undertaker<sup>28</sup> of the tramway in relation to the works, including:

- 2438 (i) to construct the tramway to a specified gauge<sup>29</sup> and, when the tramway is constructed along a street or in any place to which the public has access (including any place to which the public has access only on making a payment), to take such care as in all the circumstances is reasonable to ensure that the tramway is constructed and maintained so that the street or other place is safe for other users<sup>30</sup>;
- 2439 (ii) to operate the tramway by electricity only<sup>31</sup>; and
- 2440 (iii) in the event of a tramway laid in a street being permanently discontinued, to remove the rails and restore the surface of the road after such removal<sup>32</sup>.

1 le under the Transport and Works Act 1992 s 1(1)(b): see PARA 1586 ante.

2 For the meaning of 'tramway' see PARA 1586 ante.

3 As to the prescribing of model clauses see PARA 1589 ante.

4 The works may deviate laterally from the lines or situations shown on the works plan within the limits of deviation for that work or, if no limits are shown on the plan, and the works are situated in a street, within the boundaries of that street: Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, art 3(b), Sch 2 para 5(1)(a), (2). 'The works plan' means the plan prepared in pursuance of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, SI 2006/1466, r 12(1)(a) and certified by the Secretary of State as the works plan for the purposes of the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954: Sch 2 para 1(1). 'The limits of deviation' means the limits of deviation for the scheduled works shown on the works plan: Sch 2 para 1(1). As to certification of plans see Sch 2 para 55. As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

5 The works may deviate vertically from the levels shown on the sections: *ibid* Sch 2 para 5(1)(b). 'The sections' means the sections prepared in pursuance of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, SI 2006/1466, r 12(3) and certified by the Secretary of State as the sections for the purposes of the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954: Sch 2 para 1(1). The order will normally specify the amount of permitted deviation: see Sch 2 para 5(1)(b)(i), (ii).

6 le double lines of rails for single rails, single lines for double lines, interlacing lines for either double or single lines (or vice versa): *ibid* Sch 2 para 5(3). If the rails are in a street, the consent of the street authority is required to the change, but is not to be unreasonably withheld: Sch 2 para 5(4). 'Street authority' has the same meaning as in the New Roads and Street Works Act 1991 Pt III (ss 48-106) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 412): Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, Sch 2 para 1(1).

7 'Maintain' includes inspect, repair, adjust, alter, remove, reconstruct and replace; and 'maintenance' is to be construed accordingly: *ibid* Sch 2 para 1(1). As to the temporary use of land for maintenance of works see Sch 2 para 31.

8 *Ibid* Sch 2 para 4(1). 'The scheduled works' means the works specified in Sch 1 to the tramway order or any part of them: Sch 2 para 1(1). Subject to Sch 2 para 5 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works plan and in accordance with the levels shown on the sections: Sch 2 para 4(2).

9 *Ibid* Sch 2 para 4(3).

10 *Ibid* Sch 2 para 4(3)(a).

11 *Ibid* Sch 2 para 4(3)(b). As to the placing and maintenance of traffic signs in connection with such control see Sch 2 para 40.

12 'Apparatus' is not defined, but as to placing and maintaining apparatus in a street, see *ibid* Sch 2 para 7(1); and the definition of apparatus in Sch 2 para 7(2)(a). As to executing such works see Sch 2 para 8.

13 *Ibid* Sch 2 para 4(3)(c).

14 *Ibid* Sch 2 para 4(3)(d).

15 *Ibid* Sch 2 para 4(3)(e). Note also the power to discharge water into any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works: see Sch 2 para 18(1). As to the limitation of these powers see Sch 2 para 18(2)-(7).

16 *Ibid* Sch 2 para 4(3)(f). As to safeguarding works for buildings see Sch 2 para 19. As to the disclosure of confidential information obtained entering premises see Sch 2 para 51.

17 *Ibid* Sch 2 para 6. Alterations include increasing the width of carriageways, reducing the width or altering the level of adjacent areas, reducing the width of carriageways to accommodate stopping places and other works, carrying out works to prevent or deter other vehicles from using the tramway, and making and maintaining crossovers, sidings and passing places: Sch 2 para 6(1), (2). These powers require the consent of the street authority, but this is not to be unreasonably withheld: Sch 2 para 6(3).

- 18 Ibid Sch 2 para 9.
- 19 Ibid Sch 2 para 10.
- 20 Ibid Sch 2 para 12.
- 21 Ibid Sch 2 para 13.
- 22 Ibid Sch 2 para 20. This applies to works necessary or expedient in consequence of other street works.
- 23 Ibid Sch 2 para 16. The level of the highway may be altered: Sch 2 para 16(2). The highway authority may enter into an agreement with the undertaker (see note 28 infra) with respect to the construction and maintenance of the crossing: Sch 2 para 16(3).
- 24 Ibid Sch 2 para 17. 'Building' includes any structure or erection or any part of a building, structure or erection: Sch 2 para 1(1). The undertaker is not to affix any apparatus without the consent of the owner of the building and such consent may be given subject to reasonable conditions (including payment of rent) but is not to be unreasonably withheld: Sch 2 para 17(2). When apparatus has been so affixed, the owner of the building may require its removal during the demolition, reconstruction or repair of the building if such removal is reasonably necessary: Sch 2 para 17(5).
- 25 Ibid Sch 2 para 14. As to agreements between undertakers and local highway authorities with regard to the construction and maintenance, as part of highways at public expense, of bridges and viaducts which carry, or are intended to carry, tramways over the highways see the Highways Act 1980 s 38 (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 253, 875.
- 26 Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, Sch 2 para 11.
- 27 Ibid Sch 2 para 21.
- 28 'Undertaker' means the person designated as such in the order: ibid Sch 2 para 1(1).
- 29 The gauge will normally be standard (1,435 mm): ibid Sch 2 para 22(2).
- 30 Ibid Sch 2 para 22(3).
- 31 Ibid Sch 2 para 22(1). In an emergency, or for maintenance purposes, diesel or other power may be used: Sch 2 para 22(1).
- 32 Ibid Sch 2 para 15. The removal has to be carried out as soon as reasonably practicable (Sch 2 para 15) and unless otherwise agreed with the street authority: (1) apart from the rails, extends to any other works, equipment and apparatus which have become redundant (Sch 2 para 15(a)); and (2) restoration of the portion of the street along which the discontinued tramway was laid must be made to as good a condition as that in which it was before the tramway was laid, and carried out to the reasonable satisfaction of the street authority (Sch 2 para 15(b)).

## **UPDATE**

### **1590 Model clauses: works powers**

TEXT AND NOTES--SI 2006/1954 Sch 2 amended: SI 2008/2831, SI 2009/1307.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/18. TRAMWAYS/(4) TRANSPORT AND WORKS ACT 1992/(ii) Transport and Works Orders/1591. Model clauses: powers of compulsory acquisition.

### **1591. Model clauses: powers of compulsory acquisition.**

An order under the Transport and Works Act 1992<sup>1</sup> appertaining to the construction or operation of a tramway<sup>2</sup> may incorporate model clauses prescribed under the Act which make provision for the acquisition of land, whether compulsorily or by agreement<sup>3</sup>. Where compulsory acquisition powers are sought, the powers may include:

- 2441 (1) powers to acquire new rights<sup>4</sup>;
- 2442 (2) powers to acquire subsoil only<sup>5</sup> (including rights under streets)<sup>6</sup>;
- 2443 (3) temporary use of land for construction works<sup>7</sup>;
- 2444 (4) temporary use of land for maintenance works<sup>8</sup>;
- 2445 (5) powers to extinguish rights of statutory undertakers and to remove or re-site the apparatus of statutory undertakers<sup>9</sup>; and
- 2446 (6) a time limit for exercise of powers of acquisition<sup>10</sup>.

The model clauses provide for Part I of the Compulsory Purchase Act 1965<sup>11</sup>, in so far as not modified by or inconsistent with the provisions of the order, to apply to the acquisition of land under that order: (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981 applies; and (b) as if the order were a compulsory purchase order under that Act<sup>12</sup>.

If the appropriate authority<sup>13</sup> agrees, an interest which subsists in land in which there is a Crown or Duchy interest<sup>14</sup>, but is not itself a Crown or Duchy interest, may be acquired compulsorily by virtue of an order under the Transport and Works Act 1992<sup>15</sup>, and any provision of that Act or of such an order (other than a provision by virtue of which an interest in land is compulsorily acquired) may apply in relation to land in which there is a Crown or Duchy interest<sup>16</sup>.

1    le under the Transport and Works Act 1992 s 1(1)(b): see PARA 1586 ante.

2    For the meaning of 'tramway' see PARA 1586 ante.

3    See the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, art 3(b), Sch 2 paras 23-36.

4    See *ibid* Sch 2 para 26. There may be occasions when an undertaker (see PARA 1590 note 28 ante) wishes to acquire only an easement or other rights over land rather than any greater interest (such as a freehold or lease). As to rights over land generally see EASEMENTS AND PROFITS A PRENDRE; LANDLORD AND TENANT; REAL PROPERTY. As to the extinction or suspension of private rights of way see Sch 2 para 35. As to the acquisition of part of certain properties see Sch 2 para 34.

5    See *ibid* Sch 2 paras 27, 28 (eg for the construction of a tunnel or the laying of underground cables).

6    See *ibid* Sch 2 para 29. This power does not apply in relation to any subway or underground building or any cellar, vault, arch or other construction in or on a street which forms part of a building fronting on to the street: see Sch 2 para 29(4).

7    See *ibid* Sch 2 para 30. The power extends to entering upon and taking temporary possession of the land, removing any buildings and vegetation from the land and constructing temporary works (including the provision of means of access) and buildings on the land (see Sch 2 para 30(1)), but is subject to notification requirements (see Sch 2 para 30(2)), time limits for remaining in possession (see Sch 2 para 30(3)), restoration requirements (see Sch 2 para 30(4)) and compensation requirements (see Sch 2 para 30(5)-(7)). As to the service of notices see Sch 2 para 56. As to matters disregarded in the assessment of compensation see Sch 2 paras 32, 33. Double recovery of compensation is prohibited: see Sch 2 para 57.

8    See *ibid* Sch 2 para 31. The power does not extend to the undertaker taking temporary possession of: (1) any house or garden belonging to a house; or (2) any building (other than a house) if it is for the time being occupied: Sch 2 para 31(2). There are provisions for notification (see Sch 2 para 31(3)), time limits for remaining in possession (see Sch 2 para 31(4)), restoration requirements (see Sch 2 para 31(5)) and compensation requirements (see Sch 2 para 31(6)-(8)).

9    See *ibid* Sch 2 para 52, Sch 12.

10 Both compulsory purchase powers and the power to enter land for temporary use cease at the end of five years beginning on the day that the order comes into force: see *ibid* Sch 2 para 36(1).

11 See the Compulsory Purchase Act 1965 Pt I (ss 1-32) (as amended); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.

12 Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, Sch 2 para 24. As to the compulsory purchase of land under the Acquisition of Land Act 1981 see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq. As to special parliamentary procedure in connection with compulsory acquisition of land comprised in an application for an order under the Transport and Works Act 1992 see the Acquisition of Land Act 1981 s 12 (as amended); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 560.

13 'The appropriate authority' means: (1) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners; (2) in the case of other land belonging to Her Majesty in right of the Crown, the government department having the management of the land; (3) in the case of land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy; (4) in the case of land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; and (5) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that department: Transport and Works Act 1992 s 25(3). If any question arises as to what authority is the appropriate authority in relation to any land, that question must be referred to the Treasury, whose decision is final: s 25(4). As to land belonging to the Crown etc see CROWN PROPERTY vol 12(1) (Reissue) PARA 201 et seq. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

14 'Crown or Duchy interest' means an interest belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department: *ibid* s 25(2).

15 Ie an order under *ibid* s 1: see PARA 1586 ante.

16 *Ibid* s 25(1).

## UPDATE

### 1591 Model clauses: powers of compulsory acquisition

TEXT AND NOTES 1-12--SI 2006/1954 Sch 2 amended: SI 2008/2831, SI 2009/1307.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/18. TRAMWAYS/(4) TRANSPORT AND WORKS ACT 1992/(ii) Transport and Works Orders/1592. Model clauses: operating powers.

### 1592. Model clauses: operating powers.

An order made under the Transport and Works Act 1992<sup>1</sup> appertaining to a tramway<sup>2</sup> may include model clauses prescribed by that Act which make provision for the operation of the tramway<sup>3</sup>. Such clauses may confer on an undertaker<sup>4</sup> power:

- 2447 (1) to operate and use the tramway and other works authorised by the order for the carriage of passengers and goods<sup>5</sup>;
- 2448 (2) to charge (or waive) fares for carrying passengers or goods on the tramway or for services or facilities provided in connection with its operation<sup>6</sup>;
- 2449 (3) to remove obstructions caused to tramcars using the tramway<sup>7</sup>;
- 2450 (4) to lop or fell trees overhanging the tramway<sup>8</sup>;
- 2451 (5) to make byelaws regulating the use and operation of, and travel on, the tramway and on tramway premises or other facilities provided in connection with

the tramway and the conduct of all persons, including employees of the undertaker, while on tramway premises<sup>9</sup>; and  
2452 (6) to contract for police services<sup>10</sup>.

Clauses may also make it an offence for a person: (a) to trespass on a tramroad<sup>11</sup> authorised by the order, or on any land of the undertaker in dangerous proximity to the tramroad or to any electrical or other apparatus used for or in connection with the operation of the tramroad<sup>12</sup>; (b) without reasonable excuse to obstruct another person from constructing a tramway authorised by the order or any other authorised work, or to interfere with, move or remove any apparatus belonging to any person acting under the authority of the undertaker<sup>13</sup>.

1 le under the Transport and Works Act 1992 s 1(1)(b): see PARA 1586 ante.

2 For the meaning of 'tramway' see PARA 1586 ante.

3 See the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, art 3(b), Sch 2 paras 37-46.

4 For the meaning of 'undertaker' see PARA 1590 note 28 ante.

5 Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, Sch 2 para 37(1). Subject to the rights of any lessee or chargee (see Sch 2 para 47), the power confers an exclusive right to use the rails and other apparatus and to occupy any part of a street in which that apparatus is situated: Sch 2 para 37(2). A person who, without the consent of the undertaker or other reasonable excuse, uses the apparatus is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale: Sch 2 para 37(3). As to the standard scale see PARA 230 note 3 ante. Nothing in Sch 2 para 37 is to be taken as restricting the exercise of any public right of way over any part of a street in which the apparatus is situated, except to the extent that the exercise of the right is constrained by the presence of the apparatus: Sch 2 para 37(4). The exclusive nature of the rights conferred by Sch 2 para 34(2) renders the tramway rateable: see PARA 1555 note 5 ante.

6 Ibid Sch 2 para 38.

7 See ibid Sch 2 para 39. If any obstruction is caused by vehicles waiting, loading, unloading or breaking down on any part of the tramway or by a load falling on the tramway from a vehicle, then the person in charge of the vehicle must forthwith remove the obstruction, failing which the undertaker may take reasonable steps to remove the obstruction and recover the expenses reasonably incurred in so doing from the person by whom the vehicle was put or left or from which the load fell: Sch 2 para 39(1)(a), (2)(a). Alternatively, the expenses may be recovered from the owner of the vehicle, unless he can show that he was not concerned in, or aware of, the vehicle being so put or left or being in the place at which the load fell from it: Sch 2 para 39(1)(b), (2)(b).

8 Ibid Sch 2 para 42. The power extends to shrubs and additionally to cutting back the roots of the trees or shrubs: see Sch 2 para 42(1). The undertaker must reasonably believe it to be necessary to carry out the work to prevent the tree or shrub concerned from obstructing or interfering with the construction, maintenance or operation of the tramway or any apparatus used for the purposes of the tramway, or to prevent it constituting a danger to passengers or other persons using the tramway: Sch 2 para 42(1). The undertaker must do no unnecessary damage and must pay compensation to any person for any loss or damage arising from the exercise of the powers: Sch 2 para 42(2). There are also exceptions in favour of tramway and other statutory undertakers from restrictions on the felling of growing trees imposed by the Forestry Act 1967 s 9 (as amended): see the Forestry (Exceptions from Restrictions of Felling) Regulations 1979, SI 1979/792 reg 4 (as amended); and FORESTRY vol 52 (2009) PARA 122.

9 Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, Sch 2 para 45(1). In particular, byelaws may make provision: (1) with respect to travel tickets, the payment of fares and charges and the evasion of their payment; (2) with respect to interference with, or obstruction of, the operation of the tramway or other facilities provided in that connection; (3) with respect to the use of tobacco or other substances, the consumption of alcohol and food and the prevention of other nuisances; (4) for regulating the passage of bicycles and other vehicles on ways and other places intended for use of persons on foot within tramway premises; (5) for the safe custody and re-delivery or disposal of any property found on tramway premises and for fixing the charges made in respect of any such property; and (6) for prohibiting or restricting the placing or leaving of any vehicle without its driver on any part of the tramway or on tramway premises: Sch 2 para 45(2). As to the meaning of 'tramway premises' see Sch 2 para 45(3). Provision may be made for breach of a byelaw to constitute an offence with liability on summary conviction to a fine not exceeding level 3 on the standard scale: Sch 2 para 45(4). The undertaker may also summarily take action, if breach of a byelaw is

attended with danger or annoyance to the public, or hindrance to the undertaker in the operation of the tramway, to obviate or remove the danger, annoyance or hindrance: Sch 2 para 45(5). Before any byelaw may come into operation, it must be confirmed by the Secretary of State (see PARAS 236, 1539 ante): Sch 2 para 45(6). As to the procedure for making byelaws see Sch 2 para 45(7)-(12). As to certification of byelaws see Sch 2 para 45(13).

10 Ibid Sch 2 para 46. The agreements may be made with the local police authority or with the British Transport Police Force (as to which see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 281 et seq).

11 'Tramroad' means any part of a tramway which is not a street tramway: see ibid Sch 2 para 1(1). 'Street tramway' means any part of a tramway which is laid along a street, whether or not the section of the street in which its rails are laid may be used by other traffic: Sch 2 para 1(1).

12 Ibid Sch 2 para 44(1). Any person guilty of the offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Sch 2 para 44(1). However, no person is to be convicted unless it can be shown that a notice warning the public not to trespass on the tramroad was clearly exhibited and maintained at the station or other stopping place nearest the place where the offence is alleged to have been committed: Sch 2 para 44(2).

13 Ibid Sch 2 para 43. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Sch 2 para 43.

## UPDATE

### 1592 Model clauses: operating powers

TEXT AND NOTES--SI 2006/1954 Sch 2 amended: SI 2008/2831, SI 2009/1307.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/18. TRAMWAYS/(4) TRANSPORT AND WORKS ACT 1992/(ii) Transport and Works Orders/1593. Model clauses: miscellaneous matters.

### 1593. Model clauses: miscellaneous matters.

An order made under the Transport and Works Act 1992<sup>1</sup> appertaining to a tramway<sup>2</sup> may include model clauses prescribed by that Act making provision for the following further matters:

- 2453 (1) the application of enactments relating to railways in relation to any tramroad<sup>3</sup> authorised by the order<sup>4</sup>;
- 2454 (2) the leasing or charging of any right to operate a tramway so authorised together with any related statutory rights as may be agreed<sup>5</sup>;
- 2455 (3) planning permission and tree preservation orders<sup>6</sup>;
- 2456 (4) the use of open space land<sup>7</sup>;
- 2457 (5) the power to transfer the undertaking<sup>8</sup>;
- 2458 (6) the safeguarding of the right of any person entitled to any mine or minerals under a street in which a tramway is laid to work such mine and get such minerals<sup>9</sup>;
- 2459 (7) saving the rights of highway authorities to widen, alter, divert or improve any highway along which a tramway is laid<sup>10</sup>;
- 2460 (8) the serving of notices required or authorised to be sent for the purposes of the order<sup>11</sup>; and
- 2461 (9) arbitration in connection with any difference under certain provisions of the order<sup>12</sup>.



- 1 le under the Transport and Works Act 1992 s 1(1)(b): see PARA 1586 ante.
- 2 For the meaning of 'tramway' see PARA 1586 ante.
- 3 For the meaning of 'tramroad' see PARA 1592 note 11 ante.
- 4 See the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, art 3(b), Sch 2 para 2. The enactments relate mainly to sections of the Railways Clauses Consolidation Act 1845: see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 343 et seq.
- 5 See the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, Sch 2 para 47.
- 6 Ibid Sch 2 para 48. This concerns deemed planning permission under the Town and Country Planning Act 1990 s 90(2A) (as added): see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 238.
- 7 Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, Sch 2 para 49. This involves exchanging land for open space used by the undertaker.
- 8 Ibid Sch 2 para 50.
- 9 Ibid Sch 2 para 53. This does not affect any liability (whether civil or criminal) of the person entitled to the mine or minerals in respect of any damage to the tramway resulting from the exercise of any such right: Sch 2 para 53. As to subsidence caused by the withdrawal of support from land, buildings, structures (including any works providing passage or hard standing for vehicles, including railway or tramway vehicles) and works in connection with lawful coal mining operations see the Coal Mining Subsidence Act 1991 s 52(1); and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 205 et seq.
- 10 See the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, Sch 2 para 54.
- 11 See ibid Sch 2 para 56.
- 12 Ibid Sch 2 para 58. In the event of any difference, provision is made for it to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed (on the application of either party) by the President of the Institution of Civil Engineers: Sch 2 para 58.

## UPDATE

### 1593 Model clauses: miscellaneous matters

TEXT AND NOTES--SI 2006/1954 Sch 2 amended: SI 2008/2831, SI 2009/1307.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/18. TRAMWAYS/(4) TRANSPORT AND WORKS ACT 1992/(ii) Transport and Works Orders/1594. Validity of orders.

### 1594. Validity of orders.

If a person aggrieved<sup>1</sup> by a transport and works order<sup>2</sup> desires to question the validity of it, or of any provision contained in it, on the ground that it is not within the powers of the Transport and Works Act 1992, or that any statutory requirement<sup>3</sup> has not been complied with, he may, within the period of 42 days beginning with the day on which the notice of the making of the order<sup>4</sup> is published, make an application for the purpose to the High Court<sup>5</sup>.

On any such application, the court:

- 2462 (1) may by interim order suspend the operation of the order, or of any provision contained in it, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings<sup>6</sup>; and
- 2463 (2) if satisfied that the order or any provision contained in it is not within the powers of the Transport and Works Act 1992, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any statutory requirement<sup>7</sup>, may quash the order or any provision contained in it, either generally or in so far as it affects any property of the applicant<sup>8</sup>.

Subject to the above, such an order may not, either before or after it has been made, be questioned in any legal proceedings whatever<sup>9</sup>.

- 1 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARAS 656, 664.
- 2 I.e. an order made under the Transport and Works Act 1992 s 1: see PARA 1586 ante.
- 3 I.e. any requirement imposed by or under the Transport and Works Act 1992 or the Tribunals and Inquiries Act 1992 (as to which see ADMINISTRATIVE LAW).
- 4 I.e. the notice required under the Transport and Works Act 1992 s 14(1)(b) (notice to be published in the London Gazette). As to orders which are subject to special parliamentary procedure see s 12(1).
- 5 Ibid s 22(1).
- 6 Ibid s 22(2)(a).
- 7 See note 3 supra.
- 8 Transport and Works Act 1992 s 22(2)(b).
- 9 Ibid s 22(3).

## UPDATE

### 1594 Validity of orders

TEXT AND NOTES 5, 8--1992 Act s 22(1), (2)(b) amended: Tribunals, Courts and Enforcement Act 2007 Sch 8 para 21.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/18. TRAMWAYS/(4) TRANSPORT AND WORKS ACT 1992/(ii) Transport and Works Orders/1595. Summary of orders made.

### 1595. Summary of orders made.

Since the coming into force of Part I of the Transport and Works Act 1992<sup>1</sup>, a substantial number of transport and works orders have been made<sup>2</sup>. The majority of these orders have been in respect of railways<sup>3</sup>, eight have been in respect of undertakings of a tramway nature<sup>4</sup>, and the remainder have concerned works interfering with navigation<sup>5</sup>.

1 The Transport and Works Act 1992 Pt I (ss 1-25) (as amended) came into force on 1 January 1993.

2 At the date at which this volume states the law numerous orders have been made under the Transport and Works Act 1992 ss 1(1), 3(1).

3 The orders relate to a wide variety of lines, including those forming part of the national railway network, significant local lines (eg London Underground, Heathrow Express, Tyne and Wear Metro, Docklands Light Railway) and preserved or heritage lines (both standard and narrow gauge). As to railways see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

4 See the Greater Manchester (Light Rapid Transit System) (Modification) Order 1994, SI 1994/701; the Greater Manchester (Light Rapid Transit System) (Land Acquisition) Order 1995, SI 1995/2383; the Greater Manchester (Light Rapid Transit System) (Eccles Extension) Order 1996, SI 1996/2714; the Greater Manchester (Light Rapid Transit System) (Airport Extension) Order 1997, SI 1997/1266; the Greater Manchester (Light Rapid Transit System) (Ashton-under-Lyne Extension) Order 1998, SI 1998/1936; the Greater Manchester (Light Rapid Transit System) (Land Acquisition) Order 1998, SI 1998/2919; the Greater Manchester (Light Rapid Transit System) (Airport Extension Order 1997) (Moor Road Modification) Order 1999, SI 1999/217; and the Wirral Tramway Order 1999, SI 1999/1306.

5 See SHIPPING AND MARITIME LAW.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/18. TRAMWAYS/(5) OTHER LEGISLATION RELATING TO TRAMWAYS/(i) Financial and Contractual/1596. Power to make advances.

## **(5) OTHER LEGISLATION RELATING TO TRAMWAYS**

### **(i) Financial and Contractual**

#### **1596. Power to make advances.**

The Secretary of State<sup>1</sup> may provide, or agree to provide, financial assistance to any person: (1) for the purpose of securing the provision, improvement or development of railway services (including tramways)<sup>2</sup> or railway assets; or (2) for any other purpose relating to a railway or to railway services<sup>3</sup>. The provision of financial assistance includes each of the following: (a) the making of grants or loans; (b) the giving of guarantees; and (c) investments in bodies corporate<sup>4</sup>.

The Secretary of State may, with the approval of the Treasury<sup>5</sup>, make grants upon such terms and conditions as the Secretary of State thinks fit to any person towards expenditure appearing to the Secretary of State to be of a capital nature incurred, or to be incurred, by that person for the purpose of the provision, improvement or development of facilities for public passenger transport in Great Britain<sup>6</sup>. Any local authority<sup>7</sup>, or any two local authorities acting jointly, may make payments, upon such terms and conditions as it or they think fit, to any other person towards expenditure appearing to the authority or authorities in question to be of a capital nature incurred, or to be incurred, by that other person for the purpose of the provision, improvement or development of any facilities for public passenger transport if it appears to the authority, or each of the authorities, in question that facilities are or will be of benefit to the area of that authority<sup>8</sup>.

The Secretary of State has power, with the approval of the Treasury, to make grants upon such terms and conditions as he thinks fit to any person towards expenditure incurred, or to be incurred, by that person: (i) in carrying out research in connection with the provision or improvement of transport services by land<sup>9</sup> or other transport purposes; or (ii) in developing for the purposes of the provision or improvement of such services the results of any research carried out by, or any invention or idea of, that or any other person<sup>10</sup>.

There are special financial provisions in respect of light railways<sup>11</sup> and with regard to London<sup>12</sup>.

1 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For these purposes, 'railway' has its wider meaning: Railways Act 2005 s 6(7). Accordingly, 'railway' is taken, for these purposes, to mean: (1) a railway; (2) a tramway; or (3) a transport system which uses another mode of guided transport but which is not a trolley vehicle system; and cognate expressions are to be construed accordingly: Railways Act 1993 s 81(2); applied by the Railways Act 2005 s 58(2). For the purposes of the Railways Act 1993 s 81(2)(a)-(c), 'guided transport' (see PARA 1586 note 8 ante), 'railway' (see PARA 1537 note 2 ante), 'tramway' (see PARA 1586 ante) and 'trolley vehicle system' (see PARA 1628 note 3 post) have the meanings given by the Transport and Works Act 1992 s 67(1): Railways Act 1993 s 81(3); Railways Act 2005 s 58(2).

3 Ibid s 6(1). See further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 39.

4 Ibid s 6(2). Agreements or other arrangements entered into by the Secretary of State under s 6 may be entered into on whatever terms, and subject to whatever conditions, he considers appropriate: s 6(3).

5 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

6 Transport Act 1968 s 56(1). See further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 43.

7 'Local authority' means: (1) the council of any county or county district in England and Wales; (2) the council of a London borough or the Common Council of the City of London; (3) a metropolitan county passenger transport authority; (4) the Council of the Isles of Scilly: see the Transport Act 1968 s 56(6) (amended by the Local Government Act 1972 s 272(1), Sch 30; the London Regional Transport Act 1984 s 71(3)(b), Sch 7; and the London Local Government Act 1985 s 39, Sch 12 para 3). As to local authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; as to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq; as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq; and as to the Council of the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36.

8 Transport Act 1968 s 56(2). This is subject to s 56(3), (4) (as substituted and amended): see s 56(2).

9 'Land' includes land covered by water and any interest or right in, over or under land: ibid s 159(1).

10 Ibid s 57. See further WATER AND WATERWAYS vol 101 (2009) PARAS 722, 746.

11 See PARAS 1579, 1582 ante.

12 See the Greater London Authority Act 1999 s 101 (as amended) (grants by the Secretary of State to the Greater London Authority for the purposes of Transport for London: see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 238), s 159 (financial assistance from Transport for London to any London borough council or the Common Council of the City of London: see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 294), s 160 (guarantees by Transport for London to discharge financial obligations of any of its subsidiaries or for the purpose of carrying out certain agreements with other bodies: see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 294).

## UPDATE

### 1596 Power to make advances

NOTE 7--Head (3). Reference to a metropolitan county passenger transport authority is now to an Integrated Transport Authority for an integrated transport area in England (see PARA 247): Transport Act 1968 s 56(6)(bb) (substituted by the Local Transport Act 2008 Sch 4 para 12(3)). Definition of 'local authority' in Transport Act 1968 s 56(6) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 6.

1663)/18. TRAMWAYS/(5) OTHER LEGISLATION RELATING TO TRAMWAYS/(i) Financial and Contractual/1597. Supply, works and services contracts.

### **1597. Supply, works and services contracts.**

Special procedures apply for the award of supply, works and services contracts in relation to a system which provides a service to the public in the field of transport<sup>1</sup>. This includes a tramway system which provides such service<sup>2</sup>.

1 See the Utilities Contracts Regulations 2006, SI 2006/6 (implementing EC Parliament and Council Directive 2004/17 (OJ L134, 30.4.2004, p 1) co-ordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors). As to the procedures see FUEL AND ENERGY vol 19(1) (2007 Reissue) PARAS 643-651.

2 See the Utilities Contracts Regulations 2006, SI 2006/6, reg 3, Sch 1 Pt R.

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## **(ii) Provisions relating to Street Works**

### **1598. Prohibition of unauthorised street works.**

By virtue of the New Roads and Street Works Act 1991<sup>1</sup>, a person<sup>2</sup> may not:

- 2464 (1) place in<sup>3</sup> a street<sup>4</sup> any tramway<sup>5</sup> apparatus which constitutes apparatus<sup>6</sup> for the purposes of that Act; or
- 2465 (2) break up or open a street, or a sewer<sup>7</sup>, drain or tunnel under it, or tunnel or bore under a street, for the purposes of placing, inspecting, maintaining, adjusting, repairing, altering or renewing such apparatus, or of changing its position or removing it,

otherwise than in pursuance of a statutory right<sup>8</sup> or a street works licence<sup>9</sup>. A contravention of this provision constitutes an offence<sup>10</sup>. Powers are conferred on the street authority<sup>11</sup> for the street concerned to give directions to a person committing such an offence to remove the apparatus in question and reinstate the street, and in the event of a refusal to comply to carry out the works itself and recover the reasonable costs so incurred<sup>12</sup>.

1 See the New Roads and Street Works Act 1991 s 51 (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 423.

2 'Person' includes a body of persons corporate or unincorporate: see the Interpretation Act 1978 s 5, Sch 1.

3 'In', in relation to works, apparatus or property in a street or other place, includes a reference to works, apparatus or property under, over, across, along or upon it: New Roads and Street Works Act 1991 ss 105(1), 106. Where a street is carried or crossed by a bridge, any statutory right (see note 8 *infra*) to place apparatus in the street includes the right to place it in, or attach it to, the structure of the bridge, and other rights to execute works in relation to apparatus placed in a street extend accordingly; and references to apparatus in the street include references to apparatus so placed or attached: s 88(3).

4 'Street' means the whole or any part of any of the following, irrespective of whether it is a thoroughfare:

1421 (1) any highway, road, lane, footway, alley or passage;

1422 (2) any square or court; and

1423 (3) any land laid out as a way whether it is for the time being formed as a way or not,

and where a street passes over a bridge or through a tunnel, references to the street include that bridge or tunnel: *ibid* s 48(1). See further HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 9.

5 'Tramway' means a system, mainly or exclusively for the carriage of passengers, using vehicles guided, or powered by energy transmitted, by rails or other fixed apparatus installed exclusively or mainly in a street: *ibid* ss 105(1), 106.

6 'Apparatus' includes any structure for the lodging therein of apparatus or for gaining access to apparatus, and includes a sewer, drain or tunnel: *ibid* ss 89(3), 105(1), 106.

7 'Sewer' has the same meaning as in the Water Industry Act 1991 (see WATER AND WATERWAYS vol 100 (2009) PARA 138): New Roads and Street Works Act 1991 ss 89(1)(a), 106 (s 89(1)(a) amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2, Sch 1 para 57(1)).

8 'Statutory right' means a right (whether expressed as a right, power or otherwise) conferred by an enactment (whenever passed or made) other than a right exercisable by a street works licence (as to which see note 9 *infra*); and 'enactment' includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (see STATUTES vol 44(1) (Reissue) PARAS 1232, 1381): New Roads and Street Works Act 1991 ss 105(1), 106. A right to execute works which extends both to a street and to other land is included in references to a right to execute works in a street in so far as it extends to the street: s 105(2). Similarly, a right to execute works which extends to part but not the whole of a street is included in such references: see s 105(3).

9 *Ibid* s 51(1). 'Street works licence' means a licence granted under s 50(1): see ss 50(1), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 414.

10 *Ibid* s 51(1). A person committing such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 51(2) (amended by the Traffic Management Act 2004 s 40(1), (2), Sch 1). At the date at which this volume states the law the amendment made by the Traffic Management Act 2004 had not been brought into force in relation to Wales; and until the amendment takes effect, the maximum fine is level 3 on the standard scale. As to the standard scale see PARA 230 note 3 *ante*. An offence is not committed if the person carrying out the activities is the street authority (see note 11 *infra*) for the street concerned: New Roads and Street Works Act 1991 s 51(1). As to offences committed by a body corporate see s 166(1); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 483.

11 For the meaning of 'street authority' see *ibid* ss 49(1), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 412.

12 *Ibid* s 51(4). As to the recovery of costs see s 96.

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### **1599. Works subject to control.**

Tramway<sup>1</sup> works constitute street works for the purposes of the New Roads and Street Works Act 1991 if the works in question are executed in<sup>2</sup> a street<sup>3</sup> in pursuance of a statutory right<sup>4</sup> or a street works licence<sup>5</sup> and are concerned with any of the following (other than works for road purposes<sup>6</sup>): (1) the placing of tramway apparatus which constitutes apparatus for the purposes of that Act<sup>7</sup> or inspecting, maintaining, adjusting, repairing, altering or removing such apparatus, changing the position of it or removing it; (2) works required for or incidental to any such works, including in particular breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street<sup>8</sup>. Such works are controlled both in

relation to streets which are maintainable highways<sup>9</sup> and also in relation to streets which are not so maintainable<sup>10</sup>, but in the latter case exceptions and adaptations to the code may be prescribed<sup>11</sup>.

- 1 For the meaning of 'tramway' see PARA 1598 note 5 ante.
- 2 As to the meaning of 'in' in relation to works, apparatus or property in a street see PARA 1598 note 3 ante.
- 3 For the meaning of 'street' see PARA 1598 note 4 ante.
- 4 For the meaning of 'statutory right' see PARA 1598 note 8 ante.
- 5 For the meaning of 'street works licence' see PARA 1598 note 9 ante.
- 6 For the meaning of 'works for road purposes' see the New Roads and Street Works Act 1991 s 86(2); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 407.
- 7 For the meaning of 'apparatus' see PARA 1598 note 6 ante.
- 8 New Roads and Street Works Act 1991 s 48(3).
- 9 'Maintainable highway' means a highway which for the purposes of the Highways Act 1980 is a highway maintainable at the public expense: New Roads and Street Works Act 1991 ss 86(1), 106.
- 10 As to privately maintainable streets see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 259 et seq.
- 11 New Roads and Street Works Act 1991 s 48(2). For the consequences of such control of streets works see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 410.

## UPDATE

### 1599 Works subject to control

NOTE 8--For the purposes of the New Roads and Street Works Act 1991 s 48(3), the works that are street works by virtue of being works required for or incidental to street works of any particular kind include (1) reinstatement of the street; and (2) where an undertaker has failed to comply with his duties under Pt III (ss 48-106) with respect to reinstatement of the street, any remedial work: New Roads and Street Works Act 1991 s 48(3A) (added by the Local Transport Act 2008 s 124(2)).

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### 1600. Undertakers.

A person<sup>1</sup> by whom the statutory right<sup>2</sup> in respect of a tramway<sup>3</sup> is exercisable (in the capacity in which it is so exercisable), or the licensee<sup>4</sup> under a street works licence<sup>5</sup>, is an undertaker in relation to street works<sup>6</sup> for the purposes of the New Roads and Street Works Act 1991<sup>7</sup>. The undertaker in relation to apparatus<sup>8</sup> in<sup>9</sup> a street<sup>10</sup> is the person entitled, by virtue of a statutory right or a street works licence, to carry out in relation to the apparatus such works as fall within the category of street works<sup>11</sup>.

- 1 For the meaning of 'person' see PARA 1598 note 2 ante.
- 2 For the meaning of 'statutory right' see PARA 1598 note 8 ante.
- 3 For the meaning of 'tramway' see PARA 1598 note 5 ante.
- 4 References to the licensee are to the person for the time being entitled by virtue of the licence to do anything permitted by it: New Roads and Street Works Act 1991 s 50(5).
- 5 For the meaning of 'street works licence' see PARA 1598 note 9 ante.
- 6 For the meaning of 'street works' see the New Roads and Street Works 1991 ss 48(3), 106; and PARA 1599 ante.
- 7 Ibid s 48(4).
- 8 For the meaning of 'apparatus' see PARA 1598 note 6 ante.
- 9 As to the meaning of 'in' in relation to works, apparatus or property in a street see PARA 1598 note 3 ante.
- 10 For the meaning of 'street' see PARA 1598 note 4 ante.
- 11 New Roads and Street Works Act 1991 s 48(5). References to an undertaking having apparatus in the street, or to the undertaker to whom apparatus belongs are to be construed accordingly: s 48(5). See further HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 408.

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### **1601. Relevant transport authorities.**

For the purposes of the New Roads and Street Works Act 1991, the relevant authorities in relation to any works in a street<sup>1</sup> are the street authority<sup>2</sup> and, where the street is carried or crossed by a bridge<sup>3</sup> vested in a transport authority<sup>4</sup> or crosses or is crossed by any other property held or used for the purposes of a transport authority, that authority<sup>5</sup>.

References to a street which crosses or is crossed by property held or used for the purposes of a transport undertaking extend to cases in which the street and the property in question are at different levels, but the transport authority is not treated as a relevant authority as regards undertakers<sup>6</sup> works in such a street where the property in question consists only of: (1) subsoil of the street which is held by the transport authority but is not used, and has not been adapted for use, for the purposes of the transport undertaking<sup>7</sup>; or (2) property underground at such depth that there is no reasonable possibility of the works affecting it<sup>8</sup>.

- 1 For the meaning of 'street' see PARA 1598 note 4 ante. As to the meaning of 'in' in relation to works, apparatus or property in a street see PARA 1598 note 3 ante.
- 2 New Roads and Street Works Act 1991 s 49(6); and see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 413. For the meaning of 'street authority' see s 49(1); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 412.
- 3 As to the meaning of 'bridge' see ibid ss 88(1)(a), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 407.
- 4 'Transport authority' means the authority, body or person having the control or management of a transport undertaking; and 'transport undertaking' means a railway, tramway, dock, harbour, pier, canal or inland navigation undertaking of which the activities, or some of the activities, are carried on under statutory authority: ibid s 91(1).



5 Ibid s 49(6)(b).

6 For the meaning of 'undertakers' see PARA 1600 ante.

7 New Roads and Street Works Act 1991 s 91(3). These provisions apply to a street which is or forms part of a towing-path or other way running along a canal or inland navigation, provided the path or way is held or used, or the subsoil of it is held, for the purposes of the canal or inland navigation undertaking: s 91(4).

8 Ibid s 91(3). This provision could apply to property of a railway, tramway or canal located in a deep tunnel.

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### **1602. Major transport works.**

Where an undertaker's<sup>1</sup> apparatus<sup>2</sup> in<sup>3</sup> a street<sup>4</sup> is or may be affected by, inter alia, major transport works<sup>5</sup>, the transport authority<sup>6</sup> concerned and the undertaker must take such steps as are reasonably required:

- 2466 (1) to identify any measures needing to be taken in relation to the apparatus in consequence of, or in order to facilitate, the execution of the authority's works<sup>7</sup>;
- 2467 (2) to settle a specification of the necessary measures and determine by whom they are to be taken<sup>8</sup>; and
- 2468 (3) to co-ordinate the taking of those measures and the execution of the authority's works<sup>9</sup>,

so as to secure the efficient implementation of the necessary work and the avoidance of unnecessary delay<sup>10</sup>.

The Secretary of State<sup>11</sup> may issue or approve for these purposes a code of practice as to these matters<sup>12</sup> and the steps to be taken by the authority and the undertaker<sup>13</sup>. Any dispute between the authority and the undertaker must, in default of agreement, be settled by arbitration<sup>14</sup>. If the authority or the undertaker fails to comply with an agreement between them as to any of those matters, or with the decision of the arbitrator, the authority or undertaker is liable to compensate the other in respect of any loss or damage resulting from the failure<sup>15</sup>.

1 For the meaning of 'undertaker' see PARA 1600 ante.

2 For the meaning of 'apparatus' see PARA 1598 note 6 ante.

3 As to the meaning of 'in' in relation to works, apparatus or property in a street see PARA 1598 note 3 ante.

4 For the meaning of 'street' see PARA 1598 note 4 ante.

5 'Major transport works' means substantial works required for the purposes of a transport undertaking and executed in property held or used for the purposes of the undertaking: New Roads and Street Works Act 1991 s 91(2). For the meaning of 'transport undertaking' see PARA 1601 note 4 ante.

6 For the meaning of 'transport authority' see PARA 1601 note 4 ante.

7 New Roads and Street Works Act 1991 s 84(1)(a).

8 Ibid s 84(1)(b).

9 Ibid s 84(1)(c).

10 Ibid s 84(1). As to the costs of works see PARA 1603 post.

11 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

12 New Roads and Street Works Act 1991 s 84(2). See the *Measures necessary where apparatus is affected by major works (diversionary works) A code of practice* (1992), HMSO.

13 New Roads and Street Works Act 1991 s 84(2).

14 Ibid s 84(3); and see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 473-474. As to arbitration generally see ARBITRATION vol 2 (2008) PARA 1201 et seq.

15 Ibid s 84(4).

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### **1603. Costs of necessary measures.**

Where an undertaker's<sup>1</sup> apparatus<sup>2</sup> in<sup>3</sup> a street<sup>4</sup> is affected by, inter alia, major transport works<sup>5</sup>, the allowable costs of the measures needing to be taken in relation to the apparatus in consequence of the works, or in order to facilitate their execution, must be borne by the transport authority concerned<sup>6</sup> and the undertaker in such manner as may be prescribed<sup>7</sup>. Regulations may make provision as to the costs allowable for this purpose<sup>8</sup>, the circumstances in which they may be disallowed<sup>9</sup> and the proportions of allowable costs to be borne by the authority and the undertaker<sup>10</sup>.

1 For the meaning of 'undertaker' see PARA 1600 ante.

2 For the meaning of 'apparatus' see PARA 1598 note 6 ante.

3 As to the meaning of 'in' in relation to works, apparatus or property in a street see PARA 1598 note 3 ante.

4 For the meaning of 'street' see PARA 1598 note 4 ante.

5 For the meaning of 'major transport works' see PARA 1602 note 5 ante.

6 For the meaning of 'transport authority' see PARA 1601 note 4 ante.

7 New Roads and Street Works Act 1991 s 85(1). For the meaning of 'prescribed' see ss 104(1), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 410.

8 Ibid s 85(2). See, in relation to England, the Street Works (Sharing of Costs of Works) (England) Regulations 2000, SI 2000/3314, reg 2(2); and, in relation to Wales, the Street Works (Sharing of Costs of Works) (Wales) Regulations 2005, SI 2005/1721, reg 2(2). See also HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 475.

9 See the New Roads and Street Works Act 1991 s 85(2).

10 See ibid s 85(4). See further HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 475.

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#### **1604. Streets with special engineering difficulties.**

Where a street<sup>1</sup> is designated by a street authority<sup>2</sup> as a street with special engineering difficulties, an undertaker<sup>3</sup> is required to settle plans and sections of street works<sup>4</sup> to be executed in<sup>5</sup> such a street<sup>6</sup>. The Secretary of State<sup>7</sup> may prescribe<sup>8</sup> the criteria for designating a street as having special engineering difficulties, the procedure for making and withdrawing such a designation<sup>9</sup>, and the information to be made available<sup>10</sup> by a street authority as to the streets for the time being so designated<sup>11</sup>.

Where a local highway authority<sup>12</sup> is asked to designate a street as having special engineering difficulties: (1) by a transport authority<sup>13</sup> on the ground of proximity of the street to a structure belonging to, or under the management or control of, the authority; or (2) by an undertaker having apparatus<sup>14</sup> in the street, and declines to do so, the transport authority or undertaker may appeal to the Secretary of State who may direct that the street be so designated<sup>15</sup>.

1 For the meaning of 'street' see PARA 1598 note 4 ante.

2 For the meaning of 'street authority' see the New Roads and Street Works Act 1991 s 49(1); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 412.

3 For the meaning of 'undertaker' see PARA 1600 ante.

4 For the meaning of 'street works' see the New Roads and Street Works Act 1991 ss 48(3), 106; and see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 407. See also PARA 1599 ante.

5 As to the meaning of 'in' in relation to works, apparatus or property in a street see PARA 1598 note 3 ante.

6 See the New Roads and Street Works Act 1991 s 63(1), Sch 4 (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 441, 443 et seq.

7 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

8 Ie prescribed by regulations: New Roads and Street Works Act 1991 s 163(1). As to the criteria prescribed see the Street Works (Registers, Notices, Directions and Designations) Regulations 1992, SI 1992/2985, reg 12(1); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 441.

9 As to the procedure for making and withdrawing designations see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 442.

10 As to the information to be made available see the Street Works (Registers, Notices, Directions and Designations) Regulations 1992, SI 1992/2985, reg 12(3); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 441.

11 New Roads and Street Works Act 1991 s 63(2).

12 For the meaning of 'local highway authority' see ibid ss 86(1), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 56, 411.

13 For the meaning of 'transport authority' see PARA 1601 note 4 ante.

14 For the meaning of 'apparatus' see PARA 1598 note 6 ante.

15 New Roads and Street Works Act 1991 s 63(3).

#### **UPDATE**

## 1604 Streets with special engineering difficulties

NOTES 8, 10--SI 1992/2985 replaced: Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007, SI 2007/1951; Street Works (Registers, Notices, Directions and Designations) (Wales) Regulations 2008, SI 2008/540.

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## 1605. Works affecting level crossings or tramways.

An undertaker<sup>1</sup> proposing to begin to execute street works<sup>2</sup> at a crossing of a railway<sup>3</sup> on the level, or which affect a tramway<sup>4</sup>, must give the prescribed notice<sup>5</sup> to the relevant transport authority<sup>6</sup>. An undertaker executing such works must comply with any reasonable requirements made by the relevant transport authority: (1) for securing the safety of persons employed in connection with the works; or (2) for securing that interference with traffic on the railway or tramway caused by the execution of the works is reduced so far as practicable<sup>7</sup>.

Except where the submission of a plan and section is required<sup>8</sup>, the undertaker must defer beginning the works for such further period as the relevant transport authority may reasonably request as needed for formulating its requirements, or making its traffic arrangements<sup>9</sup>.

Nothing in these provisions affects the right of an undertaker to execute emergency works<sup>10</sup>. An undertaker executing emergency works must give notice of its intention to the relevant transport authority as soon as reasonably practicable<sup>11</sup>, notwithstanding that notice is not otherwise required<sup>12</sup>.

1 For the meaning of 'undertaker' see PARA 1600 ante.

2 For the meaning of 'street works' see the New Roads and Street Works 1991 ss 48(3), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 407. See also PARA 1599 ante.

3 'Railway' includes light railway other than one in the nature of a tramway (as to which see note 4 infra): ibid ss 105(1), 106. As to railways see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

4 For the meaning of 'tramway' see PARA 1598 note 5 ante. The words 'works which affect a tramway' would appear to be wide enough to include a crossing of a tramway (not otherwise in street) on the level and a crossing of a railway on the level by a tramway (in street).

5 Ie prescribed by regulations: New Roads and Street Works Act 1991 s 163(1). At the date at which this volume states the law no regulations have been made for this purpose.

The provisions of s 55(2)-(7) (as amended) (notice of starting date: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 426) apply to the notice required by s 93(2) as they apply in relation to a notice under s 55(1): s 93(2).

As from a day to be appointed, the provisions of s 55(2)-(9) (s 55(2) as prospectively amended; s 55(5) as amended; s 55(8), (9) as prospectively added) apply to the notice required by s 93(2): s 93(2) (amended by the Traffic Management Act 2004 s 49(3)). At the date at which this volume states the law no such day had been appointed.

6 New Roads and Street Works Act 1991 s 93(1), (2). 'Relevant transport authority' in this provision means the authority having the management of the railway or tramway undertaking concerned: s 93(1). For the meaning of 'transport authority' see PARA 1601 note 4 ante. Notice must be given under s 93 notwithstanding that notice is not required under s 55 (as amended) (see note 5 supra): s 93(2).

7 Ibid s 93(3).

8 le under ibid s 63, Sch 4 (as amended): see PARA 1604 ante.

9 Ibid s 93(3).

10 Ibid s 93(4). For the meaning of 'emergency' works, and as to the power to execute such works, see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 431.

11 Ibid s 93(5).

12 The requirement is imposed notwithstanding that notice is not required under ibid s 57: s 93(5). The provisions of s 57(3)-(4) (s 57(4) as amended) apply in relation to a notice required by s 93(5).

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### **1606. Precautions as to lights.**

An undertaker<sup>1</sup> executing street works<sup>2</sup> in a street<sup>3</sup> which crosses, or is crossed by, or is in the vicinity of, a railway<sup>4</sup>, tramway<sup>5</sup>, dock, harbour, pier, canal or inland navigation, must comply with any reasonable requirement imposed by the transport authority<sup>6</sup> concerned with respect to the displaying of lights so as to avoid any risk of their: (1) being mistaken for any signal light or other light needed for controlling, directing or securing the safety of traffic thereon; or (2) being a hindrance to the ready interpretation of any such signal or other light<sup>7</sup>. An undertaker who fails to comply with any such requirement commits an offence<sup>8</sup>. In proceedings for such an offence, it is a defence for the undertaker to show that all reasonable care was taken by it, and by its contractors and by persons in its employ or that of its contractors, to secure that no such failure occurred<sup>9</sup>.

1 For the meaning of 'undertaker' see PARA 1600 ante.

2 For the meaning of 'street works' see the New Roads and Street Works Act 1991 ss 48(3), 106; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 407. See also PARA 1599 ante.

3 For the meaning of 'street' see PARA 1598 note 4 ante.

4 As to the meaning of 'railway' see PARA 1605 note 3 ante. As to railways see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

5 As to the meaning of 'tramway' see PARA 1598 note 5 ante.

6 For the meaning of 'transport authority' see PARA 1601 note 4 ante.

7 New Roads and Street Works Act 1991 s 92(1).

8 Ibid s 92(2). An undertaker is liable on summary conviction to a fine not exceeding level 5 on the standard scale: see s 92(2) (amended by the Traffic Management Act 2004 s 40(1), (2), Sch 1). At the date at which this volume states the law the amendment made by the Traffic Management Act 2004 had not been brought into force in relation to Wales; and until the amendment takes effect, the maximum fine is level 3 on the standard scale. As to the standard scale see PARA 230 note 3 ante. As to offences committed by a body corporate see the New Roads and Street Works Act 1991 s 166(1). See also HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 483.

9 Ibid s 92(3).

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### (iii) Rail Crossings

#### 1607. Rail crossing extinguishment orders.

A council<sup>1</sup> has power by way of a rail crossing extinguishment order<sup>2</sup> to stop up a footpath<sup>3</sup>, bridleway<sup>4</sup> or restricted byway<sup>5</sup> in its area which crosses a tramway<sup>6</sup>, other than where the footpath or bridleway crosses the tramway by a tunnel or bridge<sup>7</sup>. The council may make such an order where it appears expedient to do so in the interests of the safety of members of the public using or likely to use the footpath, bridleway or restricted byway<sup>8</sup>. The order may extinguish the public right of way over the path or way: (1) on the crossing itself; and (2) for so much of its length as the council deems expedient from the crossing to its intersection with another highway<sup>9</sup> over which there subsists a like right of way (whether or not other rights of way also subsist over it)<sup>10</sup>. Supplemental provisions as to rail crossing extinguishment orders are contained in the Highways Act 1980 and in regulations made under it<sup>11</sup>.

1 As to the meaning of 'council' see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 56.

2 Ie an order under the Highways Act 1980 s 118A (as added): s 118A(3) (added by the Transport and Works Act 1992 s 47(1), Sch 2 paras 1, 3).

3 'Footpath' means a highway over which the public has a right of way on foot, not being a footway: see the Highways Act 1980 s 329(1). See further HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 64.

4 'Bridleway' means a highway over which the public has the following, but no other, rights of way, namely: a right of way on foot and a right of way on horseback or leading a horse with or without a right to drive animals of any description along the highway: see *ibid* s 329(1). See further HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 64.

5 'Restricted byway' has the same meaning as in the Countryside and Rights of Way Act 2000 Pt II Pt II (ss 47-72) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 603): Highways Act 1980 s 329(1) (definition added by the Countryside and Rights of Way Act 2000 s 51, Sch 5 Pt II para 16(a)).

6 The reference in this provision is to 'railway', which is defined to include 'tramway' but not any part of a system where rails are laid along a carriageway: Highways Act 1980 s 118A(8) (as added: see note 2 *supra*). 'Tramway' is not defined in the Highways Act 1980. 'Carriageway' means a way constituting or comprised in a highway, being a way (other than a cycle track) over which the public has a right of way for the passage of vehicles: s 329(1). See further HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 64. As to railways see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

7 *Ibid* s 118A(1) (as added (see note 2 *supra*); and amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, reg 2, Schedule Pt I). For the meaning of 'bridge' see the Highways Act 1980 s 329(1); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 854.

8 *Ibid* s 118A(1) (as added: see note 2 *supra*).

9 For the meaning of 'highway' see *ibid* s 328(1), (2); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 7.

10 *Ibid* s 118A(2) (as added: see note 2 *supra*).

11 See *ibid* s 118A (as added and amended); and the Rail Crossing Extinguishment and Diversion Orders Regulations 1993, SI 1993/9 (amended by SI 1995/451; SI 1996/252). See further HIGHWAYS, STREETS AND BRIDGES.

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### **1608. Rail crossing diversion orders.**

A council<sup>1</sup> has power by way of a rail crossing diversion order<sup>2</sup> to divert a footpath<sup>3</sup>, bridleway<sup>4</sup> or restricted byway<sup>5</sup> in its area which crosses a tramway<sup>6</sup>, otherwise than by a tunnel or bridge<sup>7</sup>. The council may make such an order where it appears expedient to do so in the interests of safety of members of the public using or likely to use the footpath or bridleway<sup>8</sup>. The order may: (1) create from a date specified in the order any such new path or way as appears to the council requisite for effecting the diversion<sup>9</sup>; and (2) extinguish, as from a date specified in the order or determined by the council<sup>10</sup>, the public right of way over the crossing and over so much of the path or way as appears requisite<sup>11</sup>. However, such an order may not alter a point of termination of the path or way: (a) if that point is not on a highway<sup>11</sup>; or (b) where it is on a highway, otherwise than to another point which is on the same highway, or a highway connected with it<sup>12</sup>. Supplemental provisions as to rail crossing diversion orders are contained in the Highways Act 1980 and in regulations made under it<sup>13</sup>.

1 As to the meaning of 'council' see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 56.

2 Ie an order under the Highways Act 1980 s 119A (as added): s 119A(3) (added by the Transport and Works Act 1992 s 47(1), Sch 2 paras 1, 4).

3 For the meaning of 'footpath' see PARA 1607 note 3 ante.

4 For the meaning of 'bridleway' see PARA 1607 note 4 ante.

5 As to the meaning of 'restricted byway' see PARA 1607 note 5 ante.

6 The reference in this provision is to 'railway', which is defined to include 'tramway' but not any part of a system where rails are laid along a carriageway: Highways Act 1980 s 119A(12) (as added: see note 2 supra). For the meaning of 'carriageway' see PARA 1607 note 6 ante. As to railways see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

7 Ibid s 119A(1) (as added (see note 2 supra); and amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, reg 2, Schedule Pt I). As to the meaning of 'bridge' see PARA 1607 note 7 ante.

8 Highways Act 1980 s 119A(1) (as added: see note 2 supra).

9 Ibid s 119A(2)(a) (as added: see note 2 supra). Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council must specify a date under s 119A(2)(a) (as added), and provide that so much of the order as extinguishes (in accordance with s 119A(2)(b) (as added and amended)) a public right of way is not to come into force until the local highway authority for the new path or way certifies that the work has been carried out: s 119A(7) (as so added; substituted by the Countryside and Rights of Way Act 2000 s 57, Sch 6 Pt I para 11(1), (3); and amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, Schedule Pt I).

10 Ie under the Highways Act 1980 s 119A(7) (as added, substituted and amended).

11 Ibid s 119A(2)(b) (as added (see note 2 supra); and amended by the Countryside and Rights of Way Act 2000 Sch 6 Pt I para 11(2)). See also note 9 supra. The provisions of the Highways Act 1980 s 27 (as amended) (making up of new footpaths, bridleways and restricted byways) apply to a footpath or bridleway created by a rail crossing diversion order with the substitution, for references to a public path creation order, of references to a rail crossing diversion order and, for references to s 26(2), of references to s 120(3): s 119A(11) (as so added). See further HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 647.

11 For the meaning of 'highway' see PARA 1607 note 9 ante.

12 Highways Act 1980 s 119A(5) (as added: see note 2 supra). As to the power of the Secretary of State to require an alternative to a rail crossing diversion order see PARA 1609 post.

13 See *ibid* s 119A (as added: see note 2 supra); and the Rail Crossing Extinguishment and Diversion Orders Regulations 1993, SI 1993/9 (amended by SI 1995/451; SI 1996/252). See further HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 647 et seq.

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### **1609. Alternatives to rail crossing extinguishment or diversion orders.**

Where: (1) a public right of way over a footpath<sup>1</sup>, bridleway<sup>2</sup> or restricted byway<sup>3</sup> crosses a tramway<sup>4</sup> otherwise than by a tunnel or bridge<sup>5</sup>; (2) the operator<sup>6</sup> of the tramway has made a closure or diversion application<sup>7</sup> in respect of the crossing; and (3) in the opinion of the Secretary of State<sup>8</sup> the crossing constitutes a danger to members of the public using it, then the Secretary of State may by order require the operator to provide a tunnel or bridge, or improve an existing tunnel or bridge, to carry the path or way over or under the tramway, at or reasonably near to the crossing to which the closure or diversion application relates<sup>9</sup>.

The Secretary of State may not make such an order after the end of two years from the date on which the closure or diversion application was made, and not less than two months before making an order he must give written notice<sup>10</sup> of his proposed order to the operator and to each local authority<sup>11</sup> in whose area the crossing (or proposed new crossing) is situated<sup>12</sup>.

An operator is not to be regarded as in breach of a duty imposed by such an order if he has used his best endeavours to comply with the order<sup>13</sup>.

1 For the meaning of 'footpath' see PARA 1607 note 3 ante; definition applied by the Transport and Works Act 1992 s 48(8).

2 For the meaning of 'bridleway' see PARA 1607 note 4 ante; definition applied by *ibid* s 48(8).

3 'Restricted byway' has the same meaning as in the Countryside and Rights of Way Act 2000 Pt II Pt II (ss 47-72) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 603); Transport and Works Act 1992 s 48(8) (definition added by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, reg 2, Schedule Pt I).

4 For the meaning of 'tramway' see PARA 1586 ante.

5 As to the meaning of 'bridge' see PARA 1607 note 7 ante.

6 'Operator' in relation to a tramway means any person carrying on an undertaking which includes maintaining the permanent way: Transport and Works Act 1992 s 48(8).

7 'Closure or diversion application' means an application under *ibid* s 6 (see PARA 1207 ante), or a request under the Highways Act 1980 s 120(3A)(b) (added by the Transport and Works Act 1992 s 47(1), Sch 2) for an order by virtue of which a public right of way would be extinguished or diverted: Transport and Works Act 1991 s 48(8).

8 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

9 Transport and Works Act 1992 s 48(1), (2) (s 48(1) amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, Schedule Pt I). The order may



include particulars as to the tunnel or bridge which is to be provided, or as to the improvements which are to be made: Transport and Works Act 1992 s 48(3).

10 Such a notice must be accompanied by a draft of the proposed order, and any order eventually made may include modifications of the draft: *ibid* s 48(5).

11 'Local authority' means a county council, a district council, a London borough council, the Common Council of the City of London, a county borough council, a parish or community council and a parish meeting of a parish not having a separate parish council: *ibid* s 48(8) (amended by the Local Government (Wales) Act 1994 s 22(1), Sch 7 para 34(3)). As to local authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; as to London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35 et seq; and as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

12 Transport and Works Act 1992 s 48(4).

13 *Ibid* s 48(6). Where an operator is required to provide or improve a bridge or tunnel but is unable to do so because he does not have the powers or rights (including rights over land) needed for the purpose, he is not to be taken as having used his best endeavours to comply unless he has used his best endeavours to obtain those powers or rights: s 48(7). References to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air space above its surface: s 67(2).

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### **1610. Cesser of obligation to maintain public crossings.**

Where a public right of way over a footpath<sup>1</sup>, bridleway<sup>2</sup> or restricted byway<sup>3</sup> where it crosses a tramway<sup>4</sup> is extinguished by an order under the Highways Act 1980<sup>5</sup>, any obligation, however imposed, to maintain the crossing for the benefit of the public ceases to have effect<sup>6</sup>.

1 For the meaning of 'footpath' see PARA 1607 note 3 ante.

2 For the meaning of 'bridleway' see PARA 1607 note 4 ante.

3 'Restricted byway' has the same meaning as in the Countryside and Rights of Way Act 2000 Pt II Pt II (ss 47-72) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 603); Transport and Works Act 1992 s 47(3) (added by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, reg 2, Schedule Pt I).

4 As to the meaning of 'tramway' see PARA 1586 ante.

5 Ie an order under the Highways Act 1980 s 118 (as amended), s 118A (as added), s 119 (as amended), s 119A (as added): see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 641-647.

6 Transport and Works Act 1992 s 47(2) (amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, SI 2006/1177, Schedule Pt I).

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### **1611. Protection of private crossings.**

The operator<sup>1</sup> of a tramway<sup>2</sup> which is crossed<sup>3</sup> in any place by a private road or path<sup>4</sup> may cause or permit crossing signs<sup>5</sup> or barriers<sup>6</sup> of a character<sup>7</sup> prescribed in regulations<sup>8</sup> made by the Secretary of State<sup>9</sup>, or otherwise authorised by him, to be placed<sup>10</sup> on or near the road or path near the crossing<sup>11</sup>. The Secretary of State may give directions to the operator of a tramway which is crossed in any place by a private road or path for the placing of crossing signs or barriers of a character specified in the directions on or near the road or path near the crossing<sup>12</sup>. Powers are given to operators of tramways to enter land owned by third parties to erect crossing signs and barriers subject to compliance with prescribed procedures<sup>13</sup>, and default powers are reserved to the Secretary of State to carry out work<sup>14</sup>.

1 'Operator', in relation to a transport system, means any person carrying on an undertaking which includes the system or any part of it, or the provision of transport services on the system: Transport and Works Act 1992 s 67(1). In the case of a railway or tramway which has more than one operator, the powers conferred by ss 52-54 (see the text and notes 2-14 infra; and PARAS 1612-1613 post) are only exercisable by or in relation to the operator carrying on the undertaking which includes maintaining the permanent way: s 56(2). 'Maintain' includes repair and replace: s 56(1).

2 For the meaning of 'tramway' see PARA 1586 ante.

3 'Cross' means cross otherwise than by tunnel or bridge: Transport and Works Act 1992 s 56(1).

4 'Private road or path' means any length of road or path to which the public does not have access: *ibid* s 56(1).

5 'Crossing sign', in relation to a private road or path and any place where it crosses a tramway, means: (1) any object or device (whether fixed or portable); or (2) any line or mark on the road or path, for conveying to users of the road or path warnings, information, requirements, restrictions or prohibitions relating to the crossing: *ibid* s 56(1).

6 'Barrier' includes gate: *ibid* s 56(1).

7 The size and colour of a crossing sign and whether or not it is illuminated (by lighting or the use of reflectors or reflecting material), and the nature of the warnings, information, requirements, restrictions or prohibitions conveyed by it, are to be regarded as part of the sign's character: *ibid* s 52(3).

8 The power to make regulations under this provision is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: *ibid* s 52(4). For regulations made under s 52 see the Private Crossings (Signs and Barriers) Regulations 1996, SI 1996/1786.

9 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

10 'Place' includes erect and (in relation to a sign) display: Transport and Works Act 1992 s 56(1).

11 *Ibid* s 52(1). As to offences see PARA 1614 post.

12 *Ibid* s 52(2). A direction given under s 52(2), if relating to a private road or path, is enforceable on the application of the Secretary of State by a mandatory order: s 54(3)(a). As to mandatory orders (formerly orders of mandamus) see JUDICIAL REVIEW vol 61 (2010) PARA 703 et seq.

13 See PARA 1612 post.

14 As to the default powers of the Secretary of State see PARA 1613 post.

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## **1612. Rights to enter land to put in place signs and barriers.**

The operator<sup>1</sup> of a tramway<sup>2</sup> may not enter or do anything on any land for the purpose of exercising his statutory powers in relation to the placing<sup>3</sup> of signs and barriers<sup>4</sup> except with the consent of every owner of the land<sup>5</sup>, or in accordance with an authorisation given by the Secretary of State<sup>6</sup>.

Where the operator of a tramway proposes to enter or do anything on any land for the purpose of exercising his statutory powers, but has not obtained the consent of every owner of the land to his proposals (after making reasonable efforts to do so), he must serve on every owner whose consent he has not obtained a notice<sup>7</sup> giving details of the proposals and stating that: (1) he is referring the proposals to the Secretary of State for a decision as to whether or not they should be carried out; and (2) in making that decision, the Secretary of State will consider any written representations made to him by the owner within the period of 42 days beginning with the date of the notice<sup>8</sup>. The operator must also: (a) submit a copy of every such notice served by him to the Secretary of State; and (b) provide the Secretary of State with such further information about the proposals as he may require<sup>9</sup>.

Where proposals are referred to the Secretary of State, he must after the expiry of the period of 42 days beginning with the date of the latest notice of proposed entry served<sup>10</sup> and after considering any representations made to him: (i) authorise the operator to carry out the proposals (either without modifications or with such modifications as the Secretary of State may specify); or (ii) direct him not to carry out the proposals; and he must serve notice of his decision on every owner served with a notice of entry<sup>11</sup>. Any such authorisation may be given subject to such conditions as the Secretary of State may specify, including conditions that compensation is to be payable by the operator<sup>12</sup>.

The operator of a tramway may enter any land and do anything necessary on it (without the consent of the owners of the land) for the purpose of: (A) complying with any directions given by the Secretary of State<sup>13</sup>; or (B) maintaining<sup>14</sup> a crossing sign<sup>15</sup> or barrier<sup>16</sup> lawfully placed<sup>17</sup> on or near a private road or path<sup>18</sup> near a place where it crosses the tramway<sup>19</sup>.

The Secretary of State may enter any land and do anything necessary on it (without the consent of the owners of the land) for the purpose of exercising his statutory default powers<sup>20</sup>.

1 For the meaning of 'operator' see PARA 1611 note 1 ante.

2 For the meaning of 'tramway' see PARA 1586 ante.

3 For the meaning of 'place' see PARA 1611 note 10 ante.

4 I.e. under the Transport and Works Act 1992 s 52(1): see PARA 1611 ante. For the meaning of 'barrier' see PARA 1611 note 6 ante.

5 For these purposes, 'owner', in relation to any land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple (whether in possession or reversion) and includes also a person holding, or entitled to the rents and profits of, the land under a tenancy, other than a tenancy for a month or any period less than a month: *ibid* s 53(9)(a). As to ownership of land see REAL PROPERTY vol 39(2) (Reissue) PARA 91 et seq.

6 *Ibid* s 53(1). The authorisation referred to is one given under s 53(4) (see the text to note 11 infra): s 53(1). As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

7 As to the serving of notices see *ibid* s 66.

8 *Ibid* s 53(2).

9 *Ibid* s 53(3).

10 I.e. under *ibid* s 53(2): see the text to note 8 supra.

11 *Ibid* s 53(4).

12 Ibid s 53(5). Any dispute as to the amount of any compensation payable is to be referred to and determined by the Lands Tribunal: s 53(6). As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

13 Ie directions given under ibid s 53(2): see the text to note 8 supra.

14 For the meaning of 'maintain' see PARA 1611 note 1 ante.

15 For the meaning of 'crossing sign' see PARA 1611 note 5 ante.

16 For the default powers of the Secretary of State where an operator fails to maintain such a crossing sign or barrier see PARA 1613 post.

17 For these purposes, 'lawfully placed' means placed in accordance with the Transport and Works Act 1992 ss 52-55: s 56(1).

18 For the meaning of 'private road or path' see PARA 1611 note 4 ante.

19 Transport and Works Act 1992 s 53(7).

20 Ibid s 53(8). The powers referred to are those under s 54(1) (see PARA 1613 post): s 53(8).

## UPDATE

### 1612 Rights to enter land to put in place signs and barriers

NOTE 12--Reference to the Lands Tribunal is now to the Upper Tribunal: Transport and Works Act 1992 s 53(6) (amended by SI 2009/1307).

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### 1613. Default powers of Secretary of State.

If the operator<sup>1</sup> of a tramway<sup>2</sup> fails<sup>3</sup>: (1) to comply with a direction given<sup>4</sup> by the Secretary of State<sup>5</sup> in connection with the placing of signs and barriers<sup>6</sup>; or (2) to maintain<sup>7</sup> a crossing sign<sup>8</sup> or barrier lawfully placed<sup>9</sup> on or near a private road or path<sup>10</sup> near a place where it crosses the tramway, the Secretary of State may himself carry out the work required by the direction or necessary to maintain the crossing sign or barrier<sup>11</sup>. Any expenses incurred by the Secretary of State in doing so are recoverable by him from the operator<sup>12</sup>.

1 For the meaning of 'operator' see PARA 1611 note 1 ante.

2 For the meaning of 'tramway' see PARA 1586 ante.

3 'Fail' includes refuse: Transport and Works Act 1992 s 56(1).

4 Ie under ibid s 52(2): see PARA 1611 ante.

5 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 For the meaning of 'barrier' see PARA 1611 note 6 ante.

7 For the meaning of 'maintain' see PARA 1611 note 1 ante.

8 For the meaning of 'crossing sign' see PARA 1611 note 5 ante.

9 For the meaning of 'lawfully placed' see PARA 1612 note 17 ante.

10 For the meaning of 'private road or path' see PARA 1611 note 4 ante.

11 Transport and Works Act 1992 s 54(1). As to the power of the Secretary of State to enter land and do anything necessary on it, without the consent of the owner, for the purpose of exercising his powers to carry out work himself under s 54(1) see PARA 1612 ante.

12 Ibid s 54(2).

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### **1614. Offences.**

A person who fails<sup>1</sup> to comply with any requirement, restriction or prohibition conveyed by a crossing sign<sup>2</sup> lawfully placed<sup>3</sup> on or near a private road or path<sup>4</sup> near a place where it crosses a tramway<sup>5</sup> is guilty of an offence<sup>6</sup>.

In any proceedings for such an offence<sup>7</sup>, a crossing sign on or near a private road or path near a place where it crosses a tramway is taken to have been lawfully placed there unless the contrary is proved<sup>8</sup>.

A person guilty of such an offence is liable on summary conviction to a fine<sup>9</sup>.

1 As to the meaning of 'fail' see PARA 1613 note 3 ante.

2 For the meaning of 'crossing sign' see PARA 1611 note 5 ante.

3 For the meaning of 'lawfully placed' see PARA 1612 note 17 ante.

4 For the meaning of 'private road or path' see PARA 1611 note 4 ante.

5 For the meaning of 'tramway' see PARA 1586 ante.

6 Transport and Works Act 1992 s 55(1).

7 No proceedings may be instituted in respect of an offence under ibid Pt II (ss 26-59) (as amended) other than an offence under s 41 (approval of works, plant and equipment: see PARA 1618 post; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 204) or s 43 (repealed) except by or with the consent of the Secretary of State or the Director of Public Prosecutions: s 58 (modified by the Railways Act 1993 s 117(5)(b)). As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1071 et seq.

8 Transport and Works Act 1992 s 55(2).

9 Ibid s 55(3). The fine must not exceed level 3 on the standard scale: see s 55(3). As to the standard scale see PARA 230 note 3 ante.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-

1663)/18. TRAMWAYS/(5) OTHER LEGISLATION RELATING TO TRAMWAYS/(iv) Safety and Welfare/1615. Responsibility for safety.

#### **(iv) Safety and Welfare**

##### **1615. Responsibility for safety.**

The prime responsibility for ensuring safety of a tramway lies with the party who controls the activity in question. Thus the operator of a tramway is responsible for the safe operation of the tramcars<sup>1</sup> which it runs and an infrastructure operator is similarly responsible for the safe operation of that infrastructure. To achieve this level of responsibility in legal terms, the provisions of Part I of the Health and Safety of Work etc Act 1974<sup>2</sup> have been extended to tramways<sup>3</sup> and various regulations have been made which are applicable to them<sup>4</sup>. Certain governmental responsibilities for rail transport safety have been transferred from the Secretary of State to the Health and Safety Executive<sup>5</sup>.

1 As to the meaning of 'tramcar' see PARA 1538 ante.

2 I.e. the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 302 et seq, 420 et seq.

3 See the Railways Act 1993 s 117; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 194. For the meaning of 'tramway' see PARA 1586 ante; definition applied by s 117(7).

4 Eg the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163 (amended by SI 1996/2089; SI 1996/2092; SI 1997/2776; SI 1999/437; SI 1999/2024; SI 2001/2975; SI 2004/568; SI 2007/1573); the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553 (amended by SI 1998/494; SI 1999/2024; SI 2006/557); and the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599.

5 See the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 10 (amended by SI 2006/557). The functions transferred were those conferred on the Secretary of State by the Transport and Works Act 1992 s 41 (approval of works, plant and equipment: see PARA 1618 post; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 204) and s 45 (directions limiting speeds and loads: see PARA 1619 post; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 208).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/18. TRAMWAYS/(5) OTHER LEGISLATION RELATING TO TRAMWAYS/(iv) Safety and Welfare/1616. Extension of health and safety at work provisions to tramways.

##### **1616. Extension of health and safety at work provisions to tramways.**

The provisions of Part I of the Health and Safety at Work etc Act 1974<sup>1</sup> have been extended<sup>2</sup> in relation to transport systems, including tramways<sup>3</sup>, and it has been made clear that the general purposes of that Part<sup>4</sup> extend to securing the proper construction and safe operation of transport systems and their vehicles, and the protection of tramway employees and the general public (whether passengers or not) from injury and risks arising from such construction and operation<sup>5</sup>.

1 I.e. the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 302 et seq, 420 et seq.

2 See the Railways Act 1993 s 117(1).

3 Ibid s 117(6)(a). For the meaning of 'tramway' see PARA 1586 ante; definition applied by s 117(7).

4 As to the general purposes of the Health and Safety at Work etc Act 1974 Pt I (as amended) see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303.

5 Railways Act 1993 s 117(1), (2). See further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 194.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/18. TRAMWAYS/(5) OTHER LEGISLATION RELATING TO TRAMWAYS/(iv) Safety and Welfare/1617. Prevention, reporting and investigation of accidents.

### **1617. Prevention, reporting and investigation of accidents.**

Regulations have been made under the Health and Safety at Work etc Act 1974 concerning the prevention of unauthorised access to the infrastructure of a transport system<sup>1</sup> (including a tramway<sup>2</sup>), the provision and maintenance of means of communication on vehicles<sup>3</sup>, the prevention of collisions between, and derailments of, vehicles<sup>4</sup>, the provision and maintenance of suitable and sufficient vehicle brakes<sup>5</sup> and the prevention of accidents to persons at work from moving vehicles<sup>6</sup>.

Further regulations have been made under the Health and Safety at Work etc Act 1974 which require the reporting of accidents, including those involving tramways<sup>7</sup>. Tramway operators may also be obliged to furnish information concerning accidents pursuant to regulations made under the Social Security Administration Act 1992<sup>8</sup>. The investigation of accidents concerning tramways is governed by the general health and safety at work legislation<sup>9</sup>.

1 See the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 3. For the meaning of 'transport system' see reg 2(1). See further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 267 et seq.

2 For the meaning of 'tramway' see PARA 1586 ante; definition applied by ibid reg 2(1). However, any part of a tramway which runs along and at the same level as a street or in any other place to which the public has access (including a place to which the public has access only on making a payment) is excluded from these regulations: see reg 2(1)(d). For the meaning of 'street' see PARA 1586 note 12 ante; definition applied by reg 2(1).

3 See ibid reg 4.

4 See ibid reg 5.

5 See ibid reg 6.

6 See ibid reg 7.

7 See the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163 (as amended), and as to the reporting of accidents see further HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 399 et seq. As to the circumstances in which, where an accident or dangerous incident has occurred on a tramway, a constable may require a person to provide a specimen of breath for testing, see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 378.

8 Social Security Administration Act 1992 s 8(a). At the date at which this volume states the law no such regulations had been made but, by virtue of the Social Security (Consequential Provisions) Act 1992 s 2(2), the Social Security (Claims and Payments) Regulations 1979, SI 1979/628, reg 25 (amended by SI 1993/2113) has effect as if so made. See SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 335.

9 See HEALTH AND SAFETY AT WORK.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/18. TRAMWAYS/(5) OTHER LEGISLATION RELATING TO TRAMWAYS/(iv) Safety and Welfare/1618. Approval of works, plant and equipment.

### **1618. Approval of works, plant and equipment.**

Regulations<sup>1</sup> have been made, pursuant to powers<sup>2</sup> conferred on the Secretary of State<sup>3</sup>, for the purpose of securing the safe operation of relevant transport systems, including tramways<sup>4</sup>. These regulations require that the approval of the relevant authority<sup>5</sup> be obtained before: (1) new works, plant or equipment<sup>6</sup> are first brought into use; or (2) works, plant or equipment are first brought into use after alterations have been made to them<sup>7</sup>.

The consent of the Secretary of State<sup>8</sup> is required under the Electricity Act 1989 to the installation, or the keeping installed, of an electric line<sup>9</sup> above ground<sup>10</sup>, but such consent is not required where the line is, or is to be, installed for the purposes of a tramway which has been authorised by or under statute<sup>11</sup>. In London, local authority consent is also required to the placing and retention of overhead wires over streets<sup>12</sup>, but there is an exemption for tramway or light railway undertakers<sup>13</sup>.

1 See the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994, SI 1994/157 (revoked; but continuing in force up to and including 1 October 2008 for certain purposes: see the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, regs 29, 34, Sch 7). See RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 204.

2 See the Transport and Works Act 1992 s 41(1) (amended by the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 6, Schedule para 1(1), (2) (a)). The power to make such regulations is exercisable by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament: Transport and Works Act 1992 s 41(8).

3 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 In the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994, SI 1994/157 (see note 1 supra), 'relevant transport system' means, inter alia, a tramway: reg 2(a). For the meaning of 'tramway' see PARA 1586 ante.

5 For these purposes, 'relevant authority' means: (1) the Office of Rail Regulation where it is made responsible for the enforcement of the relevant statutory provisions in relation to the operation of a relevant transport system by the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 3(1); and (2) the Health and Safety Executive in any other case: Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 2(a) (definition added by SI 2006/557). 'The relevant statutory provisions' has the same meaning as in the Health and Safety at Work etc Act 1974 s 53 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 425): Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 2(a) (definition added by SI 2006/557). The Office of Rail Regulation is responsible for the enforcement of the relevant statutory provisions to the extent that they relate to the operation of a tramway or the operation of any other system of guided transport: Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, SI 2006/557, reg 3(1), (2). As to the Office of Rail Regulation see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 49 et seq. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

6 'Equipment' includes vehicles: Transport and Works Act 1992 s 41(7). 'Vehicle' includes mobile traction unit: s 67(1).

7 Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994, SI 1994/157, reg 4(1) (amended by SI 2006/557). See note 1 supra. The alterations concerned are those capable of materially affecting the safe operation of the relevant transport system: Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994, SI 1994/157, reg 4(1).



- 8 As to the Secretary of State in this case see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1041 et seq.
- 9 For the meaning of 'electric line' see the Electricity Act 1989 s 64(1); and FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1041.
- 10 Ibid s 37(1). For exceptions from the requirements see s 37(2). The consent may include such conditions as appear to the Secretary of State to be appropriate, including provisions as to determination, variation or revocation: see s 37(3).
- 11 Overhead Lines (Exemption) Regulations 1992, SI 1992/3074, reg 3. See further FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1252.
- 12 London Overground Wires etc Act 1933 s 3.
- 13 Ibid s 17(a)(ii).

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### **1619. Other safety provisions.**

Regulations<sup>1</sup> have been made under the Health and Safety at Work etc Act 1974 to regulate the undertaking of safety critical work<sup>2</sup> on transport systems<sup>3</sup>, including tramways<sup>4</sup>. The controller of critical work<sup>5</sup> is required, so far as is reasonably practicable, to ensure that a person under his management, supervision or control, with the exception of where that person is receiving practical training in a safety critical task, only carries out safety critical work where: (1) that person has been assessed as being competent and fit to carry out that work following an assessment by an assessor; (2) there is an accurate and up to date record in writing of that person's competence and fitness which references any criteria for determining competence and fitness against which that assessment of competence was made; (3) the record, or an accurate summary of the record referred to in head (2) above is available for inspection, on reasonable request, by any other controller of safety critical work or any operator who may be affected by any safety critical work carried out or to be carried out by that person, for the purposes of establishing that person's competence and fitness to carry out safety critical work; and (4) there are in place arrangements for monitoring the competence and fitness of that person<sup>6</sup>. Every controller of safety critical work must without unreasonable delay review any person's competence or fitness assessment where they have reason to doubt the competence or fitness of a person to carry out that safety critical work or there has been a significant change in the matters to which the assessment relates, and where, as a result of any such review a reassessment of competence or fitness is required, that reassessment of competence or fitness must be carried out to ensure that the requirements of heads (1) to (3) above are met<sup>7</sup>.

In addition, every controller of safety critical work is required to have in place arrangements to ensure, so far as is reasonably practicable, that a safety critical worker under his management, supervision or control does not carry out safety critical work in circumstances where he is so fatigued or where he would be liable to become so fatigued that his health or safety or the health or safety of other persons on a transport system could be significantly affected<sup>8</sup>.

There is also power, exercisable by the Health and Safety Executive<sup>9</sup>, to give directions with respect to the limitation of speeds and loads on a tramway<sup>10</sup>. Certain other regulations do not apply to tramways but may apply to those systems which, although tramway in character, are railways for the purposes of the regulations<sup>11</sup>.

1 See the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, Pt 4 (regs 23-26): see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 253-256.

2 For the meaning of 'safety critical work' see *ibid* reg 23(1); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 253.

3 For these purposes, 'transport system' means a railway, a tramway, or any other system using guided transport where that other system is used wholly or mainly for the carriage of passengers, but a transport system does not include:

1424 (1) a guided bus system;

1425 (2) a trolley vehicle system;

1426 (3) any part of a transport system: (a) within a harbour or harbour area or which is part of a factory, mine or quarry; (b) used solely for the purpose of carrying out a building operation or work of engineering construction; (c) within a maintenance or goods depot; (d) within a siding except where Pt 4 applies; or (e) which is within a military establishment;

1427 (4) any fairground equipment;

1428 (5) any cableway installation; or

1429 (6) any transport system where the track forms a gauge of less than 350mm except where such a track crosses a carriageway (whether or not on the same level),

except where the transport system in question forms part of the mainline railway: reg 2(1). 'Tramway' means a system of transport used wholly or mainly for the carriage of passengers: (i) which employs parallel rails which provide support and guidance for vehicles carried on flanged wheels and are laid wholly or partly along a road or in any other place to which the public has access (including a place to which the public has access only on making a payment); and (ii) on any part of which the permitted maximum speed is such as to enable the driver to stop a vehicle in the distance he can see to be clear ahead: reg 2(1).

4 See note 3 *supra*.

5 'Controller of safety critical work' means any person controlling the carrying out of safety critical work on a transport system or in relation to a vehicle used on a transport system: Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 23(1).

6 See *ibid* reg 24(1).

7 *Ibid* reg 24(2). Where a reassessment of competence or fitness is required, the controller of safety critical work must, so far as is reasonably practicable ensure that, as a result, the health and safety of persons on a transport system is not prejudiced: reg 24(3).

8 *Ibid* reg 25(1). Such arrangements must be reviewed by the controller of safety critical work where he has reason to doubt the effectiveness of those arrangements: reg 25(2).

9 This function was transferred to the Health and Safety Executive by the Railways (Miscellaneous Provisions) Regulations 1997, SI 1997/553, reg 10(1). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 *et seq*.

10 See the Transport and Works Act 1992 s 45 (as amended); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 208.

11 See the Railway Safety Regulations 1999, SI 1999/2244 (amended by SI 2001/3291; SI 2006/557; SI 2006/599): see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 205 *et seq*.

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## **1620. Access for the disabled.**

The Secretary of State<sup>1</sup> may make rail vehicle<sup>2</sup> accessibility regulations<sup>3</sup> for the purpose of securing that it is possible:

- 2469 (1) for disabled persons<sup>4</sup>: (a) to get on to and off regulated rail vehicles<sup>5</sup> in safety and without unreasonable difficulty; (b) to be carried in such vehicles in safety and reasonable comfort<sup>6</sup>; and
- 2470 (2) for disabled persons in wheelchairs: (a) to get on to and off such vehicles in safety and without unreasonable difficulty while remaining in their wheelchairs; and (b) to be carried in such vehicles in safety and in reasonable comfort while remaining in their wheelchairs<sup>7</sup>.

The Secretary of State may, by an exemption order<sup>8</sup>: (i) authorise the use for carriage of a regulated rail vehicle even though the vehicle does not conform with the provisions of rail vehicle accessibility regulations with which it is required to conform; (ii) authorise a regulated rail vehicle to be used for carriage otherwise than in conformity with the provisions of rail vehicle accessibility regulations with which use of the vehicle is required to conform<sup>9</sup>.

1 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 'Rail vehicle' means (inter alia) a vehicle: (1) constructed or adapted to carry passengers on any railway, tramway or prescribed system; and (2) first brought into use, or belonging to a class of vehicle first brought into use, after 31 December 1998: Disability Discrimination Act 1995 s 46(6). As from a day to be appointed, 'rail vehicle' means a vehicle constructed or adapted to carry passengers on any railway, tramway or prescribed system: s 46(6) (definition substituted by the Disability Discrimination Act 2005 s 6(2)). At the date at which this volume states the law no such day had been appointed. For the meanings of 'tramway' and 'prescribed system' see the Disability Discrimination Act 1995 s 46(7) (which applies the definition of 'tramway' contained in the Transport and Works Act 1992 s 67(1): see PARA 1586 ante).

3 The power to make such regulations is exercisable by statutory instrument (Disability Discrimination Act 1995 s 67(1)), and is subject to annulment in pursuance of a resolution of either House of Parliament (s 67(5) (amended by the Disability Rights Commission Act 1999 s 14(1), Sch 4 para 3(1), (2); and the Equality Act 2006 ss 40, 91, Sch 3 paras 41, 53, Sch 4). In exercise of this power, the Secretary of State has made the Rail Vehicle Accessibility Regulations 1998, SI 1998/2456 (amended by SI 2000/3215): see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 261.

4 'Disabled person' means a person who has a disability: Disability Discrimination Act 1995 s 1(2). A person has a disability for these purposes if he has a physical or mental impairment which has a substantial and long term adverse effect on his ability to carry out normal day-to-day activities: see s 1(1). See further DISCRIMINATION vol 13 (2007 Reissue) PARA 511 et seq.

5 'Regulated rail vehicle' means any rail vehicle to which rail vehicle accessibility regulations are expressed to apply: *ibid* s 46(6). As from a day to be appointed, 'regulated rail vehicle' means any rail vehicle to which provisions of rail vehicle accessibility regulations are expressed to apply: s 46(6) (amended by the Disability Discrimination Act 2005 s 19(1), Sch 1 Pt 1 paras 1, 27(b)). At the date at which this volume states the law no such day had been appointed.

6 Disability Discrimination Act 1995 s 46(1)(a). See DISCRIMINATION vol 13 (2007 Reissue) PARA 617.

7 *Ibid* s 46(1)(b). See DISCRIMINATION vol 13 (2007 Reissue) PARA 617.

8 For examples of exemption orders made under this provision see the Rail Vehicle Accessibility (Serco Metrolink T68A Vehicles) Exemption Order 1999, SI 1999/2932; the Rail Vehicle Accessibility (Croydon Tramlink Class CR4000 Vehicles) Exemption Order 2001, SI 2001/3952 (amended by SI 2005/395); the Rail Vehicle Accessibility (Summerlee Tramcar No 392) Exemption Order 2002, SI 2002/2873; and the Rail Vehicle Accessibility (Seaton Tramway Trams 9, 10 and 11) Exemption Order 2004, SI 2004/1205.

9 Disability Discrimination Act 1995 s 47(1) (substituted by the Disability Discrimination Act 2005 s 6(3)). See DISCRIMINATION vol 13 (2007 Reissue) PARA 618. Authority under head (i) or head (ii) in the text may be for: (1) any regulated rail vehicle that is specified or is of a specified description; or (2) use in specified circumstances of: (a) any regulated rail vehicle; or (b) any regulated rail vehicle that is specified or is of a

specified description: Disability Discrimination Act 1995 s 47(1A) (added by the Disability Discrimination Act 2005 s 6(3)). In exercise of this power, the Secretary of State has made the Rail Vehicle (Exemption Applications) Regulations 1998, SI 1998/2457: see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 262.

## UPDATE

### 1620 Access for the disabled

NOTE 2--Day now appointed: SI 2010/341. Definition of 'rail vehicle' substituted: SI 2008/1746.

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### 1621. Liability for noise.

Pursuant to a power contained in the Land Compensation Act 1973<sup>1</sup>, the Secretary of State<sup>2</sup> has made regulations to provide insulation against noise caused by vehicles using a tramway<sup>3</sup>. These provide that when tramway works<sup>4</sup> have been brought into use after 1 March 1996, a duty is imposed on the responsible authority<sup>5</sup> to provide eligible buildings<sup>6</sup> with insulation against noise caused by the movement of vehicles using the tramway<sup>7</sup> or to pay grant for insulation work<sup>8</sup> to be carried out to such buildings<sup>9</sup>. There is also a discretionary power to provide such insulation or pay such grant for insulation work where an existing tramway is altered, or where noise from construction work is expected to affect such buildings<sup>10</sup>.

1 See the Land Compensation Act 1973 s 20 (as amended); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 861.

2 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 See the Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996, SI 1996/428, regs 2(1), 3(1). The regulations apply the definition of 'tramway' contained in the Transport and Works Act 1992 s 67(1) (see PARA 1586 ante), save that the system has to be provided or used in the exercise of statutory powers.

4 'Works' means the permanent way of the tramway: see the Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996, SI 1996/428, reg 2(1). Note that works are classified as initial, additional or altered: see reg 2(1).

5 'Responsible authority' means the person managing the works in question: *ibid* reg 2(1).

6 For the meaning of 'eligible building' see *ibid* reg 7.

7 As to the level of noise see *ibid* reg 9 (amended by SI 1998/1701). The regulations do not apply to noise resulting from ground-borne vibration: Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996, SI 1996/428, reg 3(2).

8 'Insulation work' means work carried out to insulate a building against noise, including work making provision for ventilation and solar control: *ibid* reg 2(1).

9 *Ibid* regs 1, 4.

10 See *ibid* regs 5, 6, 8.

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## **1622. Insurance.**

The Secretary of State<sup>1</sup> is empowered to give directions to the operator<sup>2</sup> of a tramway<sup>3</sup> requiring the operator to ensure that there are at all times in force policies of insurance against liability for death or personal injury<sup>4</sup>. Before giving such a direction, the Secretary of State must consult the person to whom he intends to give it<sup>5</sup>. If a direction is contravened, the person to whom the direction has been given is guilty of an offence<sup>6</sup>.

Employees of tramway undertakings must ordinarily be insured under the provisions of the Social Security Contributions and Benefits Act 1992<sup>7</sup>. Employers are also obliged to insure against their liability for personal injury to their employees<sup>8</sup>.

1 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 'Operator' means any person carrying on an undertaking which includes a transport system or any part of it or the provision of transport services on the system: Transport and Works Act 1992 s 67(1).

3 For the meaning of 'tramway' see PARA 1586 ante.

4 Transport and Works Act 1992 s 46(1), (2). The policies must comply with the requirements of the direction: s 46(2). As to insurance generally see INSURANCE.

5 Ibid s 46(3).

6 Ibid s 46(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 46(5). As to the standard scale see PARA 230 note 3 ante.

7 See the Social Security Contributions and Benefits Act 1992 Pt I (ss 1-19A) (as amended); and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 31 et seq.

8 See the Employers' Liability (Compulsory Insurance) Act 1969 s 1 (as amended); and EMPLOYMENT vol 39 (2009) PARA 40. Tramway operators owe their employees the ordinary duty of care as between employer and employee: see EMPLOYMENT vol 39 (2009) PARA 53 et seq.

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## **(v) Road Traffic**

### **1623. Application of public passenger vehicle legislation.**

For the purposes of the Public Passenger Vehicles Act 1981<sup>1</sup>, a tramcar<sup>2</sup> is not a public passenger vehicle<sup>3</sup> and accordingly the provisions of that Act do not, in general, apply to tramcars. However, certain provisions of the Act may be applied to tramcars by regulations<sup>4</sup>. The Secretary of State<sup>5</sup> is empowered to regulate the conduct of drivers, inspectors and conductors<sup>6</sup>, the conduct of passengers<sup>7</sup>, the carriage of luggage and goods<sup>8</sup> and the safe

custody and re-delivery or disposal of any property accidentally left in a tramcar and the fixing of charges in respect thereof<sup>9</sup>.

Regulations made under any provision of the Public Passenger Vehicles Act 1981 and applying to tramcars may amend or exclude any provision of an Act or instrument of local application where the subject-matter is the same as that covered by a regulation dealing with any of the topics described above<sup>10</sup>. However, the power to control the number of passengers carried on a tramcar has been repealed<sup>11</sup> and the power to specify the hours to be worked by drivers of tramcars is generally excluded<sup>12</sup>.

Under the model clauses prescribed for incorporation in orders relating to tramways made under the Transport and Works Act 1992<sup>13</sup>, tramcars are to be regarded as public service vehicles for the purposes of the duty imposed on local authorities by the Road Traffic Regulation Act 1984<sup>14</sup> to facilitate the passage of public service vehicles and secure the safety and security of their users<sup>15</sup>.

A tramcar is not a public service vehicle for the purposes of the Public Passenger Vehicles Act 1981<sup>16</sup>. The provisions of the Transport Act 1985 with respect to London local service licences do not apply to tramcars<sup>17</sup>. Accordingly, the traffic commissioners<sup>18</sup> have no control over the fares and charges which may be fixed by the undertaking operating a tramway<sup>19</sup>. Vehicles which operate on a tramway are exempt from the requirement to pay vehicle excise duty<sup>20</sup>.

1 As to the Public Passenger Vehicles Act 1981 generally see PARA 1132 et seq ante.

2 'Tramcar' includes any carriage used on any road by virtue of an order made under the Light Railways Act 1896: Public Passenger Vehicles Act 1981 s 82(1). As to the Light Railways Act 1896 see PARA 1574 et seq ante.

3 See the Public Passenger Vehicles Act 1981 s 1(1); and PARA 1136 ante.

4 As to the general power under the Public Passenger Vehicles Act 1981 to make regulations subject to parliamentary control see ss 60, 61 (both as amended); and PARA 1134 ante.

5 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

6 See the Public Passenger Vehicles Act 1981 s 24(1)(c) (added by the Transport and Works Act 1992 s 61(2) (a)). See PARA 1172 text and note 7 ante.

7 See the Public Passenger Vehicles Act 1981 s 25(1) (amended by the Transport and Works Act 1992 s 61(3)); and PARA 1173 ante.

8 See the Public Passenger Vehicles Act 1981 s 60(1)(j) (amended by the Transport and Works Act 1992 s 61(5)(a)); and PARA 1134 ante.

9 See the Public Passenger Vehicles Act 1981 s 60(1)(k) (amended by the Transport and Works Act 1992 s 61(5)(b)); and PARA 1134 ante.

10 See the Public Passenger Vehicles Act 1981 s 60(1B) (added by the Transport and Works Act 1992 s 61(6)); and PARA 1134 ante. At the date at which this volume states the law no regulations had been made in relation to tramcars under the Public Passenger Vehicles Act 1981 s 24 (as amended) (see PARA 1172 ante), s 25 (as amended) (see PARA 1173 ante) or s 60 (as amended) (see PARA 1134 ante), but power has been taken in certain Acts of local application to apply some of these provisions to vehicles operating on a tramway or railway: see eg the Greater Manchester (Light Rapid Transit System) Act 1988 s 46; the South Yorkshire Light Rail Transit Act 1988 s 42; the Midland Metro Act 1989 s 51; the Leeds Supertram Act 1993 s 60; the Croydon Tramlink Act 1994 s 47; and the Greater Nottingham Light Rapid Transit Act 1994 s 63.

11 The Transport Charges etc (Miscellaneous Powers) 1954 s 9 was repealed by the Transport and Works Act 1992 s 68(1), Sch 4 Pt I. Byelaws may be employed to achieve this purpose: see PARAS 1558, 1592 ante.

12 Transport Act 1968 s 102A (added by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 6(7)). This excludes tramcars operated under statutory powers from the requirements of the Transport Act 1968 Pt VI (ss 95-103) (as amended) (drivers' hours): see PARA 1380 et seq ante. The exclusion has effect subject to any provision to the contrary in any Act or order conferring such statutory powers. But note the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, reg 25 (see PARA 1619 ante; and

RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 255), which provides that a safety critical worker must not carry out safety critical work in circumstances where he is so fatigued or where he would be liable to become so fatigued that his health or safety or the health or safety of other persons on a transport system could be significantly affected.

13 Transport and Works Act 1992 s 8(1). See further PARA 1589 ante.

14 In the Road Traffic Regulation Act 1984 s 122(2)(c): see PARA 734 ante.

15 Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, art 3(b), Sch 2 para 40(5).

16 See the text and note 3 supra.

17 See the Transport Act 1985 Pt II (ss 34-46) (prospectively repealed): and PARA 1246 et seq ante.

18 As to traffic commissioners see PARA 1139 ante.

19 Previously, the commissioners had similar powers with respect to tramcars as to buses, but these powers, under the Transport Charges etc (Miscellaneous Provisions) Act 1954 s 2, have ended with the repeal of that provision, thereby putting tramcars and buses in analogous positions so far as the regulation of their fares is concerned.

20 See the Vehicle Excise and Registration Act 1994 s 5, Sch 2 para 2; and CUSTOMS AND EXCISE vol 12(2) (2007 Reissue) PARA 724.

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## **1624. Application of the Road Traffic Regulation Act 1984.**

The Road Traffic Regulation Act 1984<sup>1</sup> generally applies to tramcars<sup>2</sup>, but the Secretary of State<sup>3</sup> may provide by regulations for certain provisions<sup>4</sup> of the Act not to apply, or to apply with modifications, to all tramcars or to tramcars of any specified class<sup>5</sup>. Such regulations may make different provision for different cases, may include transitional provisions and may make amendments to any local Act passed before 1 July 1992<sup>6</sup> which authorises or regulates the use of tramcars<sup>7</sup>. Regulations have been made pursuant to these powers<sup>8</sup>.

The Road Traffic Regulation Act 1984 also allows an exception in favour of the owners or operators of tramways<sup>9</sup> to the general prohibition against the placing of traffic signs<sup>10</sup> on or near a road<sup>11</sup> otherwise than in accordance with the provisions of Part V<sup>12</sup> of that Act<sup>13</sup>.

1 As to the Road Traffic Regulation Act 1984 generally see PARA 718 et seq ante.

2 'Tramcar' includes any carriage used on any road by virtue of an order under the Light Railways Act 1896: Road Traffic Regulation Act 1984 s 141A(4) (added by the Road Traffic Act 1991 s 46(1)). As to the Light Railways Act 1896 see further PARA 1574 et seq ante.

3 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 The provisions concerned are the Road Traffic Regulation Act 1984 ss 1-11 (as amended) (see PARAS 742-753 ante), s 12 (repealed), s 13 (repealed) (general provisions for traffic regulation), s 14 (as substituted and amended) (see PARA 755 ante) (temporary prohibition or restriction on roads), ss 16A-16C (as added) (see PARAS 759-762 ante) (prohibition or restriction on roads in connection with certain events), s 18 (as amended) (see PARA 766 ante) (one-way traffic on trunk roads) and s 81 (see PARA 847 ante), ss 82-86 (as amended) (see PARAS 847-850 ante), ss 87-89 (see PARAS 854-856 ante) (speed limits): s 141A(2) (as added: see note 2 supra).

5 Ibid s 141A(1)(a) (as added: see note 2 supra).

6 Ie the date on which ibid s 141A (as added) was brought into force: see the Road Traffic Act 1991 (Commencement No 4 and Transitional Provisions) Order 1992, SI 1992/1286.

7 Road Traffic Regulation Act 1984 s 141A(3) (as added: see note 2 supra).

8 See the Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, which in relation to tramcars provide:

1430 (1) that, with modifications, the Road Traffic Regulation Act 1984 s 1 (as amended) (see PARA 742 ante), s 6 (as amended) (see PARA 747 ante), s 9 (as amended) (see PARA 751 ante), s 14 (as substituted and amended) (see PARA 755 ante) and s 18 (as amended) (see PARA 766 ante) have effect, on and after 1 July 1992, so that tramcars are exempt from any order or notice under any of those provisions (Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, regs 3, 4); and

1431 (2) that an order made before 1 July 1992 under the Road Traffic Regulation Act 1984 s 1 (as amended) (see PARA 742 ante), s 14 (as substituted and amended) (see PARA 755 ante), s 18 (as amended) (see PARA 766 ante) or s 84 (as amended) (see PARA 848 ante), or, as respects any road outside Greater London, under s 9 (as amended) (see PARA 751 ante), is not to apply to tramcars (Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 15).

However, nothing under head (1) or head (2) supra is to affect the operation of any provision in an order or notice under the Road Traffic Regulation Act 1984 s 14 (as substituted and amended) (see PARA 755 ante) restricting the speed of vehicles: Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 4(2).

For general provisions as to the making of regulations see the Road Traffic Regulation Act 1984 s 134(1)-(3) (as amended); and PARA 720 ante.

9 See ibid s 64(4)(b). The exception extends to any traffic sign placed, in pursuance of powers conferred by a special Act of Parliament or order having the force of an Act, by the owners or operators of a tramway, light railway or trolley vehicle undertaking, a dock undertaking or a harbour undertaking. The Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954, art 3(b), Sch 2 para 40 makes provision for incorporation in a transport and works order of power for a tramway operator to place and maintain traffic signs in a street: see further PARA 1590 ante. As to transport and works orders see PARA 1586 ante.

10 For the meaning of 'traffic sign' see PARA 830 ante. As to 'placing' see the Road Traffic Regulation Act 1984 s 64(6); and PARA 770 note 2 ante.

11 For the meaning of 'road' see PARA 206 ante.

12 Ie the Road Traffic Regulation Act 1984 Pt V (ss 64-80) (as amended): see PARAS 830-845 ante.

13 See ibid s 64(4) (as amended); and PARA 830 ante. Regulations made pursuant to s 64 (as amended) (see PARA 830 ante) and s 134 (as amended) (see PARA 720 ante) have prescribed traffic signs, signals and road markings for use in connection with the operation of tramcars: see the Traffic Signs Regulations and General Directions 2002, SI 2002/3113 (as amended).

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## **1625. Application of the Road Traffic Acts.**

The Road Traffic Act 1988<sup>1</sup> generally applies to tramcars<sup>2</sup>, but the Secretary of State<sup>3</sup> may provide by regulations for certain provisions<sup>4</sup> of the Act not to apply, or to apply with modifications, to all tramcars or to tramcars of any specified class<sup>5</sup>. Such regulations may make different provision for different cases, may include transitional provisions and may make



amendments to any local Act passed before 1 July 1992<sup>6</sup> which authorises or regulates the use of tramcars<sup>7</sup>.

A similar power to make regulations in relation to tramcars has been provided in respect of certain provisions<sup>8</sup> of the Road Traffic Offenders Act 1988<sup>9</sup>.

The requirements imposed by the Road Traffic Act 1988 for the construction and condition of a motor vehicle to be examined, and for a test certificate to be issued on compliance with such examination, before the vehicle may be used on a road at any time do not apply to tramcars<sup>10</sup>. The further requirements imposed by the Act for regulating the use on roads of motor vehicles, their condition and equipment and the conditions under which they may be so used, do not apply to tramcars, either generally<sup>11</sup> or in particular regard to vehicle lighting<sup>12</sup>.

Provisions of the Road Traffic Act 1988 concerned with offences involving drink and drugs<sup>13</sup> (to the extent that otherwise they might do so) do not apply to vehicles on any transport system to which Chapter I of Part II of the Transport and Works Act 1992 applies<sup>14</sup>.

1 See PARAS 201-202, 219 ante.

2 'Tramcar' includes any carriage used on any road by virtue of an order under the Light Railways Act 1896: see the Road Traffic Act 1988 s 192(1); and PARA 219 ante. As to the Light Railways Act 1896 see further PARA 1574 et seq ante.

3 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 The provisions concerned are the Road Traffic Act 1988 s 12 (as amended) (see PARAS 992-993 ante) (motor racing on public ways), ss 40A-42 (as amended) (see PARAS 260-265, 625 ante) (using vehicle in dangerous condition and general regulation of construction, use etc), s 47 (as amended) (see PARA 657 ante), s 48 (as amended) (see PARA 657-658 ante) (test certificates), s 66 (as amended) (see PARA 675 ante) (conditions for grant of excise licence), ss 68-73 (as amended) (see PARA 686 et seq ante) (inspection of public passenger vehicles and goods vehicles), ss 75-79 (as amended) (see PARA 694 et seq ante) (miscellaneous provisions about vehicles and vehicle parts), s 83 (see PARA 408 ante) (offences to do with reflectors and tail lamps), ss 87-109 (as amended) (see PARA 442 et seq ante) (licensing of drivers of vehicles), ss 143-165 (as amended) (see PARA 937 et seq ante) (third party liabilities and miscellaneous), s 168 (as amended) (see PARA 968 ante) (duty to give name and address), s 170 (as amended) (see PARA 645 ante) (duty of driver to stop, report accident and give information), s 171 (see PARAS 645, 648 ante) (duty of driver to give insurance information), s 190 (see PARA 209 ante) (method of calculating weight of motor vehicles and trailers) and s 191 (see PARA 977 ante) (interpretation of references to carriages): s 193A(2)(a) (s 193A added by the Road Traffic Act 1991 s 46(2)).

5 Road Traffic Act 1988 s 193A(1)(a) (as added: see note 4 supra).

6 ie the date on which the Road Traffic Act 1988 s 193A (as added) was brought into force: see the Road Traffic Act 1991 (Commencement No 4 and Transitional Provisions) Order 1992, SI 1992/1286.

7 Road Traffic Act 1988 s 193A(3), (4) (as added: see note 4 supra). See the Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, which in relation to tramcars provide:

1432 (1) that the Road Traffic Act 1988 s 40A (as added) (see PARA 625 ante), s 68 (as substituted and amended; prospectively amended) (see PARA 686 ante), ss 69-73 (as amended) (see PARA 688 et seq ante), ss 75-79 (as amended) (see PARA 694 et seq ante), s 83 (see PARA 408 ante), s 190 (see PARA 209 ante) and s 191 (see PARA 977 ante) are not to apply to tramcars (Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 7);

1433 (2) that the Road Traffic Act 1988 s 87 (as amended) (see PARA 444 ante) is to apply to tramcars but with the following modifications:

1. (a) a licence authorising a person to drive a motor vehicle in category B within the meaning of the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864 (replacing SI 1996/2824, which in turn replaced SI 1987/1387) is to be regarded as authorising that person to drive a tramcar (Road Traffic Act 1988 s 87(3) (s 87(3), (4) added by the Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 8));

2. (b) notwithstanding that it is an offence under the Road Traffic Act 1988 s 87(1) (as amended) to drive on a road a motor vehicle of any class otherwise than in accordance with a licence authorising him to drive a motor vehicle of that class, a person may drive, or cause or permit another person to drive, a tramcar if the driver was employed on duties which required the driving of tramcars on a road at any time during the one year period ending immediately before 1 July 1992 (s 87(4) (as so added)).

3

For general provisions as to regulations see s 195(1)-(3) (as amended); and PARA 243 ante.

8 The provisions concerned are the Road Traffic Offenders Act 1988 s 1 (as amended) (see PARA 1028 ante), s 2 (as amended) (see PARA 1028 ante), s 7 (as amended) (see PARA 1032 ante), s 8 (as amended) (see PARA 1033 ante), s 22 (see PARA 1043 ante), s 25-29 (as amended) (see PARA 1045 et seq ante), s 31 (as amended) (see PARA 1054 ante), s 32 (see PARA 996 ante), ss 34-48 (as amended) (see PARA 1058 et seq ante), s 91A (as added) (see PARA 1024 ante), ss 91ZA-91B (as added) (see PARAS 1084-1085 ante), s 96 (see PARA 1080 ante) and s 97 (see PARA 1058 ante); Road Traffic Act 1988 s 193A(2)(b) (added by the Road Traffic Act 1991 s 46(2); and amended by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 17, 31; and the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 35). As to the Road Traffic Offenders Act 1988 generally see PARA 1011 et seq ante.

9 See the Road Traffic Act 1988 s 45 (as amended; prospectively amended) (see PARA 660 ante), s 46 (as amended; prospectively substituted and amended) (see PARA 662 ante), s 193A (as added and amended) (see PARA 219 ante). At the date that this volume states the law no regulations have been made excluding or applying with modifications the provisions of the Road Traffic Offenders Act 1988 mentioned in note 8 supra.

10 Motor Vehicles (Test) Regulations 1981, SI 1981/1694, reg 6(1)(xxiv) (added by SI 1992/1217).

11 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 4 Table item 8 (item added by SI 1992/1217).

12 Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 9A (added by SI 1992/1217).

13 See the Road Traffic Act 1988 ss 4-11 (as amended); and PARAS 975, 978 et seq ante.

14 See *ibid* s 192A (added by the Transport and Works Act 1992 s 39). As to the application of the Transport and Works Act 1992 Pt II Ch I (ss 26-40) (as amended) see PARA 1626 note 2 post.

## UPDATE

### 1625 Application of the Road Traffic Acts

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### 1626. Offences involving drink and drugs.

If a person works<sup>1</sup> on a transport system<sup>2</sup>:

2471 (1) as a driver, guard, conductor or signaller or in any other capacity in which he can control or affect the movement of a vehicle<sup>3</sup>; or

2472 (2) in a maintenance capacity<sup>4</sup> or as a supervisor of, or look out for, persons working in a maintenance capacity<sup>5</sup>,

either: (a) when he is unfit to carry out that work<sup>6</sup> through drink or drugs<sup>7</sup>; or (b) after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit<sup>8</sup>, he is guilty of an offence<sup>9</sup>.

If a person commits such an offence, the responsible operator<sup>10</sup> is also guilty of an offence<sup>11</sup>. However, no offence is committed if the responsible operator has exercised all due diligence to prevent the commission on the transport system of any offence involving drink or drugs<sup>12</sup>.

If a person commits such an offence in the course of his employment with a person other than the responsible operator, his employer is (without prejudice to any liability of that operator<sup>13</sup>) also guilty of an offence<sup>14</sup>. However, no such offence is committed by the employer if he has exercised all due diligence to prevent the commission on the transport system by any of his employees of any offence involving drink or drugs<sup>15</sup>.

Further provision in respect of offences involving drink or drugs is made in connection with the power to arrest without warrant, the carrying out of breath tests, the provision of specimens for analysis, the choice of specimens for breath, the protection of hospital patients, and the provision of evidence in proceedings<sup>16</sup>.

1 It is immaterial whether a person who works on a transport system does so in the course of his employment, under a contract for services, voluntarily or otherwise: Transport and Works Act 1992 s 38(3). See EMPLOYMENT.

2 Ibid Pt II Ch I (ss 26-40) (as amended) applies to transport systems of the following kinds: a railway, a tramway, or a system which uses another mode of guided transport and is specified for the purposes of Pt II Ch I (as amended) by an order made by the Secretary of State: s 26(1). For the meaning of 'railway' see PARA 1537 note 2 ante; for the meaning of 'tramway' see PARA 1586 ante; for systems using other modes of guided transport so specified see PARA 1634 text and note 4 post. As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. As to railways see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

3 Ibid s 27(1)(a), (2)(a). As to the meaning of 'vehicle' see PARA 1618 note 6 ante. As to offences involving drink and drugs where a person works on a transport system see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 377.

4 A person works on a transport system in a maintenance capacity: (1) if his work on the system involves maintenance, repair or alteration of: (a) the permanent way or other means of guiding or supporting vehicles; (b) signals or any other means of controlling the movement of vehicles; or (c) any means of supplying electricity to vehicles or to the means of guiding or supporting vehicles; or (2) if his work involves coupling or uncoupling vehicles or checking that they are working properly before they are used on any occasion: ibid s 27(3).

5 Ibid s 27(2)(a), (2)(b).

6 A person is taken to be unfit to carry out any work if his ability to carry out that work properly is for the time being impaired: ibid s 27(4).

7 'Drug' includes any intoxicant other than alcohol: ibid s 38(1).

8 For the meaning of 'prescribed limit' see ibid s 38(2); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 377.

9 Ibid s 27(1), (2). A person guilty of an offence under s 27 is liable on summary conviction to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the standard scale, or to both: s 36(1). As to the standard scale see PARA 230 note 3 ante.

10 'The responsible operator' means: (1) in a case where the transport system on which the offence under ibid s 27 is committed has only one operator, that operator; and (2) in a case where the transport system on which the offence under s 27 is committed has more than one operator, whichever of them is responsible for the work giving rise to the offence: s 28(2). For the meaning of 'operator' see PARA 1611 note 1 ante.

11 Ibid s 28(1). A person guilty of an offence under s 28 is liable on summary conviction to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the standard scale, or to both: s 36(1).

Where an offence under Pt II (ss 26-59) (as amended) committed by a body corporate is committed with the consent or connivance of, or is attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in such a capacity, he as well as the body corporate is guilty of the offence: s 59(1). For this purpose, 'director', in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate: s 59(2).

12 Ibid s 28(3).

13 Ie under ibid s 28(1): see the text and note 11 supra.

14 Ibid s 28(4).

15 Ibid s 28(5).

16 See further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 378-383.

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## **(6) TROLLEY VEHICLES AND OTHER GUIDED TRANSPORT MODES**

### **(i) Trolley Vehicles**

#### **1627. General position.**

Trolley vehicles (also known as 'trolleybuses') first operated in passenger-carrying service in 1911<sup>1</sup>. A substantial number of systems were in operation during the mid decades of the twentieth century, some serving as a replacement for tramways. The mode of transport thereafter went into decline, with the last system closing in 1972<sup>2</sup>. There have been recent attempts to re-introduce the mode<sup>3</sup>.

It should be noted that a trolley vehicle system is not a guided form of transport, as the vehicles are steered manually from on board the vehicle. It should also be noted that with some designs of trolley vehicle, apart from receiving power from an external source to propel the vehicle, it may also be equipped with additional means of propulsion on board the vehicle<sup>4</sup>.

1 Separate trolley vehicle systems opened in Leeds and Bradford in that year.

2 This last system was in Bradford. A line operated on an experimental basis in Doncaster during the mid-1980s. Trolley vehicles continue to be operated in certain transport museums.

3 Notably in Liverpool, where in 1998 Merseyside Passenger Transport Executive applied for a transport and works order to operate trolley vehicles there. The application was later refused.

4 Eg electric batteries or an internal combustion engine. See PARA 1629 note 6 post (in reference to 'duobus'); and see PARA 1630 note 11 post (in reference to 'auxiliary trolley vehicle').

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#### **1628. Requirement for statutory authorisation.**

As with tramways, trolley vehicles require statutory authority if their apparatus is to be installed and operated in, under or over a public highway<sup>1</sup>. Statutory authority was usually secured by means of private Acts of Parliament although, as trolley vehicles have been provided with no legislative code of their own, these Acts incorporated, or otherwise applied, relevant provisions taken from the Tramways Act 1870<sup>2</sup>.

The Transport and Works Act 1992 now enables trolley vehicle systems to receive authorisation by means of orders made under that Act<sup>3</sup> in like manner to that appertaining to tramways<sup>4</sup>. However, no separate model clauses have been prescribed for trolley vehicle systems<sup>5</sup>, although many of those prescribed for tramways<sup>6</sup> should be capable of adaptation to meet the requirements of trolley vehicle operation.

1 See PARAS 1598, 1618 ante.

2 See eg the West Yorkshire (Parking and Transport) Act 1982; and the South Yorkshire Passenger Transport Act 1986.

3 Transport and Works Act 1992 s 1(1)(c). 'Trolley vehicle system' means a system of transport by vehicles constructed or adapted for use on roads without rails under electric power transmitted to them by overhead wires (whether or not there is in addition a source of power on board the vehicles): s 67(1). As to the meaning of 'vehicle' see PARA 1618 note 6 ante.

4 See PARA 1586 ante.

5 Ie under the Transport and Works Act 1992 s 8: see PARA 1589 ante; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 310.

6 Ie the clauses prescribed by the Transport and Works (Model Clauses for Railways and Tramways) Order 2006, SI 2006/1954. See PARAS 1589-1593 ante.

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### **1629. Application of the Road Traffic Regulation Act 1984.**

The provisions of the Road Traffic Regulation Act 1984<sup>1</sup> in general apply to trolley vehicles<sup>2</sup>, but the Secretary of State<sup>3</sup> may provide by regulations for certain provisions<sup>4</sup> of the Act not to apply, or to apply with modifications, to all trolley vehicles or to trolley vehicles of any specified class<sup>5</sup>. In exercise of this power, regulations have been made in respect of a specific class of trolley vehicle<sup>6</sup>. The power to make regulations also extends to making different provision for different cases, to including transitional provisions and to making such amendments to any local Act passed before 1 July 1992<sup>7</sup> as may authorise or regulate the use of trolley vehicles<sup>8</sup>. Regulations have been made pursuant to these powers<sup>9</sup>.

The exception under the Road Traffic Regulation Act 1984 which allows owners or operators of tramways to put in place traffic signs on or near a road otherwise than in accordance with Part V of that Act<sup>10</sup> also applies to owners or operators of trolley vehicle undertakings<sup>11</sup>.

1 As to the Road Traffic Regulation Act 1984 generally see PARA 718 et seq ante.

2 'Trolley vehicle' means a mechanically propelled vehicle adapted for use on roads without rails under power transmitted to it from some external source (whether or not there is in addition a source of power on

board the vehicle): Road Traffic Regulation Act 1984 s 141A(4) (s 141A added by the Road Traffic Act 1991 s 46(1)).

3 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 The provisions concerned are the Road Traffic Regulation Act 1984 ss 1-11 (as amended) (see PARAS 742-753 ante), s 12 (repealed), s 13 (repealed) (general provisions for traffic regulation), s 14 (as substituted and amended) (see PARA 755 ante) (temporary prohibition or restriction on roads), ss 16A-16C (as added) (see PARAS 759-762 ante) (prohibition or restriction on roads in connection with certain events), s 18 (as amended) (see PARA 766 ante) (one-way traffic on trunk roads), s 81 (see PARA 847 ante), ss 82-86 (as amended) (see PARAS 847-850 ante), ss 87-89 (see PARAS 854-856 ante) (speed limits): s 141A(1)(a), (2) (as added (see note 2 supra); and s 141A(2) amended by the Road Traffic Regulation (Special Events) Act 1994 s 3(1), Schedule para 4).

5 Road Traffic Regulation Act 1984 s 141A(3) (as added: see note 2 supra).

6 The class of vehicle so specified is a 'duobus' which is defined as meaning a trolley vehicle which:

1434 (1) is adapted to operate under power provided from a source on board when it is not operating from power transmitted to it from some external source;

1435 (2) has a maximum speed when it is operating solely under power provided from a source on board which is at least:

3. (a) 75% of its maximum speed when it is operating solely under power transmitted to it from an external source; or

4

4. (b) 30 mph,

5

1436 whichever is the less; and

1437 (3) is designed to have a range of at least ten miles when operating solely under power provided from a source on board;

and 'maximum speed' means in relation to a source of power, the speed which the trolley vehicle is incapable, by reason of its construction, of exceeding on the level under that source of power when unladen: Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 2(1).

7 The date on which the Road Traffic Regulation Act 1984 s 141A (as added) was brought into force: see the Road Traffic Act 1991 (Commencement No 4 and Transitional Provisions) Order 1992, SI 1992/1286.

8 Road Traffic Regulation Act 1984 s 141A(3) (as added: see note 2 supra).

9 See the Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, which in relation to trolley vehicles provide:

1438 (1) that, with modifications and subject to reg 11, the Road Traffic Regulation Act 1984 s 1 (as amended) (see PARA 742 ante), s 6 (as amended) (see PARA 747 ante), s 9 (as amended) (see PARA 751 ante), s 14 (as substituted and amended) (see PARA 755 ante) and s 18 (see PARA 766 ante) are to have effect, on and after 1 July 1992, so that trolley vehicles are exempt from any order or notice under any of those provisions (Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 5);

1439 (2) that the Road Traffic Regulation Act 1984 applies without modification to duobuses (see note 6 supra) (Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 11); and

1440 (3) that an order made before 1 July 1992 under the Road Traffic Regulation Act 1984 s 1 (as amended) (see PARA 742 ante), s 14 (as substituted and amended) (see PARA 755 ante), s 18 (see PARA 766 ante) or s 84 (as amended) (see PARA 848 ante), or, as respects any road outside Greater London, under s 9 (as amended) (see PARA 751 ante), is not to apply to trolley vehicles (other than duobuses) (Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 15), and that any such order has effect thereafter, in relation to duobuses, as if the provisions of the Road Traffic Regulation Act 1984 s 141 (repealed) and the corresponding provisions of earlier enactments had never been passed (Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 16).

For general provisions as to the making of regulations see the Road Traffic Regulation Act 1984 s 134(1)-(3) (as amended); and PARA 720 ante.

10 *le ibid* Pt V (ss 64-80) (as amended): see PARA 830 et seq ante.

11 *Ibid* s 64(4)(b). See further PARA 1624 ante.

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### **1630. Application of the Road Traffic Acts.**

The Road Traffic Act 1988<sup>1</sup> generally applies to trolley vehicles<sup>2</sup>, but the Secretary of State<sup>3</sup> may provide by regulations for certain provisions<sup>4</sup> of the Act not to apply, or to apply with modifications, to all trolley vehicles or to trolley vehicles of any specified class<sup>5</sup>. In exercise of this power, regulations have been made in respect of a specific class of trolley vehicle<sup>6</sup>. The power to make regulations also extends to making different provision for different cases, to including transitional provisions and to making such amendments to any local Act passed before 1 July 1992<sup>7</sup> as may authorise or regulate the use of trolley vehicles<sup>8</sup>.

A similar power to make regulations in relation to trolley vehicles has been provided in respect of certain provisions<sup>9</sup> of the Road Traffic Offenders Act 1988<sup>10</sup>.

The requirements imposed by the Road Traffic Act 1988 for the construction and condition of a motor vehicle to be examined, and for a test certificate to be issued on compliance with such examination, before the vehicle may be used on a road at any time do not apply to trolley vehicles<sup>11</sup>.

1 See PARAS 201-202, 219 ante.

2 For the meaning of 'trolley vehicle' see PARA 219 ante.

3 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 The provisions concerned are the Road Traffic Act 1988 s 12 (as amended) (see PARAS 992-993 ante) (motor racing on public ways), ss 40A-42 (as amended) (see PARAS 260-265, 625 ante) (using vehicle in dangerous condition and general regulation of construction, use etc), s 47 (as amended) (see PARA 657 ante), s 48 (as amended) (see PARAS 657-658 ante) (test certificates), s 66 (as amended) (see PARA 675 ante) (conditions for grant of excise licence), ss 68-73 (as amended) (see PARA 686 et seq ante) (inspection of public passenger vehicles and goods vehicles), ss 75-79 (as amended) (see PARA 694 et seq ante) (miscellaneous provisions about vehicles and vehicle parts), s 83 (see PARA 408 ante) (offences to do with reflectors and tail lamps), ss 87-109 (as amended) (see PARA 442 et seq ante) (licensing of drivers of vehicles), ss 143-165 (as amended) (see PARA 937 et seq ante) (third party liabilities and miscellaneous), s 168 (as amended) (see PARA 968 ante) (duty to give name and address), s 170 (as amended) (see PARA 645 ante) (duty of driver to stop, report accident and give information), s 171 (see PARAS 645, 648 ante) (duty of driver to give insurance information), s 190 (see PARA 209 ante) (method of calculating weight of motor vehicles and trailers) and s 191 (see PARA 977 ante) (interpretation of references to carriages): s 193A(2)(a) (s 193A added by the Road Traffic Act 1991 s 46(2)).

5 Road Traffic Act 1988 s 193A(1)(a) (as added: see note 4 supra).

6 See the Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217; and PARA 1629 note 6 ante.

7 *le* the date on which the Road Traffic Act 1988 s 193A (as added) was brought into force: see the Road Traffic Act 1991 (Commencement No 4 and Transitional Provisions) Order 1992, SI 1992/1286.

8 Road Traffic Act 1988 s 193A(3) (as added: see note 4 supra). See the Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, which in relation to trolley vehicles provide:

- 1441 (1) that, subject to reg 11, the Road Traffic Act 1988 s 40A (as added) (see PARA 625 ante) and ss 77-79 (as amended) (see PARAS 696-697 ante) do not apply to trolley vehicles (Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 9);
- 1442 (2) that, subject to reg 11, the Road Traffic Act 1988 s 68 (as substituted and amended; prospectively amended) (see PARA 686 ante) applies to trolley vehicles but with the omission of s 68(4) (Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 10);
- 1443 (3) that the Road Traffic Act 1988 applies without modification to duobuses (as to which see PARA 1629 note 6 ante) (Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 11); and
- 1444 (4) that any regulations made before 1 July 1992 under the Road Traffic Act 1988 s 41 (see PARA 260 ante) are to have effect thereafter in relation to trolley vehicles as if s 193, Sch 4 (repealed) and the corresponding provisions of earlier enactments had never been passed (Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992, SI 1992/1217, reg 17).

For general provisions as to regulations see the Road Traffic Act 1988 s 195(1)-(3) (as amended); and PARA 243 ante.

9 The provisions concerned are the Road Traffic Offenders Act 1988 s 1 (as amended) (see PARA 1028 ante), s 2 (as amended) (see PARA 1028 ante), s 7 (as amended) (see PARA 1032 ante), s 8 (as amended) (see PARA 1033 ante), s 22 (see PARA 1043 ante), ss 25-29 (as amended) (see PARA 1045 et seq ante), s 31 (as amended) (see PARA 1054 ante), s 32 (see PARA 996 ante), ss 34-48 (as amended) (see PARA 1058 et seq ante), s 91A (as added) (see PARA 1024 ante), ss 91ZA-91B (as added) (see PARAS 1084-1085 ante), s 96 (see PARA 1080 ante) and s 97 (see PARA 1058 ante); Road Traffic Act 1988 s 193A(2)(b) (added by the Road Traffic Act 1991 s 46(2); and amended by the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 17, 31; and the Driving Licences (Community Driving Licence) Regulations 1996, SI 1996/1974, reg 2, Sch 1 para 35).

10 See the Road Traffic Act 1988 s 45 (as amended; prospectively amended) (see PARA 660 ante), s 46 (as amended; prospectively substituted and amended) (see PARA 662 ante), s 193A (as added and amended) (see PARA 219 ante). At the date at which this volume states the law no regulations had been made excluding or applying with modifications the provisions of the Road Traffic Offenders Act 1988 mentioned in note 9 supra.

11 See the Motor Vehicles (Test) Regulations 1981, SI 1981/1694, reg 6(1)(xxv) (added by SI 1992/1217) (which excludes a trolley vehicle which is not an auxiliary trolley vehicle); and the Motor Vehicles (Test) Regulations 1981, SI 1981/1694, reg 6(5) (added by SI 1992/1217) (which defines 'auxiliary trolley vehicle' as a trolley vehicle which is adapted to operate under power provided from a source on board when it is not operating from power transmitted to it from some external source).

## UPDATE

### 1630 Application of the Road Traffic Acts

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### 1631. Application of other legislation.



Trolley vehicles are public service vehicles for the purposes of the Public Passenger Vehicles Act 1981<sup>1</sup> and as public service vehicles the provisions of the Disability Discrimination Act 1995 also apply to them<sup>2</sup>.

The provisions of the New Roads and Street Works Act 1991 as they relate to tramways<sup>3</sup> are, where appropriate, also applicable to trolley vehicle systems, as the definition of tramway contained in that Act<sup>4</sup> is wide enough to include trolley vehicle systems.

Part I of the Health and Safety at Work etc Act 1974<sup>5</sup> has been applied to trolley vehicle systems<sup>6</sup>. Chapter II of Part II of the Transport and Works Act 1992<sup>7</sup> does not apply to trolley vehicles, but the power of the Secretary of State to give directions as to insurance does so<sup>8</sup>. Several regulations concerned with safety and welfare matters in relation to tramways also apply to trolley vehicle systems<sup>9</sup>, whereas this is not the case with other such regulations<sup>10</sup>.

1 See the Public Passenger Vehicles Act 1981 s 1 (as amended); and PARA 1136 ante. Under previous legislation (ie the Road Traffic Act 1960 s 117 (repealed)) trolley vehicles were not included.

2 See the Disability Discrimination Act 1995 s 40; and DISCRIMINATION vol 13 (2007 Reissue) PARA 635 (power to make regulations in respect of public service vehicles). In exercise of this power, the Public Service Vehicles Accessibility Regulations 2000, SI 2000/1970 (amended by SI 2000/3318; SI 2002/2981; SI 2003/1818; SI 2005/2988; SI 2007/500), have been made: see DISCRIMINATION vol 13 (2007 Reissue) PARA 635.

3 See PARA 1598 et seq ante.

4 See PARA 1598 note 5 ante.

5 The Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) is concerned with health, safety and welfare in connection with work: see further PARAS 1615-1616 ante.

6 See the Railways Act 1993 s 117(6)(a); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 194. For the meaning of 'trolley vehicle system' see PARA 1628 note 3 ante. See further PARA 1616 ante.

7 As to the Transport and Works Act 1992 Pt II Ch II (ss 41-56) see PARAS 1618-1621 ante.

8 See *ibid* s 46; and PARA 1622 ante.

9 Notably the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 399 et seq); and the Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553 (as amended) (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 267 et seq).

10 Notably the Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996, SI 1996/428 (as amended) (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 299); and the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599 (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 231 et seq).

## UPDATE

### 1631 Application of other legislation

NOTE 2--SI 2000/1970 further amended: SI 2008/1459, SI 2009/143, SI 2009/876.

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## (ii) Guided Transport Modes

### 1632. Position under the Transport and Works Act 1992.

Prior to the Transport and Works Act 1992, statutory recognition of systems of guided transport apart from railways and tramways was extremely limited. If statutory authority was sought for a system of this nature, promoters had to rely on the private Bill procedure to secure such authority, but others have relied on traffic regulation powers<sup>1</sup>. The Transport and Works Act 1992 has classified such systems and made provision for them to obtain authority for their construction or operation (or ancillary matters) by means of an order made under that Act<sup>2</sup>. The Secretary of State<sup>3</sup> is empowered to prescribe modes of guided transport<sup>4</sup> for this purpose<sup>5</sup> and an order has been made to this effect<sup>6</sup>.

1 Eg a guided bus scheme in Leeds has relied for its operation on a traffic regulation order made under the Road Traffic Regulation Act 1984 s 1 (see PARA 742 ante).

2 Transport and Works Act 1992 s 1(1)(d). As to the making of such orders see PARAS 1585-1586, 1588 ante.

3 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 For the meaning of 'guided transport' see PARA 1586 note 8 ante.

5 Transport and Works Act 1992 s 2(1). As to parliamentary control over the making of such orders see PARA 1586 note 9 ante.

6 See the Transport and Works (Guided Transport Modes) Order 1992, SI 1992/3231 (as amended); and PARA 1633 post.

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### 1633. Prescribed modes of guided transport.

The modes of guided transport prescribed by order in pursuance of the Transport and Works Act 1992<sup>1</sup> are modes which employ vehicles used for the carriage of passengers or goods<sup>2</sup> and which belong to the following systems:

- 2473 (1) aerial cableway<sup>3</sup>;
- 2474 (2) lift<sup>4</sup>;
- 2475 (3) magnetic levitation<sup>5</sup>;
- 2476 (4) monorail<sup>6</sup>;
- 2477 (5) road-based with cable guidance<sup>7</sup>;
- 2478 (6) road-based with rail guidance<sup>8</sup>;
- 2479 (7) road-based with side guidance<sup>9</sup>; and
- 2480 (8) track-based with side guidance<sup>10</sup>.

1 See PARA 1632 ante.

2 Transport and Works (Guided Transport Modes) Order 1992, SI 1992/3231, art 3(2) (amended by SI 1997/1951). 'Goods' includes mail, parcels, animals, plants and any other creature, substance or thing capable of being transported, but does not include passengers: Railways Act 1993 s 83; definition applied by the Transport and Works (Guided Transport Modes) Order 1992, SI 1992/3231, art 3(2) (amended by SI 1997/1951).

3 'Aerial cableway' means a mode in which the vehicles are supported and guided by means of a cable, but does not include a funicular railway or a lift: Transport and Works (Guided Transport Modes) Order 1992, SI 1992/3231, art 3(1). A 'funicular railway' falls within the definition of 'railway' contained in the Transport and Works Act 1992 s 67(1) (see PARA 1537 note 2 ante). As to railways see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

4 'Lift' means a mode in which the vehicle: (1) is moved wholly or partly between guides which are vertical or inclined at an angle of less than 15 degrees to the vertical; and (2) provides direct access at more than one level to a street: Transport and Works (Guided Transport Modes) Order 1992, SI 1992/3231, art 3(1). Beyond the angle of inclination specified in head (1) supra, the lift becomes a funicular railway for the purposes of the order: see note 3 supra. The reference to 'street' in head (2) supra indicates that the concern is with lifts operating in outside locations, as between cliff top and beach.

5 'Magnetic levitation' means a mode in which the vehicles are supported and guided wholly or mainly by means of magnetic force: *ibid* art 3(1).

6 'Monorail' means a mode in which the vehicles are supported and guided wholly or mainly by means of a single rail or beam: *ibid* art 3(1).

7 'Road-based with cable guidance' means a mode in which the vehicles: (1) are capable of operating on a road; and (2) are guided wholly or mainly by means of a cable, wire or other device which is not in direct physical contact with the vehicles: *ibid* art 3(1). For the meaning of 'road' see PARA 206 ante; definition applied by art 3(2).

Examples of this mode have been employed in the Channel Tunnel (in the service tunnel).

8 'Road-based with rail guidance' means a mode in which the vehicles: (1) are capable of operating on a road; and (2) are guided wholly or mainly by a single rail or slot: *ibid* art 3(1).

9 'Road-based with side guidance' means a mode in which the vehicles: (1) are capable of operating on a road; and (2) are guided wholly or mainly by means of wheels bearing outwards against fixed apparatus: *ibid* art 3(1). The guided bus, which has been employed in Birmingham, Leeds and Ipswich, is an example of this mode.

10 'Track-based with side guidance' means a mode in which the vehicles: (1) are supported by means of a track or other structure not being a road; and (2) are guided wholly or mainly by means of wheels bearing outwards against fixed apparatus: *ibid* art 3(1).

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### **1634. Application of other legislation.**

The Public Passenger Vehicles Act 1981, the Road Traffic Regulation Act 1984 and the Road Traffic Act 1988 make no express mention of modes of guided transport (apart from railways and tramways). If, however, any vehicle from a guided system was able to operate on a public road (with or without its means of guidance) that vehicle would become subject, where appropriate, to the provisions of those Acts. Indeed, at least one of the modes currently does so operate<sup>1</sup>. The drink and drugs provisions of the Transport and Works Act 1992<sup>2</sup> apply to modes of guided transport if the Secretary of State<sup>3</sup> so specifies by order<sup>4</sup>. The power for the Secretary of State to give directions as to insurance under that Act also applies<sup>5</sup>. Rail vehicles, for the purposes of the Disability Discrimination Act 1995, include vehicles constructed or adapted to carry passengers on a prescribed mode of guided transport and so to that extent the Act applies to them<sup>6</sup>.

Part I of the Health and Safety at Work etc Act 1974<sup>7</sup> has been extended to apply to modes of guided transport, additional to railways and tramways<sup>8</sup>, and certain regulations of a safety or welfare character also apply to such modes<sup>9</sup>. Those modes which are capable of operating in a

street would appear to fall within the definition of 'tramway' in the New Roads and Street Works Act 1991<sup>10</sup> and, in so far as they do, that Act, where appropriate, will therefore apply to them.

If a vehicle<sup>11</sup> of a system uses or intends to use a mode of guided transport<sup>12</sup> which employs an electric line<sup>13</sup> installed or to be installed above ground, the consent of the Secretary of State<sup>14</sup> is required to such installation unless the mode of guided transport has been authorised by or under statute<sup>15</sup>.

1 The mode is road-based with side guidance: see PARAS 1633 text and note 9, 1632 note 1 ante.

2 See PARA 1626 ante.

3 As to the Secretary of State see PARAS 236, 1539 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

4 Transport and Works Act 1992 s 26(1)(c). The power to make orders is subject to annulment in pursuance of a resolution of either House of Parliament: s 26(3). For an order so made see the Transport (Guided Systems) Order 1992, SI 1992/2044 (amended by SI 2005/2290), which relates to a track-based system with side guidance at Birmingham Airport, Gatwick Airport and Stansted Airport, and a monorail system at Merry Hill, Dudley.

5 Transport and Works Act 1992 s 46: see PARA 1622 ante.

6 See the Disability Discrimination Act 1995 s 46(6), (7); and DISCRIMINATION vol 13 (2007 Reissue) PARA 617. The Act adopts the definition of 'guided transport' in the Transport and Works Act 1992 s 67(1) (see PARAS 1586 note 8, 1633 ante). Regulations have been made under the Disability Discrimination Act 1995 which apply the Act to monorail systems, magnetic levitation systems and systems which are track-based with side guidance: see the Rail Vehicle Accessibility Regulations 1998, SI 1998/2456, reg 3(1) (amended by SI 2000/3215); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 261. In certain circumstances, where a vehicle of a system of guided transport operates on a public road, and where it otherwise meets the requirements of the Disability Discrimination Act 1995 s 40(5), the Public Service Vehicles Accessibility Regulations 2000, SI 2000/1970 (amended by SI 2000/3318; SI 2002/2981; SI 2003/1818; SI 2005/2988; SI 2007/500) apply: see DISCRIMINATION vol 13 (2007 Reissue) PARA 635.

7 The Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) is concerned with health, safety and welfare in connection with work: see further PARAS 1615-1616 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 302 et seq, 420 et seq.

8 See the Railways Act 1993 s 117(6)(b); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 194. For the meaning of 'guided transport' see PARA 1586 note 8 ante; definition applied by s 117(7).

9 The Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994, SI 1994/157 (revoked; but continuing in force up to and including 1 October 2008 for certain purposes: see the Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, regs 29, 34, Sch 7) apply to the following modes: (1) magnetic levitation; (2) monorail; (3) road-based with cable guidance; (4) road-based with rail guidance; (5) road-based with side guidance; and (6) track-based with side guidance: Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994, SI 1994/157, reg 3, Sch 1. See RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 204.

The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163 (as amended) apply to the modes listed in heads (1)-(6) supra: see reg 2(1). See HEALTH AND SAFETY AT WORK 52 (2009) PARA 399 et seq.

The Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996, SI 1996/428, apply to the modes listed in heads (1)-(6) supra, save that they have to be provided or used in the exercise of statutory powers: reg 3(1)(c), Sch 2. See RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 299.

The Railway Safety (Miscellaneous Provisions) Regulations 1997, SI 1997/553, apply to the modes listed in heads (1)-(6) supra: reg 2(1). See RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 267 et seq.

The Railways and Other Guided Transport Systems (Safety) Regulations 2006, SI 2006/599, apply to a railway, a tramway and certain other systems using guided transport where that other system is used wholly or mainly for the carriage of passengers: see reg 2(1); and PARA 1619 ante.

10 See PARA 1598 note 5 ante.

11 As to the meaning of 'vehicle' see PARA 1618 note 6 ante; definition applied by the Overhead Lines (Exemption) Regulations 1992, SI 1992/3074, reg 2.

12 For the meaning of 'guided transport' see PARA 1586 note 8 ante; definition applied by ibid reg 2.

13 For the meaning of 'electric line' see the Electricity Act 1989 s 64(1); and FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1041.

14 As to the Secretary of State in this case see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1041 et seq.

15 See the Overhead Lines (Exemption) Regulations 1992, SI 1992/3074, reg 3.

## UPDATE

### 1634 Application of other legislation

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 6--SI 2000/1970 further amended: SI 2008/1459, SI 2009/143, SI 2009/876.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/19. INTERNATIONAL ROAD TRAFFIC/(1) IN GENERAL/1635. Introduction.

## 19. INTERNATIONAL ROAD TRAFFIC

### (1) IN GENERAL

#### 1635. Introduction.

This part of the title deals with the law applicable to international road traffic, that is to say, foreign visiting vehicles<sup>1</sup> and domestic vehicles<sup>2</sup> engaged in such traffic; it includes the requirements of European Union law which form part of English law, but only in so far as applicable to international road traffic<sup>3</sup>.

There are two types of provisions applicable to international road traffic:

- 2481 (1) exceptions for foreign visiting vehicles from the provisions of road traffic and transport legislation<sup>4</sup>; and
- 2482 (2) special provisions applying only to international transport operations<sup>5</sup>.

1 I.e. a vehicle brought temporarily into Great Britain by a person resident outside the United Kingdom: see the Motor Vehicles (International Circulation) Act 1952 s 1(1)(b); and PARA 1636 post. See also the definitions of 'foreign goods vehicle' and 'foreign public service vehicle' in the Road Traffic (Foreign Vehicles) Act 1972 s 7(1): see PARA 1643 post. For the meaning of 'United Kingdom' see PARA 224 note 5 ante; and for the meaning of 'Great Britain' see PARA 205 note 3 ante.

A person resides where he lives, and a temporary absence is immaterial provided there is an intention to return and a house or lodging to which to return: see *R v St Leonard's, Shoreditch Inhabitants* (1865) LR 1 QB 21; *R v Glossop Union* (1866) LR 1 QB 227. The word 'reside' implies a degree of permanence (*Levene v IRC* [1928] AC 217 at 222-223, HL, per Viscount Cave LC; *Fox v Stirk* [1970] 2 QB 463 at 477, [1970] 3 All ER 7 at 13, CA, per

Widgery LJ; *Brokelmann v Barr* [1971] 2 QB 602, [1971] 3 All ER 29), but a person may be resident in more than one place at the same time (*Levene v IRC* supra; *Langford Property Co Ltd v Tureman* [1949] 1 KB 29, sub nom *Langford Property Co Ltd v Athanassoglou* [1948] 2 All ER 722, CA; *Herbert v Byrne* [1964] 1 All ER 882, [1964] 1 WLR 519, CA; cf *Beck v Scholz* [1953] 1 QB 570, [1953] 1 All ER 814, CA). Whether a person is resident in a particular place and whether that residence is permanent are questions of fact and degree and it is possible to be resident in accommodation such as a tent or a vehicle; moreover the legality or lawfulness or otherwise of the residence is not generally a relevant consideration: see *Hipperson v Electoral Registration Officer for the District of Newbury* [1985] QB 1060, [1985] 2 All ER 456, CA.

2 le vehicles driven by persons resident in the United Kingdom.

3 European Union law applicable to domestic road traffic is addressed in the context of the various subjects as it arises during this title.

4 See eg the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, arts 2, 5 (both as amended) (see PARAS 1638-1639 post); the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 5(b) (see PARA 1640 post); the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 4(4) (see PARA 1640 post); and the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8 (see PARA 1641 post).

5 See eg the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1 (as amended) (see PARA 1637 post); the Carriage of Goods by Road Act 1965 (see PARA 1660 post; and CARRIAGE AND CARRIERS vol 7 (2008) PARA 650 et seq); the Road Traffic (Foreign Vehicles) Act 1972 (see PARA 1643 et seq post); the Carriage of Passengers by Road Act 1974 (see CARRIAGE AND CARRIERS vol 7 (2008) PARA 657); and the International Carriage of Perishable Foodstuffs Act 1976 (see PARA 1660 post; and CARRIAGE AND CARRIERS vol 7 (2008) PARA 111 et seq).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/19. INTERNATIONAL ROAD TRAFFIC/(2) INTERNATIONAL CIRCULATION OF MOTOR VEHICLES/1636. Statutory provisions.

## **(2) INTERNATIONAL CIRCULATION OF MOTOR VEHICLES**

### **1636. Statutory provisions.**

For the purpose of enabling effect to be given to any international agreement for the time being in force in respect of the United Kingdom<sup>1</sup>, Her Majesty may by Order in Council<sup>2</sup> provide<sup>3</sup>: (1) for the grant and authentication of any passes, certificates or other documents relating to vehicles or the drivers of vehicles which may be required for purposes of travel abroad by persons resident in the United Kingdom<sup>4</sup>; and (2) for modifying<sup>5</sup> in relation to vehicles brought temporarily into Great Britain<sup>6</sup> by persons resident outside the United Kingdom, and in relation to persons so resident who are temporarily in Great Britain<sup>7</sup>, any enactment<sup>8</sup> relating to vehicles or the drivers of vehicles<sup>9</sup>.

Effect has been given under this power<sup>10</sup> to certain provisions of the International Convention relative to Motor Traffic<sup>11</sup>, the Convention on Road Traffic of 1949<sup>12</sup>, the Convention on the Taxation of Road Vehicles for Private Use in International Traffic of 1956<sup>13</sup>, the Convention on the Taxation of Road Vehicles engaged in International Passenger Traffic of 1956<sup>14</sup>, the Convention on the Taxation of Road Vehicles engaged in International Goods Transport of 1956<sup>15</sup>, the Agreement regarding the Status of Forces of Parties to the North Atlantic Treaty<sup>16</sup>, the Decision of the Council of the Organisation for European Economic Co-operation relating to identification marks for hired chauffeur-driven vehicles going abroad from the United Kingdom and coming to Great Britain from abroad<sup>17</sup>, and the Convention on Road Traffic of 1968<sup>18</sup>.

1 For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

2 As to Orders in Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 907.

3 Motor Vehicles (International Circulation) Act 1952 s 1(1). As to Orders for facilitating international traffic in Northern Ireland see s 2.

4 Ibid s 1(1)(a).

5 An Order in Council under ibid s 1 may provide for modifying any such enactment in respect of matters appearing to Her Majesty to be incidental to or connected with the matters regulated by any such international agreement: s 1(2)(a). The power conferred by s 1 includes power to make provision corresponding to any such enactment: Road Traffic (Amendment) Act 1967 s 8(a). 'Enactment' includes an enactment of the Parliament of Northern Ireland: Motor Vehicles (International Circulation) Act 1952 s 6.

6 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

7 As to the meaning of 'resident' see PARA 1635 note 1 ante. See also *Flores v Scott* [1984] 1 WLR 690, [1984] RTR 363, DC, where it was held that a student who came to Great Britain for a course of study was not a person 'temporarily in Great Britain', as the term 'temporarily' contains an element other than time and involves a casual purpose in contrast to a 'regular habit of life'.

8 The reference in the Motor Vehicles (International Circulation) Act 1952 s 1(1)(b) to any enactment is a reference to any enactment passed before or after that Act: Road Traffic (Amendment) Act 1967 s 8(b).

9 Motor Vehicles (International Circulation) Act 1952 s 1(1)(b). In certain circumstances any privilege conferred by the order may extend to persons resident outside the United Kingdom: see s 1(2)(b). The order may authorise the Secretary of State to make regulations by statutory instrument for any of the purposes of the order: s 1(3). Any statutory instrument containing regulations made under any such order is subject to annulment in pursuance of a resolution of either House of Parliament: s 1(5). No order may be recommended to Her Majesty unless a draft has been laid before and approved by resolution of each House of Parliament: s 1(5). An order may be varied or revoked by a subsequent order: s 1(4). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

10 See the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208 (as amended), which is still to be brought fully into force pending the coming into force of the Convention on Road Traffic (Vienna, 8 November; 1968; Misc 14 (1969); Cmnd 4032) as respects the United Kingdom. For the provisions authorising the Secretary of State to issue documents for drivers and vehicles going abroad see the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1 (as amended); and PARA 1637 post. For the provisions relating to visitors' driving permits see art 2 (as substituted and amended); and PARA 1639 post. For the provisions relating to documents for vehicles brought temporarily into United Kingdom see art 5 (as amended); and PARA 1638 post.

An application under the Goods Vehicles (Licensing of Operators) Act 1995 s 8 (see PARA 1334 ante) for an operator's licence for vehicles brought temporarily into Great Britain must be made to the licensing authority for the area where the vehicle is landed: see the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 6(1). Regulations under the Road Traffic Act 1988 s 41(2)(f) (see PARA 260 ante) (as read with s 43 (as amended) (see PARA 266 ante)) as to the lighting of vehicles may grant exemption from (either wholly or partially), and, subject to any conditions, vary, the requirement of those provisions in respect of vehicles brought temporarily into Great Britain by persons resident outside the United Kingdom: see the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 6(2).

11 I.e. the International Convention relative to Motor Traffic (Paris, 24 April 1926; TS 11 (1930); Cmd 3510).

12 I.e. the Convention on Road Traffic (Geneva, 19 September 1949; TS 49 (1958); Cmd 7997).

13 I.e. the Convention on the Taxation of Road Vehicles for Private Use in International Traffic (Geneva, 18 May 1956; Misc 16 (1957); Cmnd 220).

14 I.e. the Convention on the Taxation of Road Vehicles engaged in International Passenger Traffic (Geneva, 14 December 1956; Misc 26 (1957); Cmnd 320).

15 I.e. the Convention on the Taxation of Road Vehicles engaged in International Goods Transport (Geneva, 14 December 1956; TS 112 (1969); Cmnd 4206).

16 I.e. the Agreement regarding the Status of Forces of Parties to the North Atlantic Treaty (London, 19 June 1951; TS 3 (1955); Cmnd 9363): see art IV, concerning driving permits for members of visiting forces and their civilian components. As to the North Atlantic Treaty (Washington, 4 April 1949; TS 56 (1949); Cmd 7789) see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 518.

17 See the Decision of the Council of the Organisation for European Economic Co-operation relating to identification marks for hired chauffeur-driven vehicles going abroad from the United Kingdom and coming to Great Britain from abroad. This decision of 28 June 1957 concerning the international circulation of hired private road motor vehicles was adopted by the Council at its 369th meeting in June 1957.

18 See the Convention on Road Traffic (Vienna, 8 November 1968; Misc 14 (1969); Cmnd 4032). At the date at which this volume states the law this Convention was not in force for the United Kingdom.

## UPDATE

### **1636-1637 Statutory provisions, Documents for British drivers and vehicles going abroad, etc**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/19. INTERNATIONAL ROAD TRAFFIC/(2) INTERNATIONAL CIRCULATION OF MOTOR VEHICLES/1637. Documents for British drivers and vehicles going abroad, etc.

### **1637. Documents for British drivers and vehicles going abroad, etc.**

The Secretary of State may issue for use outside the United Kingdom<sup>2</sup> a driving permit<sup>3</sup> to a person who has attained the age of 18 years<sup>4</sup> and satisfies the Secretary of State: (1) that he is competent to drive motor vehicles of the classes for which the permit is to be issued; and (2) that he is resident in the United Kingdom<sup>5</sup>.

The Secretary of State may also issue for use outside the United Kingdom a document<sup>6</sup> for any motor vehicle registered under the Vehicle Excise and Registration Act 1994<sup>7</sup>. He may also assign to certain motor vehicles<sup>8</sup> an identification mark in the form of a trade plate<sup>9</sup>. The Secretary of State may charge a fee<sup>10</sup> for any document issued<sup>11</sup>, and may carry out tests of the competency of applicants for driving permits and examinations of vehicles<sup>12</sup>. Any function of the Secretary of State mentioned above may be delegated to any body concerned with motor vehicles<sup>13</sup>.

As from the date on which the Convention on Road Traffic of 1968<sup>14</sup> is first in force in respect of the United Kingdom, the following provisions replace those above<sup>15</sup> as to the issue of driving permits<sup>16</sup>. The Secretary of State may issue to a person resident in the United Kingdom a driving permit<sup>17</sup> for use outside the United Kingdom<sup>18</sup>. Such a permit is to be issued to a person only for vehicles in respect of which he holds a full licence<sup>19</sup> or a provisional licence<sup>20</sup>, or has held and is entitled to obtain such a licence and is authorised to drive<sup>21</sup> and has passed the test of competence to drive<sup>22</sup> or a test which is a sufficient test<sup>23</sup>.

In addition, there is a power to make regulations in relation to international road haulage, requiring permits to be carried and to be produced on request<sup>24</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'United Kingdom' see PARA 224 note 5 ante.



3 This may be in each or either of Forms A and B in the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1, Sch 1. A permit in Form A, which has effect under the Convention on Road Traffic (Geneva, 19 September 1949; TS 49 (1958); Cmd 578), is expressed to be valid for one year from the date of issue in the territory of all contracting states other than the United Kingdom and authorises the driving of vehicles of the categories set out in the permit: see the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, Sch 1 Form A. A permit in Form B, which has effect under the International Convention relative to Motor Traffic (Paris, 24 April 1926; TS 11 (1930); Cmd 3510), is expressed to be valid for one year from the date of issue in the territory of the contracting states listed in the permit and authorises the driving of vehicles of the categories set out in it: Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, Sch 1 Form B.

4 A permit in *ibid* Sch 1 Form A which is restricted to motor cycles or invalid carriages may be issued to a person who is under 18 years of age: art 1(1) proviso.

5 *Ibid* art 1(1). The Road Traffic Act 1988 ss 173, 174 (both as amended) (forgery of documents, etc, false statements and withholding material information) (see PARAS 1012-1013 *ante*) apply to a Convention driving permit as they apply to licences under that Act: Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1(9) (added by SI 1989/993). The Road Traffic Offenders Act 1988 s 13 (as amended) (admissibility of records as evidence) (see PARA 1037 *ante*) applies to records maintained by the Secretary of State in connection with his functions under the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1 (as amended) as that provision applies to records maintained in connection with functions under the Road Traffic Offenders Act 1988, and the power conferred by s 13(5) to prescribe a description of matter which may be admitted as evidence under that provision has effect in relation to the application of that provision by the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1 (as amended): art 1(10) (added by SI 1989/993).

6 The document is in the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, Sch 1 Form D, which has effect under the International Convention relative to Motor Traffic (Paris, 24 April 1926; TS 11 (1930); Cmd 3510); it is valid for one year from the date of issue and gives the right to travel freely in all contracting states set out in the permit: Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, Sch 1 Form D.

7 *Ibid* art 1(2); Interpretation Act 1978 s 17(2). As to vehicles registered under the Vehicle Excise and Registration Act 1994 see PARA 518 *et seq ante*.

8 *Ie* vehicles to which the Decision of 1957 of the Council of the Organisation for European Economic Co-operation concerning the International Circulation of Hired Private Road Motor Vehicles applies.

9 Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1(5). See also PARA 1636 note 10 *ante*. The trade plate referred to in the text is such as may be required to be carried on such a vehicle under the provisions of the Decision of 1957 of the Council of the Organisation for European Economic Co-operation, Regulation s 1.

10 The fee that may be charged is £5.50: see the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1(6) (substituted by SI 2004/1992).

11 Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1(6) (as substituted: see note 10 *supra*).

12 *Ibid* art 1(7). As from a date to be notified (see note 16 *infra*), the words 'tests of the competency of applicants for driving permits and' are revoked: art 1(7) (amended by SI 1980/1095). At the date at which this volume states the law no such date had been notified.

13 Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1(8). As from a date to be notified (see note 16 *infra*), the reference in art 1(8) to delegating the carrying out of tests is revoked: art 1(8) (amended by SI 1980/1095). At the date at which this volume states the law no such date had been notified.

14 *Ie* the Convention on Road Traffic (Vienna, 8 November 1968; Misc 14 (1969); Cmd 4032). See PARA 1636 note 18 *ante*.

15 *Ie* the text to notes 1-5 *supra*.

16 The amendments made by the Motor Vehicles (International Circulation) (Amendment) Order 1980, SI 1980/1095, art 3 are to have effect from the date to be notified in the London, Edinburgh and Belfast Gazettes as the date on which the Convention on Road Traffic of 1968 is first in force in respect of the United Kingdom: see the Motor Vehicles (International Circulation) (Amendment) Order 1980, SI 1980/1095, art 1(b). At the date at which this volume states the law no such date had been notified.

17 The permit may be in any of Forms A, B and C in the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1, Sch 1 (as amended). As to Forms A and B see note 3 *supra*. A permit in Form A is not

to be issued to any person who is under 18 years of age unless it is restricted to the driving of motor cycles or invalid carriages, or both: art 1(1B) (added by SI 1980/1095: see note 16 supra). A permit in Form B is not to be issued to any person who is under 18 years of age: Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1(1C) (as so added).

A permit in Form C, which has effect under the Convention on Road Traffic (Vienna, 8 November 1968; Misc 14 (1969); Cmnd 4032), is expressed to be valid for the territories of all contracting parties, other than the United Kingdom, and the categories of vehicles for which it is valid are set out in it: Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, Sch 1 Form C (as so added). A permit in Form C is limited in its period of validity to: (1) three years; or (2) if shorter: (a) the unexpired period of the permit holder's current United Kingdom driving licence; or (b) where he is authorised to drive by virtue of the Road Traffic Act 1988 s 88(1) (as amended) (see PARA 446 ante) (licence applied for or surrendered for correction of particulars etc), the remainder of the period for which he is so authorised together with the period of validity of any licence granted while he is so authorised: Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1(1D) (as so added); Interpretation Act 1978 s 17(2).

18 Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1(1) (substituted by SI 1980/1095: see note 16 supra).

19 Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1(1A)(a) (art 1(1A) added by SI 1980/1095: see note 16 supra). The permit may also be issued to a person who has held and is entitled to obtain a full licence and is authorised to drive by virtue of the Road Traffic Act 1988 s 88(1) (as amended) (see PARA 446 ante); Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1(1A)(a) (as so added); Interpretation Act 1978 s 17(2). 'Full licence' means a licence granted under the Road Traffic Act 1988 Pt III (ss 87-109) (as amended) other than a provisional licence: Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1(1A) (as so added); Interpretation Act 1978 s 17(2).

20 The permit may be issued to such a person as is mentioned in note 19 supra: see the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1(1A)(b) (as added: see notes 16, 19 supra). For the meaning of 'provisional licence' see PARA 445 note 27 ante; definition applied by art 1(1A) (as so added).

21 He is authorised to drive as mentioned in *ibid* art 1(1A)(a) (as added): see note 19 supra.

22 For the meaning of 'test of competence to drive' see PARA 443 note 20 ante; definition applied by *ibid* art 1(1A) (as added: see notes 16, 19 supra).

23 *Ibid* art 1(1A)(b) (as added: see notes 16, 19 supra). For the meaning of 'test of competence which is a sufficient test' see PARA 445 note 13 ante; definition applied by art 1(1A) (as so added).

24 See the International Road Haulage Permits Act 1975 s 1 (amended by the Criminal Justice Act 1982 ss 37, 38, 46; the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 13; the Road Traffic Act 1991 ss 48, 83, Sch 4 para 10, Sch 8; the Vehicle and Excise Registration Act 1994 s 63, Sch 3 para 8; the Goods Vehicles (Licensing of Operators) Act 1995 s 60(1), Sch 7 para 7; and the Road Traffic (Northern Ireland Consequential Amendments) Order 1981, SI 1981/160, art 5). At the date at which this volume states the law no regulations were in force under the International Road Haulage Permits Act 1975 s 1 (as amended). Where a driver fails or refuses to comply with a requirement under s 1 (as amended), there is a power to prohibit the removal from the United Kingdom of the relevant goods vehicle or trailer: see s 2 (amended by the Criminal Justice Act 1982 ss 37, 38, 46). As to international carriage of goods by road see further CARRIAGE AND CARRIERS vol 7 (2008) PARA 650 et seq.

## UPDATE

### 1636-1637 Statutory provisions, Documents for British drivers and vehicles going abroad, etc

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1663)/19. INTERNATIONAL ROAD TRAFFIC/(2) INTERNATIONAL CIRCULATION OF MOTOR VEHICLES/1638. Documents for vehicles brought temporarily into Great Britain.

### **1638. Documents for vehicles brought temporarily into Great Britain.**

The Secretary of State<sup>1</sup> has made regulations concerning vehicles brought temporarily into the United Kingdom<sup>2</sup> by persons resident outside the United Kingdom<sup>3</sup>. If:

- 2483 (1) such a person satisfies a registration authority<sup>4</sup> that he is resident outside the United Kingdom and that the vehicle is only temporarily in the United Kingdom<sup>5</sup>; and
- 2484 (2) such a person complies with certain regulations<sup>6</sup>,

then the vehicle is exempt to a specified extent<sup>7</sup> from the payment of excise duty<sup>8</sup>.

The regulations with which the visitor must comply for the above purposes provide for:

- 2485 (a) the production, if required<sup>9</sup>, of an insurance document<sup>10</sup>, a visitor's registration document<sup>11</sup> and a registration card<sup>12</sup>;
- 2486 (b) registration marks for exempted vehicles<sup>13</sup>;
- 2487 (c) the issue of registration cards to certain exempted vehicles<sup>14</sup>; and
- 2488 (d) the recording by registration authorities of certain details in respect of vehicles<sup>15</sup> and their forwarding to, and recording by, the Secretary of State<sup>16</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

3 I.e. the Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, which have effect as if made under the Vehicle Excise and Registration Act 1994 s 22(1) (as amended), s 23(4) (as amended), s 57(1)-(5) (as amended), s 58(1)(as amended); and the Motor Vehicles (International Circulation) Order 1957, SI 1957/1074 (amended by SI 1972/869; and revoked with savings by SI 1975/1208).

4 'Registration authority' means the Automobile Association, the Royal Automobile Club, the Royal Scottish Automobile Club or the Secretary of State: Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 5(9) (definition substituted by SI 1985/459).

5 Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 5(1)(a) (amended by SI 1996/1929). As to the meaning of 'resident' see PARA 1635 note 1 ante.

6 Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 5(1)(b). The regulations referred to are regulations made under art 5(4) (as amended). The Secretary of State may by regulations provide for:

- 1445 (1) the furnishing to a registration authority, by a person who imports a vehicle to which either of art 5(2) (as substituted) or art 5(3) (as amended) applies, of such particulars as may be prescribed (art 5(4)(a));
- 1446 (2) the recording by a registration authority of any particulars which the Secretary of State may by the regulations direct to be recorded, and for the manner of such recording, and for the making of any such particulars available for use by such persons as may be specified in the regulations on payment, in such cases as may be so specified, of such fee as may be prescribed (art 5(4)(b) (substituted by SI 1985/459));
- 1447 (3) the production to a registration authority of prescribed documents (Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 5(4)(c)); and
- 1448 (4) the registration of vehicles which by virtue of art 5 (as amended) are exempt from excise duty and for the assignment of registration marks to, and for the issue of registration cards for, such vehicles (art 5(4)(d)).

The Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610 (as amended) have effect as if made under the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 5(4) (as amended).

7 A vehicle is exempt from any duty of excise to the following extent:

1449 (1) in the case of a vehicle to which EEC Council Directive 83/182 (OJ L105, 23.4.83, p 59) (as amended) on tax exemptions within the community for certain means of transport temporarily imported into one member state from another applies, the vehicle is exempt from excise duty if its importation is in accordance with the provisions of that Directive and it continues to be so exempt for as long as those provisions continue to be satisfied (Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 5(2)(a) (art 5(2) substituted by SI 1996/1929)); and

1450 (2) in the case of a vehicle being used for, or in connection with: (a) international carriage within the scope of EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) on common rules for the international carriage of passengers by coach and bus (as amended), or EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) on access to the market in the carriage of goods by road within the Community to or from the territory of a member state or passing across the territory of one or more member states (as amended); (b) a cabotage transport operation within the scope of EC Council Regulation 2454/92 (OJ L251, 29.8.92, p 1) laying down conditions under which non-resident carriers may operate national road passenger transport services within a member state, or EC Council Regulation 3118/93 (OJ L279, 12.11.93, p 1) laying down conditions under which non-resident carriers may operate national road haulage services within a member state (as amended); or (c) a type of carriage which is exempt from any Community authorisation and from any carriage authorisation under EEC Council Directive 62/1002 (OJ L70, 6.8.62, p 2005) on the establishment of common rules for certain types of carriage of goods by road (as amended), the vehicle is exempt from excise duty if and so long as the vehicle is being so used in accordance with whichever of those instruments is applicable to the use of the vehicle (Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 5(2)(b) (as so substituted)).

A vehicle registered in the Isle of Man and brought temporarily into the United Kingdom by a person resident outside the United Kingdom is exempt from excise duty for a period not exceeding one year from the date of importation, if the person bringing the vehicle into the United Kingdom satisfies the registration authority that he is resident outside the United Kingdom and that the vehicle is only temporarily in the United Kingdom and complies with regulations under art 5(4) (as amended) (see note 6 supra): art 5(3) (amended by SI 1996/1929).

8 Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 5(2) (as substituted: see note 7 supra). A person who has brought a visiting vehicle which is not an exempted vehicle into Great Britain must apply for an excise licence under the Vehicle Excise and Registration Act 1994 (see PARA 518 et seq ante) for that vehicle: Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 7.

9 The powers to require production are in the registration authority and, in respect of a registration document, a police officer or a person acting on behalf of the Secretary of State: *ibid* reg 4(1), (3).

10 'le a certificate of insurance, a certificate of security or an insurance card: *ibid* reg 4(2)(a). For the meanings of 'certificate of insurance' and 'certificate of security' see PARA 947 ante; definitions applied by reg 3; Interpretation Act 1978 s 17(2). 'Insurance card' means an international motor insurance card issued under the authority of a Foreign Bureau or the British Bureau, which is green and sets out certain specified particulars: Motor Vehicles (International Motor Insurance Card) Regulations 1971, SI 1971/792, reg 3(1) (definition substituted by SI 1977/895); definition applied by the Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 3.

11 'Visitor's registration document' means: (1) in the case of a vehicle registered in a country outside the United Kingdom, a registration certificate issued under the law of any country in respect of which a nationality sign (see note 13 *infra*) has been assigned in, or notified to the Secretary General of the United Nations under, the International Convention relative to Motor Traffic (Paris, 24 April 1926; TS 11 (1930); Cmd 3510) or the Convention on Road Traffic (Vienna, 8 November 1968; Misc 14 (1969); Cmd 4032) whether or not that country is a party to any of the said Conventions and containing a registration mark, the name or the trade mark of the maker of the vehicle, the maker's identification or serial number, the date of its registration and the full name and permanent place of residence of the applicant for the said certificate; (2) a certificate in Form D of the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 1, Sch 1 (as amended) (see PARA 1637 ante), issued under the law of a country outside the United Kingdom which is a party to the International Convention relative to Motor Traffic (Paris, 24 April 1926; TS 11 (1930); Cmd 3510); or (3) in the case of a vehicle registered in accordance with the registration system of the British Authorities in Germany or the United States Authorities in Germany, a registration certificate specifying the registration letter and number allotted to the vehicle under the system: Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 3.

12 *Ibid* reg 4(1), (2)(a)-(c). 'Registration card' means a card issued under reg 6 (see note 14 *infra*): reg 3.

13 See *ibid* reg 5, which is expressed to be subject to reg 8(5). The registration mark assigned to a visiting vehicle, being an exempted vehicle, is: (1) in the case of a vehicle in respect of which there has been issued and there is held by the driver a visitor's registration document recording a registration mark which consists of no letters or numerals other than Roman letters or ordinary European numerals or both, that mark; and (2) in any other case: (a) either the Northern Ireland registration mark; or (b) the letters in the group QA-QY and a number assigned by the registration authority: reg 5. The registration mark must be displayed on the vehicle (see reg 8(1)), and a nationality sign must be exhibited at the back (see reg 8(2)). 'Nationality sign' means a sign bearing the distinctive letters for the country of origin specified under the International Convention relative to Motor Traffic (Paris, 24 April 1926; TS 11 (1930); Cmd 3510) Annex C; the Convention on Road Traffic (Geneva, 19 September 1949; TS 49 (1958); Cmd 578) Annex 4; or the Convention on Road Traffic (Vienna, 8 November 1968; Misc 14 (1969), Cmd 4032) Annex C: Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 3. Registration marks and nationality signs must also be shown by trailers towed by visiting vehicles: see reg 8(3), (4). A registration mark issued by a registration authority under reg 5 becomes void when relief from customs duty ceases to be afforded in respect of the vehicle under the provisions referred to in the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 5(2) (as substituted): Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 8(5).

14 See *ibid* reg 6. Where a registration authority assigns a registration mark to a visiting vehicle under reg 5(b)(ii) (see note 13 head (2)(b) *supra*), it must issue a registration card to the person who brought the vehicle into Great Britain: see reg 6(1). Where the registration card has been lost, stolen, mutilated or otherwise defaced a duplicate can be applied for: see the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 8; applied by the Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 6(2)(a); and see the Interpretation Act 1978 s 17(2). The registration card must be produced if the registration authority so requires: see the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, reg 12; applied by the Motor Vehicles (International Circulation) Regulations 1985, SI 1985/610, reg 6(2)(b). Where such a vehicle is sold, transferred, removed to a country outside the United Kingdom or destroyed, then the holder of the registration card must surrender it and give the name and address of the new owner where appropriate: reg 6(3). Surrendered cards must be sent to the Secretary of State by other registration authorities: reg 6(4).

15 See *ibid* reg 9(1). When a registration authority assigns a registration mark under reg 5(b)(ii) (see note 13 head (2)(b) *supra*), it must record: (1) the name of the applicant and his address in the United Kingdom, and his home address if available; (2) the make, and chassis number or engine number of the vehicle; (3) the registration mark assigned and the date and place of assignment; and (4) (if available) the date and place of entry of the vehicle into the United Kingdom: reg 9(1).

16 See *ibid* reg 9(2)-(5). The particulars recorded (see note 15 *supra*) must be forwarded to the Secretary of State by other registration authorities: reg 9(2). The Secretary of State must preserve these records and any records made by himself for not less than two years (reg 9(3), (4)), and furnish particulars to prescribed authorities and, on payment of a fee, furnish the name and address shown in respect of any registration mark to any person showing reasonable cause (reg 9(5)).

## UPDATE

### 1638 Documents for vehicles brought temporarily into Great Britain

NOTE 7-- Regulation 684/92 replaced with effect in part from 4 June 2010 and in part from 4 December 2011: European Parliament and EC Council Regulation 1073/2009 (OJ L300, 14.11.2009, p 88). Regulation 881/92 replaced with effect in part from 14 May 2010 and in part from 4 December 2011: European Parliament and EC Council Regulation 1072/2009 (OJ L300, 14.11.2009, p 72).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/19. INTERNATIONAL ROAD TRAFFIC/(2) INTERNATIONAL CIRCULATION OF MOTOR VEHICLES/1639. Visitors' driving permits.

### 1639. Visitors' driving permits.

Anyone<sup>1</sup> resident outside the United Kingdom who holds: (1) a Convention driving permit<sup>2</sup>; or (2) a domestic driving permit<sup>3</sup> issued in a country outside the United Kingdom<sup>4</sup> may, for 12 months following his last date of entry into the United Kingdom<sup>5</sup>, drive, and any person may cause or permit such a person to drive, in Great Britain, a motor vehicle of any class other than a medium-sized goods vehicle<sup>6</sup>, a large goods vehicle<sup>7</sup>, a privately-operated passenger vehicle<sup>8</sup> or a passenger-carrying vehicle<sup>9</sup> which that permit or licence authorises him to drive, despite the fact that he does not hold a British driving licence<sup>10</sup>.

During a like period such a person<sup>11</sup> may also drive, and any person may cause or permit such a person to drive, in Great Britain: (a) in the case of any such person who is resident in an EEA State, the Isle of Man, Jersey or Guernsey, a medium-sized goods vehicle, a large goods vehicle, a privately-operated passenger vehicle or a passenger-carrying vehicle; and (b) in the case of any other such person, a medium-sized goods vehicle, a large goods vehicle, a privately-operated passenger vehicle or a passenger-carrying vehicle brought temporarily into Great Britain, which he is authorised by that permit to drive, notwithstanding that he is not the holder of a medium-sized goods vehicle driver's licence<sup>12</sup>, a large goods vehicle driver's licence<sup>13</sup>, a privately-operated passenger vehicle driver's licence<sup>14</sup> or a passenger-carrying vehicle driver's licence<sup>15</sup>.

1 This does not include a person who is disqualified for driving by reason of his age under the Road Traffic Act 1988 s 101 (as amended) (see PARA 478 ante) or by reason of any conviction or court order under Pt III (ss 87-109) (as amended) (see PARA 442 et seq ante): see the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(4), (5) (art 2 substituted by SI 1989/993; and the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(4) amended by SI 1989/993; SI 1996/1929; SI 1996/1974). In the Road Traffic Act 1988 s 101 (as amended) (persons under age) the minimum age for driving is reduced from 21 to 18 in the case of a person resident outside the United Kingdom who is temporarily in Great Britain who is driving a vehicle which: (1) in the case of a person not resident in an EEA state, the Isle of Man, Jersey or Guernsey, is brought temporarily into Great Britain; (2) is within a class specified in s 101, Table item 7 (as substituted) (see PARA 478 ante); and (3) is either a vehicle registered in a Convention country or a goods vehicle in respect of which that person holds a certificate of competence which satisfies the international requirements: Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(4) (as so substituted and amended; and further amended by SI 2004/1992). 'Convention country' means a country which is not an EEA state nor a party to the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (Geneva, 1 July 1970 1971; TS 103 (1978); Cmnd 7401) ('AETR'), but is a party to the Convention on Road Traffic (Geneva, 19 September 1949; TS 49 (1958); Cmnd 578) or the International Convention relative to Motor Traffic (Paris, 24 April 1926; TS 11 (1930); Cmd 3510): Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(4) (as so substituted). 'The international requirements' means: (a) in relation to a person who is driving a goods vehicle on a journey to which EEC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1) on the harmonisation of certain social legislation relating to road transport applies, the requirements of art 5(1)(b) (conditions to be fulfilled by drivers) that Regulation; and (b) in relation to a person who is driving a goods vehicle on a journey to which the AETR applies, the requirements of art 5(1)(b) (conditions to be fulfilled by drivers) of that Agreement: Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(4) (as so substituted and amended). As to the repeal by European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) of EEC Council Regulation 3820/85 (OJ L370, 31.12.85, p 1) and the continued application of art 5(1) see PARA 1380 note 1 ante.

'EEA state' means a state which is a contracting party to the EEA Agreement; and 'EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993: Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(7) (definitions added by SI 1996/1974). For the meaning of 'United Kingdom' see PARA 224 note 5 ante; and for the meaning of 'Great Britain' see PARA 205 note 3 ante.

In the event of a conviction of a person driving on a driving permit resulting in disqualification or endorsement, the court must send particulars to the Secretary of State: Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 4, Sch 3 para 2(1). The court must not enter any particulars in a driving permit: Sch 3 para 2(2). In the event of a permit holder being disqualified, the court may require him to produce the permit within five days or such longer period as it may determine, and the court must then forward it to the Secretary of State: Sch 3 para 3(1). The Secretary of State must retain it until the disqualification ends or the holder leaves Great Britain, whichever is earlier, and send the holder's name and address with particulars of the disqualification to the authority which issued the permit, recording those particulars on the permit if it is a Convention driving permit: Sch 3 para 3(2) (substituted by SI 1989/993). Failure to produce a permit when so required is an offence, and is treated as an offence under the Road Traffic Offenders Act 1988 s 27(3) (as amended) (see PARA 1047 ante): Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, Sch 3 para 3(3); Interpretation Act 1978 s 17(2). Where a disqualification is removed under the Road Traffic Offenders Act

1988 s 42(2) (see PARA 1078 ante), particulars must be forwarded to the Secretary of State if particulars of the disqualification were forwarded to him, and he must enter particulars of the order removing the disqualification on the permit if the disqualification was so entered, send particulars of the order to the authority which issued the permit and return the permit to the holder: see the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, Sch 3 para 4 (amended by SI 1989/993).

In the Road Traffic Act 1988 s 164(1), (2), (6), (8) (as amended) (production of driving licence etc: see PARA 647 ante) and s 173(1), (2) (as amended) (driving licence offences: see PARA 1012 ante), references to a driving licence include references to a driving permit: Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, Sch 3 para 5; Interpretation Act 1978 s 17(2). 'Driving permit' for these purposes, means a driving permit which by virtue of the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208 (as amended) authorises a person to drive a motor vehicle without holding a driving licence under the Road Traffic Act 1988 Pt III (as amended): Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, Sch 3 para 1; Interpretation Act 1978 s 17(2). 'Convention driving permit' has the meaning given in note 2 infra: Motor Vehicles (International Circulation) Order 1975, Sch 3 para 1 (amended by SI 1989/993).

2 Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(1)(a) (as substituted: see note 1 supra). 'Convention driving permit' means a driving permit in Form A or B (see art 1, Sch 1 (as amended); and PARA 1637 ante), issued under the authority of a country outside the United Kingdom to a person who has given proof of his competence to drive: see art 2(7) (as substituted (see note 1 supra); and amended by SI 1996/1929). As from a day to be appointed by notice in the London Gazette, the definition of 'Convention driving permit' will also include a driving permit in Form C (see the Vehicles (International Circulation) Order 1975, SI 1975/1208, Sch 1; and PARA 1637 note 17 ante) and the requirement as to proof of competence to drive is omitted: art 2(7) (definition substituted by SI 1989/993). At the date at which this volume states the law no such day had been appointed.

3 'Domestic driving permit' means a document issued under the law of a country outside the United Kingdom to a person who has given proof of his competence to drive and authorising the holder to drive motor vehicles or a specified class of motor vehicles in that country, and includes a driving permit issued to such a person by the armed forces of any such country for use in some other such country but does not include a Community licence (within the meaning of the Road Traffic Act 1988 Pt III (as amended) (see PARA 415 note 16 ante): Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(7) (as substituted: see note 1 supra).

4 Ibid art 2(1)(b) (as substituted: see note 1 supra).

5 This period applies provided the permit or licence is still valid: see ibid art 2(8) (as substituted: see note 1 supra).

6 For the meaning of 'medium-sized goods vehicle' see PARA 474 note 4; definition applied by ibid art 2(7) (amended by SI 2004/1992).

7 For the meaning of 'large goods vehicle' see PARA 489 note 5 ante; definition applied by the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(7) (definition added by SI 1991/771).

8 'Privately-operated passenger vehicle' means a vehicle, not used for carrying passengers for hire or reward, which is constructed or adapted to carry more than eight but not more than 16 passengers: Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(7) (definition added by SI 2004/1992).

9 For the meaning of 'passenger-carrying vehicle' see PARA 489 note 6 ante; definition applied by the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(7) (definition added by SI 1991/771).

10 Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(1) (as substituted: see note 1 supra). A British driving licence is one issued under the Road Traffic Act 1988 Pt III (as amended): see PARA 442 et seq ante. The Secretary of State for Transport may by order contained in a statutory instrument withdraw one or both of the rights conferred by the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(1)(b), (2)(b) (as substituted), either in the case of all domestic driving permits, or in the case of such permits of a description specified in the order or held by such persons of a description so specified: art 2(6) (substituted by SI 2004/1992). It is not a breach of provisions of the Treaty Establishing the European Community (EEC Treaty) (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) relating to free movement of workers, freedom of establishment or supply of services for a member state to require citizens of another state to have a driving licence of the state in which they are resident: Case 16/78 *Re Choquet* [1978] ECR 2293, ECJ.

11 I.e. a person holding a Convention driving permit or a domestic driving permit issued in a country outside the United Kingdom: Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(2) (substituted by SI 2004/1992).

12 'Medium-sized goods vehicle driver's licence' means a licence under the Road Traffic Act 1998 Pt III (as amended) in so far as it authorises a person to drive medium sized goods vehicles of any class: Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(7) (definition added by SI 2004/1992).

13 For the meaning of 'large goods vehicle driver's licence' see PARA 490 note 6 ante; definition applied by the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(7) (definition added by SI 1991/771).

14 'Privately-operated passenger vehicle driver's licence' means a licence under the Road Traffic Act 1988 Pt III (as amended) in so far as it authorises a person to drive privately-operated passenger vehicles of any class: Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(7) (definition added by SI 2004/1992).

15 Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 2(2) (as substituted: see note 11 supra). For the meaning of 'passenger-carrying vehicle driver's licence' see PARA 490 note 7 ante; definition applied by art 2(7) (definition added by SI 1991/771).

## UPDATE

### 1639 Visitors' driving permits

TEXT AND NOTES--For rules applying a local border traffic regime and providing 'local border traffic permits' to non-EU nationals who live within 30 kilometers of an land border with an EU member state and who regularly cross that border for social, cultural, economic or family reasons, see European Parliament and EC Regulation 1931/2006 (OJ L405, 30.12.2006; corrected in OJ L29, 3.2.2007, p 3) laying down rules on the local border traffic at the external land borders of the member states and amending the provisions of the Schengen Convention.

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/19. INTERNATIONAL ROAD TRAFFIC/(3) CONSTRUCTION AND EQUIPMENT OF VEHICLES AND TRAILERS/1640. Construction and equipment of vehicles and trailers.

## (3) CONSTRUCTION AND EQUIPMENT OF VEHICLES AND TRAILERS

### 1640. Construction and equipment of vehicles and trailers.

Certain of the regulations as to the construction, weight and equipment of motor vehicles and trailers<sup>1</sup> do not apply to motor vehicles or trailers brought temporarily into Great Britain by persons resident abroad<sup>2</sup> if they comply with certain requirements of the Geneva Convention on Road Traffic<sup>3</sup>, or of the Paris Convention on Road Traffic<sup>4</sup>.

The following types of vehicles or combinations of vehicles need not comply with the provisions of regulations governing the fitting of lamps, reflectors, rear markings and devices<sup>5</sup> if the vehicle or combination complies in every respect with the requirements as to lighting equipment and reflectors relating to it contained in the Geneva Convention on Road Traffic or the Paris Convention on Road Traffic<sup>6</sup>: (1) any vehicle having a base or centre in a country outside Great Britain<sup>7</sup> from which it normally starts its journeys, provided that a period of not more than 12 months has elapsed since the vehicle was last brought into Great Britain<sup>8</sup>; (2) vehicles brought temporarily into Great Britain by a person resident outside the United



Kingdom<sup>9</sup>; (3) any combination of two or more vehicles, one of which is drawing the other or others, if the combination includes any vehicle of the type mentioned in head (1) or head (2) above<sup>10</sup>; and (4) a vehicle proceeding to a port for export<sup>11</sup>.

1    Ie the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078 (as amended): see PARAS 267 et seq, 583 et seq ante. For the meanings of 'motor vehicle' and 'trailer' see PARA 210 ante.

2    See *ibid* reg 4(4), Table item 2 (as amended); and PARA 268 ante. The regulations which do not apply are Pt II (regs 7-65) (as amended) (see PARA 271 et seq ante) in so far as they relate to construction and equipment (except reg 7 (as amended) (see PARA 271 ante), reg 8 (as amended) (see PARA 273 ante), reg 10 (as substituted) (see PARA 277 ante), reg 10A (as added) (see PARA 278 ante), reg 40 (see PARA 316 ante) and reg 53 (see PARA 342 ante)), regs 66-69 (as amended) (see PARAS 364-367 ante), and reg 71 (as amended) (see PARA 371 ante): see PARA 268 ante. Additionally, in respect of any passenger vehicle with a maximum gross weight exceeding 10 tonnes registered in one or more member states, the provisions of reg 36A(2), (7), (9) (as added and amended) (see PARA 308 ante) do not apply; and in respect of any goods vehicle with a maximum gross weight exceeding 12 tonnes registered in one or more member states, the provisions of reg 36(B)(2), (9), (11) (as added and amended) (see PARA 309 ante) do not apply.

3    Ie the Convention on Road Traffic (Geneva, 19 September 1949; TS 49 (1958); Cmnd 578) art 21, art 22(1) (so far as it relates to direction indicators and stop lights), Annex 6.

4    Ie the International Convention relative to Motor Traffic (Paris, 24 April 1926; TS 11 (1930) Cmd 3510) art 3.

5    Ie the Road Vehicles Lighting Regulations 1989, SI 1989/1796, Pt II (regs 11-22) (as amended): see PARA 378 et seq ante.

6    See *ibid* reg 5; and PARA 399 ante.

7    For the meaning of 'Great Britain' see PARA 205 note 3 ante.

8    Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 5(a). See also PARA 399 ante.

9    See *ibid* reg 5(b); and PARA 399 ante. For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

10    See *ibid* reg 5(c); and PARA 399 ante.

11    See *ibid* reg 5(d); and PARA 399 ante.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/19. INTERNATIONAL ROAD TRAFFIC/(4) VISITING FORCES AND INTERNATIONAL HEADQUARTERS/1641. Visiting forces and international headquarters.

## **(4) VISITING FORCES AND INTERNATIONAL HEADQUARTERS**

### **1641. Visiting forces and international headquarters.**

Certain provisions of the road traffic legislation do not apply in relation to persons or vehicles in the service of a visiting force<sup>1</sup> or of a headquarters<sup>2</sup>. A visiting force or headquarters, members of such a force or headquarters, persons employed in the service of such a force, and property used for the purposes of such a force or headquarters are exempt from the operation of specified road traffic enactments<sup>3</sup> to the extent that, by virtue of the rule of law by which enactments do not bind the Crown<sup>4</sup>, such a force or headquarters, such members, such persons or such property would be so exempt if the force or headquarters were part of any of the home forces<sup>5</sup>. Except as stated above, the road traffic legislation applies to any such person or vehicle.

Regulations exempt from duty payable under the Vehicle Excise and Registration Act 1994 vehicles imported into Great Britain<sup>6</sup> by or on behalf of members<sup>7</sup>, or their dependants<sup>8</sup>, of the visiting forces of specified countries<sup>9</sup> and members<sup>10</sup>, or their dependants, of specified headquarters or organisations<sup>11</sup>, where there is produced to the Secretary of State<sup>12</sup> evidence that the person importing the vehicle has not been required to pay any tax or duty chargeable in respect of its importation<sup>13</sup>.

1 'Visiting force' means any body, contingent or detachment of the forces of a country, being a body, contingent or detachment for the time being present in the United Kingdom (including United Kingdom territorial waters), or in any place on, under or above an installation in a designated area within the meaning of the Continental Shelf Act 1964 s 1(7) (see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 172) or any waters within 500 metres of such an installation, on the invitation of Her Majesty's government in the United Kingdom: see the Visiting Forces Act 1952 s 12(1) (as amended), s 12(1A) (as added); and ARMED FORCES vol 2(2) (Reissue) PARA 140.

2 See the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8. This order applies to the visiting forces of countries specified in art 3(1), Sch 1 Pts I, II, and to the headquarters specified in art 3(2), Sch 2: see ARMED FORCES vol 2(2) (Reissue) PARA 142.

The provisions which do not apply are:

1451 (1) the Transport Act 1968 Pt VI (ss 95-103) (as amended) (drivers' hours) (see PARA 1380 et seq ante) (Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(a));

1452 (2) the Road Traffic Regulation Act 1984 ss 6, 7, 8, 19, 20, 102, 103 (all as amended) (see PARA 747 et seq ante) (Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), 2(a)); and

1453 (3) the Road Traffic Act 1988 ss 68-74 (as amended) (see PARAS 686-693 ante), ss 123-162 (as amended) (see PARA 413 et seq ante), s 165 (as amended) (see PARA 648 ante), s 170(5)-(7) (as amended) (see PARA 645 ante), s 171 (see PARA 645 ante) (Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(1)(b), 2(b)).

The Road Traffic Regulation Act 1984 s 130(3) (see PARA 719 ante) has effect in relation to vehicles used for the purposes of a visiting force or headquarters, while being driven by a person subject to the orders of a member of such a force or headquarters, as it has effect in relation to vehicles used for naval, military or air force purposes, while being driven as mentioned in s 130(3): Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(3).

Neither the Road Traffic Act 1988 s 97(3) (as amended) (see PARA 464 ante) nor s 98(3) (as amended) (see PARA 466 ante), in so far as they prevent such a licence as is there mentioned from authorising a person to drive certain motor cycles, applies in the case of motor cycles in the service of a visiting force: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(4).

Subject to any regulations under the Road Traffic Act 1988 s 101(2) (see the Motor Vehicles (Driving Licences) Regulations 1996, SI 1996/3824 (as amended); and PARA 479 ante), that provision (in so far as it prohibits persons under 21 from holding or obtaining a licence to drive motor vehicles or persons under 18 from holding or obtaining a licence to drive medium-sized goods vehicles) does not apply in the case of vehicles in the service of a visiting force: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(5).

The Road Traffic Act 1988 s 165 (as amended) (see PARA 648 ante), in so far as it provides for the production of test certificates and the giving of names and addresses, applies to a person in connection with a vehicle to which s 47 (as amended) (see PARA 657 ante) applies notwithstanding that he or the driver is or was at any material time a person in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(6).

The Road Traffic Act 1988 s 165(1) (as amended) (see PARA 648 ante), in so far as it provides for the production of a plating certificate or a goods vehicle test certificate (mentioned in s 165(2)(c) (see PARA 648 ante)), applies to a person in connection with a goods vehicle (so mentioned) notwithstanding that he or the driver is or was at any time a person in the service of a visiting force or headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(7).

No vehicle excise duty is chargeable under the Vehicle Excise and Registration Act 1994 (see PARA 518 et seq ante) in respect of any vehicle in the service of a visiting force: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(8).

Any reference to a vehicle in the service of a visiting force or headquarters is a reference to a vehicle (including a motor cycle) which belongs to the visiting force or headquarters and is used for the purposes of that force or headquarters or which is used for the purposes of a visiting force or headquarters, while being driven by a person for the time being subject to the orders of a member of a visiting force or headquarters: art 8(9)(b). For the meaning of 'headquarters' see the International Headquarters and Defence Organisations Act 1964 s 1, Schedule para 1; and ARMED FORCES vol 2(2) (Reissue) PARA 150. Any reference to a person in the service of a visiting force or headquarters is a reference to a member of a visiting force or headquarters, or a person employed in the service of such a force, when acting in the course of his duties as such: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 8(9)(a).

3 The specified enactments are the Road Traffic (Foreign Vehicles) Act 1972 (see PARA 1643 et seq post) and the Public Passenger Vehicles Act 1981 (see PARA 1132 et seq ante): Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 12(1), Sch 5.

4 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 384.

5 Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 12(1).

6 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

7 'Member of a visiting force' means a person for the time being appointed to serve with, or a member of the civilian component of, any body, contingent or detachment of the forces of any country specified in the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 5 para 3 (as substituted), which is for the time being present in the United Kingdom on the invitation of Her Majesty's government: reg 34, Sch 5 para 1(2)(b). For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

8 'Dependant' means a member of the household of a person falling within ibid Sch 5 para 1(1)(a) or (b) (see notes 7 supra, 10 infra) who is his spouse or any other person wholly or mainly maintained by him or in his custody, charge or care: Sch 5 para 1(2)(a).

9 For the specified countries see ibid Sch 5 para 3 (substituted by SI 2003/2154).

10 'Member of a headquarters or organisation' means a member of the military forces of any country, except the United Kingdom, who is for the time being appointed to serve in the United Kingdom under the orders of any headquarters or organisation specified in the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 5 para 4 (as substituted) and includes a person for the time being recognised by the Secretary of State as a civilian member of such a headquarters or organisation: Sch 5 para 1(2)(c).

11 For the list of specified headquarters and organisations see ibid Schedule para 4 (substituted by SI 2003/2154).

12 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

13 See the Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742, Sch 5 para 1. The period during which a vehicle is an exempt vehicle by virtue of Sch 5 (as amended) is the period of 12 months beginning with the day on which a nil licence is issued in respect of that vehicle: Sch 5 para 2(1). For the meaning of 'nil licence' see PARA 519 note 5 ante. The exemption ceases to apply if, at any time during the exemption period, the importer of the vehicle becomes liable to pay any duty or tax chargeable in respect of its importation: Sch 5 para 2(2).

## UPDATE

### 1641-1642 Visiting Forces and International Headquarters

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1663)/19. INTERNATIONAL ROAD TRAFFIC/(4) VISITING FORCES AND INTERNATIONAL HEADQUARTERS/1642. Visiting forces' driving permits.

### **1642. Visiting forces' driving permits.**

Any member<sup>1</sup> of a visiting force<sup>2</sup> or of a civilian component of such a visiting force, or a dependant<sup>3</sup> of a member of a visiting force or a civilian component, who holds a driving permit issued under the law of any part of the sending country, or issued by the service authorities of the visiting force, may drive in Great Britain<sup>4</sup> a motor vehicle, of any class which he is authorised to drive by the permit, notwithstanding that he is not the holder of a driving licence<sup>5</sup>.

1 This does not include a person who has been disqualified for driving by reason of his age under the Road Traffic Act 1988 s 101 (as amended) (see PARAS 478-479 ante) or in consequence of a conviction or court order under Pt III (ss 87-109) (as amended) (see PARA 442 et seq ante): Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 3(2), (3) (art 3 substituted by SI 1989/993). For the procedure in respect of a conviction of a person possessing a driving permit see the Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 4, Sch 3 (as amended); and PARA 1639 note 1 ante.

2 For the meaning of 'visiting force' see PARA 1641 note 1 ante; definition applied by ibid art 3(4) (as substituted: see note 1 supra).

3 'Dependant', in relation to a member of any visiting force or a civilian component of such a force, means the wife or husband of that member or any other person wholly or mainly maintained by him or in his custody, charge or care: ibid art 3(4) (as substituted: see note 1 supra).

4 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

5 Motor Vehicles (International Circulation) Order 1975, SI 1975/1208, art 3(1) (as substituted: see note 1 supra). A driving licence is granted under the Road Traffic Act 1988 Pt III (as amended): see PARA 442 et seq ante. As to the application of the general law of road traffic to visiting forces see PARA 1641 ante.

## **UPDATE**

### **1641-1642 Visiting Forces and International Headquarters**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/19. INTERNATIONAL ROAD TRAFFIC/(5) CONTROL OF FOREIGN VEHICLES/1643. Foreign goods vehicles and foreign public service vehicles.

## **(5) CONTROL OF FOREIGN VEHICLES**

### **1643. Foreign goods vehicles and foreign public service vehicles.**

'Foreign goods vehicle' means a goods vehicle<sup>1</sup> which has been brought into Great Britain<sup>2</sup> and which, if a motor vehicle, is not registered in the United Kingdom<sup>3</sup> or, if a trailer, is drawn by a motor vehicle not registered in the United Kingdom which has been brought into Great Britain<sup>4</sup>.

'Foreign public service vehicle' means a public service vehicle<sup>5</sup> which has been brought into Great Britain and is not registered in the United Kingdom<sup>6</sup>.

A motor vehicle which does not for the time being have exhibited on it a licence or trade plates<sup>7</sup> is presumed, unless the contrary is proved, not to be registered in the United Kingdom<sup>8</sup>. Where a motor vehicle is presumed not to be registered in the United Kingdom, but is subsequently proved to have been so registered, anything which has been done in relation to the vehicle, or in relation to a trailer drawn by it, by a person relying in good faith on that presumption and purporting to act by virtue of any of the statutory provisions<sup>9</sup>, which would have been lawfully done by virtue of the above provision if the vehicle had not been registered in the United Kingdom<sup>10</sup>, is to be treated as having been lawfully done by virtue of that provision<sup>11</sup>.

1 'Goods vehicle' means a motor vehicle constructed or adapted for use for the carriage or haulage of goods or burden of any description, or a trailer so constructed or adapted: Road Traffic (Foreign Vehicles) Act 1972 s 7(1).

2 For the meaning of 'Great Britain' see PARA 205 note 3 ante.

3 For the meaning of 'United Kingdom' see PARA 224 note 5 ante.

4 Road Traffic (Foreign Vehicles) Act 1972 s 7(1).

5 For the meaning of 'public service vehicle' see PARA 1136 ante; definition applied by ibid s 7(1) (amended by the Public Passenger Vehicles Act 1981 s 88, Sch 7 para 17).

6 Road Traffic (Foreign Vehicles) Act 1972 s 7(1).

7 I.e a licence or trade plates issued under the Vehicle Excise and Registration Act 1994: see PARA 518 et seq ante.

8 Road Traffic (Foreign Vehicles) Act 1972 s 7(4) (amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 5).

9 Road Traffic (Foreign Vehicles) Act 1972 s 7(5)(a). The provisions referred to in the text are the provisions of the Road Traffic (Foreign Vehicles) Act 1972.

10 Ibid s 7(5)(b).

11 Ibid s 7(5).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131; VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/19. INTERNATIONAL ROAD TRAFFIC/(5) CONTROL OF FOREIGN VEHICLES/1644. Prohibition on driving foreign vehicles.

#### **1644. Prohibition on driving foreign vehicles.**

Where, in relation to any foreign goods vehicle<sup>1</sup> or foreign public service vehicle<sup>2</sup> or its driver<sup>3</sup>, an examiner<sup>4</sup> or authorised inspector<sup>5</sup> exercises specified functions<sup>6</sup> and the driver obstructs<sup>7</sup> the examiner or inspector in the exercise of his functions, or refuses, neglects<sup>8</sup> or otherwise fails to comply with any requirement made by him, the examiner or inspector may prohibit the driving of the vehicle on a road<sup>9</sup> either absolutely or for a specified purpose and either for a specified period or without any limitation of time<sup>10</sup>.

The examiner or inspector may also similarly prohibit the driving of a vehicle if it appears to him that, in relation to the vehicle or its driver, there has been a contravention, or that there will be a contravention if the vehicle is driven on a road, of certain provisions<sup>11</sup>.

Where, in relation to any foreign goods vehicle or foreign public service vehicle, an authorised person<sup>12</sup> exercises any functions under statutory provisions as to the weighing of vehicles<sup>13</sup>, and the driver obstructs that person in the exercise of his functions or refuses, neglects or otherwise fails to comply with any requirement made by him under those provisions<sup>14</sup>, or it appears to the authorised person that any limit of weight applicable to the vehicle<sup>15</sup> has been exceeded, or will be exceeded if the vehicle is driven on a road<sup>16</sup>, the authorised person may prohibit the driving of the vehicle on a road, either absolutely or for a specified purpose<sup>17</sup>.

Where an examiner, authorised inspector or authorised person prohibits the driving of a vehicle, he may also direct the driver to remove the vehicle (and, if it is drawing a trailer, also to remove the trailer) to such place and subject to such conditions as are specified in the direction<sup>18</sup>.

1 For the meaning of 'foreign goods vehicle' see PARA 1643 ante.

2 For the meaning of 'foreign public service vehicle' see PARA 1643 ante.

3 For the meaning of 'driver' see PARA 207 ante. Any reference to driving a vehicle is, in relation to a trailer, to be construed as a reference to driving the motor vehicle by which the trailer is drawn: Road Traffic (Foreign Vehicles) Act 1972 s 7(2). See further PARA 210 ante.

4 'Examiner' means an examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 ante) or a constable authorised to act for the purposes of the Road Traffic (Foreign Vehicles) Act 1972 by or on behalf of a chief officer of police: s 7(1) (definition amended by the Road Traffic 1991 s 48, Sch 4 para 8(a)). As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq. As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARAS 165, 178 et seq.

5 As from a day to be appointed the Road Traffic (Foreign Vehicles) Act 1972 is prospectively amended by the Transport Act 1982 s 10(4) so as to include a reference to an authorised inspector where there is a reference to an examiner. At the date at which this volume states the law these amendments had not been brought into force. References to an authorised inspector are references to a person authorised by the Secretary of State under the Transport Act 1982 s 8 (as amended) (see PARA 699 ante), to exercise the function to which s 8 (as amended) relates: Road Traffic (Foreign Vehicles) Act 1972 s 7(1A) (prospectively added by the Transport Act 1982 s 74, Sch 5 para 17).

6 Road Traffic (Foreign Vehicles) Act 1972 s 1(1)(a) (amended by the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 22(1), (2); the Public Service Vehicles (Community Licences) Regulations 1999, SI 1999/1322, reg 13(1)). As to the prospective amendment made by the Transport Act 1982 s 10(4) see note 5 supra. The specified functions are: (1) inspecting and copying records and other documents required to be carried on goods vehicles and public service vehicles (ie under the Transport Act 1968 s 99 (as amended) (see PARA 1426 ante)); (2) testing the condition of motor vehicles on roads (ie under the Road Traffic Act 1988 s 67 (see PARA 684 ante)); (3) inspecting vehicles to secure proper maintenance (ie under s 68 (as amended) (see PARA 686 ante)); (4) requiring the production of, and inspecting, copying and marking documents required to be carried on certain passenger vehicles (ie under the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 16 (see PARA 1650 post)); (5) requiring the production of a certain document which is required to be kept on board certain passenger vehicles (ie under EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) on common rules for the international carriage of passengers by coach and bus, art 3 (as amended)); and (6) requiring the production of certain documents which are required to be kept on board certain passenger vehicles (ie under the Road Transport (Passenger Vehicles Cabotage) Regulations 1999, SI 1999/3413, reg 7 (see PARA 1656 post)); Road Traffic (Foreign Vehicles) Act 1972 s 1(1)(a) (as so amended); Sch 1 (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 9(4); the Road Traffic Act 1991 s 83, Sch 8; the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979, SI 1979/1746, reg 3(9); the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 22; the Public Service Vehicles (Community Licences) Regulations 1999, SI 1999/1322, reg 13(2); the Road Transport (Passenger Vehicles Cabotage) Regulations 1999, SI 1999/3413, reg 10(1)(a); the Goods Vehicles (Community Authorisations) (Modification of the Road Traffic (Foreign Vehicles) Act 1972) Regulations 2002, SI 2002/1415, reg 2(1), (2); and the Goods Vehicles (Recording Equipment) Regulations 2005, SI 2005/1904, reg 9).

7 Obstruction may amount to behaviour which is not violent but makes the task of the examiner or inspector more difficult: see *Hinchcliffe v Sheldon* [1955] 3 All ER 406, [1955] 1 WLR 1207, DC.

8 This implies failure to perform a duty of which the person knows or ought to know: see *Re Hughes, Rea v Black* [1943] Ch 296, [1943] 2 All ER 269.

9 For the meaning of 'road' see PARA 206 ante. For prohibitions on vehicles see PARA 1645 post.

10 Road Traffic (Foreign Vehicles) Act 1972 s 1(2)(a) (amended by the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 22(1), (2)). As to the prospective amendment made by the Transport Act 1982 s 10(4) see note 5 supra. In performing his functions the examiner or inspector must act in accordance with any general directions given by the Secretary of State: Road Traffic (Foreign Vehicles) Act 1972 s 2(4)). As to the prospective amendment made by the Transport Act 1982 s 10(4) see note 5 supra. The Secretary of State may give information about vehicles or persons obtained from tests or inspections carried out under the Road Traffic (Foreign Vehicles) Act 1972 s 1 (as amended) to the competent authorities in other member states: see the Road Vehicles (Testing) (Disclosure of Information) (Great Britain) Regulations 2002, SI 2002/2426.

11 Road Traffic (Foreign Vehicles) Act 1972 s 1(2)(b)). As to the prospective amendment made by the Transport Act 1982 s 10(4) see note 5 supra. The provisions referred to are those: (1) requiring users of certain goods vehicles, unless exempted, to hold operators' licences (ie under the Goods Vehicles (Licensing of Operators) Act 1995 s 2 (see PARA 1329 ante)); (2) requiring goods vehicles to be identified by plates, marks etc (ie under regulations made under s 57(2)(d) (see PARA 1321 ante)); (3) limiting driving time and periods of duty of drivers of goods vehicles and public service vehicles and requiring the installation of recording equipment in and the keeping of records on such vehicles (ie under the Transport Act 1968 ss 96-98 (as amended) (see PARA 1380 et seq ante), and regulations and orders made under those provisions and applicable Community rules within the meaning of Pt VI (ss 95-103) (as amended) (see PARA 1380 ante)); (4) giving effect to international agreements relating to vehicles used on international journeys (ie under any order made under s 100 (see PARA 1381 ante)); (5) creating an offence of using a motor vehicle or trailer in a dangerous condition etc (ie under the Road Traffic Act 1988 s 40A (as added) (see PARA 625 ante)); (6) regulating the construction, weight, equipment and use of motor vehicles and trailers on roads (ie under regulations made under s 41 (as amended) (see PARA 260 ante)); (7) imposing penalties for contravention of certain requirements relating to international passenger services (ie under the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 19 (as amended) (see PARA 1650 post), or under the Public Service Vehicles (Community Licences) Regulations 1999, SI 1999/1322, regs 3, 7 (see PARA 1652 post)); and (8) imposing penalties for contravention of certain requirements relating to national passenger services by a carrier registered in a foreign member state (ie under the Road Transport (Passenger Vehicles Cabotage) Regulations 1999, SI 1999/3413, regs 3, 4, 7 (see PARA 1656 post)): Road Traffic (Foreign Vehicles) Act 1972 s 1(2)(b) (as so amended); Sch 2 (amended by the European Communities Act 1972 s 4(1), Sch 4 para 9(4); the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 s 2(3); the Road Traffic (Consequential Provisions) Act 1988 ss 3, 4, Sch 1 Pt I, Sch 3 para 9(5); the Road Traffic Act 1991 s 48, Sch 4 para 9; the Goods Vehicles (Licensing of Operators) Act 1995 s 60(1), Sch 7 para 6; the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 22(4); the Public Service Vehicles (Community Licences) Regulations 1999, SI 1999/1322, reg 13(3); the Road Transport (Passenger Vehicles Cabotage) Regulations 1999, SI 1999/3413, reg 10(1)(b); and the Goods Vehicles (Community Authorisations) (Modification of the Road Traffic (Foreign Vehicles) Act 1972) Regulations 2002, SI 2002/1415, reg 2(1), (3)).

In the case of a goods vehicle, a prohibition under the Road Traffic (Foreign Vehicles) Act 1972 s 1(2)(b) (as amended) by reference to a supposed contravention of the Road Traffic Act 1988 s 40A (as added) (see PARA 625 ante) or of regulations under s 41 (as amended) (see PARA 260 ante) may be imposed with a direction making it irremovable unless and until the vehicle has been inspected at an official testing station: Road Traffic (Foreign Vehicles) Act 1972 s 1(6)(a) (s 1(6) added by the Transport Act 1978 s 9(1), Sch 3 para 8; and amended by the Road Traffic Act 1991 s 48, Sch 4 para 6).

12 'Authorised person' means a person (whether an examiner or not) authorised to exercise the powers of the Road Traffic Act 1988 s 78 (see PARA 697 ante), with respect to the weighing of motor vehicles and trailers: Road Traffic (Foreign Vehicles) Act 1972 s 7(1) (definition amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 9).

13 Road Traffic (Foreign Vehicles) Act 1972 s 1(1)(b) (amended by the Road Traffic (Consequential Provisions) Act 1988 Sch 3 para 9). The functions referred to are functions under the Road Traffic Act 1988 s 78, s 79 (as amended): see PARA 697 ante.

14 Road Traffic (Foreign Vehicles) Act 1972 s 1(3)(a) (amended by the Road Traffic Act 1991 Sch 3 para 9).

15 ie by virtue of regulations made under the Road Traffic Act 1988 s 41 (as amended): see PARA 260 ante.

16 Road Traffic (Foreign Vehicles) Act 1972 s 1(3)(b) (amended by the Road Traffic Act 1991 Sch 3 para 9).

17 Road Traffic (Foreign Vehicles) Act 1972 s 1(3). In the case of a goods vehicle a prohibition imposed under this provision may be against driving the vehicle on a road until the weight has been reduced and official notification has been given to whoever is for the time being in charge of the vehicle that it is permitted to proceed: s 1(6)(b) (as added: see note 11 supra). The official notification must be in writing and be given by an authorised person and may be withheld until the vehicle has been weighed or re-weighed in order to satisfy the

person giving the notification that the weight has been sufficiently reduced: s 1(7) (added by the Transport Act 1978 Sch 3 para 8).

18 Road Traffic (Foreign Vehicles) Act 1972 s 1(4)). As to the prospective amendment made by the Transport Act 1982 s 10(4) see note 5 supra. The prohibition on driving does not apply to the removal of the vehicle in accordance with such a direction: Road Traffic (Foreign Vehicles) Act 1972 s 1(4). Any direction given under s 1(4) may be given either in that notice or in a separate notice in writing given to the driver of the vehicle: s 1(5).

## **UPDATE**

### **1644-1645 Prohibition on driving foreign vehicles, Prohibitions on foreign vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1644 Prohibition on driving foreign vehicles**

NOTE 6--Regulation 684/92 replaced with effect in part from 4 June 2010 and in part from 4 December 2011: European Parliament and EC Council Regulation 1073/2009 (OJ L300, 14.11.2009, p 88).

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/19. INTERNATIONAL ROAD TRAFFIC/(5) CONTROL OF FOREIGN VEHICLES/1645. Prohibitions on foreign vehicles.

### **1645. Prohibitions on foreign vehicles.**

Where a prohibition on driving a foreign vehicle is imposed<sup>1</sup>, the examiner<sup>2</sup>, authorised inspector<sup>3</sup> or authorised person<sup>4</sup> must forthwith give written notice of the prohibition to the driver<sup>5</sup> of the vehicle, specifying the circumstances in consequence of which the prohibition is imposed<sup>6</sup>, and stating whether the prohibition is on all driving of the vehicle or only on driving it for a specified purpose<sup>7</sup>; and, where the prohibition is imposed under certain provisions<sup>8</sup>, also stating whether it is imposed only for a specified period or without limitation of time<sup>9</sup>.

A prohibition comes into force as soon as this notice has been given, and continues in force until it is removed or, in the case of a prohibition imposed only for a specified period, until it is removed or the period expires, whichever first occurs<sup>10</sup>. A written exemption for the use of the vehicle, in such manner, subject to such conditions and for such purposes as may be specified in the exemption, may be granted by any examiner, authorised inspector or authorised person, as the case may be<sup>11</sup>. A prohibition may be removed by any examiner or authorised inspector, or, as the case may be, by any authorised person, if he is satisfied that appropriate action has been taken to remove or remedy the circumstances in consequence of which the prohibition was imposed<sup>12</sup>.

In certain circumstances<sup>13</sup> a prohibition may only be removed after the vehicle has been to an official testing station<sup>14</sup> for inspection<sup>15</sup>.



- 1    le a prohibition on the driving of a vehicle imposed under the Road Traffic (Foreign Vehicles) Act 1972 s 1(2) (as amended) or s 1(3) (as amended): see PARA 1644 ante. For the penalties for using a vehicle in contravention of a prohibition see PARA 1647 post.
- 2    For the meaning of 'examiner' see PARA 1644 note 4 ante.
- 3    For the meaning of 'authorised inspector' see PARA 1644 note 5 ante.
- 4    For the meaning of 'authorised person' see PARA 1644 note 12 ante.
- 5    For the meaning of 'driver' see PARA 207 ante.
- 6    Road Traffic (Foreign Vehicles) Act 1972 s 1(5). As to the prospective amendment made by the Transport Act 1982 s 10(4) see PARA 1644 note 5 supra. The matters to be specified are those falling within the Road Traffic (Foreign Vehicles) Act 1972 s 1(2)(a), (b) (as amended) or s 1(3)(a), (b) (as amended): s 1(5).
- 7    Ibid s 1(5)(a).
- 8    le under ibid s 1(2) (as amended): see PARA 1644 ante.
- 9    Ibid s 1(5)(b).
- 10   Ibid s 2(1), which is expressed to be subject to any exemption granted under s 2(2) (see the text and note 11 infra).
- 11   See ibid s 2(2). As to the prospective amendment made by the Transport Act 1982 s 10(4) see PARA 1644 note 5 supra. In the exercise of his functions under the Road Traffic (Foreign Vehicles) Act 1972 s 2 (as amended) an examiner or an authorised inspector must act in accordance with any general directions given by the Secretary of State; and (without prejudice to s 2(1)-(3B) (as amended)) an examiner or an authorised inspector, in exercising his functions under s 2(2), must act in accordance with any directions given by the Secretary of State with respect to the exercise of those functions in any particular case: s 2(4). As to the prospective amendment made by the Transport Act 1982 s 10(4) see PARA 1644 note 5 supra. As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.
- 12   Road Traffic (Foreign Vehicles) Act 1972 s 2(3). As to the prospective amendment made by the Transport Act 1982 s 10(4) see PARA 1644 note 5 supra. He must forthwith give to the driver written notice of the removal of the prohibition: Road Traffic (Foreign Vehicles) Act 1972 s 2(3).
- 13   le where a prohibition is made which is irremovable unless and until the vehicle has been inspected at an official testing station: see ibid s 1(6)(a) (as added); and PARA 1644 ante.
- 14   'Official testing station' means a station maintained by the Secretary of State under the Road Traffic Act 1988 s 72A (as added) (see PARA 692 ante): Road Traffic (Foreign Vehicles) Act 1972 s 7(1) (definition added by the Transport Act 1978 s 9(1), Sch 3 para 10; and amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 9(3); and the Road Traffic Act 1991 s 48, Sch 4 para 8). As from a day to be appointed 'official testing station' includes premises designated by the Secretary of State under the Transport Act 1982 s 10(12) (as amended) (see PARA 660 ante): see the Road Traffic (Foreign Vehicles) Act 1972 s 7(1) (definition as so added and amended; and further amended by the Transport Act 1982 s 74(1), Sch 5 para 17(2)(a)). At the date at which this volume states the law no such day had been appointed.
- 15   Road Traffic (Foreign Vehicles) Act 1972 s 2(3A) (added by the Transport Act 1978 Sch 3 para 9). In such cases the Road Traffic Act 1988 s 72A (as added) (fees for inspection) (see PARA 692 ante) applies: Road Traffic (Foreign Vehicles) Act 1972 s 2(3B) (added by the Transport Act 1978 Sch 3 para 9; and amended by the Road Traffic (Consequential Provisions) Act 1988 Sch 3 para 9(2); and the Road Traffic Act 1991 s 48, Sch 4 para 7).

## UPDATE

### **1644-1645 Prohibition on driving foreign vehicles, Prohibitions on foreign vehicles**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/19. INTERNATIONAL ROAD TRAFFIC/(5) CONTROL OF FOREIGN VEHICLES/1646.  
Production of documents for foreign vehicles.

### **1646. Production of documents for foreign vehicles.**

In certain circumstances<sup>1</sup>, the examiner<sup>2</sup>, on production if so required of his authority, may require the driver<sup>3</sup> of a vehicle to produce a document of the description specified in regulations modifying the application of statutory provisions to vehicles brought temporarily into Great Britain<sup>4</sup> and to permit the examiner to inspect and copy it<sup>5</sup>, and may detain the vehicle for such time as is requisite for the purpose of inspecting and copying the document<sup>6</sup>. If the driver refuses or fails to comply with any such requirement the examiner may prohibit the driving of the vehicle on a road<sup>7</sup>, either absolutely or for a specified purpose, and either for a specified period or without limitation of time<sup>8</sup>. The circumstances in which the power may be exercised are:

2489 (1) where it appears to the examiner that the vehicle is a foreign goods vehicle<sup>9</sup> within the meaning of regulations modifying statutory provisions in their applications to vehicles brought temporarily into Great Britain<sup>10</sup>, and is being used, or has been brought into Great Britain for the purpose of being used, in such circumstances as, by virtue of the provisions as to operators' licences<sup>11</sup>, as modified by the regulations, to require a document of a description specified in the regulations to be carried on it<sup>12</sup>;

2490 (2) where it appears to the examiner that the vehicle is a foreign public service vehicle<sup>13</sup> and is being used, or has been brought into Great Britain for the purpose of being used, in such circumstances as, by virtue of the provisions as to public service vehicle operators' licences<sup>14</sup>, as modified by regulations as to public service vehicles registered outside Great Britain<sup>15</sup>, to require a document of a description specified in the regulations to be carried on it<sup>16</sup>.

1 See the text and notes 9-16 infra.

2 For the meaning of 'examiner' see PARA 1644 note 4 ante.

3 For the meaning of 'driver' see PARA 207 ante.

4 I.e. regulations made under the Goods Vehicles (Operators' Licences) Act 1995 s 57(6) (see PARA 1321 ante): see the Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) Regulations 1996, SI 1996/2186; and PARA 1321 ante. For the meaning of 'Great Britain' see PARA 205 note 3 ante.

5 Road Traffic (Foreign Vehicles) Act 1972 s 4(1)(a), (3)(a) (s 4(1)(a) amended by the Goods Vehicles (Licensing of Operators) Act 1995 s 60(1), Sch 7 para 5).

6 Road Traffic (Foreign Vehicles) Act 1972 s 4(3)(b).

7 For the meaning of 'road' see PARA 206 ante.

8 Road Traffic (Foreign Vehicles) Act 1972 s 4(3). For prohibitions generally see PARA 1644 ante. For penalties for breaches of prohibitions see PARA 1647 post. A prohibition imposed under s 4(3) is subject to the same provisions as prohibitions imposed under s 1 (as amended) (see PARAS 1644-1645 ante): see s 4(4).

9 I.e. within the meaning of regulations for the time being in force under the Goods Vehicles (Licensing of Operators) Act 1995 s 57(6) (which enables certain provisions of that Act to be modified in their application to vehicles brought temporarily into Great Britain): see the Goods Vehicles (Licensing of Operators) (Temporary

Use in Great Britain) Regulations 1996, SI 1996/2186, reg 3(1); and PARA 1321 ante. For the meaning of 'foreign goods vehicle' for the purposes of the Road Traffic (Foreign Vehicles) Act 1972 generally see PARA 1643 ante.

10 Ibid s 4(1)(a) (as amended: see note 5 supra).

11 Ie by virtue of the Goods Vehicles (Licensing of Operators) Act 1995 s 2(1): see PARA 1329 ante.

12 Road Traffic (Foreign Vehicles) Act 1972 s 4(1)(b) (amended by the Goods Vehicles (Licensing of Operators) Act 1995 Sch 7 para 5).

13 Road Traffic (Foreign Vehicles) Act 1972 s 4(2)(a). For the meaning of 'foreign public service vehicle' see PARA 1643 ante.

14 Ie by virtue of the Public Passenger Vehicles Act 1981 s 12(1) (as substituted): see PARA 1338 ante.

15 Ie regulations made under ibid s 60(1)(m) (see PARA 1134 ante). See the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, regs 9(2), 10(2)(b), 11(2)(a), 12(2)(a) (as amended); and PARA 1649 post.

16 Road Traffic (Foreign Vehicles) Act 1972 s 4(2)(b) (amended by the Transport Act 1980 s 43(1), Sch 5 Pt II; and the Public Passenger Vehicles Act 1981 s 88(2), Sch 7 para 16).

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### **1647. Enforcement.**

Any person who drives<sup>1</sup> a vehicle on a road<sup>2</sup> in contravention of a prohibition<sup>3</sup>, or causes or permits<sup>4</sup> a vehicle to be driven on a road in contravention of a prohibition<sup>5</sup>, or refuses or neglects or otherwise fails to comply within a reasonable time with a direction to move the vehicle to a specified place<sup>6</sup> is guilty of an offence<sup>7</sup>.

Where a constable<sup>8</sup> in uniform has reasonable cause to suspect that the driver of a vehicle has committed such an offence, the constable may detain the vehicle<sup>9</sup>. For this purpose he may give a direction, specifying an appropriate person<sup>10</sup> and directing the vehicle to be removed by that person to such place and subject to such conditions as may be specified in the direction<sup>11</sup>.

A vehicle which is removed to a place specified in a direction must be detained in that place, or in any other place to which it is removed in accordance with a further direction, until a constable, or, if the place is in the occupation of the Secretary of State<sup>12</sup>, the Secretary of State, authorises the vehicle to be released<sup>13</sup>. A constable or the Secretary of State may authorise the release of the vehicle<sup>14</sup> on being satisfied that:

- 2491 (1) the prohibition, if any, imposed in respect of the vehicle has been removed, or that no prohibition was imposed<sup>15</sup>;
- 2492 (2) appropriate arrangements have been made for removing or remedying the circumstances in consequence of which the prohibition was imposed<sup>16</sup>;
- 2493 (3) the vehicle will be taken forthwith to a place from which it will be taken out of Great Britain<sup>17</sup>; or
- 2494 (4) in the case of a vehicle detained under these provisions<sup>18</sup>, that the purpose for which the vehicle was detained has been fulfilled or that the trailer need no longer be detained for the purpose of safeguarding it or its load<sup>19</sup>.

Any person who drives a vehicle in accordance with a direction or is in charge of a place at which a vehicle is detained is not liable for any damage to or loss in respect of the vehicle or its

load unless it is shown that he did not take reasonable care of the vehicle while driving it or, as the case may be, did not, while the vehicle was detained in that place, take reasonable care of the vehicle or did not take reasonable care of its load<sup>20</sup>.

1 For the meaning of 'drives' see PARA 207 ante.

2 For the meaning of 'road' see PARA 206 ante.

3 Road Traffic (Foreign Vehicles) Act 1972 s 3(1)(a). The prohibition mentioned in the text is under s 1 (as amended): see PARA 1644 ante.

4 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

5 Road Traffic (Foreign Vehicles) Act 1972 s 3(1)(b).

6 Ibid s 3(1)(c). The direction referred to is a direction under s 1(4): see PARA 1644 ante.

7 Ibid s 3(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 3(1) (amended by virtue of the Criminal Justice Act 1982 ss 39(2), 46(1), (4), Sch 3). As to the standard scale see PARA 230 note 3 ante.

8 As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

9 Road Traffic (Foreign Vehicles) Act 1972 s 3(3).

10 'Appropriate person' in relation to a direction to remove a motor vehicle, other than a motor vehicle drawing a trailer, means a person licensed to drive vehicles of the class to which the vehicle belongs: *ibid* s 3(7) (a). In relation to a direction to remove a trailer or motor vehicle drawing a trailer, it means a person licensed to drive vehicles of a class which, when the direction is complied with, will include the motor vehicle drawing the trailer in accordance with that direction: s 3(7)(b).

11 Ibid s 3(3). The prohibition does not apply to the removal of the vehicle in accordance with such a direction: s 3(3). Where a constable detains a motor vehicle drawing a trailer, or detains a trailer drawn by a motor vehicle, then for the purpose of securing the removal of the trailer, he may also detain the trailer or detain the motor vehicle: s 3(4). A direction may require both the motor vehicle and the trailer to be removed to the place specified in the direction: s 3(4). As from a day to be appointed, the Road Safety Act 2006 s 11(3), Sch 4 (see PARA 1127 et seq ante) makes provision about the immobilisation of vehicles the driving of which has been prohibited under the Road Traffic (Foreign Vehicles) Act 1972 s 1 (as amended) and about their removal and disposal: s 3(8) (added by the Road Safety Act 2006 s 12(2)). At the date at which this volume states the law no such day had been appointed.

12 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

13 Road Traffic (Foreign Vehicles) Act 1972 s 3(5).

14 Ibid s 3(5).

15 Ibid s 3(5)(a).

16 Ibid s 3(5)(b).

17 Ibid s 3(5)(c). For the meaning of 'Great Britain' see PARA 205 note 3 ante.

18 *Ie* under *ibid* s 3(4): see note 11 *supra*.

19 Ibid s 3(5)(d).

20 Ibid s 3(6).

## UPDATE

### 1647 Enforcement

NOTE 11--Day appointed is 5 January 2009: SI 2008/3164.

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## **(6) INTERNATIONAL TRANSPORT OF PASSENGERS AND GOODS**

### **1648. International journeys by passenger vehicles registered in the United Kingdom.**

Where a vehicle registered in Northern Ireland is used for the carriage of passengers on Community regulated<sup>1</sup> carriage of passengers which are regular services<sup>2</sup>, shuttle services<sup>3</sup> or works services<sup>4</sup>, then, the requirements as to certificates of initial fitness, PSV operators' licences and operator's discs<sup>5</sup> are omitted<sup>6</sup>.

Where a vehicle registered in the United Kingdom<sup>7</sup> is used for the international carriage of passengers by road:

- 2495 (1) on occasional services<sup>8</sup>, whether Community regulated or not<sup>9</sup>; or
- 2496 (2) for international carriage which is ASOR regulated<sup>10</sup>; or
- 2497 (3) as a public service vehicle for the carriage of passengers which is not ASOR regulated or Community regulated but is a service of the same type as an occasional service<sup>11</sup>,

then, in the case of vehicles registered in Northern Ireland the requirements as to certificates of initial fitness, PSV operators' licences and operator's discs do not apply<sup>12</sup>, and in the case of vehicles registered in Great Britain or Northern Ireland the statutory provision as to the registration of local services is varied so as to require a passenger waybill and the provision as to London local service licences is omitted<sup>13</sup>.

Where a public service vehicle<sup>14</sup> is registered in the United Kingdom and is used for the international carriage of passengers which is not Community regulated, but which is a regular service, a special regular service<sup>15</sup> or a shuttle service<sup>16</sup>, then in the case of a vehicle registered in Northern Ireland, the statutory requirements as to certificates of initial fitness, PSV operators' licences and operators' discs<sup>17</sup> do not apply, and in the case of vehicles registered in Great Britain or Northern Ireland the statutory provision as to the registration of local services is varied so as to require an international passenger transport authorisation<sup>18</sup> and the provision as to London local service licences does not apply<sup>19</sup>.

1 'Community regulated' in relation to the carriage of passengers means the international carriage of passengers by road to which EEC Council Regulation 117/66 (OJ L147, 9.8.66, p 2688) on the introduction of common rules for the international carriage of passengers by coach and bus (repealed) applies, namely in the circumstances mentioned in art 4(1) (repealed), ie where the place of departure is in the territory of a member state and the destination is in the territory of the same or another member state and the vehicle is registered in a member state and in construction and equipment is suitable for carrying more than nine persons including the driver, and is intended for that purpose, and references to the carriage of passengers which is Community regulated include unladen journeys of the vehicles concerned with such carriage: Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 2(1)(e).

EEC Council Regulation 117/66 (OJ L147, 9.8.66, p 2688), EEC Council Regulation 516/72 (OJ L67, 19.3.72, p 13) (as amended) and EEC Council Regulation 517/72 (OJ L67, 19.3.72, p 19) (as amended) are repealed and

replaced by EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) on common rules for the international carriage of passengers by coach and bus (amended by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1); and EC Council Regulation 1791/2006 (OJ L363, 20.12.2006, p 1)). EEC Commission Regulation 1016/68 (OJ L173, 21.7.68, p 8) (as amended) has been repealed and replaced by EC Commission Regulation 1839/92 (OJ L187, 7.7.92, p 5) (as amended). See EC Commission Regulation 2121/98 (OJ L268, 3.10.98, p 10).

EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) provides that references to the regulations repealed are to be taken as references to EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) (as amended): see art 21(2). However, this provision refers to references in other Community legislation and does not modify national implementing legislation: see Case C-8/90 *Criminal proceedings against Willy Kennes and Verkooyen PVBA* [1991] ECR I-4391, sub nom *Belgium v Kennes* [1993] 3 CMLR 735, ECJ. It is therefore submitted that the references in the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748 (as amended) to EEC Council Regulation 117/66 (OJ L147, 9.8.66, p 2688) should not be replaced by references to the replacement provisions contained in EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) (as amended).

2 'Regular services' means services which provide for the carriage of passengers at specified intervals along specified routes, passengers being taken up or set down at predetermined stopping points: EEC Council Regulation 117/66 (OJ L147, 9.8.66, p 2688) art 1(1) (repealed: see note 1 supra). This definition is also applied by European Parliament and Council Regulation 561/2006 (OJ L102, 11.4.2006, p 1) art 4(n), as to the definition of 'regular passenger services': see PARA 1384 note 5 ante.

3 'Shuttle services' means services by which, by means of repeated outward and return journeys, previously formed groups of passengers are carried from a single place of departure to a single destination, each group being subsequently returned to the place of departure: EEC Council Regulation 117/66 (OJ L147, 9.8.66, p 2688) art 2(1) (repealed: see note 1 supra). The concept of shuttle services has been abolished by EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) (as amended).

4 See the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 4(1). 'Works services' means services operated by an undertaking for its own workers to carry them to or from their place of work or from one place of work of the undertaking to another: EEC Council Regulation 117/66 (OJ L147, 9.8.66, p 2688) art 6(1) (repealed: see note 1 supra).

5 See the requirements of the Public Passenger Vehicles Act 1981 s 6 (as amended) (see PARA 1141 ante), s 12 (as amended) (see PARA 1144 ante), s 18 (as amended) (see PARA 1159 ante).

6 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 4(2)(b). Regulation 4(2)(a) is now redundant as it refers to the Public Passenger Vehicles Act 1981 s 30 (road service licensing) which has been repealed by the Transport Act 1985 ss 1, 139(3), Sch 8.

7 As to the registration of motor vehicles see PARA 518 et seq ante. For the meaning of 'Great Britain' see PARA 205 note 3 ante.

8 'Occasional services' means services which are not regular services (see note 2 supra) nor shuttle services (see note 3 supra), and include services (called 'closed door tours') where the same group of passengers is carried throughout and brought back to its place of departure, and services where the outward journey is made carrying passengers and the return journey is made unladen: EEC Council Regulation 117/66 (OJ L147, 9.8.66, p 2688) art 3(1) (repealed: see note 1 supra).

9 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 6(1)(a).

10 Ibid reg 6(1)(b). 'ASOR' means the Agreement on the International Carriage of Passengers by Road by means of Occasional Coach and Bus Services, approved on behalf of the Economic Community pursuant to EEC Council Decision of 20 July 1982 concluding the Agreement, entering into force for the Economic Community on 1 December 1983, as read with EEC Council Regulation 56/83 (OJ L10, 21.1.83, p 1) on measures implementing the Agreement: Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 6(5). 'ASOR regulated' means, in relation to the carriage of passengers, the international carriage of passengers by road to which ASOR applies, namely in the circumstances specified in art 1, that is to say, by means of occasional services (within the meaning of that Agreement) effected: (1) between the territories of two ASOR states, or starting and finishing in the territory of the same ASOR state; and (2) should the need arise during such services, in transit through the territory of another ASOR state or through the territory of a state which is not an ASOR state; and (3) using vehicles registered in the territory of an ASOR state which, by means of their construction and their equipment, are suitable for carrying more than nine persons, including the driver, and are intended for that purpose, and references to the carriage of passengers which is ASOR regulated include unladen journeys of the vehicles concerned with such carriage: Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 6(5). 'ASOR state' means: (a) a state, not being a member state, which is a contracting party to ASOR and to which the provisions of ASOR Sections II and III apply in accordance with ASOR art 18; or (b) the European Economic Community: Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 6(5).

11 Ibid reg 6(1)(c).

12 Ibid reg 6(2)(a) (amended by SI 1987/1755). The requirements referred to are those in the Public Passenger Vehicles Act 1981 s 6 (as amended) (see PARA 1141 ante), s 12 (as amended) (see PARA 1144 ante), s 18 (as amended) (see PARA 1159 ante), s 22 (repealed).

13 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 6(2)(b) (amended by SI 1987/1755) (which substitutes the Transport Act 1985 s 6 (see PARA 1178 ante) for this purpose and omits the Transport Act 1985 s 35 (prospectively repealed and replaced: see PARA 1246 ante)).

No person may cause or permit a vehicle to be used on a road for the international carriage of passengers unless: (1) in the case of such carriage which is ASOR regulated, the requirements of ASOR arts 7-9, Annex (which provide for the completion by the person by whom, or on whose behalf, a vehicle is used to provide an occasional service of a passenger waybill in respect of the service in question and for the carrying of the top copy of such waybill on the vehicle at all times while it is used on that service) are complied with, and, in the case of any other such carriage, the requirements of EEC Commission Regulation 1016/68 (OJ L173, 21.7.68, p 8) arts 2-4, Annex 2 (repealed: see note 1 supra) (which require the production of a passenger waybill of which a copy must be kept with the vehicle) are complied with; and (2) the vehicle is used on the service in question in circumstances which accord in all respects with the particulars which have been specified in the said passenger waybill as applicable to that service: Transport Act 1985 s 6(1) (s 6 substituted by the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 6(2)(b)). A certifying officer or public service vehicle examiner may at any reasonable time enter any premises and, on production if so required of his authority, require to see and may copy the document, and, on production if so required of his authority, may require the operator of a vehicle used for the international carriage of passengers to produce and permit him to inspect and copy the document and mark it with an official stamp: Transport Act 1985 s 6(2), (3) (as so substituted). It is an offence punishable on summary conviction with a fine not exceeding level 3 on the standard scale to contravene these provisions without reasonable excuse or to fail to comply with the requirements of a certifying officer or public service vehicle examiner, or wilfully to obstruct an officer or examiner in the exercise of his powers under these provisions: s 6(4) (as so substituted). As to the standard scale see PARA 230 note 3 ante.

14 For the meaning of 'public service vehicle' see PARA 1136 ante.

15 'Special regular service' means a regular service provided for categories of passengers, eg school children or workers: EEC Council Regulation 117/66 (OJ L147, 9.8.66, p 2688) art 1(3) (repealed: see note 1 supra).

16 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 5(1).

17 Ibid reg 5(2)(a) (amended by SI 1987/1755). The statutory requirements referred to are the Public Passenger Vehicles Act 1981 s 6 (as amended) (see PARA 1141 ante), s 12 (as amended) (see PARA 1144 ante), s 18 (as amended) (see PARA 1159 ante).

18 The Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 5(2)(b) (as amended) substitutes the Transport Act 1985 s 6 (as amended) (registration of local services) (see PARA 1178 ante) for this purpose. 'International passenger transport authorisation' means a licence, permit, authorisation or other document issued by the Secretary of State in pursuance of an international agreement or agreements to which the United Kingdom is for the time being a party: s 6(4) (as so substituted). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante. The Secretary of State is the competent authority of the United Kingdom for the purposes of ASOR and EEC Council Regulation 117/66 (OJ L147, 9.8.66, p 2688), EEC Council Regulation 516/72 (OJ L67, 19.3.72, p 13), EEC Council Regulation 517/72 (OJ L67, 19.3.72, p 19) or EEC Commission Regulation 1016/68 (OJ L173, 21.7.68, p 8) (all repealed: see note 1 supra) in relation to the international carriage of passengers to, from or through Great Britain: Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 13(1). As to the duly authorised authority for the purposes of ASOR art 6 and EEC Council Regulation 117/66 (OJ L147, 9.8.66, p 2688) art 9 (repealed: see note 1 supra) see the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 13(2).

Application for, or for variation of the conditions of, a regular service authorisation, a special regular service authorisation or a shuttle service authorisation must be made to the Secretary of State in the prescribed form: reg 14(1). Applications for other authorisations required by the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748 (as amended) are also made to the Secretary of State: see reg 14(2). An application for a certified copy of any such authorisation must be made to the Secretary of State: reg 14(2A) (added by SI 1990/1103). As to fees see the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 14(2A) (as so added); reg 14(3)-(6) (amended by SI 1987/1755; SI 1990/1103; SI 2003/1118; SI 2004/1882).

19 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 5(2)(b) (amended by SI 1987/1755).

**UPDATE****1648 International journeys by passenger vehicles registered in the United Kingdom**

NOTES 1, 3--Regulation 684/92 replaced with effect in part from 4 June 2010 and in part from 4 December 2011: European Parliament and EC Council Regulation 1073/2009 (OJ L300, 14.11.2009, p 88).

NOTE 18--SI 1984/748 reg 14 further amended: SI 2008/1577, SI 2009/879.

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**1649. Passenger services by vehicles registered outside the United Kingdom.**

In relation to a public service vehicle<sup>1</sup> registered<sup>2</sup> outside the United Kingdom<sup>3</sup> which:

- 2498 (1) in construction and equipment is suitable for carrying not more than nine persons, including the driver, and is intended for that purpose<sup>4</sup>;
- 2499 (2) is brought into Great Britain<sup>5</sup> for the purpose of carrying passengers who are travelling to Great Britain from a place outside the United Kingdom, or who are travelling from the United Kingdom to any such place<sup>6</sup>; and
- 2500 (3) remains in Great Britain for a period not exceeding three months from the date of its entry into the country<sup>7</sup>,

the requirements as to certificates of initial fitness, PSV operators' licences and operators discs<sup>8</sup> do not apply<sup>9</sup>.

For vehicles being used for Community regulated<sup>10</sup> carriage of passengers registered outside the United Kingdom which are providing regular, shuttle or works services<sup>11</sup>, the requirements as to certificates of initial fitness, PSV operators' licences and operators' discs<sup>12</sup> do not apply<sup>13</sup>. For vehicles registered outside the United Kingdom which are used for the international carriage of passengers to provide a regular, special regular<sup>14</sup> or shuttle service which is not Community regulated<sup>15</sup>, the requirements as to certificates of initial fitness and operators' discs do not apply<sup>16</sup>, and the requirement as to PSV operators' licences is varied so as to require the use of an international passenger transport authorisation<sup>17</sup>.

For vehicles registered outside than the United Kingdom which are used for ASOR or Community regulated occasional services<sup>18</sup> and which comply with the requirements as to passenger waybills<sup>19</sup>, the provisions as to certificates of initial fitness and operators' discs<sup>20</sup> do not apply<sup>21</sup> and, subject to certain conditions<sup>22</sup>, the requirements as to PSV operators' licences do not apply<sup>23</sup> or apply in a substituted form<sup>24</sup>.

For vehicles registered in certain states which are ECMT states<sup>25</sup>, which are brought into Great Britain for the purpose of carrying passengers in transit or making only a temporary stay<sup>26</sup> and which remain for a period not exceeding three months<sup>27</sup> and are providing services of a description similar to occasional services, the requirements as to certificates of initial fitness and operators' discs<sup>28</sup> do not apply<sup>29</sup>, and the requirements as to PSV operators' licences<sup>30</sup> apply in a substituted form<sup>31</sup>.



For public service vehicles registered in states which are not member states, ASOR states or ECMT states<sup>32</sup> which are brought into Great Britain to carry passengers making only a temporary stay or in transit, who began their journey in the country of registration of the vehicle or in Northern Ireland<sup>33</sup>, and which do not remain in Great Britain for a period exceeding three months<sup>34</sup>, and which are used to provide occasional services which are not Community regulated<sup>35</sup>, the requirements as to certificates of initial fitness and operators' discs<sup>36</sup> do not apply and the requirements as to PSV operators' licences<sup>37</sup> apply in modified form so as to require a list of passengers or an international passenger transport authorisation to be carried on the vehicle<sup>38</sup>.

The provisions of regulations relating to the fitness, equipment, use and certification of public service vehicles<sup>39</sup> do not apply to vehicles registered outside the United Kingdom used for international passenger services<sup>40</sup> or to a vehicle registered in Northern Ireland used for the international carriage of passengers<sup>41</sup>.

- 1 For the meaning of 'public service vehicle' see PARA 1136 ante.
- 2 As to the registration of motor vehicles see PARA 518 et seq ante.
- 3 For the meaning of 'United Kingdom' see PARA 224 note 5 ante.
- 4 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 7(1)(a).
- 5 For the meaning of 'Great Britain' see PARA 205 note 3 ante.
- 6 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 7(1)(b).
- 7 Ibid reg 7(1)(c).
- 8 Ie the requirements of the Public Passenger Vehicles Act 1981 s 6 (as amended) (see PARA 1141 ante), s 12 (as amended) (see PARA 1144 ante), s 18 (as amended) (see PARA 1159 ante).
- 9 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 7(2).
- 10 For the meaning of 'Community regulated' see PARA 1648 note 1 ante.
- 11 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 8(1)(a). For the meanings of 'regular services', 'shuttle services' and 'works services' see PARA 1648 notes 2-4 ante.
- 12 See note 8 supra.
- 13 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 8(2).
- 14 For the meaning of 'special regular service' see PARA 1648 note 15 ante.
- 15 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 9(1)(a). This exemption applies where the law of the registering country authorises the journey: reg 9(1)(b).
- 16 Ie the requirements of the Public Passenger Vehicles Act 1981 s 6 (as amended) (see PARA 1141 ante), s 18 (as amended) (see PARA 1159 ante).
- 17 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 9(2), Sch 2 (which substitutes for these purposes the Public Passenger Vehicles Act 1981 s 12: see PARA 1144 ante).
- 18 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 10(1)(a). For the meaning of 'occasional services' see PARA 1648 note 8 ante. For the meaning of 'ASOR regulated' see PARA 1648 note 10 ante.
- 19 Ibid reg 10(1)(b). The requirements referred to are those of the Agreement on the International Carriage of Passengers by Road by means of Occasional Coach and Bus Services ('ASOR') arts 7, 8, 9, Annex and EEC Commission Regulation 1016/68 (OJ L173, 21.7.68, p 8) arts 2-4, Annex 2 (repealed: see PARA 1648 note 1 ante): see PARA 1648 note 13 ante.

20    Ie the provisions of the Public Passenger Vehicles Act 1981 s 6 (as amended) (see PARA 1141 ante), s 18 (as amended) (see PARA 1159 ante).

21    Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 10(2).

22    Ie that the vehicle is used in accordance with the specified journey particulars entered in the waybill: see *ibid* reg 10(1)(b)(ii).

23    *Ibid* reg 10(2)(a). In the case of an occasional service which is either a closed door tours service or a service carrying passengers in only one direction (see PARA 1648 note 8 ante) or is an occasional service which is neither of the above but complies with the conditions of ASOR art 5(2) or EEC Council Regulation 117/66 (OJ L147, 9.8.66, p 2688) art 5(2) (repealed: see PARA 1648 note 1 ante) (namely that the outward journey is made unladen, all the passengers are taken up in the same place, the passengers constitute groups formed under contracts of carriage made before their arrival in the country where they are to be taken up, or have been brought previously into the country by the carrier or another occasional service, or have been invited to the country at the invitor's expense; and such passengers must constitute a group not formed solely to undertake that journey) the Public Passenger Vehicles Act 1981 s 12 (as amended) (see PARA 1144 ante) is omitted: see the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 10(2)(a).

24    See *ibid* reg 10(2)(b). The provisions of the Public Passenger Vehicles Act 1981 s 12 (as amended) (see PARA 1144 ante) have effect for these purposes as if substituted by the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, Sch 2, which imposes a requirement for the use of an international passenger transport authorisation in the case of an occasional service which is neither a closed door tour nor a service carrying passengers in one direction only: see reg 10(2)(b).

25    *Ibid* reg 11(1)(a). 'ECMT state' means a state which is a member of the European Conference of Ministers of Transport of 17 November 1953 but is not a member state or an ASOR state: Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 2(1)(f). For the meaning of 'ASOR state' see PARA 1648 note 10 ante.

26    *Ibid* reg 11(1)(b).

27    *Ibid* reg 11(1)(c).

28    Ie the provisions of the Public Passenger Vehicles Act 1981 s 6 (as amended) (see PARA 1141 ante), s 18 (as amended) (see PARA 1159 ante).

29    Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 11(2). The vehicle must be used by or on behalf of a person authorised by the country of registration to use the vehicle on the journey (reg 11(1)(ii)); and the service must not be ASOR or Community regulated and the journey must begin in one of the specified countries and end in the same country, another such country or Great Britain (reg 11(1)(i)).

30    Ie the Public Passenger Vehicles Act 1981 s 12 (as amended): see PARA 1144 ante.

31    Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 11(2). Thus in the case of an occasional service which is a closed door tour or a service carrying passengers in only one direction, no person may cause or permit the vehicle to be used on a road unless there is carried on the vehicle a document issued by the competent authority in the country of registration of the vehicle which conforms with reg 11(2), Sch 3, and is duly completed: reg 11(2)(a) (which substitutes for these purposes the Public Passenger Vehicles Act 1981 s 12). In the case of an occasional service which is neither of the foregoing, a vehicle may not be used except under an international passenger transport authorisation: Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 11(2)(b), Sch 2 (which substitutes for these purposes the Public Passenger Vehicles Act 1981 s 12).

32    Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 12(1)(a).

33    *Ibid* reg 12(1)(b).

34    *Ibid* reg 12(1)(c).

35    The vehicle must also be used to provide occasional services by a person so authorised in the state of registration of the vehicles: *ibid* reg 12(1)(c).

36    Ie the provisions of the Public Passenger Vehicles Act 1981 s 6 (as amended) (see PARA 1141 ante), s 18 (as amended) (see PARA 1159 ante).

37    Ie *ibid* s 12 (as amended): see PARA 1144 ante.

38 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 12(2), Sch 2 (reg 12(2) amended by SI 1988/1809), substituting for these purposes the Public Passenger Vehicles Act 1981 s 12 (see PARA 1144 ante)).

39 Ie the Public Service Vehicles (Conditions of Fitness, Equipment, Use and Certification) Regulations 1981, SI 1981/257, Pts II-V: see PARA 1134 ante.

40 Ie vehicles to which any provision of *ibid* Pt III (regs 7-11) applies.

41 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 23. The vehicles mentioned in the text are vehicles to which any provision of Pt II (regs 4-6) (as amended) applies.

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### **1650. Documentation and enforcement of international services.**

A vehicle used to provide a works service<sup>1</sup> must have a certificate<sup>2</sup>, and a vehicle used to provide an occasional service<sup>3</sup> must have a control document consisting of a book of duplicate passenger waybills<sup>4</sup>. A vehicle examiner<sup>5</sup> may require the driver of a vehicle to produce his works service certificate<sup>6</sup>, and may require the driver of an occasional service to produce a passenger waybill, if the service is such that one has to be carried<sup>7</sup>, for inspection and stamping<sup>8</sup>.

A vehicle used to provide regular<sup>9</sup> or special regular services<sup>10</sup> must carry a specified authorisation<sup>11</sup>, a vehicle providing a shuttle service<sup>12</sup> must carry a travel document<sup>13</sup>, a vehicle used to provide an occasional service<sup>14</sup> must carry the top copy of the passenger waybill<sup>15</sup> and a model control document with stiff green covers<sup>16</sup>. An examiner may require the driver of a vehicle to allow him to inspect these documents<sup>17</sup>.

If the Secretary of State is at any time satisfied that a holder of a regular, special regular or shuttle service authorisation issued by him has failed to comply with the relevant Council Regulation<sup>18</sup>, with the authorisation or any condition specified in it, or has failed to operate or is no longer operating a service under the authorisation, he may by notice in writing to the holder withdraw the authorisation<sup>19</sup>.

A person is guilty of an offence punishable on summary conviction with a fine<sup>20</sup> if, without reasonable excuse, he uses a vehicle for Community regulated<sup>21</sup> carriage of passengers by road, or causes or permits a vehicle to be so used<sup>22</sup>: (1) to provide a regular or special regular service (not being a works service) otherwise than in accordance with the terms of an authorisation<sup>23</sup>; (2) to provide a shuttle service (not being a works service) otherwise than under an authorisation<sup>24</sup>; or (3) to provide a works service without a certificate<sup>25</sup>. He is also guilty of an offence if, without reasonable excuse, he uses a vehicle for ASOR regulated<sup>26</sup> or Community regulated carriage by road, or causes or permits a vehicle to be so used, to provide an occasional service without a duly completed waybill, or without one being carried on the vehicle<sup>27</sup>. He is similarly guilty if he fails to comply with a requirement imposed under specified provisions<sup>28</sup> or wilfully obstructs an examiner<sup>29</sup>.

The provisions of the Public Passenger Vehicles Act 1981 relating to forgery and the making of false statements<sup>30</sup> are applied to authorisations, certificates or other documents required by the provisions relating to international passenger transport<sup>31</sup> to be in force in relation to a vehicle, or to be kept or carried on a vehicle, used for the international carriage of passengers<sup>32</sup>.

1 For the meaning of 'works services' see PARA 1648 note 4 ante.

2 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 15(1). The certificate is the one required by EEC Council Regulation 117/66 (OJ L147, 9.8.66, p 2688) art 6 (repealed: see PARA 1648 note 1 ante), and specified in EEC Commission Regulation 1016/68 (OJ L173, 21.7.68, p 8) art 1 (repealed: see PARA 1648 note 1 ante). Application for the issue of the certificate must be made to the Secretary of State: Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 15(2). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

3 For the meaning of 'occasional services' see PARA 1648 note 8 ante.

4 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 15(1). The control document is the document specified in the Agreement on the International Carriage of Passengers by Road by means of Occasional Coach and Bus Services ('ASOR') art 6 or EEC Council Regulation 117/66 (OJ L147, 9.8.66, p 2688) art 9 (repealed: see PARA 1648 note 1 ante), and its form and nature are specified in ASOR art 7 or EEC Commission Regulation 1016/68 (OJ L173, 21.7.68, p 8) art 2 (repealed: see PARA 1648 note 1 ante). As to ASOR see PARA 1648 note 10 ante. As to applications for the issue of control documents see the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 15(2). A control document is valid for five years: reg 15(3).

5 For the meaning of 'examiner' see PARA 1644 note 4 ante; definition applied by *ibid* reg 2(1)(h).

6 *Ibid* reg 16(2).

7 *Ie* where it appears to the examiner that the vehicle is being used in circumstances where, by virtue of EEC Council Regulation 1016/68 (OJ L173, 21.7.68, p 8) arts 2, 3(2) (repealed: see PARA 1648 note 1 ante), a top copy of the waybill must be carried: Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 16(1).

8 *Ibid* reg 16(2)(a). The examiner may detain the vehicle for this purpose: reg 16(2)(b).

9 For the meaning of 'regular services' see PARA 1648 note 2 ante.

10 For the meaning of 'special regular service' see PARA 1648 note 15 ante.

11 *Ie* the authorisation required under EEC Council Regulation 517/72 (OJ L67, 19.3.72, p 19) arts 2, 3, 17 (repealed: see PARA 1648 note 1 ante): Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 16(1), (3)(a).

12 For the meaning of 'shuttle services' see PARA 1648 note 3 ante.

13 *Ie* a travel document specified under EEC Council Regulation 516/72 (OJ L67, 19.3.72, p 13) arts 17, 18 (repealed: see PARA 1648 note 1 ante): Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 16(1), (3)(b).

14 For the meaning of 'occasional services' see PARA 1648 note 8 ante.

15 *Ie* the top copy of the passenger waybill specified in ASOR art 8(2) and EEC Commission Regulation 1016/68 (OJ L173, 21.7.68, p 8) art 3(2) (repealed: see PARA 1648 note 1 ante): Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 16(3)(c).

16 *Ie* the model control document with stiff green covers specified in ASOR art 11(1), (3) and EEC Commission Regulation 1016/68 (OJ L173, 21.7.68, p 8) art 5 (repealed: see PARA 1648 note 1 ante): Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 16(3)(d).

17 *Ibid* reg 16(2). The examiner may also require a driver to allow him to examine and may stamp a works service certificate or passenger waybill: reg 16(2), (3)(c).

18 'Relevant Council Regulation' means in the case of a regular or special regular service authorisation EEC Council Regulation 517/72 (OJ L67, 19.3.72, p 19) (repealed: see PARA 1648 note 1 ante) and in the case of a shuttle service authorisation EEC Council Regulation 516/72 (OJ L67, 19.3.72, p 13) (repealed: see PARA 1648 note 1 ante): Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 18(7).

19 *Ibid* reg 18(1). Where the Secretary of State decides to withdraw an authorisation in exercise of his powers under EEC Council Regulation 516/72 (OJ L67, 19.3.72, p 13) (repealed: see PARA 1648 note 1 ante) or EEC Council Regulation 517/72 (OJ L67, 19.3.72, p 19) (repealed: see PARA 1648 note 1 ante) he may do so by notice in writing to the holder of the authorisation: Road Transport (International Passenger Services)

Regulations 1984, SI 1984/748, reg 18(2). The withdrawal takes effect on the date specified in the notice which must be not earlier than 28 days after the date of the notice: reg 18(3). Where an authorisation is withdrawn it is of no effect and the holder must forthwith surrender the authorisation to the Secretary of State: reg 18(4). At any reasonable time an examiner may, on production if so required of his authority, enter any premises of the holder of an authorisation which has been withdrawn and may require the holder to produce the authorisation and, on its being produced, may seize it and deliver it to the Secretary of State: reg 18(5). Where it appears to an examiner that an authorisation produced to him in accordance with reg 16 has been withdrawn he may seize it and deliver it to the Secretary of State: reg 18(6).

20 The fine must not exceed level 3 on the standard scale: see *ibid* regs 19(3), 20 (both amended by virtue of the Criminal Justice Act 1988 s 52). As to the standard scale see PARA 230 note 3 ante.

21 For the meaning of 'Community regulated' see PARA 1648 note 1 ante.

22 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 19(1).

23 *Ibid* reg 19(1)(a). Such authorisations are issued under EEC Council Regulation 517/72 (OJ L67, 19.3.72, p 19) (repealed: see PARA 1648 note 1 ante). See also the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 17.

24 *Ibid* reg 19(1)(b). As to shuttle service authorisations see EEC Council Regulation 516/72 (OJ L67, 19.3.72, p 13) art 2 (repealed: see PARA 1648 note 1 ante).

25 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 19(1)(c). As to works service certificates see EEC Commission Regulation 1016/68 (OJ L173, 21.7.68, p 8) art 1 (repealed: see PARA 1648 note 1 ante).

26 For the meaning of 'ASOR regulated' see PARA 1648 note 10 ante.

27 Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 19(2). As to the penalty see note 20 *supra*. As to passenger waybills see PARA 1648 note 13 ante.

28 *Ibid* reg 20(a). The text refers to failure to return a waybill to the Secretary of State within the specified period, or detaching a copy (ie under reg 15(4), (5)), failure to permit an examiner to inspect documents (ie under reg 16(2)(a)), failure to carry or produce a works service certificate (ie under reg 17(1)), failure to carry or produce a waybill (ie under reg 17(2)), failure to surrender or produce an authorisation withdrawn by the Secretary of State (ie under reg 18(4), (5)), and failure to comply with a requirement imposed by or under ASOR or EEC Council Regulation 117/66 (OJ L147, 9.8.66, p 2688), EEC Council Regulation 516/72 (OJ L67, 19.3.72, p 13), EEC Council Regulation 517/72 (OJ L67, 19.3.72, p 19) or EEC Commission Regulation 1016/68 (OJ L173, 21.7.68, p 8) (all repealed: see PARA 1648 note 1 ante): Road Transport (International Passenger Services) Regulations 1984, SI 1984/748, reg 20(a).

29 See *ibid* reg 20(b).

30 *Ie* the Public Passenger Vehicles Act 1981 s 65(1)(a) (as amended) (see PARA 1304 ante), s 66(a) (as amended) (see PARA 1305 ante).

31 *Ie* required by ASOR, or by EEC Council Regulation 117/66 (OJ L147, 9.8.66, p 2688), EEC Council Regulation 516/72 (OJ L67, 19.3.72, p 13), EEC Council Regulation 517/72 (OJ L67, 19.3.72, p 19) or EEC Commission Regulation 1016/68 (OJ L173, 21.7.68, p 8) (all repealed: see PARA 1648 note 1 ante), or by the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748 (as amended), or by the Public Passenger Vehicles Act 1981 as modified by the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748 (as amended): see reg 21.

32 *Ibid* reg 21.

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## **1651. International carriage by coach and bus.**

The international carriage of passengers by coach and bus within the territory of the European Community by carriers for hire or reward or own-account carriers established in a member state in accordance with its law, using vehicles registered in that member state which are suitable, by virtue of their construction and equipment, for carrying more than nine persons, including the driver, and are so intended, and the movement of such vehicles empty in connection with such carriage, are governed by European legislation<sup>1</sup>.

Any carrier for hire or reward must be permitted to carry out regular<sup>2</sup>, special regular<sup>3</sup> and occasional<sup>4</sup> services without discrimination as to nationality or place of establishment if he: (1) is authorised in the state of establishment to undertake carriage by means of regular services including special regular services or occasional services by coach and bus; (2) satisfies the conditions laid down in accordance with the Community rules on admission to the occupation of road passenger transport operator in national and international transport operations<sup>5</sup>; and (3) meets legal requirements on road safety as far as the standards for drivers and vehicles are concerned<sup>6</sup>.

Any own-account carrier must be permitted to carry out own-account transport operations<sup>7</sup>, without discrimination as to nationality or place of establishment if he: (a) is authorised in the state of establishment to undertake carriage by coach and bus in accordance with market-access conditions laid down by national legislation; and (b) meets legal requirements on road safety as far as the standards for drivers and vehicles concerned<sup>8</sup>.

Occasional services do not require authorisation<sup>9</sup>. Special regular services do not require authorisation if they are covered by a contract concluded between the organiser and the carrier<sup>10</sup>. Regular services and special regular services not covered by a contract between the organiser and the carrier do require authorisation<sup>11</sup>.

1 See EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) on common rules for the international carriage of passengers by coach and bus (amended by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1); and EC Council Regulation 1791/2006 (OJ L363, 20.12.2006, p 1)). EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) (as amended) repealed and replaced the Regulations referred to in the Road Transport (International Passenger Services) Regulations 1984, SI 1984/748 (as amended) (see PARAS 1648-1650 ante): EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 21; and see PARA 1648 note 1 ante. See also EC Commission Regulation 2121/98 (OJ L268, 3.10.98, p 10) laying down detailed rules for the application of EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) (as amended), and EC Council Regulation 12/98 (OJ L4, 8.1.98, p 10) as regards documents for the carriage of passengers by coach and bus.

2 Regular services are services which provide for the carriage of passengers at specified intervals along specified routes, passengers being taken up and set down at predetermined stopping points; regular services must be open for all, subject, where appropriate, to compulsory reservation; the regular nature of the service is not affected by any adjustment to the service operating conditions: EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 2(1.1) (amended by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)). The organisation of parallel temporary services, serving the same public as existing regular services, the non-serving of certain stops and the serving of additional stops on existing regular services are governed by the same rules as existing regular services: EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 2(1.3) (amended by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)).

3 Special regular services are services which provide for the carriage of specified categories of passengers to the exclusion of other passengers, in so far as such services are operated under the conditions specified for regular services (see note 2 supra); they include:

1454 (1) the carriage of workers between home and work;

1455 (2) carriage to and from the educational institution for school pupils and students; and

1456 (3) the carriage of soldiers and their families between their state of origin and the area of their barracks,

and the fact that a special service may be varied according to the needs of the users does not affect its classification as a regular service: EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 2(1.2) (amended by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)).

4 Occasional services are services which do not meet the definition of regular services, including special regular services, and which are characterised above all by the fact that they carry groups of passengers assembled on the initiative of the customer or the carrier himself; they do not include parallel or temporary services comparable to existing regular services and serving the same public as regular services: EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 2(3.1) (amended by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)). The services do not cease to be occasional services solely because they are provided at certain intervals: EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 2(3.3). Occasional services may be provided by a group of carriers acting on behalf of the same contractor, and travellers may catch a connection en route, with a different carrier of the same group, in the territory of one of the member states: see art 2(3.4) (amended by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)).

5 le EC Council Directive 96/26 (OJ L124, 23.5.96, p 1) on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for those operators the right of establishment in national and international transport operations (amended by EC Council Directive 98/76 (OJ L277, 14.10.98, p 17): see PARA 1657 post.

6 EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 3(1) (amended by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)).

7 Own-account transport operations are those carried out for non-commercial and non-profit-making purposes by a natural or legal person, provided that the transport activity is only an ancillary activity for that natural or legal person, and the vehicles used are the property of that natural or legal person or have been obtained on deferred terms by him or it or have been the subject of a long term leasing contract and are driven by a member of the staff of the natural or legal person or by the natural person himself: EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 2(3.4) (substituted by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)).

8 EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 3(2). Own-account road transport operations are exempt from any system of authorisation but must be subject to a system of certificates: art 13(1). The certificates must be issued by the competent authority of the member state in which the vehicle is registered and be valid for the entire journey including transit: art 13(3).

9 Ibid art 4(1) (art 4 substituted by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)).

10 EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 4(2) (as substituted: see note 9 supra). Empty journeys by vehicles in connection with the transport operations referred to in art 4(1), (2) (as substituted) do not require authorisation: art 4(3) (as so substituted).

11 Ibid art 4(4) (as substituted: see note 9 supra). Authorisation must be in accordance with arts 5-10 (amended by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)).

## UPDATE

### **1651-1656 International carriage by coach and bus ... Passenger vehicles cabotage**

Regulation 684/92 replaced with effect in part from 4 June 2010 and in part from 4 December 2011: European Parliament and EC Council Regulation 1073/2009 (OJ L300, 14.11.2009, p 88).

### **1651 International carriage by coach and bus**

NOTE 5--Directive 96/26 replaced with effect from 4 December 2011: see PARA 1657.

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### **1652. Community licences.**

In order to carry out international transport by coach and bus<sup>1</sup> any carrier meeting certain criteria<sup>2</sup> must hold a Community licence<sup>3</sup> issued by the competent authorities<sup>4</sup> of the member state of establishment<sup>5</sup>. A person is entitled to be issued by the competent authority with a Community licence if he holds a standard licence<sup>6</sup> which authorises use on both national and international operations, or a restricted licence<sup>7</sup>. A Community licence is issued for a period of five years and is renewable<sup>8</sup>. The Community licence replaces the document issued by the competent authorities of the member state of establishment certifying that the carrier has access to the market for the international carriage of passengers by road<sup>9</sup>. When an application for a licence is submitted, and at least every five years thereafter, the competent authority must verify whether the carrier meets or continues to meet the conditions as to occasional services<sup>10</sup>. Where the conditions are not met, the competent authority must refuse to issue or renew a Community licence by means of a reasoned decision<sup>11</sup>. A person who is aggrieved by the refusal of the competent authority to issue a Community licence to him, or being the holder of a Community licence, is aggrieved by the decision of the competent authority who issued it to withdraw it, may appeal to the Transport Tribunal<sup>12</sup>.

A person who uses a vehicle in Great Britain in order to carry out international passenger transport operations by coach and bus without a Community licence is guilty of an offence<sup>13</sup>. A person who uses a public service vehicle in Great Britain under a Community licence and, without reasonable excuse, fails to comply with any of the conditions governing the use of that licence<sup>14</sup>, is guilty of an offence<sup>15</sup>.

The holder of a Community licence must furnish such information as the competent authority which issued it may reasonably require from time to time to enable the authority to decide whether the holder is entitled to retain that licence<sup>16</sup>. A person who, without reasonable excuse, fails to supply any information required is guilty of an offence<sup>17</sup>.

1 See PARA 1651 ante.

2 I.e. the criteria laid down in EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) on common rules for the international carriage of passengers by coach and bus, art 3(1) (as amended): see PARA 1651 text and note 6 ante.

3 The Community licence must conform to the model in *ibid* Annex (substituted by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)).

4 The competent authority, in relation to the operator of a public service vehicle who has an operating centre in a traffic area in Great Britain, is the traffic commissioner for that area: Public Service Vehicles (Community Licences) Regulations 1999, SI 1999/1322, reg 4. For the meaning of 'public service vehicle' see PARA 1136 ante; for the meaning of 'operating centre' see PARA 1144 note 7 ante; and for the meaning of 'traffic commissioner' see PARA 1138 note 7 ante (definitions applied by reg 2(2)). For the meaning of 'Great Britain' see PARA 205 note 3 ante. As to traffic areas see PARA 1138 ante.

5 EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 3a(1) (art 3a added by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)). The competent authority must issue the holder with the original of the Community licence which must be kept by the carrier, and the number of certified true copies corresponding to the number of vehicles used for the international carriage of passengers at the disposal of the holder of the Community licence, either in full ownership, or in another form, notably by an instalment-purchase contract, a hire contract or a leasing contract: EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 3a(2) (as so added). The Community licence must be established in the name of the carrier and is non-transferable; a certified true copy must be carried on the vehicle and must be presented at the request of any authorised inspecting officer: art 3a(3) (as so added). An authorised inspecting officer in Great Britain is an examiner appointed under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 ante) and a police constable: Public Service Vehicles (Community Licences) Regulations 1999, SI 1999/1322, reg 8. As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

6 For the meaning of 'standard licence' see PARA 1145 note 2 ante; definition applied by *ibid* reg 2(2).

7 *Ibid* reg 5. For the meaning of 'restricted licence' see PARA 1145 note 2 ante; definition applied by reg 2(2).



- 8 EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 3a(4) (as added: see note 5 supra).
- 9 Ibid art 3a(5) (as added: see note 5 supra).
- 10 Ibid art 3a(6) (as added: see note 5 supra). The conditions as to occasional services are laid down in art 3(1) (as amended): see PARA 1651 ante.
- 11 Ibid art 3a(7) (as added: see note 5 supra). As to withdrawal of Community licences see PARA 1655 post.
- 12 Public Service Vehicles (Community Licences) Regulations 1999, SI 1999/1322, reg 6. As to the constitution and proceedings of the Transport Tribunal see PARA 253 et seq ante.
- 13 Ibid reg 3. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: reg 3. As to the standard scale see PARA 230 note 3 ante. As to offences committed by bodies corporate see reg 12.
- 14 Ie under EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) (as amended).
- 15 Public Service Vehicles (Community Licences) Regulations 1999, SI 1999/1322, reg 7. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: reg 7.
- 16 Ibid reg 10(1).
- 17 Ibid reg 10(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: reg 10(2).

## UPDATE

### **1651-1656 International carriage by coach and bus ... Passenger vehicles cabotage**

Regulation 684/92 replaced with effect in part from 4 June 2010 and in part from 4 December 2011: European Parliament and EC Council Regulation 1073/2009 (OJ L300, 14.11.2009, p 88).

### **1652 Community licences**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTE 12--SI 1999/1322 reg 6 amended: SI 2009/1885.

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### **1653. Regular services subject to authorisation.**

Authorisations<sup>1</sup> must be issued in the name of the transport undertaking; they may not be transferred to third parties<sup>2</sup>. The period of validity of an authorisation must not exceed five years<sup>3</sup>. Authorisations entitle their holders to operate regular services in the territories of all member states over which the routes of the services pass<sup>4</sup>. There are provisions governing the procedure for applications for authorisation<sup>5</sup>, the authorisation procedure<sup>6</sup>, the grant and renewal of authorisations<sup>7</sup> and the lapse of authorisation<sup>8</sup>. Save in the event of force majeure,

the operator of a regular service must, until the authorisation expires, take all measures to guarantee a transport service that fulfils the standards of continuity, regularity and capacity and complies with the other conditions laid down by the competent authority<sup>9</sup>.

1     le those required by EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) on common rules for the international carriage of passengers by coach and bus, art 4(4) (as substituted): see PARA 1651 ante.

2     Ibid art 5(1). The carrier who has received the authorisation may, with the consent of the competent authority (see PARA 1652 note 4 ante) operate the service through a sub-contractor and, in this case, the name of the latter undertaking and its role as sub-contractor must be indicated in the authorisation and the sub-contractor must fulfil the conditions laid down in art 3(1) (as amended) (see PARA 1651 ante): art 5(1). In the case of undertakings associated for the purpose of operating a regular service, the authorisation must be issued in the names of all the undertakings, and must be given to the undertaking that manages the operation and copies must be given to the others: art 5(1) (amended by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)). For the meaning of 'regular service' see PARA 1648 note 2 ante.

3     EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 5(2) (amended by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)). It may be set at less, either at the request of the applicant or by mutual consent of the competent authorities of the member states on whose territories passengers are picked up or set down: EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 5(2). Authorisations must specify: (1) the type of service; (2) the route of the service, giving in particular the place of departure and the place of destination; (3) the period of validity of the authorisation; and (4) the stops and the timetable: art 5(3) (amended by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)). Authorisations must conform to the model drawn up by the European Commission in accordance with EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 16a (added by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)): EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 5(4) (amended by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)).

4     EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 5(5) (substituted by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)). The operator of a regular service may use additional vehicles to deal with temporary and exceptional situations; in this case the carrier must ensure that there is carried on the vehicle a copy of the authorisation of the regular service, a copy of the contract between the operator of the regular service and the undertaking providing the additional vehicles or an equivalent document, and a certified true copy of the Community licence issued to the operator of the regular service: EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 5(6) (added by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)).

5     See EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 6 (amended by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)).

6     See EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 7 (substituted by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)).

7     See EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 8 (amended by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)).

8     See EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 9 (amended by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)).

9     EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 10(1). Conditions are laid down in accordance with art 5(3) (as amended): see note 3 supra. The carrier must display the route of the service, the bus stops, the timetable, the fares and the conditions of carriage, in so far as these are not laid down by law, in such a way as to ensure that such information is readily available to users: art 10(2). Without prejudice to EEC Council Regulation 1191/69 (OJ L156, 28.6.69, p 1) (as amended), it is possible for the member states concerned, by common agreement and in agreement with the holder of the authorisation, to make changes to the operating conditions governing a regular service: EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 10(3).

## UPDATE

### **1651-1656 International carriage by coach and bus ... Passenger vehicles cabotage**

Regulation 684/92 replaced with effect in part from 4 June 2010 and in part from 4 December 2011: European Parliament and EC Council Regulation 1073/2009 (OJ L300, 14.11.2009, p 88).

### **1653 Regular services subject to authorisation**

NOTE 9--EEC Council Regulation 1191/69 repealed and replaced from 3 December 2009 by European Parliament and EC Council Regulation 1370/2007 (OJ L315, 3.12.07, p 1) on public passenger transport services by rail and by road. Note that the old regulation will continue to apply to freight transport services until 2 December 2012.

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### **1654. Occasional services and other services exempt from authorisation.**

Occasional services<sup>1</sup> must be carried out under cover of a journey form<sup>2</sup>. Within the framework of an international occasional service, a carrier may carry out occasional services (local excursions) in a member state other than that in which it is established<sup>3</sup>. Such services are intended for non-resident passengers previously carried by the same carrier on one of the international services and must be carried out with the same vehicle or another vehicle from the same carrier or group of carriers<sup>4</sup>.

1 For the meaning of 'occasional service' see PARA 1651 note 4 ante.

2 EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) on common rules for the international carriage of passengers by coach and bus, art 11(1) (art 11 substituted by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)). A carrier operating occasional services must fill out a journey form before each journey: EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 11(2) (as so substituted). The journey form must contain at least the following information: (1) the type of service; (2) the main itinerary; and (3) the carriers involved: art 11(3) (as so substituted). The books of journey forms must be supplied by the competent authority of the member state where the transport undertaking is established or by a body appointed by that authority: art 11(4) (as so substituted). As to the competent authority see PARA 1652 note 4 ante. The European Commission has a duty to lay down the model for the journey form and the way in which it is to be used, in accordance with the procedure provided for in art 16a (added by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)): EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 11(5) (as so substituted).

3 Ibid art 12 (amended by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)).

4 EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 12.

### **UPDATE**

#### **1651-1656 International carriage by coach and bus ... Passenger vehicles cabotage**

Regulation 684/92 replaced with effect in part from 4 June 2010 and in part from 4 December 2011: European Parliament and EC Council Regulation 1073/2009 (OJ L300, 14.11.2009, p 88).

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1663)/19. INTERNATIONAL ROAD TRAFFIC/(6) INTERNATIONAL TRANSPORT OF PASSENGERS AND GOODS/1655. Controls and penalties.

### **1655. Controls and penalties.**

Passengers using a regular service<sup>1</sup>, excluding a special regular service<sup>2</sup>, must throughout their journeys possess transport tickets, either individual or collective<sup>3</sup>, which must be presented at the request of an authorised inspecting officer<sup>4</sup>.

An authorisation or control document<sup>5</sup> must be carried on the vehicle and must be presented at the request of any authorised inspecting officer<sup>6</sup>.

Carriers operating coaches and buses in international passenger transport must allow all inspections intended to ensure that the operations are being conducted correctly, particularly as regards driving and rest periods<sup>7</sup>.

The competent authority<sup>8</sup> of the member state where the carrier is established must withdraw a Community licence<sup>9</sup> where the holder no longer meets the conditions laid down or has supplied inaccurate information concerning the data which were required for the issue of the licence<sup>10</sup>. The authorising authority must withdraw an authorisation if the holder no longer fulfils the conditions on the basis of which the authorisation was issued, in particular where the member state in which the carrier is established so requests<sup>11</sup>. The competent authorities of the member states concerned must prohibit a carrier from operating on their territory an international passenger service if he repeatedly commits serious breaches of the regulations governing road safety, in particular with regard to the rules applicable to vehicles and driving and rest periods for drivers<sup>12</sup>.

1 For the meaning of 'regular services' see PARA 1651 note 2 ante.

2 For the meaning of 'special regular services' see PARA 1651 note 3 ante.

3 EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) on common rules for the international carriage of passengers by coach and bus, art 14(1) (amended by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)). The tickets must indicate the points of departure and destination and, where appropriate, the return journey, the period of validity of the ticket and the price of the transport: EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 14(1).

4 Ibid art 14(2). As to authorised inspecting officers see PARA 1652 note 5 ante.

5 As to authorisations and control documents see PARA 1653 ante.

6 EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 15(1). In the case of special regular services covered by a contract concluded between the organiser and the carrier, the contract or a certified true copy of it will serve as the control document: art 15(1).

7 Ibid art 15(2). In the context of implementation of art 15, authorised inspecting officers are empowered to: (1) check the books and other documentation relating to the operation of the transport undertaking; (2) make copies of, or take extracts from, the books and documentation on the premises; (3) have access to all the transport undertaking's premises, sites and vehicles; and (4) require the production of any information contained in books, documentation or databases: art 15(2).

8 As to the competent authority see PARA 1652 note 4 ante.

9 As to Community licences see PARA 1652 ante.

10 EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 16(1) (art 16 substituted by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)). Where a Community licence is withdrawn by the competent authority, the holder of that licence must within seven days of such withdrawal return to the competent authority which issued it the original licence and all certified true copies of it: Public Service Vehicles (Community Licences) Regulations 1999, SI 1999/1322, reg 9(1). The holder of a Community licence must return to the competent authority which issued it such certified true copies of the licence as the authority may require pursuant to: (1) any decision of the authority to reduce the maximum number of vehicles (being vehicles having their operating centre in the

area of the authority) which the holder is authorised, under the Public Passenger Vehicles Act 1981 s 16(1) (as amended) (see PARA 1153 ante), to use under the PSV operator's licence held by him; or (2) any decision of the authority to suspend or withdraw certified true copies of the Community licence: Public Service Vehicles (Community Licences) Regulations 1999, SI 1999/1322, reg 9(2). A person who, without reasonable excuse, fails to comply with these provisions is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: reg 9(3). As to the standard scale see PARA 230 note 3 ante. For the meaning of 'PSV operator's licence' see PARA 1136 note 7 ante; definition applied by reg 2(2).

11 EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 16(2) (as substituted: see note 10 supra). The authority must immediately inform the competent authorities of the member state concerned: art 16(2) (as so substituted).

12 Ibid art 16(4) (added by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)). The authority must immediately inform the competent authorities of the member states concerned: EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) art 16(4) (as so added). In the case of a serious breach or repeated minor breaches of road safety regulations, in particular with regard to the rules applicable to vehicles, driving and rest periods for drivers and the provision without authorisation of parallel or temporary services as referred to in art 2(1.3) (as amended) (see PARA 1651 ante), the competent authority of the member state of establishment of the carrier who committed the breach may withdraw the Community licence or make temporary and/or partial withdrawals of the certified true copies of the Community licence; and these penalties must be determined in accordance with the seriousness of the breach committed by the holder of the Community licence and with the total number of certified true copies that he possesses in respect of his international trade: art 16(3) (as substituted: see note 10 supra). Member states must on request provide each other with any relevant information in their possession concerning breaches of the provisions relating to the international carriage of passengers by coach and bus committed in their territory by a carrier from another member state and the penalties imposed, and the penalties imposed on their own carriers in respect of breaches committed in the territory of another member state: art 16(5) (added by EC Council Regulation 11/98 (OJ L4, 8.1.98, p 1)).

## UPDATE

### **1651-1656 International carriage by coach and bus ... Passenger vehicles cabotage**

Regulation 684/92 replaced with effect in part from 4 June 2010 and in part from 4 December 2011: European Parliament and EC Council Regulation 1073/2009 (OJ L300, 14.11.2009, p 88).

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### **1656. Passenger vehicles cabotage.**

Any carrier who operates road passenger transport services for hire or reward, and who holds a Community licence<sup>1</sup> may, subject to certain conditions<sup>2</sup> and without discrimination on the grounds of the carrier's nationality or place of establishment, temporarily operate national road passenger services, called cabotage transport operations, for hire or reward in another member state (the 'host state') without being required to have a registered office or other establishment in that state<sup>3</sup>. Cabotage transport operations are authorised for: (1) special regular services<sup>4</sup> provided they are covered by a contract concluded between the organiser and the carrier; (2) occasional services; and (3) regular services, provided they are performed by a carrier not resident in the host state in the course of a regular international service<sup>5</sup>. Save as otherwise provided in Community legislation, the performance of cabotage transport operations is subject to the laws, regulations and administrative provisions in force in the host state in specified areas<sup>6</sup>. The Community licence or a certified true copy of it must be kept on board the vehicle and be produced when requested by an authorised inspecting officer<sup>7</sup>. Cabotage transport

operations in the form of occasional services must be carried out under cover of a control document (the 'journey form') which must be kept on board the vehicle and be produced when requested by an authorised inspecting officer<sup>8</sup>.

A person commits an offence if he uses a vehicle on a road<sup>9</sup>, or causes or permits<sup>10</sup> a vehicle to be so used, for the purpose of cabotage transport operations in Great Britain or between Great Britain and Northern Ireland which are carried out by a road passenger transport carrier established in a member state other than the United Kingdom without a licence<sup>11</sup>. A person commits an offence if he uses a vehicle on a road, or causes or permits a vehicle to be so used, for the purposes of cabotage transport operations in Great Britain or between Great Britain and Northern Ireland which take the form of occasional services and are carried out without a control document<sup>12</sup>.

Without prejudice to criminal prosecution, the Secretary of State<sup>13</sup> may impose penalties on non-resident carriers who have committed infringements of the European provisions relating to cabotage<sup>14</sup> or of Community or national transport regulations within the United Kingdom on the occasion of a cabotage transport operation<sup>15</sup>. The competent authority of the host state must inform the traffic commissioner<sup>16</sup> for the area in which the carrier has his operating centre of the infringements recorded and any penalties imposed on the carrier and may, in the event of serious or repeated infringements, at the same time transmit a request that a penalty be imposed<sup>17</sup>. A carrier who is aggrieved by an administrative penalty imposed on him by the Secretary of State<sup>18</sup> may request the Secretary of State to review that decision<sup>19</sup>. A carrier who is aggrieved by an administrative penalty imposed on him by the traffic commissioner for the area in which the carrier has his operating centre<sup>20</sup> may appeal to the Transport Tribunal<sup>21</sup>.

The provisions as to certification of initial fitness<sup>22</sup>, PSV operator's certificates<sup>23</sup> and operators' discs<sup>24</sup> do not apply to a vehicle being used to carry out cabotage transport operations<sup>25</sup>.

The provisions of the Public Passenger Vehicles Act 1981 concerning forgery and misuse of documents to obtain a licence<sup>26</sup> apply to the control document<sup>27</sup>.

1 As to Community licences see PARA 1652 ante.

2 The conditions specified in EC Council Regulation 12/98 (OJ L4, 8.1.98, p 10) laying down the conditions under which non-resident carriers may operate national road passenger transport services within a member state. See also EC Commission Regulation 2121/98 (OJ L268, 3.10.98, p 10) laying down detailed rules for the application of EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) (as amended) and EC Council Regulation 12/98 (OJ L268, 3.10.98, p 10).

3 EC Council Regulation 12/98 (OJ L268, 3.10.98, p 10) art 1.

4 'Regular services' means services which provide for the carriage of passengers at specified intervals along specified routes, passengers being taken up and set down at predetermined stopping points: *ibid* art 2(1). Regular services must be open to all, subject, where appropriate, to compulsory reservation: art 2(1). The fact that the operating conditions of the service may be adjusted does not affect its classification as a regular service: art 2(1). 'Special regular services' means regular services which provide for the carriage of specified categories of passengers, to the exclusion of other passengers, at specified intervals along specified routes, passengers being taken up and set down at predetermined stopping points; and include: (1) the carriage of workers between home and work; (2) carriage to and from the educational institution for school pupils and students; and (3) the carriage of soldiers and their families between their homes and the area of their barracks: art 2(2). The fact that a special service may be varied according to the needs of users does not affect its classification as a regular service: art 2(2).

5 *Ibid* art 3. A regular international service must be carried out in accordance with EC Council Regulation 684/92 (OJ L74, 20.3.92, p 1) (as amended): EC Council Regulation 12/98 (OJ L268, 3.10.98, p 10) art 3. Cabotage transport cannot be performed independently of such international service: art 3. Urban and suburban services, that is services meeting the needs of an urban centre or conurbation, and transport needs between it and the surrounding areas, are excluded from head (3) in the text: art 3.

6 *Ibid* art 4(1). The specified areas are: (1) rates and conditions governing the transport contract; (2) weights and dimensions of road vehicles (such weights and dimensions may, where appropriate, exceed those applicable in the carrier's member state of establishment, but they may under no circumstances exceed the

technical standards set out in the certificate of conformity); (3) requirements relating to the carriage of certain categories of passengers (ie schoolchildren, children and persons with reduced mobility); (4) driving and rest time; and (5) value added tax on transport services (ie EC Council Directive 77/388 (OJ L145, 13.6.77, p 1) on the harmonisation of the laws of the member states relating to turnover taxes -- common system of value added tax: uniform basis of assessment, art 21(1)(a), which applies to the cabotage transport services): EC Council Regulation 12/98 (OJ L268, 3.10.98, p 10) art 4(1). Save as otherwise provided in Community legislation, the cabotage transport operations authorised by art 3(3) are subject to the existing laws, regulations and administrative provisions in force in the host state regarding authorisations, tendering procedures, the routes to be operated and the regularity, continuity and frequency of services as well as itineraries: art 4(2). The technical standards of construction and equipment which must be met by vehicles used to carry out cabotage transport operations are those laid down for vehicles put into circulation in international transport: art 4(3). The national provisions referred to in art 4(1), (2) must be applied by member states to non-resident carriers on the same conditions as those imposed on their own nationals, so as effectively to prevent any open or hidden discrimination on grounds of nationality or place of establishment: art 4(4). The list of areas covered in art 4(1) may be amended: see art 4(5).

7 Ibid art 5. The driver of a vehicle which is required under art 5 to have on board a Community licence or a certified true copy commits an offence if he fails, without reasonable cause, to produce the licence or copy when requested to do so by an authorised inspecting officer and is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Transport (Passenger Vehicles Cabotage) Regulations 1999, SI 1999/3413, reg 7(1), (2), (4). As to offences committed by bodies corporate see reg 9. As to the standard scale see PARA 230 note 3 ante. For the meaning of 'Great Britain' see PARA 205 note 3 ante. Authorised inspecting officers for these purposes in Great Britain are constables in uniform and examiners appointed under the Road Traffic Act 1988 s 66A (as added and amended) (see PARA 698 ante): Road Transport (Passenger Vehicles Cabotage) Regulations 1999, SI 1999/3413, reg 8. As to constables see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

8 EC Council Regulation 12/98 (OJ L268, 3.10.98, p 10) art 6(1). The driver of a vehicle which is required, under art 6(1), to have on board a control document commits an offence if he fails, without reasonable cause, to produce the control document when requested to do so by an authorised inspecting officer and is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Road Transport (Passenger Vehicles Cabotage) Regulations 1999, SI 1999/3413, reg 7(3), (4). The journey form must comprise the points of departure and destination of the service, and the date of departure and the date on which the service ends: EC Council Regulation 12/98 (OJ L268, 3.10.98, p 10) art 6(2). The journey forms must be supplied in books certified by the competent authority or agency in the member state of establishment: art 6(3). In the case of special regular services, the contract concluded between the carrier and the transport organiser, or a certified true copy of it, will serve as the control document but the journey form must be completed in the form of a monthly statement: art 6(4). The journey forms used must be returned to the competent authority or agency in the member state of establishment in accordance with procedures to be laid down by the authority or agency: art 6(5).

9 For the meaning of 'road' see PARA 206 ante; definition applied by the Road Transport (Passenger Vehicles Cabotage) Regulations 1999, SI 1999/3413, reg 1(2).

10 As to the meaning of 'causes or permits' see PARA 261 note 6 ante.

11 Road Transport (Passenger Vehicles Cabotage) Regulations 1999, SI 1999/3413, reg 3(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: reg 3(2).

12 Ibid reg 4(1). As to the requirement for the control document see note 8 supra. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: reg 4(2).

13 The Secretary of State is designated as the competent authority for the purposes of EC Council Regulation 12/98 (OJ L268, 3.10.98, p 10) art 11(2): Road Transport (Passenger Vehicles Cabotage) Regulations 1999, SI 1999/3413, reg 5(2) (substituted by SI 2000/3114). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

14 Ie the provisions of EC Council Regulation 12/98 (OJ L268, 3.10.98, p 10).

15 Ibid art 11(2). The penalties must be imposed on a non-discriminatory basis and may, inter alia, consist of a warning or, in the event of serious or repeated infringements, a temporary ban on cabotage transport operations within the United Kingdom: art 11(3). Where a falsified Community licence, falsified authorisation or falsified certified true copy of it is produced, the falsified document must be withdrawn immediately and, where appropriate, forwarded as soon as possible to the competent authority of the carrier's member state of establishment: art 11(3).

16 The traffic commissioner for the area in which the carrier has his operating centre ('the appropriate traffic commissioner') is designated as the competent authority for the purposes of *ibid* art 11(4): Road Transport (Passenger Vehicles Cabotage) Regulations 1999, SI 1999/3413, reg 5(1). For the meaning of 'traffic commissioner' see *PARA* 1138 note 7 *ante*; definition applied by reg 1(2).

17 EC Council Regulation 12/98 (OJ L268, 3.10.98, p 10) art 11(4). In the event of serious or repeated infringements, the traffic commissioner must decide whether an appropriate penalty should be imposed on the carrier concerned; he must take into account any penalty already imposed in the host state and ensure that the penalties already imposed on the carrier concerned are, as a whole, proportional to the infringement or infringements which gave rise to such penalties: art 11(4). The penalty imposed by the traffic commissioner, after consulting the competent authority of the host state, may extend to withdrawal of authorisation to pursue the occupation of road passenger transport operator: art 11(4). The traffic commissioner may also arraign the carrier concerned before a competent national court or tribunal: art 11(4). The host state must be informed of any decisions taken pursuant to art 11: art 11(4).

18 *Ie* under *ibid* art 11(2).

19 Road Transport (Passenger Vehicles Cabotage) Regulations 1999, SI 1999/3413, reg 6(1).

20 *Ie* under EC Council Regulation 12/98 (OJ L268, 3.10.98, p 10) art 11(4).

21 Road Transport (Passenger Vehicles Cabotage) Regulations 1999, SI 1999/3413, reg 6(2). As to the Transport Tribunal see *PARA* 253 *et seq ante*.

22 *Ie* the requirements of the Public Passenger Vehicles Act 1981 s 6 (as amended): see *PARA* 1141 *ante*.

23 *Ie* the provisions of *ibid* s 12 (as amended): see *PARA* 1144 *ante*.

24 *Ie* the provisions of *ibid* s 18 (as amended): see *PARA* 1159 *ante*.

25 Road Transport (Passenger Vehicles Cabotage) Regulations 1999, SI 1999/3413, reg 10(2).

26 *Ie* the Public Passenger Vehicles Act 1981 s 65 (as amended) (see *PARA* 1304 *ante*), s 66 (as amended) (see *PARA* 1305 *ante*).

27 *Ie* the journey form issued under EC Council Regulation 12/98 (OJ L268, 3.10.98, p 10) art 6(1) (see the text and note 8 *supra*): see the Road Transport (Passenger Vehicles Cabotage) Regulations 1999, SI 1999/3413, reg 10(3), (4).

## UPDATE

### **1651-1656 International carriage by coach and bus ... Passenger vehicles cabotage**

Regulation 684/92 replaced with effect in part from 4 June 2010 and in part from 4 December 2011: European Parliament and EC Council Regulation 1073/2009 (OJ L300, 14.11.2009, p 88).

### **1656 Passenger vehicles cabotage**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see *ADMINISTRATIVE LAW* vol 1(1) (2001 Reissue) *PARA* 196A.

TEXT AND NOTES 20, 21--SI 1999/3413 reg 6(2) amended: SI 2009/1885.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-



1663)/19. INTERNATIONAL ROAD TRAFFIC/(6) INTERNATIONAL TRANSPORT OF PASSENGERS AND GOODS/1657. International carriage of goods by road within the Community.

### **1657. International carriage of goods by road within the Community.**

A European Regulation<sup>1</sup> abolished for the road hauliers of the member states the system of quotas of authorisations for the carriage of goods by road within the European Community and bilateral quotas of permits for the carriage of goods by road between member states<sup>2</sup> and replaced it with a system of Community authorisations issued without quota limits to carriers who satisfy qualitative criteria of good repute, financial standing and professional competence<sup>3</sup>. The Regulation does not affect the system of bilateral quotas of permits between member states and third countries until the necessary agreements are concluded between the Community and the third countries<sup>4</sup>. International carriage<sup>5</sup> must be carried out subject to Community authorisation<sup>6</sup> in conjunction with a driver attestation<sup>7</sup> if the driver is a national of a non-member country<sup>8</sup>.

The driver attestation must be issued by the competent authorities of the member state of establishment of the haulage undertaking<sup>9</sup>. A driver attestation must be issued by the member state at the request of the holder of the Community authorisation for each driver who is a national of a non-member country whom he lawfully employs or who is lawfully put at his disposal in accordance with the laws, regulations or administrative provisions and, as appropriate, the collective agreements, in accordance with the rules applicable in that member state, on the conditions of employment and of vocational training of drivers applicable in that same member state<sup>10</sup>. Each driver attestation must certify that the driver named therein is employed in accordance with the relevant conditions<sup>11</sup>. The driver attestation must certify that in the context of transport by road covered by Community authorisation, a driver who is a national of a non-member country carrying out such transport is employed in the haulier's member state of establishment in accordance with the laws, regulations or administrative provisions and, as appropriate, the collective agreements, in accordance with the rules applicable in that member state, on the conditions of employment and of vocational training of drivers to carry out road transport operations in that state<sup>12</sup>. A driver attestation must be issued for a period to be determined by the issuing member state, subject to a maximum validity of five years<sup>13</sup>. The driver attestation is valid only as long as the conditions under which it was issued are satisfied<sup>14</sup>. Member states must take appropriate measures to ensure that if those conditions are no longer met the haulier returns the attestation immediately to the issuing authorities<sup>15</sup>.

The Community authorisation is issued by the competent authority of the member state of establishment of the haulier<sup>16</sup>, must be made out in the name of the haulier and may not be transferred to any third party; a certified true copy must be kept in the vehicle and produced whenever required by an authorised inspecting officer<sup>17</sup>. The Community authorisation is issued for a renewable period of five years<sup>18</sup>. Whenever an application for a Community authorisation is lodged, not more than five years after issue and subsequently at least every five years, the competent authority must verify whether the haulier satisfies or still satisfies the conditions as to Community authorisation<sup>19</sup>.

If the conditions as to Community authorisation or driver attestation are not satisfied<sup>20</sup>, the competent authorities of the member state of establishment must reject an application for the issue or renewal of a Community authorisation or of a driver attestation, by means of a decision which states the reasons for doing so<sup>21</sup>. The competent authorities must withdraw a Community authorisation or a driver attestation where the holder: (1) no longer satisfies the relevant conditions; or (2) has supplied incorrect information in relation to the data required for the issue of a Community authorisation or of a driver attestation<sup>22</sup>. The member states must guarantee that the applicant or the holder of a Community authorisation is able to appeal against any decision by the competent authorities of the member state of establishment to

refuse or withdraw an authorisation<sup>23</sup>. The member states must guarantee that the holder of a Community authorisation can appeal against any decision by the competent authorities of the member state of establishment to refuse or withdraw a driver attestation or to make the issue of driver attestations subject to additional conditions<sup>24</sup>.

A person who, being entitled to be issued with a Community authorisation<sup>25</sup>, is aggrieved by the refusal of the competent authority to issue such an authorisation to him, or, being the holder of a Community authorisation, is aggrieved by the decision of the competent authority who issued it to withdraw it, may appeal, if he is a haulier established in Great Britain, to the Transport Tribunal<sup>26</sup>.

A person who uses a vehicle in the United Kingdom for international carriage without a Community authorisation is guilty of an offence<sup>27</sup>. A person who uses a vehicle in the United Kingdom under a Community authorisation and, without reasonable excuse, fails to comply with any of the conditions governing the use of that authorisation<sup>28</sup> is also guilty of an offence<sup>29</sup>.

1     le EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) (amended by European Parliament and Council Regulation 484/2002 (OJ L76, 19.3.2002, p 1) on access to the market in the carriage of goods by road within the Community to or from the territory of a member state or passing across the territory of one or more member states (as amended), implemented in the United Kingdom by the Goods Vehicles (Community Authorisations) Regulations 1992, SI 1992/3077.

2     le the system under EEC Council Regulation 3164/76 (OJ L357, 29.12.76, p 1) (as amended) on the Community quota for the carriage of goods by road between member states.

3     See EC Council Directive 96/26 (OJ L124, 23.5.96, p 1) on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right of establishment in national and international transport operations, implemented in Great Britain by the Goods Vehicles (Licensing of Operators) Act 1995 ss 13, 27, Sch 3 (as amended). See also PARA 1339 et seq ante. For the meaning of 'Great Britain' see PARA 205 note 3 ante. As to provision for international road haulage permits see the International Road Haulage Permits Act 1975 ss 1, 2 (both as amended); and PARA 1637 ante. As to carriage of goods generally see CARRIAGE AND CARRIERS; and as to international carriage of goods by road see CARRIAGE AND CARRIERS vol 7 (2008) PARA 650 et seq.

4     See EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) art 1.

5     'International carriage' means: (1) a journey undertaken by a vehicle the point of departure and the point of arrival of which are in two different member states, with or without transit through one or more member states or non-member countries; (2) a journey undertaken by a vehicle from a member state to a non-member country or vice versa, with or without transit through one or more member states or non-member countries; (3) a journey undertaken by a vehicle between non-member countries, with transit through the territory of one or more member states; or (4) an unladen journey in conjunction with such carriage: *ibid* art 2.

6     See note 3 *supra*. A person is entitled to be issued with a Community authorisation if, in the case of a person established as a haulier in Great Britain, he holds a standard operator's licence covering international transport operations: Goods Vehicles (Community Authorisations) Regulations 1992, SI 1992/3077, reg 5. As to the meaning of 'standard operator's licence' see PARA 1330 note 2 ante; definition applied by reg 2(2); and see the Interpretation Act 1978 s 17(2).

7     A driver attestation must be issued by a member state in accordance with EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) art 6 (as substituted) to any haulier who: (1) is the holder of a Community authorisation; (2) in that member state lawfully employs drivers who are nationals of non-member countries or lawfully uses drivers who are nationals of non-member countries put at his disposal in accordance with the conditions of employment and of vocational training laid down in that same member state by laws, regulations or administrative provisions, and, as appropriate, by collective agreements, in accordance with the rules applicable in that member state: art 3(3) (added by European Parliament and EC Council Regulation 484/2002 (OJ L76, 19.3.2002, p 1) art 1(2)(b)). 'Driver' means the person who drives a vehicle, or who is carried in that vehicle in order to be available for driving if necessary: EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) art 2 (amended by European Parliament and EC Council Regulation 484/2002 (OJ L76, 19.3.2002, p 1) art 1(1)).

8     EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) art 3(1), (2) (art 3(1) substituted by European Parliament and EC Council Regulation 484/2002 (OJ L76, 19.3.2002, p 1) art 1(2)(a)).

9 EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) art 6(1) (art 6 substituted by EC Council Regulation 484/2002 (OJ L76, 19.3.2002, p 1) art 1(5)).

10 EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) art 6(2) (as substituted: see note 9 supra). The Commission must examine the consequences of restricting the obligation to hold a driver attestation to drivers who are nationals of non-member countries and must, should there be sufficient justification for doing so, submit a proposal for the amendment of the relevant provisions: art 11(a) (added by EC Council Regulation 484/2002 (OJ L76, 19.3.2002, p 1) art 1(10)).

11 EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) art 6(2) (as substituted: see note 9 supra). The conditions are those laid down in art 4 (see the text to note 12 infra).

12 Ibid art 4(2) (added by EC Council Regulation 484/2002 (OJ L76, 19.3.2002, p 1) art 1(3)). The driver attestation must conform to the prescribed model, which also lays down the conditions governing its use: EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) art 6(3) (as substituted: see note 9 supra). As to the prescribed model see Annex III (added by EC Council Regulation 484/2002 (OJ L76, 19.3.2002, p 1) art 1(11)). Member states must take all steps necessary to prevent the forgery of driver attestations and inform the European Commission of the steps taken: EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) art 6(3) (as so substituted). The driver attestation belongs to the haulier, who puts it at the disposal of the driver designated in it when that driver drives a vehicle using a Community authorisation issued to that haulier: art 6(4) (as so substituted). A certified true copy of the driver attestation must be kept at the haulier's premises and must be produced whenever required by an authorised inspecting officer: art 6(4) (as so substituted).

13 Ibid art 6(5) (as substituted: see note 9 supra).

14 Ibid art 6(5) (as substituted: see note 9 supra).

15 Ibid art 6(5) (as substituted: see note 9 supra).

16 Ibid art 5(1). For the purposes of EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) (as amended) and the Goods Vehicles (Community Authorisations) Regulations 1992, SI 1992/3077, the competent authority in relation to a haulier with an operating centre in a traffic area in Great Britain is the traffic commissioner for that area: reg 4(a). The holder must be issued with the original of the Community authorisation which must be kept by the haulage undertaking, and the number of certified true copies corresponding to the number of vehicles at the disposal of the holder of the Community authorisation, whether wholly owned or, for example, under hire purchase, hire or leasing contracts: EC Council Regulation (OJ L95, 9.4.92, p 1) art 5(2). The Community authorisation must correspond to the model in Annex 1 which also lays down the conditions governing its use: art 5(3).

17 Ibid art 5(4). In Great Britain the authorised inspecting officers are police constables, and examiners appointed under the Road Traffic Act 1998 s 66A(1) (as added and amended) (see PARA 698 ante): Goods Vehicles (Community Authorisations) Regulations 1992, SI 1992/3077, reg 8(a).

18 EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) art 5(5) (added by EC Council Regulation 484/2002 (OJ L76, 19.3.2002, p 1) art 1(4)).

19 EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) art 7(1). The competent authorities of the member state of establishment must regularly verify, by carrying out checks each year, covering at least 20% of the valid attestations issued in that member state, whether the conditions referred to in art 3(3) (as added) (see note 7 supra) under which a driver attestation has been issued are still satisfied: art 7(2) (added by EC Council Regulation 484/2002 (OJ L76, 19.3.2002, p 1) art 1(6)).

20 Ie the conditions laid down in EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) art 3(2) or those referred to in art 3(3) (as added) (see note 7 supra).

21 Ibid art 8(1) (art 8 substituted by EC Council Regulation 484/2002 (OJ L76, 19.3.2002, p 1) art 1(7)).

22 EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) art 8(2) (as substituted: see note 21 supra). In the event of serious infringements or repeated minor infringements of carriage regulations, the competent authorities of the member state of establishment of the haulier who has committed such infringements may, inter alia, temporarily or partially withdraw the certified true copies of the Community authorisation and may withdraw driver attestations: art 8(3) (as so substituted). These sanctions must be determined having regard to the seriousness of the infringement committed by the holder of the Community authorisation and having regard to the total number of certified true copies of that authorisation that he holds in respect of international traffic: art 8(3) (as so substituted). In the event of serious infringements or repeated minor infringements regarding any misuse whatsoever of driver attestations, the competent authorities of the member state of establishment of the haulier who committed such infringements must impose appropriate sanctions such as: (1) suspension of the issue of driver attestations; (2) withdrawal of driver attestations; (3) making the issue of driver attestations

subject to additional conditions in order to prevent misuse; and (4) temporary or partial withdrawal of the certified true copies of the Community authorisation: art 8(4) (as so substituted). These sanctions must be determined having regard to the seriousness of the infringement committed by the holder of the Community authorisation: art 8(4) (as so substituted).

The holder of a Community authorisation which is withdrawn by the competent authority in accordance with art 8(2) must within seven days of such withdrawal return to the competent authority which issued it the original authorisation and all certified true copies of it: Goods Vehicles (Community Authorisations) Regulations 1992, SI 1992/3077, reg 9(1). The holder of a Community authorisation must return to the competent authority which issued it such certified true copies of the authorisation as the authority may require pursuant to any reduction in the number of vehicles at the disposal of the holder or any decision of the authority under EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) art 8(3) to suspend certified true copies of that authorisation: Goods Vehicles (Community Authorisations) Regulations 1992, SI 1992/3077, reg 9(2). A person who, without reasonable excuse, fails to comply with any provision of reg 9(1), (2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: reg 9(3). As to the standard scale see PARA 230 note 3 ante. The holder of a Community authorisation must furnish such information as the competent authority which issued it may reasonably require from time to time to enable the authority to decide whether the holder is entitled to retain that authorisation: reg 10(1). A person who, without reasonable excuse, fails to supply any information so required is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: reg 10(2). As to offences by bodies corporate see reg 12. As to the death or bankruptcy of the holder of a Community authorisation see reg 11.

23 EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) art 9(1) (amended by EC Council Regulation 484/2002 (OJ L76, 19.3.2002, p 1) art 1(8)).

24 EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) art 9(2) (added by EC Council Regulation 484/2002 (OJ L76, 19.3.2002, p 1) art 1(8)).

25 *Ie* under the Goods Vehicles (Community Authorisations) Regulations 1992, SI 1992/3077, reg 5: see note 7 *supra*.

26 *Ibid* reg 6. As to the Transport Tribunal see PARA 253 *et seq* ante.

27 *Ibid* reg 3. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: reg 3.

28 *Ie* under EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) (as amended).

29 Goods Vehicles (Community Authorisations) Regulations 1992, SI 1992/3077, reg 7. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: reg 7.

## UPDATE

### 1657 International carriage of goods by road within the Community

TEXT AND NOTES--Regulation 881/92 replaced with effect in part from 14 May 2010 and in part from 4 December 2011: European Parliament and EC Council Regulation 1072/2009 (OJ L300, 14.11.2009, p 72).

NOTE 3--Directive 96/26 replaced with effect from 4 December 2011: European Parliament and EC Council Regulation 1071/2009 (OJ L300, 14.11.2009, p 51).

TEXT AND NOTE 26--SI 1992/3077 reg 6 amended: SI 2009/1885.

NOTE 28--See *Romantiek Transport BVBA v Vehicle and Operator Services Agency* [2008] EWCA Civ 534, [2008] 2 Lloyd's Rep 409, [2008] All ER(D) 224 (May), (vehicle not performing cabotage but, in reality, operating full-time in member state other than that of its purported establishment).

1663)/19. INTERNATIONAL ROAD TRAFFIC/(6) INTERNATIONAL TRANSPORT OF PASSENGERS AND GOODS/1658. Community cabotage.

### **1658. Community cabotage.**

Any road haulage carrier for hire or reward who is a holder of the Community authorisation<sup>1</sup> and whose driver, if he is a national of a non-member country, holds a driver attestation in accordance with the relevant conditions<sup>2</sup>, is entitled to operate on a temporary basis national road haulage services for hire or reward in another member state ('cabotage'), without having a registered office or other establishment there<sup>3</sup>.

1     le an authorisation under EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) (as amended) on access to the market in the carriage of goods by road within the Community to or from the territory of a member state or passing across the territory of one or more member states (as amended): see PARA 1657 ante. The performance of cabotage transport operations is subject, save as otherwise provided in Community Regulations, to the laws, regulations and administrative provisions in force in the member state where it is performed in respect of: (1) rates and conditions governing the transport contract; (2) weights and dimensions of road vehicles (such weights and dimensions may, where appropriate, exceed those applicable in the carrier's member state of establishment, but they may under no circumstances exceed the technical standards certified by the proof of compliance referred to in EEC Council Directive 86/364 (OJ L221, 7.8.86, p 48) art 1(1)); (3) requirements relating to the carriage of certain categories of goods, in particular dangerous goods, perishable foodstuffs, and live animals; (4) driving and rest time; and (5) value added tax on transport services (EEC Council Directive 77/388 (OJ L145, 13.6.77, p 1) art 21(1)(a) applies to cabotage services); EC Council Regulation 3118/93 (OJ L279, 12.11.93, p 1) (as amended) laying down the conditions under which non-resident carriers may operate national road haulage services within a member state, art 6(1). These provisions are applied to non-resident transport operators on the same conditions as those which the member state imposes on its own nationals, so as to prevent any open or hidden discrimination on grounds of nationality or place of establishment: art 6(3). The technical standards of construction and equipment which vehicles used to carry out cabotage operations must meet are those laid down for vehicles put into circulation in international transport: art 6(2).

2     le the conditions laid down in EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) (as amended): see PARA 1657 ante.

3     EC Council Regulation 3118/93 (OJ L279, 12.11.93, p 1) art 1(1) (substituted by European Parliament and EC Council Regulation 484/2002 (OJ L76, 19.3.2002, p 1) art 2(1)). In addition, any carrier entitled in the member state of establishment, in accordance with that member state's legislation, to carry out the road haulage operations for hire or reward mentioned in EEC Council Directive 62/1001 (OJ L70, 6.8.62, p 2005) Annex I points 1, 2 and 3 (as amended) must be permitted, under the conditions set out in EC Council Regulation 3118/93 (OJ L279, 12.11.93, p 1) (as amended), to carry out, as the case may be, cabotage operations of the same kind or cabotage operations with vehicles in the same category: art 1(2). If the driver is a national of a non-member country, he must also hold a driver attestation in accordance with the conditions laid down in EC Council Regulation 881/92 (OJ L95, 9.4.92, p 1) (as amended): EC Council Regulation 3118/93 (OJ L279, 12.11.93, p 1) art 1(2) (amended by EC Council Regulation 484/2002 (OJ L76, 19.3.2002, p 1) art 2(2)).

Permission to carry out cabotage operations, within the framework of the types of carriage referred to in EEC Council Directive 62/1001 (OJ L70, 6.8.62, p 2005) Annex I point 5 (as amended), must be unrestricted: EC Council Regulation 3118/93 (OJ L279, 12.11.93, p 1) art 1(3). Any undertaking entitled in the member state of establishment, in accordance with that member state's legislation, to carry out road haulage operations for own account must be permitted to carry out cabotage operations on own account as defined in EEC Council Directive 62/1001 (OJ L70, 6.8.62, p 2005) Annex I point 4 (as amended): EC Council Regulation 3118/93 (OJ L279, 12.11.93, p 1) art 1(4). Any such undertakings are entitled to receive the cabotage authorisations referred to in art 2 (amended by EC Council Regulation 3315/94 (OJ L350, 21.12.94, p 9)) under the same conditions as undertakings performing road haulage operations for hire or reward: EC Commission Regulation 792/94 (OJ L92, 9.4.94, p 13) laying down detailed rules for the application of EC Council Regulation 3118/93 (OJ L279, 12.11.93, p 1) to road haulage operators on own account, art 1. The authorities of the member state where the cabotage operation is carried out must consider the cabotage authorisations as sufficient evidence that the undertaking is entitled to carry out road haulage operations on own account, as defined in EEC Council Directive 62/1001 (OJ L70, 6.8.62, p 2005) (as amended) Annex I point 4: EC Commission Regulation 792/94 (OJ L92, 9.4.94, p 13) art 2.

## **UPDATE**

### **1658 Community cabotage**

NOTES--Regulation 881/92 replaced with effect in part from 14 May 2010 and in part from 4 December 2011: see PARA 1657.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/19. INTERNATIONAL ROAD TRAFFIC/(6) INTERNATIONAL TRANSPORT OF PASSENGERS AND GOODS/1659. Temporary use of goods vehicles in Great Britain.

### **1659. Temporary use of goods vehicles in Great Britain.**

Regulations made by the Secretary of State<sup>1</sup> provide exemptions from operator licensing for foreign goods vehicles<sup>2</sup> of specified countries<sup>3</sup> used in Great Britain for the carriage of any goods or for the carriage of specified goods, subject to specified conditions or in specified circumstances, or by Northern Ireland and foreign goods vehicles used for specified purposes or in specified circumstances<sup>4</sup>. In particular the regulations exempt Northern Ireland and foreign goods vehicles used for the carriage of goods between member states<sup>5</sup>, Northern Ireland or foreign goods vehicles with international licences<sup>6</sup>, foreign goods vehicles with Community cabotage authorisations and Northern Ireland goods vehicles carrying goods in Great Britain or between Northern Ireland and Great Britain<sup>7</sup>. In relation to foreign goods vehicles not otherwise exempt<sup>8</sup>, the regulations lay down a simplified procedure for the grant of operators' licences<sup>9</sup>.

1    Ie the Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) Regulations 1996, SI 1996/2186 (amended by SI 2001/1149; SI 2004/462). As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2    Ie exemptions from the Goods Vehicles (Licensing of Operators) Act 1995 s 2(1): see PARA 1329 ante. 'Foreign goods vehicle' means a goods vehicle: (1) which is operated by a person who is not established in the United Kingdom and has been brought temporarily into Great Britain; (2) which is not being used for international carriage by a haulier who is established in a member state other than the United Kingdom; (3) which is engaged in carrying goods by road on a journey some part of which has taken place, or will take place, outside the United Kingdom; and (4) which, except in the case of a Community cabotage authorisation, is not used at any time during the said journey for the carriage of goods loaded at one place in the United Kingdom and delivered to another place in the United Kingdom: Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) Regulations 1996, SI 1996/2186, reg 3(1). For the meaning of 'United Kingdom' see PARA 224 note 5 ante; and for the meaning of 'Great Britain' see PARA 205 note 3 ante. For the meaning of 'international carriage' see PARA 1657 note 5 ante; definition applied by reg 3(1). 'Northern Ireland goods vehicle' means a goods vehicle of which the operating centre is in Northern Ireland and: (a) which has been brought temporarily into Great Britain; (b) which is not being used for international carriage by a haulier who is established in Northern Ireland and is not established in Great Britain; (c) which is engaged in carrying goods by road on a journey some part of which has taken place, or will take place, outside Great Britain; and (d) which, in the case of a motor vehicle, is registered in Northern Ireland or, in the case of a trailer, is drawn in Great Britain only by a motor vehicle which is a Northern Ireland goods vehicle: reg 3(1).

3    See *ibid* regs 8-30, 30A-30E (regs 13, 25 substituted, and regs 30A-30E added, by SI 2004/462).

4    See the Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) Regulations 1996, SI 1996/2186, reg 4 (amended by SI 2004/462).

5    See the Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) Regulations 1996, SI 1996/2186, reg 5 (amended by SI 2004/462).

6    See the Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) Regulations 1996, SI 1996/2186, reg 6 (amended by SI 2004/462). International licences are issued pursuant to the scheme adopted by Resolution of the Council of Ministers of Transport on 14 June 1973: see the Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) Regulations 1996, SI 1996/2186, reg 6.

7 See the Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) Regulations 1996, SI 1996/2186, reg 7 (amended by SI 2004/462). 'Community cabotage authorisation' means an authorisation granted pursuant to EC Council Regulation 3118/93 (OJ L279, 12.11.93, p 1) laying down conditions under which non-resident carriers may operate national road haulage services within a member state (as amended) (see PARA 1658 ante); Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) Regulations 1996, SI 1996/2186, reg 3(1).

8 See under *ibid* regs 4-30E (as amended).

9 *Ibid* reg 31 (amended by SI 2004/462).

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### **1660. Legislation implementing international conventions.**

Certain statutory provisions give the force of law in the United Kingdom to certain international conventions in the transport field. In respect of road transport, the Carriage of Goods by Road Act 1965 gives the force of law to the Convention on the Contract for the International Carriage of Goods by Road ('CMR')<sup>1</sup>. This convention establishes the contract conditions for international carriage.

The International Carriage of Perishable Foodstuffs Act 1976 implements the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for such Carriage ('ATP')<sup>2</sup>. Regulations prescribe the standards for transport equipment to be used for such carriage, the foodstuffs which are perishable foodstuffs, the temperature limits, the transport equipment to be used for different foodstuffs, and provide for exemptions and examination and testing<sup>3</sup>. Provision is also made for enforcement and penalties<sup>4</sup>.

1 See the Convention on the Contract for the International Carriage of Goods by Road (Geneva, 19 May 1956; TS 90 (1967); Cmd 3455) ('CMR'). The convention is known by its acronym CMR, taken from its French title 'Convention relative au Contrat de Transport International de Marchandises par Route'. The convention is in English and French and the two texts have equal status: see art 51. Whilst only the English text is given the force of law in the United Kingdom (see the Carriage of Goods by Road Act 1965 s 1), it is appropriate to have regard to the French text whenever the English text is unclear: see *James Buchanan & Co Ltd v Babco Forwarding and Shipping (UK) Ltd* [1978] AC 141, [1977] 3 All ER 1048, HL. See further CARRIAGE AND CARRIERS vol 7 (2008) PARA 650 et seq.

2 See the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for such Carriage (Geneva, 1 September 1970; TS 52 (1987); Cmd 250) ('ATP'). See also the International Carriage of Perishable Foodstuffs Regulations 1985, SI 1985/1071, reg 2 (as substituted); and CARRIAGE AND CARRIERS vol 7 (2008) PARAS 111-112.

3 See the International Carriage of Perishable Foodstuffs Regulations 1985, SI 1985/1071 (as amended); and CARRIAGE AND CARRIERS vol 7 (2008) PARAS 111-112.

4 See CARRIAGE AND CARRIERS vol 7 (2008) PARA 113 et seq.

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## 20. TRANSPORT OF RADIOACTIVE SUBSTANCES AND MATERIALS

### 1661. Power to make regulations relating to transport of radioactive material by road.

Under the Radioactive Material (Road Transport) Act 1991, the Secretary of State may make such regulations as appear to him to be necessary or expedient: (1) to prevent any injury to health, or any damage to property or to the environment, being caused by, or by any incident arising out of, the transport of radioactive material<sup>2</sup>; and (2) to give effect to such international regulations for the safe transport of radioactive material as may from time to time be published by the International Atomic Energy Agency<sup>3</sup>. Without prejudice to the generality of the enabling power, such regulations may make particular provision with respect to: (a) the design of packaging for radioactive material and the manufacture and maintenance of packaging components<sup>4</sup>; (b) the preparation, labelling, consignment, handling, transport, storage in transit and delivery of radioactive packages<sup>5</sup>; (c) the placarding of vehicles used to transport such packages<sup>6</sup>; and (d) the keeping of records and the furnishing of information<sup>7</sup>.

Any person who contravenes or fails to comply with regulations made under the Radioactive Material (Road Transport) Act 1991 is guilty of an offence<sup>8</sup>.

Provision was made for regulations made under earlier legislation<sup>9</sup> to have effect as if made under the Radioactive Material (Road Transport) Act 1991<sup>10</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 Radioactive Material (Road Transport) Act 1991 s 2(1)(a). 'Transport' for these purposes means transport by road: s 1(2). 'Radioactive material' means any material having a specific activity in excess of 70 kilobecquerels per kilogram or such lesser specific activity as may be specified in an order made by the Secretary of State: s 1(1). The power to make regulations, or an order under s 1(1), is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: ss 1(1), 2(5). For such an order see the Radioactive Material (Road Transport) (Definition of Radioactive Material) Order 2002, SI 2002/1092, specifying 0.1 kilobecquerels per kilogram as the specific activity for the purposes of the Radioactive Material (Road Transport) Act 1991 s 1(1) (see the Radioactive Material (Road Transport) (Definition of Radioactive Material) Order 2002, SI 2002/1092, art 2).

The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573 (see PARA 1663 post) have been made under the Radioactive Material (Road Transport) Act 1991 s 2 to the extent necessary to revoke the regulations that had been previously made under s 2.

3 Ibid s 2(1)(b). As to the International Atomic Energy Agency see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1354.

4 Ibid s 2(2)(a). 'Packaging', in relation to radioactive material which has been consigned for transport, means an assembly of packaging components which encloses the material completely: s 1(2). 'Packaging components' means components intended for use as part of the packaging of such material, and includes: (1) receptacles, absorbent materials, spacing structures and radiation shielding; and (2) devices for cooling, for absorbing mechanical shocks and for thermal insulation: s 1(2).

5 Ibid s 2(2)(b). 'Radioactive package' means a package comprising radioactive material which has been consigned for transport and its packaging: s 1(2).

6 Ibid s 2(2)(c).

7 Ibid s 2(2)(d). As from a day to be appointed, s 2(2)(d) is substituted, and s 2(2)(e), (f) are added, by the Road Safety Act 2006 s 57(1), (2). At the date at which this volume states the law no such day had been appointed. As from the appointed day, head (d) in the text is substituted so that regulations may make provision for the keeping of records and the production, inspection, removal, retention and copying of records and other documents (see the Radioactive Material (Road Transport) Act 1991 s 2(2)(d) (as so substituted)); and new heads are added providing that regulations may provide for the provision of information and the answering of questions (including the making of declarations as to the truth of answers and their admissibility in



evidence), and for the provision of facilities and assistance in connection with the carrying out of functions conferred by the regulations (see s 2(2)(e), (f) (as so added)).

Regulations may also: (1) impose requirements by reference to the approval of the Secretary of State or of any person or body specified in the regulations; (2) make different provision for different cases or circumstances; and (3) provide for such exceptions, limitations and conditions, and make such supplementary, incidental, consequential or transitional provisions, as the Secretary of State considers necessary or expedient: s 2(3). As from a day to be appointed, regulations may also make provision for the imposition of requirements by inspectors and examiners: s 2(3)(za) (added by the Road Safety Act 2006 s 57(3)). At the date at which this volume states the law no such day had been appointed.

8 Radioactive Material (Road Transport) Act 1991 s 2(4). Section 2(4) is amended by the Road Safety Act 2006 s 57(4), as from a day to be appointed, to the effect that for 'fails to comply with regulations' there is substituted 'fails to comply with any requirement imposed by or by virtue of regulations'. At the date at which this volume states the law no such day had been appointed. Any person guilty of an offence under the Radioactive Material (Road Transport) Act 1991 s 2(4) is liable: (1) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both; or (2) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding two months or to both: s 6(3). As to the statutory maximum see PARA 359 note 11 ante. The court by or before which any person is convicted of such an offence in respect of any radioactive material may order the material to be destroyed or disposed of and any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by that person: s 6(4).

9 Re the Radioactive Substances Act 1948 s 5(2) (repealed).

10 Radioactive Material (Road Transport) Act 1991 s 2(6).

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## **1662. Appointment and powers of inspectors and examiners.**

The Secretary of State<sup>1</sup> may appoint as inspectors, to assist him in the execution of the Radioactive Material (Road Transport) Act 1991 and regulations made under it<sup>2</sup>, such number of persons appearing to him to be qualified for the purpose as he may consider necessary<sup>3</sup>; and he may make to or in respect of any person so appointed such payments by way of remuneration, allowances or otherwise as he may with the Treasury's approval determine<sup>4</sup>.

If it appears to an inspector<sup>5</sup> or examiner<sup>6</sup>, as respects any vehicle used to transport radioactive packages<sup>7</sup>: (1) that the vehicle, or any radioactive package which is being transported by it, fails to comply with any relevant regulations<sup>8</sup>; or (2) that the vehicle, or any radioactive package which is being transported by it, has been involved in an accident<sup>9</sup>; or (3) that any radioactive package which was being transported by the vehicle, or any radioactive material<sup>10</sup> which was contained in such a package, has been lost or stolen<sup>11</sup>, he may prohibit the driving of the vehicle<sup>12</sup>.

If it appears to an inspector that any radioactive package or packaging component fails to comply with any relevant regulations, he may prohibit the transport<sup>13</sup> of that package or, as the case may require, the use of that component as part of the packaging<sup>14</sup> of radioactive materials<sup>15</sup>.

Any such prohibition may apply either absolutely or for a specified purpose and either without any limitation of time or for a specified period<sup>16</sup>. Such a prohibition comes into force as soon as notice of it has been given and continues in force until it is removed<sup>17</sup> or, in the case of a prohibition imposed only for a specified period, until either it is removed or that period expires, whichever occurs first<sup>18</sup>.

If an inspector is of the opinion that any person is failing or is likely to fail to comply with any regulations which make provision for regulating the manufacture, or requiring the maintenance, of packaging components, he may serve a notice on that person: (a) stating that the inspector is of that opinion; (b) specifying the matters constituting the failure to comply with the regulations in question or making it likely that such a failure will occur; and (c) specifying the steps which must be taken in order to remedy those matters and the period within which these steps must be taken<sup>19</sup>.

Any person who contravenes a prohibition, or fails to comply with such a notice, is guilty of an offence<sup>20</sup>.

On producing, if so required, some duly authenticated document showing his authority, an inspector or examiner has a right at all reasonable hours: (i) to enter any vehicle used to transport radioactive packages for the purpose of ascertaining: (A) whether the vehicle, or any radioactive package which is being transported by it, fails to comply with any regulations<sup>21</sup>; (B) whether the vehicle, or any radioactive package which is or was being transported by it, has been involved in an accident; and (c) whether any radioactive package which was being transported by the vehicle, or any radioactive material which was contained in such a package, has been lost or stolen<sup>22</sup>; and (ii) in the case of an inspector, to enter any premises for the purpose of ascertaining whether there is on the premises any vehicle used for transporting radioactive packages, or any radioactive package or packaging component which fails to comply with regulations<sup>23</sup>. An inspector or examiner who enters any vehicle or premises by virtue of these provisions<sup>24</sup> may seize anything which he has reasonable grounds for believing is evidence in relation to an offence of contravening or failing to comply with regulations<sup>25</sup>. Any person who intentionally obstructs any person exercising any power conferred by these provisions<sup>26</sup> is guilty of an offence<sup>27</sup>. If any person who enters any vehicle or premises by virtue of these provisions<sup>28</sup> discloses any information thereby obtained with respect to any manufacturing process or trade secret, he is, unless the disclosure was made in the performance of his duty, guilty of an offence<sup>29</sup>.

1 As to the Secretary of State see PARA 236 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 237 ante.

2 I.e. regulations made under the Radioactive Material (Road Transport) Act 1991 s 2: see PARA 1661 text and notes 9-10 ante. See also PARA 1663 post.

3 Radioactive Material (Road Transport) Act 1991 s 1(3)(a).

4 Ibid s 1(3)(b). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

5 I.e. an inspector appointed under ibid s 1(3): s 1(2).

6 I.e. an examiner appointed under the Road Traffic Act 1988 s 68(1) (as originally enacted): Radioactive Material (Road Transport) Act 1991 s 1(2). Any reference in any Act, or any instrument made under any Act, to an examiner appointed under the Road Traffic Act 1988 s 68(1) (as originally enacted) is to be construed as a reference to an examiner appointed under s 66A (as added and amended) (see PARA 698 ante): Road Traffic Act 1991 s 9(2).

7 For the meaning of 'radioactive package' see PARA 1661 note 5 ante.

8 Radioactive Material (Road Transport) Act 1991 s 3(1)(a). The regulations in question are those made, or having effect as if made, under s 2: see note 2 supra.

9 Ibid s 3(1)(b).

10 For the meaning of 'radioactive material' see PARA 1661 note 2 ante.

11 Radioactive Material (Road Transport) Act 1991 s 3(1)(c).

12 Ibid s 3(1). When an inspector or an examiner imposes a prohibition he may also by a direction in writing require the person in charge of the vehicle to remove it (and if it is a motor vehicle drawing a trailer also to remove the trailer) to such place and subject to such conditions as are specified in the direction; and the prohibition does not apply to the removal of the vehicle or trailer in accordance with the direction: s 3(4). When an inspector or examiner imposes a prohibition under s 3(1) or (2) (see the text and notes 13-15 infra) he must forthwith give notice of the prohibition to the person in charge of the vehicle, package or packaging component specifying the failure to comply or, as the case may be, the accident or other incident in consequence of which the prohibition is imposed and: (1) stating whether the prohibition applies absolutely or for a specified purpose (and if the latter specifying the purpose); and (2) stating whether the prohibition applies without limitation of time or for a specified period; and any direction under s 3(4) may be given either in such a notice or in a separate notice given to the person in charge of the vehicle: s 3(5). For the meaning of 'packaging components' see PARA 1661 note 4 ante.

13 For the meaning of 'transport' see PARA 1661 note 2 ante.

14 For the meaning of 'packaging' and 'packaging components' see PARA 1661 note 4 ante.

15 Radioactive Material (Road Transport) Act 1991 s 3(2).

16 Ibid s 3(3).

17 Ibid s 3(6)(a). A prohibition under s 3(1) may be removed by any inspector or examiner, and a prohibition under s 3(2) may be removed by any inspector, if he is satisfied: (1) in the case of a prohibition imposed in consequence of a failure to comply with regulations, that appropriate action has been taken to remedy that failure; and (2) in the case of a prohibition imposed in consequence of an accident or other incident, either that no failure to comply with regulations was occasioned by that accident or incident or that appropriate action has been taken to remedy any such failure which was so occasioned: s 3(7). On removing a prohibition the inspector or examiner must forthwith give notice of the removal to the person in charge of the vehicle, package or packaging component: s 3(7).

18 Ibid s 3(6)(b).

19 Ibid s 4(1), (2).

20 Ibid ss 3(8), 4(2). Any person guilty of an offence under s 3(8) is liable: (1) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both; or (2) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding two months or to both: s 6(3). As to the statutory maximum see PARA 359 note 11 ante. The court by or before which any person is convicted of such an offence in respect of any radioactive material may order the material to be destroyed or disposed of and any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by that person: s 6(4).

21 Ie under ibid s 2: see PARA 1661 ante.

22 Ibid s 5(1)(a). If a justice of the peace, on sworn information in writing is satisfied that there are reasonable grounds for entering any vehicle or premises for any such purpose as is mentioned in s 5(1) and either: (1) that admission to the vehicle or premises has been refused, or a refusal is apprehended, and (in the case of premises) that notice of the intention to apply for the warrant has been given to the occupier; or (2) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or (in the case of premises) that they are unoccupied or the occupier temporarily absent, he may by warrant signed by him authorise the inspector or examiner to enter and search the vehicle or premises, using reasonable force if need be: s 5(2). A warrant granted under s 5 continues in force until executed: s 5(3).

23 Ibid s 5(1)(b). See note 22 supra. The text refers to regulations under s 2: see PARA 1661 ante.

24 Or by a warrant: see note 22 supra.

25 Radioactive Material (Road Transport) Act 1991 s 5(4). The text refers to an offence under s 2(4): see PARA 1661 ante.

26 Or by a warrant: see note 22 supra.

27 Radioactive Material (Road Transport) Act 1991 s 5(5).

28 Or by a warrant: see note 22 supra.

29 Radioactive Material (Road Transport) Act 1991 s 5(6).

**UPDATE****1662 Appointment and powers of inspectors and examiners**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ROAD TRAFFIC (VOLUME 40(1) (2007 REISSUE) PARAS 201-650; VOLUME 40(2) (2007 REISSUE) PARAS 651-1131); VOLUME 40(3) (2007 REISSUE) PARAS 1132-1663)/20. TRANSPORT OF RADIOACTIVE SUBSTANCES AND MATERIALS/1663. The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007.

**1663. The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007.**

The Radioactive Material (Road Transport) Regulations 2002<sup>1</sup>, made under the Radioactive Material (Road Transport) Act 1991<sup>2</sup>, have been revoked and replaced by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007<sup>3</sup>, which also replace the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004<sup>4</sup>. The new regulations are much wider in scope than the Radioactive Material (Road Transport) Regulations 2002, dealing with the carriage of dangerous goods generally rather than radioactive material specifically, and applying to carriage by rail, as well as by road<sup>5</sup>. Provision is made for exceptions and derogations from the regulations<sup>6</sup>.

The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007 make provision as to who is the competent authority for the purposes of the regulations<sup>7</sup>, and as to the functions of that authority<sup>8</sup>, and for the making of appointments by that authority<sup>9</sup>.

The regulations impose requirements contained within ADR<sup>10</sup> and RID<sup>11</sup>. In addition to general requirements<sup>12</sup>, there are requirements relating to classification<sup>13</sup>; the dangerous goods list, special provisions and goods packed in limited quantities<sup>14</sup>; packing and tank provisions<sup>15</sup>; consignment procedures<sup>16</sup>; construction and testing<sup>17</sup>; carriage, loading, unloading and handling<sup>18</sup>; vehicle crews, equipment, operation and documentation<sup>19</sup>; and the construction and approval of vehicles<sup>20</sup>. The regulations also impose certain requirements that are additional or alternative to the requirements of ADR and RID<sup>21</sup>. These include requirements relating to the carriage of explosives (and, in some cases, certain goods) by road and rail<sup>22</sup>; the marshalling and formation of trains<sup>23</sup>; the keeping of information<sup>24</sup>; and placarding requirements for carriage within Great Britain<sup>25</sup>.

Provision is made as to the enforcement of the regulations<sup>26</sup>. The regulations provide a defence to any proceedings for an offence consisting of a contravention of the regulations for a person who can prove that the commission of the offence was due to the act or default of another person (not being one of his employees) and that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence<sup>27</sup>.

1    le the Radioactive Material (Road Transport) Regulations 2002, SI 2002/1093 (revoked).

2    le the Radioactive Material (Road Transport) Act 1991 s 2: see PARA 1661 ante.

3 See the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573. The regulations came into force on 1 July 2007: see reg 1. For provisions relating to interpretation see regs 2, 3, 5. Provision is also made for the sending out of documents: see reg 4.

4 See the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004, SI 2004/568 (revoked).

5 See the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573, reg 8(1). As to carriage of goods see CARRIAGE AND CARRIERS. As to railways see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 3 et seq. The regulations also apply to some extent to carriage of dangerous goods by inland waterway, in so far as they relate to safety advisers: see reg 8(2). As to inland waterways see WATER AND WATERWAYS vol 101 (2009) PARA 713 et seq.

The regulations also deal with the use of transportable pressure equipment: see Pt 4 (regs 71-80). As to transportable pressure equipment see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 555 et seq.

6 As to the exceptions see *ibid* regs 9-13, 35-37. As to the derogations see regs 14-34.

7 See *ibid* s 6.

8 See Pt 3 (regs 66-70). The functions of the competent authority are set out in reg 66. As to the appointment of persons by the competent authority to carry out its functions see reg 67; and as to the appointment of bodies and experts to carry out certain tasks see reg 69. As to the charging of fees see reg 68. Under reg 70 certain things done under previous legislation are deemed to have been a function performed under reg 66.

9 See *ibid* s 7, Sch 1.

10 For the purposes of the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573, 'ADR' generally means the provisions which came into effect on 1 January 2007 which: (1) form Annexes A and B to the European Agreement concerning the International Carriage of Dangerous Goods by Road; and (2) are contained in Annexes A and B to EC Council Directive 94/55 (OJ L319, 12.12.94, p 7) on the approximation of the laws of member states with regard to the transport of dangerous goods by road: Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573, reg 2.

11 See *ibid* Pt 2 (regs 38-65). For the purposes of the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573, 'RID' generally means the Annex to the Regulation concerning the international carriage of dangerous goods by rail which forms Appendix C to the Convention concerning International Carriage by Rail ('COTIF') which: (1) came into effect on 1 January 2007; and (2) is contained in the Annex to EC Council Directive 96/49 (OJ L235, 17.9.96, p 25) on the approximation of the laws of member states with regard to the transport of dangerous goods by rail: see the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573, reg 2.

12 See *ibid* regs 38-46.

13 See *ibid* regs 47, 48.

14 See *ibid* regs 49, 50.

15 See *ibid* regs 51, 52.

16 See *ibid* reg 53.

17 See *ibid* regs 54-61.

18 See *ibid* reg 62.

19 See *ibid* regs 63, 64.

20 See *ibid* reg 65.

21 See *ibid* Pt 5 (regs 81-91).

22 See *ibid* regs 81-87, 89.

23 See *ibid* reg 88.

24 See *ibid* reg 90.

25 See *ibid* reg 91.

26 See *ibid* reg 92.

27 See *ibid* reg 93.

## **UPDATE**

### **1663 The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations [2009]**

TEXT AND NOTES--Replaced. See the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which relate to application (reg 4); prohibitions and requirements (regs 5-10); exemptions (regs 11-18); transport pressure equipment (regs 19-23; see HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 555-557); radiological emergencies (reg 24); GB competent authority functions (regs 25-30); the keeping and provision of information (reg 31); and enforcement (reg 32). 'The GB competent authority' means the competent authority in Great Britain for the purposes of SI 2009/1348 as determined under reg 25, but a reference to '2007 GB Competent Authority' is a reference to the competent authority in Great Britain for the purposes of SI 2007/1573: SI 2009/1348 reg 2(5) Table. The competent authority in Great Britain for the purposes of SI 2009/1348 is (1) the Health and Safety Executive for certain class 1 goods; (2) the Secretary of State for Defence for functions in relation to certain military explosives and certain class 7 goods; (3) the traffic authority responsible for the road that passes through the tunnel in relation to certain functions; and (4) the Secretary of State for Transport for all other functions: see reg 25.